

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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R2604016

Order Instituting Rulemaking to Refine the
Risk Based Decision Making Framework
for Electric and Gas Utilities.

Rulemaking 26-04-016

**PUBLIC ADVOCATES OFFICE'S
MOTION FOR CLARIFICATION OF THE SCOPING MEMO**

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I. INTRODUCTION

The Public Advocates Office at the California Public Utilities Commission (Cal Advocates) files and serves this motion for clarification of the *Assigned Commissioner's Scoping Memo and Ruling* (Scoping Memo),¹ issued July 20, 2026, in Rulemaking (R.) 26-04-016.² Specifically, Cal Advocates requests that the Assigned Commissioner clarify the deadlines for parties to submit opening and reply comments on the Scoping Memo. This motion is filed pursuant to Rule 11.1 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure (Rules).

The *Commission's Order Instituting Rulemaking to Refine the Risk-Based Decision-Making Framework for Electric and Gas Utilities* (RDF OIR) includes a preliminary schedule that provides parties with opportunities for comments and replies to the Scoping Memo during the third quarter of 2026.³ However, the schedule that appears in the Scoping Memo does not provide deadlines for comments on the Scoping Memo.⁴ Accordingly, Cal Advocates asks the Assigned Commissioner to clarify the specific deadlines for party comments on the Scoping Memo, consistent with the RDF OIR.

II. DISCUSSION

The RDF OIR includes a preliminary schedule that provides parties with opportunities for comments and replies to the Scoping Memo during the third quarter of 2026.⁵ Specifically, the RDF OIR states, in relevant part:⁶

¹ Rulemaking (R.) 26-04-016, *Assigned Commissioner's Scoping Memo and Ruling* (Scoping Memo), July 20, 2026.

² R.26-04-016, *Commission's Order Instituting Rulemaking to Refine the Risk-Based Decision-Making Framework for Electric and Gas Utilities* (RDF OIR), May 7, 2026.

³ RDF OIR at 17.

⁴ Scoping Memo at 7.

⁵ RDF OIR at 17.

⁶ RDF OIR at 17.

Scoping Memo	Around 90 days after OIR Issued
Comments on Scoping Memo and replies filed and served	Q3 2026

Unlike the RDF OIR, the Scoping Memo does not address parties' opportunity for comments on the Scoping Memo.⁷ The schedule that appears in the Scoping Memo does not provide deadlines for comments on the Scoping Memo.⁸ As such, the specific deadlines for opening and reply comments on the Scoping Memo are unclear.

The Scoping Memo must be interpreted in a manner consistent with the RDF OIR. The Scoping Memo cannot be interpreted as eliminating the opportunity to present scoping comments as stated in the RDF OIR.⁹ An interpretation that would eliminate comments on the Scoping Memo at this stage of the proceeding, contrary to procedure that the Commission provided in the RDF OIR, would prejudicially violate parties' due process rights. Due process requires that the Commission follow its own rules.¹⁰ Pursuant to Commission Rules 9.1(a) and 15.4, a scoping memo can neither change nor ignore the directives in the Commission order that authorizes the proceeding.¹¹ In

⁷ See, generally, Scoping Memo.

⁸ Scoping Memo at 7 (The first item on the schedule in the Scoping Memo is a deadline of October 23, 2026, for opening comments on the small and multi-jurisdictional utilities (SMJU) reporting and ramp schedule).

⁹ See *California Portland Cement Co. v. Pub. Util. Com.*, 49 Cal. 2d 171, 176 (1957) (it is an error of law, subject to judicial review, for the Commission to reach inconsistent findings of fact, including those of reasonableness); see also *Pac. Gas & Elec. Co. v. Pub. Utilities Com.*, 237 Cal. App. 4th 812, 851 (2015).

¹⁰ *Calaveras Tel. Co. v. Public Utilities Com.* (2019) 39 Cal.App.5th 972, 980; (courts "will annul a decision by the Commission if the Commission failed to comply with its own rules and the failure was prejudicial."); *S. California Edison Co. v. Pub. Utilities Com.* (2006) 140 Cal. App. 4th 1085, 1106 ("The PUC's failure to comply with its own rules concerning the scope of issues to be addressed in the proceeding therefore was prejudicial").

¹¹ See Rules 9.1(a) and 15.4 (only when the full Commission acts does a rule become effective); see also Rule 16.4(h) (decisions remain effective even for petitions for modification).

addition, Rule 13.6(a) requires that the Commission consider evidence to preserve “the rights of parties to meaningfully participate in the proceeding.”¹²

Here, the RDF OIR provided the parties with notice that parties would have the opportunity to comment on the Scoping Memo after the Prehearing Conference.¹³ Based on the notice in the RDF OIR, Cal Advocates and other parties reasonably expected that the Assigned Commissioner would issue a scoping memo for comment.¹⁴ Cal Advocates’ comments at the Prehearing Conference expressly reflect its expectation that there will be an additional opportunity for parties to comment on scope and schedule.¹⁵ Now, if the Commission were to eliminate the opportunity for scoping comments after the Prehearing Conference, it would violate due process because it would contradict the Commission’s RDF OIR¹⁶ and prejudice Cal Advocates’ rights to meaningfully participate in the proceeding.¹⁷

III. CONCLUSION

The RDF OIR provides the parties with an opportunity to submit opening and reply comments on the Scoping Memo. Yet, the Scoping Memo does not specify the deadlines for comments on the Scoping Memo. Therefore, to avoid violating the parties due process rights, Cal Advocates respectfully asks the Assigned Commissioner to clarify

¹² See Rule 13.6(a) (“In hearings before the Commission, the technical rules of evidence, whether statutory, common law, or adopted by court, need not be applied. Although evidence need not be excluded merely by application of rules governing admissibility, competency, weight, or foundation in the record, the rights of parties to meaningfully participate in the proceeding and to public policy protections shall be preserved.”)

¹³ RDF OIR at 17.

¹⁴ RDF OIR at 17.

¹⁵ See, PHC Transcript at 42:20 - 43:4 (“[Cal Advocates:] Yes. As you mentioned, right now we don't have party agreement on the scope of issues or the issues to be concluded. I think that's really going to be a stumbling block in discussing the schedule. . . . This OIR asked for parties to comment on issues that should be included within the scope here.”)

¹⁶ *Calaveras Tel. Co. v. Public Utilities Com.* (2019) 39 Cal.App.5th 972, 980; *S. California Edison Co. v. Pub. Utilities Com.* (2006) 140 Cal. App. 4th 1085, 1106 (Commission violated its own rules where, months after scoping memo, ALJ permitted a party to file materials and new proposals but allowed only three business days to respond).

¹⁷ See Rule 13.6(a).

the specific deadlines for party comments on the Scoping Memo, consistent with the RDF OIR.

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