

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

September 18, 2008

Agenda ID #7943  
Alternate to Agenda ID #7488

TO PARTIES OF RECORD IN RESOLUTION ROSB-002

**NOTICE OF ALTERNATE RESOLUTION ORDERING ALTERNATIVE DISPUTE RESOLUTION BETWEEN PARTIES IN ORDER TO DETERMINE WHETHER TO ADOPT A RAILROAD CITATION PROGRAM FOR ENFORCING COMPLIANCE WITH GENERAL ORDERS AND OTHER REQUIREMENTS INCLUDING PROCEDURES FOR APPEAL OF CITATIONS ISSUED TO RAILROAD CARRIERS.**

A draft resolution (ROSB-002) by the Consumer Protection and Safety Division recommending adoption of a Railroad Carrier Citation Program was scheduled for consideration on the September 18, 2008 Commission meeting agenda. Commissioner Simon has issued the attached alternate resolution. The Commission may vote on the resolution at the November 6, 2008 Commission meeting, or it may postpone a vote. The Commission may adopt all or part of ROSB-002, or the alternate, or may amend or modify it, or set it aside and prepare a different resolution.

The Commission will consider the draft and alternate resolutions at its November 6, 2008 meeting. Railroads subject to the Railroad Carrier Citation Program may file comments on the draft resolution. An original and 2 copies of comments must be filed with the Consumer Protection and Safety Division by October 7, 2008, at the address set forth below, and served electronically on Paul Phillips, advisor to Commissioner Simon, at [psp@cpuc.ca.gov](mailto:psp@cpuc.ca.gov). Commenters must also serve comments on the other railroads potentially subject to the Citation Program, and send copies of comments by electronic mail to the e-mail address below. Comments shall focus on factual, legal or technical error in the draft resolution. (See Rule 14.5 for detailed requirements.)

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Attachments

## ATTACHMENT

### **Resolution ROSB-002: Resolution Ordering Alternative Dispute Resolution Between Parties In Order To Determine Whether To Adopt A Railroad Citation Program For Enforcing Compliance With General Orders And Other Requirements Including Procedures For Appeal Of Citations Issued To Railroad Carriers.**

Pursuant to Public Utilities Code § 311(e), this is the digest of the substantive differences between the proposed resolution prepared by the Consumer Safety and Protection Division (CPSD) (mailed on April 15, 2008) and the alternate proposed resolution of Commissioner Timothy Alan Simon, (mailed on September 18, 2008).

CPSD's proposed resolution recommends that the Commission approve a citation program under the administration of the Director of CPSD for enforcing compliance with certain General Orders and other requirements for railroad carriers operating in California. Specifically, the citation program will enforce compliance with the requirements for walkways, clearances, notification of hazardous materials release, and certain railroad operating rules agreed to by the Union Pacific Railroad Company (UPRR) and BNSF Railway Company (BNSF) in *Union Pacific Railroad Co. v. CPUC*, Case No. 07-cv-001 (E.D. Cal. June 1, 2007) ("AB 3023 Suit"). Staff is delegated authority to draft and issue citations for specific violations and levy penalties in specified amounts as set forth in Appendix A of the proposed resolution.

The alternate proposed resolution recommends that a mediation be convened by the Commission's Administrative Law Judge Division to discuss and attempt to resolve differences between CPSD and the railroad carriers regarding the citation program. The Administrative Law Judge Division is directed to report back to the Commission three months after the resolution is effective.

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Consumer Protection and Safety Division  
Railroad Operations Safety Branch

San Francisco, California  
Date: September 18, 2008  
Resolution ROSB-002

**RESOLUTION**

**ALTERNATE RESOLUTION ORDERING ALTERNATIVE DISPUTE RESOLUTION BETWEEN PARTIES IN ORDER TO DETERMINE WHETHER TO ADOPT A RAILROAD CITATION PROGRAM FOR ENFORCING COMPLIANCE WITH GENERAL ORDERS AND OTHER REQUIREMENTS INCLUDING PROCEDURES FOR APPEAL OF CITATIONS ISSUED TO RAILROAD CARRIERS.**

**SUMMARY**

On August 30, 2007, staff presented ROSB-001 with the stated purpose of creating a citation program for enforcing railroad compliance with selected general orders and certain other requirements. Staff later withdrew the resolution and refilled it in an amended form as ROSB-002.

Staff and the railroads appeared to have broad agreement about the importance of compliance, but they disagree about the most appropriate and effective process for achieving this goal. The parties have met together to discuss their differences regarding the resolution, but have not had the benefit of a mediator to help them resolve their outstanding issues. This matter has not been a subject of a formal proceeding, and there is no factual record on which to base a proposed Citation Program.

**THEREFORE, IT IS ORDERED THAT:**

1. For a period of three months from the date of this order, staff and the railroads, subject to Commission jurisdiction, shall participate in an Alternative Dispute Resolution (ADR) process consistent with Commission rules for the

purpose of attempting to settle upon an appropriate process for efficiently ensuring compliance with the Commission's General Orders and other requirements that would be the subject of a proposed Citation Program. The Administrative Law Judges Division shall assign an ALJ to serve as a neutral mediator for the ADR process. Three months from the date of this order, the assigned ALJ neutral shall submit a written report to the Commission on the status of the discussions and make a recommendation regarding whether the Commission should place the resolution implementing the proposed Citation Program back on the Commission Agenda.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on \_\_\_\_\_, 2008, the following Commissioners voting favorably thereon:

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PAUL CLANON  
Executive Director

**Updated ROSB Service Lists**

**Altamont Commuter Express**

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