

PUBLIC UTILITIES COMMISSION

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Before the
Highways, Transit, and Pipelines Subcommittee
United States House of Representatives
Transit Safety: the Federal Transit Administration's State Safety Oversight Program
July 19, 2006

Chairman Petri and members of the Committee, I am pleased to have the opportunity today to come before you and discuss transit safety and the Federal Transit Administration's state safety oversight program. My name is Richard W. Clark, and I am Director of the Consumer Protection and Safety Division of the California Public Utilities Commission

California Public Utilities Commission

In 1911, the California Public Utilities Commission (CPUC) was established by Constitutional Amendment as the Railroad Commission. In 1912, the Legislature passed the Public Utilities Act, expanding the Commission's regulatory authority to include natural gas, electric, telephone, and water companies as well as railroads and marine transportation Companies. In 1946, the Commission was renamed the California Public Utilities Commission.

The Governor appoints the five Commissioners, who must be confirmed by the Senate, for six year staggered terms. The Governor appoints one of the five to serve as Commission President. The current Commission President is Michael Peevey with Geoffrey Brown, Dian M. Grueneich, John Bohn, and Rachelle Chong filling the remaining Commissioner positions.

The CPUC employs economists, engineers, administrative law judges, accountants, lawyers, and safety and transportation specialists. The Commission is currently organized into several advisory units, an enforcement division, and a strategic planning group. The Division of Ratepayer Advocates is an independent arm of the CPUC that represents consumers in Commission proceedings, pursuant to statute. The Commission also has a Public Advisor who assists the public in participating in Commission proceedings, and a unit that is charged with informally resolving consumer complaints.

CPUC Oversight of Rail Fixed Guideway Systems

The California Public Utilities Commission has been responsible for safety oversight of railroads, street railroads and other forms of passenger transport by rail since the creation of the California Railroad Commission in 1912.

During the design and construction of the Bay Area Rapid Transit (BART) system in the 1960s, the Commission created a separate "BART Safety Unit" utilizing its railroad operations safety staff, engineering specialists and train control engineering consultants. The BART unit eventually

became the BART Section and subsequently, the Rail Transit Safety Section (RTSS). The Commission addressed BART design; construction and operational safety issues through issuance of specific Decisions.

The 1970's ushered in a renewed interest in public rail transit systems. In response, Public Utilities Code Section 99152 was adopted in 1978 giving the Commission specific jurisdiction and responsibility for the safety oversight of public transit guideways planned, acquired or constructed on or after January 1, 1979. This code section was amended in 1986 directing the Commission to, "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 . . ."

Herein began California's established State Safety Oversight Plan for rail transit projects, extensions, capital improvement projects, vehicle procurements, and maintenance and operations oversight. The plan identified the applicable State of California General Orders; document submittals, including contractual drawings, operations rules, standard operating procedures, etc.; witness points to provide field tests of equipments, safety devices, etc.; and inspection requirements of structures such as track, signal, switch, emergency walkways, grade crossing, overhead catenary system clearances, etc. State of California General Orders are an integral part of the CPUC oversight program, mandating minimum requirements, are specified in the following:

- General Order 143-B, Safety Rules and Regulations Governing Light Transit, original implementation date June 27, 1978
- General Order 127, Rules for Maintenance and Operation of Automatic Train Control Systems—Rapid Transit Systems, original implementation date August 15, 1967.
- General Order 75-C, Rules for Grade Crossing Equipment, original implementation February 14, 1973
- General Order 88-B, Rules for Altering Public Highway Rail Crossings, original implementation February 14, 1973
- General Order 95, Regulations Governing the Rules for Overhead Electric Line Construction (e.g. Catenary System), original implementation July 1, 1942
- General Order 26-D, Regulations Governing Clearance on Railroads and Street Railroads with Reference to Side and Overhead Structures, Parallel tracks, Crossings, and Public Roads, Highways, and Streets, original implementation date February 1, 1948. This General Order applies to joint-usage or shared track railroads such as San Diego trolley, Inc. and other rail transit systems not specifically excluded from its requirements.
- General Order 164-C, Rules and Regulations Governing State Safety Oversight of Fixed Guideway Systems, original implementation September 27, 1996.

Subsequent to the adoption of Section 3029 of the Intermodal Surface Transportation efficiency Act (ISTEA) of 1991, which requires each state to develop and implement safety plans for all fixed guideway transit systems, Governor Pete Wilson designated the CPUC on October 13, 1992 as the agency responsible for ensuring California compliance with that Section.

Introduction of Federal Transit Administration

On December 29, 1995, the Federal Transit Administration (FTA) issued 49 Code of Federal Regulations Part 659, Rail Fixed Guideway Systems: State Safety Oversight. The Rule required States to oversee the safety of rail fixed guideway systems through a designated oversight agency. The Governor designation of the CPUC fulfilled this requirement. This rule was revised by the Federal Transit Administration, effective May 1, 2006.

CPUC Rail Transit Safety Section

The CPUC Rail Transit Safety Section is charged with responsibility for safety oversight of rail fixed guideway systems. The organizational structure includes a Program Manager, Program and Project Supervisor, two Senior Utility Engineer Supervisors, Senior Transportation Operations Supervisor, and nine Utility Engineers. All utility engineers are required to have a minimum education requirement of a Bachelor of Science Degree in an engineering discipline. Transportation Operations Supervisors have a minimum experience requirement in rail transportation.

Funding Source for Rail Transit Safety Oversight

The California general funds are the source of funding for the CPUC Rail Transit Safety Section, with the specific monies derived from the current State gasoline tax. No other source of funding to support the state safety oversight program is available at this time. The fiscal year 2005 budget for state safety oversight of fixed guideway systems included approximately 1.6 million dollars.

State Safety Oversight Activities

CPUC oversight includes the safety and security regulation of six major rail transit agencies that encompass 650 route miles, with year 2005 ridership exceeding 275 million passengers:

- Bay Area Rapid Transit District (BART), began revenue service in early 1970s
- Los Angeles Metropolitan Transportation Authority (LACMTA), Blue Line began revenue service in 1990
- Sacramento Regional Transit District (SRTD), began revenue service in 1987
- San Diego Trolley Inc (SDTI), began revenue service in 1981
- Santa Clara Valley Transit Authority (VTA), began revenue service in 1987
- San Francisco Municipal Railroad (MUNI), began revenue service in 1912

Additionally, CPUC oversight includes four transit agencies that do not have oversight mandated by the Federal Transit Administration:

- San Francisco Airport Peplemover (Air Tran), connection to BART, began revenue service in 2004
- San Pedro Red Cars (POLA), began revenue service in 2003
- Los Angeles Farmer's Market Trolley, began revenue service in 2003
- Angles Flight Railway Company, funicular system in Los Angeles, began revenue service in 1996, however, CPUC ordered closure February 1, 2001 due to accident

One additional system is under construction with an expected revenue service date of December 2007:

- North County Transit District (NCTD) light rail (Sprinter), under construction in San Diego County

Lastly, nine major projects in varying stages of construction and preliminary engineering are currently embedded in the safety certification process of the CPUC. Rail Transit Systems are virtually in a perpetual state of acquisition as new equipment is purchased and system expansions are designed and constructed to fulfill the rapidly growing need for mass public transportation. All modifications and system rehabilitations require constant design and procurement efforts. Coordination and compatibility with the existing system, construction efforts under operating conditions, testing, and break-in phases must all be managed as part of the ongoing system safety effort.

CPUC safety oversight of rail transit agencies has broad horizons and encompasses elements of design, construction, maintenance, and operation of those systems. There are eleven major elements contained in the safety oversight plan:

- Review and approval of system safety program plans
- Review and approval of system security program plans
- Review and approval of hazard management plans
- Triennial Reviews
- Participation in agencies' internal safety audit process
- Review and approval of safety certification plans for new construction and major projects
- Final review of safety certification prior to start of revenue service of any new system or major project
- Periodic inspection activities
- Participation in fire life safety activities and drills
- Review of accident investigations conducted by transit agencies on behalf of CPUC
- Accident investigations

Impact of CPUC Safety Oversight of Rail Transit Agencies

CPUC safety oversight of these rail transit agencies is an integral part of the overall safety of those systems. Major accidents have been kept to a minimum on these systems, with only two severe accidents resulting in CPUC taking action to suspend revenue service in the history of State oversight.

In 1979 a fire occurred in the Bay Area Rapid Transit (BART) trans-bay tube resulting in one fatality, several injuries and considerable disruption of commuter transportation between San Francisco and the East Bay. The Commission ordered BART to suspend passenger service until completion of an investigation and the implementation of approved safety mitigation efforts. Subsequently, additional studies and evaluations of BART fire/life safety issues were ordered by the Commission. These efforts led to numerous safety improvements on the BART system and established standards that were adopted by the rail transit industry.

The second severe accident occurred in 2001 when a mechanical failure on the Angeles Flight Railway Company occurred, resulting in one fatality and seven injuries. The Commission ordered closure of this system and to date this system is still closed and will remain closed until such time approved safety mitigation efforts have been implemented.

San Francisco Municipal Railroad (MUNI) was brought under the umbrella of CPUC safety oversight in 1997. During the time period between 1997 and 2005, MUNI has reported an 87 percent drop in rail transit collisions. Generic statewide statistics of rail transit accidents during the time period between 1997 and 2005 indicate an overall reduction in crossing collisions of 76 percent, reduction in derailments of 84 percent, and reduction in serious injuries of 75 percent. However, fatalities during this same time period increased by 12.5 percent.

One major advantage enjoyed by a safety oversight program is the detachment from the budgetary restrictions that apply to transit agencies. In contrast, transit agencies have budgetary and operational restrictions when considering safety improvements. Similarly, political dynamics are at times an insurmountable force for transit agency safety departments when applying for safety funding. Transit agencies are public entities governed by a board of directors, generally appointed by mayors and/or city council members with strong ties and commitments to communities. Conversely, the CPUC focus is directed solely towards public safety and the regulatory power embedded therein can swing the pendulum in the direction of safety. The CPUC regularly recommends practices of lessons learned from one transit agency to another. Experience has also illustrated instances wherein transit agency safety departments enjoy CPUC leverage in their dealings with maintenance and operational departments to implement recommended safety measures.

Lastly, but not least important, is the nationwide consistency that is enjoyed through a formal state oversight safety and security program administered by a Federal agency and the continued focus on safety and security fostered by such a plan.

Challenges to State Safety Oversight

As a regulatory body, the California Public Utilities Commission must conform to strict rules and procedures. While as a whole this adds credence to the program, the process is laborious. For example, after the final revision to 49 Code of Federal Regulations Part 659, Rail Fixed Guideway Systems: State Safety Oversight, was issued April 29, 2005 with an effective date of May 1, 2006, CPUC immediately took action to revise State General Order 164-C, Rules and Regulations Governing State Safety Oversight of Fixed Guideway Systems to incorporate those revisions into the State regulations.

General Order 164-C is the State counterpart to 49 Code of Federal Regulations Part 659 that sets forth the requirements for all rail fixed guideway systems in the State, mandating the methodology in which California will comply with the 49 Code of Federal Regulations Part 659.

The process in which a State General Order is revised and formally adopted follows a transparent, publicly accessible, and democratic process where a spirit of open communication and cooperation is fostered amongst the communities, rail transit agencies, and the CPUC. Once the proposed revisions were drafted, communities and rail transit agencies were afforded a 30 day comment period. Additionally, CPUC staff held meetings with each rail transit agency to solicit comments and concerns with the revision and to answer questions. Comments were considered and melded into the rule revision and a final workshop was conducted in an attempt to reconcile any remaining differences in opinion.

While the effective date of the revised 49 CFR Part 659 is May 1, 2006, California has yet to formalize the corresponding General Order revision due to irreconcilable issues pertaining to confidentiality of transit

agency records. 49 Code of Federal Regulations Part 659, § 659.11, Confidentiality of Investigation Reports and Security, does provide verbiage to preclude investigation reports from being discoverable and that security plans are not made available for the public. However, the Freedom of Information Act, 5 U.S.C. § 552, as amended by Public Law No. 104-231, 110 Stat. 3048 and the California Public Records Act, Title 1, Division 7, Chapter 3.5 of the Government Code § 6250-6270, supersede this regulation. Consequently, an Order Instituting Rulemaking has been initiated wherein all parties will come forward and offer testimony to the Commission for final resolution of differences. However, to adequately address the confidentiality issues in protecting investigative reports from becoming discoverable in civil proceedings, both Federal and State laws will need to be revised.

Another challenge with the 49 Code of Federal Regulations Part 659 lies within the verbiage found in § 659.35 Investigations. This section provides that state oversight agencies may allow rail transit agencies to conduct accident investigations on their behalf. However, in the event of dissent to the findings, the state has only two options: 1) conduct its own investigation, or 2) “. . . negotiate with the rail transit agency until a resolution on the findings is reached.” Similar verbiage is found in §659.37 Corrective Action Plans wherein paragraph (d) states, “The oversight agency must establish a process to resolve disputes between itself and the rail transit agency resulting from the development or enforcement of a corrective action plan.”

As illustrated above in the California rulemaking process, democracy is upheld within the organization of the CPUC. However, safety is not negotiable and state oversight agencies should not be held responsible to negotiate or resolve disputes on matters pertaining to safety, but should be vested with the authority to consider comments and subsequently make decisions and enforce those decisions.

Accident investigation findings of the National Transportation Safety Board (NTSB) are also addressed in §659.37 Corrective action plans. However, again, the state oversight agency is charged to:

“. . . identify the process by which findings from an NTSB accident investigation will be evaluated to determine whether or not a corrective action plan should be developed by either the oversight agency or rail transit agency to address NTSB findings.”

This language places the state oversight agency in the precarious position as an extension of the NTSB who has no statute authority to impose its recommendations.

Adequate and qualified staffing of state oversight agencies continues to be a huge challenge facing the states, with local funding being the primary source to support the effort. The challenges of the available candidates in the job market further increase the burden. The prerequisite requirement of CPUC for Rail Transit Safety Section employees to have minimum requirements further reduces the available candidates for hire. It is also common for state employees to be lured to private industry or other governmental agencies by more attractive salary and benefit packages. However, it is believed that the minimum requirements are necessary in order to successfully fulfill the role of safety and security oversight.

Currently there are no training programs or defined curriculum for state safety oversight and, therefore, states must rely upon hiring prerequisites, peer training, and solicit industrial training from rail transit agencies. The Federal Transit Administration has an alliance with the Transportation Safety Institute for developing training classes. However, there is no curriculum or specific classes designed for state safety oversight. Furthermore, classes are frequently cancelled or space is not available as they are hosted by the rail transit agencies.

States bear the burden of funding for the training of its employees, including tuition and travel expenses. Conversely, other Federal organizations such as the Federal Railroad Administration and the Office of Pipeline Safety have developed programs that embrace State counterparts and provide training and funds for that training as a method to ensure consistency in program implementation and enforcement.

Mention should be made of the Federal Transit Administration's effort in June of this year wherein all state oversight agencies were invited to attend a workshop designed to review and critique initial submissions as required by 49 Code of Regulations Part 659, Rail Fixed Guideway Systems: State Safety Oversight. While the workshop was a precedence making event and did afford an opportunity for learning, the workshop was needed several months prior to the due date of May 1, 2006 for the initial submissions, especially considering the wide-sweeping changes encompassed in the Rule. The state oversight community, as a whole, has expressed a vital need for frequent interaction with the Federal Transit Administration and has requested more meaningful workshops designed to facilitate a better understanding of the responsibilities with which state safety oversight organizations have recently been charged.

The Federal Transit Administration has historically held only one annual workshop to which both state oversight agencies and transit agencies are invited, along with representatives from the American Public Transportation Authority (APTA) and other agencies. The workshops are generally of value. However, the attendance ratio of transit agency representation to state oversight representation is heavy weighted on the side of the transit agencies and, therefore, the dominant voice is that of the transit agencies. The state community has requested that the Federal Transit Administration reserve at least one full day of the upcoming annual workshop in September 2006 solely for state oversight agency attendance and to consider at least one additional workshop annually with only state oversight agency participation.

The current staffing level of safety personnel within the Federal Transit Administration (FTA) is also of concern to the States. For example, the role of program manager in the FTA Office of Safety and Security designated to lead the state oversight program was vacant for approximately one year, with that position being filled in March 2006. The impact was felt by the state community in development of the mandated state safety oversight plans and in the pre-rulemaking process. Furthermore, the preponderance of the Federal Transit Administration staff is allocated to administering the Federal grant program and not specifically to safety and security oversight.

The greatest challenge of the state oversight program lies in enforcement of rules and regulations. The only provision for enforcement at the Federal level lies within 49 Code of Regulations Part 659, Rail Fixed Guideway Systems: State Safety Oversight, § 659.7 Withholding of funds for noncompliance, as follows:

- “ . . . the FTA may withhold up to five percent of the amount to be distributed to any state or affected urbanized area in such state under FTA's formula program for urbanized areas, if:
- (1) The state in the previous fiscal year has not met the requirements of this part; and
 - (2) The Administrator determines that the state is not making adequate efforts to comply with this part.
- (b) The Administrator may agree to restore withheld formula funds, if compliance is achieved with two years (See 49 U.S.C. 5330)”

California in designating the Public Utilities Commission as the State Oversight Agency has added a certain amount of regulatory empowerment to the program, but those states with other types of designations

do not have such authority. The provisions of § 659.7 if implemented could have far reaching impact on the public transportation systems. Furthermore, the withholding of funds is only applicable to a state as a whole, and not levied towards an egregious entity or agency.

It is the heartfelt opinion of the state communities that additional enforcement mechanisms should be developed to ascertain safety and security programs and their corresponding rules and regulations are complied with. Those mechanisms should mirror authorities granted to the Federal Railroad Administration and allow for emergency orders, defect citations, and/or civil penalties, without preempting state authority.

Rail Fixed Guideway System Security

By the very nature of design, the Nation's rail transit industry security is in the forefront of security concerns and is also addressed in 49 Code of Regulations Part 659, Rail Fixed Guideway Systems: State Safety Oversight, § 659.21 System security plan: general requirements and § 659.23 System security plan: contents.

In recognition of the threat, CPUC has designated one full time employee to head up the security aspect of the state safety oversight program. However, it will take approximately 18 months to hire and train a candidate. Challenges lie within prerequisites for hiring, training, and background check and security clearance. Existing staff does not have experience or training in security, risk management, or law enforcement, nor are they required to undergo background checks. Being that this is virgin territory for state safety oversight, there is uncertainty on the proper course of action and how the multitude of State and Federal agencies will interact and go forward with this immense challenge.

To further complicate the issue, the Aviation and Transportation Security Act gave the Transportation Security Administration (TSA) authority over all transportation modes, including the authority to issue regulations. TSA has to date predominately focused on airport security and is still defining the role and responsibilities of its rail security inspectors as they go forward in this endeavor. Also, the Department of Homeland Security along with the Office of Grants and Training is actively involved in supporting rail transit security. However, only recently has either of these organizations made efforts to establish relationships and partnerships with state oversight agencies.

The 49 Code of Regulations Part 659, Rail Fixed Guideway Systems: State Safety Oversight, has assigned responsibility to state oversight agencies to require rail transit agencies to implement a system security plan and to approve that plan. However, the guidance in those sections is general and vague. Furthermore, there are no provisions for training, background checks, or security clearances for state personnel charged with these responsibilities in the Rule. Without these provisions, by the very nature of security, it is only logical that rail transit agencies and other State and Federal agencies are tentative at the least in developing cooperative working relationships.

Outreach is being made by the Federal Transit Administration to build partnerships with TSA and the state oversight community. A three-day workshop was held in San Francisco in June 2006 with representation from FTA, CPUC, and TSA at the table to develop and draft a plan whereby the assets of each group can be pooled to accomplish the tasks outlined in the Rule. However, we cannot place enough emphasis on the

need for communication and partnership to accomplish the goal and minimize duplication of work effort to efficiently utilize the minimal resources available.

Optimally, as the Federal Transit Administration prepares to enter into pre-rulemaking to encompass provisions outlined in 119 Stat. 1144 Public Law 109-59, Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU), a more clear direction will be established for state oversight responsibility and interaction between TSA.

Conclusion

Without a doubt, the State Safety Oversight Program of rail fixed guideway systems is a vital piece of National safety and security. The foundation of the program provides a consistent structure to assure the public that these systems remain the safest means of transportation in the nation regardless of state lines. However, a more solidified partnership between Federal and State agencies and rail fixed guideway systems must be forged to continue forward momentum. The description of the roles of the various lead agencies must adequately communicate their respective responsibilities, authorities, and limitations. The division of labor, responsibility, and authority must be appropriate to fulfill the tasks.

Vital to the achievement of nationwide safety and security in rail fixed guideway systems is training of the agencies designated to oversee safety and security of those systems. The Federal Transit Administration should develop an appropriate training curriculum for state oversight agencies, including courses on methods to conduct state oversight.

Enhanced enforcement mechanisms must be created to guarantee compliance with both 49 Code of Regulations Part 659, Rail Fixed Guideway Systems: State Safety Oversight and the State Safety Oversight Plans implemented by each individual State in addition to the existing provisions of § 659.7 Withholding of funds for noncompliance. Rules and regulation without consequences or penalty for noncompliance are a frivolous effort.

As SAFETEA-LU is incorporated into 49 Code of Regulations Part 659, Rail Fixed Guideway Systems: State Safety Oversight, clarification of roles and responsibilities and interaction amongst various agencies should be included. More guidance for security plans, risk assessment, and threat vulnerability assessment is needed from the FTA. More training and tools to achieve and maintain those goals must be accomplished.

Staffing requirements of both the Federal Transit Administration and the State Oversight Agencies is of major concern. 49 Code of Regulations Part 659, Rail Fixed Guideway Systems: State Safety Oversight, mandates quite a menu of activities and responsibilities, but provides no guidance on the structure or staffing of those designees charged with that responsibility. Furthermore, the FTA Office of Safety and Security is minimally staffed and is therefore limited in its ability to provide guidance to State Oversight Agencies.

Furthermore, a funding mechanism should be attached to 49 Code of Regulations Part 659, Rail Fixed Guideway Systems: State Safety Oversight to allow continued low rail transit accident rates as public transportation passenger trips increase. Enhanced funding would empower state oversight agencies to develop and maintain superior oversight practices and continue with high levels of safety and security for

transit. Funding for the mandates in the Rule would foster a unified front between the Federal Transit Administration and the state oversight community to embrace safety; enforce safety; and go forward through safety and security innovation.

There is much work to be done in the quest for excellence in rail fixed guideway system safety and security and we will continue those endeavors passionately. We will continue efforts to systematically strategize to maximize resources and efforts in safety and security of rail transit. Consideration of the enhancements outlined in this testimony to further propel the program is greatly appreciated.

Mr. Chairman, I appreciate the opportunity to come before you today and provide testimony on these issues. I ask for the continued support of the Subcommittee as we pursue this work, and I again offer assistance as the Subcommittee considers important rail fixed guideway system safety and security issues. Thank you.

For more information on California Public Utilities Commission, visit our web site at:
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