

ALJ/PWI/fzs 6/22/2022



**FILED**

06/22/22

11:41 AM

C2106011

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

James L. Duncan,

Complainant,

vs.

Sonoma-Marín Area Rail Transit  
District (SMART),

Defendant.

Case 21-06-011

Application of the City of Santa Rosa  
for Approval to Construct a Public  
Pedestrian and Bicycle At-Grade  
Crossing of the Sonoma-Marín Area  
Rail Transit (SMART) Track at Jennings  
Avenue Located in Santa Rosa, Sonoma  
County, State of California.

Application 15-05-014

**ADMINISTRATIVE LAW JUDGE’S RULING  
CONSOLIDATING PROCEEDINGS AND DIRECTING ALL  
PARTIES TO FILE AND SERVE PROPOSED  
PROCEEDINGS SCHEDULE**

For the reasons set forth below, we consolidate the two proceedings  
Case (C.) 21-06-011 and Application (A.) 15-05-014, and we direct all parties in  
both proceedings to file and serve a proposed proceedings schedule by  
July 11, 2022.

**1. Consolidation of A.15-05-014 and C.21-06-011 Is Appropriate to Jointly Address Related Questions of Law and Fact and to Promote Efficiency**

Under Rule 7.4 of the Commission's Rules of Practice and Procedure, proceedings involving related questions of law or fact may be consolidated. Consolidation promotes efficiency, minimizes conflicts in schedule, and promotes a more timely resolution of related proceedings.<sup>1</sup>

In A.15-05-014, the City of Santa Rosa (City) filed an application for Commission approval for an at-grade crossing of the rail tracks of Sonoma-Marín Area Rail Transit (SMART) at Jennings Avenue in Santa Rosa. In Decision (D.) 16-09-002 in that proceeding, the Commission approved the application for a three-year period, with the conclusion that the City had convincingly shown that it had eliminated all potential safety hazards.<sup>2</sup> In D.19-10-002, the Commission extended the authorization for an at-grade crossing at Jennings Avenue to September 20, 2021. In D.21-10-003, the Commission again extended the authorization for an at-grade crossing to September 20, 2023. On January 24, 2022, the Commission's Rail Safety Division filed a Petition for Modification (PFM) of D.16-09-002, asserting that new evidence reflects that an at-grade crossing at Jennings Avenue presents an unreasonable risk of harm to the public and should not be opened.<sup>3</sup>

In C.21-06-011, Complainant Duncan (Duncan) alleges that SMART has violated the California Constitution and California statutes, including Public

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<sup>1</sup> D.19-09-051 at 6.

<sup>2</sup> D.16-09-002 Conclusion of Law 11.

<sup>3</sup> PFM at 3, 8-9.

Utilities (Pub. Util.) Code Section 702,<sup>4</sup> and has disregarded and acted to oppose the Commission's decisions in A.15-05-014 by claiming that the Jennings Avenue at-grade crossing is unsafe.<sup>5</sup> The Complaint includes allegations that members of SMART's Board expressed their support for SMART's management and staff's position that SMART can supersede the Commission's decision,<sup>6</sup> SMART informed the Commission and the assigned Administrative Law Judge that it would never agree to the construction of the Jennings Avenue crossing,<sup>7</sup> SMART's general manager indicated that SMART could override D.16-09-002 and substitute its decision regarding the safety of the Jennings Avenue crossing for that of the Commission,<sup>8</sup> and SMART notified the City that the at-grade crossing will not be allowed over SMART's property.<sup>9</sup> The Complaint's specific references to D.16-09-002 reflect the extent to which the two proceedings relate to each other. Further, both proceedings raise a common issue regarding the safety of the at-grade crossing at Jennings Avenue, including the deference to be given to the Commission's findings regarding safety in A.15-05-014.

Consolidation of the two proceedings will also promote efficiency. Maintaining separate proceedings may result in the duplication of work by the parties and the Commission. Consolidation will also allow the Commission to

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<sup>4</sup> Pub. Util. Code Section 702 provides: "Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees."

<sup>5</sup> Complaint at 5, 43.

<sup>6</sup> Complaint at 6.

<sup>7</sup> Complaint at 9, 15.

<sup>8</sup> Complaint at 27.

<sup>9</sup> Complaint at 30.

better coordinate scheduling for the two proceedings. Consolidation should also reduce or eliminate the risk of inconsistent Commission findings of fact, conclusions of law, and orders that could result from separate proceedings. As a result, we consolidate proceedings A.15-05-014 and C.21-06-011.

**2. All Parties Shall File and Serve a Proposed Proceedings Schedule by July 11, 2022.**

We direct all parties to both proceedings to file and serve a proposed proceedings schedule by July 11, 2022. The schedule shall include all events that the parties consider appropriate for the resolution of the proceedings and an explanation for the proposed timing of events.

**IT IS RULED that:**

1. Application 15-05-014 and Case 21-06-011 are consolidated.
2. All parties to Application 15-05-014 and Case 21-06-011 shall file and serve a proposed proceedings schedule by July 11, 2022.

Dated June 22, 2022, at San Francisco, California.

/s/ PETER WERCINSKI  
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Peter Wercinski  
Administrative Law Judge