

*Process*  
*TR-4*

Decision 83 08 080 August 17, 1983

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LEV AKOBYANOFF (and all other	)	
passengers of BART),	)	
	)	
Complainants,	)	
	)	Case 82-08-05
v.	)	Petition for Modification
	)	(Filed July 7, 1983;
BART (Bay Area Rapid Transit	)	amended July 14, 1983)
System),	)	
	)	
Defendant.	)	

ORDER DENYING PETITION FOR MODIFICATION

On June 1, 1983, the Commission entered an order on the merits in this matter (Decision (D.) 83-06-035). The order held that complainant was entitled to no relief. It became effective on July 1, 1983.

The time in which a petition for rehearing could be filed expired on July 1, 1983 (P.U. Code Section 1731). On July 7, 1983, complainant filed a Petition for Modification. On July 14, 1983, complainant filed an Amendment to the Petition for Modification and a request for the issuance of a subpoena duces tecum.

It is clear that the Petition for Modification is really a petition for rehearing filed under the guise of a different name, since the time for filing a petition for rehearing had expired.

In Scott Transportation Co. (1957) 56 CPUC 1, the Commission held that:

"Petitioners were further afforded a full hearing upon the issues they again seek to raise in the motions here involved. Petitioners did not seek a rehearing or judicial review of the order entered on February 11, 1957. There is a strong similarity to their present position and that of the plaintiff in Young v. Industrial Accident Commission, 63 Cal. App. 2d 286, wherein the court observed at pages 291-92; 'Having failed to apply for a rehearing within the time limit fixed by the code he cannot accomplish the same purpose by a petition to reopen, that petition differing in form only, not in substance, from a petition for a rehearing.'

"There must be an end to litigation. Petitioners are precluded from attaching herein the order of February 11, 1957. In re Foothill Ditch Co., 47 Cal. P.U.C. 754, 756; Burke v. Thompson (La.), 10 P.U.R. 3d 111." (56 CPUC at pp. 5-6.)

Complainant's Petition for Modification, as amended, is an untimely petition for rehearing similar to the one in the Scott case. It must be denied.

IT IS ORDERED that the Petition for Modification, as amended, is denied.

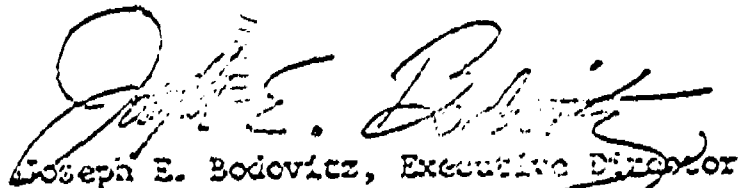
This order is effective 30 days from today.

Dated AUG 17 1983, at San Francisco, California.

VICTOR CALVO  
PRISCILLA C. GREW  
DONALD VIAL  
WILLIAM T. BAGLEY  
Commissioners

Commissioner Leonard M. Grimes, Jr.,  
being necessarily absent, did not  
participate.

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Joseph E. Bodovitz, Executive Director

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Rule 43 of the Commission's Rules of Practice and Procedure provides that:

"Petitions for modification of a Commission decision, or for an extension of time to comply with a Commission order or for an extension of an effective date of a Commission order shall indicate the reasons justifying relief and shall contain a certificate of service on all parties. Petitions for modification, other than in highway carrier

~~tariff matters, shall only be filed to make minor changes in a Commission decision or order. Other desired changes shall be by application for rehearing or by a new application. Requests for extension of time to comply with decisions or orders may also be made by letter to the Secretary. The letter shall indicate that a copy has been sent to all parties." (Emphasis added.)~~

Examination of the Petition for Modification discloses that it seeks reversal of the findings, conclusions, and order of D.83-06-035. These are not minor modifications within the purview of Rule 43. The amendment seeks to conduct discovery.

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