BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's post-2005 Energy Efficiency Policies, Programs, Evaluation, Measurement and Verification, and Related Issues.	**FILED** **PUBLIC UTILITIES COMMISSION** **APRIL 13, 2006** **SAN FRANCISCO, CALIFORNIA** **RULEMAKING 06-04-010**

ORDER INSTITUTING RULEMAKING

I. Summary

This Order Instituting Rulemaking (OIR) will address the Commission's policies, programs and evaluation, measurement and verification (EM&V) activities related to post-2005 energy efficiency activities administered by Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company ("the utilities").[1] We recognize the need to open a new rulemaking that addresses future energy efficiency activities in light of the Commission's adoption of aggressive energy savings goals for post-2005 portfolio achievements, as well as the policies of the Energy Action Plan and this Commission to place cost-effective energy efficiency first in the loading order for resource procurement.

[1] For the purpose of this Rulemaking, energy efficiency programs exclude low-income assistance activities, including the Low-Income Energy Efficiency (LIEE) program. LIEE and other low-income assistance programs continue to be addressed in our generic low-income energy efficiency Rulemaking (R.) 01-08-027 and related proceedings.

The focus of our efforts in this rulemaking will be to further refine the policies, programs and EM&V related to the "next generation" of energy efficiency activities in 2006 and beyond. In particular, consistent with our direction in Decision (D.) 05-09-043, we will evaluate a shareholder risk/reward incentive mechanism for energy efficiency as the next priority:

> "[W]e believe that the roll out of this next generation of energy efficiency in early 2006 should be closely followed by a determination on the risk/reward incentive mechanism that will apply to, at a minimum, the energy efficiency programs that are designed primarily to replace more costly supply-side options ("resource programs"), including codes and standards advocacy programs. We have accomplished the groundwork for fully developing such a mechanism by addressing administrative structure issues and threshold EM&V issues related to performance incentives earlier this year in R.01-08-018.
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> "[W]e believe that this should be the next priority for our energy efficiency, and direct the Assigned Commissioner in R.01-08-028 to establish a schedule for addressing this issue in that proceeding, or its successor proceeding, as soon as practicable. Per D.03-12-062, we will closely coordinate with our other resource proceedings, in order to ensure that the development of an energy efficiency risk/reward incentive mechanism is consistent with the overall procurement incentive policies being developed in R.04-04-003. We will also coordinate the development of a risk/reward mechanism with the post-compliance phase updating process we have established today." [2]

[2] D.05-09-043 in Application 05-06-004 et al., *mimeo*., pp. 165-166.

By D.06-02-032 in R.04-04-003, we reiterated our intent to develop energy efficiency shareholder incentives in coordination with the procurement incentive framework established by that decision.[3]

Accordingly, we will proceed expeditiously with the development of shareholder risk/reward incentive mechanism for energy efficiency in this rulemaking. This rulemaking will also be the forum for considering further refinements to the EM&V protocols pursuant to the expedited review process established in D.05-04-051. As warranted, in this rulemaking we will also address refinements to the energy efficiency policy rules, including reporting requirements via the procedures for modifying those rules adopted in D.05-04-051.[4]

For the longer term, we plan in this rulemaking to update our energy efficiency savings goals based on further studies of energy efficiency potential. This rulemaking, or its successor proceeding, will also be the forum for initiating the next planning cycle for 2009-2011 energy efficiency program plans, funding levels, and related issues.

II. Preliminary Scoping Memo

The preliminary scoping memo for this rulemaking is presented in the following sections. We have identified the following major categories of energy efficiency issues: 1) Shareholder Risk/Reward Incentive Mechanism, 2) EM&V, 3) Refinements to Policy Rules and Reporting Requirements, 4) Updates to Energy Efficiency Potentials Studies and Savings Goals, 5) Implementation of

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[3] D.06-02-032 in R.04-04-003, *mimeo*., pp. 31-32 and Ordering Paragraph 7.

[4] See D.05-04-051, Attachment 3, Rule XI.

2006-2008 Portfolio Plans and Planning Process for 2009-2011 Program Cycle, and 6) Transition Issues and Filings Related to Pre-2006 Programs.

A. Shareholder Risk/Reward Incentive Mechanism

This proceeding will develop a shareholder risk/reward incentive mechanism for energy efficiency consistent with the policy rules, performance basis and associated updating/true-up determinations adopted in R.01-08-028 and related proceedings. We will evaluate all aspects of such a mechanism, including consideration of the following issues:

- How to provide utilities with an opportunity to earn financial rewards for their shareholders balanced by the risk of financial penalties for poor performance. (D.06-02-032, *mimeo*., p. 31.)
- How to ensure that shareholder incentives are paid on a portfolio of energy efficiency programs only if the portfolio performs better than the supply-side resources it was intended to replace. (D.05-04-051, *mimeo*., p. 41.)
- How to establish a minimum performance threshold for shareholder incentive payments that is tied to Commission-adopted kilowatt, kilowatt-hour and therm savings goals, including the consideration of whether savings from pre-2006 codes and standards advocacy work will count towards this threshold. (D.05-04-051, *mimeo*., p. 43 and Ordering Paragraph 6; D.05-09-043, *mimeo*., p. 132 and Attachment 10.)
- How to ensure that the design of energy efficiency-specific incentives works in tandem with the concept of a "greenhouse gas allowance sales" incentive mechanism discussed in D.06-02-032, in order to eliminate any potential double-counting of financial rewards or penalties. (D.06-02-032, *mimeo*., pp. 34-35.)
- Whether shareholder incentive payments under this risk/reward mechanism will be included (as a cost) in the

energy efficiency tests of cost-effectiveness. (D.05-04-051, *mimeo*., p. 23.)

B. EM&V

In the EM&V phase of this proceeding, we will continue to augment and/or refine our EM&V protocols and study plans, as needed, for the evaluation of energy efficiency performance for portfolio and program planning, performance basis updating and resource planning purposes. As discussed in D.05-09-043, in this phase we will also explore timing and baseline issues related to the calculation of the performance basis for codes and standards work, and related EM&V activities.[5]

We have identified in previous decisions and rulings a myriad of EM&V activities that require ongoing attention during the 2006-2008 program cycle, including: (1) developing remaining evaluator "how to" protocols and process and review protocols for post-2005 programs, (2) finalizing detailed EM&V study plans for all 2006-2008 programs and associated Requests for Proposals for EM&V contractors, (3) updating the Database for Efficiency Resources (DEER) using the results of ex post (post-installation) measurement studies, (4) informing resource planners of the ex post study results and updated savings estimates for energy efficiency, (5) coordinating the study parameters for the 2005 load impact study being performed for the low-income energy efficiency program with the EM&V efforts underway in this proceeding, and (6) addressing ongoing EM&V contract and data management activities. By D.05-04-051, the Commission directed that EM&V protocols be developed under an expedited review process, so they can be put in place as quickly as possible during the 2006-2008 program

[5] D.05-09-043, *mimeo*., pp. 130-134, and Attachment 10.

cycle. We retain this expedited review process for ongoing EM&V protocol development in the rulemaking we open today.[6]

C. Refinements to Policy Rules and Reporting Requirements

By D.05-04-051, the Commission updated the existing Energy Efficiency Policy Manual to reflect policy rules (Rules) that articulate Commission objectives for energy efficiency, and that provide guidance to the utility program administrators, program implementers and interested parties for the development of program portfolios for 2006 and beyond. Among other things, the Rules describe threshold requirements for cost-effectiveness, and discuss how to calculate and present cost-effectiveness results for our consideration. They also summarize the Commission's determinations in D.05-01-055 regarding competitive bidding, advisory groups, affiliate rules and other administrative structure issues. In addition, the Rules describe the Commission's expectations regarding the information that program administrators will file with their program planning applications and during program implementation. They also describe the process for updating the Energy Efficiency Policy Manual in the future, provide a guide to reference documents and include a list of common terms and definitions.[7]

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[6] For a discussion of the required protocols and expedited review process established in R.01-08-028, see D.05-04-051, pp. 67-73, Ordering Paragraphs 11-15; see also *Administrative Law Judge's Ruling on EM&V Protocol Issues,* September 2, 2005, pp. 15-20; *Administrative Law Judge's Ruling Adopting Protocols for Process and Review of Post-2005 EM&V Activities*, January 11, 2006, pp. 1-3, Attachment 1.

[7] See D.05-04-051, Attachment 3.

This rulemaking will be the forum for considering refinements to the Rules using the informal or formal procedural vehicles provided for in Rule XI. We cannot anticipate at this time the precise scope of these refinements, but note that the Commission has recently identified one area to explore further; namely, the embedded (or "upstream") energy savings associated with water efficiency:

> "We believe that the energy efficiency rulemaking, where we address policy rules and definitions for energy efficiency applications on a generic basis, is the appropriate forum for considering these embedded energy savings issues. Consistent with the procedures we have established for updating those rules and definitions [footnote omitted], we will direct the Assigned Commissioner to explore the issue of counting embedded energy savings associated with water efficiency by informal or formal procedural vehicles in our rulemaking proceeding ….We recognize that there are many tasks and priorities for the coming weeks and month's set forth in today's decision, and therefore leave to the Assigned Commissioner to determine the appropriate schedule for considering this issue further.[8]

In addition, the Administrative Law Judge (ALJ) issued a ruling on February 21, 2006 adopting the "first generation" of post-2005 reporting requirements under the Rules and directed that further work be undertaken by Energy Division to develop an annual report format during the fall of 2006.[9] The development of that report format and ongoing refinements to reporting requirements will also be undertaken in this proceeding.

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[8] D.05-09-043, *mimeo.*, pp. 168-169.

[9] *Administrative Law Judge's Ruling on Reporting Requirements*, February 21, 2006 in R.01-08-028, p. 3.

D. Updates to Energy Efficiency Potential Studies and Savings Goals

In this rulemaking, we will also update the energy efficiency savings goals adopted in D.04-09-060 in preparation for the 2009-2011 program cycle. For this purpose, Energy Division and California Energy Commission (CEC) staff[10] have been directed to prepare recommendations for such adjustments "based on updated savings potentials studies, accomplishment data, changes to mandatory efficiency standards and other evaluation studies and factors that staff deems appropriate."[11] During this process, we will also explore the questions posed in D.05-09-043 regarding the manner in which the baseline for these future potential studies should be established, and the related issue of how codes and standards advocacy work should count towards the goals established for subsequent program cycles.[12]

E. Implementation of 2006-2008 Portfolio Plans and Planning Process for 2009-2011 Program Cycle

Under the post-2005 administrative structure for energy efficiency, utility program administrators, their advisory groups, and collaborative staff will meet on an ongoing basis throughout the implementation of 2006-2008 portfolio plans, as well as during the development of 2009-2011 portfolio plans that will be submitted by the utilities for Commission consideration. This rulemaking will

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[10] The Assigned Commissioner, the Chief ALJ, and the Director of the Energy Division shall work with the CEC to define the PUC and CEC staffs' (collaborative staff) respective roles and responsibilities.

[11] D.04-09-060, Ordering Paragraph 3.

[12] D.05-09-043, *mimeo.*, p. 132 and Attachment 10.

serve as the procedural forum for notices, rulings or other determinations, as needed, for such activities that occur over the next 18 months.

In addition, this rulemaking will address utility and other efforts associated with the implementation of Executive Order S-20-04 (Green Buildings Initiative), which seeks to increase energy efficiency in State-owned and other commercial buildings throughout California.

F. Transition Issues and Filings Related to Pre-2006 Programs

Today, we close R.01-08-028. In doing so, we recognize that there are some outstanding EM&V and reporting issues related to 2004-2005 energy efficiency programs that may need to be addressed as we transition to the implementation of the utilities' 2006-2008 portfolio plans. In particular, for the 2004-2005 programs the Commission required ALJ approval of final evaluation plans and contractor selection for statewide programs and overarching studies.[13] Some of the contractor selections are still underway for these evaluation activities. Evaluation reports for 2005 program activities will continue to be submitted to the Commission, as they are completed, and a docket will need to be identified for that purpose. This rulemaking will now serve as the procedural forum for these and other transition issues or filings related to pre-2006 energy efficiency programs that were to be addressed in R.01-08-028.

III. Category of Proceeding

Rule 6(c)(2) of our Rules of Practice and Procedure provides that the order instituting rulemaking "shall preliminarily determine the category" of the

[13] Ordering Paragraph 13 of D.03-12-060, as modified by D.04-02-059.

proceeding. We believe that the issues in this proceeding may fit more than one category as defined in Rule 5. Accordingly, pursuant to Rule 6.1(b), we preliminarily determine that the subject matter of this proceeding should be divided into two phases for the purpose of establishing the category of this proceeding. Phase 1 consists of the issues identified under Sections II.A and II.B above (Shareholder Risk/Reward Incentive Mechanism and EM&V), and should be categorized as "ratesetting," as that term is defined in Rule 5(c). We preliminarily determine that ratesetting is the most suitable category for this subject matter, since the incentive payments that result from the risk/reward incentive mechanism will have an impact on utility rates, and many of the EM&V protocols and related EM&V determinations will be linked to that mechanism to determine future incentive payments.

For the purpose of determining category under Rule 6.1(b), Phase 2 consists of all other issues identified in the preliminary scoping memo, i.e., in Sections II.C., II.D and II.E above. Our preliminary determination is that the category of "quasi-legislative," as that term is defined in Rule 5(d), is the most suitable category for this subject matter.

IV. Respondents and Service List

The Respondents to this rulemaking are Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company.

The service lists in R.01-08-028 and A.05-06-004 *et al*. shall serve as the temporary service list in this proceeding. A permanent service list shall be established at the first prehearing conference (PHC). Persons who wish to become a "party" to this proceeding should appear at the first PHC and fill out the "Notice of Party/Non-Party Status" form (appearance form) at that time.

Service of documents in this proceeding shall be made by electronic mail consistent with the Commission's Rules of Practice and Procedure 2.3 and 2.3.1. In addition, a hard copy of all documents shall be mailed to the ALJ and Commissioner.

V. Schedule

The Assigned Commissioner or ALJ shall schedule a PHC as soon as practicable. A preliminary schedule for this proceeding will be discussed at the first PHC. Those who wish to file comments on the issues identified in this OIR shall submit and serve their comments in accordance with the schedule identified at the first PHC, or established by Assigned Commissioner or ALJ ruling.

Consistent with Rule 6(e), we expect this proceeding to be concluded within 18 months.

VI. Objection to Category

Any person who objects to the preliminary categorization of this rulemaking shall raise such objection no later than 10 calendar days after the Commission issues this OIR.

VII. *Ex Parte* Communications

This proceeding is subject to Rule 7, which specifies standards for engaging in *ex parte* communications and the reporting of such communications. Appendix B sets forth Rule 7 and Rule 7.1 *ex parte* restrictions and reporting requirements. These requirements become effective upon the issuance of this OIR, based on the preliminary determination of category discussed above. Following the Assigned Commissioner's appealable determination of category, the applicable *ex parte* communication and reporting requirements shall depend

on such determination unless and until the Commission modifies the determinations pursuant to Rule 6.4 or 6.5.

Therefore, **IT IS ORDERED** that:

1. A rulemaking is instituted on the Commission's own motion to examine post-2005 energy efficiency policies, programs, evaluation, measurement and verification, and related issues.

2. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and the Southern California Gas Company are Respondents to this proceeding.

3. The Executive Director shall cause this Order Instituting Rulemaking to be served on Respondents, the California Energy Commission, and the service lists in Rulemaking (R.) 01-08-028 and Application (A.) 05-06-004 *et al*. Those organizations and individuals listed under the state service list and information-only categories will be served electronically only.

4. The service lists in R.01-08-028 and A.05-06-004 *et al*. shall serve as the temporary service list in this proceeding. A permanent service list shall be established at the first prehearing conference (PHC). Persons who wish to become a "party" to this proceeding should appear at the first PHC and fill out the "Notice of Party/Non-Party Status" form (appearance form) at that time.

5. The category for Phase 1 of this rulemaking, as defined herein, is preliminarily determined to be "ratesetting" as that term is defined in Rule 5(c) of the Commission's Rules of Practice and Procedure.

6. The category for Phase 2 of this rulemaking, as defined herein, is preliminarily determined to be "quasi-legislative" as that term is defined in Rule 5(d) of the Commission's Rules of Practice and Procedure.

7. Any person who objects to the preliminary categorization of this rulemaking shall raise such objection no later than 10 calendar days after the Commission issues this OIR.

8. R.01-08-028 is closed. As discussed herein, this rulemaking will now serve as the procedural forum for transition issues or filings related to pre-2006 energy efficiency programs that would otherwise have been addressed or filed in R.01-08-028.

9. All comments and other filings in this rulemaking shall be served pursuant to the Electronic Service Protocols attached as Appendix A hereto, and consistent with Rules 3.2 and 3.2.1.

10. As soon as practicable, the Assigned Commissioner or Administrative Law Judge shall schedule a PHC in this rulemaking.

This order is effective today.

Dated April 13, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

APPENDIX A
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ELECTRONIC SERVICE PROTOCOLS

These electronic service protocols are applicable to all "appearances" and individuals/organizations on the "state service" list that serve comments or other documents in this proceeding.

I. Party Status in Commission Proceedings

In accordance with Commission practice, by entering an appearance at a hearing or by other appropriate means, an interested party or protestant gains "party" status. A party to a Commission proceeding has certain rights that non-parties do not have. For example, a party has the right to participate in evidentiary hearings, file comments on a proposed decision, and appeal a final decision. A party also has the ability to consent to waive or reduce a comment period, and to challenge the assignment of an Administrative Law Judge (ALJ). Non-parties do not have these rights, even though they are included on the service list for the proceeding and receive copies of some or all documents.

Non-parties may participate in this proceeding under either the "state service" or "information only" categories. Commission staff members, divisions or branches, Legislators or their staff members, and state agencies or their staff members may participate as under the state service category. They will be allowed to file comments or other documents on issues in this rulemaking, at the direction of the assigned ALJ(s) or Assigned Commissioner.

Those who request to be categorized as "information only" will receive all Commission-generated notices of hearings, rulings proposed decisions and Commission decisions at no charge. However, individuals on the "information

only" list will not receive copies of pleadings or other filings in this proceeding, and may not comment on the issues in this proceeding, unless they later apply for party status.

II. Service of Documents by Electronic Mail

For the purposes of this proceeding, all individuals in appearance and state service categories shall serve documents by electronic mail, and in turn, shall accept service by electronic mail consistent with Rule 2.3 and 2.3.1. In addition, paper copies shall be served on the Assigned Commissioner and assigned ALJ(s).

III. Notice of Availability

If a document, including attachments, exceeds 75 pages, parties may serve a Notice of Availability in lieu of all or part of the document, in accordance with Rule 2.3(c) of the Commission's Rules of Practice and Procedure. However, paper copies of that document shall be served on the Assigned Commissioner and the assigned ALJ(s).

IV. Filing of Documents

These electronic service protocols govern service of documents only, and do not change the rules regarding the tendering of documents for filing. Documents for filing must be tendered in paper form, as described in Rule 2, et. seq., of the Commission's Rules of Practice and Procedure.

V. Obtaining Up-to-Date Electronic Mail Addresses

An up-to-date service list of electronic mail addresses is posted by Process Office on the web at:
http://www.cpuc.ca.gov/published/service_lists/sl_index.htm

To view and copy the electronic addresses for a service list, download the comma-delimited file, and copy the column containing the electronic addresses.

The Commission's Process Office periodically updates service lists to correct errors or to make changes at the request of parties and non-parties on the list. Parties should go to the website listed above (or obtain paper copy from the Process Office) before serving a document. Parties should not "bookmark" the web page for future use, since it may not reflect the most up-to-date listings on the service list.

VI. Pagination Discrepancies in Documents Served Electronically

Differences among word-processing software can cause pagination differences between documents served electronically and print outs of the original. (If documents are served electronically in PDF format, these differences do not occur. For the purposes of reference and/or citation (e.g., at the Final Oral Argument, if held), parties should use the pagination found in the original document.

(END OF APPENDIX A)

APPENDIX B
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RESTRICTIONS AND REPORTING OF *EX PARTE* COMMUNICATIONS

7. (Rule 7) Ex Parte Communications--Applicable Requirements

(a) The requirements of this subsection shall apply to ex parte communications during the period between the beginning of a proceeding and the determination of the category of that proceeding, including the decision by the Commission on any appeal of such determination. After determination of the category, the requirements of subsection (b), (c), or (d) of this rule shall apply, as appropriate.

(1) In a proceeding initiated by application filed after January 1, 1998, the requirements of subsection (c) shall apply during the period between the filing and the Commission's preliminary determination of category pursuant to Rule 6(a)(1), after which the requirements of subsection (b), (c), or (d) shall apply, depending on the preliminary determination. After the assigned Commissioner's appealable determination of category under Rule 6(a)(3), the applicable requirements shall depend on such determination unless and until it is modified by the Commission pursuant to Rule 6.4 or 6.5(a).

(2) In a proceeding initiated by complaint filed after January 1, 1998, regardless of the complainant's proposed category for the proceeding, ex parte communications shall be prohibited until the date of service of the instructions to answer, after which the applicable requirements shall depend on the determination of category in the instructions to answer, unless and until such determination is modified by the Commission pursuant to Rule 6.4.

(3) In a proceeding initiated after January 1, 1998, by order instituting investigation or order to show cause, the requirements of subsection (b), (c), or (d) shall apply, depending on the order's determination of category, unless and until such determination is modified by the Commission pursuant to Rule 6.4.

(4) In a proceeding initiated after January 1, 1998, by order instituting rulemaking, the requirements of subsection (b), (c), or (d) shall apply, depending on the order's preliminary determination of category. After

the assigned Commissioner's appealable determination of category, the applicable requirements shall depend on such determination unless and until it is modified by the Commission pursuant to Rule 6.4 or 6.5(a).

(5) In a proceeding to which this Article applies by virtue of Rule 4(b)(2), the requirements of subsection (b), (c), or (d) shall apply, depending on the preliminary determination of category pursuant to Rule 6(d). After the assigned Commissioner's appealable determination of category, the applicable requirements shall depend on such determination unless and until it is modified by the Commission pursuant to Rule 6.4 or 6.5(a).

(b) In any adjudicatory proceeding, ex parte communications are prohibited.

(c) In any ratesetting proceeding, ex parte communications are permitted only if consistent with the following restrictions, and are subject to the reporting requirements set forth in Rule 7.1:

(1) Oral ex parte communications are permitted at any time with a Commissioner provided that the Commissioner involved (i) invites all parties to attend the meeting or sets up a conference call in which all parties may participate, and (ii) gives notice of this meeting or call as soon as possible, but no less than three days before the meeting or call.

(2) If an ex parte communication meeting or call is granted by a decisionmaker to any party individually, all other parties shall be sent a notice at the time that the request is granted (which shall be no less than three days before the meeting or call), and shall be offered individual meetings of a substantially equal period of time with that decisionmaker. The party requesting the initial individual meeting shall notify the other parties that its request has been granted, at least three days prior to the date when the meeting is to occur. At the meeting, that party shall produce a certificate of service of this notification on all other parties. If the communication is by telephone, that party shall provide the decisionmaker with the certificate of service before the start of the call. The certificate may be provided by facsimile transmission.

(3) Written ex parte communications are permitted at any time provided that the party making the communication serves copies of the

communication on all other parties on the same day the communication is sent to a decisionmaker.

(4) Prohibitions on Ex Parte Communications:

(i) Prohibition of Ex Parte Communications When a Ratesetting Deliberative Meeting is Not Scheduled or When a Ratesetting Decision is Held.

In any ratesetting proceeding, the Commission may establish a period during which no oral or written communications on a substantive issue in the proceeding shall be permitted between an interested person and a Commissioner, a Commissioner's personal advisor, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, or the assigned Administrative Law Judge. Such period shall begin not more than 14 days before the Commission meeting date on which the decision in the proceeding is scheduled for Commission action. If the decision is held, the Commission may permit such communications for the first half of the hold period, and may prohibit such communications for the second half of the period, provided that the period of prohibition shall begin not more than 14 days before the Commission meeting date to which the decision is held.

(ii) Prohibition of Ex Parte Communications When a Ratesetting Deliberative Meeting is Scheduled:

In all ratesetting proceedings in which a hearing has been held, a proposed decision has been filed and served, and a Ratesetting Deliberative Meeting has been scheduled, there shall be a prohibition on communications as provided in this subsection.

The first day of the prohibition on communications will be the day of the Ratesetting Deliberative Meeting at which the proposed decision is scheduled to be discussed and will continue through the conclusion of the Business Meeting at which a vote on the proposed decision is scheduled. If a proposed decision is held at the Business Meeting, when the hold is announced, the Commission will also announce

whether and when there will be a further prohibition on communications, consistent with the provisions of subparagraph (i).

(d) In any quasi-legislative proceeding, ex parte communications are allowed without restriction or reporting requirement.

(e) The requirements of subsections (b) and (c) of this rule, and any reporting requirements under Rule 7.1, shall cease to apply, and ex parte communications shall be permitted, in any proceeding in which (1) no timely answer, response, protest, or request for hearing is filed after the pleading initiating the proceeding, (2) all such responsive pleadings are withdrawn, or (3) there has been a final determination that a hearing is not needed in the proceeding. However, if there has been a request for hearing, the requirements continue to apply unless and until the request has been denied.

(f) Ex parte communications concerning categorization of a given proceeding are permitted, but must be reported pursuant to Rule 7.1(a).

(g) When the Commission determines that there has been a violation of this rule or of Rule 7.1, the Commission may impose penalties and sanctions, or make any other order, as it deems appropriate to ensure the integrity of the record and to protect the public interest.

7.1. (Rule 7.1) Reporting Ex Parte Communications

(a) Ex parte communications that are subject to these reporting requirements shall be reported by the interested person, regardless of whether the communication was initiated by the interested person. An original and seven copies of a "Notice of Ex Parte Communication" (Notice) shall be filed with the Commission's San Francisco Docket Office within three working days of the communication. The Notice shall include the following information:

(1) The date, time, and location of the communication, and whether it was oral, written, or a combination;

(2) The identities of each decisionmaker involved, the person initiating the communication, and any persons present during such communication;

(3) A description of the interested person's, but not the decisionmaker's, communication and its content, to which description shall be attached a copy of any written, audiovisual, or other material used for or during the communication.

(b) These reporting requirements apply to ex parte communications in ratesetting proceedings and to ex parte communications concerning categorization. In a ratesetting proceeding, communications with a Commissioner's personal advisor also shall be reported under the procedures specified in subsection (a) of this rule.

(END OF APPENDIX B)