

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rail Safety Division
 Rail Transit Safety Branch

Resolution ROSB-005
 May 5, 2022

RESOLUTION

**RESOLUTION GRANTING AN EXEMPTION FROM
 GENERAL ORDER 26-D, SECTION 3.2, PROPOSED BY
 THE RAIL SAFETY DIVISION**

SUMMARY

This resolution addresses a written request of January 12, 2021, from the San Bernardino County Transportation Authority (SBCTA) to the Rail Safety Division (RSD) at the California Public Utilities Commission, seeking an exemption from General Order 26-D, Section 3.4 for its Redlands Passenger Rail Project (RPRP).¹ The RSD has determined that an exemption from General Order 26-D, Section 3.4 is not necessary since it is preempted by the federal Americans with Disabilities Act (ADA). RSD has determined that an exemption from General Order 26-D, Section 3.2 is needed in order for SBCTA to comply with the requirements of General Order 118-A. This resolution: 1) approves an exemption from General Order 26-D, Section 3.2, for the SBCTA for the walkways at SBCTA's planned four new passenger stations along the RPRP; and 2) directs SBCTA to install various safety features and devices as part of the walkway additions to ensure public safety.

General Order 26-D, Section 3.4, sets forth a minimum clearance requirement for station platforms. However, this provision of General Order 26-D is preempted by the ADA,² which requires a different platform height and distance from track center line to accommodate the introduction of the Multi Unit (MU) equipment— and thus, results in a smaller clearance area – than what is set forth in General Order 26-D, Section 3.4. In turn, General Order 26-D, Section 3.2 requires that “All structures and obstructions above the top of the rail” have a minimum side clearance of 8’6”.³ SBCTA will be constructing the Arrow platforms at 23.5" Above Top of Rail (ATR) and at 5'-4" between the face of the platform and track centerline. This design not only makes the platforms higher but much closer to the tracks, at 5’4” from the platform(s) to track centerline.

¹ The four stations are the San Bernardino-Downtown Metrolink Station, a.k.a. San Bernardino Transit Center (SBTC), San Bernardino-Tippecanoe Street, Redlands-Esri, Redlands-Downtown and Redlands- University stations.

² American with Disabilities Act (ADA) Section 49 CFR, Part 37 (Sections 37.41 and 37.42, “Construction of transportation facilities by public entities (37.41),” and “Service in an Integrated Setting to Passengers at Intercity, Commuter, and High-Speed Rail Station Platforms Constructed or Altered After February 1, 2012 (37.42).”

³ ‘equals feet, “ equals inches.

Pursuant to General Order 118-A, Section 11, all structures and obstructions that can be walked upon must have gradually sloped walkways at the edge of the platforms for the use of railway workers and in emergency situations. A conflict results from these various regulatory requirements: station platforms built in compliance with the ADA – and thus not in compliance with the preempted provision of General Order 26-D, Section 3.4 – must have walkways pursuant to General Order 118-A connecting the walkways to the station platforms. However, because the ADA-compliant station platforms are higher and closer to the track centerline than what is envisioned under General Order 26-D, any walkways leading to/from those station platforms will in turn be higher and closer to the track centerline than what is provided for in the minimum side clearance requirement found in General Order 26-D, Section 3.2.

For this reason, the below described exemption to the requirement of General Order 26-D, Section 3.2 is needed to comply with General Order 118-A.

BACKGROUND

On January 12, 2021, RSD received a letter from the San Bernardino County Transportation Authority (SBCTA) informing RSD of the introduction of a new type of equipment, Multiple Unit (MU) (Passenger Cars), on the Redlands Passenger Rail Project (RPRP). SBCTA's letter requested a variance of CPUC General Order 26-D, Section 3.4, Side Clearances, in order to comply with the amended Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. § 1201 et seq.; 49 CFR § 37.42). SBCTA informed RSD that it will be constructing the Arrow platforms at 23.5" Above Top of Rail (ATR) at 5'-4" between the face of the platform and track centerline. In addition, SBCTA informed RSD that it will not be constructing walkway ramps at the ends of the passenger platforms as specified in General Order 118-A, Section 11, because those walkways would violate the minimum side clearance requirement found in General Order 26-D, Section 3.2.

SBCTA states that the construction of a ramp leading from the track bed up to the platforms in accordance with General Order 118-A would be in direct conflict with General Order 26-D, Section 3.2, which provides that "[a]ll structures and obstructions above the top of the Rail except those hereinafter specifically mentioned" have a minimum side clearance of 8' 6".

SBCTA states that the ADA, specifically Title 49, part 37, of the Code of Federal Regulations (CFR), preempts platform track center measurement compliance with General Order 26-D, section 3.4, with respect to platforms less than 4' in height and 7' 6" from track center. ADA platform heights are typically 15" above top of rail (ATR) and as high as 3' and are closer to tracks than the 7' 6" requirement of section 3.4 of General Order 26-D.

Finally, SBCTA's letter expresses concerns that constructing walkways to/from its station platforms for the benefit of railway workers would present an inherent safety risk in providing passengers, including disabled passengers, an avenue that would take them off the platform directly into rail traffic trespassing issues already plaguing the railroad.

DISCUSSION

RSD agrees that the ADA platform requirement preempts section 3.4 of General Order 26-D. Because this regulatory requirement is preempted in this instance by federal requirements, an exemption is not required from General Order 26-D, Section 3.4.

Most importantly, the ADA's preemptive impact in this case does not mean that General Order 118-A requirements are inapplicable. The walkways leading up to a platform are not part of the platform. They are a continuation of the walkway along a railroad track used by railroad employees performing normal trackside duties. As such, in cases involving ADA platform preemption of General Order 26-D, section 3.4, General Order 118-A walkway requirements are not preempted.

A problem arises regarding the height of a sloping ramp from the walkway that needs to ascend/descend from an ADA passenger platform. Once the sloping walkway, or "ramp" rises above the top of the rail higher than 8", it can be construed to be a side clearance obstruction. That is because it is not 8' 6" from the track center, as prescribed in General Order 26-D, section 3.2.

ADA platforms pursuant to the sections noted above are required in California via federal preemption. In sum, compliance with the platform height requirements found in the ADA prevent compliance with GO 26-D, Section 3.4, which in turn prevent SBCTA from complying with GO 118's walkway requirement, since a walkway built to ADA-platform height would violate GO 26-D, Section 3.2's minimum side clearance requirement.

It is imperative that railroad employees are afforded a safe work environment with walkways connected to rail platforms as prescribed in General Order 118-A, while affording and accommodating disabled citizens.

SBCTA's proposal is wholly inadequate to protect the safety of railway workers. Simply not constructing the gradually sloped walkway required by GO 118-A is unacceptable.

General Order 26-D, section 16.3 states:

The Commission reserves the right to modify any of the provisions of these regulations in specific cases when, in the Commission's opinion, public safety, convenience or necessity would be served by so doing.

Granting an exemption from GO 26-D, Section 3.2 for the RPRP would allow SBCTA to construct a walkway in compliance with GO 118-A to ensure that railway workers are afforded gradually sloped walkways.

A limited exemption from GO 26-D, Section 3.2 is necessary in the interest of public safety and in order to ensure that railway workers are afforded gradually sloped walkways to allow safe access between the track bed and station platform. RSD has required continual improvement on walkways in and around railroad tracks for railroad employees since 1963. This exemption will

significantly reduce tripping hazards for railroad employees, thus reducing the chance of injuries or fatalities to railroad workers in and around ADA compliant platforms.

For these reasons, the Commission grants a limited exemption from General Order 26-D, Section 3.2's requirement that obstructions have a minimum side clearance of 8'6" inches. The exemption is as follows: SBCTA is exempted from General Order 26-D, Section 3.2 at its four new planned rail stations along the RPRP line, for the limited purpose of installing gradually sloped walkways at the ends of the station platforms at each of the planned new stations along the RPRP line as required by General Order 118-A. SBCTA must continue to comply with all non-preempted provisions of General Order 26-D in all other instances.

To address RSD's safety concerns, SBCTA shall take all necessary steps in the design and installation of these walkways to include safety features and devices to protect the public from accessing the walkway from the platform. Specifically, SBCTA must place various safety features and devices at or near the walkways connected to the station platforms warning the public that walkways are for railway worker access and emergency use only.

NOTICE

On April 1, 2022, this Resolution was published on the Commission's Daily Calendar.

COMMENTS

The draft resolution of the Rail Safety Division (RSD) in this matter was mailed in accordance with Section 311 of the Public Utilities Code and Rule 14.2(c) of the Commission's Rules of Practice and Procedure. No comments were received.

FINDINGS

1. SBCTA sent a letter to RSD requesting an exemption from General Order 26-D, Section 3.4 for the walkways at SBCTA's planned four new passenger stations along the Redlands Passenger Rail Project due to a conflict between General Order 26-D, Section 3.4, and the Americans with Disabilities Act (ADA). Because the ADA preempted Section 3.4, no exemption is needed for this particular provision.
2. In order to protect the safety of railway workers, it is necessary to install gradually sloped walkways at the end of the Redlands Passenger Rail Project platforms in compliance with General Order 118-A.
3. Due to a conflict created between the ADA requirements for station platform height and General Order 26-D, an exemption from General Order 26-D, Section 3.2 is necessary to allow SBCTA to construct gradually sloped walkways connecting the walkways to the station platforms.
4. An exemption from the requirements of General Order 26-D, Section 3.2 for the walkways at SBCTA's planned four new passenger stations along the Redlands Passenger Rail Project

ensures that the construction and reconstruction of passenger platforms complies with ADA requirements and General Order 118-A.

- 5. The requirements of General Order 118-A remain in full force and effect for the walkways at SBCTA’s planned four new passenger stations along the Redlands Passenger Rail Project. Compliance with General Order 118-A ensures that the walkway(s) reaches the edge of the station platform(s) which according to SBCTA is 23.5” above top of rail (ATR).

THEREFORE, IT IS ORDERED THAT:

- 1. An exemption from General Order 26-D, Section 3.2 is granted at SBCTA’s four new stations planned along the Redlands Passenger Rail Project line for the limited purpose of installing gradually sloped walkways to ensure that a walkway is provided at the end of the ADA-compliant platform for the safety of railway workers, in compliance with General Order 118-A.
- 2. General Order 118-A remains in full force and effect and is not preempted by the American with Disabilities Act (ADA).
- 3. Pursuant to General Order 118A, SBCTA must install walkways at the end of each station platform at the four new stations planned along the Redlands Passenger Rail Project line.
- 4. SBCTA shall install various safety features and devices related to the installation of the walkways to the newly constructed station platforms.
- 5. This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted by the Commission at its regularly scheduled meeting on May 5, 2022. The following Commissioners voted favorably thereon:

/s/ RACHEL PETERSON

Rachel Peterson
Executive Director

ALICE REYNOLDS
President
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
DARCIE L. HOUCK
JOHN R.D. REYNOLDS
Commissioners