

Decision 11-10-018 October 6, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to determine whether the temporary measures adopted in Resolution SX-88 or other measures banning personal use of electronic devices by rail transit personnel should be adopted on a permanent basis.

Rulemaking 08-10-007
(Filed October 16, 2008)

**DECISION ADOPTING GENERAL ORDER GOVERNING THE USE OF
PERSONAL ELECTRONIC DEVICES**

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DECISION ADOPTING GENERAL ORDER GOVERNING THE USE OF PERSONAL ELECTRONIC DEVICES

1. Summary

This decision approves the Settlement and adopts the General Order (GO) 172, attached to this decision as Appendix A, to govern the use of personal electronic devices¹ (PEDs) by the employees of the rail transit agencies and rail fixed guideway systems under the Commission's jurisdiction² (collectively referred to as rail transit agencies or agencies). During the course of this proceeding, some of the parties³ to the proceeding, including the agencies and the labor unions representing the employees of the agencies (collectively referred to as Settling Parties⁴) began a series of discussions and negotiations which resulted in the Settlement. The Commission's Consumer Protection and Safety Division (CPSD) facilitated those discussions and negotiations.

¹ Personal Electronics Device or PED means any wireless or portable electronic devices, including but not limited to, wireless phones, personal digital assistants, smart phones, two way pagers, wireless or portable internet devices, laptop computers, DVD players, audio players, iPods, iPads, ereaders, MPS players, portable electronic games, Bluetooth devices, headphones or earbuds. See Appendix A, GO 172, Section 2.4.

² The Commission has the authority to prohibit the use of PEDs by safety-sensitive rail transit employees. See California Public Utilities Code Sections 778, 29047, 30646, 100168 and 99152.

³ Full list of the parties to this proceeding is attached hereto as Appendix C. Appendix C does not include those parties who monitored or otherwise followed the proceeding while on the Information Only or State Service lists but that comprehensive list can be viewed at the Commission's Website:
http://docs.cpuc.ca.gov/published/service_lists/R0810007_77823.htm.

⁴ Settling Parties are Los Angeles County Metropolitan Transit Agency, North County Transit District, Sacramento Regional Transit District, San Diego Trolley, Inc., San Francisco Bay Area Rapid Transit District Area, Santa Clara Valley Transportation Authority, SFO Airtrain, Amalgamated Transit Union, International Brotherhood of Electrical Workers, Local Union 465, and United Transportation Union.

On April 5, 2011, the Settling Parties filed the Joint Motion of Settling Parties for Commission Approval of Settlement Agreement and Adoption of Compromise General Order (Joint Motion). GO 172, filed with the Joint Motion and attached as Appendix A to today's decision, reflects the Settlement and the resulting refinements to a prior draft GO which had previously been prepared by CPSD.

There are no protests, objections or comments filed in opposition to the Joint Motion, the Settlement or any aspect of the GO 172. CPSD supports the adoption of GO 172.

We find that the Settlement and the terms of GO 172 are reasonable in light of the whole record, consistent with law, and in the public interest. This decision resolves all outstanding issues in this proceeding and closes the proceeding.

2. Background

Shortly after three accidents which occurred in the nation over the summer of 2008, all involving transit operators where use of personal cell phone was found a contributory factor in each of those accidents, on September 12, 2008, a Metrolink passenger train collided head-on with a Union Pacific freight train in Chatsworth, California.⁵ The Metrolink accident resulted in 25 fatalities, 135 injuries, and significant train damage. Investigation confirmed that the Metrolink locomotive engineer was sending and receiving text messages while

⁵ See *Personal Electronic Device Use on Rail Transit Systems: Report for R.08-10-007*, December 24, 2009, Consumer Protection and Safety Division, California Public Utilities Commission, <http://docs.cpuc.ca.gov/efile/RULINGS/111820.pdf>. This document is generally referred to throughout this decision as the Staff Report.

alone at the control of the train. This inattention caused him to miss a red signal and thus caused the tragic collision.

Immediately following this collision, on September 18, 2008, the Commission adopted Resolution SX-88 as its interim emergency order. Resolution SX-88 temporarily banned the use of cell phones and other similar devices by both railroad and rail transit employees operating in California, while the Commission devised and put in place permanent safety measures.

In the meantime, on October 7, 2008, the Federal Railroad Administration (FRA) issued Emergency Order (EO) 26 to ban cell phone usage by railroad employees.⁶ This new FRA rule, EO 26 applies only to the railroads and governs the nation's interstate freight and passenger railroad network operating within California, including railroads in California such as Union Pacific Railroad, Burlington Northern Santa Fe Railway, Amtrak, Caltrain, and Metrolink, among others.

Resolution SX-88 still remains in effect today, on an interim basis, and now applies only to California's rail transit agencies and their employees. Distinct from railroad agencies overseen by the federal government, the Commission has jurisdiction over rail transit agencies. Typical examples of the rail transit agencies include San Francisco Bay Area Rapid Transit District (BART), San Francisco Municipal Transportation Authority (commonly referred to as Muni), Sacramento Regional Transit District, and San Diego Trolley, among others. Today's decision will therefore apply only to the California's rail transit agencies and will supersede Resolution SX-88.

⁶ See 73 FR 58702.

On October 22, 2008, the Commission issued Order Instituting Rulemaking, 08-10-007 (OIR). The purpose of the OIR was to determine whether the temporary measures adopted in Resolution SX-88 and/or other measures restricting personal use of electronic devices (PEDs)⁷ by rail transit employees should be adopted on a permanent basis. The parties since filed numerous comments responsive to the OIR as well as comments responsive to several subsequent rulings by the assigned Administrative Law Judge (ALJ).

On July 9 and 10, 2009, the Commission's Consumer Protection and Safety Division (CPSD) held a two-day public workshop in order to elicit additional input from the rail transit agencies, employees' unions (unions) and other potential parties. The workshop was well attended and the rail transit agencies' representatives and union representatives actively participated and shared insightful comments toward designing an effective General Order (GO) that would improve transit operator behavior.

To that end, the participants focused on the logistics of implementing and effectively enforcing any permanent PED ban for the rail transit employees, including which employees should be covered. They also discussed funding, enforcement, disciplinary tools and impact of potential GO provisions on collective bargaining rights, inward-facing camera as monitoring tool, and

⁷ OIR borrowed Federal Communications Commission term "Commercial Mobile Radio Services" (CMRS), which refers to any carrier or licensee whose wireless network is connected to the public switched telephone network or is operated for profit. Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993. In the OIR, the borrowed term "CMRS" was used interchangeably to refer to what we refer to here in this decision as the PEDs. GO 172 no longer refers to CMRS to eliminate that potential ambiguity or inadvertent and unintended meaning in GO 172. Instead, we define the term "PEDs" in Section 2.4 of the GO 172.

balancing health and safety concerns of the public and passengers with the privacy concerns of transit agencies' employees.

The July 2009 workshop was followed by multiple rulings seeking further clarification data and the parties' subsequent filings of additional comments relating to the agencies' (1) safety records, (2) preventative, educational and training efforts, (3) overview of remedial safety measures, disciplinary actions, corrective actions, and/or procedural safeguards taken, and (4) other experiences relating to the safety concerns associated with the use and abuse of PEDs by the agencies' employees.

On December 24, 2009, CPSD submitted its initial Staff Report, including a draft GO, (Staff Report). The Staff Report described several significant cellular phone-related accidents as well as numerous studies and research reports detailing the extent of the distraction and resulting unacceptable risks to public safety created by abuse of such technology.

On December 28, 2009, the ALJ issued a ruling and invited comments on the Staff Report, including the attached GO. In general, the parties acknowledged the significant public safety concerns giving rise to the OIR and supported the Commission's development of effective safety regulation on the subject.

The parties however disagreed with several aspects of the draft GO. Notably, several parties objected to the categories of the agencies' employees covered by the draft GO or to the level of restrictions or extent of monitoring requirements that should apply. The agencies were also concerned about the potential cost of the in-cab camera and attendant monitoring. The unions reiterated their concern that continuous camera surveillance of an on-duty operator would be an invasion of their privacy. The agencies and unions both

objected to the disciplinary provisions in the draft GO as potentially violating collective bargaining agreements.

During the latter months of 2010, CPSD had a series of facilitated informal discussions with the parties. Those informal discussions succeeded in refining the terms of the draft GO. On April 5, 2011, the Settling Parties filed the Joint Motion and proposed the approval of the Settlement and adoption of GO 172.⁸

On April 25, 2011, CPSD submitted an Addendum to the initial Staff Report (Addendum). The Addendum is attached to this decision as Appendix B and supports the approval of Settlement and adoption of GO 172. CPSD believes GO 172 is reasonable, and is more likely to be more effective than the draft GO proposed by CPSD in the Staff Report. Specifically, CPSD supports the provisions of the GO 172 requiring the inward-facing video camera installation and monitoring.⁹ CPSD advises that GO 172 results from a meaningful exchange among the key stakeholders, reflecting industry experience and insights. The draft GO previously recommended by CPSD faced significant objections from the stakeholders, and CPSD believes that this collaboratively developed GO 172 will be better received, with substantially less resistance within the industry, and with enhanced compliance and safer operator behavior.

3. Standard of Review for Settlements

The Commission reviews all settlements under the criteria set forth in Article 12, Rules 12.1 – 12.7 of the Commission’s Rules of Practice and Procedure (Rules). Specifically, Rule 12.1(d) provides that, prior to the Commission’s

⁸ See Appendix A to this decision.

⁹ See Appendix B, Addendum, at 1; and GO 172, Sections 4 and 6.

approval, the Commission must find a settlement “reasonable in light of the whole record, consistent with law, and in the public interest.” We will discuss the terms of the Settlement as reflected in GO 172 and determine whether it meets these criteria.

4. Summary of Proposed Settlement and GO 172

GO 172 balances the fiscal concerns associated with the installation and monitoring of in-cab inward-facing cameras, with public safety goals and the needs and concerns of the rail transit agencies’ employees and union members. GO 172 would apply to all rail transit agencies in California.

Currently, the Commission oversees the safety of the following rail transit agencies:¹⁰

BART: San Francisco Bay Area Rapid Transit District

MUNI: San Francisco Municipal Railway
(San Francisco MTA, or “Muni”)

MTA: Los Angeles County Metropolitan Transportation Authority

SDTI: San Diego Trolley, Inc.

SRT: Sacramento Regional Transit

VTa: Santa Clara Valley Transportation Authority

NCTD: North (San Diego) County Transit District
 (“Sprinter” Light Rail)

Angel’s Flight: Los Angeles’ downtown funicular

POLA: Port of Los Angeles (Waterfront Red Car Line)

SFO: San Francisco International Airport (“AirTrain”)

The Grove Trolley (Los Angeles)

¹⁰ GO 172 would also apply to any new rail transit agencies that may begin operation in the future.

Americana at Brand Trolley (Glendale)

Some key provisions of GO 172 are discussed below.

4.1. In-Cab Inward-facing Camera and PED Possession

Staff Report originally proposed that the agencies be required to install and monitor inward-facing cameras in the rail transit cabs or, absent such monitoring, the operators would be banned from possession of PEDs on the transit vehicles. Agencies objected on grounds that the monitoring requirement was too costly and only marginally beneficial. Unions objected that cameras would violate privacy rights. Unions also argued that PED possession and use with reasonable restrictions should be permitted, with or without the cameras. GO 172 is a compromise by all parties to some extent.

GO 172 allows possession of PED on rail transit vehicles if the device is turned off and stowed and not on the operator's person. Operational in-cab inward-facing video cameras are required within three years of the effective date of GO 172. During the three-year interim period until the cameras are installed and operational, supervisory observations for compliance are required, with CPSD oversight of the supervisory monitoring.

We agree that this provision provides a necessary monitoring tool that would deter or prevent PED use in the cab environment. Specifically, although immediate implementation of in-cab camera surveillance may not be feasible for all of the agencies, the parties have committed and accepted such surveillance requirement and schedule for implementing it. This provision therefore is critically important because it will result in video cameras being installed and video footage being monitored.

PEDs in today's society have become customary, and this provision will provide a framework for prudent and safe possession and use of PEDs by the operators while concurrently providing better protections from behaviors that could compromise safety.

Ideally, installation of these cameras would occur sooner than three years from now. However, we understand the agencies' concerns that securing funding, working with funding cycles, installation of the cameras and testing of the cameras will take considerable time. Therefore, we find that allowing up to three years for the agencies to secure, install and begin in-cab video monitoring is reasonable.

We commend CPSD and the Settling Parties for their efforts in reaching the compromised solution reflected in this provision. Because of this historic joining of forces, California will be the first state to require in-cab inward-facing cameras on any rail vehicle, including both railroad and rail transit agencies.

4.2. In-Cab Camera and Video Retention or Storage Requirements

Staff Report originally recommended that the agencies be required to retain video footage for all cameras for 60 consecutive days. Agencies claimed that the 60-day requirement would be prohibitively expensive while adding only marginal safety benefits.¹¹

¹¹ Los Angeles County Metropolitan Transportation Authority estimated costs at \$55 million to comply with the 60-day video retention requirement. Los Angeles County Metropolitan Transportation Authority, Comment dated January 22, 2010, at 7.

Instead of the 60-day requirement, GO 172 requires that cameras have an eight-day continuous loop recording so that any time the recording is downloaded, the most recent eight days are available for review.

In addition, GO 172 requires each of the agencies to develop and submit an enforcement and monitoring plan that includes provisions for reviewing those recordings both randomly and after any derailment, impact, death or injury, complaint, or observation of a violation, and for the purposes of a testing program to ensure compliance with GO 172. The enforcement and monitoring plan would then be reviewed and approved by the CPSD Director or Deputy Director.¹²

We find that the eight-day continuous loop recording and related safety requirements set forth in GO 172 are a reasonable and a cost-effective approach to introducing the in-cab camera technology as an enforcement tool. Specifically, these provisions set forth an approach that effectively creates the means for non-compliance to be monitored and sets a framework for the agencies' disciplinary programs.

4.3. Zero Tolerance Policy and Discipline of Rail Transit Employees

Unlike the draft GO provisions originally proposed by CPSD, which set out specific disciplinary consequences to violations, GO 172 gives latitude to agencies to devise appropriate sanctions for GO violations by their employees

¹² GO 172, Section 6.1 requires that each rail transit agency must submit the video-based monitoring and enforcement plan for review and approval "at least 90 days prior to video camera operation." Section 4 also requires the agencies to store and retain the recordings, if an agency's monitoring uncovers recordings of an operator violating GO 172, of an impact, derailment, etc.

(including contractors), while requiring varying degrees of discipline “up to and including discharge.”¹³ Specifically, within 90 days of the effective date of GO 172, each rail transit agency must develop, adopt, and submit to the Commission, for review and approval, a clear and effective zero tolerance policy and program designed to effectively deter and prevent violations and promote a culture of safer behavior.¹⁴

GO 172, Section 5.2a provides that each agency’s disciplinary program must set out disciplinary consequences appropriate to the violations “and sufficiently serious to be reasonably expected to prevent violations of this General Order.” For instance, a relatively non-punitive disciplinary action may be commensurate with an inadvertent or otherwise less egregious non-compliance, while suspension or discharge from operator duties may be appropriate for more serious or repeat violations.

GO 172 also requires each rail transit agency to keep records of any violation of GO 172 and to make the records available to the Commission staff upon request. Such mandatory record-keeping and Commission oversight are added assurances for successful implementation of the zero tolerance policy and program by the agencies.

These GO provisions were developed collaboratively by the rail transit agencies and their employees’ unions. Such collaborative development shows the stakeholders’ commitment to the framework for the disciplinary programs and their uniform buy-in to those envisioned programs. Therefore, the

¹³ *Id.*, Section 5.1.

¹⁴ *Id.*, Section 5.2b.

collaboratively developed disciplinary framework and resulting disciplinary programs should be well received by the agencies for their implementation and by the agencies' employees for speedier acceptance and compliance. In addition, this collaboration should moot any potential collective bargaining issues or other potential for litigation which could delay or hamper GO 172 implementation. For these reasons, we find that the GO 172 provisions regarding the disciplinary policy and program are reasonable.

4.4. Personal versus Agency-issued Devices

Staff Report originally proposed different draft GO provisions for personal versus rail transit agency-issued (agency-issued) devices. CPSD believed that less strict regulation of agency-issued PEDs might be appropriate so as not to unduly interfere with the agencies' operations. GO 172 makes no distinction between personal and agency-issued devices. All PEDs are treated equally. Specifically, all PEDs, irrespective of whether they are personal or agency-issued, must be turned off and stowed when a transit employee is operating a rail transit or on-track vehicle. A PED may be used in an emergency, and only when "the rail transit or on-track vehicle is stopped and the person is not in the controlling compartment of the rail transit vehicle."¹⁵

This GO 172 shows that the agencies and their employees' unions acknowledge the importance of minimizing transit operator distractions. GO 172 recognizes that any use of the PEDs, personal or agency-issued, while operating the transit vehicles poses unacceptable safety risk.

¹⁵ See GO 172, Section 3.2.

We find this strict use prohibition to be an appropriate and reasonable regulatory response to effectively address the underlying public safety concerns. We also find this provision to be simpler and easier to enforce than the draft GO previously proposed by CPSD.

4.5. Other Refinements

In addition to the foregoing modifications and refinements, GO 172 also reflects several other proposed modifications by the Settling Parties, to the draft GO provisions originally proposed by CPSD. Mainly, the modifications clarify or update definitions and eliminate ambiguities or inconsistencies.

5. Discussion

The Settlement, as described above, and as reflected in GO 172 is an effective and thoughtfully crafted solution to the significant rail transit safety concern for which the OIR was issued. Through this collaborative process, the industry stakeholders arrived at a solution that effectively accommodated and addressed their respective concerns while also achieving the shared goal of the OIR, rail transit safety.

GO 172 will deter and prevent unsafe transit operator behaviors which were the unintended byproduct of the new PED technologies. The National Transportation and Safety Board (NTSB) chairperson said:

Technology has the ability to increase the number of distractions, but it also has the ability to increase safety in the cab. Technology's a game changer. It's already changing the way we do business. When it comes to using technology, enforcement and oversight can't be left behind. It has to advance along with everything else that we're relying on technology to improve.

...

I hope that the rail regulators, industry, and labor will work together towards solutions, and take a chance on leading when it comes to safety and distractions, and not be the last mode to address this important issue.¹⁶

We agree. GO 172 is an important safety precaution necessitated by changing times. We next consider the Settlement and GO 172 under the specific criteria by which we review proposed settlements. As set forth in Rule 12.1(d), the criteria are whether a proposed settlement is reasonable in light of the entire record, consistent with the law, and in the public interest.

5.1. The Settlement is Reasonable in Light of the Entire Record of this Proceeding

As noted earlier, the record in this proceeding is extensive and demonstrates a clear safety need for GO 172. CPSD prepared the Staff Report and a draft GO, based on this record. The Settling Parties, with active CPSD facilitation, then collaborated on revisions to draft a GO that found a workable solution to the issues presented in the OIR while addressing the parties' concerns.

In Section 4, above, of today's decision, we discussed the major provisions of GO 172, with special attention to those provisions that revised CPSD's draft GO. For all of these provisions, we found that the approach taken in GO 172 is reasonable. In fact, for each major concern, the Settling Parties propose a solution that is reasonable, both in itself and as accommodation of various concerns by stakeholders.

¹⁶ Chairperson Deborah A. P. Hersman's closing remarks at the January 21, 2010, NTSB Board meeting adopting the final report and recommendations regarding the September 12, 2008, Chatsworth Metrolink-UPRR collision.

We further find GO 172 to be coherent and comprehensive. For example, GO 172, Section 1.4, anticipates future updates to GO 172 as technology changes and other social media circumstances change to keep up with continually changing times. Section 1.5 also provides for any potential exemptions or modifications to GO.

GO 172 will be an effective regulatory response to a clear safety issue facing the transit industry. Review of the record in this proceeding provides support for the Settlement and adoption of GO 172. Thus, we find the Settlement and GO 172 are reasonable in light of the entire record.

5.2. The Settlement is Consistent with the Law

The Settlement and GO 172 are consistent with the law. Taken together, California Public Utilities Code (Code) Sections 778, 29047, 30646, 100168 and 99152 authorize the Commission to prohibit the use of PEDs by safety-sensitive rail transit employees, when operating rail transit vehicles.

The rail transit agencies in operation prior to January 1, 1979, Code Sections specifically outlines the Commission jurisdiction. Examples of these jurisdiction-conferring statutes include Code Section 29047 for Bay Area Rapid Transit, Section 100168 for the Santa Clara Valley Transit Authority, and Section 30646 for the Los Angeles County Metropolitan Transportation Authority.¹⁷

Code Section 29047 provides, in pertinent part, that:

¹⁷ The Los Angeles County Transportation Authority is the successor to the Southern California Rapid Transit District (the original statutory target agency) and the Los Angeles County Transportation Commission. The change-over took place February 1, 1993.

The [BART] district shall be subject to regulations of the Public Utilities Commission relating to safety appliances and procedures, and the commission shall inspect all work done pursuant to this part and may make such further additions or changes necessary for the purpose of safety to employees and the general public. The commission shall enforce the provisions of this section

Code Section 100168 is identical to the quoted portion of Section 29047 and provides for the Commission's rail transit safety jurisdiction over the Santa Clara Valley Transit District (San Jose). Code Section 30646 does likewise for the Los Angeles County Metropolitan Transportation Authority, adding that it: "... shall [also] be subject to the jurisdiction of the Public Utilities Commission with respect to safety rules and other regulations governing the operation of street railways."

Generally, as to all rail transit agencies, Code Section 778 provides: "The commission shall adopt rules and regulations, which shall become effective on July 1, 1977, relating to safety appliances and procedures for rail transit services operated at grade and in vehicular traffic...."

For transit guideways, Code Section 99152 provides:

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.

Consistent with the foregoing authorities, the Commission has adopted various rules and regulations concerning rail transit safety. For example, GO 26-D establishes clearances as to side and overhead structures, parallel tracks and crossings; GO 95 sets forth, among other things, safety requirements for overhead electric/catenary lines; GO 127 provides for the maintenance and operation of automatic train control systems for the rail transit agencies; GO 143-B addresses the design, construction, and operation of light rail transit systems; and GO 164-D provides safety oversight for rail fixed guideway systems.

Consistent with the foregoing authorities, the Commission continues to oversee and update these safety GOs. Moreover, the Commission has been identified by the Federal Transit Administration as the State Safety Oversight Agency (SSO) for transit agencies in California under Title 49 C.F.R. part 659. As an SSO, the Commission is also required to execute certain federally-mandated oversight responsibilities over the rail transit agencies.

The Commission adopted Resolution SX-88 which prohibited the “Personal use of commercial mobile radio services and devices by on-duty railroad engineers, brakemen, conductors, or rail transit vehicle operators...except for personal communications which take place while the train or transit vehicle is stopped and with approval of the appropriate management personnel.”¹⁸ Resolution SX-88 continues in effect today, on an interim basis, for rail transit agencies. As stated in the OIR, this proceeding considers the

¹⁸ *Ibid.*

permanent adoption of the prohibitions in the Resolution SX-88 as well as other measures to address safety regarding rail transit employees' use of PEDs.

The Settling Parties have complied with Commission's Rule 12.1. The Commission has jurisdiction and authority to adopt GO 172 as a safety regulation. No party objects to the Commission's jurisdiction or authority. No party objects or otherwise opposes the approval of Settlement and adoption of GO 172. Also, GO 172 provides more comprehensive measures than Resolution SX-88. Based on the foregoing, we find that the Settlement and GO 172 are consistent with the applicable laws.

5.3. The Settlement is in the Public Interest

The Settlement and GO 172 are in the public interest. The GO effectively requires agencies to implement safety programs which include this important safety technology (inward-facing cameras) as part of the transit agencies' safety programs. GO 172 successfully addresses an important rail transit safety issue at a time when the agencies, who will bear the cost of the implementation, face severe fiscal constraints. Finally, the Settlement resolves both privacy and collective bargaining concerns that might otherwise hinder successful implementation of GO 172. We also find the public interest to be served by this successful collaboration among the stakeholders in the transit industry.

Therefore, we believe adoption of GO 172 should avoid potential delays and costs of protracted litigation and should readily be accepted by the industry. We expect that speedier and smoother implementation will result. We therefore find that the Settlement and GO 172 are reasonable compromises of the Settling Parties' respective positions and are in the public interest.

5.4. Adopting the Settlement is Reasonable

Based on our review and the discussion above, the Commission finds the Settlement and GO 172 to be reasonable in light of the whole record, consistent with the law, and in the public interest. Therefore, we approve the Settlement and adopt GO 172.

6. Other Procedural Matters

Rule 12.1(a) requires parties to submit a settlement for approval by filing a written motion within 30 days after the last day of hearing. There was no evidentiary hearing in this proceeding. Therefore, the time limits in Rule 12.1(a) are inapplicable to the situation at hand.

Consistent with Rule 12.1(b), a public notice of a settlement conference was provided by the ALJ's Ruling, dated March 4, 2011. A settlement conference was convened on March 16, 2011. Participating parties were the Settling Parties. The Settling Parties reported that after the settlement conference, the Settling Parties required additional time to finalize their settlement efforts. Those efforts ultimately resulted in the GO 172, and on April 5, 2011, the Settling Parties filed a Joint Motion, along with a proposed GO, GO 172.

No objections or comments were filed by anyone opposing the Settlement. Thus, the Settlement meets the requirements of Rule 12.1(a) and 12.(b).

7. Waiver of Comments on Proposed Decision

Because this decision grants relief sought by the Settling Parties by approving the Settlement and adopting GO 172 in its entirety without modification, and because no party objects or opposes the Settling Parties' Joint Motion seeking approval of Settlement and adoption of GO 172, the 30-day public review and comment period required by Section 311 of the Public Utilities

Code is waived, as authorized by Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure.

8. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Kimberly H. Kim is the assigned ALJ in this proceeding.

Findings of Fact

1. The Joint Motion, seeking the Commission's approval of the Settlement and adoption of GO 172, is sponsored by Los Angeles County Metropolitan Transit Agency, North County Transit District, Sacramento Regional Transit District, San Diego Trolley, Inc., San Francisco Bay Area Rapid Transit District Area, Santa Clara Valley Transportation Authority, SFO Airtrain, Amalgamated Transit Union, International Brotherhood of Electrical Workers, Local Union 465, and United Transportation Union.

2. The Settlement is unopposed.

3. CPSD supports the approval of Settlement and adoption of GO 172.

4. A settlement conference was properly noticed and held.

5. The record in this proceeding is extensive and demonstrates a clear safety need for GO 172.

6. Through the collaborative process, the industry stakeholders arrived at the Settlement and GO 172 -- a solution that effectively accommodated and addressed their respective concerns while also achieving the shared goal of the OIR, rail transit safety.

7. GO 172 balances the fiscal concerns associated with the installation and monitoring of in-cab inward-facing cameras, with public safety goals and the needs and concerns of the rail transit agencies' employees and union members.

8. GO 172 would apply to all rail transit agencies in California.

9. GO 172 effectively requires agencies' implementation of safety programs which include an important safety technology (inward-facing cameras) as part of the safety programs.

10. Operational in-cab inward-facing video cameras are required within three years of the effective date of GO 172.

11. During the three-year interim period until the cameras are installed and operational, supervisory observations for compliance are required, with CPSD oversight of the supervisory monitoring.

12. GO 172 allows possession of PED on rail transit vehicles if the device is turned off and stowed and not on the operator's person.

13. We recognize that, for the agencies, securing funding, working with funding cycles, installation of the cameras and testing of the cameras will take considerable time.

14. GO 172 requires that cameras have an eight-day continuous loop recording so that any time the recording is downloaded, the most recent eight days are available for review.

15. GO 172 requires each of the agencies to develop and submit an enforcement and video monitoring plan for CPSD Director or Deputy Director review and approval at least 90 days before video operation.

16. The eight-day continuous loop recording and related safety requirements set forth in GO 172 are a reasonable and a cost-effective approach to introducing the in-cab camera technology as an enforcement tool against non-compliance and set a framework for the agencies' disciplinary programs.

17. GO 172 requires each rail transit agency to develop, adopt, and submit to the Commission, within 90 days from the effective date of GO 172, for review and approval, a clear and effective zero tolerance policy and program designed

to effectively deter and prevent violations and promote a culture of safe behavior.

18. GO 172 provides all PEDs, irrespective of whether they are personal or agency-issued, must be turned off and stowed when a transit employee is operating a rail transit or on-track vehicle.

19. A PED may be used in an emergency, and only when “the rail transit or on-track vehicle is stopped and the person is not in the controlling compartment of the rail transit vehicle.”

20. GO 172 acknowledges the importance of minimizing transit operator distractions created by the PEDs, personal or agency-issued, and such distraction to a transit operator while operating a transit vehicles poses an unacceptable public and passenger safety risk.

21. GO 172 successfully addresses an important rail transit safety issue at a time when the agencies, who will bear the cost of the implementation, face severe fiscal constraints.

22. The Settlement and GO 172 resolve both privacy and collective bargaining concerns that might otherwise hinder successful implementation of GO 172.

23. GO 172 will deter and prevent unsafe transit operator behaviors which were the unintended byproduct of the new PED technologies.

24. GO 172 is an important safety precaution necessitated by changing times.

25. GO 172 is coherent and comprehensive, and for each major provision, GO 172 presents a solution that is reasonable, both in itself and as accommodation of various concerns by the transit industry stakeholders.

26. Review of the record in this proceeding provides support for our approval of the Settlement and adoption of GO 172, as an effective regulatory response to a clear safety issue facing the transit industry.

27. Taken together, California Public Utilities Code Sections 778, 29047, 30646, 100168 and 99152 authorize the Commission to prohibit the use of PEDs by safety-sensitive rail transit employees, when operating rail transit vehicles.

28. The public interest is served by this successful collaboration among the stakeholders in the transit industry.

29. Approval of the Settlement and adoption of GO 172 should avoid potential delays and costs of protracted litigation and should readily be accepted by the industry, resulting in speedier and smoother implementation of GO 172.

30. We find the Settlement and GO 172 to be reasonable in light of the whole record, consistent with the law, and in the public interest.

31. Approval of the Settlement and adoption of GO 172 will resolve all outstanding issues in this proceeding.

Conclusions of Law

1. The Settling Parties have complied with Rule 12.1(a) and 12.1(b).
2. The Settlement and GO 172 are reasonable in light of the whole record, consistent with the law, and in the public interest.
3. The Settlement should be approved effective immediately.
4. GO 172 should be adopted and should be effective immediately.

O R D E R

IT IS ORDERED that:

1. General Order 172 attached to this decision as Appendix A is adopted.
2. General Order 172 supersedes and replaces Resolution SX-88.
3. Rulemaking 08-10-007 is closed.

This order is effective today.

Dated October 6, 2011, at Los Angeles, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners

[D1110018 Appendix A](#)

[D1110018 Appendix B](#)

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