

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Resolution ALJ-180  
Administrative Law Judge Division  
May 4, 2000

**R E S O L U T I O N**

RESOLUTION ALJ-180. To adopt a new protocol for closed session deliberation of ratesetting proposed decisions (ratesetting deliberative meetings) and the related prohibition on ex parte communications (quiet time) imposed by Rule 7(c)(4) of the Commission Rules of Practice and Procedure.

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Since January 1, 1998, the Commission has had authority under Senate Bill 960 (Pub. Util. Code § 1701.3(c)), to conduct closed session deliberations in ratesetting proceedings before adopting a proposed decision. The Commission's practice pursuant to Resolutions ALJ-175, adopted on February 4, 1998, and ALJ-177, adopted on June 8, 1998, has been to automatically schedule a ratesetting deliberative meeting in all ratemaking proceedings in which a hearing has been held and a proposed decision has been filed and served. Further, under Rule 7(c)(4)<sup>1</sup> in all ratemaking proceedings, the Commission imposes a period of "quiet time," as required by § 1701.3(c) in order to hold a closed session (ratesetting deliberative meeting), which begins on the date of the Commission ratesetting deliberative meeting and continues through the conclusion of the Business Meeting at which a vote on the proposed decision is scheduled. If the vote on the proposed decision is held at the Business Meeting, the Commission announces at that time whether and when a further prohibition on ex parte communications will be in effect.

In this resolution, we resolve that ratesetting deliberative meetings will no longer be automatically scheduled for each ratemaking proceeding in which a hearing has been held and a proposed decision has been filed and served, but may be scheduled in such proceeding upon the request of any Commissioner. Since the purpose of the quiet time associated with ratesetting deliberative meetings is to allow the Commission to hold a closed session to discuss the proposed decision, it no longer makes sense to automatically schedule quiet time in ratesetting proceedings when a ratesetting deliberative meeting often may not be held.

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<sup>1</sup> All rule citations are to the Commission Rules of Practice and Procedure, unless otherwise specified.

Accordingly, we direct the Chief Administrative Law Judge to cause a notice of the proposed revision of Rule 7(c)(4) set forth in this resolution to be published in the California Regulatory Notice Register, and to take other necessary action to amend Rule 7(c)(4) to eliminate the automatic imposition of quiet time in ratesetting proceedings in which a hearing has been held and a proposed decision has been filed and served. In the meantime, under the authority of Rule 87, which allows the Commission to permit deviations from the Rules for good cause, we will continue imposing mandatory quiet time only when a ratesetting deliberative meeting has been scheduled at the request of a Commissioner or in other proceedings as determined by the Commission in its discretion.

### **History and Background**

Senate Bill 960 granted the Commission authority to discuss proposed ratesetting decisions in closed session, so long as the Commission has established a period of quiet time which does not exceed 14 days and conducts the ratesetting deliberative meeting during that time. See Pub. Util. Code § 1701.3(c). In Resolutions ALJ-175 and ALJ-177, the Commission adopted a new protocol to implement the authority to conduct closed session discussions granted by Senate Bill 960.

Resolution ALJ-175 provides that ratesetting deliberative meetings shall automatically be scheduled in all ratesetting proceedings in which a hearing has been held and a proposed decision has been filed and served. Before adopting this resolution, the Commission considered comments. Some commenters suggested that the Commission adopt a protocol in which, presumptively, a ratesetting deliberative meeting would not be held, unless by decision or ruling, closed session deliberation is set for a particular proceeding. These commenters argued that the presumption that no ratesetting deliberative meeting would be held would provide Commissioners with flexibility and maximum access to the parties affected by their decisions. However, the Commission determined that the automatic scheduling of a ratesetting deliberative meeting would enable the parties to anticipate the period of quiet time and to conduct ex parte communications with Commissioners before the quiet time takes effect. The Commission also reasoned that the consistent scheduling of ratesetting deliberative meetings and the associated period of quiet time would prevent disadvantage to any party who wished to confer with a Commissioner regarding a proposed decision and later discovered that the period of quiet time had begun.

Resolution ALJ-175 also proposed the adoption of new protocols for the imposition of quiet time associated with the ratesetting deliberative meetings, as follows:

In all ratesetting proceedings where hearings have been held and a proposed decision has been filed and served, there shall be a prohibition on communications as provided in Rule 7(c)(4).

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 of 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 requirements of Rule 7(c)(4).

Resolution ALJ-175 further directed the Chief Administrative Law Judge to publish these two protocols and to take necessary actions to incorporate them as amendments to Rule 7(c)(4).

On June 4, 1998, the Commission adopted Resolution ALJ-177, which formally amended Rule 7(c)(4) to include these two protocols as the second and third paragraphs of the Rule.<sup>2</sup>

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<sup>2</sup> As amended by Resolutions ALJ-177 and 179, Rule 7(c)(4) now reads as follows:

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.

In all ratesetting proceedings where hearings have been held and a proposed decision has been filed and served, 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 of 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

## Discussion

Since the adoption of Resolutions ALJ-175 and ALJ-177, the Commission has had several years of experience with decisionmaking pursuant to these protocols. Closed deliberations have been rare, and the required quiet time has been an unnecessary restriction on communications between Commissioners, the parties in the proceeding, and interested persons.

However, in some cases, Commissioners may wish to discuss a proposed ratesetting decision in closed session. In these cases, the Commission needs to continue to exercise the authority granted by Senate Bill 960 to conduct ratesetting deliberative meetings. Therefore, in this resolution, we provide that the Commission shall determine whether to schedule a ratesetting deliberative meeting and to impose the associated quiet time on a case-by-case basis.<sup>3</sup>

The most efficient way to implement this new protocol would be for any Commissioner who wishes to discuss an issue in closed session to request the scheduling of a ratesetting deliberative meeting. Upon the scheduling of the ratesetting deliberative meeting, the quiet time requirements stated in the second and third paragraphs of Rule 7(c)(4) would take effect.

The purpose of the amendment of Rule 7(c)(4) by Resolutions ALJ-175 and 177 was to implement the provisions of Senate Bill 960 that permit the Commission to conduct closed session discussions of proposed decisions in ratesetting proceedings, only if the Commission has established a period of quiet time and meets in closed session during that time. Since this resolution provides that the Commission will hold ratesetting deliberative meetings only if requested by a Commissioner, there is no reason to schedule quiet time in all ratesetting proceedings in which hearings have been held and a proposed decision has been filed and served. Further, it is unclear how the second and third paragraphs of Rule 7(c)(4) would apply when no ratesetting deliberative meeting is scheduled, because under these provisions, the first day of mandatory quiet time is the date of the ratesetting deliberative meeting.

Accordingly, we will exercise our authority under Rule 87, which permits deviations from the rules for good cause, to exempt ratesetting proceedings from the quiet time provisions of Rule 7(c)(4) when the Commission has not scheduled

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there will be a further prohibition on communications, consistent with the requirements of this subsection.

<sup>3</sup> Under its Rules of Practice and Procedure, the Commission may hold a ratesetting deliberative meeting in proceedings in which a hearing has been held and a proposed decision has been filed and served, but is not required to do so. See Rule 8.1(d).

a ratesetting deliberative meeting in a particular proceeding and no quiet time for that proceeding has been specifically ordered. Eliminating the automatic imposition of quiet time when no ratesetting meeting is scheduled will help to reduce confusion regarding the Commission's quiet time requirements and will yield a practical, common-sense result.

The Commission will retain discretion to establish a period of quiet time in ratesetting proceedings in which no ratesetting deliberative meeting is scheduled on a case-by-case basis.

In addition, in order to clarify the Commission rules and protocol related to quiet time in ratesetting proceedings, we propose to amend Rule 7(c)(4) as follows:<sup>4</sup>

(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 ~~where-in which~~ a ~~hearings has have~~ been held, ~~and~~ a proposed decision has been filed and served, and a

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<sup>4</sup> The proposed amendment of Rule 7(c)(4) is presented in a redlined format with new language underlined.

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 ~~of~~ 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 ~~requirements provisions~~ provisions of this subsection subparagraph (i).

### **Comments on Draft Resolution**

Pursuant to Pub. Util. Code § 311(g)(1), the Commission is required to serve certain decisions, including resolutions such as this one, on “parties” for public review and comment. This resolution was served in draft on the persons and entities who appear on the Commission’s service list for Rulemaking 99-11-021, filed November 18, 1999, for the purpose of revising settlement provisions in the Rules of Practice and Procedure on March 21, 2000. This service list includes all persons who generally monitor proposed changes to the Commission’s procedural rules.

Comments were filed by Pacific Gas and Electric Company (PG&E), on April 10, 2000. PG&E’s comments support the Commission proposed change in protocol for the scheduling of ratesetting deliberative meetings and the imposition of related quiet time set forth in this resolution.

### **IT IS RESOLVED** that:

In all ratesetting deliberative meeting in which a hearing has been held and a proposed decision has been filed and served, a ratesetting deliberative meeting shall be scheduled upon the request of any Commissioner. Pending an amendment of Rule 7(c)(4), we shall grant a deviation from Rule 7(c)(4) so as to impose mandatory quiet time only in proceedings in which a ratesetting deliberative meeting is scheduled or in which the Commission, in its discretion, has specifically established a quiet time.

The Chief Administrative Law Judge shall submit all required forms to the Office of Administrative Law preparatory to publishing the above revision of Rule 7(c)(4) in the California Regulatory Notice Register and shall cause a notice of the proposed amendment to be published in the California Regulatory Notice

Register. For purposes of such publication, the Chief Administrative Law Judge is authorized to propose nonsubstantive changes to the draft and to the existing Title 20 rules, wherever such nonsubstantive changes will improve the clarity, organization, or consistency of the Commission's Rules of Practice and Procedure.

No later than 45 days after publication of the notice of the proposed revision of Rule 7(c)(4) in the California Regulatory Notice Register, parties may mail an original and four copies of their comments in letter (rather than pleading) form, addressed to Administrative Law Judge Prestidge, and may e-mail a copy to Administrative Law Judge Prestidge at tom@cpuc.ca.gov. Parties shall also serve their comments on all parties to the Commission's service list for Rulemaking 99-11-021.

The Executive Director shall cause a copy of this resolution to be (1) served on all appearances in Rulemaking 99-11-021, and (2) published on the Commission's website ([www.cpuc.ca.gov](http://www.cpuc.ca.gov)). The Chief Administrative Law Judge shall cause to be published in the Daily Calendar a notice that ratesetting deliberative meetings and the associated quiet time will no longer be automatically scheduled.

Due to the need to eliminate any unnecessary restrictions on communications between Commissioners, and parties and interested persons in ratesetting proceedings, and to grant Commissioners additional flexibility in their schedules, this resolution becomes effective today.

I certify that this resolution was adopted by the Public Utilities Commission at its regular meeting on May 4, 2000, the following Commissioners approving it:

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN

Executive Director

LORETTA M. LYNCH  
President

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

CARL W. WOOD

Commissioners

ALJ/TOM/eap