

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Safety and Enforcement Division
Rail Transit Safety Branch

San Francisco, California
Date: December 18, 2014
Resolution ST-163

RESOLUTION

**RESOLUTION ADOPTING A RAIL TRANSIT SYSTEM
CITATION PROGRAM FOR ENFORCING COMPLIANCE
WITH GENERAL ORDERS AND OTHER REQUIREMENTS
INCLUDING PROCEDURES FOR APPEAL OF CITATIONS
ISSUED TO RAIL TRANSIT AGENCIES OPERATING PUBLIC
TRANSIT RAIL FIXED GUIDEWAY SYSTEMS.**

SUMMARY

This resolution approves a citation program under the administration of the Director of the Safety and Enforcement Division (SED) for enforcing compliance with certain General Orders and other requirements for public transit guideway system carriers (hereinafter "rail fixed guideway system" as defined in General Order 164-D, section 2.15) operating in California. Specifically, the citation program will aid in ensuring compliance with the requirements for walkways, clearances, roadway worker protections and certain rail fixed guideway system operating rules. Staff is delegated authority to draft and issue citations for specific violations and levy penalties in specified amounts as set forth in Appendix A.

Delegation of authority to SED will allow prompt action by Staff to protect the public and rail fixed guideway system employees and fulfill the objectives of the Commission's rail fixed guideway system safety responsibilities. Authority for this resolution is derived from provisions of: the California Constitution; California statutes and court decisions; federal law; and prior Commission decisions and orders. Nothing in this resolution diminishes, alters, or reduces the Commission's existing authority to promote and enforce public safety requirements.

Currently Staff uses on-site visits to identify noncompliance, safety concerns, and reported unsafe conditions. Following those visits, Staff notifies the rail fixed guideway system of the need for corrective action. Generally, the Staff inspector and rail fixed

guideway system agree to a timeframe for remediation informally. However, the rail fixed guideway system sometimes fails to meet its commitments. Consequently, CPUC inspection Staff must make repeated site visits, or contact with the rail fixed guideway system carrier, in an effort to achieve compliance, or, in the alternative, consider recommending a formal investigation (Order Instituting Investigation) to the Commission. The adoption of this citation process will allow Staff to document persistent conditions that fail to comply with applicable CPUC rules, orders, and regulations, and will provide a more certain timeframe for remediation.

The SED Director or Deputy Director will issue citations after the following:

- 1) the CPUC inspection Staff has given a notice of defect or violation to the rail fixed guideway system;
- 2) the Rail Transit Agency (“RTA”) (operating a rail fixed guideway system) has had an opportunity to correct the defect or violation; and,
- 3) the rail fixed guideway system has failed to correct the defect or violation in a timely manner.

Citations will also be considered for repeat violations that were previously corrected, but which have re-occurred, or for particularly egregious or willful violations.

BACKGROUND

California law, including Public Utilities Code § 7, allows the Commission to delegate certain of its powers to Commission Staff.¹ The Commission may delegate to its Staff the performance of certain functions, including investigation of facts preliminary to agency action, and the ministerial assessment of specific penalties for certain types of violations.² Over the last several years the Commission has developed and enhanced its citation programs in numerous areas, including household good movers, charter party carriers, passenger stage corporations, railroads, maintenance and operation of power plants, slamming by telecommunications providers (switching a consumer’s telephone service from one carrier to another without consent), and compliance with resource adequacy requirements for electric power.

¹ See D.06-01-047, mimeo at pp. 9-12, which modifies and denies rehearing of D.04-05-017 and D.04-05-018, and thereby upholds the Commission’s delegation of authority to Staff under the G.O. 167 citation program, among other things.

² *Ibid.*

A citation program administered by Staff for specified violations of the Commission's General Orders and other requirements that apply to rail fixed guideway system carriers will allow prompt Staff action to protect rail fixed guideway system employees and the public, minimize enforcement costs, and fulfill the objectives of the Commission's rail fixed guideway system safety program. This citation program is consistent with other approved citation programs and will expedite rail fixed guideway system compliance with General Orders (G.O.s) 26-D, 33-B, 72-B, 75-D, 95, 118-A, 127, 128, 143-B, 164-D, 172, and 175.³

The types of violations that Staff may enforce by citation and the citation procedures themselves are similar to those for railroad safety under Resolution ROSB-002. The amounts of the proposed penalties also are similar to those approved in G.O. 167.

COMPLIANCE WITH GENERAL ORDERS:⁴

G.O. 26-D establishes minimum clearances between rail tracks, parallel tracks, side clearances that apply to rail fixed guideway system tracks, overhead clearances on rail fixed guideway system tracks, and clearances for obstructions, motor vehicles, and warning devices next to tracks, including rail fixed guideway system tracks, at highway-rail crossings.

G.O. 33-B establishes requirements for the approval, construction and operation that apply to rail fixed guideway systems' interlocking plants.

G.O. 72-B provides uniform standards for grade crossing construction and maintenance that apply to railroads and rail fixed guideway systems.

G.O. 75-D establishes standards for warning devices for railroad and rail fixed guideway systems at-grade highway-rail crossings.

G.O. 95 provides standards that apply to rail fixed guideway systems' electric feeder conductors, span wires, electric poles and towers, etc., communication lines, vertical clearances for wires, and signal systems.

G.O. 118-A provides standards for the construction, reconstruction, and maintenance of walkways that apply to rail fixed guideway system tracks to provide a safe area for train crews to work. G.O. 118 also requires those walkways to be kept reasonably free of vegetation.

³ See Appendix A for how these General Orders may apply, especially for those General Orders that primarily apply to railroads.

⁴ See Appendix A for specific applicability of each General Order cited.

G.O. 127 establishes regulations for the construction, reconstruction, maintenance and operation of automatic train control systems employed by rail fixed guideway systems.

G.O. 128 provides additional rules that apply to rail fixed guideway systems' underground electric supply and communication systems.

G.O. 143-B establishes safety regulations governing the design, construction, operation, and maintenance of rail fixed guideway systems.

G.O. 164-D provides for additional rules for the safety oversight of rail fixed guideway systems as required under Title 49 of the Code of Federal Regulations, Part 659.

G.O. 172 establishes rules and regulations governing the use of personal electronic devices by employees of rail fixed guideway systems.

G.O. 175 establishes rules and regulations governing roadway worker protections for rail fixed guideway systems.

COMPLIANCE WITH THE PUBLIC UTILITIES ("PUB. UTIL.") CODE:

PUB. UTIL CODE § 309.7 makes SED Staff "responsible for consumer protection and safety shall be responsible for inspection, surveillance, and investigation of the rights-of-way, facilities, equipment, and operations of railroads and public mass transit guideways, and for enforcing state and federal laws, regulations, orders, and directives relating to transportation of persons or commodities, or both, of any nature or description by rail...[and] enforce safety laws, rules, regulations, and orders, and to collect fines and penalties resulting from the violation of any safety rule or regulation."

PUB. UTIL CODE § 315 requires the Commission to investigate the cause of all accidents occurring within this State upon the property of any public utility or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to person or property and requiring, in the judgment of the commission, investigation by it, and may make such order or recommendation with respect thereto as in its judgment seems just and reasonable. Under Pub. Util. Code § 216 (a) every "common carrier" such as an RTA is a "public utility."

PUB. UTIL CODE § 451 requires that every public utility...furnish and maintain such adequate [and] efficient...instrumentalities, equipment, and facilities...as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

PUB. UTIL CODE § 771 requires that Staff be permitted to "enter upon any premises occupied by any public utility, for the purpose of making the examinations and tests and exercising any of the other powers provided for in this part, and may set up and

use on such premises any apparatus and appliances necessary therefor. The agents and employees of the public utility may be present at the making of such examinations and tests.”

AUTHORITIES:

PUB. UTIL CODE § 778. “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. The rules and regulations shall include, but not be limited to, provisions on grade crossing protection devices, headways, and maximum operating speeds with respect to the speed and volume of vehicular traffic within which the transit service is operated.”

PUB. UTIL CODE § 2107 provides that “[a]ny public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each offense.” Any citation for a violation of Section 2107 requires a hearing at the Commission before the fine can be imposed against an RTA.

PUB. UTIL CODE § 2110 provides that “every public utility and every officer, agent, or employee of any public utility, who violates or fails to comply with, or who procures, aids, or abets any violation by any public utility of any provision of the Constitution of this state or of this part, or who fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or who procures, aids, or abets any public utility in such violation or noncompliance in a case in which a penalty has not otherwise been provided, is guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.”

PUB. UTIL CODE § 2111 provides that “every corporation or person, other than a public utility and its officers, agents, or employees, which or who knowingly violates or fails to comply with, or procures, aids or abets any violation of any provision of the Constitution of this state relating to public utilities or of this part, or fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or who procures, aids, or abets any public utility in such violation or noncompliance, in a case in which a penalty has not otherwise been provided for such corporation or person, is subject to a penalty of not less than five hundred dollars (\$500), nor more than twenty thousand dollars (\$20,000) for each offense.”

PUB. UTIL CODE § 29047 requires that the San Francisco Bay Area Transit District comply with the Commission's "regulations 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 [C]ommission shall enforce the provisions of this section."

PUB. UTIL CODE § 30646 requires that the Southern California Rapid Transit District comply with the Commission's "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 district shall be subject to the jurisdiction of the Public Utilities Commission with respect to safety rules and other regulations governing the operation of street railways." "The commission shall enforce the provisions of this section."

PUB. UTIL CODE § 99152 requires any public transit guideway planned, acquired, or constructed, on or after January 1, 1979, to comply with the Commission's "regulations... 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."

PUB. UTIL CODE § 100168 requires that the Santa Clara Valley Transportation Authority comply with the Commission's "regulations...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."

COMPLIANCE WITH FEDERAL REGULATIONS:

The Federal Transit Administration's ("FTA's") safety requirements represent a minimum standard that must be addressed by each rail transit agency and enforced by the state oversight agency." (70 Fed. Reg. 22562, April 29, 2005.) The Commission has been designated by the Governor of California as the state oversight agency for rail fixed guideway systems in the state.

The state oversight agency is responsible for establishing standards for rail safety and security practices and procedures to be used by rail transit agencies within its purview. In addition, the state oversight agency must oversee the execution of these practices and procedures, to ensure compliance with the provisions of this part.

(49 C.F.R. Part 659.13.)

In enforcing compliance with rail fixed guideway system safety requirements, or in response to any reported violation, the Commission may initiate any authorized formal proceeding or pursue any other remedy authorized by the California Constitution, the Public Utilities Code, other state or federal statutes, court decisions or decrees, or otherwise by law or in equity. Finally, the Commission's enforcement of this resolution by citation process does not bar or affect the remedies otherwise available to other persons or government agencies.

CITATION PROGRAM

The citation program authorizes the Director or Deputy Director of SED to issue citations to rail fixed guideway system carriers for a violation of specified Public Utilities Code sections and Commission General Orders. A fixed guideway system that has been issued such a citation may accept the fine imposed or contest it through a process of appeal. The Commission adopts the following procedures to govern the issuance and appeal of these citations.

1. *Citation: Contents.* The citation served upon the respondent by the investigator shall include:
 - (a) A specification of each alleged violation as listed in Appendix A;
 - (b) A statement of the facts upon which each alleged violation is based;
 - (c) A statement that the respondent may either pay the amount of the fine set forth in the citation or appeal the citation, as set forth herein, and that the respondent will forfeit the right to appeal the citation by failing to do either of these things within the allowable period;
 - (d) An explanation of how to file an appeal, including an explanation of the respondent's right to have a hearing, to have a representative at the hearing, to request a transcript, and to

request an interpreter, and a copy of Resolution ALJ-299⁵ which includes *Appendix A, Pilot Program Citation Appeal and General Order 156 Appellate Rules* (Citation Appellate Rules), which procedural rules apply to any citation appeal filed pursuant to this resolution; and

- (e) A form of Notice of Appeal.
2. *Response.* The respondent, within 30 days after the date of service of the citation, shall remit payment of the full amount of the fine to SED, agree with SED on conditions for payment, or file a Notice of Appeal with the Commission's Docket Office and serve the Notice of Appeal upon SED and the Chief Administrative Law Judge (with an electronic copy to: ALJ_Div_Appeals_Coordinator@cpuc.ca.gov) on the same day the Notice of Appeal is filed, consistent with Rules 3, 4, and 6 of the Citation Appellate Rules. (Hereafter, a respondent filing a Notice of Appeal is referred to as Respondent/Appellant).
2. Respondent/Appellant must also file a proof of service to this effect at the same time respondent files the Notice of Appeal. Upon written request made by respondent/appellant to the Director of SED before the expiration of the 30 day appellate deadline for an extension of time to file the Notice of Appeal, the Director of SED (or the Director's designee) may authorize an additional period not to exceed 30 days. This extension must be made in writing and attached to the Notice of Appeal. (See Citation Appellate Rule 4.)
3. *Citation: Payment of fine; default.* If the respondent pays the full amount of the fine within the time allowed hereunder, the citation shall become final. If the respondent, within 30 days after the date of service of the citation, fails to file a Notice of Appeal with the Docket Office, or if the respondent, having entered into an agreement with SED, fails to comply with any provision of that agreement, the respondent shall be in default, and the citation shall become final. In this event, the respondent shall have forfeited its right to appeal the citation. If the respondent fails to pay the full amount of the fine within 30 days after the date of service of the citation, SED may take all necessary action provided by law to recover any unpaid fine and ensure compliance with applicable statutes and Commission orders.
4. *Citation: Appeals shall be filed with the Docket Office.*
- (a) An appeal must be brought by Respondent/Appellant filing a Notice of Appeal with the Commission's Docket Office pursuant to Resolution ALJ-299 and the timeframe and other requirements

⁵ <http://docs.cpuc.ca.gov/ResolutionSearchForm.aspx>. Enter "ALJ-299" in the search window.

of Rule 3 of this resolution cited above. The Notice of Appeal must state the date and number of the citation appealed and the grounds for appeal, pursuant to Rule 3 of the Citation Appellate Rules. The title page and caption must be as described in Rule 3 of the Citation Appellate Rules.

- (b) The Chief Administrative Law Judge shall designate an ALJ to hear the appeals of the citations.
- (c) Appeals of citations shall be heard in the Commission's San Francisco or Los Angeles courtrooms on regularly scheduled days. Appeals shall be calendared accordingly, except that a particular matter may be re-calendared at the direction of the designated ALJ.
- (d) Respondent/Appellant must serve the Notice of Appeal on the Chief Administrative Law Judge (with an electronic copy to: ALJ_Div_Appeals_Coordinator@cpuc.ca.gov) and on the Director of SED as provided by Rule 6 of the Citation Appellate Rules. Pursuant to this same rule, respondent/appellant must file a proof of service to this effect at the same time respondent/appellant files its Notice of Appeal).
- (e) Pursuant to Rule 7 of the Citation Appellate Rules, not later than seven business days after the Notice of Appeal is filed, SED must file a compliance filing which includes: (1) a complete copy of the citation which is appealed, (2) a proof of service on the respondent/appellant and Chief Administrative Law Judge, and service electronically to: ALJ_Div_Appeals_Coordinator@cpuc.ca.gov.
- (f) Pursuant to Rule 10 of the Citation Appellate Rules, a hearing on the appeal must occur promptly, with the parties notified at least 10 days in advance of the hearing. The ALJ may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing.
- (g) The respondent/appellant may order a transcript of the hearing, and shall pay the cost of the transcript in accordance with the Commission's usual procedures.
- (h) The respondent/appellant may be represented at the hearing by an attorney or other representative, but such representation shall be at the respondent's/appellant's sole expense.

- (i) At the hearing, SED shall bear the burden of proof in establishing a violation. SED shall also bear the burden of producing evidence and, therefore, shall open and close. The ALJ may, in his or her discretion, alter the order of presentation. Pursuant to Rule 13 of the Citation Appellate Rules, Rule 13.6 (Evidence) of the Commission's Rules of Practice and Procedure is applicable.
- (j) Ordinarily, any appeal shall be submitted at the close of the hearing. In the discretion of the ALJ upon a showing of good cause, the record may be kept open for a reasonable period to permit a party to submit additional evidence or argument.
- (k) The ALJ shall issue a proposed resolution resolving the appeal not later than 60 days after the appeal is submitted, and the proposed resolution shall be placed on the first available agenda, consistent with the Commission's applicable rules.
- (l) All *ex parte* communications (as defined by Rule 8.1(c) of the Commission's Rules of Practice and Procedure) with a decision maker (including any Commissioner, Commissioner advisor, the Chief Judge, any Assistant Chief Judge, the assigned Judge, or the Law and Motion Judge) from the date the citation issues through the date a final order is issued on the citation appeal, are prohibited. (See: Citation Appellate Rule 19.) A final order means the date when the period to apply for rehearing of the Commission resolution on the appeal has expired and no application for rehearing has been filed, or if an application for rehearing is filed, the date when the period to seek judicial review of the decision finally resolving the application for rehearing has passed without any party seeking judicial review; or if judicial review is sought, the date any court cases are finally resolved. (Id.)
- (m) Citation resolutions are subject to rehearing pursuant to Pub. Util. Code § 1731 and to judicial review pursuant to Pub. Util. Code § 1756.

COMMENTS ON DRAFT RESOLUTION:

The Draft Resolution of the Commission Safety and Enforcement Division in this matter was mailed to the parties in interest on May 9, 2014, in accordance with Cal. Pub. Util.

Code § 311(g). Comments were filed on June 2, 2014, Reply comments were filed on June 9, 2014.

After initial comments were received, SED held a meeting with the California Rail Transit Agencies (“RTAs”) and union representatives on July 16, 2014, and discussed the substance of the Resolution’s provisions. In those meetings, Staff agreed to consider the following numbered underlined requests. All present agreed that this was a complete list of concerns. Each request was discussed internally, and the disposition follows each underlined request:

1. Request that CPUC staff meet with RTAs to discuss status of unresolved or “open” non-compliance findings.

Staff has since met with each of the rail transit agencies to clarify which items remain open and why they are open. Some items were closed, and some require re-inspections to verify closure, and some were found to justifiably remain open. Most reconciliation is complete, but Staff continues to work through some open items with each agency.

2. Request that regular meetings be held to ensure issues are understood and communicated.

Staff has agreed that such meetings can be productive and should be regularly scheduled, either as separate RTA meetings or as part of larger regular meetings with multiple RTAs.

3. Request that CPUC staff draft standard procedures for implementing the citation program.

Staff has developed procedures and they are currently being reviewed and vetted.

4. Request that the resolution include a list of items to be, or that can be, considered in issuing a citation and/or in setting a penalty amount, e.g. range of monetary fine, self-reporting, or something that was previously considered in compliance.

SED believes the procedures and penalties in the Resolution are appropriate but, in any event, any citation that any RTA believes warrants a reduced penalty amount may be appealed.

5. Request that before issuing a citation, staff should verify that the condition still exists.

Staff has agreed that before a citation is issued, staff should verify that the condition still exists, recognizing that some citations must be immediately issued after first discovery by Staff, such as an operating rule failure, or egregious conditions that should have been discovered and corrected by the RTA.

6. Request for a review of the G.O.s and Pub. Util. Code sections to see if some can be eliminated and/or added, such as Pub. Util. Code sections 99152, 771, and 315.

Staff has reviewed this issue and has made adjustments, including 1) distinguishing citable Pub. Util. Code sections, such as Sections 315 and 771, from PU Code sections giving the Commission authority to adopt and enforce its regulations, and 2) by providing non-compliance examples in Appendix A for some General Orders that may primarily apply to railroads, but in some circumstances may also apply to rail fixed guideway systems, such as General Orders 26-D and 118-A.

7. Request to address times when a third party is responsible for correcting non-compliance, such as pavement markings provided by a local street maintenance jurisdiction.

Staff has agreed to pursue Pub. Util. Code sections that may govern third parties that cause and/or are responsible for correcting non-compliance when the RTA has performed its due diligence to seek remediation either by interim safety protections, or by pressing for third party corrective action, or both.

8. Request to determine if fines can be submitted to a safety program fund.

The law requires that all fines must be submitted to the state's general fund (P.U.C. § 2104 et seq.)

9. Request that CPUC staff send a monthly status report on Corrective Action Plans (CAPs).

Staff has agreed to send monthly status reports to each RTA and has already begun doing so.

10. Request that CPUC staff develop a Compliance Manual as an aide to interpret, and identify a deviation from, a regulation, (not tied in timing to adoption of resolution).

Staff has agreed to develop a "Guidance Document" to facilitate interpretation of the applicable regulations. This will need to be a work-in-progress as the need

for interpretation becomes evident, and may need to be updated often. The term "Compliance Manual" will not be used since it may have meaning beyond that intended for the guidance provided.

11. Request to identify G.O. subsections that will be subject to citations - (not tied in timing to adoption of the Resolution).

CPUC staff has agreed to work with the RTAs and unions to identify CPUC General Order sections and Pub. Util. Code Section subsections that may not be subject to citations. Such development will not delay the adoption of this Resolution, and will be an ongoing process to resolve interpretation issues as they arise.

12. Request the opportunity for a 30-day comment period on a revised draft Resolution.

Staff has agreed to another review period for the revised Resolution.

The status of any of the above agreements will not absolve an RTA from its responsibility to comply with the relevant Cal. Pub. Util. Code sections and the Commission's regulations, nor will such status relieve any RTA of its responsibility for a scheduled penalty (Appendix A). The above agreements are only intended to facilitate communication, understanding, and implementation of an effective safety compliance program, and will not relieve any RTA of its safety responsibilities.

A revised Draft Resolution of the Commission Safety and Enforcement Division in this matter was mailed to the parties in interest on November 17, 2014, in accordance with Cal. Pub. Util. Code § 311(g). Joint RTA Comments ("Joint Comments") were filed on December 8, 2014. The Joint Comments contend that the Citation Program is "ambiguous, vague, and overreaching" with highly burdensome enforcement consequences.

In support of that characterization, the Joint Comments raise a number of concerns. For instance, if RTAs entered into an agreement with Staff resolving the alleged violation and then fails to comply, it will forfeit its right to appeal. As Staff has indicated previously, if an RTA believes that Staff has unfairly contended that the RTA has failed to comply with the agreement, the RTA may still submit an Application to the Commission requesting a hearing on the forfeiture demanded by Staff. The forfeiture applies to the failure to comply with the settlement and if the RTA believes it has done so, it may submit an Application to the Commission to demonstrate that it has in fact complied with the settlement.

The Joint Comments also contend that RTAs should have a right to submit an Application to the Commission in advance of the issuance of a citation if the RTA cannot convince Staff that there is no violation on which to base a citation. This would eviscerate the purpose of the Citation Program and introduce a confusing and unnecessary complexity to the Program.

The Joint Comments also raise the RTAs' earlier concerns that the violations should be specifically identified. As previously noted, the potential violations of statutes, rules, and General Orders are too broad to be included in a laundry list of offending conduct. As with other Commission citation programs, we decline to entertain a facial constitutional challenge to all the laws and G.O.'s based on multiple hypothetical situations as not yet ripe for adjudication. The Joint Comments point to a violation of Pub. Util. Code § 2111 which does not apply to public utilities such as RTAs but fail to consider that the statute nevertheless may apply to third-party contractors of the RTAs. Finally, the Joint Comments contend that G.O. 26-D, G.O. 33-B, and G.O. 118-A do not apply to RTAs. The Commission does not agree with the contention. The Joint Comments suggest that rules concerning shared use of track with freight trains and important interlocking facilities apply only to railroads. We are not willing to assume that there is no situation in which an RTA could not violate safety responsibilities on shared tracks or at interlocking facilities on its system.

The Joint Comments also argue that RTAs are "sister agencies" with limited budgets derived from public funds (mainly federal funds). Consequently, the Joint Comments argue, these sister agencies should be provided a formal proceeding at the Commission. As previously mentioned, the expansion of public transit guideway systems in California makes such a policy no longer feasible. The Joint Comments characterize the Citation Program as "inconsistent" with the Commission's past "principle of collegiality." Collegiality is a positive and beneficial policy but it should not be confused with lax enforcement. Finally, the Joint Comments contends that the Citation Program fails to demonstrate a need to impose such a Program. The Commission does not agree.

In response to earlier comments submitted by the Union Pacific Railroad, SED in this resolution is not seeking modification of Res. ROSB-002, to conform to Res. ALJ-299. The Commission's safety jurisdiction over railroads is significantly different from that of transit systems. It is limited by federal preemption under 49 U.S.C. § 20106 to safety regulation where the subject matter is not covered by federal regulations and that does not conflict with federal regulations, to local safety hazard sites, and to the Commission's responsibilities under the State Participation Plan with the Federal Railroad Administration under 49. U.S.C. §§ 212 et seq.

ORDER

IT IS ORDERED THAT the following procedures shall govern citations and appeals of citations for violations of statutes or Commission orders relating to rail fixed guideway carriers, also known as Rail Transit Agencies (RTAs):

1. The citation program described above and in the Specified Violations and Scheduled Penalties, Appendix A, are hereby adopted.
2. The RTAs shall identify a company-specific senior management personnel contact so that particularly complex or long-running violations can receive prompt action from a senior-level rail fixed guideway (RTA) official.
3. Authority is delegated to the Director and Deputy Director of the Safety and Enforcement Division to issue citations and levy Scheduled Penalties for the Specified Violations set forth in Appendix A to enforce compliance by rail fixed guideway (RTA) carriers with safety requirements.
4. The RTAs and Safety and Enforcement Division's Rail Transit Safety Branch staff will hold regular meetings to discuss citations.
5. In enforcing compliance with rail fixed guideway (RTA) safety requirements or in response to any Specified Violation, the Commission may initiate any formal proceeding authorized by the California Constitution, the Public Utilities Code, other state and federal statutes, court decisions or decrees, the Commission's Rules of Practice and Procedure, or prior Commission orders, decisions, rules, directions, demands or requirements, and pursue any other remedy authorized by the California Constitution, the Public Utilities Code, RESOLUTION ST-163 of other state or federal statutes, court decisions or decrees, or otherwise by law or in equity. The citation program adopted herein is an additional enforcement mechanism that may be used in addition to, or in lieu of, a formal proceeding.
6. Nothing in this resolution bars or affects the rights or remedies otherwise available to other persons or government agencies.
7. This resolution is effective January 1, 2015.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on December 18, 2014, the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
MICHAEL PICKER
Commissioners

**APPENDIX A
SPECIFIED VIOLATIONS AND SCHEDULED PENALTIES**

Specified Violation	Scheduled Penalty
Failure to comply with G.O. 26-D. Regulations governing clearances with reference to side and overhead structures, parallel tracks, crossings of public roads, highways and streets, where , for example, the rail fixed guideway system shares clearances with a temporally or physically separate railroad operation.	\$2,000 per incident.
Failure to comply with G.O. 33-B. Requirements for the approval, construction and operation of rail fixed guideway systems' interlocking plants, where , for example, the rail fixed guideway system shares an interlocking with a railroad operation.	\$4,000 per incident.
Failure to comply with G.O. 72-B. Uniform standards for grade crossing construction and maintenance.	\$4,000 per incident.
Failure to comply with G.O. 75-D. Standards for warning devices for railroad and rail fixed guideway system at-grade highway-rail crossings.	\$4,000 per incident.
Failure to comply with G.O. 95. Standards for the construction of rail fixed guideway systems' electric feeder conductors, span wires, electric poles and towers, etc., communication lines, vertical clearances for wires, and signal systems.	\$5,000 per incident.
Failure to comply with G.O. 118 (except as to vegetation control requirements) - Walkways shall provide a reasonable regular surface with	\$3,000 per incident.

gradual slope not to exceed approximately one inch to eight inches (1/8 or 12.5%) , where , for example, the rail fixed guideway system shares walkways with a temporally or physically separation railroad operation	
Failure to comply with G.O. 127. Regulations for the construction, reconstruction, maintenance and operation of automatic train control systems employed by rail fixed guideway systems.	\$7,500 per incident.
Failure to comply with G.O. 128. Rules for the construction of rail fixed guideway systems' underground electric supply and communication systems.	\$5,000 per incident.
Failure to comply with G.O. 143-B. Regulations governing the design, construction, operation, and maintenance of rail fixed guideway systems.	\$5,000 per incident plus \$250/day.
Failure to comply with G.O. 164-D. Rules for the safety oversight of rail fixed guideway systems as required under Title 49 of the Code of Federal Regulations, Part 659.	\$5,000 per incident plus \$250/day.
Failure to comply with G.O. 172. Rules and regulations governing the use of personal electronic devices by employees of Rail Transit Agencies and Rail Fixed Guideway Systems.	\$7,500 per incident.
Failure to comply with G.O. 175. Rules and regulations for roadway worker protections on California Rail Transit Agencies.	\$5,000 per incident plus \$250/day.
Failure to comply with Public Utilities Code § 309.7. Interference with or obstruction of a Safety and Enforcement Division ("SED")	\$10,000 per incident plus \$250/day.

<p>investigation of the rights-of-way, facilities, equipment, and operations of Rail Transit Agencies and/or interference with or obstruction of SED's enforcement of state and federal laws, regulations, orders, and directives concerning RTAs.</p>	
<p>Failure to comply with Public Utilities Code § 315. Interference with or obstruction of an SED accident investigation occurring on the property of of an RTA or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to person or property and requiring, in the judgment of the Commission, and/or the failure of an RTA to comply with a Commission order or recommendations with respect thereto.</p>	<p>\$10,000 per incident plus \$250/day.</p>
<p>Failure to comply with Public Utilities Code § 451. Every Rail Transit Agency shall furnish and maintain such adequate and efficient instrumentalities, equipment, and facilities, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public. This would apply to a defect that has no specific CPUC regulation, but does have a safety standard that should be followed, such as a manufacturer's wear limits for brakes.</p>	<p><u>\$5,000 per incident.</u></p>
<p>Failure to comply with Public Utilities Code § 771. The commissioners and their officers and employees may enter upon any premises occupied by any public utility, for the purpose of making the examinations and tests and exercising any of the other powers provided for in this part, and may set up and use on such premises any apparatus and appliances necessary therefor. The agents and employees of the public utility may be present</p>	<p><u>\$10,000 per incident plus \$250/day.</u></p>

at the making of such examinations and tests. This would apply if any RTA prevented CPUC staff from exercising these duties.	
Failure to comply with 49 C.F.R. § 659 et seq.	\$5,000 per incident.

(END OF APPENDIX A)

Service List

Angels Flight Railway Company

c/o Mr. JOHN H. WELBORNE
Post Office Box 712345
Los Angeles, CA 90071

David Delemos

Sacramento County Department of Airports (SCDOA),
6900 Airport Blvd.,
Sacramento, CA 95837

Los Angeles County Metropolitan Transportation Authority

Vijay Khawani
Executive Officer Corporate Safety
One Gateway Plaza
Los Angeles, CA 90012-2932

Caruso Affiliated (Los Angeles Farmer's Market Trolley)

Peter Hayden, Vice President Engineering
101 The Grove Drive
Los Angeles, CA 90036

Sacramento Regional Transit District

Mark Lonergan, COO
P.O. Box 2110
Sacramento, CA 95812-2110

San Diego Trolley Inc.

Wayne Terry, Chief Operating Officer
1255 Imperial Avenue Suite 900
San Diego, CA 92101

San Francisco Airport's AirTrain

John L. Martin, Director
San Francisco International Airport
PO Box 8097
San Francisco, CA 94128-8097

San Francisco Bay Area Rapid Transit District

Ms. Grace Crunican, General Manager
300 Lakeside Drive, 23rd Floor
P.O. Box 12688
Oakland CA 94604-2688

San Francisco Municipal Transportation Authority

Edward D. Reiskin, Director of Transportation
San Francisco Municipal Railway
One South Van Ness Avenue, Seventh Floor
San Francisco, CA 94103

Santa Clara Valley Transportation Authority District

Ms. Nuria I. Fernandez, General Manager
3331 North First Street
San Jose, CA 95134

North County Transit District

Matthew Tucker, Executive Director
810 Mission Avenue
Oceanside, CA 92054

Port of Los Angeles Waterfront Red Car Line

Kurt Arend, Asst. Chief Harbor Engineer
425 S. Palos Verdes Street
San Pedro, CA 90731

United Transportation Union

James P. Jones, State Legislative Director
1005 12th Street, STE 4
Sacramento, CA 95814
utucslb@mindspring.com

Getty Center Museum

Michael Roger, Director of Facilities
1200 Getty Center Drive, Suite 100
Los Angeles, CA 90049
310-440-6709