

PUBLIC UTILITIES COMMISSION

180 PROMENADE CIRCLE, SUITE 115
SACRAMENTO, CA 95834



December 7, 2018

Robert Jason Pinoli
General Manager, Skunk Train
& Vice President
Mendocino Railway
Foot of Laurel Street, Fort Bragg, California 95437

Re: Classification of Mendocino Railway

Mr. Pinoli,

This letter is in regards to your recent inquiry about the classification of the Mendocino Railway. Mendocino Railway is regarded as a Class III railroad by the California Public Utilities Commission (CPUC) (see: <http://www.cpuc.ca.gov/General.aspx?id=973>). CPUC authority over railroads is spelled out in Public Utilities (PU) Codes sections 309.7, 315, 768, and 1201 – 1205. See attached.

If you have any further questions, please contact me at (916) 928-2515 or email at atm@cpuc.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "David Stewart".

David Stewart
Utilities Engineer
Safety and Enforcement Division
Rail Crossings Engineering Section

PU Code 1201 - 1205

1201.

No public road, highway, or street shall be constructed across the track of any railroad corporation at grade, nor shall the track of any railroad corporation be constructed across a public road, highway, or street at grade, or shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade, nor shall the track of a street railroad corporation be constructed across the track of a railroad corporation at grade, without having first secured the permission of the commission. This section shall not apply to the replacement of lawfully existing tracks. The commission may refuse its permission or grant it upon such terms and conditions as it prescribes.

(Enacted by Stats. 1951, Ch. 764.)

1201.1.

The commission, in consultation with the Department of Transportation, shall adopt rules and regulations prescribing uniform standards regarding the time after the warning signal begins at a railroad crossing at which traffic enforcement shall begin, after public hearings and consultation with transit districts or transportation commissions and multicounty rail transit entities established under Division 12 (commencing with Section 130000), that provide rail transportation.

(Added by Stats. 1999, Ch. 841, Sec. 3. Effective January 1, 2000.)

1202.

The commission has the exclusive power:

- (a) To determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use, and protection of each crossing of one railroad by another railroad or street railroad, of a street railroad by a railroad, of each crossing of a public or publicly used road or highway by a railroad or street railroad, and of a street by a railroad or of a railroad by a street.
- (b) To alter, relocate, or abolish by physical closing any crossing set forth in subdivision (a).
- (c) To require, where in its judgment it would be practicable, a separation of grades at any crossing established and to prescribe the terms upon which the separation shall be made and the proportions in which the expense of the construction, alteration, relocation, or abolition of crossings or the separation of grades shall be divided between the railroad or street railroad corporations affected or between these corporations and the state, county, city, or other political subdivision affected.
- (d) To authorize on an application-by-application basis and supervise the operation of pilot projects to evaluate proposed crossing warning devices, new technology, or other additional safety measures at designated crossings, with the consent of the local jurisdiction, the affected railroad, and other interested parties, including, but not limited to, represented railroad employees.

(Amended by Stats. 2017, Ch. 425, Sec. 10. (SB 385) Effective January 1, 2018.)

1202.1.

In any proceeding under Section 1202, where the application to the commission states that the parties are not in agreement as to apportionment of costs, but the applicant is willing to advance the amount of money reasonably necessary to enable the respondent to complete the work to be done by it, the commission shall set the application for hearing as soon as its calendar permits on all of the following questions:

- (a) The necessity for the project.
- (b) The approval of the location and the engineering plans, including provisions for handling traffic during construction and the work to be performed by each party.
- (c) The sum to be advanced by the applicant for the work to be done by the respondent. The commission shall render as promptly as possible an interim decision effective within 20 days on the questions, reserving for a later hearing and decision the question of apportionment of costs. The decision shall also order the respondent to proceed upon receipt of the sum to be advanced by the applicant without delay to perform the work to be done by the respondent, integrating the work with that of the applicant or its contractor in such manner that neither will unreasonably obstruct or delay the work of the other, to the end that the people of the state may have the use of the project at the earliest possible date.

In the event of the failure or refusal of the respondent to grant a right of entry to permit the applicant to proceed with the work to be performed by it or its contractor, the applicant may, pursuant to Section 19 of Article I of the Constitution, obtain an order of immediate possession in a court of competent jurisdiction if a condemnation action has previously been filed in that court, or file the action and obtain an order of immediate possession in the event the action has not previously been filed. Upon obtaining the order, the applicant may proceed in the same manner as if a right of entry had been granted, and the respondent shall proceed with its own work and integrate it with that of the applicant or its contractor.

In the final decision apportioning costs, the commission shall credit the sum advanced by the applicant against the applicant's share of the costs. In the final decision, the commission shall also credit against the applicant's share of the costs any increases in those costs found by the commission to be directly attributable to the respondent's willful failure or refusal, after the effective date of the interim decision, to proceed with its own work or to integrate its work with that of the applicant or its contractor.

(Amended by Stats. 1984, Ch. 144, Sec. 167.)

1202.2.

In apportioning the cost of maintenance of automatic grade-crossing protection constructed or altered after October 1, 1965 under Section 1202, as between the railroad or street railroad corporations and the public agencies affected, the commission shall divide such maintenance cost in the same proportion as the cost of constructing such automatic grade-crossing protection is divided. The liability of cities, counties and cities and counties to pay the share of maintenance costs assigned to such local agencies by the commission shall be limited to funds set aside for allocation to the commission pursuant to Section 1231.1. The railroad or street railroad corporations and the public agencies affected may agree on a different division of maintenance costs. If the public agency affected agrees to assume a greater proportion of the cost of maintenance than the apportionment of the cost of construction, the difference shall be paid by the public agency from funds other than the State Highway Fund or any other state fund.

(Added by Stats. 1965, Ch. 1644.)

1202.3.

Notwithstanding any other provision of this chapter, in any proceeding under Section 1202, in the case of a crossing involving a publicly used road or highway not on a publicly maintained road system, the commission may apportion expense for improvements to the county in the case of unincorporated territory, city or other political subdivision if the commission finds (a) that the owner or owners of private property served by such publicly used crossing agree to expressly

dedicate and improve, and the affected public agency agrees to accept, a right-of-way or roadway over such property for a reasonable distance from such crossing as determined by the commission, or (b) that a judicial determination of implied dedication of such road or highway over the railroad right-of-way to public use, based on public user in the manner and for the time required by law, has taken place.

If neither of these conditions is found to exist, the commission shall order the crossing abolished by physical closing.

In no event shall a railroad be required to bear costs for the improvement of a publicly used crossing in excess of what it would be required to bear in connection with the improvement of a public street or highway crossing.

(Added by Stats. 1971, Ch. 1477.)

1202.5.

In prescribing the proportions in which the expense of construction, reconstruction, alteration, or relocation of grade separations shall be divided between railroad or street railroad corporations and public agencies, in proceedings under Section 1202, the commission, unless otherwise provided in this section, shall be governed by the following standards:

(a) Where a grade separation project, whether initiated by a public agency or a railroad, will not result in the elimination of an existing grade crossing, located at or within a reasonable distance from the point of crossing of the grade separation, the commission shall require the public agency or railroad applying for authorization to construct such grade separation to pay the entire cost.

(b) Where a grade separation project initiated by a public agency will directly result in the elimination of one or more existing grade crossings, located at or within a reasonable distance from the point of crossing of the grade separation, the commission shall apportion against the railroad 10 percent of the cost of the project. The remainder of such costs shall be apportioned against the public agency or agencies affected by such grade separation.

(c) Where a grade separation project initiated by a railroad will directly result in the elimination of an existing grade crossing, located at or within a reasonable distance from the point of crossing of the grade separation, the commission shall apportion 10 percent of the cost, attributable to the presence of the highway facilities, against the public agency or agencies affected by the project, and the remainder thereof to the railroad or railroads applying for authorization to construct such grade separation.

(d) Where the project consists of an alteration or reconstruction of an existing grade separation for the purpose of increasing the capacity of the structure for highway purposes, the commission shall apportion 10 percent of the cost against the railroad and the balance against the public agency or agencies affected by the grade separation. There shall be no apportionment of cost to the railroad if it did not bear any of the cost of the original project, in which case the public agency or agencies shall pay 100 percent of the cost of the alteration or reconstruction of the grade separation. An allocation of funds set aside pursuant to Section 190 of the Streets and Highways Code may be made for such a project notwithstanding subdivision (d) of Section 2454 of the Streets and Highways Code.

Where the project consists of an alteration or reconstruction of an existing grade separation for the purpose of increasing the capacity of the structure for railway purposes, the commission shall apportion 10 percent of the cost against the public agency or agencies affected and the balance against the railroad applying for authorization to alter or reconstruct the grade separation. There shall be no apportionment of cost to the public agency or agencies if the agency or agencies did not bear any of the cost of the original project, in which case the railroad shall pay 100 percent of the

cost of the alteration or reconstruction of the grade separation.

(e) In the event the commission finds that a particular project does not clearly fall within the provisions of any one of the above categories, the commission shall make a specific finding of fact on the relation of the project to each of the categories, and in apportioning the costs, it shall assess against the railroad a reasonable percentage, if any, of the cost not exceeding the percentage specified in subdivision (b), dependent on the findings of the commission with respect to the relation of the project to each category. The remainder of such cost shall be apportioned against the public agency or agencies affected by the project.

(f) In the event the commission finds that the respective shares of any apportionment should be divided between two or more railroads or two or more public agencies, the commission, to the extent that it has jurisdiction to do so in a particular proceeding before it, shall divide the shares between the railroads or the public agencies, or both, on any reasonable basis, to be decided by the commission, but in so doing shall follow the standards hereinabove prescribed for apportionment between railroads and public agencies, respectively.

(g) The standards herein prescribed for apportionment of costs of grade separations shall not be applicable where federal funds are used. On such projects, the apportionments shall be in accordance with federal law and the rules, regulations, and orders of the federal agency administering such law, where applicable.

(h) No provision of this section or of the Public Utilities Code shall be construed as in any way limiting the right of public agencies or railroads to negotiate agreements apportioning costs of grade separations, and the validity of any and all such agreements is hereby recognized for all purposes regardless whether the method of apportionment prescribed therein conforms to the standards hereinabove prescribed.

As used in this section "public agency" includes a separation of grade district, as well as the state, a county, city, or other political subdivision.

(Amended by Stats. 1991, Ch. 1035, Sec. 1.)

1202.6.

Any municipal corporation, transit district, rapid transit district, or other public entity which provides rail passenger transportation services through a contract with a railroad corporation, may pay all or part of the share of a grade separation project allocated to such railroad corporation, or all or part of such share of a project's cost negotiated and agreed upon as the railroad's share by the railroad and a public agency or agencies pursuant to subdivision (h) of Section 1202.5. In any case where the municipal corporation, transit district, rapid transit district, or other public entity agrees to pay all or part of the railroad's share, it may enter into the negotiations allocating costs and may be a party to the agreement assessing such costs.

(Added by Stats. 1970, Ch. 961.)

1202.7.

Whenever existing automatic grade-crossing safety signal equipment that was installed within the previous 10 years is planned for removal due to upgrade or closure projects undertaken pursuant to Section 130 of Title 23 of the United States Code, and the commission determines that it will meet the same performance criteria and inspection standards as new equipment and therefore be safe to use, the signal equipment shall be made available to the following:

(a) With the consent of the participating railroad, to a state agency designated by the commission, for storage and potential use at a railroad crossing currently nominated by the commission for funding to eliminate hazards of railway-highway crossings pursuant to Section 130 of Title 23 of

the United States Code.

(b) To other railroads for use at other railway-highway crossings within the state.

(Added by Stats. 2006, Ch. 885, Sec. 2. Effective September 30, 2006.)

1203.

Each corporation and political subdivision to which any of the expense is apportioned shall pay from the funds available therefor in its treasury the amount apportioned to it at the time and to the parties specified by the order of the commission. If that amount is not so paid the corporation or political subdivision entitled thereto under the order may sue therefor in any court of competent jurisdiction. If no such funds are available the appropriate boards, officers, and employees intrusted with the levy and collection of the taxes or assessments of such political subdivision shall do all acts necessary to include in the next succeeding tax or assessment levy the amount due and shall collect that amount, whereupon the amount due shall be paid in accordance with the commission's order. The commission may by order designate the State, certain of the corporations, and political subdivisions affected, to do all or specified portions of the acts required by any order of the commission made under the provisions of Sections 1202 to 1205, inclusive, and may prescribe the manner and the time within which the parties so designated shall be paid or reimbursed by the other corporations, the State, and political subdivisions among which the expense of the work has been apportioned by the commission.

(Enacted by Stats. 1951, Ch. 764.)

1204.

If the legislative body of the political subdivision determines that special benefits will accrue from the separation of grades to one or more districts within the political subdivision, and has made a finding to that effect and that the cost thereof, other than the portion to be paid by the railroad, interurban railroad, or street railroad involved, should be paid by such district or partly by the district and partly by the political subdivision, the commission may provide that such proportion of the total cost of the separation of grades, including the acquisition of property and the damage to property or an interest therein, as is not payable by the owners of the railroad, interurban railroad, or street railroad involved, may be assessed upon the district or that a part thereof may be paid by the district and a part by the political subdivision in accordance with the finding of the legislative body of the latter. The commission may provide that the physical work of making the grade separation as well as the proceedings for letting contracts therefor, collecting and enforcing the assessments, and making payment for damages and for the acquisition of property shall be done through the agency of the political subdivision in accordance with law. The order of the commission shall authorize the officers of the political subdivision to enter upon so much of the right of way of the railroad, interurban railroad, or street railroad as is necessary to effect the physical grade separation.

(Enacted by Stats. 1951, Ch. 764.)

1205.

If any order of the commission provides for the payment of a portion of the cost of any such grade separation by a political subdivision without authorizing the assessment of all or any part thereof upon a benefited district, the legislative body of the political subdivision may at any time thereafter apply to the commission to have the order modified in accordance with any finding made by the legislative body, and the commission may thereupon make a new or modified order in the same manner as if such application had been made to it before the making of the order.

PU Code 309.7, 315, and 768

309.7 (a) The division of the commission 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. The Consumer Protection and Safety Division shall advise the commission on all matters relating to rail safety, and shall propose to the commission rules, regulations, orders, and other measures necessary to reduce the dangers caused by unsafe conditions on the railroads of the state. The delegation of enforcement responsibility to the Consumer Protection and Safety Division shall not diminish the power of other agencies of state government to enforce laws relating to employee or environmental safety, pollution prevention, or public health and safety.

(b) In performing its duties, the Consumer Protection and Safety Division shall exercise all powers of investigation granted to the commission, including rights to enter upon land or facilities, inspect books and records, and compel testimony. The commission shall employ sufficient federally certified inspectors to ensure at the time of inspection that railroad locomotives and equipment and facilities located in class I railroad yards in California are inspected not less frequently than every 120 days [765.5 (d)], and all main and branch line tracks are inspected not less frequently than once every 12 months [765.5 (e) Note: the commission shall conduct focused inspections of railroad yards and track, either in coordination with the Federal Railroad Administration, or as the commission determines to be necessary.]. In performing its duties, the safety division shall consult with representatives of railroad corporations, labor organizations representing railroad employees, and the Federal Railroad Administration.

(c) The general counsel shall assign to the Consumer Protection and Safety Division the personnel and attorneys necessary to fully utilize the powers granted to the commission by any state law, and by any federal law relating to rail transportation, including, but not limited to, the Federal Rail Safety Act (45 U.S.C. Sec. 421m, et seq.), to enforce safety laws, rules, regulations, and orders, and to collect fines and penalties resulting from the violation of any safety rule or regulation.

(d) The activities of the Consumer Protection and Safety Division that relate to safe operation of common carriers by rail, other than those relating to grade crossing protection, shall also be supported by the fees paid by railroad corporations, if any, pursuant to Sections 421 to 424, inclusive. The activities of the Consumer Protection and Safety Division that relate to grade crossing protection shall be supported by funds appropriated therefore from the State Highway Account in the State Transportation Fund. On or before November 30 of each year, the commission shall report to the Legislature on the activities of the safety division, and shall fully document in the report all expenditures of those funds in the audit report provided in subdivision (f) of Section 421.

PU Code 315. The commission shall 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. Neither the order or recommendation of the commission nor any accident report filed with the commission shall be admitted as evidence in any action for damages based on or arising out of such loss of life, or injury

to person or property. Every public utility shall file with the commission, under such rules as the commission prescribes, a report of each accident so occurring of such kinds or classes as the commission from time to time designates.

PU Code 768. The commission may, after a hearing, require every public utility to construct, maintain, and operate its line, plant, system, equipment, apparatus, tracks, and premises in a manner so as to promote and safeguard the health and safety of its employees, passengers, customers, and the public. The commission may prescribe, among other things, the installation, use, maintenance, and operation of appropriate safety or other devices or appliances, including interlocking (GO 33) and other protective devices at grade crossings or junctions and block or other systems of signaling. The commission may establish uniform or other standards of construction and equipment, and require the performance of any other act which the health or safety of its employees, passengers, customers, or the public may demand.