

## DISCOVERY: CUSTOM AND PRACTICE GUIDELINES

The California Public Utilities Commission's (Commission's) limited formal rules for discovery are contained in Article 10 and Rules 11.3 and 11.7 of the Commission's Rules of Practice and Procedure.<sup>1</sup> The Commission is generally not bound by the formal rules for discovery found in the Code of Civil Procedure (CCP), although it may look to the CCP for guidance in resolving discovery disputes. These guidelines reflect customary discovery practices that have developed over time and are recognized by most experienced practitioners before the Commission. They are not part of the Commission's formal Rules of Practice and Procedure, and individual matters may require different approaches or processes depending on the specific case or matters being addressed.

- The conduct of the Commission's business is facilitated by the smooth exchange of information among the parties. Thus, as a general principle, discovery should proceed in a cooperative and efficient manner, differences should be resolved as much as possible among the parties, and a discovery dispute should be brought before the assigned Administrative Law Judge only as a last resort, after the parties' good faith efforts at resolution of the dispute have failed.
- Discovery may be propounded by any party on any other party, as defined by Rule 1.4. Parties may also propound discovery on a non-party through a subpoena, as provided in Rule 10.2. Unless otherwise required, discovery is not filed or served on service lists.
- The usual means of discovery on other parties is through "data requests" (*i.e.*, questions or requests for data, information or documents sent electronically or in writing to the party to respond). Depositions are allowed pursuant to Public Utilities Code Section 1794. Commission discovery practice generally does not use formal civil discovery tools, such as requests for admission, interrogatories, etc.
- The customary response time for data requests is 10 business days. The propounding party may indicate if a shorter response period is required or a longer response period is acceptable to it. A responding party may indicate if a longer response period is required, but should do so promptly and should indicate the date upon which the data response will be provided. Parties are encouraged to work together to identify a reasonable response time.
- If all or a portion of the information sought in discovery is considered proprietary or confidential by the responding party, the responding party will ordinarily propose that the propounding party execute a non-disclosure agreement. Parties are expected to negotiate in good faith with respect to the terms of such agreements. Additional time may be allowed to respond to discovery if necessary for the negotiation of a non-disclosure agreement with parties other than Commission staff; however, parties should not engage in undue delay as a litigation tactic.

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<sup>1</sup> [http://docs.cpuc.ca.gov/published/RULES\\_PRAC\\_PROC/105138.htm](http://docs.cpuc.ca.gov/published/RULES_PRAC_PROC/105138.htm)

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- The responding party may object to the data request and should make a reasonable effort to lodge its objection in a prompt manner after receiving the data request. However, objections are not waived if not made until the date when the responses themselves are due.
- Subject to any applicable confidentiality or non-disclosure requirements, a party to a proceeding may request copies of data requests/responses propounded by and on other parties in the same proceeding. If the party requesting copies wishes also to receive copies of future data requests/responses, it must affirmatively make such a request as part of its request for a copy of an individual data request, or separately.
- A responding party may provide its data response to the propounding party via e-mail or other mutually agreed-upon method. A responding party may satisfy the obligation to provide data requests/responses to any other parties by providing such data requests/responses via e-mail, posting data requests/responses on a website, or any other mutually agreed-upon method.
- A propounding or responding party may request a “meet & confer” to discuss a data request/response. For example, a meet & confer may be requested by a propounding party to discuss a non-responsive data response or by a responding party who wishes to clarify or intends to object to a data request. The goal of the meet & confer is for the parties to identify a mutually-acceptable resolution to the identified issue. Participation in a meet & confer does not waive the propounding party’s right to file a motion to compel a response to a data request or a responding party’s right to file a motion for a protective order; in fact, informal attempts to resolve discovery disputes are **required** prior to filing such motions (see Rule 11.3(a)).
- Data responses may be entered into the record through witness testimony or by other means, such as by stipulation.