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

Application of San Mateo County for Rehearing
of Resolution TL-19150

A.

**COUNTY OF SAN MATEO'S APPLICATION TO REHEAR RESOLUTION TL-19150
AFFIRMING THE CONSUMER PROTECTION AND ENFORCEMENT DIVISION'S
DISPOSITION OF WAYMO ADVICE LETTER 0002**

JOHN D. NIBBELIN
COUNTY COUNSEL (SBN 184603)
CAITI T. BUSCH
DEPUTY COUNTY COUNSEL (SBN 318534)

Attorneys for
COUNTY OF SAN MATEO
500 County Center, 4th Floor
Redwood City, CA 94063
Telephone: (650) 363-4768
E-mail: jnibbelin@smcgov.org
E-mail: cbusch@smcgov.org

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I. INTRODUCTION

On June 21, 2024, the Public Utilities Commission (“Commission” or “CPUC”) issued Resolution TL-19150, *Resolution Affirming the Consumer Protection and Enforcement Division’s Disposition of Waymo Advice Letter 0002* (“Resolution”), which allows Waymo LLC to substantially expand its driverless autonomous vehicle (“AV”) fared-passenger services into significant portions of Los Angeles and the San Francisco Bay Peninsula, including large swaths of San Mateo County. The Commission’s approval of Waymo’s Tier 2 Advice Letter followed directly from the Commission’s approval of Waymo’s Tier 3 Advice Letter in August 2023 (“CCSF Advice Letter”), which allowed Waymo to significantly expand its operations in the City and County of San Francisco (“CCSF”).¹ CCSF immediately challenged that approval in the appellate courts² on several arguably meritorious grounds, including that the Commission failed to address legitimate and troubling public safety and environmental concerns caused by Waymo AVs.

Now, the Commission has doubled down on its erroneous approval of Waymo’s CCSF Advice Letter by affirming the Consumer Protection Enforcement Division’s (“CPED”) approval of Waymo’s Tier 2 Advice Letter. The Commission should rehear its decision to issue the Resolution for several key reasons: (1) Waymo’s requested expansion should not be granted through an advice letter approved by CPED because an evidentiary hearing is required to adjudicate material disputed facts and acquire highly relevant and necessary evidence, and because CPED’s decision on the Advice Letter was not ministerial; and (2) approving Waymo’s Tier 2 Advice Letter is unlawful because the Commission has not addressed serious public safety concerns, as required under Public Utilities Code Section 5352, or

¹ (See Resolution TL-19144 (“CCSF Resolution”), Aug. 11, 2023, available at <https://shorturl.at/VfsrB>.)

² (See *City and County of San Francisco, et al. v. Public Utilities Commission of the State of California*, Case No. S283446 (Cal. S. Ct.); *City and County of San Francisco, et al. v. Public Utilities Commission of the State of California*, Case No. A169262 (Cal. Ct. App.).)

serious environmental concerns, as required under the California Environmental Quality Act (“CEQA”), Pub. Res. Code, § 21000, *et seq.* Moreover, the Commission should exercise its discretion to stay operation of the Resolution and of the approval of Waymo’s Advice Letter because Waymo’s CCSF Advice Letter is the subject of legitimate and potentially meritorious litigation, which, if successful, would require the Commission to revoke any approval of Waymo’s Tier 2 Advice Letter in this proceeding.

Given the lack of local control over AV regulation and the paramount responsibility of the Commission to protect the public as it relates to AVs, the Commission should allow for a more robust process to determine if Waymo’s requested expansion here sufficiently mitigates the risks it threatens to create. For these reasons, the County of San Mateo respectfully requests that the Commission grant this application and rehear its decision on Resolution TL-19150 pursuant to the Commission’s Rule of Practice and Procedure 16.1 and Public Utilities Code section 1732.

II. DISCUSSION

A. Approval of Waymo’s Request Required a Formal Hearing and Was Inappropriate for the Advice Letter Process.

The Resolution asserts that the Tier 2 Advice Letter process is the appropriate avenue to authorize Waymo to expand its services further into San Mateo County and Los Angeles under Rule 7.6.1 of General Order 96-B. (Reso. TL-19150 (“Reso”) at 7–8.) It also asserts that no material disputed facts exist that would require an evidentiary hearing because no protestor raised material facts related to the approval of Waymo’s Passenger Safety Plan (“PSP”) and whether it complied with the Commission’s Deployment Decision. (*Id.* at 11.) These assertions are incorrect. The Commission should not have approved Waymo’s Advice Letter without first allowing for an evidentiary hearing. Moreover, the advice letter process was not appropriate here because discretion was required to affirm that Waymo complied with the PSP requirements, and because disputed material facts exist about

whether Waymo's AVs comply with the California Vehicle Code and what public safety and environmental impacts the proposed expansion will have. The "quick and simplified" advice letter review process, which is intended for "requests that are expected neither to be controversial nor raise important policy questions" (GO 96-B Rule 5.1), was insufficient to develop the evidence necessary to fully understand the potential public safety and environmental impacts and issues Waymo's significant expansion would create, including accounting for the differing needs and hurdles Waymo will face operating in San Mateo County as compared to San Francisco.

The advice letter process does not allow for an evidentiary hearing and severely constrains the ability of stakeholders to provide meaningful input to and solicit appropriate responses from the Commission. In the CCSF proceeding, the use of the advice letter process caused the Commission to ignore evidence of serious public safety and environmental concerns caused by AVs, as discussed below. (See, *infra*, Sections II.B & II.C.) Now, the Resolution in this case goes even further, approving Waymo's significant expansion without even providing stakeholders an opportunity to present relevant evidence. In essence, through the Resolution, the Commission inappropriately operated on autopilot, blindly following the Deployment Decision rather than exercising its authority to consider new, highly relevant evidence. The Commission should reconsider and decline to continue to willfully refuse to engage with the troubling evidence raised by CCSF and the protestors here. Instead, it should allow an evidentiary hearing before finally approving Waymo's Advice Letter, so that the material disputed facts concerning the safety of Waymo's AVs and the potential environmental impacts of expansion can be fully adjudicated.

Moreover, approval of Waymo's Advice Letter by CPED was not ministerial. The Resolution suggests that all that was required for CPED to approve Waymo's Advice Letter was for CPED to ensure Waymo's Passenger Safety Plan ("PSP") checked the boxes established in the Deployment Decision, including, for example, detailing how Waymo will "minimize safety risks to passengers

traveling in a ride operated without a driver in the vehicle.” (Decision 20-11-046, Att. B (“Deployment Decision”), May 13, 2021, at p. 118; see Reso. at 9.) But the purpose of the PSP requirements in the Deployment Decision is to ensure that Waymo’s chosen methods actually *do* “minimize risk for all passengers in [Waymo’s] driverless vehicles.” (Deployment Decision at p. 118.) In order to evaluate whether Waymo’s PSP submitted with its Tier 2 Advice Letter satisfies that requirement, CPED had to conclude that “the updated PSP *reasonably addresses* [Waymo’s] proposed service expansion.” (Reso. at 9.) Determining what is “reasonable” is a discretionary decision, not a ministerial one. As such, this question was not appropriately addressed through Industry Division disposition. (See GO 96-B, Rule 7.6.1 [defining a “ministerial” act appropriate for Industry Division disposition as one where “the Industry Division need only determine as a technical matter whether the proposed action is within the scope of what has already been authorized by statutes or Commission orders.”].) Instead, the Commission should have heard the matter itself through a more robust process that allowed for evidentiary submissions and a hearing.

B. The Commission’s Approval of Waymo’s Advice Letter Was an Abuse of Discretion and Violates State Law, Including Public Utilities Code Section 5352 and CEQA.

The Commission should have rejected Waymo’s Tier 2 Advice Letter under GO 96-B Rule 7.4.2(2) because approving it was an abuse of discretion and contrary to state law, namely the Commission’s obligations to protect public safety under Public Utilities Code Section 5352, and the Commission’s obligations to conduct environmental review before approving Waymo’s activities under the California Environmental Quality Act (“CEQA”), Pub. Res. Code, § 21000, *et seq.*

1. Approval of Waymo’s Advice Letter without Adopting Additional Safety Measures Was an Abuse of Discretion and Contrary to Law.

Approval of Waymo’s Advice Letter without the Commission adopting additional public safety

protections was an abuse of discretion and violates the legal mandate that the Commission “promote carrier and public safety through its safety enforcement regulations.” (Pub. Util. Code, § 5352, subd. (a).)

In the CCSF proceeding, the Commission abused its discretion by irrationally ignoring CCSF’s evidence demonstrating that Waymo’s expansion could lead to serious public safety concerns. San Francisco submitted copious evidence regarding public safety concerns.³ Those concerns continue today, as Waymo AVs apparently continue to be involved in traffic accidents and violate traffic laws, spurring an investigation by the National Highway Traffic Safety Administration.⁴

Rather than requiring Waymo to incorporate mechanisms to better mitigate against these public safety concerns, the Commission deferred responsibility for protecting public safety to the Department of Motor Vehicles (“DMV”), ignoring the legal mandate that the Commission “promote carrier and public safety through its safety enforcement regulations.” (Pub. Util. Code, § 5352, subd. (a).)⁵ Indeed, CPUC abused its discretion in several ways, including by reaching unsupported and incorrect conclusions in its final approval Resolution; ignoring information about AV interference with first responders; and failing to incorporate any additional public safety protections into its approving Resolution,⁶ despite acknowledging that it was concerned about potential risks to passenger and public

³ (See, e.g., San Francisco Comments On The Draft Resolution Approving Authorization For Waymo Autonomous Vehicle Passenger Service Phase 1 Driverless Deployment Program (“CCSF Comments”), May 31, 2023, Case No. R.12-12-011, pp. 8–18; San Francisco’s Application To Rehear Resolution T1-19144 Approving Authorization For Waymo Autonomous Vehicle Passenger Service Phase 1 Driverless Deployment Program (“CCSF Rehearing Req.”), Sept. 31, 2023, Case No. R.12-12-011, pp. 4–9, 16–19.)

⁴ (See, e.g., “6 Waymo robotaxis block traffic to San Francisco freeway on-ramp,” TechCrunch, Apr. 17, 2024, available at <https://techcrunch.com/2024/04/17/seven-waymo-robotaxis-block-traffic-to-san-francisco-freeway-on-ramp/>; “Waymo recalls and updates robotaxi software after two cars crashed into the same towed truck,” TechCrunch, Feb. 13, 2024, available at <https://techcrunch.com/2024/02/13/waymo-recall-crash-software-self-driving-cars/>; “US opens probe into Alphabet’s Waymo over ‘unexpected behavior’ of self-driving vehicles,” Reuters, May 14, 2024, available at <https://www.reuters.com/business/autos-transportation/us-opens-probe-into-alphabets-waymo-over-performance-self-driving-vehicles-2024-05-14/>; see generally https://static.nhtsa.gov/odi/ffdd/sgo-2021-01/SGO-2021-01_Incident_Reports_ADS.csv [NHTSA accident reports involving, among others, Waymo AVs (see columns C and EF)].)

⁵ (See Or. Modifying Resolution T1-19144 And Denying Rehearing As Modified, And Denying Motion For Stay (“Order Modifying CCSF Resolution”), Nov. 9, 2023, Decision 21-11-053, pp. 1–2, 4–5, 14.)

⁶ (CCSF Resolution, *supra*, pp. 12–14; Order Modifying CCSF Resolution, *supra*, pp. 13–15.)

safety as driverless AVs scale up^{7,8}

By approving Waymo’s Tier 2 Advice Letter through the Resolution, the Commission makes these same legal errors again, washing its hands of responsibility for public safety and relying solely on the DMV’s approval of Waymo’s operational design domain as the mechanism for protecting the public from Waymo’s vehicles’ erratic, disruptive, and unlawful driving. (See Reso. at 9 [noting DMV is “the lead agency responsible over vehicle safety and Law Enforcement Interaction Plan requirements, while the Commission’s authority extends to passenger safety”].) By approving Waymo’s further expansion without properly accounting for the serious public safety concerns raised by the evidence submitted in the CCSF proceeding and in the protests and requests for review here, the Commission has again acted contrary to law.

2. Approval of Waymo’s Advice Letter without Environmental Review Violated CEQA.

Approval of Waymo’s Advice Letter without the Commission conducting CEQA review was also contrary to law, thus warranting rehearing of the Resolution.

In the CCSF proceeding, the Commission similarly declined to conduct CEQA review before approving Waymo’s expansion of its AV services and fleets. CPUC’s failure to conduct CEQA review before approving these requested expansions is unreasonable and unlawful. Despite the limited forum in which to present evidence of potential environmental impacts, CCSF submitted copious evidence that approval of Waymo’s expansion could impact the environment, including through greenhouse gas emissions, traffic congestion, disruption to emergency services, and pollution.⁹ Nevertheless, CPUC summarily declined to conduct CEQA review, arguing, as the Draft Resolution does here, that its approval was not a project that would cause either a direct physical change in the environment, or a

⁷ (CCSF Resolution, *supra*, p. 11.)

⁸ (See generally, CCSF Resolution. *supra*; Order Modifying CCSF Resolution, *supra*.)

⁹ (See, e.g., CCSF Rehearing Req., *supra*, pp. 22–27; CCSF Comments, *supra*, pp. 19–23.)

reasonably foreseeable indirect physical change in the environment, and because the project is exempt from CEQA.¹⁰ This conclusion was not and is not supported by the evidence before the CPUC in light of Waymo’s intention to significantly expand its operations. Nor is Waymo’s expansion project exempt under the “passenger service” exemption, as that exemption is intended to apply exclusively to transit projects. (See CEQA, Pub. Resources Code, § 21080(b)(10).)

Through the Resolution, the Commission followed the same approach in this case as it did in the CCSF case by declining to conduct CEQA environmental review. (Reso. at 12.) The Resolution’s CEQA conclusions are incorrect here for the same reasons the Commission’s conclusions were incorrect in the CCSF proceeding. Specifically, Waymo’s proposed expansion into a large proportion of San Mateo County and Los Angeles will have even greater direct and indirect impacts on the physical environment than in San Francisco, including because the vehicle miles traveled will expand significantly, causing, for example, an increase in generate particulate matter, transit delays, and interference with emergency access.

C. A Stay of the Order Approving Waymo’s Tier 2 Advice Letter Is Necessary in Light of San Francisco’s Legal Challenge to Waymo’s Tier 3 Advice Letter.

If the Commission will not rehear its Resolution and reject Waymo’s Tier 2 Advice Letter without prejudice, it should stay its approval of the Advice Letter on the grounds that approving the Letter at this juncture would be unjust and unreasonable in light of CCSF’s legal challenge to the Commission’s approval of the CCSF Advice Letter in August 2023. In those proceedings, CCSF raises the same legal challenges concerning public safety and environmental review as the County of San Mateo and other protestors raise in this proceeding. (See, *infra*, Section II.B.)

Though the Resolution suggests the CCSF proceeding is irrelevant to the present proceeding

¹⁰ (See CCSF Resolution, *supra*, pp. 19–20; Order Modifying CCSF Resolution, *supra*, pp. 16–19.)

because “Waymo’s Driverless Deployment authorization remains active and no stay has been issued” (Reso. at 11), it acknowledges elsewhere that the Commission must have validly authorized the CCSF Advice Letter in order to now authorize Waymo’s Tier 2 Advice Letter. (See Reso. at 2 [noting Waymo’s Tier 2 Advice Letter directly follows from “Waymo’s existing authorization to provide fared, driverless passenger service in San Francisco and portions of San Mateo County, which the Commission granted in August 2023 in Resolution TL-19144”]; Reso. at 7, 9 [noting Tier 2 advice letter is follow-on to Waymo’s authority to operate within San Francisco].) Because authorization of Waymo’s Tier 2 Advice Letter turns on the validity of the Commission’s authorization of Waymo’s CCSF Advice Letter, CCSF’s legal challenge, if successful, would directly undermine and be a grounds for overturning the Commission’s approval of Waymo’s Tier 2 Letter here.

There is no reason for the Commission to rush to approve Waymo’s Tier 2 Advice Letter, thereby forcing the protestors in this case, including San Mateo County, to assert the same exact legal challenges as CCSF on appeal of the Commission’s Resolution here, when the appellate courts are already on course to decide these issues in the coming months. It would be unreasonable and unjust under Rule 7.4.2(6) for the Commission to formally and finally approve the Tier 2 Advice Letter now, when the precursor Tier 3 Advice Letter is on shaky legal footing and binding court opinions are scheduled to issue on the ultimate factual and legal issues in this case. This injustice would be especially pronounced in this proceeding, where the parties have had little opportunity to present evidence in support of their positions, meaning they might have greater difficulty succeeding on appeal than CCSF, given the more robust evidence in the record in CCSF’s proceeding.

III. CONCLUSION

Respectfully, the Commission’s approval of Waymo’s Tier 2 Advice Letter through the Resolution has simply compounded the legal and factual errors the Commission made in the precursor CCSF proceeding. Rather than allowing the approval of the inadequate Advice Letter here to become

