

Decision 23-11-053

November 8, 2023

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Francisco for Rehearing
of Resolution TL-19144.

Application 23-09-015

**ORDER MODIFYING RESOLUTION TL-19144 AND DENYING
REHEARING AS MODIFIED, AND DENYING MOTION FOR STAY****I. INTRODUCTION**

The San Francisco Municipal Transportation Agency (“SFMTA”), the San Francisco County Transportation Agency (“SFCTA”), and the San Francisco Planning Department (collectively “San Francisco”) have jointly applied to request the California Public Utilities Commission (“Commission”) rehear Resolution (“Res.”) TL-19144.¹

Res. TL-19144 stems from Decision 20-11-046 (the “Deployment Decision”). In the Deployment Decision, the Commission created a program to allow entities that hold a Transportation Charter-Party (“TCP”) carrier permit to add autonomous vehicles (“AVs”) to their passenger carrier equipment statement and to accept monetary compensation for rides in autonomous vehicles. The Deployment Decision specifies the requirements for TCP carrier permit holders to offer driverless passenger service and the process for entities to apply. Requirements include, for example, holding a TCP permit, holding a California Department of Motor Vehicles (“DMV”) Autonomous Vehicle Deployment Permit, and maintaining insurance for the

¹ Unless otherwise noted, all citations to Commission decisions and resolutions are to the official pdf versions, which are available at <http://docs.cpuc.ca.gov/DecisionSearchForm.aspx> and <https://docs.cpuc.ca.gov/ResolutionSearchForm.aspx>.

AVs offered for passenger service.² The process to apply or to modify existing authorization is through an advice letter application to the Director of the Commission's Consumer Protection and Enforcement Division ("CPED") demonstrating compliance with Commission General Order ("GO") 157-E, which governs TCP carriers, and including specified information such as the DMV AV Deployment Permit and a passenger safety plan.³ Based on whether the application complies with the Deployment Decision requirements, CPED prepares a resolution recommending appropriate disposition of the application.⁴ The Commission votes whether to issue the resolution.

On December 12, 2022, Waymo LLC ("Waymo") applied through the advice letter process for expansion of its driverless passenger service. Under previously approved applications, Waymo held a TCP permit and was authorized to offer fared passenger service with a safety driver and non-fared driverless passenger service throughout San Francisco at any time of day.⁵ Waymo's advice letter requested authorization to offer fared driverless passenger service throughout San Francisco at any time of day.⁶ Finding the advice letter application complied with the Deployment Decision requirements, CPED drafted a resolution approving the application. After hearing from multiple commenters, including San Francisco, the Commission issued the resolution—Res. TL-19144—on August 11, 2013.

San Francisco requests the Commission rehear Res. TL-19144 for three reasons. First, San Francisco asserts the advice letter process under which Res. TL-19144 was issued was procedurally inadequate because the Commission failed to develop an adequate evidentiary record and unlawfully ignored alleged public safety

² Deployment Decision, Ordering Paragraph ("OP") 2, 7.

³ Deployment Decision, OP 18.

⁴ For certain limited changes, CPED can approve or reject the advice letter without a Commission resolution.

⁵ Res. TL-19144, p. 2.

⁶ Res. TL-19144, p. 2.

hazards and potential environmental impacts. Second, San Francisco claims the Commission violated the Passenger Charter-Party Carriers' Act ("TCP Act"), Cal. Pub. Util. Code §§ 5351 *et seq.* Third, San Francisco argues the Commission violated the California Environmental Quality Act ("CEQA"), Cal. Pub. Res. Code §§ 21000 *et seq.* In addition, San Francisco requested the Commission allow oral argument and stay Res. TL-19144 pending the rehearing.

We have carefully considered all the arguments presented by San Francisco. For the reasons set forth below, San Francisco's application for rehearing is denied. San Francisco's request for oral argument is denied. San Francisco's motion for stay of Res. TL-19144 is also denied.

II. THE STANDARD TO BE APPLIED

"The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously."⁷ An application for rehearing should not "relitigate issues already determined by the Commission" or seek "to reweigh the evidence."⁸ The rehearing applicant bears the "burden of proving legal error."⁹

III. BACKGROUND AND PROCEDURAL HISTORY

Under the TCP Act, the Commission regulates passenger service using the public highways for compensation.¹⁰ In the Commission's quasi-legislative proceeding on regulations relating to passenger carriers, ridesharing, and new online-enabled transportation services—Rulemaking (R.)12-12-011—the Commission has issued several decisions establishing additional regulations for TCP permit holders who wish to offer passenger service for compensation using AVs. San Francisco and Waymo have participated in that proceeding and were parties to those decisions.

⁷ Commission Rule of Practice and Procedure ("Rule") 16.1(c).

⁸ D.21-03-048, p. 4.

⁹ D.17-08-015, p. 4.

¹⁰ Pub. Util. Code § 5352.

In Decision 18-05-043, the Commission set out a framework and two pilot programs. The second pilot program authorized TCP permit-holders possessing a DMV Manufacturer’s Testing Permit—which allows manufacturers of autonomous vehicles to operate in California—to operate driverless AVs in passenger service subject to certain restrictions.¹¹ On November 18, 2022, Waymo received authorization to participate in the Driverless Pilot program, allowing it to offer non-fared passenger service throughout San Francisco without a safety driver present, with no limits on fleet size.¹²

In November 2020, in the Deployment Decision, the Commission authorized TCP permit holders to potentially engage in full deployment of fared AV passenger service, through the Commission’s Autonomous Vehicle Passenger Service Deployment programs.¹³ To obtain a Driverless Deployment Permit, which allows full deployment of fared AV passenger service, the AV carrier must submit an advice letter application for the program that demonstrates its compliance with Commission GO 157-E, which governs the Commission’s TCP carriers, and includes all information required by the Deployment Decision.¹⁴ Notable requirements include holding an active AV Deployment Permit from the DMV and submitting a Passenger Safety Plan (“PSP”) to the Commission.¹⁵

The Commission also considered how the Commission should regulate AV safety, and adopted an approach that distinguished “vehicle safety” and “passenger safety.”¹⁶ The Commission noted that the DMV will only issue a permit to deploy AVs if, among other things, “the manufacturer has conducted test and validation methods and

¹¹ D.18-05-043, p. 3.

¹² Res. TL-19144, p. 2; Waymo Advice Letter 0001 (“Waymo Advice Letter”), Dec. 12, 2022, p. 3.

¹³ Res. TL-19144, p. 2; Deployment Decision, Ordering Paragraph (OP) 1, 2, 3.

¹⁴ Res. TL-19144, p. 3; Deployment Decision, OP 18.

¹⁵ Res. TL-19144, p. 3; Deployment Decision, OP 2, 3, 8.

¹⁶ Deployment Decision, pp. 27-36.

is satisfied, based on the results of the tests and validations, that the vehicles are safe for deployment on public roads in California.”¹⁷ The DMV also issues an Operational Design Domain (“ODD”) to AV operators, containing limitations as to geography, roadway type, speed, weather conditions, daily hours of operation, and other matters.¹⁸ The Commission thus found the DMV is the appropriate authority to evaluate and affirm through the permit process the AV’s capability to perform the dynamic driving task.¹⁹ However, the Commission adopted passenger safety as a goal, and provided a process for each applicant for a Driverless Deployment Permit to submit a passenger safety plan that explains their policies and procedures to minimize risk for all passengers in their driverless vehicles.²⁰

On December 23, 2020, San Francisco filed an application for rehearing of the Deployment Decision, arguing that environmental review pursuant to CEQA should have been conducted before the Commission authorized AV passenger service deployment.²¹ Alternatively, San Francisco suggested that the Commission adopt a limited first phase of AV Passenger Service Deployment, for information gathering purposes only, as allowed by CEQA Guidelines.²²

In D.21-05-017, the Commission denied rehearing, concluding that there were no reasonably foreseeable environmental impacts caused by the Deployment Decision; thus, the AV deployment authorized by the Deployment Decision did not constitute a CEQA project and did not require environmental review.²³ D.21-05-017

¹⁷ Deployment Decision, p. 14, citing Cal. Code of Regs, tit. 13 §§ 227.00(b), 227.02(j).

¹⁸ Cal. Code of Regs tit. 13 § 228.06(a)(11).

¹⁹ Deployment Decision, p. 30.

²⁰ Deployment Decision, p. 34.

²¹ Application of SFMTA and SFCTA for Rehearing of D.20-11-046, filed in R.12-12-011 (Dec. 23, 2020), pp. 11-12.

²² *Id.*, pp. 11-12, citing CEQA Guidelines, Cal. Code Regs. tit 14 § 15306.

²³ D.21-05-017, pp. 3-4 and OP 31.

modified the Deployment Decision, by adding the above Conclusions of Law to the Deployment Decision.²⁴ D.21-05-047 also modified the Deployment Decision by creating a phased approach to AV deployment, although it did not adopt San Francisco's suggested approach. Rather, the Commission allowed the full fared driverless AV deployment as authorized in the Deployment Decision to be implemented as Phase I of Deployment Programs, during which time the data that the Commission had ordered would be gathered.²⁵ The Commission ordered that a Phase II of the Deployment Program would be initiated no later than three years from the date of the start of Phase I.²⁶ In Phase II, the Commission would evaluate the extensive data collected in Phase I. Parties could also raise the applicability of CEQA during Phase II.²⁷

On November 9, 2022, the DMV issued an ODD to Waymo for driverless AV operations including all of San Francisco, 24 hours a day, 7 days a week, with no limits on fleet size.²⁸ On December 12, 2022, Waymo filed Advice Letter 0001 ("Waymo Advice Letter") seeking authorization under its TCP permit for Phase I fared AV passenger service to the limits of its DMV ODD. San Francisco protested the Waymo advice letter; there were two other responses to the advice letter also expressing concern, while 38 responses were in support.²⁹ San Francisco also filed comments on the draft resolution, opposing approval of the Waymo's request.³⁰ Two other comments on

²⁴ D.21-05-017, OP 46 & 47, adding Conclusions of Law (COL) 22 & 23 to the Deployment Decision.

²⁵ D.21-05-017, p. 5, OP 1, 2.

²⁶ D.21-05-017, p. 5, OP 3. Pursuant to OP 3, Phase I would start upon approval of the first amended driverless AV deployment permit or approval of the first advice letter authorizing driverless AV deployment, whichever was first. Thus, Phase I started on June 22, 2022 with the approval of Res. TL-19137.

²⁷ D.21-05-017, p. 5, OP 3, 30, 60.

²⁸ Res. TL-19144, p. 12; *see also* Waymo Advice Letter, Attachment A.

²⁹ Res. TL-19144, pp. 4-7, Finding 2.

³⁰ Res. TL-19144, p. 17-20.

the draft resolution expressed concern or opposition to approval of Waymo’s request, one comment expressed conditional support, and 27 comments were in support of Waymo’s request.³¹

On August 10, 2023, the Commission issued Res. TL-19144, authorizing Waymo to offer fared driverless AV passenger service in San Francisco as limited by its ODD. The Commission did not impose additional limits beyond the ODD on the number of AVs, hours of operation, or geographic limits with the City of San Francisco.³² On August 16, 2023, San Francisco filed a motion to stay Res. TL-19144. San Francisco asked the Commission to stay Res. TL-19144 “to preserve the status quo pending a decision by the full Commission on San Francisco’s forthcoming application for rehearing.”³³

On September 11, 2023, San Francisco filed an application for rehearing of Res. TL-19144 (“Rehearing App.”). On September 26, 2023, Waymo filed a response (“Waymo Response”) to San Francisco’s Rehearing App. On September 28, 2023, the San Francisco Taxi Workers Alliance (“SFTWA”) filed a response to the Rehearing App.

IV. DISCUSSION

San Francisco states three main justifications for rehearing: (1) that the advice letter process resulting in the Resolution was “procedurally inadequate” to address the underlying issues; (2) that the Commission did not fulfill its duties to protect passenger and public safety; and (3) and that the Commission failed to comply with CEQA.³⁴ These three issues will be discussed substantively below.

San Francisco also requests a stay of the Resolution and requests the Commission (1) adopt new public, monthly reporting requirements including such data as

³¹ Res. TL-19144, p. 15.

³² Res. TL-19144, p. 1, OP 1.

³³ San Francisco Motion to Stay Res. [TL-19144], p. 1.

³⁴ Rehearing App., p. 2.

Vehicle Miles Traveled, street interference incidents, crashes, and high-risk violations of the Vehicle Code; (2) study environmental impacts; and (3) undertake an incremental, performance-based expansion of driverless deployment.³⁵ San Francisco’s requests for reporting requirements and incremental deployment are similar to requests it made in its comments on the draft resolutions, which the Commission did not adopt.³⁶

A. The Commission Properly Established an Advice Letter Process to Implement Driverless Deployment.

The Deployment Decision created an advice letter process for TCP permit holders to seek approval of fared driverless service. Waymo used that process, which the Commission approved in Res. TL-19144. San Francisco argues the use of the advice letter process, rather than the formal proceeding and evidentiary hearing process, was inconsistent with the Commission’s rules.

In particular, San Francisco asserts the Commission’s rules provide the advice letter process is for requests that are expected “neither to be controversial nor to raise important policy questions,” and the issue of fared driverless AV service is both “highly controversial and raised significant policy questions.”³⁷ San Francisco also argues the Commission improperly relied on Waymo’s advice letters, despite protests and comments presenting contrary information, and faults the Commission for not providing a hearing during the Resolution process.³⁸

In describing advice letters, the Commission’s GO 96-B states that they are for a “quick and simplified review of the types of utility requests that are expected neither to be controversial nor to raise important policy questions.”³⁹ That is because the advice letter process “does not provide for an evidentiary hearing;” “a matter that requires an

³⁵ Rehearing App., pp. 27-28.

³⁶ Res. TL-19144., pp. 4, 11, 17, Finding 3.

³⁷ Rehearing App., pp. 11-12.

³⁸ Rehearing App., pp. 16-20.

³⁹ GO 96-B, Sec. 5.1.

evidentiary hearing may be considered only in a formal proceeding.”⁴⁰ GO 96-B, however, expressly provides that a utility may request relief by means of an advice letter, as here, where the advice letter process has been authorized or required by Commission order.⁴¹ San Francisco has not demonstrated the Commission’s use of the advice letter process in Res. TL-19144 was improper or unlawful.

1. San Francisco Misinterprets the Advice Letter Process Authorized by the Deployment Decision.

San Francisco claims that the Commission’s use of an advice letter process to implement fared driverless AV resulted in an authorization for fared driverless AV service that is not supported by substantial evidence and ignored contrary evidence.⁴² San Francisco specifically claims that Res. TL-19144 ignored evidence of public safety, environmental impacts, and Waymo’s alleged lack of compliance with GO 157-E.

But in doing so, San Francisco misinterprets the advice letter process set up by the Deployment Decision. In the Deployment Decision, the Commission properly considered all the evidence before it, including evidence from parties opposing its authorization of fared driverless AV service.⁴³ Thus, the Deployment Decision was supported by substantial evidence. The Commission’s main duty in approving Res. TL-19144 was ensuring compliance with the Deployment Decision. The Commission found that compliance, and San Francisco has not proven otherwise. Additionally, the Commission addressed the issues raised by San Francisco and other parties in protests and comments. In discussing the protests and comments, Res. TL-19144 relied on and cited the Commission’s orders and guidance in the Deployment Decision.⁴⁴

⁴⁰ GO 96-B, Sec. 5.1.

⁴¹ GO 96-B, Sec. 5.1.

⁴² Rehearing App., pp. 13-15.

⁴³ See e.g., Deployment Decision, pp. 28-29, 31-33, 48-50.

⁴⁴ Res. TL-19144, pp. 4-6, 11-14, 16-19.

On public safety, the Commission already considered how to address road safety in a formal proceeding—in the Deployment Decision in the ongoing Passenger Carrier Rulemaking (R.)12-12-001.⁴⁵ San Francisco primarily seeks to relitigate whether the Deployment Decision should have required that the fared driverless AV application include substantial independent evidence on road safety.⁴⁶ However, as discussed above, the purposes of an application for rehearing is not to “relitigate issues already determined by the Commission or to reweigh the evidence.”⁴⁷ In Res. TL-19144, the Commission found that Waymo’s advice letter met the Deployment Decision’s requirements for a TCP permit holder to offer fared driverless AV service; such requirements included a Passenger Safety Plan, permits from the DMV, and other matters.⁴⁸ San Francisco does not demonstrate that the advice letter failed to demonstrate these requirements. Thus, San Francisco does not demonstrate legal error in Res. TL-19144.

And on GO 157-E, while San Francisco is correct that the Deployment Decision requires that applicants for driverless permits demonstrate compliance with GO 157-E,⁴⁹ San Francisco is incorrect that Res. TL-19144’s finding that Waymo was in compliance with GO 157-E was not supported by substantial evidence.

GO 157-E generally requires that all charter-party carriers (“TCPs”) comply with the provisions of the Vehicle Code.⁵⁰ San Francisco claims that “[a]t the very least, there remains a material issue of fact whether Waymo AVs are in compliance with the [Vehicle Code], and accordingly the General Order, due to numerous

⁴⁵ See e.g., Deployment Decision, §§ 4.6, 4.7, 4.10, 4.12, 4.16.

⁴⁶ See Rehearing App., pp. 13-15; Deployment Decision, Sec. 4.6.

⁴⁷ D.21-03-048, p. 4.

⁴⁸ Res. TL-19144, pp. 8-9, Findings 8 – 10.

⁴⁹ Deployment Decision, pp. 10, 81, OP 18.

⁵⁰ GO 157-E, Sec. 1.06.

documented violations of the [Vehicle Code].”⁵¹ San Francisco then discusses some of the claimed Vehicle Code violations.

But San Francisco does not demonstrate that the alleged violations of the Vehicle Code mean that Waymo is not in compliance with GO 157-E. GO 157-E contains the Commission’s general rules and regulations over various aspects of TCP operations. GO 157 regulates areas such as liability insurance, operations at airports, record keeping, responding to complaints and maintenance of vehicles. GO 157-E does not require the suspension or revocation of a TCP’s license based on single or isolated violations of the Vehicle Code. The Commission has, in the past, used the discretion provided by the TCP Act⁵² to deny or revoke a TCP’s permit to operate, when there is a showing of repeated or egregious violations.⁵³ Here, San Francisco does not demonstrate that its allegations of Vehicle Code violations meet this standard. Indeed, as part of the application, Waymo provided its DMV-approved ODD.⁵⁴ Res. TL-19144 further confirms that the DMV’s suspension or revocation of Waymo’s AV permit causes automatic suspension of its Commission TCP driverless permit.⁵⁵

⁵¹ Rehearing App., p. 14.

⁵² See Pub. Util. Code, § 5378(a).

⁵³ See *e.g.* D.03-10-079 (denying Tour Designs a TCP permit and fining it for numerous violations of the Vehicle Code and the TCP Act); D.98-10-024 (revoking the TCP permit of Royal Circle Ltd. with prejudice for continuing violations of the Vehicle Code and the TCP Act); D.97-01-006 (revoking the TCP permit of Luceros Tours with prejudice for chronically violating multiple provisions of the Vehicle Code); D.94-11-021 (revoking the TCP permit of Express Airport Shuttle for repeated violations of numerous Commission rules and Vehicle Code provisions).

⁵⁴ Res. TL-19144, p. 12.

⁵⁵ Res. TL-19144, p. 13.

2. San Francisco Incorrectly Claims that the Advice Letter Process Was Inconsistent with Commission Rules and Precedent.

San Francisco also claims that the advice letter process was a “truncated approval process” and that the Commission is obligated to conduct needed fact gathering.⁵⁶ But San Francisco fails to provide authority to support this claim.

San Francisco cites two prior instances where the Commission chose to provide a formal proceeding in which to consider issues raised on application for rehearing, arguing that this establishes a policy that “the Commission is obligated to conduct needed fact gathering to address known issues.”⁵⁷ While in these two cases the Commission did find that a formal proceeding was needed, such determinations are necessarily based on the unique facts of each situation and are up to the Commission’s discretion.

One of the cases San Francisco cites, D.17-05-034, bears some procedural similarities to this case, in that a previous Commission decision, D.16-01-044, set up an advice letter process for implementation of net metering successor tariffs.⁵⁸ However, the circumstances of that case are distinguishable from the circumstances of Res. TL-19144. In D.17-05-034, on rehearing of a resolution approving three advice letters, the Commission “conclude[d] that interpreting D.16-01-044’s description of how [nonbypassable charges] must be calculated is not a straightforward matter” and that interpreting the language of D.16-01-044 was best addressed in a formal proceeding. Because pursuant to GO 96-B, Section 5.3, “matters that ‘otherwise require review in a

⁵⁶ Rehearing App., p. 11, 14-15.

⁵⁷ Rehearing App., p. 19, citing D.11-11-019 and D.17-05-034.

⁵⁸ D.17-05-034, p. 1. The other decision cited by San Francisco bears little resemblance to the instant situation, as that decision granted rehearing because the informal advice letter process was poorly structured, including allowing record information that was not available to all parties. D.11-11-019, pp. 8, 19.

formal proceeding’ [are] not to be resolved by resolution,” the Commission ordered that the successor tariffs be implemented in a formal proceeding.⁵⁹

Unlike in D.16-01-044, the advice letter process established in the Deployment Decision is straightforward and does not require additional analysis regarding the meaning of the Deployment Decision. The Deployment Decision established several requirements for TCP permit holders to implement fared driverless AV service.⁶⁰ Waymo properly followed this process with its advice letter.⁶¹ There is no need to provide another formal proceeding to re-consider issues already considered by the Deployment Decision and implemented via advice letter by Res. TL-19144. Approval of fared service through the advice letter process in Res. TL-19144 does not constitute legal error.

B. The Commission’s Regulatory Decisions on Public Safety Are Lawful.

San Francisco claims that the “Commission erred by approving the Resolution without appropriately considering the public safety impacts.”⁶² To support its claim, San Francisco primarily cites to a portion of the preamble to the Passenger Charter-Party Carriers’ Act (“TCP Act”), which lists among the Act’s purposes “to promote carrier and public safety through [the Act’s] safety enforcement regulations.”⁶³ Based on this language, San Francisco asserts that the Commission failed its statutory obligation to take measures protecting public safety.⁶⁴

⁵⁹ D.17-05-034, p. 2.

⁶⁰ Deployment Decision, OP 7 – 11, 18.

⁶¹ Res. TL-19144, pp. 8-9, Findings 8 – 10.

⁶² Rehearing App., p. 16.

⁶³ Rehearing App., p. 16, citing Pub. Util. Code § 5352(a).

⁶⁴ San Francisco also cites a California Supreme Court case for the proposition that “[p]ublic safety must not be left to possible future action by the Commission or possible future voluntary actions by private companies.” Rehearing App., p. 18, citing *Ventura Cnty. Waterworks v. Public Util. Com’n* (1964) 61 Cal.2d 462, 465. However, this case

San Francisco does not demonstrate that the Commission failed to comply with its obligations under the TCP Act or any other law. The preamble to the TCP Act is in Public Utilities Code Section 5352. Section 5352 specifies the actions the Commission must undertake to satisfy the preamble, including, for example, prioritizing the timely processing of consumer complaints and implementing a process for appropriate and timely enforcement against illegally operating carriers.⁶⁵ San Francisco fails to identify any Commission violation of these provisions.

As explained in the Deployment Decision and in Res. TL-19144, the Commission has chosen an approach to regulating the safety of driverless passenger carriers that acknowledges the safety of AVs is a responsibility shared by multiple regulatory agencies. In particular, the DMV is the agency with the broadest authority and greatest technical expertise regarding vehicle and road safety matters and therefore has the primary responsibility for vehicle and road safety.⁶⁶ The Deployment Decision thus points to the DMV as the appropriate authority to evaluate and affirm through its permit process the AVs' capability to perform the dynamic driving task.⁶⁷ The Deployment Decision incorporates into the advice letter approval process an AV operator obtaining a DMV Autonomous Vehicle Deployment Permit and certifying that the entity is in compliance with all DMV regulations.⁶⁸ By contrast, in the Deployment Decision, the Commission adopted the goal to protect "passenger safety," including through requiring that to provide farmed driverless passenger service, an entity must provide a Passenger Safety Plan (PSP) that details how the applicant will minimize safety risks to passengers

has nothing to do with public safety. Rather, its holding is that an already operating utility is entitled to a hearing, as required by Pub. Util. Code Sec. 1005(a), before the grant of a certificate of public convenience and necessity to a competitor.

⁶⁵ Pub. Util. Code § 5352.

⁶⁶ See Vehicle Code § 38750(c), (e); *see also* Res. TL-19144, p. 12.

⁶⁷ Deployment Decision, pp. 29-30.

⁶⁸ Deployment Decision, OP 7.b.

traveling in a ride operated without a driver in the vehicle, such as by allowing passengers to contact the AV service provider during the ride.⁶⁹

In Res. TL-19144, the Commission found that Waymo submitted materials that matched the requirements of the Deployment Decision. The materials included the ODD issued by the DMV authorizing Waymo's AV operations, with unlimited fleet size throughout all of San Francisco, day or night.⁷⁰ And they included an updated PSP focused on the safety of passengers.⁷¹

San Francisco claims that because Res. TL-19144 improperly relied on the Deployment Decision's consideration of public safety, it did not properly address public safety issues raised in protests and comments on the advice letter.⁷² Again, San Francisco misunderstands the Commission's processes. As discussed above, the consideration of public safety issues in R.12-12-001, as discussed in the Deployment Decision, provides the Commission authorization for Res. TL-19144's approval of a permit for fared driverless AV service. Res. TL-19144 properly relied on the Deployment Decision's requirements.

In sum, San Francisco cites no statutory or regulatory public safety protections that the Commission violated in its approval of Res. TL-19144. And San Francisco cannot use this rehearing process to relitigate the Commission's quasi-legislative policy decision on how to regulate driverless passenger service safety. As such, this allegation of error is without merit.

⁶⁹ Deployment Decision, pp. 34-35.

⁷⁰ Res. TL-19144, p. 12; *see also* Waymo Advice Letter, Attachment A, Statement and Map of Operational Design Domain - Driverless Deployment.

⁷¹ Res. TL-19144, pp. 9-11.

⁷² Rehearing App., pp 13-14.

C. An Environmental Review Was Not Required Prior to Approval of Res. TL-19144.

San Francisco next argues that the Commission abused its discretion in authorizing AV passenger service without an environmental review pursuant to CEQA.⁷³ San Francisco made no claims about environmental impacts in its protest of the Waymo advice letter. In its comments on the draft Resolution, San Francisco first claimed that the fared driverless AV deployment would have environmental impacts and provided anecdotal evidence of these impacts.⁷⁴ San Francisco provides more extensive information alleging environmental impacts in its Rehearing App.⁷⁵ However, this additional evidence was not before the Commission when it approved Res. TL-19144 and need not be considered on application for rehearing.⁷⁶

The California Legislature enacted CEQA in 1970 with the intent of requiring public agencies to consider the environmental implications of their actions when they carry out projects or approve private projects. A CEQA project is “an activity which may cause either a direct physical change in the environment, or a reasonable foreseeable indirect physical change in the environment, and which is any of the following: (a) An activity directly undertaken by any public agency; (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants,

⁷³ Rehearing App., pp. 22-23.

⁷⁴ San Francisco Comments on the Draft Resolution, May 31, 2023, pp. 19-23.

⁷⁵ Rehearing App., pp. 25-27.

⁷⁶ D.15-05-056, p. 5. In its Rehearing App., for the first time San Francisco raises a new CEQA issue, claiming impacts on “emergency access.” Citing CEQA Guidelines, San Francisco claims that this is an issue that CEQA requires to be considered. Rehearing App., pp. 29-30, citing CEQA Guidelines, Appendix G. However, a California appellate court found that “the obligation to provide adequate fire and emergency medical services is the responsibility of the city” (citing Cal. Const, art. XIII, § 35, subd. (a)(2)) and “not an environmental impact that CEQA requires a project proponent to mitigate.” *City of Hayward v. Trustees of California State University* (2015) 242 Cal.App.4th 833, 843 (analyzing CEQA Guidelines, § 15382, which defines “significant effect on the environment”).

subsidiaries, loans, or other forms of assistance from one or more public agencies; (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.”⁷⁷

“Project” refers to “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change.”⁷⁸ If an activity is not a CEQA project, CEQA does not require any environmental review.⁷⁹ Various types of activities may also be exempt from the CEQA environmental review process, as discussed below.

Relying on a previous discussion of CEQA in D.21-05-017, Res. TL-19144 dismissed San Francisco’s comments on the draft resolution, reiterating that environmental impact issues should be properly addressed in Phase II of the AV Deployment Program.⁸⁰ However, Res. TL-19144 should have made clear that no environmental impact review was required prior to the approval of Waymo’s fared driverless AV deployment. Accordingly, we will modify Res. TL-19144 to clearly state that no environmental impact review was required at the time of the issuance of the Resolution.

The fared driverless deployment approved by the Commission would only be a CEQA project if there were a direct physical impact or a reasonably foreseeable indirect change.⁸¹ Here, the Commission’s approval merely authorized Waymo, which already held a TCP permit, to begin charging fares on the driverless AV passenger service that it was already operating based on previous DMV and Commission authorizations. As discussed above, on November 9, 2022, the DMV issued an ODD to Waymo for AV operations that included all of San Francisco, 24 hours a day, 7 days a

⁷⁷ Pub. Resource Code § 21065.

⁷⁸ CEQA Guidelines, Cal. Code Regs., tit. 14 § 15378(a).

⁷⁹ Pub. Resources Code § 21080(d).

⁸⁰ Res. TL-19144, pp. 19-20.

⁸¹ Pub. Res. Code, § 21065.

week, with no limits on fleet size.⁸² Moreover, as part of the Driverless Pilot program, the Commission had already authorized Waymo to provide non-fared driverless passenger service throughout San Francisco at any time of day with no limits on fleet size.⁸³

The fact that Waymo was approved to collect fares – with respect to transport that is already on public roads, already serving the public, and already at liberty to deploy as geographically broadly as desired and at all hours of the day – does not constitute a direct physical impact on the environment. San Francisco identifies none.

The approval also causes no “reasonably foreseeable indirect change.” San Francisco points to alleged “emergency access impacts” and “additional driverless AV trips.”⁸⁴ But on emergency access impacts, San Francisco fails to identify how the events it asserts were “logged” constitute a reasonably foreseeable physical impact on the environment. Nor does San Francisco adequately explain why the Commission’s authorization, which came with a requirement that Waymo comply with the Vehicle Code, would result in additional incidents in violation of the Vehicle Code. Likewise, San Francisco fails to explain why Waymo’s ability to collect fares will foreseeably result in additional overall vehicle trips. Waymo can already operate AVs without limitation and can use them for passenger service. Res. TL-19144 does not expand the number of allowable Waymo cars. And the Transportation Charter-Party market, including numerous services such as Uber and Lyft that allow individuals to get from point A to point B using a passenger service vehicle, already exists. Merely allowing Waymo to collect fares and operate according to their existing ODD, which regulates safe vehicle operations, does not change the physical status quo, directly or indirectly.

And in any event, even if fared driverless AV deployment was determined to constitute a CEQA project, it would be exempt from the requirement to perform

⁸² Res. TL-19144, p. 12; *see also* Waymo Advice Letter, Attachment A.

⁸³ Res. TL-19144, p. 2.

⁸⁴ Rehearing App., pp. 25-27.

environmental review, as it is covered by the “passenger service exemption” to CEQA, where the legislature has exempted “project[s] for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use . . .”⁸⁵ The action approved in Res. TL-19144 is passenger service on road rights-of-way already in use. And one of the goals of the Commission’s AV Passenger Service Deployment programs, including the driverless deployment, is to “[i]mprove transportation options for all, particularly for disadvantaged communities and low-income communities.”⁸⁶ Thus, even if driverless AV passenger service deployment was a project under CEQA, which we hold it is not, then the deployment approved in Res. TL-19144 is exempted from CEQA pursuant to Public Resources Code section 21080, subd. (b)(10).

D. San Francisco’s Request for Oral Argument Is Denied.

In connection with its Application for Rehearing, San Francisco requests oral argument.⁸⁷ The Commission’s Rules of Practice and Procedure, Rule 16.3, subd. (a) provides that the Commission may, in its complete discretion, order oral argument on a rehearing application if it would materially assist the Commission in resolving the application, and if the rehearing application raises an issue of major significance for the Commission, because the challenged order or decision:

- (1) adopts new Commission precedent or departs from existing Commission precedent without adequate explanation;
- (2) changes or refines existing Commission precedent;
- (3) presents legal issues of exceptional controversy, complexity, or public importance; and/or
- (4) raises questions of first impression that are likely to have significant precedential impact.

⁸⁵ Pub. Resources Code § 21080(b)(10). For purposes of this subsection, “highway” includes city streets. *See* Vehicle Code § 360.

⁸⁶ Res. TL-19144, p. 2; Deployment Decision, p. 2.

⁸⁷ Rehearing App., pp. 2-3.

San Francisco claims that its Rehearing App. “presents legal issues of exceptional controversy, complexity, and public importance, and raises questions of first impression that are likely to have significant precedential impact.”⁸⁸

The public importance, controversy, and complexity of these questions is evident from the multiple hours of live public comment that preceded the Commission’s vote on the Resolutions. Because driverless AVs are an emerging technology whose passenger and public safety impacts in real-world circumstances are only just becoming known, this Application presents questions of first impression about how the Commission, as a regulator, must address such real-world incidents and move with care.⁸⁹

Res. TL-19144, as modified, does not change Commission decisions or orders, and does not adopt new precedent. The issues San Francisco raises in its Rehearing App. have already been discussed by the Commission in the Deployment Decision and Res. TL-19144. Moreover, the issues are sufficiently briefed and there is no basis to conclude that oral argument will benefit disposition of the application for rehearing. Therefore, the request for oral argument is denied.

E. San Francisco’s Motion for Stay of Res. TL-19144 Is Denied.

On August 16, 2023, San Francisco filed a motion to stay Res. TL-19144, “to preserve the status quo pending a decision by the full Commission on San Francisco’s forthcoming application for rehearing.”⁹⁰ San Francisco argues that a stay is necessary because it is likely to prevail on the merits of its application for rehearing and because it will suffer serious and irreparable harm if a stay is not granted.⁹¹ However, because we

⁸⁸ Rehearing App., pp. 2-3.

⁸⁹ Rehearing App., p. 3.

⁹⁰ San Francisco’s Motion to Stay [Res. TL-19144], Aug. 16, 2023, p. 1. San Francisco reiterated its request for a stay in its Rehearing App. Rehearing App., p. 3.

⁹¹ San Francisco’s Motion to Stay [Res. TL-19144], p. 2.

have already resolved the issues raised in the application for rehearing, we need not resolve the motion for stay. Accordingly, the motion is denied as moot.

V. CONCLUSION

For the reasons discussed above, we modify Res. TL-19144 to clarify that an environmental review was not required prior to approval of the resolution. As modified, we deny San Francisco's application for rehearing of Res. TL-19144 because San Francisco has not demonstrated legal, factual, or procedural error. The request for oral argument and the motion for stay are also denied.

THEREFORE, IT IS ORDERED that:

1. Resolution (Res.) TL-19144 is hereby modified such that the last paragraph on page 19 before the Findings is deleted, and replaced with the following two paragraphs:

The fared driverless deployment authorized by Res. TL-19144 does not constitute a CEQA project. Res. TL-19144 merely authorized Waymo to begin charging fares on the driverless AV passenger service that it was already operating based on previous DMV and Commission authorizations. The fact that Waymo may collect driverless passenger service fares does not constitute a project under CEQA. Numerous passenger service options already exist, and Waymo specifically already possesses authorization to deploy its cars and to provide passenger service as geographically broadly as desired and at all hours of the day. Thus, there are no reasonably foreseeable direct or indirect environmental impacts. San Francisco's anecdotal comments on the draft resolution do not demonstrate reasonably foreseeable environmental impacts, especially as San Francisco's comments do not address whether the impacts it claims are the result of the AV operations already authorized, or a result of the addition of authorization to charge fares.

Even if Waymo's approval to conduct fared driverless AV deployment was determined to constitute a CEQA project, it would be exempt from the requirement to perform environmental review, as it is covered by the "passenger service exemption" to CEQA, where the legislature has exempted "project[s] for the institution or increase of

passenger or commuter services on rail or highway rights-of-way already in use . . .”⁹² The action approved in Res. TL-19144 is passenger service on road rights-of-way already in use. And one of the goals of the Commission’s AV Passenger Service Deployment programs, including the driverless deployment, is to “[i]mprove transportation options for all, particularly for disadvantaged communities and low-income communities.”⁹³ Thus, even if driverless AV passenger service deployment was a project under CEQA, which we hold it is not, then the deployment approved in Res. TL-19144 is exempt from CEQA pursuant to Public Resources Code section 21080, subd. (b)(10).

2. Finding 19 is added to Res. TL-19144 to read as follows:

The fared driverless deployment authorized by Res. TL-19144 does not constitute a California Environmental Quality Act (CEQA) project, because it will not result in either a direct physical change or a reasonable foreseeable indirect physical change in the environment.
3. Finding 20 is added to Res. TL-19144 to read as follows:

Even if fared driverless AV deployment was determined to constitute a CEQA project, it is statutorily exempt from a requirement to perform environmental review, as the legislature in Public Resources Code section 21080, subd. (b)(10) has exempted “project[s] for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use . . .”
4. Finding 21 is added to Res. TL-19144 to read as follows:

One of the goals of the Commission’s AV Passenger Service Deployment programs, as stated in D.20-11-046, is to improve transportation options for all, particularly for disadvantaged communities and low-income communities.
5. Rehearing of Res. TL-19144, as modified, is denied.
6. San Francisco’s request for oral argument is denied.

⁹² Pub. Resources Code § 21080(b)(10). For purposes of this subsection, “highway” includes city streets. *See* Vehicle Code § 360.

⁹³ Res. TL-19144, p. 2; Deployment Decision, p. 2.

7. San Francisco's motion for stay of Res. TL-19144 is denied.
8. Proceeding Application 23-09-015 is closed.

This order is effective today.

Dated November 8, 2023, at Sacramento, California.

ALICE REYNOLDS
President
GENEVIEVE SHIROMA
DARCIE L. HOUCK
JOHN REYNOLDS
KAREN DOUGLAS
Commissioners