

Decision 25-10-026

October 9, 2025

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

James L. Duncan,

Complainant

v.

Sonoma Marin Area Rail Transit  
District,

Defendant

Case 21-06-011

**ORDER MODIFYING DECISION 25-05-002 AND  
DENYING REHEARING AS MODIFIED****I. INTRODUCTION**

This Order addresses the application for rehearing of Decision (D.) 25-05-002 (Decision) timely filed by James L. Duncan (Duncan or Applicant) on June 19, 2025. In the Decision, we found that Duncan was not entitled to any relief and dismissed his Complaint.

Duncan's rehearing application alleges that the Decision errs by: (1) stating that the Motion to Dismiss filed by Sonoma Marin Area Rail Transit (SMART) on January 25, 2022 was denied "because it found that SMART did not meet the criteria to have the motion granted;" (2) the Commission both taking action without jurisdiction and also exceeding its jurisdiction; (3) improperly departing from the assigned Commissioner's Scoping Memo and Ruling issued on December 19, 2022 (Scoping Memo), both by omitting issues listed in the Scoping Memo and by including an issue that was not part of the Scoping Memo; (4) violating Public Utilities Code section 2101; (5) finding in favor of SMART despite SMART failing to meet its burden of proof; (6) improperly "disregard[ing]" Duncan's evidence; (7) including two Findings of Fact that are not supported by substantial evidence; (8) improperly excluding relevant

evidence; (9) reaching a conclusion that is arbitrary and capricious; and (10) refusing to fine SMART. SMART filed a response opposing Duncan's rehearing application on July 7, 2025.

We have carefully considered all Applicant's arguments and find no grounds for rehearing. (Pub. Util. Code, § 1732; Cal. Code Regs., tit. 20, § 16.1, subd. (c).) However, we modify the Decision as explained below. We deny the application for rehearing of D.25-05-002, as modified, because no legal error has been shown.

## II. DISCUSSION

Duncan alleges that the Decision deviates from the Scoping Memo by omitting references to Public Utilities Code sections 99152 and 1759(a). (Rehg. App. at pp. 9-10.) Duncan is correct that these two code sections appear in his Complaint and in the Scoping Memo. (Rehg. App. at p. 9; Scoping Memo at p. 4.) The omission of these two citations from the Decision is not legal error. Duncan has shown no error here.

Duncan has offered no evidence that these statutes were not considered by the Commission in the proceeding, nor does the fact that these citations were omitted from the Decision indicate that they were not considered. To the contrary, both section 99152 and section 1759 were discussed in Duncan's Opening Brief, and thus clearly *were* included in the proceeding. (See June 5, 2024 Opening Brief of James L. Duncan at pp. 9, 11.) If Duncan wished to raise them differently, or more forcefully, it was his responsibility to do so. Like the petitioners in *Bullseye Telecom, Inc.*, if Duncan "had relevant evidence to present on that issue but failed to do so, that was [his] own strategic decision and [he] cannot now be heard to complain." (*Bullseye Telecom, Inc. v. Public Utilities Com.* (2019) 66 Cal.App.5th 301, 327; *compare Southern California Edison Co. v. Public Utilities Com.* (2006) 140 Cal.App.4th 1085, 1105-1106 [finding that the addition of a new issue that was not included in the scoping memo was improper and that the Commission did not proceed in the manner required by law when it did so].)

Even if these two code sections had never been mentioned again after the Scoping Memo was issued, Duncan offers no evidence that this purported departure

would have been “material” or “prejudicial.” (*See Bullseye Telecom, Inc., supra*, 66 Cal.App.5th at p. 324.)

Nevertheless, to clarify and for the sake of consistency, we modify the Decision to include these citations as follows.

On pages 5-6, the Decision currently states:

1. Has SMART failed to comply with Commission D.16-09-002, D.17-08-017, and D.19-10-002; Rule 1.1; the Public Utilities (Pub. Util.) Code § 702, § 1201, § 1202, § 1709; and California Constitution Article XII, § 8?

(D.25-05-002 at pp. 5-6.) We modify this statement as follows:

1. Has SMART failed to comply with Commission D.16-09-002, D.17-08-017, and D.19-10-002; Rule 1.1; the Public Utilities (Pub. Util.) Code § 702, § 1201, § 1202, § 1709, § 1759(a), and § 99152; and California Constitution Article XII, § 8?

On page 10, the Decision currently states “As noted above, Duncan asserts that SMART violated Pub. Util. Code §§ 702, 1201, 1202(a), 1709, California Constitution Article XII § 8, and Rule 1.1.” (D.25-05-002 at p. 10.) We modify this statement to read as follows: “As noted above, Duncan asserts that SMART violated Pub. Util. Code §§ 702, 1201, 1202(a), 1709, 1759(a), and 99152, California Constitution Article XII § 8, and Rule 1.1.”

Duncan also alleges that FOF 4 (“The complaint requests that SMART be compelled to come to an agreement with the City [of Santa Rosa] to construct the Jennings Avenue at-grade rail crossing on SMART’s right-of-way and that SMART be fined accordingly”) is not supported by substantial evidence. (Rehg. App. at p. 39 [citing D.25-05-002 at p. 21].)

In claiming error, Duncan argues that he “has always asserted that any agreement between SMART and Santa Rosa for the Jennings Avenue Crossing to be constructed on SMART’s right of way is illegal, as discussed above,” and that this

finding therefore misconstrues his Complaint. (Rehg. App. at p. 39.) Duncan is correct insofar as FOF 4 differs somewhat from the relief requested in his Complaint. This finding is simply a summary of Duncan's requested relief. (D.25-05-002 at p. 21.) Duncan's prayer for relief in his Complaint repeatedly requests that the Commission "[f]ind that SMART is in violation of" various California laws including the California Constitution and Public Utilities Code sections 702, 1201, 1202, 1709, 99152, and 1759(a), and that SMART has "failed to comply with" several Commission decisions relating to the construction of the Jennings Avenue Crossing. (Complaint at pp. 45-46.) It does not explicitly ask that SMART "be compelled to come to an agreement" regarding the Jennings Avenue Crossing. (*See generally id.*)

The Scoping Memo consolidated the nine paragraphs of Duncan's prayer for relief into two questions which are also not identical to FOF 4's statement. They are whether "SMART failed to comply with Commission D.16-09-002, D.17-08-017, and D.19-10-002; Rule 1.1; the Pub. Util. Code Section 702, Section 1201, Section 1202, Section 1709, Section 1759(a), and Section 99152; and California Constitution Article XII, Section 8" and, if so, what the consequences should be. (Scoping Memo at p. 4.) But an agreement between the City and SMART is an obvious prerequisite for any construction. As such, FOF 4 is supported by substantial evidence contrary to Duncan's claim.

However, because FOF 4 purports to describe Duncan's Complaint, but deviates somewhat from the language of both his Complaint and the Scoping Memo, we clarify the language in FOF 4. Thus, we modify FOF 4 to read as follows: "The complaint requests that SMART be found to be in violation of D.16-09-002, D.17-08-017, and D.19-10-002; Rule 1.1; Pub. Util. Code Section 702, Section 1201, Section 1202, Section 1709, Section 1759(a), and Section 99152; and California Constitution Article XII, Section 8, and that SMART be fined accordingly."

### III. CONCLUSION

For the reasons stated above, D.25-05-002 is modified to reflect the clarifications specified below. As modified, rehearing is denied, since no legal error has been shown.

**THEREFORE, IT IS ORDERED** that:

1. Decision 25-05-002 is modified as follows:
  - a. On pages 5-6, the following statement is deleted:
    1. Has SMART failed to comply with Commission D.16-09-002, D.17-08-017, and D.19-10-002; Rule 1.1; the Public Utilities (Pub. Util.) Code § 702, § 1201, § 1202, § 1709; and California Constitution Article XII, § 8?

The following is added in its place:

1. Has SMART failed to comply with Commission D.16-09-002, D.17-08-017, and D.19-10-002; Rule 1.1; the Public Utilities (Pub. Util.) Code § 702, § 1201, § 1202, § 1709, § 1759(a), and § 99152; and California Constitution Article XII, § 8?
- b. On page 10, the following statement is deleted:

“As noted above, Duncan asserts that SMART violated Pub. Util. Code §§ 702, 1201, 1202(a), 1709, California Constitution Article XII § 8, and Rule 1.1.”

The following is added in its place:

“As noted above, Duncan asserts that SMART violated Pub. Util. Code §§ 702, 1201, 1202(a), 1709, 1759(a), and 99152, California Constitution Article XII § 8, and Rule 1.1.”

- c. On page 21, Finding of Fact 4 that reads “The complaint requests that SMART be compelled to come to an agreement with the City to construct the Jennings Avenue at-grade rail crossing on SMART’s right-of-way and that SMART be fined accordingly” is deleted.

The following is added as Finding of Fact 4 in its place:

“The complaint requests that SMART be found to be in violation of D.16-09-002, D.17-08-017, and D.19-10-002; Rule 1.1; Pub. Util. Code Section 702, Section 1201, Section 1202, Section 1709, Section 1759(a), and Section 99152; and California Constitution Article XII, Section 8, and that SMART be fined accordingly.”

2. As modified, Duncan’s application for rehearing of Decision 25-05-002 is denied because no legal error has been demonstrated.

3. This proceeding, Case 21-06-011, is closed.

This order is effective today.

Dated: October 9, 2025, at Bellflower, California.

ALICE REYNOLDS

President

DARCIE L. HOUCK

JOHN REYNOLDS

KAREN DOUGLAS

MATTHEW BAKER

Commissioners