

Decision 09-07-005 July 9, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Amend
General Order 118 Regarding the Appropriate
Size Materials, Including Ballast Rock Used in
Railway Switching Yards for Occupational
Health and Safety.

Rulemaking 07-09-007
(Filed September 20, 2007)

ORDER EXTENDING STATUTORY DEADLINE

Summary

This decision extends the statutory deadline for resolution of this matter to September 18, 2009. The parties submitted a settlement agreement on March 11, 2009. The Administrative Law Judge (ALJ) issued a ruling seeking additional information from the parties. On March 13, 2009, the Commission extended the statutory deadline to resolve this proceeding. The current deadline is July 20, 2009. Due to the Commission meeting schedule and the required 30-day comment period, the 60-day deadline extension actually resulted in only an additional 18 days for the ALJ to prepare a proposed decision. Consequently, additional time is needed to review the parties' response to the ruling and prepare a decision. It is impossible for this proceeding to be resolved by the current statutory deadline of July 20, 2009.

Background

Pub. Util. Code § 1701.5 provides that quasi-legislative cases shall be resolved within 18 months of the scoping memo unless the Commission makes

findings why that deadline cannot be met and issues an order extending the deadline. No single order may extend the deadline for more than 60 days.

On September 25, 2007, the Commission issued Order Instituting Rulemaking 07-09-007, to amend General Order 118 regarding the appropriate ballast size for use on walkways in railway switching yards. The original statutory deadline for resolution of this proceeding was March 25, 2009, but in January 2009, parties contacted the ALJ seeking additional time to finalize settlement negotiations. In response to the request of the parties, a Commission order was issued on March 13, 2009, extending the statutory deadline to May 21, 2009.

On March 11, 2009, the parties filed a settlement agreement. After initial review, the ALJ issued a ruling seeking supplemental information from the parties regarding the settlement agreement. The deadline for parties to respond to the ALJ's ruling was May 11, 2009. There was insufficient time for the Commission to resolve this proceeding between the May 11, 2009, deadline for parties to respond to the ALJ ruling and the statutory deadline of May 21, 2009. On May 13, 2009, the Commission issued an order extending the statutory deadline by 60 days to July 20, 2009. Due to the 30-day comment period and the Commission meeting schedule, the May 13, 2009, extension order actually resulted in only 18 additional days for the ALJ to prepare a proposed decision. Therefore, it is necessary to extend the statutory deadline for resolution of this proceeding an additional 60 days to September 18, 2009.

Waiver of Comments

Under Rule 14.6(c)(10) of the Commission's Rules of Practice and Procedure, the Commission may reduce or waive the period for public and comment of proposed decisions extending the deadline for resolving

quasi-legislative proceedings. Accordingly, pursuant to Rule 14.6(c)(10), the otherwise applicable § 1701.5(a) statutory deadline for public review and comment is being waived.

Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner and Linda A. Rochester is the assigned ALJ for this proceeding.

Findings of Fact

1. This rulemaking was issued on September 25, 2007, as a quasi-legislative proceeding.
2. The parties filed a settlement agreement on March 11, 2009.
3. The Administrative Law Judge issued a ruling seeking additional information from the parties regarding the settlement agreement.
4. Parties filed responses to the Administrative Law Judge's ruling on May 11, 2009.
5. The necessary Commission review of the settlement and the additional information could not be completed and a decision issued before the statutory deadline of May 21, 2009.
6. On March 13, 2009, the Commission issued an Order extending the statutory deadline for resolution of this proceeding by 60 days to July 20, 2009.
7. Due to the required 30-day comment period and the Commission meeting schedule, the March 13, 2009, extension order resulted in only 18 additional calendar days for the Administrative Law Judge to prepare a proposed decision.
8. A final decision in this proceeding is to be issued on or before September 18, 2009.

Conclusion of Law

The 18-month deadline imposed by Pub. Util. Code §1701.5(a) should be extended until September 18, 2009.

IT IS ORDERED that the 18-month statutory deadline in this proceeding is extended until September 18, 2009.

This order is effective today.

Dated July 9, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners