

PUBLIC UTILITIES COMMISSION

Public Advocates Office
505 VAN NESS AVENUE
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August 12, 2022

Via Electronic Mail Only

Michael Hart, CEO
Sierra Railroad Company
1222 Research Park Drive
Davis, CA 95618
E-mail: mike@sierraenergy.com

Re: Public Utilities Commission's Response to Mendocino Railway's Request

Dear Mr. Hart,

This letter is in response to your July 26, 2022 e-mail to the California Public Utilities Commission's (Commission) General Counsel, Christine Hammond.

In your July 26, 2022 e-mail, you request a letter from the Commission stating that Mendocino Railway is a regulated public utility railroad. Your request is similar to one received from Robert Jason Pinoli, General Manager of Mendocino Railway on October 31, 2018.

On December 7, 2018, the Commission responded in writing to Mr. Pinoli, stating that Mendocino Railway is a Class III railroad. Based on Mendocino Railway's representations to the Commission, the Commission considers Mendocino Railway's rail operations largely un-changed since that time.

This letter confirms that Mendocino Railway is a Commission-regulated railroad. The Commission's website lists Mendocino Railway's status as a Class III Commission-regulated railroad.¹ While Mendocino Railway is a Commission-regulated railroad, it is not a public utility within the meaning of the California Constitution, the California Public Utilities Code, and the Commission's orders.

¹ Regulated California Railroads, available at: <https://www.cpuc.ca.gov/industries-and-topics/rail-safety/railroad-operations-and-safety/regulated-california-railroads>

The status of Mendocino Railway has previously been determined by the Commission. In 1997, the California Western Railroad (CWRR) - which was the company operating the excursion service commonly known as the “Skunk Train” at the time - applied to the Commission for status to reduce its commuter passenger services. In the course of this proceeding, the Commission determined that CWRR did not constitute a public utility to the extent it provides excursion rail service, which constituted 90% of its overall business. (D.98-01-050 (January 21, 1998) 1998 Cal. PUC LEXIS 189 [“In providing excursion passenger service, CWRR does not function as a public utility.”].)

The Commission found that, while CWRR was not a public utility, it was still subject to Commission regulation regarding the safety of CWRR’s rail operations. D.98-01-050, Conclusion of Law 3. CWRR agreed with these findings and did not challenge the Commission’s determination that it was not a public utility.

It is my understanding that Mendocino Railway later purchased the CWRR in a bankruptcy proceeding and has continued to provide excursion train service on the Skunk Train. The Commission is not aware of any changes to the excursion services provided by Mendocino Railway that would cause a change to its 1998 determination that Mendocino Railway is a regulated railroad but not a public utility. As such, the 1998 determination is still the applicable law with regard to Mendocino Railway’s status.

While some California railroads do constitute public utilities, “railroads” and “public utilities” are not synonymous under the Public Utilities Code. The Public Utilities Code gives the Commission authority to regulate the safety of rail operations in California, regardless of a railroads status as a public utility. (See, *e.g.*, Pub. Util. Code, § 309.7 [The Commission “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”]; Pub. Util. Code, § 765.5 (“provid[ing] that the commission takes all appropriate action necessary to ensure the safe operation of railroads in this state.”].)

The Commission also works in partnership with the Federal Railroad Administration as federally certified inspectors to ensure the implementation of railroad safety laws and regulations. (49 C.F.R. § 212.1, et seq.) The Commission also recognizes the regulatory authority of the Surface Transportation Board pursuant to 49 United States Code section 10501, et seq.

The Commission's jurisdiction is limited to safety oversight over Mendocino Railway's rail operations, to ensure that Mendocino Railway is operating its rail vehicles safely and in compliance with the law. The Commission does not regulate other aspects of Mendocino Railway's operations, such as fare prices or schedules, and the Commission's authority would not pre-empt, for example, generally applicable land-use or environmental rules or regulations as such rules or regulations relate to non-railroad operations.

In addition, your July 26, 2022, e-mail recounts your difficulty with having Commission staff state that Mendocino Railway is a public utility, and also states that at a recent conference that included other California short-line railroads, "[o]ne of the government officials present simply suggested that we throw the next CPUC inspector off the property saying we are not regulated and not subject to his authority."

As explained above, Mendocino Railway is a Commission-regulated railroad, but not a public utility within the meaning of the California Constitution, the California Public Utilities Code, and the Commission's orders. As a Commission-regulated railroad, the Commission is authorized to access railroad property for inspections, as part of the Commission's obligation to ensure the safe operation of all railroads in California. (Pub. Util. Code, § 309.7.)

It is essential that Mendocino Railway have a complete understanding of its obligations as a Commission-regulated railroad, which includes allowing Commission inspectors access to its property. If Mendocino Railway were to throw Commission inspectors off of its property as your e-mail suggests, or otherwise impede or prevent Commission inspectors from accessing Mendocino Railway's property, this would constitute a blatant violation of the Public Utilities Code, punishable by fines or other penalties. Further, obstructing a public officer from carrying out their duties is a crime, as is threatening a public employee to refrain from carrying out the performance of their duties. (Pen. Code §§ 71; 148, subd. (a)(1).)

Ensuring the safety and integrity of Commission inspectors is of paramount importance. Any act of obstructing or attempting to remove Commission inspectors from railroad property will be prosecuted to the fullest extent of the law.

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We hope this letter answers your inquiry as the Commission continues to exercise its regulatory mission to ensure safe operations of Sierra Railroad and its related entities.

Sincerely,



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