

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED

01/09/26

04:59 PM

A2601006

Joint Application of the Public Advocates
Office, The Utility Reform Network and
Mussey Grade Road Alliance for
Rehearing of Resolution SPD-37.

Application

**JOINT APPLICATION OF THE PUBLIC ADVOCATES OFFICE, THE UTILITY
REFORM NETWORK, AND MUSSEY GRADE ROAD ALLIANCE FOR
REHEARING OF RESOLUTION SPD-37**

A. MIREILLE FALL

Energy Attorney for The Utility Reform
Network

The Utility Reform Network
360 Grand Avenue, #150
Oakland, CA 94610
Telephone: (415) 929-8876
E-mail: afall@turn.org

JOSHUA TEY

Attorney for Public Advocates Office

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (213) 576-7074
Email: Joshua.Tey@cpuc.ca.gov

DIANE J. CONKLIN

Spokesperson for Mussey Grade Road
Alliance

Mussey Grade Road Alliance
P.O. Box 683
Ramona, CA 92065
Telephone: (760) 787-0794
Email: dj0conklin@earthlink.net

January 9, 2026

TABLE OF CONTENTS

| | <u>Page</u> |
|---|--------------------|
| TABLE OF AUTHORITIES..... | ii |
| I. INTRODUCTION | 1 |
| II. BACKGROUND AND PROCEDURAL HISTORY | 3 |
| III. STANDARD OF REVIEW | 5 |
| IV. DISCUSSION..... | 5 |
| A. The Commission Must Follow the Commission’s Rules of Practice and Procedure. | 5 |
| B. The Commission Committed Reversible Legal Error by Establishing an “Application” without Defining Party Status as Required by the Rules of Practice and Procedure..... | 6 |
| C. The Commission Committed Error by Imposing a 15-Day Response Deadline Contrary to Rule 2.6 | 7 |
| D. The Failure to Define Party Status Deprives Stakeholders of Due Process, Including a Right to Discovery and a Meaningful Opportunity to be Heard | 7 |
| V. CONCLUSION | 10 |

TABLE OF AUTHORITIES

Page(s)

Cases

| | |
|---|---------|
| <i>Calaveras Telephone Co. v. Public Utilities Com.</i> (2019) 39 Cal.App.5th 972, 980 | 5 |
| <i>Consumers Lobby Against Monopolies v. Public Utilities Comm’n</i> , 25 Cal.3d 891 (1979) | 6, 8 |
| <i>Greene v. McElroy</i> , 360 U.S. 474, 507 (1959); <i>see also California Motel</i> <i>Assn. v. Industrial Welfare Comm’n</i> , 25 Cal.3d 212 (1979) | 5, 7, 8 |
| <i>People ex rel. Orloff v. Public Utilities Comm’n</i> , 31 Cal.3d 750 (1982) | 6 |
| <i>Sierra Club v. Public Utilities Comm’n</i> , 140 Cal.App.4th 1045 (2006) | 6 |
| <i>Wood v. Public Utilities Commission</i> (1971) 4 Cal.3d 288..... | 8 |

Commission Decisions

| | |
|-------------------|---|
| D.95-09-121 | 8 |
|-------------------|---|

California Public Utilities Code

| | |
|----------------|----------|
| 309.5(e) | |
| 1701.1 | 8, 9, 10 |
| 1705 | 9, 10 |

Commission Rules of Practice and Procedure

| | |
|--------------------|-------|
| Rule 1.4(a) | 6 |
| Rule 2.1-2.4 | 6 |
| Rule 2.6..... | 7 |
| Rule 2.6(a) | 7, 3 |
| Rule 10.1 | 9, 10 |
| Rule 16.1 | 1 |
| Rule 16.1(c) | 5 |

California Code Regulations. tit. 20

| | |
|-------------|---|
| § 1.1 | 6 |
| § 1.4 | 6 |
| § 6.1 | 6 |
| § 7.1 | 6 |

Senate Bill

| | |
|----------------------------|---------|
| Senate Bill (SB) 884 | 1, 3, 4 |
|----------------------------|---------|

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Joint Application of the Public Advocates
Office, The Utility Reform Network and
Mussey Grade Road Alliance for
Rehearing of Resolution SPD-37.

Application

**JOINT APPLICATION OF THE PUBLIC ADVOCATES OFFICE, THE UTILITY
REFORM NETWORK, AND MUSSEY GRADE ROAD ALLIANCE FOR
REHEARING OF RESOLUTION SPD-37**

I. INTRODUCTION

Pursuant to Rule 16.1 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates), The Utility Reform Network (TURN), and Mussey Grade Road Alliance (MGRA) submit this application for rehearing of Resolution SPD-37 (Resolution). The Resolution was adopted on December 4, 2025, and issued on December 10, 2025.

The Commission adopted Resolution SPD-15 on March 8, 2024, and established the guidelines and program under SB 884 to expedite the undergrounding of electrical corporations' distribution infrastructure.¹ Resolution SPD-37 realigns the procedures adopted in Resolution SPD-15 with the subsequently adopted 10-Year Electrical Undergrounding Plan Guidelines developed by the Office of Energy Infrastructure Safety,² and clarifies the process and requirements for review and conditional approval of SB 884 undergrounding cost applications that will be submitted to the Commission for approval by major utilities such as Pacific Gas and Electric (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric (SDG&E). The Resolution focuses on

¹ Resolution SPD-37, at 1.

² Energy Safety, *10-Year Electrical Undergrounding Plan Guidelines*, February 20, 2025.

oversight, data standards, auditability, and cost-reasonableness criteria to ensure that undergrounding projects demonstrably reduce wildfire risk and improve system reliability while protecting ratepayers.³ The Resolution itself does not authorize expenditures; instead, it sets up the general the framework and conditions under which specific undergrounding projects and associated costs may later be approved by the Commission through utility applications and audits.⁴

The Resolution establishes what it terms a joint “Phase 1 Application” process to resolve issues not addressed by the Resolution: including how Cost-Benefit Ratios (CBR) must be calculated, whether large electrical corporations’ proposed audit methodologies are adequate, and whether any additional conditions should be placed on what costs are allowed to be recovered through the one-way balancing account adopted in Resolution SPD-15.⁵ As part of the Phase 1 Application process, the Resolution provides: “Parties to the Phase 1 Application may respond to each of the large electrical corporations’ proposals and make counter proposals within 15 calendar days of the large electrical corporations’ filing(s).”⁶ The Resolution’s use of the terms “Parties” and “Application” indicates that the Phase 1 Application process is governed by the Commission’s Rules of Practice and Procedure applicable to formal proceedings, yet the Resolution establishes a process that is contrary to the rules.

By establishing the Phase 1 Application process in contravention to the Commission’s Rules of Practice and Procedure, the Resolution fails to provide prospective parties with a fair opportunity to be heard and violates their due process rights. For these reasons, as set forth below, the Commission should grant rehearing and issue an order modifying the Resolution to provide: a formal Application Process that

³ Resolution SPD-37, at 11.

⁴ Resolution SPD-37, at 10.

⁵ Resolution SPD-37, at 2.

⁶ Resolution SPD-37, at 30.

follows the Rules, a 30-day protest period,⁷ a formal discovery period, and a formal hearing process.

II. BACKGROUND AND PROCEDURAL HISTORY

Senate Bill (SB) 884 directed the Commission to establish a voluntary program to expedite the undergrounding of electric distribution facilities owned by large electrical corporations.⁸ SB 884 assigns distinct roles to the Office of Energy Infrastructure Safety (Energy Safety) and the Commission. Under the statute, Energy Safety reviews and approves utilities' ten-year electrical undergrounding plans, while the Commission is responsible for reviewing applications seeking conditional approval of undergrounding costs and ensuring that ratepayer-funded expenditures are reasonable and consistent with statutory and Commission requirements.⁹

On March 8, 2024, the Commission adopted Resolution SPD-15, which established the initial CPUC Guidelines for implementing SB 884. Resolution SPD-15 sets forth procedures for Commission review of utility undergrounding cost applications following Energy Safety's approval and adopts a one-way balancing account to track eligible costs, subject to conditions and future audit.¹⁰

Subsequent to SPD-15, Energy Safety adopted an updated 10-Year Electrical Undergrounding Plan Guidelines.¹¹ In response, the Commission issued a draft resolution proposing revisions to its SB 884 program guidelines to align Commission procedures with Energy Safety's updated framework and to refine cost recovery conditions, data requirements, and audit provisions. The Commission circulated the draft

⁷ Rule 2.6(a): [P]rotests or responses to an application must be filed within 30 days of notice in the Daily Calendar.

⁸ Resolution SPD-37, at 3.

⁹ Resolution SPD-37, at 3.

¹⁰ Resolution SPD-37, at 4.

¹¹ *Energy Safety Adopts 10-Year Electrical Undergrounding Plan Guidelines*, Office of Energy Infrastructure Safety (adopted February 20, 2025): <https://energysafety.ca.gov/news/2025/02/20/energy-safety-adopts-10-year-electrical-undergrounding-plan-guidelines> [Adoption date – February 20, 2025].

of Resolution SPD-37 for public comment on [DATE].¹² Cal Advocates filed Opening Comments on Resolution SPD-37 on September 4, 2025 and Reply Comments on September 9, 2025. TURN filed Opening Comments on Resolution SPD-37 on September 4, 2025 and Reply Comments on September 9, 2025.

On December 4, 2025, the Commission adopted Resolution SPD-37.¹³ Resolution SPD-37 revises the guidelines adopted in Resolution SPD-15 by modifying cost recovery conditions, expanding data and audit requirements, and establishing additional procedural mechanisms for Commission oversight of SB 884 undergrounding costs.¹⁴

Among other things, Resolution SPD-37 establishes a new “Phase 1 Application” process to address issues the Commission determined were unresolved by the Resolution itself, including the calculation of cost-benefit ratios, the adequacy of proposed audit methodologies, and the scope of costs eligible for recovery through the one-way balancing account.¹⁵ The Resolution directs large electrical corporations to file a joint Phase 1 Application on an expedited schedule and sets abbreviated response timelines, including only 15 calendar days for parties to that application to respond to the Phase 1 Applications.¹⁶

Resolution SPD-37 did not provide for a protest or response period consistent with the Commission’s Rules and did not establish a discovery or hearing process before requiring parties to respond to substantive proposals affecting billions of ratepayer dollars in future cost recovery and oversight. The procedural deadlines imposed in Resolution SPD-37 give rise to the legal errors addressed in this Application for Rehearing.

¹² Resolution SPD-37, at 5.

¹³ Resolution SPD-37, at 1. The Resolution was issued on December 10, 2025.

¹⁴ Resolution SPD-37, at 2.

¹⁵ Resolution SPD-37, at 2.

¹⁶ Resolution SPD-37, at 2, 7, 12, 25-30.

III. STANDARD OF REVIEW

SPD-37 contains legal error that must be corrected. “The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously.”¹⁷ Applications for rehearing must “set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and must make specific references to the record or law.”¹⁸ As set forth below, the Joint Parties demonstrate that SPD-37 errs by prejudicially failing to comply with the Commission’s Rules, and by failing to provide parties with due process of law.

IV. DISCUSSION

A. The Commission Must Follow the Commission’s Rules of Practice and Procedure.

The issue here is whether the Commission can, by way of a resolution, establish a process that is contrary to its established procedural rules. It cannot. The Commission is legally bound to comply with its own statutes, decisions, and Rules of Practice and Procedure, and failure to do so constitutes reversible legal error warranting rehearing.¹⁹

As the California Supreme Court has long held, an administrative agency “must comply with its own regulations” and acts arbitrarily when it departs from them without explanation or notice.²⁰ This principle applies with particular force to the CPUC, whose Rules, including rules governing party participation, notice, and the opportunity to be

¹⁷ Rule 16.1(c).

¹⁸ Rule 16.1(c).

¹⁹ *Calaveras Telephone Co. v. Public Utilities Com.* (2019) 39 Cal.App.5th 972, 980 (“[A] court of appeal will annul a decision by the Commission if the Commission failed to comply with its own rules and the failure was prejudicial.”)

²⁰ *Greene v. McElroy*, 360 U.S. 474, 507 (1959); see also *California Motel Assn. v. Industrial Welfare Comm’n*, 25 Cal.3d 200, 212 (1979) (agency action invalid where the agency failed to follow its own procedural rules).

heard“ have the force and effect of law.”²¹ ²² Where the Commission fails to adhere to these rules, it violates fundamental due process principles and exceeds its jurisdiction.²³

Here, SPD-37 errs by establishing a process that fails to define party status and fails to comply with established rules for response periods.

B. The Commission Committed Reversible Legal Error by Establishing an “Application” without Defining Party Status as Required by the Rules of Practice and Procedure

Resolution SPD-37 repeatedly characterizes the Phase 1 filing as an “Application” and refers to “Parties” who may file responses and counter-proposals. Under the Commission’s Rules, however, party status in an application proceeding is not automatic and must be established through the filing of a protest or motion for party status.²⁴ Despite invoking the terminology and structure of a formal application proceeding, Resolution SPD-37 does not identify how an interested person may become a party, does not provide for a protest or response period, and does not specify when party status attaches. The Resolution thus requires “Parties” to act before any mechanism exists for stakeholders to become parties under the Rules.²⁵

The Commission may not create a hybrid procedural construct that invokes the obligations of party participation while withholding the procedural mechanisms that confer party status. The Rules governing party participation have the force and effect of law, and the Commission acts in excess of its authority when it departs from them without notice or justification. Because Resolution SPD-37 establishes an application process without addressing party status or providing the procedural steps required to

²¹ *Sierra Club v. Public Utilities Comm’n*, 140 Cal.App.4th 1045, 1060 (2006).

²² See Cal. Code Regs., tit. 20, §§ 1.1, 1.4, 6.1, 7.1.

²³ *Consumers Lobby Against Monopolies v. Public Utilities Comm’n*, 25 Cal.3d 891, 901–02 (1979); *People ex rel. Orloff v. Public Utilities Comm’n*, 31 Cal.3d 750, 757 (1982).

²⁴ Rule 1.4; Rule 2.1-2.4

²⁵ Per Rule 1.4(a), party status is typically granted in response to an application or a motion. However, the Resolution does not call for the latter, and the former would not likely be resolved within 15 days of an application.

obtain it, the Resolution violates the Commission's Rules of Practice and Procedure and constitutes reversible legal error.

C. The Commission Committed Error by Imposing a 15-Day Response Deadline Contrary to Rule 2.6

Resolution SPD-37 requires that "Parties to the Phase 1 Application my respond to each of the large electrical corporations' proposals and make counter-proposals within 15 calendar says of the filing(s)." ²⁶ This requirement directly conflicts with Rule 2.6(a), which provides that, unless otherwise, provided by rule, decision, or General Order, protests or responses to an application must be filed within 30 days of notice in the Daily Calendar. The Commission cannot, by resolution, ignore its own procedural rules. While Rule 1.2 permits some deviation from the rules "in special cases and for good cause shown," the Commission may not preemptively change an adopted rule outside of a proceeding without good cause, or the provision of notice and an opportunity to be heard. An administrative agency must comply with its own regulations and acts arbitrarily when it departs from them without explanation. ²⁷ Accordingly, the abbreviated response period adopted in Resolution SPD-37 constitutes legal error and rehearing is necessary.

D. The Failure to Define Party Status Deprives Stakeholders of Due Process, Including a Right to Discovery and a Meaningful Opportunity to be Heard

SPD-37's directive limiting response time for the Phase 1 applications deprives parties of any meaningful opportunity to respond to the applications and deprives parties of the ability to meaningfully participate in the proceeding. This is especially problematic since SPD-37 does not provide any other opportunity for parties to present evidence or comment on the Phase 1 applications as SPD-37 does not contemplate party testimony or the opportunity to request hearings on the Phase 1 applications. Procedural due process is a fundamental constitutional limitation on the exercise of administrative authority and applies with full force to Commission proceedings when the Commission's

²⁶ Resolution SPD-37, at 30.

²⁷ *Greene v. McElroy*, 360 U.S. 474, 507 (1959).

actions adjudicate or materially affect the rights, obligations, or property interests of identifiable parties. The California Supreme Court has made clear that “the essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it.”²⁸ These principles apply equally in administrative adjudications, including CPUC proceedings, where regulatory decisions may impose binding legal consequences.²⁹

The Legislature has expressly incorporated constitutional due process requirements into the Public Utilities Code. In particular, Public Utilities Code § 1701.1 mandates that the Commission classify proceedings and determine hearing requirements “consistent with due process,” thereby requiring that procedural determinations be guided by fairness and the protection of party rights rather than administrative expediency. Where a proceeding is adjudicatory or quasi-judicial—meaning it resolves disputed facts or determines the rights or liabilities of specific parties—due process protections attach.³⁰

These statutory requirements are implemented and reinforced by the Commission’s Rules. Rule 1.2 expressly provides that the rules “shall be liberally construed to secure just, speedy, and inexpensive determination of proceedings.” This underscores that procedural fairness is a guiding principle of Commission practice.

The Commission’s own precedent recognizes these obligations. In *Re Competition for Local Exchange Service*, the Commission stated that “due process is the federal and California constitutional guarantee that a person will have notice and an opportunity to be heard before being deprived of certain protected interests by the government.”³¹

Importantly, due process requires not only notice and participation, but a meaningful process—one that allows parties to present evidence, respond to adverse claims, and address dispositive issues before the Commission reaches its decision.

²⁸ *Consumers Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal.3d 891, 901.

²⁹ *Greene v. McElroy*, 360 U.S. 474, 507 (1959).

³⁰ *Wood v. Public Utilities Commission* (1971) 4 Cal.3d 288, 292–293.

³¹ D.95-09-121 (1995) at 47.

Rule 14.1, which governs the submission and consideration of evidence, reflects this principle by ensuring that the Commission’s determinations are based on an evidentiary record developed with party participation. A proceeding that forecloses evidence on material issues, limits participation in a manner that prejudices affected parties, or resolves key questions without affording a reasonable opportunity for response violates PUC §§ 1701.1 and 1705, as well as Rule 1.2, and fails to satisfy constitutional due process.³²

Parties are also authorized to conduct discovery under the Commission’s Rule 10.1, which provides broad discovery rights to parties as to “any matter, not privileged, that is relevant to the subject matter...”³³ The Commission’s failure to define party status in the Phase 1 Application process has concrete due-process consequences. Without a defined mechanism for becoming a party, stakeholders are effectively denied access to discovery as a matter of procedure, not discretion.³⁴

Even assuming, *arguendo*, that stakeholders could somehow obtain party status, the Resolution’s 15-day response deadline renders discovery functionally impossible.³⁵ Under the schedule imposed by Resolution SPD-37, discovery would need to be initiated immediately upon filing (even before notice appears on the Daily Calendar), full and complete responses would need to be produced without delay or extension, and those responses would then need to be analyzed and incorporated into substantive counter-proposals within the same 15-day window.³⁶ This compressed process forecloses the

³² *Wood*, *supra*, 4 Cal.3d at 292–293; *Consumers Lobby*, *supra*, 25 Cal.3d at 901.

³³ Rule 10.1.

³⁴ Pub. Util. Code section 309.5(e) allows Cal Advocates to compel regulated utilities to produce or disclose any information Cal Advocates deems necessary outside a proceeding, meaning that Cal Advocates could undertake related discovery in advance Resolution SPD-37’s 15 days; in contrast, the Commission’s Rules of Practice, Rule 10.1, apply only to parties within formal proceedings.

³⁵ See CPUC: General Discovery Custom and Practice; ALJ Division at 1. Parties are typically afforded 10 business days just to respond to discovery requests.

³⁶ Given the typical 10 business days allowed for discovery responses (see CPUC: General Discovery Custom and Practice; ALJ Division; at 1 [“The customary response time for data requests is 10 business

developments of an evidentiary record on issues the Commission itself has deemed unresolved, including cost-benefit methodology, audit sufficiency, and cost-recovery conditions. Moreover, rather than provide for essential discovery, the schedule imposed by Resolution SPD-37 rewards gamesmanship and non-responsive discovery.³⁷ Due process requires a meaningful opportunity to present evidence and informed responses to proposals, not just the opportunity to submit comments. . The Resolution offends due process in that it renders discovery by potential parties, especially those other than Cal Advocates,³⁸ largely impossible.

By denying parties a realistic opportunity to conduct discovery and develop evidence before responding to the Phase 1 Application, Resolution SPD-37 violates Public Utilities Code §§ 1701.1 and 1705 and the Commission’s Rules 1.2 and 10.1, and deprives affected parties of due process. Accordingly, where — as here — the Commission fails to comply with its statutory and rule-based obligations to provide notice, a hearing where required, and a meaningful opportunity to be heard, the resulting decision is procedurally defective and inconsistent with constitutional due process. Such defects warrant rehearing or other appropriate relief to ensure that Commission action is grounded in a fair and lawful process.

V. CONCLUSION

For the reasons stated above, the Joint Parties request that the Commission grant rehearing of Resolution SPD-37, and issue an order modifying the Resolution to provide: a formal Application Process for consideration of the Phase 1 Applications that abides by

days.”), the Resolution’s 15-day response time would require discovery to go out immediately and full and complete responses to be timely provided. Depending on how many business days are within the 15-day response period, it is possible that even if data requests are sent the day after the application(s) are filed, data request responses may be received 15 or more calendar days from the filing of the applications.

³⁷ PG&E has already raised concerns about responding to discovery related to this Resolution PG&E Response to Requester DR No. CalAdvocates-PGE-NonCase-MMH-11242025-SPD37-Changes; Dated: December 10, 2025.

³⁸ Pub. Util. Code section 309.5(e) allows Cal Advocates to compel regulated utilities to produce or disclose any information Cal Advocates deems necessary outside a proceeding, meaning that Cal Advocates could undertake related discovery in advance Resolution SPD-37’s 15 days; in contrast, the Commission’s Rules of Practice, Rule 10.1, apply only to parties within formal proceedings.

all of the Commission's formal Rules of Practice, including a 30-day protest period, formal discovery period, and a formal hearing process.

Respectfully submitted,

/s/ Joshua Tey

JOSHUA TEY

Attorney for Public Advocates Office

California Public Utilities Commission

505 Van Ness Avenue

San Francisco, CA 94102

Telephone: (213) 576-7074

E-mail: Joshua.Tey@cpuc.ca.gov

/s/ A Mireille Fall

A MIREILLE FALL

Attorney The Utility Reform Network

The Utility Reform Network

360 Grand Avenue, #150

Oakland, CA 94610

Telephone: (415) 929-8876

E-mail: afall@turn.org

/s/ Diane J. Conklin

DIANE J. CONKLIN

Spokesperson Mussey Grade Road

Alliance

Mussey Grade Road Alliance

P.O .Box 683

Ramona, CA 92065

Telephone: (760) 787 0794

E-mail: dj0conklin@earthlink.net

January 9, 2026