
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



Agenda ID #5346

March 1, 2006

TO: PARTIES INTERESTED IN RESOLUTION ALJ-190

This draft resolution will be on the agenda at the April 13, 2006 Commission meeting. The Commission may then vote on this draft resolution, or it may postpone a vote.

When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own order. Only when the Commission acts does the resolution become binding on the parties.

Any person may serve comments on the draft resolution. Opening comments shall be served no later than March 13, 2006. Service is required on all parties shown on the attached service list.

Finally, comments must be served on Administrative Law Judge Hallie Yacknin and, for that purpose, I suggest hand delivery, overnight mail or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin
Chief Administrative Law Judge

ALM:h12

attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-190
Administrative Law Judge Division

RESOLUTION

RESOLUTION ALJ-190. Modifies the Rules Governing Submittal of Prepared Testimony in Arbitrations under Section 252 of the Telecommunications Act of 1996, and Clarifies the Rule Governing Submittal of Prepared Testimony in support of other Applications.

Rule 2.7(b) of the Commission's Rules of Practice and Procedure provides that, "[e]xcept as otherwise required or permitted by these Rules or the Commission's decisions, General Orders, or resolutions, testimony and exhibits shall not be filed with the Docket Office."

Notwithstanding Rule 2.7(b), the practice of many applicants has been to file, or to tender to the Docket Office for filing, prepared testimony in support of their applications or (in the case of energy utility general rate case applications) Notices of Intent.

In addition, Resolution ALJ-181, updating the rules implementing the provisions of Section 252 of the Telecommunications Act of 1996, deviates from Rule 2.7(b) by requiring applicants to include prepared testimony with requests for arbitration filed with or tendered to Docket Office.

Upon review of these disparate practices and procedures, we conclude that there is no need for the filing of prepared testimony in support of Section 252 arbitration requests or any other formal filing. The mere filing of prepared testimony does not give it evidentiary weight; that is accomplished by its admission into the record of the proceeding. If prepared testimony is filed and subsequently admitted into the record, it results in the duplication of records in the formal file. Timely service of prepared testimony can be achieved without requiring that it be filed. For all these reasons, the filing or tendering of prepared testimony is unnecessarily burdensome for the Commission, which must process and maintain the formal records of proceedings, and for parties.

Today we approve revisions to the rules governing filings made pursuant to the Telecommunications Act of 1996 to repeal their provisions deviating from Rule 2.7(b), and to clarify that prepared testimony issued in support of such filings at the time they are made shall not be filed or tendered to Docket Office, but shall be served on the persons upon whom the filing is served together with the filing, and on the Administrative Law Judge or, if none is yet assigned, on the Chief Administrative Law Judge. This resolution also serves as notice and clarification that this procedure applies to all prepared testimony issued in support of a filing at the time the filing is made, except as otherwise required or permitted by Commission decision, General Order, or resolution, pursuant to Rule 2.7(b).

A draft of this resolution was issued on February 10, 2006, for public review and comment. Comments were filed on _____.

IT IS RESOLVED that the revisions set forth in Appendix A shall govern the submittal of prepared testimony in proceedings pursuant to the Telecommunications Act of 1996. It is further resolved that the procedures set forth therein apply to all prepared testimony issued in support of a filing at the time the filing is made, except as otherwise required or permitted by Commission decision, General Order, or resolution.

This resolution is effective today.

I certify that this resolution was adopted by the Public Utilities Commission at its regular meeting on _____, the following Commissioners approving it:

STEVE LARSON
Executive Director

APPENDIX A

*Interim Rules for Electronic Filing of Documents*REVISIONS TO RULES GOVERNING FILINGS MADE PURSUANT TO
TELECOMMUNICATIONS ACT OF 1996, Resolution ALJ-181**Rule 3.3 Content**

[Part d is amended as follows:]

- d. Direct testimony supporting the requester's position on factual predicates underlying disputed issues. Notwithstanding any other provision of these rules, the requester's prepared direct testimony shall not be filed or tendered to the Docket Office, but shall be served together with the request for arbitration. In addition, the requester shall serve its prepared direct testimony on the Administrative Law Judge or, if none is yet assigned, on the Chief Administrative Law Judge.

Rule 3.6 Opportunity to Respond

Pursuant to Subsection 252(b)(3), any party to a negotiation which did not make the request for arbitration ("respondent") shall file a response with the Commission within 25 days of the request for arbitration. In the response, the respondent shall address each issue listed in the request, describe the respondent's position on these issues, and identify and present any additional issues for which the respondent seeks resolution and provide such additional information and evidence necessary for the Commission's review. Building upon the contract language proposed by the applicant and using the form of agreement selected by the applicant, the respondent shall include, in the response, a single-text mark-up document containing the language upon which the parties agree and, where they disagree, both the applicant's proposed language (bolded) and the respondent's proposed language (underscored). Finally, the response should contain any direct testimony supporting the respondent's position on underlying factual predicates. On the same day that it files its response before the Commission, the respondent must serve a copy of the Response and all supporting documentation on any other party to the negotiation. Notwithstanding any other provision of these rules, respondent's prepared

direct testimony shall not be filed or tendered to the Docket Office, but shall be served together with the request for arbitration. In addition, respondent shall serve its prepared direct testimony on the Administrative Law Judge or, if none is yet assigned, on the Chief Administrative Law Judge.

(END OF APPENDIX A)