

Decision 03-02-048 February 27, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into the issues of safety certification for rail transit agencies and other public transit guideways.

Rulemaking 02-01-009
(Filed January 9, 2002)

O P I N I O N

1. Summary

Following five days of workshop discussion between fixed guideway system operators in California and the Commission's rail safety engineering staff, the parties have reached agreement on most of the provisions of a revised General Order (GO) 164-C to establish standards for safety certification for rail transit agencies and other public transit guideways. By this order, the Commission resolves remaining issues and adopts GO 164-C to replace existing GO 164-B.

2. Procedural History

On January 9, 2002, the Commission issued this Order Instituting Rulemaking (OIR) to consider a proposed revision of GO 164-B to strengthen safety review prior to revenue service for rail fixed guideway systems in California. The OIR set forth proposed changes to GO 164-B that would establish Commission requirements for system safety program plans, safety audit requirements, safety certification requirements, and reporting requirements for accidents and unacceptable hazardous conditions.

Interested parties were invited to submit comments on the proposed new general order, and a two-day workshop was conducted in Sacramento April 25 and 26, 2002, during a meeting of the Rail Operations and Regulatory (ROAR) Committee. The ROAR Committee includes all rail transit agencies and commuter rail agencies in California. A staff report on the workshop was issued on May 13, 2002, and parties submitted additional comments on May 28. A prehearing conference and a second two-day workshop were conducted on July 9 and 10, 2002, in San Francisco, and a second staff report was issued on August 16, 2002. By Administrative Law Judge (ALJ) Ruling dated October 16, 2002, a final draft version of GO 164-C was circulated for comment, and final comments were filed by November 15, 2002. A third informational workshop was conducted on December 10, 2002, at which time this matter was deemed submitted for Commission decision. Staff reported that there are no material issues of fact in dispute, and thus no evidentiary hearing is necessary.

3. Background

The Commission's responsibilities regarding rail transit safety are set forth in the California Public Utilities Code. There also are federal provisions relating to the Commission's oversight of the six major rail transit systems in the state. The key provisions regarding fixed guideway systems include Pub. Util. Code § 99152 and 49 CFR Part 659.

Pub. Util. Code § 99152 states:

Any public transit guideway planned, acquired, or constructed, on or after January 1, 1979, is subject to regulations of the Public Utilities Commission relating to safety appliances and procedures.

The commission shall inspect all work done on those guideways and may make further additions or changes necessary for the purpose of safety to employees and the general public.

The commission shall develop an oversight program employing safety planning criteria, guidelines, safety standards, and safety procedures to be met by operators in the design, construction, and operation of those guideways. Existing industry standards shall be used where applicable.

The commission shall enforce the provisions of this section.
(Amended by Stats. 1986, Ch. 483, Sec. 1.)

The key federal provision, 49 CFR Part 659, is entitled “Rail Fixed Guideway Systems; State Safety Oversight.” Among other elements, this rule requires each state to designate an agency to oversee the safety of rail transit systems. In California, the Commission is that agency.

Pursuant to 49 CFR Part 659, the Commission oversees the six major rail transit agencies in California. They are the Bay Area Rapid Transit District (BART), Los Angeles County Metropolitan Transit Authority (LACMTA), Sacramento Regional Transit District (SRTD), San Diego Trolley Incorporated (SDTI), San Francisco Municipal Railway (MUNI), and Santa Clara Valley Transportation Authority (SCVTA).

In addition to these six agencies, the Commission has safety oversight responsibility for other public transit guideways operating in California. The rules established in GO 164-C apply to “any light rail system, rapid rail system, monorail, inclined plane, funicular, trolley, or automated guideway transit system used for public transit and not regulated by the Federal Railroad Administration or unless specifically exempted from Commission oversight.” (Section 2.18.)

The Federal Transit Administration (FTA) has recently developed guidelines to assist transit agencies in developing safety and security elements for their major capital projects. The Joint Task Force on System Safety,

established by the FTA and the American Public Transportation Association (APTA), has prepared a "Handbook for Transit Safety and Security Certification" that describes a process for developing and documenting a formal safety certification program for major capital projects and recommends a process for safety certification.

Following recommendations of these agencies, GO 164-C establishes a formal safety certification process that must be accomplished and approved prior to the start of revenue service for each such project.

4. Summary of Changes

The safety certification process is the major change to former GO 164-B. Staff and industry representatives agreed on a number of other changes required by state and federal law. Set forth below is a brief explanation of each of the provisions of GO 164-C.

4.1 Definitions

GO 164-C adds definitions for terms related to safety certification (i.e., Certifiable Elements List, Hazard Analysis, Major Projects, Safety Certification). Staff and industry representatives agreed on a new definition of "Rail Fixed Guideway System" to mean "any light rail system, rapid rail system, monorail, inclined plan, funicular, trolley, or automated guideway transit system used for public transit and not regulated by the Federal Railroad Administration or specifically exempted from Commission oversight."

4.2 System Safety Program Plans

For the most part, the requirements for development of a System Safety Program Plan track those set forth in GO 164-B. Commission approval of each plan continues to be required, as is Commission verification of plan compliance. An early proposal for formal submission of the plan through the Commission's

Advice Letter procedure was eliminated as unnecessary. Instead, staff has accepted responsibility for preparing operator plans for approval through a Commission resolution.

4.3 Internal Safety Audits

The requirements for annual internal safety audits by operators are essentially unchanged. These audits are intended to ensure compliance with an operator's System Safety Program Plan.

4.4 Requirements for Reporting and Investigating Accidents

As they did under GO 164-B, operators are required to submit accident and unacceptable hazard reports to the Commission. In general, the reports are required for any event resulting in a fatality or serious injury or property damage in excess of \$100,000. Additionally, operators are required to report any unacceptable hazardous condition.

4.5 Safety Certification Plan Requirements

GO 164-C requires that a Safety Certification Plan for each operator's major capital project be submitted to staff for Commission approval by Resolution. The requirements contemplate that Commission staff will have reviewed and approved most of the capital project plans during the preliminary engineering phase of the project.

4.6 Safety Certification Verification

At least 15 days prior to start of service, an operator is required to submit to staff a Safety Certification Verification Report stating that all safety requirements have been completed and all hazards adequately mitigated. Staff commits to approving or noting any objection to the verification report within seven business days.

4.7 Commission Approval

GO 164-C contemplates that, where Commission approval is requested, operators will do so by a letter to staff. Staff will prepare a resolution for Commission approval, post notice in the Commission's Daily Calendar, and notify an operator if copies of the request should be served on other parties. Written protests to the requests must be served on the operator and on staff within 10 days of the Daily Calendar posting. An operator will have 10 days to file a reply to any protest.

5. Comments on Final Draft

Five operators of fixed guideway systems filed comments on the final draft version of GO 164-C. They are the San Francisco International Airport (SFO), LACMTA, MUNI, BART and SCVTA.

SFO argues that the Commission lacks jurisdiction to regulate the safety of its AirTrain people mover system at the airport. The AirTrain is an above-ground, automated system of unmanned rubber-tired trolleys that will operate within a concrete guideway to service terminals, parking areas and other points in the airport. The AirTrain will replace a shuttle bus system that carries passengers within the airport premises.

The issue of whether the Commission has safety jurisdiction over the AirTrain by virtue of Pub. Util. Code § 99152 is currently before the Commission in another proceeding, Order Instituting Investigation (I.) 02-07-014.¹ Should the

¹ "Investigation on the Commission's own motion into the San Francisco Airport's refusal to comply with California Public Utilities Code section 99152 and 164-B and order to show cause why the Airport should not be ordered to complete a system safety program plan prior to commencement of the Airport's operations of its AirTrain transportation system."

Commission decide that the AirTrain is a public transit guideway as contemplated by Pub. Util. Code § 99152, then the requirements of GO 164-C would apply to SFO. In any event, since the jurisdictional question will be decided in I.02-07-014, we need not deal with that issue in this rulemaking proceeding.

LACMTA suggests a number of changes to the final draft version of GO 164-C. The suggested changes and our response are as follows:

- In Section 1.4, change the phrase “demonstrating that safety is not reduced thereby” to “demonstrating that safety is not reduced to unacceptable levels below industry standards and practices.” The suggested language is ambiguous and could be interpreted to lessen an agency’s standard of safety. (BART in its comments makes the identical recommendation.)
- In Section 7.1, provide that operators shall “require” (instead of “ensure”) that all entities involved in a project comply with safety requirements. The suggested language could be interpreted to reduce an operator’s responsibility for safety compliance by contractors.
- In Section 7.3, require that revisions to the Safety Certification Plan be deemed approved if staff does not respond to the revisions within 15 days, and require staff to obtain a Commission ruling for any change it proposes in the Safety Certification Plan. (BART in its comments makes the identical recommendation.) We note that in the final workshop, staff agreed that its approval or rejection of revisions “shall” take place within 30 business days, and we believe that this sufficiently addresses the concern.

- In Section 7.6(b), provide that a “reference” list of all safety and security design criteria will be provided in the Safety Certification plan. In our judgment, adding the word “reference” is unnecessary in that it already is implied in the general order.
- In Section 7.6(e), delete the requirement that actual checklists be added to the Safety Certification plan. (BART in its comments makes the identical recommendation.) In the final workshop, staff agreed that a list of checklists may be supplied, with actual checklists supplied upon request by staff.
- In Section 8.2, change the time for submission of a Safety Certification Verification Report from 15 business days to 10 business days, with approval deemed effective if staff fails to respond within five business days. The submission date already has been reduced from that originally proposed, and further reductions have not been justified. We note that the final workshop made changes in the provision to address some operator concerns.

MUNI proposes three changes to the final draft version of GO 164-C. The proposed changes and our analysis of each are set forth as follows:

- MUNI would eliminate the requirement that redesigned projects include safety certification programs, arguing that this is a duplication of earlier safety requirements. We do not agree that duplication exists, and we decline to make this change.
- MUNI would redefine “major projects” in Section 2.11 to apply primarily to safety elements “unique” to the operator or “new to the transit industry.” We decline to make these changes because we believe that they are unclear and would detract from the definition of “major projects.”

- MUNI would change the wording in Section 8.2 to take note of listed open items in the Safety Certification Verification Report. Staff and operators in the final workshop adopted changes to address this concern.

In addition to BART recommendations that have been dealt with in our review of LACMTA proposals, BART proposes clarifications to Sections 8.2 and 9.2, and it would deem a Safety Certification Verification Report acceptable in the absence of staff comment within seven days. While changes to Section 8.2 have been made, we conclude that other proposed clarifications are unnecessary, and we are unwilling to accept “automatic” approval of a verification report in the absence of timely staff response.

SCVTA contests the scope of GO 164-C as excessive, and it urges that the general order be revised to make clear that an operator may file an application for Commission approval of a project in response to staff opposition or suggested revisions. SCVTA’s objections to the scope of GO 164-C and Pub. Util. Code § 99152 are being addressed by the Commission in another proceeding, A.01-01-003², and there is no need to deal with those issues in this rulemaking proceeding. As to an operator’s right to file an application with the Commission, nothing in the general order limits that right. An operator may at any time seek Commission approval of a project pursuant to Rule 15 of the Rules of Practice and Procedure.

² “Application of the Santa Clara Valley Transportation Authority for an Order Authorizing Construction of an At-Grade Crossing of Hamilton Avenue (82D-5.6) by the Light Rail Transit Line of the Vasona Light Rail Project in the City of Campbell, County of Santa Clara.”

6. Conclusions

The revised GO 164-C makes important changes to our rules intended to enhance the safety of fixed guideway public transportation systems. Our rail safety staff and industry representatives spent many hours drafting and re-drafting guideway safety requirements to make them both effective and practical. We believe that the final product carries out the intention of the Legislature in enacting Pub. Util. Code § 99152. Our order today adopts GO 164-C to supersede GO 164-B, effective immediately.

7. Comments on Draft Decision

The draft decision in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. No comments were received.

8. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Glen Walker is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. This OIR was implemented on January 9, 2002, to consider a revision of GO 164-B to strengthen safety review prior to revenue service of fixed guideway systems in California.
2. Industry representatives met with the Commission's rail safety staff in workshops on April 25-26, 2002; July 9-10, 2002; and December 10, 2002, to draft revisions to GO 164-B.
3. The parties have agreed on virtually all of the revisions to GO 164-B.
4. Proposed GO 164-C implements requirements of Pub. Util. Code § 99152 and 49 CFR Part 659.

5. GO 164-C establishes a formal safety certification process and the procedures for ensuring compliance with safety certification.

6. Five parties filed suggested changes to the final draft version of GO 164-C.

Conclusions of Law

The final draft version of GO 164-C, affixed to this decision as Attachment A, should be adopted to supersede GO 164-B, effective immediately.

O R D E R

IT IS ORDERED that:

1. General Order (GO) 164-C, affixed to this decision as Attachment A, is adopted to supersede GO 164-B, effective immediately.

2. Order Instituting Rulemaking 02-01-009 is closed.

This order is effective today.

Dated February 27, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

[ATTACHMENT A TO R0201009](#)