

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Operations, Practices, and Conduct of San Francisco Municipal Transportation Agency, Regarding Ongoing Public Safety Issues.

**FILED
PUBLIC UTILITIES COMMISSION
FEBRUARY 24, 2011
SAN FRANCISCO OFFICE
I.11-02-017**

**ORDER INSTITUTING INVESTIGATION INTO
THE OPERATIONS OF THE SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY**

I. INTRODUCTION AND STATEMENT OF PURPOSE

By this Order, the Commission institutes a formal investigation to determine whether the named Respondent, the San Francisco Municipal Transportation Agency ("SFMTA" or "Muni") repeatedly violated the Commission's General Orders, including 143-B, 164-D and 127, violated state and federal codes, violated SFMTA's own internal procedures, neglected system maintenance, and repeatedly failed to respond to the California Public Utilities Commission's ("Commission") Consumer Protection and Safety Division's ("CPSD") Rail Transit Safety Section ("RTSS") staff ("Staff") requests and its report recommendations, resulting in unsafe operations and endangering Muni's passengers.

The Respondent is SFMTA, a municipal transportation agency subject to the oversight of the Commission. The Commission has exclusive jurisdiction over rail transit safety in the state of California, including safety oversight of Rail Fixed Guideway Systems and Light-Rail Transit pursuant to Public Utilities Code § 99152 and 49 C.F.R. Part 659 et al.

The Commission has been regulating SFMTA's light rail and rail fixed guideways systems (light rail vehicles and cable cars) since 1996¹. As a part of this oversight authority, Staff conducts regular inspections of SFMTA's light rail systems, including mechanical, track, signal, and operations. Over the past several years, Staff has documented repeated safety violations and areas of needed safety improvement in SFMTA's light rail systems. In addition to the individual alleged safety violations and recommendations, Staff has observed a lack of responsiveness by SFMTA to Staff's findings and recommendations.

Of particular concern to Staff is SFMTA's inadequate and delayed responses to Staff's incident reports, investigations, corrective action recommendations some of which are over 13 months late. These delays in responding to Staff Reports and recommendations endanger public safety and corrections must be made immediately.

By initiating this formal investigation, the Commission seeks to address alleged past violations, which may have resulted in unsafe operations and endangered Muni's passengers and employees. The Commission seeks to remedy these alleged pervasive safety concerns to ensure that SFMTA's operations and policies comply with the law as well as SFMTA's own internal procedures to ensure the safety of passengers and employees.

II. SUMMARY OF PRELIMINARY FINDINGS

Staff conducted over twenty inspections from July, 2009 through January, 2011. The inspections covered all areas: mechanical, track, signal, and operations. The results of those inspections are documented in Inspection Reports.² Staff has compiled a list of findings from its inspections:

A. Track Deterioration at Church and Duboce Streets

The track at Church and Duboce streets has deteriorated and has numerous defects. Staff inspected the track on August 12, 2009, and again on October 20, 2009.

¹ D.96-09-081, 68 CPUC2d 156.

² Due to the voluminous nature of the Inspection Reports, only key documents will be attached to this OII and staff report. The inspections reports in their entirety are available upon request.

The problem is current; RTSS has yet to receive any plan for correction. Alleged violations are to General Order (“GO”) 143-B, section 14.05, and as incorporated in section 14.05, the standards in the Code of Federal Regulations, including Gage (49 CFR 213.53), Defective Rails (49 CFR 213.113), Rail Joints (49 CFR 213.121), and Frogs (49 CFR 213.137). These ongoing track violations present a serious public safety risk, and could result in various safety implications, including possible derailments. (See e.g. Staff Report, Photographs and Inspection Reports in Appendix B)

B. Automatic Train Control Inoperative in Sunset Tunnel

The Sunset Tunnel has numerous violations. The Automatic Train Control System (“ATCS”) may not regularly operate in the tunnel, which is a violation of GO 127.Section 3.16, which states, “No portion of the automatic train control system shall be abandoned, nor its operation discontinued without the permission of this Commission.” The ATCS monitors all trains on a continuous basis, and automatically protects against collisions and derailments due to right of way, excessive speed, track switches, and other causes.

The SFMTA is not following its own regulations regarding speed restrictions in a non-functioning ATCS area (Rule 4.32.2) (see inspection of January 6, 2011, attachment Staff Report, Appendix B). Richard Clark, Director of CPSD, sent a letter to Nathaniel Ford, SFMTA Executive Director and CEO, on January 14, 2011, directing the SFMTA to start following its own regulations and directing SFMTA to inform the Commission regarding its plan to restore the ATCS in the Sunset Tunnel. The SFMTA responded with a letter dated January 18, 2011, stating that the ATCS never functioned in the tunnel; however, the SFMTA did not provide any documentation to verify the claim. The SFMTA has yet to provide a plan for implementation of ATCS in the Sunset Tunnel. These violations of GO 127 and SFMTA’s internal rules constitute a serious public safety hazard.

C. Poor Maintenance of Signal and Train Control Equipment at Church Portal

An inspection on June 3-4, 2010, of the Church Portal noted numerous deficiencies including induction-damaged loop cable supports, improperly supported cables, cables rubbing switch rods, junction box problems, and others. A follow-up inspection on January 7, 2011, noted the same deficiencies. These deficiencies potentially pose a public safety threat. (See Staff Report, Appendix B)

D. ATCS Malfunction at the Embarcadero Station

The ATCS functions poorly in the Market Street Tunnel and may not regularly operate at the Embarcadero Station. The SFMTA has delayed replacing the induction loop cable (see inspection dated October 11, 2010, Staff Report, Appendix B). The lack of a properly functioning ATCS may have contributed to an incident on October 1, 2010, in which one light rail vehicle (“LRV”) hit another LRV at the Embarcadero Station causing major damage to both LRVs. Both train operators had minor injuries and were transported to the local hospital.

E. Failure to Implement Blue Flag Safety Procedures

SFMTA did not have a blue flag/ blue light procedure in place until January, 2011. The blue flag/light procedure is required to prevent injury to personnel working underneath or around LRV’s. When an employee is working under a train, or in a location where moving the train could imperil the employee, that employee places a blue flag or turns on a blue light, which can only be removed by the person who placed it or turned it on. The blue flag procedure is common in Rail Transit Agencies (“RTA”). On May 12, 2010, Muni issued a bulletin to Muni operations professionals implementing blue flag/ blue light procedures. In September, 2010, a Muni employee became concerned because the blue light/ blue flag procedure was not used and the employee made a Good Faith Challenge and brought the situation to the attention of Staff.³ On December 7, Muni issued a memorandum to “All Rail Maintenance and Operations

³ The employee’s name has been redacted from the report.

Personnel”, directing that the blue flag/ blue light procedures should be followed at all times. On December 14, Staff observed SFMTA maintenance employees working on LRV’s without a blue flag or blue light. This is a preliminary finding of a violation of SFMTA’s own internal safety policy. (See e.g. Staff Report, Appendix B)

F. Failure to Complete Corrective Action Plans

The last Triennial Audit of the SFMTA occurred in October 2008. Of the 49 Corrective Action Plans (“CAP”) created by the SFMTA, 17 remain open. Several of these are significant and relate to the SFMTA’s track inspection program and the documentation of that program. In several recent meetings with Staff, the SFMTA has not been able to provide the status of pending CAP’s for Staff review. (See Staff Report, Appendix A⁴).

G. Failure to Respond to Inspection Reports or Submit Corrective Action Plans

Staff inspections of the SFMTA between July 17, 2009, and January, 2011, document various material problems with the SFMTA. Of the 29 inspections requiring SFMTA responses within 30 days, 26 responses and CAPs have not yet been received. (See Staff Report, Appendix B).

H. Failure to Provide Incident Reports

GO 164 D requires the SFMTA to submit final accident investigation reports within 60 calendar days of the accident. To date, there are 8 SFMTA accident investigation reports outstanding from 2009, (some of which are over 13 months late) and 25 from 2010. Each of these late reports is a violation of GO 164-D. (See Staff Report, Appendix C).

III. REMEDIES

The Commission’s primary concern is safety. The Commission will use all the enforcement tools available to ensure safety. For any safety violations established in

⁴ Due to their volume, if the appendices to the Staff Report are not attached to this OII, they are available upon request.

this record, the Commission will consider imposing significant fines and penalties, as well as ordering SFMTA to propose a remedial action plan for the Commission's consideration and adoption.

IV. PRELIMINARY SCOPING MEMO

Within 30 days of the mailing date of this order, Respondent shall file and serve a response to this OII. If more time is needed, Respondent shall meet and confer with Staff prior to requesting an extension from the Administrative Law Judge ("ALJ").

The assigned ALJ will set a schedule for the Prehearing Conference ("PHC"). The PHC will address scoping and scheduling issues. Shortly thereafter, the Assigned Commissioner will issue a scoping memo setting forth the scope of the proceeding, establishing a procedural schedule and determining the category of this proceeding.

IV. PROCEEDING CATEGORY AND NEED FOR HEARING

Rule 7.1(d) of the Commission's Rules specifies that an Order Instituting Investigation will preliminarily determine the category of the proceeding and the need for hearing. We determine that this proceeding is adjudicatory as defined in Rule 1.3(a), and evidentiary hearings may be necessary. The categorization is appealable under Rule 7.6 of the Commission's Rules of Practice and Procedure.

V. EX PARTE COMMUNICATIONS PROHIBITED

Article 8 of the Commission's Rules of Practice and Procedure applies to all communications with decision makers and advisors regarding the issues in this proceeding. This proceeding is categorized as adjudicatory and Rule 8.2(b) prohibits *ex parte* communications.

THEREFORE, IT IS ORDERED that:

1. An investigation on the Commission's own motion is hereby instituted to determine whether the San Francisco Municipal Transportation Agency ("SFMTA") violated any provision of the Public Utilities Code, Commission Rules of Practice and

Procedure, General Orders, SFMTA rules or other requirements with regard to safety issues on its light rail and fixed rail systems

2. SFMTA is named as the Respondent in this investigation.
3. The Commission may adopt fines, penalties, and a remedial action plan to deter and prevent future violations that may endanger public safety.
4. Staff shall continue to investigate the operations of Respondent. Staff may propose to amend the OII to add additional respondents or to raise additional charges in a motion to amend the OII which shall be supported by a Staff declaration supporting the proposed amendments or changes.
5. Pursuant to Rule 7.1(c), of the Commission's Rules of Practice and Procedure, this proceeding is categorized as adjudicatory, and deemed to require evidentiary hearings. Ex parte communications are prohibited. The determination as to the category is appealable under Rule 7.6 of the Commission's Rules of Practice and Procedure.
6. A prehearing conference shall be convened before an Administrative Law Judge ("ALJ") for the purpose of considering the establishment of a schedule in this matter, including the dates, time and location for an evidentiary hearing.
7. The Executive Director shall cause a copy of this Order to be served electronically and by certified mail on SFMTA:

Nathaniel P. Ford, Executive Director/Chief Executive Officer
Nathaniel.ford@sfmta.com
Reginald Mason, Director of Safety, Security and Enforcement
Reginald.mason@sfmta.com
Carter Rohan, Director of Capital Programs and Construction
Carter.Rohan@sfmta.com
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, Seventh Floor
San Francisco, CA 94103

Julia Friedlander,
Julia.friedlander@sfgov.org
General Counsel for Municipal Transportation Agency
Office of the City Attorney
1390 Market Street, Fifth Floor
San Francisco, CA 94102

This order is effective today.

Dated February 24, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
Commissioners

Commissioner Catherine J.K. Sandoval, being necessarily absent, did not participate.

RTSS Staff Report
On
San Francisco Municipal Transportation Agency
Compliance with Safety Regulations and
Material Conditions Affecting Safety

February 11, 2011

**REPORT ON SFMTA
COMPLIANCE WITH SAFETY REGULATIONS AND
MATERIAL CONDITIONS AFFECTING SAFETY**

Summary and Background

The Rail Transit Safety Section of the California Public Utilities Commission (Commission) is the designated State Safety Oversight Agency by the federal Rail Transit Agency which is part of the federal Department of Transportation. This authority is given in 49 Code of Federal Regulations 659. Specific Commission requirements are set forth in General Order 164-D, Rules and Regulations governing State Safety Oversight of Rail Fixed Guideway Systems, and General Order 143-B, Safety Rules and Regulations Governing Light Rail Transit.

Over the past several years, Rail Transit Safety Section staff (Staff) has become increasingly concerned about the safety of the San Francisco Municipal Transportation Agency's (SFMTA) light-rail system. Specifically, is concerned about the safety consequences of SFMTA's lack of attention to closing out Corrective Action Plans (CAPs), late reporting or non-reporting of incidents, and non-responsiveness to address inspection findings.

Summary of Violations

1. Track at Church and Duboce streets is deteriorated and has numerous defects. Track was inspected on August 12, 2009, re-inspected on October 20, 2009. reports. The problem is still current; we have yet to receive any plan for correction. Violations are: CFR 213.53, 213.113, 213.121, 213.137.
2. Sunset Tunnel has numerous violations including that the Automatic Train Control System (ATCS) is apparently abandoned in the tunnel, which is a violation of General Order 127. The SFMTA is not following its own regulations regarding speed restrictions in a non-functioning ATCS area (Rule 4.32.2) (see inspection of January 6, 2011). Richard Clark sent a letter to Nathaniel Ford on January 14, 2011, directing the SFMTA to start following its own regulations and to inform the CPUC of its plan for restoration of the ATCS in the Sunset Tunnel. The SFMTA responded with a letter dated January 18, 2011, stating that the ATCS never functioned in the tunnel; however, the SFMTA did not provide any documentation to verify the claim. The SFMTA has yet to provide a plan for restoration of the ATCS.
3. The Church Portal inspection noted numerous deficiencies including induction damaged loop cable supports, cable not properly supported, cables rubbing switch rods, junction box problems, etc. These and other deficiencies were noted in an inspection report dated June 3-4, 2010. A follow-up inspection on January 7, 2011, noted the same deficiencies.

4. The ATCS functions poorly in the Market Street Tunnel and appears not to operate at the Embarcadero Station. The SFMTA continues to delay replacing the induction loop cable (see inspection dated October 11, 2010). This situation may have contributed to the incident of October 1, 2010, in which one LRV hit another LRV at the Embarcadero Station. This accident caused major damage to both LRVs. Both train operators had minor injuries and were transported to the local hospital.

Operational Procedures

1. The SFMTA did not have a blue flag procedure in place until January 2011. This procedure is required to prevent injury to personnel working underneath or around LRVs. This procedure is common in Rail Transit Agencies (RTAs).

Corrective Action Plans

The last Triennial Audit of the SFMTA occurred in October 2008. Of the 49 Corrective Action Plans created by the SFMTA, 17 remain open. Several of these are significant and relate to the SFMTA's track inspection program and the documentation of that program. In several recent meetings with Staff, the SFMTA has not been able to provide a status of the open Corrective Action Plans. (See Appendix A).

Inspection Reports

The RTSS established a new inspector position approximately two years ago. Inspections of the SFMTA started on July 17, 2009, and have been conducted through January, 2011. These inspections document various material problems with the SFMTA. Of the 29 inspections, 26 required responses and Corrective Action Plans which have not yet been received. The inspection reports required a response within 30 days. (See Appendix B).

Incident Reports

GO 164 D requires the SFMTA to submit final accident investigation reports within 60 calendar days of the occurrence of the accident. The SFMTA has eight accident investigation reports still outstanding for 2009 (some 13 months late) and 25 accident reports from 2010. Each of these late reports is a violation of GO 164-D. (See Appendix C).

The SFMTA has not been submitting Form Vs since 2008 as required by GO 164-D, Section 7.5.

Responsiveness

In general, the SFMTA has been unresponsive to the CPUC's requirements.

Recommendation

RTSS Staff recommends the Commission initiate an Order Instituting Investigation against SFMTA to ensure that SFMTA takes the actions needed to ensure safety on its light-rail system.