

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIAResolution ALJ-344
Administrative Law Judge Division

RESOLUTIONRESOLUTION ALJ-344. Approves modifications to the Rules of Practice and Procedure (Title 20, Division 1, of the California Code of Regulations)

Summary

This resolution approves modifications to the Commission's Rules of Practice and Procedure (Title 20, Division 1, of the California Code of Regulations) as set forth in Attachment A.¹ The modifications implement statutory amendments pursuant to Senate Bill 215, 2016-2017 Reg. Sess. (Ca. 2017), reflect changes in the Commission's administration, streamline certain procedures, and provide greater clarity as specifically discussed below.

Pursuant to Pub. Util. Code § 311(h), these modifications shall be submitted to the Office of Administrative Law for review and publication in the California Code of Regulations, and for transmittal to the Secretary of State.

¹ The originally proposed insertions and deletions to the current Rules of Practice and Procedure are shown in underline and ~~strikethrough~~, respectively. Initial revised insertions and deletions are shown in double underline and ~~double strikethrough~~. (Double underline and double strikethrough supersede any co-existing single underline or single strikethrough, i.e., ~~single underline/double strikethrough~~ indicates that the originally proposed insertion is now deleted, and ~~double underline/single strikethrough~~ indicates that the originally proposed deletion is now re-inserted.) Second revisions to the originally proposed modifications are shown in *italic underline* and *italic strikethrough*.

1. Disqualification of Commissioners and Administrative Law Judges

Rule 9.4 of the Commission's Rules of Practice and Procedure (Rules) (Motion for Reassignment for Cause) as currently written implements former Section 309.6(a) requiring the Commission to "adopt procedures on the disqualification of administrative law judges due to bias or prejudice similar to those of other state agencies and superior courts" and Sections 1701.2(a) and 1701.3(b) providing for challenging Administrative Law Judges (ALJs) for cause, which "shall include, but are not limited to, financial interest and prejudice." Senate Bill (SB) 215 extends the mandate of Section 309.6(a) to Commissioners, and amends Section 309.6(b) to provide that, in ratesetting and adjudicatory proceedings, a Commissioner or ALJ shall be disqualified for bias or prejudice based on "actions taken during the proceeding that demonstrate bias or prejudice" and "actions taken outside the public record of a proceeding demonstrating any commitment to provide relief to a party." The modifications therefore (1) amend Rule 9.4 to include disqualification of an ALJ for the actions identified in Section 309.6(b); and (2) adopt a new Rule 9.5 implementing SB 215 with respect to the procedure for disqualification of a Commissioner for bias or prejudice. (Although SB 215 does not likewise amend Sections 1701.2(a) and 1701.3(b)) to extend those statutes to Commissioners, the new Rule 9.5 reasonably defines "bias or prejudice" as defined in the current Rule 9.4.)

As currently written, Rule 9.4 requires any response to a motion for reassignment to be formally filed (and Rule 8.3(f) bars communications between an ALJ and other decisionmakers regarding motions for reassignment). There is no statutory basis for barring such communications. Accordingly, the modifications to Rule 9.4 delete the provision requiring responses to be filed (and the proposed modifications to Rule 8.3(f) regarding *ex parte* communications delete the provision barring communications between the ALJ and decisionmakers).

The modifications also revise Rule 9.4 by (1) revising its heading to specify its applicability to ALJs (as compared to new Rule 9.5 which applies to Commissioners); (2) substituting the term "disqualification" for the term "reassignment;" and (3) deleting the words "or interest" from section (a)(2) as the term is redundant of the term "financial interest" as addressed in section (a)(1). We also delete section (f) defining "financial interest," and instead amend section to Rule 1.3 (Definitions) to define "financial interest" for all purposes, including disqualification of an ALJ or Commissioner under Article 9 and the definition of an "interested person" pursuant to Rule 8.1 (Definitions) regarding *ex parte* communications (Article 8).

The modifications extend current Rule 9.5 (Circumstances Not Constituting Cause) to Commissioners and mirror the changes concerning "financial interest" modified in Rule 9.4, add minor clarifying language to define "experience" as "past work experience," and renumber it.

Current Rule 9.6 (Administrative Law Judge's Request for Reassignment) provides that the ALJ shall withdraw from a proceeding in which there are grounds for reassignment unless the parties waive the reassignment pursuant to Rule 9.7 (Waiver). The modifications delete these rules as ALJs are subject to Canon 3B of the California Judicial Code of Ethics, which requires the ALJ to withdraw from such proceedings and does not allow an exception for waiver by the parties.

The modifications to Rule 14.6 (Reduction or Waiver) provide for waiver of public review and comment on a Commission decision resolving a motion to disqualify a Commissioner consistent with regulatory efficiency and the need for adequate prior notice and comment on commission decisions, pursuant to our authority under Section 311(g)(3). Requiring comment on a proposed decision resolving the narrow issue of the merits of a motion to disqualify a Commissioner would unduly delay the proceeding and compromise the Commission's ability to meet the statutory deadlines for resolving a proceeding. (See Sections 1701.2(i) and 1701.5(a).) The motion is the time and place for a party to set forth specifically the grounds for the motion, so there is no need to provide an additional opportunity for comment on this narrow legal issue.

2. Prehearing Conference, Scoping Memo, and Designation of Presiding Officer

Current Sections 1701.1, 1701.2 and 1701.3 require a prehearing conference and scoping memo in a proceeding in which it is determined that a hearing is needed. In implementing the current statutes, Rule 7.2 (Prehearing Conference) and Rule 7.3 (Scoping Memo) provide for the discretion not to hold a prehearing conference or issue a scoping memo if it is preliminarily determined that a hearing is not needed and no protest or other pleading is filed in response to the document that initiates the proceeding.

As amended by SB 215, Sections 1701.1, 1701.2 and 1701.3 now require a scoping memo in all adjudicatory, ratesetting and quasi-legislative proceedings, and a prehearing conference in all adjudicatory and ratesetting proceedings. The modifications to Rule 7.2 and Rule 7.3 therefore rescind the discretion not to conduct a prehearing conference or issue a scoping memo under those circumstances.

Furthermore, as amended by SB 215, Sections 1701.3(d) and 1701.4(d) now afford the right to oral argument before the Commission regardless of whether a hearing is needed, and Section 1701.2 now requires a presiding officer's decision in an adjudicatory proceeding regardless of whether a hearing is needed. We revise the originally proposed modifications to Rule 13.13(b), and add to the originally proposed rules a proposed revision to Rule 14.1(a), to reflect this.

3. Appeal of Category

SB 215 amends Section 1701.1 to add the provision that the determination of a proceeding's category shall be subject to a request for rehearing within 10 days of any ruling subsequent to the scoping memo that expands the scope of the proceeding. The modifications to Rule 7.6 (Appeals of Categorization) reflect that amendment.

4. Ex Parte Communication Definition

SB 215 amends Section 1701.1 pertaining to the definition of "*ex parte* communication" as follows:

- Requires the Commission to develop a rule to define "procedural matters."
- Requires the Commission to ban "one-way communications" from a decisionmaker to an interested person. We interpret this to require clarification that such communications are not exempt from the definition of "*ex parte* communication."
- Adds persons involved in issuing credit ratings or advising entities or persons who invest in shares or operations of a party to the definition of "interested person."
- Allows the Commission to develop a rule identifying additional persons or entities in the definition of "interested person."
- Adds Commissioners' policy and legal advisory staff assigned to a Commissioner's office to the definition of "decisionmaker."
- Clarifies that *ex parte* communications include communications at public conferences.

The modifications to Rule 8.1 (Definitions) and deletion of Rule 8.2 (Communications with Advisors), as well as the modification to Rule 4.6 (Expedited Complaint Procedure), implement these statutory amendments.

As currently written, Rule 8.1(c)(3) defines "*ex parte* communications" to include communications at a public forum if the forum was not set by ruling or order in the proceeding. The modifications would only require notice of the public forum to the official service list in order for the communications at the event to fall outside of the definition of "*ex parte* communication," as such notice is sufficient to afford transparency of the communications and equal opportunity to participate in them.

Finally, the modifications to Rule 8.1 (1) delete the definition of "Commission staff of record," as that term is not used in any rule, (2) add the definition of "party" to include Commission staff assigned to the proceeding in an advocacy capacity; (3) replace the

term “association” as used in the description of representatives who fall within the definition of “interested person” with the word “organization,” for consistency with statute; and (4) expand on the definition of “interested person.” These modifications provide greater clarity, accuracy and consistency with statute.

5. *Ex Parte* Restrictions and Reporting Requirements

Prior to SB 215, Sections 1701.2, 1701.3 and 1701.4 imposed *ex parte* restrictions only on proceedings in which it is determined that a hearing is needed. As amended by SB 215, the statutory requirements of Sections 1701.2, 1701.3 and 1701.4 apply regardless of whether a hearing is needed.

SB 215 further amends Sections 1701.2, 1701.3 and 1701.4 pertaining to the *ex parte* restrictions and reporting requirements as follows:

- Confers express authority on the Commission to ban *ex parte* communications in ratesetting proceedings and to ban or require reporting of *ex parte* communications in quasi-legislative proceedings.
- Bars communications regarding the assignment of a Commissioner or ALJ to a proceeding;
- Bars decisionmakers other than ALJs from engaging in procedural communications in adjudicatory proceedings.
- Bars individual oral *ex parte* communications in ratesetting proceedings within 3 days of the scheduled vote on the matter.
- Amends the required advance notice of all-party *ex parte* meetings and reporting of individual *ex parte* communications to three working days as opposed to three days.
- In ratesetting proceedings, exempts oral *ex parte* communications at all-party meetings from reporting requirements.
- In adjudicatory proceedings, requires the reporting of prohibited *ex parte* communications should they occur.
- Requires the Commission to adopt a rule specifying sanctions for violations of the *ex parte* rules.
- Provides that, in a proceeding in which an *ex parte* communication is not disclosed until after the decision has issued, a party may, as part of a petition to rescind or modify the decision, seek a finding that the *ex parte* communication significantly influenced the decision’s process or outcome.

The modifications to Rules 8.3 and 8.4 (as proposed, recodified as Rules 8.2 and 8.3), and the proposed modifications to Rule 15.1 regarding Commission meetings (addressed in Part 6) implement these statutory amendments.

In addition, the modifications would exempt written *ex parte* communications in ratesetting proceedings from reporting requirements, for the following reason: As currently written, Rule 8.3(c) requires reporting of *ex parte* communications in ratesetting proceedings, without exception. As amended, Section 1701.1(e)(3) now exempts reporting of oral *ex parte* communications occurring at permissible all-party meetings, presumably because all parties are afforded an opportunity to be present at such meetings and do not require a post-meeting report of such communications. While SB 215 does not similarly expressly exempt reporting of permissible written *ex parte* communications, Section 1701.3(h)(4) continues to require concurrent service of written *ex parte* communications on all parties. The requirement that written *ex parte* communications be concurrently served on all parties provides even more transparency and notice than the requirement that all parties be afforded the opportunity to participate in an all-party meeting, not only because parties may misremember the oral communication, but also because a party may not be able to avail themselves of the opportunity to be present at the meeting. Accordingly, it would be incongruous to interpret SB 215 as requiring reporting of concurrently served written communications, but not of oral communications at all-party meetings.

In addition, the modifications delete (and do not extend to Commissioners) the provision of current Rule 8.3(f) that extends the definition of “*ex parte* communications” to communications between an ALJ and other decisionmakers regarding a motion to reassign (or disqualify) an ALJ. There is no statutory basis for this requirement.

Finally, to reflect SB 215’s clarification that *ex parte* communications at conferences are subject to the *ex parte* requirements, we adopt a new Rule 8.3 to clarify that presentations and public dialogue at conferences are outside of the definition of “*ex parte* communication,” but impose reporting requirements on them in ratesetting proceedings and prohibit them in adjudicatory proceedings.

6. Administrative Matters in Closed Session

SB 215 amends Section 1701.1 to add Section 1701.1(f) requiring the Commission to adopt by rule a definition of “administrative matters” that may be discussed in closed session. The modifications to Rule 15.1 (Commission Meetings) implement this statute.

These modifications also implement SB 215’s provision that the Commission may not vote on a matter in which a notice of prohibited *ex parte* communications has been filed until all parties have been provided a reasonable opportunity to respond to the communication, as discussed in Part 5.

7. Concurrent Alternate Decision

SB 215 amends Section 1701.3(c) to eliminate the requirement that an assigned Commissioner’s alternate decision issue concurrently with the ALJ’s proposed decision, allowing it to issue at any time. Accordingly, the modification to Rule 14.2 (Issuance of Recommended Decision) deletes the requirement that the assigned Commissioner’s or ALJ’s alternate decision issue concurrently with the proposed decision

8. Notice of Intent to Claim Intervenor Compensation

Prior to SB 215, Sections 1701.1 et seq. only required a prehearing conference and a scoping memo in an adjudicatory, ratesetting, or quasi-legislative proceeding in which hearing are needed. Section 1804(a) provides that a notice of intent to claim intervenor compensation shall be filed within 30 days of the prehearing conference or, if no prehearing conference is held, pursuant to the procedure determined by the Commission. Rule 17.1(a)(2) sets forth the deadline for filing a notice of intent to claim intervenor compensation in the event that a prehearing conference is held because it is anticipated that no hearing is needed.

SB 215 amends Section 1701.1(b) to require a prehearing conference and a scoping memo in any proceeding that is categorized as adjudicatory or ratesetting, without regard to the need for hearing, and Section 1701.1(c) to require a scoping memo in any proceeding that is categorized as quasi-legislative, without regard to the need for hearing.

Accordingly, the modifications revise Rule 17.1(a)(2) to narrowly apply to quasi-legislative proceedings and to provide a more straight-forward procedure, i.e., set the deadline with reference to the date of issuance of the requisite scoping memo.

SB 512 amends Section 1804 to provide that an eligible local government entity, as defined in Section 1802(d) as also amended, may seek intervenor compensation. Accordingly, the modifications to Rule 17.1 also incorporate these changes.

9. Party Status in a Rulemaking

Rule 1.4 (Participation in Proceedings) provides for persons to automatically obtain party status upon the person's filing of a document that initiates a proceeding or upon the person's filing of document in response to the initiating document. In a rulemaking proceeding, responsive documents are designated as "comments." However, that term is also used to refer to documents commenting on the merits of a recommended decision. (See Rule 14.3, Comments on Proposed or Alternate Decisions.) The modification to Rule 1.4 clarifies that the "comments" that, when filed, automatically confer party status are comments in response to the document initiating a rulemaking.

10. Certificate of Service; State Service Category

The modifications to Rule 1.9(e) eliminate the requirement that a copy of the certificate of service be attached to each copy of the document that is served. This requirement is unnecessary, as the certificate of service is on record with the Commission and publicly available on the electronic docket card for the proceeding.

The modifications to Rule 1.9(f) eliminate the "State Service" category on the Official Service List. As currently written, "State Service" is available only to California state employees and affords those persons hard-copy service of documents that parties serve by hard copy and not electronically. Other non-parties may request "Information Only," which entitles them only to electronic service of documents that are electronically served. There is little practical purpose to retaining the "State Service" category as most documents are served electronically, particularly in proceedings that non-party state employees regularly subscribe (in contrast to, e.g., small consumer complaint proceedings and license applications).

11. Retract Electronic Filing Requirement and Update Maximum Size Allowed

The originally proposed modifications to Rule 1.13 would eliminate the option of tendering documents for filing in hard copy. After further investigation confirming that some, albeit few, persons appearing before the Commission continue to tender documents for filing in hard-copy, we have determined to retract this proposed modification, and revised the originally proposed modification to Rule 1.13 accordingly.

In comments on the originally proposed modifications, the Office of Ratepayer Advocates (ORA) proposed that, consistent with the originally proposed modifications to Rule 13.7 that would require submittal of evidentiary documents using the Electronic Filing System with no size limitation (see below), we modify Rule 1.13 to similarly eliminate the 20.0 megabytes (MB) size limitation. We declined to adopt that recommendation at the time due to technical limitations. However, effective

September 14, 2017, the Commission's electronic filing system has been upgraded to increase the maximum size of an electronic filing to 1.5 gigabytes (GB). Accordingly, we revise Rule 1.13 to substitute the new 1.5 GB size limitation for the currently-stated 20.0 MB.

12. Availability and Contents of Daily Calendar

As currently written, Rule 1.17 provides that the Daily Calendar shall be available at the Commission's Los Angeles office. There is no statutory requirement for this and, as the Daily Calendar is available on the Commission's website, there is no practical requirement for this. The modifications eliminate this provision, and conform the availability of the Daily Calendar to the availability of the Commission agenda.

In addition, as currently written, Rule 1.17 provides that the Daily Calendar will include notice of submission of proceedings. There is no statutory or practical requirement for this. The proposed modifications eliminate this provision.

We further note that the Daily Calendar includes many other items that are not identified in Rule 1.17, and that its current requirement that the Daily Calendar include newly filed recommended decisions serves no statutory or practical purpose (as filed recommended decisions are served on the proceeding's official service list). Rather than attempting to update Rule 1.17 to reflect current needs and practice, and recognizing that future needs may lead us to add other new items to the Daily Calendar and that technical advances may allow us to eliminate others, we revise the originally proposed modifications to limit the required items to notice of Commission meetings and hearings and to afford the Commission discretion with respect to all other matters.

13. Executive Director Order Dismissing Complaint

As authorized by Section 308, Commission Resolution A-4638 (1977) provides that the Executive Director may issue an order dismissing a complaint upon stipulation of the parties. New Rule 4.5 promulgates the resolution as a rule. The modifications renumber the subsequent rule.

14. Delete Obsolete Rule

Rule 8.6 sets forth the *ex parte* requirements applicable to proceedings initiated before January 1, 1998. There are no longer any such open proceedings. The modifications delete this rule for being obsolete.

15. Waiver of 7-Day Settlement Conference Notice

Rule 12.1 requires seven days' advance notice of any settlement conference. The intent

of this rule is to ensure that all parties are afforded an opportunity to participate in a settlement conference. It is unreasonable to require such notice if all parties agree to waive it. The modification to Rule 12.1 allows for such waiver.

16. Require Electronic Uploading of Exhibits

We adopt a new Rule 13.7(f) requiring the electronic uploading of evidentiary exhibits utilizing the Commission's electronic filing system. Again, this will provide greater transparency and public access to Commission records.

17. Receipt of Prepared Testimony Without Examination

As provided in Rule 13.8, it is Commission practice for parties to present witnesses' direct testimony in the form of written prepared testimony which is introduced through the witness and offered as a documentary exhibit at evidentiary hearing. Rule 13.8(c) identifies the opportunity for parties to offer such prepared testimony into evidence by motion. It is intended to alert practitioners to the opportunity to move for the receipt of prepared testimony as an exhibit without the need to appear at an evidentiary hearing if no party seeks the opportunity to cross-examine the witness. The modifications to Rule 13.8(c) clarify and simplify this opportunity.

18. Delete Ambiguous Term

Rule 13.11 addresses requirements for summation briefs, and refers to them in the title as "closing" briefs. It is Commission practice for parties to file concurrent "opening" briefs and concurrent "reply" briefs responding to the "opening" briefs. Under these circumstances, the use of the word "closing" in the title of Rule 13.11 confusing. The modification to Rule 13.11 therefore deletes it.

19. Separate Motion to Request Oral Argument

As currently written, Rule 13.13(b) requires parties to request oral argument before the Commission by making such request in their summation briefs. In practice, such requests can be inadvertently overlooked until late in the proceeding.

The modifications to Rule 13.13(b) change this provision to require parties to make such request by separate motion. This change provides clearer notice of the request.

In addition, the modifications to the rule delete the term "final" in referring to oral argument before the Commission; this term is superfluous.

20. Clarify Set-Aside Submission for Further Argument

Rule 13.14(b) addresses motions to set aside submission for the taking of additional evidence. The modifications to the rule clarify that such motions may also seek the taking of additional argument.

21. Conform Comment on Draft Resolution

As currently written, Rule 14.5 is confusing with respect to the deadline for offering comments on a draft resolution. The modifications to the rule provide that the time for offering comments is 20 days after notice of the draft resolution, in conformance with Rule 14.3 regarding comment on proposed and alternate proposed decisions.

22. Eliminate Specified Deadline Hour for Agenda Item Document

Rule 15.3 as currently written provides that the Commission will make agenda item documents available at 9:00 a.m. on the day of the Commission meeting. However, statute only requires that the Commission make such documents available at the meeting. (Section 311.5 and Govt.C. 11125.1(b).) It is unduly restrictive for the Commission to impose an earlier deadline on itself. The modification to Rule 15.3(b) eliminates it.

23. Rulings on Motions Related to Applications for Rehearing

As currently written, Rule 16.1(c) provides that motions related to applications for rehearing shall be directed to the Chief ALJ for resolution. Just as applications for rehearing are not properly addressed or resolved by ALJs including the Chief ALJ, it is inappropriate for the Chief ALJ to resolve motions relating to them. The modification to Rule 16.1 therefore deletes this provision.

24. Eliminate Supplemental Notice of Intent for Judicial Review

As currently written, Rule 17.1(f) requires an intervenor who intends to request compensation for costs of judicial review to file a supplemental notice of intent after appearing in the judicial review proceeding. There is no apparent purpose served by this requirement. The modification to Rule 17.1 eliminates this requirement.

25. Correct Typos/Update Titles

We modify Rules 1.7(a), 1.14(b)(2), 3.1(k)(3)(B), 3.3(b), 6.3(d), 13.12, 14.6(c)(4), and 16.2(b) to correct references and typographical and semantical errors.

Notice of Proposed Modifications

Notice of these modifications, and comment on them, are governed by Government Code §§ 11346.4 and 11351, and California Code of Regulations, Title 1, §§ 1-120. Notice of these modifications as originally proposed was published in the California Regulatory Notice Register on May 19, 2017. In addition, on May 4, 2017, the draft resolution containing the modifications as originally proposed was electronically mailed to all persons on the service list maintained by the Commission for this purpose.

On September 29, 2017, the revised draft resolution addressing the comments and containing modifications to the originally proposed revisions was electronically mailed to the same service list.

On November 6, 2017, the further-revised draft resolution addressing the comments and containing further modifications to the modified proposed revisions was electronically mailed to the same service list.

Comments on Originally Proposed Modifications

Comments on the originally proposed modifications were received on July 3, 2017, from ORA, The Utility Reform Network (TURN), the California Water Association (CWA), Pacific Gas and Electric Company (PG&E), and, jointly, PG&E, San Diego Gas & Electric Company, Southern California Edison Company (SCE), and Southern California Gas Company (Joint Utilities).

1. ORA

ORA recommends that we revise Rule 8.1 et seq. to ensure that the rules comport with Pub. Util. Code § 1701.1(e)(2)(A)'s ban on one-way communications. We revise Rule 8.1(b) and add a new Rule 8.2(g) to accomplish this.

ORA recommends that, consistent with the proposed modifications to Rule 13.7 that would require submittal of evidentiary documents using the Electronic Filing System with no size limitation, we modify Rule 1.13 to similarly eliminate the 20.0 MB size limitation. We initially declined to adopt this recommendation due to then-existing technical limitations, but adopt it in the second round of revisions to the originally proposed modifications. (See "Comments on Revisions to Originally Proposed Amendments," below.)

ORA recommends that we adopt a rule to subject communications regarding Tier 3 Advice Letters (and possibly others) to the *ex parte* rules. We decline to adopt this recommendation as a matter of both law and practicality. It is not legally required as Sections 1701.1 et seq., upon which the *ex parte* rules are based, are inapplicable to Advice Letters. Sections 1701.1 et seq. are premised on the categorization of formal

proceedings, and provide for the assignment of a commissioner to a proceeding, the conduct of a prehearing conference and issuance of a scoping memo, and the conduct of evidentiary hearings where appropriate; none of these processes apply to advice letters. (See General Order 96-B, General Rule 5.1.) Furthermore, it is impractical to implement because, unlike in formal proceedings for which the Commission maintains docket cards, there is no system for formally filing *ex parte* notices outside of formal proceedings.

ORA recommends that we revise the definition of “procedural matters” in proposed Rule 8.1(e)(i) to require interested persons to include all parties in communications inquiring regarding the proceeding schedule, general Commission practice, or the requirements of the Rules of Practice and Procedure; and that we revise proposed Rule 8.2(c)(3)(B) to subject written *ex parte* communications to the reporting requirements of Rule 8.4. We decline to adopt these recommendations.

ORA recommends that we revise proposed Rule 8.3 to clarify whether a “conference” includes invitation-only meetings or the annual symposium held by the California Independent System Operator, and to require reporting of pre-conference planning communications between decisionmakers and interested persons. We decline to adopt these recommendations. We note, however, that pre-conference planning communications between decisionmakers and interested persons are not communications at a conference or otherwise governed by proposed Rule 8.3.

ORA recommends that we revise proposed Rule 15.1 to expand the definition of “administrative matters” that may be discussed in closed session to exclude the subject matter of (at least) Tier 3 Advice Letters. We decline to adopt this recommendation. We note, however, that all resolutions (including resolutions that resolve advice letters) are subject to Pub. Util. Code § 311 and are therefore excluded from the proposed definition of “administrative matters.” (See Pub. Util. Code § 311(g).)

2. TURN

TURN offers minor clarifying revisions to proposed Rules 8.1(b) and 8.3(a) that we adopt.

TURN recommends revising proposed Rule 8.3 to define a conference as “an event open to the public at no charge or for modest fee,” revising proposed Rules 9.4 and 9.5 to eliminate the 10- and 30-day limitations for filing a motion to disqualify an ALJ or Commissioner for cause, revising proposed Rule 14.6(c) to condition waiver of comment on decisions resolving motions to disqualify an ALJ or Commissioner on “public necessity,” and revising proposed Rule 15.3(b) to reinstate a 9:00 a.m. deadline and add a start-of-meeting deadline for making agenda item documents available. We decline to adopt these recommendations.

3. CWA

CWA recommends revising the definition of “procedural matter” in proposed Rule 8.1(e) to include communications regarding submission, filing or service of a document and to exclude communications regarding intervenor compensation request apart from inquiries regarding the forms and filing requirements, and offers minor clarifying revisions to the proposed rule. We revise the proposed rule to adopt these recommendations.

CWA recommends revising the deadline for submitting exhibits as “supporting documents” pursuant to proposed Rule 13.7(f), and we adopt the recommendation.

CWA recommends further revising proposed Rule 13.7(f) to limit the submittal requirement to exhibits that have been received into evidence. We decline to adopt this recommendation. It is appropriate to maintain a record of exhibits that have been marked for identification even if not received into evidence, as we have historically done with hard copies in the Commission’s Central Files office.

4. PG&E

PG&E recommends revising proposed Rule 1.9(e) to clarify that the certificate of service need not be included with service of the underlying document, and we adopt the recommendation.

PG&E recommends that we revise Rule 1.13(a)(2) to allow the filing of documents in mixed media formats. We decline to adopt this recommendation for cybersecurity reasons.

5. Joint Utilities

The Joint Utilities ask for clarification in proposed Rule 8.1(b)(3) as to who has authority under the proposed rule to provide the required notice to the official service list. We clarify here that the purpose of the proposed rule is to require that notice of the public forum be served on the official service list; there is no restriction as to who may do so. We make a minor revision to the originally proposed rule to clarify this.

The Joint Utilities recommend revising proposed Rule 8.2(c)(2) to clarify whether all interested persons who attend an *ex parte* meeting that is not an all-party meeting must file notification of grant of the meeting. We revise originally proposed Rule 8.2(c)(2) to provide this clarification.

The Joint Utilities recommend that we revise proposed Rule 8.3 to clarify that communications at conferences are exempt from both the three-day advance notice requirement and the equal time requirements. We revise the originally proposed rule to do this.

The Joint Utilities recommend that we revise proposed Rule 8.4 regarding the required content of ex parte notices to include additional requirements enacted pursuant to SB 215 and to reinstate the clarification that the interested person shall not report the decisionmaker's communication. We revise the originally proposed rule to do this.

The Joint Utilities recommend revising proposed Rule 8.3 to define "conference" as "a public, announced gathering of individuals or members of one or several organizations for discussing matters of common or public interest." We decline to adopt this recommendation.

The Joint Utilities further recommend deleting the element of "intent" from proposed Rule 8.1(e)(1), revising proposed Rule 8.3(c) to clarify a perceived ambiguity, and revising proposed Rule 8.4 to confine its reporting requirements to those set forth in statute. We decline to adopt these recommendations.

The Joint Utilities make other recommendations that are beyond the scope of revisions to the Rules of Practice and Procedure, and we do not address them here.

Comments on Revisions to Originally Proposed Modifications

Comments on the revisions to the originally proposed modifications were received on October 16, 2017, from the Joint Utilities and TURN.

1. Joint Utilities

The Joint Utilities note that, effective September 14, 2017, the Commission's electronic filing system has been upgraded to increase the maximum size of an electronic filing to 1.5 GB. Accordingly, we modify Rule 1.13 to substitute the new 1.5 GB size limitation for the currently-stated 20.0 MB size limitation, consistent with the originally proposed modifications to Rule 13.7 that would require submittal of evidentiary documents using the Electronic Filing System with no size limitation,

As currently written, Rule 8.3(c)(2)(B) requires an interested person to notify the parties that its request for individual ex parte meeting has been granted and to file a certificate of service of this notification. The Joint Utilities contend that, by its plain language, only the certificate of service of the notice, and not the notice itself, must be filed. The Joint Utilities go on to report that the Docket Office informed SCE that the better practice would be for the interested person to file the notice itself and not (simply) the

certificate of having served it. The Joint Utilities ask the Commission to consult with Docket Office on this requirement, and propose resolving the apparent confusion by revising the rule to dispense with the requirement to file certificate of service of the notice. We agree that the rule as currently written is ambiguous in this regard. While the plain language might be read to only require filing a certificate of service, standard practice is for a certificate of service to accompany the document that is being certified as having been served. (See Rules 1.9(e) and 1.13(b)(1)(iii).) We modify Rule 8.3(c)(2)(B) to resolve this ambiguity.

The Joint Utilities point out typographical errors in the depiction of revisions to the originally proposed modifications to Rules 8.4(a)(3) and current Rule 9.5, re-numbered as Rule 9.6 as shown in Appendix A. We correct them.

2. TURN

TURN reiterates its comments on the originally proposed modifications recommending revisions to Rule 8.3, 9.4 and 9.5, 14.6(c). We decline to adopt them.

With regard to Rule 8.3, TURN claims that failing to define “conference” as “an event open to public at no charge or for a modest fee” would appear to permit an interested person to invite decisionmakers to a private event with utility management and call the gathering a “conference.” As any communications at such an event would be subject to the same prohibition and reporting requirements regardless of its accessibility to the public, it is not apparent how this would run afoul of the intent of the ex parte statutes, and TURN does not explain how it would.

With regard to Rules 9.4 and 9.5, TURN claims that it is unreasonable to impose a deadline for a motion to disqualify a Commissioner or Administrative Law Judge for cause that runs from the time the party discovered or should have discovered the alleged cause for disqualification. TURN argues that a party might not be convinced of the need to file a motion upon discovering initial information showing cause, but only upon discovering additional information bolstering such a showing. It is not apparent that, under such circumstances, the deadline would run from the time of the initial discovery as opposed to the later discovery. We are not persuaded of the need to deviate from our established protocol with respect to the calculation of time for filing a motion to disqualify for cause. (See current Rule 9.4(c).)

With regard to Rule 14.6(c) regarding waiver of public review and comment on proposed decisions resolving motions to disqualify a Commissioner, TURN asserts that we neglect to address how such waiver is consistent with the need for adequate prior notice and comment on commission decisions. We modify the discussion on the proposed rule modification to expound on this.

TURN narrows its recommended revision to Rule 15.3(b) regarding the distribution of agenda item documents, limiting it to adding a start-of-meeting deadline for making agenda item documents available. We adopt this recommendation.

Comments on Second Revisions to Originally Proposed Modifications

Comments on the second revisions to the originally proposed modifications were received on November 21, 2017, from Scott Rafferty.

Mr. Rafferty suggests that this rulemaking is not subject to the rulemaking requirements of the Administrative Procedures Act and, therefore, has occurred without any effective form of notice to the public. To the contrary, amendments to the Rules of Practice and Procedure are subject to most of the requirements of the Administrative Procedures Act, including its notice requirements. (See Pub. Util. Code § 311(h).) As described above, notice of these modifications as originally proposed was published in the California Regulatory Notice Register on May 19, 2017. In addition, the draft resolution containing the modifications as originally proposed and as subsequently revised was electronically mailed to all persons on the service list maintained by the Commission for this purpose. Furthermore, as Mr. Rafferty notes, the Commission's Committee on Policy and Governance noticed and conducted meetings soliciting public comment on potential rule changes to implement SB 215 before formally initiating this rulemaking.

Mr. Rafferty objects to the originally proposed modifications to (renumbered) Rule 8.2, and to the revision to the originally proposed modifications that added a new proposed Rule 8.3(b). These comments are untimely.

IT IS RESOLVED that:

1. The modifications to the Rules of Practice and Procedure, as shown in the attached Appendix A, are adopted.
2. The Chief Administrative Law Judge shall take all appropriate steps to submit the newly adopted rules to the Office of Administrative Law pursuant to Pub. Util. Code § 311(h) for purposes of approval and printing them in the California Code of Regulations, thereby giving them effect.

3. This resolution is effective today.

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

TIMOTHY J. SULLIVAN
Executive Director

APPENDIX A

PROPOSED MODIFICATIONS TO RULES OF PRACTICE AND PROCEDURE

The originally proposed insertions and deletions to the current Rules of Practice and Procedure are shown in underline and ~~striketrough~~, respectively. Initial revised insertions and deletions are shown in double underline and ~~double striketrough~~. (Double underline and double striketrough supersede any co-existing single underline or single striketrough, i.e., ~~single underline/double striketrough~~ indicates that the originally proposed insertion is now deleted, and double underline/single striketrough indicates that the originally proposed deletion is now re-inserted.) Second revisions to the originally proposed modifications are shown in *italic underline* and *italic striketrough*.

1.3. (Rule 1.3) Definitions.

(a) "Adjudicatory" proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

(b) "Category," "categorization," or "categorized" refers to the procedure whereby a proceeding is determined to be an "adjudicatory," "ratesetting," or "quasi-legislative" proceeding.

(c) "Financial interest" means that the action or decision on the matter will have a direct and significant financial impact, distinguishable from its impact on the public generally or a significant segment of the public, as described in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code and Title 2, Division 6, Sections 18109-18997 of the California Code of Regulations.

(ed) "Person" means a natural person or organization.

(de) "Quasi-legislative" proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.

(ef) "Ratesetting" proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). "Ratesetting" proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. Other proceedings may be categorized as ratesetting, as described in Rule 7.1(e)(2).

(fg) "Scoping memo" means an order or ruling describing the issues to be considered in a proceeding and the timetable for resolving the proceeding, as described in Rule 7.3.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 1701.1(a), 1701.1(c)(1)-(4), Public Utilities Code.

1.4. (Rule 1.4) Participation in Proceedings.

(a) A person may become a party to a proceeding by:

- (1) filing an application (other than an application for rehearing pursuant to Rule 16.1), petition, or complaint;

(2) filing (i) a protest or response to an application (other than an application for rehearing pursuant to Rule 16.1) or petition, or (ii) comments in response to an order instituting rulemaking;

(3) making an oral motion to become a party at a prehearing conference or hearing; or

(4) filing a motion to become a party.

(b) A person seeking party status by motion pursuant to subsection (a)(3) or (a)(4) of this rule shall:

(1) fully disclose the persons or entities in whose behalf the filing, appearance or motion is made, and the interest of such persons or entities in the proceeding; and

(2) state the factual and legal contentions that the person intends to make and show that the contentions will be reasonably pertinent to the issues already presented.

(c) The assigned Administrative Law Judge may, where circumstances warrant, deny party status or limit the degree to which a party may participate in the proceeding.

(d) Any person named as a defendant to a complaint, or as a respondent to an investigation or a rulemaking, is a party to the proceeding.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701, Public Utilities Code.

1.7. (Rule 1.7) Scope of Filing.

(a) Separate documents must be used to address unrelated subjects or to ask the Commission or the Administrative Law Judge to take essentially different types of action (e.g., a document entitled "Complaint and Motion to File Under Seal" would be improper; two separate documents must be used for the complaint and for the motion). Motions that seek leave to file another document (e.g., to accept a later filing or to file a document under seal) shall be tendered concurrently and separately with the document that is the subject of the motion.

(b) Except as otherwise required or permitted by these Rules or the Commission's decisions, general orders, or resolutions, prepared testimony shall not be filed or tendered to the Docket Office. If prepared testimony is

issued in support of a filing at the time the filing is made, it shall be served (i) on the service list together with the filing, and (ii) on the Administrative Law Judge or, if none is yet assigned, on the Chief Administrative Law Judge.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701, Public Utilities Code.

1.9. (Rule 1.9) Service Generally.

(a) Except as otherwise provided in these rules or applicable statute, a requirement to serve a document means that a copy of the document must be served on each person whose name is on the official service list for the proceeding and on the assigned Administrative Law Judge (or, if none is yet assigned, on the Chief Administrative Law Judge).

(b) Except as otherwise provided in these rules or applicable statute, all documents that are tendered for filing pursuant to Rule 1.13 must be served.

(c) Service of a document may be effected by personally delivering a copy of the document to the person or leaving it in a place where the person may reasonably be expected to obtain actual and timely receipt, mailing a copy of the document by first-class mail, or electronically mailing the document as provided in Rule 1.10, except that documents that are electronically tendered for filing as provided in Rule 1.14 must be served by e-mail as provided in Rule 1.10. Service by first-class mail is complete when the document is deposited in the mail. Service by e-mail is complete when the e-mail message is transmitted, subject to Rule 1.10(e). The Administrative Law Judge may direct or any party may consent to service by other means not listed in this rule (e.g., facsimile transmission).

(d) A person may serve a Notice of Availability in lieu of hard copy service under this rule or e-mail service under Rule 1.10:

(1) if the entire document, including attachments, exceeds 50 pages; or

(2) if a document or part of the document is not reproducible in electronic format, or would cause the entire e-mail message, including all attachments, to exceed 3.5 megabytes in size, or would be likely to cause e-mail service to fail for any other reason; or

(3) if the document is made available at a particular Uniform Resource Locator (URL) on the World Wide Web in a readable, downloadable,

printable, and searchable format, unless use of such formats is infeasible; or

(4) with the prior permission of the assigned Commissioner or Administrative Law Judge; except that the document must be served on any person who has previously informed the serving person of its desire to receive the document.

The Notice must comply with Rule 1.6(a), and shall state the document's exact title and summarize its contents, and provide the name, telephone number, and e-mail address, if any, of the person to whom requests for the document should be directed. The document shall be served within one business day after receipt of any such request.

If the document is made available at a particular URL, the Notice of Availability must contain a complete and accurate transcription of the URL or a hyperlink to the URL at which the document is available, and must state the date on which the document was made available at that URL. Such document must be maintained at that URL until the date of the final decision in the proceeding. If changes to the web site change the URL for the document, the serving person must serve and file a notice of the new URL.

~~(e) A copy of the certificate of service must be attached to e~~Each copy of the document (or Notice of Availability) served and to each copy filed with the Commission must include the certificate of service. It is not required to include the certificate of service with service of the document. If a Notice of Availability is served, a copy of the Notice must also be attached to each copy of the document filed with the Commission. The certificate of service must state: (1) the caption for the proceeding, (2) the docket number (if one has been assigned), (3) the exact title of the document served, (4) the place, date, and manner of service, and (5) the name of the person making the service. The certificate filed with the original of the document must be signed by the person making the service (see Rule 1.8(e)). The certificate filed with the original of the document must also include a list of the names, addresses, and, where relevant, the e-mail addresses of the persons and entities served and must indicate whether they received the complete document or a Notice of Availability. (See Rule 18.1, Form No. 4.)

(f) The Process Office shall maintain the official service list for each pending proceeding and post the service list on the Commission's web site. The official service list shall include the following categories:

(1) Parties, as determined pursuant to Rule 1.4, and

~~(2) State Service, for service of all documents (available to California State employees only), and~~

~~(3) Information Only, for electronic service of all documents only, unless otherwise directed by the Administrative Law Judge.~~

Persons will be added to the official service list, either as State Service or Information Only, upon request to the Process Office. It is the responsibility of each person or entity on the official service list to ensure that its designated person for service, mailing address and/or e-mail address shown on the official service list are current and accurate. A person may change its mailing address or e-mail address for service or its designation of a person for service by sending a written notice to the Process Office.

(g) The Administrative Law Judge may establish a special service list that includes some, but not all, persons on the official service list for service of documents related to a portion of a proceeding, provided that all persons on the official service list are afforded the opportunity to be included on the special service list. A special service list may be established, for example, for one phase of a multi-phase proceeding or for documents related to issues that are of interest only to certain persons.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. References: Sections 311.5 and 1704, Public Utilities Code.

1.13. (Rule 1.13) Tendering of Document for Filing.

~~(a) Documents, other than may be tendered for filing in hard copy or electronically, as follows, except that documents which a person seeks leave to file under seal (Rule 11.4), must be tendered for filing using the Electronic Filing System on the Commission's website at <http://www.cpuc.ca.gov/PUC/efiling>. a utility whose gross intrastate revenues, as reported in the utility's most recent annual report to the Commission, exceed \$10 million shall electronically file all documents unless otherwise prohibited or excused by these rules:~~

~~(a) Hard copy:~~

~~(1) Documents must be tendered for filing at the Commission's Docket Office at the State Building, 505 Van Ness Avenue, San Francisco, California 94102, or at the Commission's Offices in the State Building,~~

~~320 West 4th Street, Suite 500, Los Angeles. All documents tendered by mail must be addressed to the Commission's Docket Office in San Francisco. Only hand-delivered documents will be accepted by the Los Angeles office. First class postage charges to San Francisco must be paid at the time documents are tendered to the Los Angeles office. Payment of postage charges may be made by check or money order.~~

~~(2) Except for Proponent's Environmental Assessments (see Rule 2.4(b)) and complaints (see Article 4), an original and six exact copies of the document (including any attachments but not including the transmittal letter, if any) shall be tendered. After assignment of the proceeding to an Administrative Law Judge, an original and three copies of the document shall be tendered.~~

~~In lieu of the original, one additional copy of the document may be tendered. If a copy is tendered instead of the original, the person tendering the document must retain the original, and produce it at the Administrative Law Judge's request, until the Commission's final decision in the proceeding is no longer subject to judicial review.~~

(b) Electronic:

~~(1) Documents must be transmitted to the Docket Office using the Electronic Filing System on the Commission's website at <http://www.cpuc.ca.gov/PUC/efiling>.~~

~~(i)~~ Documents must be transmitted in PDF Archive format (PDF/A). This PDF document must be searchable unless creation of a searchable document is infeasible.

~~(ii)~~ A single transmission may not exceed *20.0 megabytes* 1.5 gigabytes in size. Documents tendered in a transmission that exceeds this limit shall not be filed electronically.

~~(iii)~~ The certificate of service must be transmitted with the document as a separate attachment.

~~(2) Electronically tendered documents will not be filed under seal. Documents which a person seeks leave to file under seal (Rule 11.4) must be tendered by hard copy. However, redacted versions of such documents may be electronically tendered for filing.~~

~~(3)~~ A Notice of Acknowledgment of Receipt of the document is immediately available to the person tendering the document confirming the date and time of receipt of the document by the Docket Office for review. In the absence of a Notice of Acknowledgment of Receipt, it is

the responsibility of the person tendering the document to obtain confirmation that the Docket Office received it.

(45) The Docket Office shall deem the electronic filing system to be subject to a technical failure on a given day if it is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon that day, in which case filings due that day shall be deemed filed that day if they are filed the next day the system is able to accept filings.

~~(b) Documents which a person seeks leave to file under seal (Rule 11.4) must be tendered for filing in hard copy at the Commission's Docket Office at the State Building, 505 Van Ness Avenue, San Francisco, California 94102, or at the Commission's Offices in the State Building, 320 West 4th Street, Suite 500, Los Angeles.~~

~~(1) All documents tendered by mail must be addressed to the Commission's Docket Office in San Francisco.~~

~~(2) Only hand-delivered documents will be accepted by the Los Angeles office. First-class postage charges to San Francisco must be paid at the time documents are tendered to the Los Angeles office. Payment of postage charges may be made by check or money order.~~

~~(3) Except for Proponent's Environmental Assessments (see Rule 2.4(b)), an original and six exact copies of the document (including any attachments but not including the transmittal letter, if any) shall be tendered. After assignment of the proceeding to an Administrative Law Judge, an original and three copies of the document shall be tendered.~~

~~(4) In lieu of the original, one additional copy of the document may be tendered. If a copy is tendered instead of the original, the person tendering the document must retain the original, and produce it at the Administrative Law Judge's request, until the Commission's final decision in the proceeding is no longer subject to judicial review.~~

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 1701, Public Utilities Code.

1.14. (Rule 1.14) Review and Filing of Tendered Documents

(a) Tendered documents are not filed until they have been reviewed and accepted for filing by the Docket Office in San Francisco.

(b) If a document is accepted for filing, it will be recorded as of the date it was first tendered for filing at the Commission's San Francisco or Los Angeles office.

(1) Hard copy: The Docket Office will provide an acknowledgment of the filing on request, provided the person tendering the document furnishes at the time the document is tendered, an extra copy of the document and a self-addressed envelope with postage fully prepaid. The extra copy of the document will be stamped with the filing stamp and docket number and returned by mail.

(2) Electronic: Upon the filing of any document tendered electronically, the document will be stamped with the electronic filing stamp and, ~~it~~ in the case of an initiating document, a docket number and the Docket Office shall electronically transmit to the person tendering the document a Confirmation of Acceptance and a link to the filed stamped copy of the document on the Commission's website. Electronically filed documents so endorsed carry the same force and effect as a manually affixed endorsement stamp.

(c) If a tendered document does not comply with applicable requirements, the Docket Office may reject the document for filing. Documents submitted in response to a rejected document will not be filed.

(1) Hard copy: The Docket Office will return the rejected document with a statement of the reasons for the rejection.

(2) Electronic: The Docket Office will electronically transmit to the person tendering the document a Notice of Rejection setting forth the ground for rejecting the document.

(d) If a tendered document is in substantial, but not complete, compliance with applicable requirements, the Docket Office may notify the person tendering the document of the defect. If the document would initiate a new proceeding, the document will be filed as of the date that the defect is cured. For all other documents, if the defect is cured within seven days of the date of this notification, the document will be filed as of the date it was tendered for filing, provided that the document was properly served as required by these Rules on or before the date the document was tendered for filing.

(e) Acceptance of a document for filing is not a final determination that the document complies with all requirements of the Commission and is not a waiver of such requirements. The Commission, the Executive Director, or the Administrative Law Judge may require amendments to a document, and the Commission or the Administrative Law Judge may entertain appropriate

motions concerning the document's deficiencies.

(f) If a document initiates a new proceeding, the proceeding will be assigned a docket number when the document is accepted for filing. The Chief Administrative Law Judge shall maintain a docket of all proceedings.

(g) Specific types of documents may be subject to additional requirements stated in other articles of these rules. Additional or different requirements for certain types of filings are stated in the Public Utilities Code or in the Commission's decisions, General Orders, or resolutions.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 1701, Public Utilities Code.

1.17 (Rule 1.17) Daily Calendar

A Daily Calendar of ~~the time and place of the next three regularly scheduled Commission meetings and hearing and other pertinent matters, newly filed proceedings, proceedings set for hearings, submission of proceedings and newly filed recommended decisions~~ shall be published on the Commission's Internet website. The Daily Calendar is also available for viewing and photocopying (for a fee) at the Central Files Office. ~~available for public inspection at the Commission's San Francisco and Los Angeles offices. The Daily Calendar shall indicate the time and place of the next three regularly scheduled Commission meetings. Electronic access to the Daily Calendar is available at the Commission's website (www.cpuc.ca.gov).~~

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 1701, Public Utilities Code.

3.1. (Rule 3.1) Construction or Extension of Facilities.

Applications, under Section 1001 of the Public Utilities Code, to construct or extend facilities shall contain the following information:

(a) A full description of the proposed construction or extension, and the manner in which the same will be constructed.

(b) The names and addresses of all utilities, corporations, persons or other

entities, whether publicly or privately operated, with which the proposed construction is likely to compete, and of the cities or counties within which service will be rendered in the exercise of the requested certificate.

Whenever a public utility applies to the Commission to extend or establish its water service within a county water district, a public utility or municipal utility district, or other water or utility district, or any area served by such district, such district shall also be named, if it furnishes a like service. The application shall contain a certification that a copy of the application has been served upon or mailed to each such person named.

(c) A map of suitable scale showing the location or route of the proposed construction or extension, and its relation to other public utilities, corporations, persons, or entities with which the same is likely to compete.

(d) A statement identifying the franchises and such health and safety permits as the appropriate public authorities have required or may require for the proposed construction or extension.

(e) Facts showing that public convenience and necessity require, or will require, the proposed construction or extension, and its operation.

(f) A statement detailing the estimated cost of the proposed construction or extension and the estimated annual costs, both fixed and operating associated therewith. In the case of a utility which has not yet commenced service or which has been rendering service for less than twelve months, the applicant shall file as a part of the application supporting statements or exhibits showing that the proposed construction is in the public interest and whether it is economically feasible.

(g) Statements or exhibits showing the financial ability of the applicant to render the proposed service together with information regarding the manner in which the applicant proposes to finance the cost of the proposed construction or extension.

(h) A statement of the proposed rates to be charged for service to be rendered by means of such construction or extension. If the application proposes any increase in rates, it shall comply with Rule 3.2(a).

(i) A statement corresponding to the statement required by Section 2 of General Order No. 104-A, as to all known matters which both (a) are designated by said section for inclusion in the annual report but occurred or were proposed subsequent to the period covered by the last previous annual report filed by the applicant and (b) are, or will be, connected with the construction or extension proposed in the application; or, if no such matters

are known to have so occurred or are then known to be proposed, a statement to that effect; provided, that an applicant whose capital stock, or that of its parent company, is listed on a "national securities exchange," as defined in the Securities Exchange Act of 1934 (15 U.S.C. 78(a) et seq.), in lieu of the statement required by this rule shall include in the application a copy of the latest proxy statement sent to stockholders by it or its parent company if not previously filed with the Commission, provided, further, that an applicant whose capital stock, or that of its parent company, is registered with the Securities and Exchange Commission (SEC) pursuant to the provisions of Section 12(g) of said Securities Exchange Act of 1934, in lieu of the statement required by this rule shall include in the application a copy of the latest proxy statement sent to stockholders by it or its parent company containing the information required by the rules of the SEC if not previously filed with the Commission.

(j) In the case of a telephone utility, the estimated number of customers and their requirements for the first and fifth years in the future.

(k) In the case of a gas utility seeking authority to construct a pipeline:

(1) Regarding the volumes of gas to be transported:

(A) A statement of the volumes to be transported via the proposed pipeline including information on the quality of gas and the maximum daily and annual average daily delivery rates.

(B) A statement that copies of summaries of all contracts for delivery and receipt of gas to be transported via the proposed pipeline and information on the reserves and delivery life pertaining thereto will be made available for inspection on a confidential basis by the Commission or any authorized employee thereof. The terms and provisions of individual contracts for gas supply and data as to reserves or delivery life of individual gas suppliers shall not be required to be stated in the application or in the record of the proceedings, and if disclosed to the commission or to any officer or employee of the Commission on a confidential ~~bases~~ basis as herein provided, shall not be made public or be open to public inspection.

(2) A summary of the economic feasibility, the market requirements and other information showing the need for the new pipeline and supply.

(3) Where the gas to be transported through the pipeline is to be purchased by the applicant from, or transported by the applicant for, an out-of-state supplier:

(A) A copy of the proposed tariff under which the gas will be purchased or transported.

(B) A statement that the out-of-state pipeline supplier has agreed:
(1) to file with this Commission copies of annual reports which it files with the Federal Energy Regulatory Power Commission; (2) to file with this Commission monthly statements of its revenues, expenses and rate base components; (3) to file with this Commission copies of its tariffs as filed from time to time with the Federal Energy Regulatory Power Commission; and (4) at all times to permit this Commission or its staff reasonable opportunity for field inspection of facilities and examination of books and records, plus assurance that reasonable requests for operating information otherwise prepared in the course of business will be supplied in connection with any proceeding before the Federal Energy Regulatory Power Commission.

(I) In the case of an electric utility proposing to construct an electric generating plant:

(1) Load and resource data setting forth recorded and estimated loads (energy and demands), available capacity and energy, and margins for two years actual and three years estimated, on an average year basis.

(2) Existing rated and effective operating capacity of generating plants and the planned additions for a three-year period.

(3) Estimated capital and operating costs of power to be generated by the proposed plant for all competitive fuels which may be used under legislative restrictions in the proposed plant.

(4) For any nuclear plant, a statement indicating that the requisite safety and other license approvals have been obtained or will be applied for, and that a copy of the application to this Commission has been furnished to the State Coordinator of Atomic Energy Development and Radiation Protection.

(m) In the case of a water utility:

(1) An estimate of the number of customers and the requirements for water for the first and fifth years in the future, and the ultimate future development anticipated by applicant, together with a description of the proposed normal, and emergency standby, water facilities for production, storage and pressure to serve the area for which the certificate is sought.

(2) A statement of the estimated operating revenues and estimated expenses, by major classes, including taxes and depreciation, for the first

and fifth years in the future attributable to operations in the proposed area.

(3) If the applicant has operated as a water utility elsewhere in the State of California for a period in excess of one year prior to filing the application, a general statement of the operating plans for the proposed area, including a statement whether a new area will be served by existing personnel or will constitute a separate district to be served by new personnel. If the applicant has not operated as a water utility elsewhere in the State of California for a period in excess of one year prior to filing the application, a description of the operating plans for the proposed area, including, to the extent available, but not necessarily limited to, such items as qualifications of management and operating personnel, proposed operating pressures for the system, plans for water treatment, availability of utility personnel to customers, billing procedures, emergency operation plans and provision for handling customer complaints.

(n) In the case of an application by a water utility in an area in which the facilities have already been constructed, extended or installed:

(1) A detailed statement of the amount and basis of the original cost (estimated if not known) of all plant and of the depreciation reserve applicable thereto.

(2) If the facilities have been rendering service in the area for which the certificate is sought, and

(A) The rates proposed are the same as the tariff rates in the district which includes the area to be certificated, the application shall also include a summary of earnings on a depreciated rate base with respect to such area for the test period or periods upon which applicant bases its justification for the rates to be applied in such area; otherwise

(B) The application shall also comply with Rule 3.2, including the furnishing of the information specified in subsections (a)(5) and (6) thereof but made applicable to the proposed rates; provided, however, the information required by subsections (a)(2) and (3) thereof need be furnished only when increases are proposed.

(o) Such additional information and data as may be necessary to a full understanding of the situation.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1001, Public Utilities Code.

3.3. (Rule 3.3) Certificate to Operate.

(a) Applications for a certificate to operate as a vessel common carrier or passenger stage corporation shall contain the following information:

(1) The type of service applicant seeks to perform or that is being performed by applicant, a general description of it, and a reference to the authority under which existing service is performed.

(2) The specific authority requested and the particular statutory provision under which the certificate is requested.

(3) The areas and points where the applicant will be holding out service, by county, fixed termini, and regular route, if appropriate. If the applicant intends to serve one or more commercial airports, this information must include each airport proposed to be served.

(4) A map or sketch of the route and points to be served, drawn to suitable indicated scale, and showing present and proposed operation by distinctive coloring or marking.

(5) A list of the base fares to be charged, and a statement indicating whether or not the applicant is aware of existing competitors who offer the same or substantially similar services. In addition, all proposed discounted fares must be disclosed as part of this list. Applications for certificates need not contain tariffs, but shall indicate the level and nature of proposed rates and rules, as required herein, and may refer to tariffs on file with or issued by the Commission.

(6) A statement indicating the frequency of the proposed service. If "on call" service is proposed, the application shall set forth conditions under which such service would be performed.

(7) The kind and approximate number of units of equipment to be employed in the proposed service.

(8) A statement of financial ability to render the proposed service.

(9) Facts showing that the proposed operation is required by public convenience and necessity, as defined by Public Utilities Code Section 1032. Pursuant to Section 1032 of the Public Utilities Code, the applicant must show:

- a. That the applicant is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol (CHP) governing highway safety;
- b. That the applicant is committed to observing federal and state hours of service regulations;
- c. That the applicant has a preventive maintenance program in effect for its passenger vehicles that conforms to CHP regulations found under Title 13 of the California Code of Regulations (CCR);
- d. That the applicant institutes a program to monitor the driving records of those operating vehicles that require Class B driver's licenses;
- e. That the applicant has a safety education and training program in effect for all employees and subcarriers;
- f. That the applicant agrees to maintain its passenger vehicles in safe operating condition and in compliance with motor vehicle safety laws and regulations; and
- g. That the applicant has filed with the Commission proof of workers' compensation insurance coverage or a statement as required by Public Utilities Code Section 460.7.

(b) Every applicant for a passenger stage certificate shall forward a notice of the application to each city and county governmental entity and regional transportation planning agency within whose boundaries passengers will be loaded or unloaded. This notice shall inform parties that a complete copy of the application may be made available on the website of the California Public Utilities Commission and, if not made available online, that a copy of the application can be obtained by contacting the applicant or the California Public Utilities Commission and requesting a paper copy. A certificate of service shall be filed with the application.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 460.7, 701, 1007, 1032 and 1701, Public Utilities Code.

4.5. (Rule 4.5) Voluntary Dismissal of Complaint.

Upon motion by all parties stipulating to the dismissal of a complaint, the Executive Director may issue an order granting such motion.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1702.1, Public Utilities Code.

4.6 (Rule 4.6) Expedited Complaint Procedure.

(a) This procedure is applicable to complaints against any electric, gas, water, heat, or telephone company where the amount of money claimed does not exceed the jurisdictional limit of the small claims court referenced in Pub. Util. Code § 1702.1.

(b) No attorney at law shall represent any party other than himself under the Expedited Complaint Procedure.

(c) No pleading other than a complaint and answer is necessary.

(d) A hearing without a reporter shall be held within 30 days after the answer is filed.

(e) Separately stated findings of fact and conclusions of law will not be made, but the decision may set forth a brief summary of the facts.

(f) Complaints calendared under the Expedited Complaint Procedure are exempt from the categorizing and scoping requirements of Article 7 and the requirements of Article 8 regarding communications with decisionmakers *and Commissioners' advisors*.

(g) The Commission or the presiding officer, when the public interest so requires, may at any time prior to the filing of a decision terminate the Expedited Complaint Procedure and recalendar the matter for hearing under the Commission's regular procedure.

(h) The parties shall have the right to file applications for rehearing pursuant to Section 1731 of the Public Utilities Code. If the Commission grants an application for rehearing, the rehearing shall be conducted under the Commission's regular hearing procedure.

(i) Decisions rendered pursuant to the Expedited Complaint Procedure shall

not be considered as precedent or binding on the Commission or the courts of this state.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1702.1, Public Utilities Code.

6.3. (Rule 6.3) Petition for Rulemaking.

(a) Pursuant to this rule, any person may petition the Commission under Public Utilities Code Section 1708.5 to adopt, amend, or repeal a regulation. The proposed regulation must apply to an entire class of entities or activities over which the Commission has jurisdiction and must apply to future conduct.

(b) Form and Content. A petition must concisely state the justification for the requested relief, and if adoption or amendment of a regulation is sought, the petition must include specific proposed wording for that regulation. In addition, a petition must state whether the issues raised in the petition have, to the petitioner's knowledge, ever been litigated before the Commission, and if so, when and how the Commission resolved the issues, including the name and case number of the proceeding (if known). A petition that contains factual assertions must be verified. Unverified factual assertions will be given only the weight of argument. The caption of a petition must contain the following wording: "Petition to adopt, amend, or repeal a regulation pursuant to Pub. Util. Code § 1708.5."

(c) Service and Filing. Petitions must be served upon Executive Director, Chief Administrative Law Judge, Director of the appropriate industry division, and Public Advisor. Prior to filing, petitioners must consult with the Public Advisor to identify any additional persons upon whom to serve the petition. If a petition would result in the modification of a prior Commission order or decision, then the petition must also be served on all parties to the proceeding or proceedings in which the decision that would be modified was issued. The assigned Administrative Law Judge may direct the petitioner to serve the petition on additional persons.

(d) Responses and Replies. Responses to a petition must be filed and served on all ~~parties~~ persons who were served with the petition within 30 days of the date that the petition was served, unless the assigned Administrative Law Judge sets a different date. The petitioner and any other ~~party~~ person may reply to responses to the petition. Replies must be filed and served within 10 days of the last day for filing responses, unless the Administrative Law Judge sets a different date..

(e) The requirements of Article 8 regarding communications with decisionmakers and Commissioners' advisors do not apply to petitions for rulemaking.

(f) The Commission will not entertain a petition for rulemaking on an issue that the Commission has acted on or decided not to act on within the preceding 12 months.

Note: Authority cited: Sections 1701 and 1708.5, Public Utilities Code.
Reference: Section 1708.5, Public Utilities Code.

7.2. (Rule 7.2) Prehearing Conference.

(a) The assigned Commissioner shall set a prehearing conference in an adjudicatory or ratesetting proceeding ~~In any proceeding in which it is preliminarily determined that a hearing is needed, the assigned Commissioner shall set a prehearing conference for 45 to 60 days after the initiation of the proceeding or as soon as practicable after the Commission makes the assignment. The ruling setting the prehearing conference may also set a date for filing and serving prehearing conference statements. Such statements may address the schedule, the issues to be considered, and any other matter specified in the ruling setting the prehearing conference.~~

(b) The assigned Commissioner has the discretion not to set a prehearing conference in a quasi-legislative proceeding ~~any proceeding in which it is preliminarily determined that a hearing is not needed and (1) in a proceeding initiated by application, complaint, or order instituting investigation, no timely protest, answer, or response is filed, or (2) in any proceeding initiated by Commission order, no timely request for hearing is filed.~~

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(b), Public Utilities Code.

7.3. (Rule 7.3) Scoping Memos.

~~(a) At or after the prehearing conference (if one is held),~~ The assigned Commissioner shall issue the scoping memo for the proceeding, which shall determine the schedule (with projected submission date) and issues to be addressed. In an adjudicatory or ratesetting proceeding in which there is evidentiary hearing, the scoping memo shall also designate the presiding officer. In a proceeding initiated by application or order instituting

rulemaking, the scoping memo shall also determine the category and need for hearing.

~~(b) The assigned Commissioner has the discretion not to issue a scoping memo in any proceeding in which it is preliminarily determined that a hearing is not needed and (1) in a proceeding initiated by application, complaint, or order instituting investigation, no timely protest, answer, or response is filed, or (2) in any proceeding initiated by Commission order, no timely request for hearing is filed.~~

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(b) and (c), Public Utilities Code.

7.6. (Rule 7.6) Appeals of Categorization.

(a) Any party may file and serve an appeal regarding the categorization of a proceeding to the Commission, no later than 10 days after the date of: (1) an assigned Commissioner's ruling on category pursuant to Rule 7.3(a); (2) the instructions to answer pursuant to Rule 7.1(b); ~~or~~ (3) an order investigation pursuant to Rule 7.1(c), or (4) any subsequent ruling that expands the scope of the proceeding. Such appeal shall state why the designated category is wrong as a matter of law or policy. The appeal shall be served on the Commission's General Counsel, the Chief Administrative Law Judge, the President of the Commission, and all persons who were served with the ruling, instructions to answer, or order.

(b) Any party, no later than 15 days after the date of a categorization from which timely appeal has been taken pursuant to subsection (a) of this rule, may file and serve a response to the appeal. The response shall be served on the appellant and on all persons who were served with the ruling, instructions to answer, or order. The Commission is not obligated to withhold a decision on an appeal to allow time for responses. Replies to responses are not permitted.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(a), Public Utilities Code.

8.1. (Rule 8.1) Definitions.

For purposes of this Article, the following definitions apply:

~~(a) "Commission staff of record" includes staff from the Division Office of Ratepayer Advocates assigned to the proceeding, staff from the Consumer Protection and Safety Division assigned to an adjudicatory proceeding or to a ratesetting proceeding initiated by complaint, and any other staff assigned to an adjudicatory proceeding in an advocacy capacity.~~

~~"Commission staff of record" does not include the following staff when and to the extent they are acting in an advisory capacity to the Commission with respect to a formal proceeding: (1) staff from any of the industry divisions; or (2) staff from the Consumer Protection and Safety Division in a quasi-legislative proceeding, or in a ratesetting proceeding not initiated by complaint.~~

~~(ba) "Decisionmaker" means any Commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the policy or legal advisory staff assigned to a Commissioner's office, the assigned Administrative Law Judge, or the Law and Motion Administrative Law Judge.~~

~~(eb) "Ex parte communication" means a written communication (including a communication by letter or electronic medium) or oral communication (including a communication by telephone or in person) that:~~

~~(1) concerns any substantive issue in a formal proceeding, other than procedural matters,~~

~~(2) takes place between an interested person and a decisionmaker, whether from the interested person to the decisionmaker or from the decisionmaker to the interested person or a combination thereof, and~~

~~(3) does not occur in a public hearing, workshop, or other public forum, with that has been noticed to the official service list ~~noticed by ruling or order in the proceeding~~, or on the record of the proceeding.~~

~~"Ex parte communications" may include communications that are one-way from a decisionmaker to an interested person, except as provided in Rule 8.3(b).~~

~~Communications regarding the schedule, location, or format for hearings, filing dates, identity of parties, and other such nonsubstantive information are procedural inquiries, not ex parte communications.~~

(d) "Interested person" means any of the following:

- (1) any party to the proceeding or the agents or employees of any party, including persons receiving consideration to represent any of them;
- (2) any person with a financial interest, ~~as described in Article I (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code,~~ in a matter at issue before the Commission, or such person's agents or employees, including persons receiving consideration to represent such a person;
- (3) a representative acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar ~~association~~ organization who intends to influence the decision of a Commission member on a matter before the Commission, even if that association is not a party to the proceeding, ~~or~~
- (4) a person involved in issuing credit ratings or advising entities or persons who invest in shares or operations of any party to a proceeding.

(d) "Party" includes staff from the Office of Ratepayer Advocates assigned to the proceeding and any other Commission staff assigned to a proceeding in an advocacy capacity.

(e) "Procedural matter" means:

- ~~(i)~~ an inquiry regarding the proceeding schedule, location or format of a hearing or other event in the proceeding, general Commission practice, or the requirements of the Rules of Practice and Procedure, provided that the person making the inquiry reasonably believes that the ~~matter~~ subject of the inquiry is not in controversy;
- ~~(ii)~~ a discussion of issues related to submission, filing or service of a document;
- ~~(3)~~ a request for a specific procedural action, so long as the parties are included in the communication; or
- ~~(iii)~~ a ~~matter~~ an inquiry pertaining to the forms and requirements for filing an intervenor compensation notice of intent or request for compensation.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(e)(1)(c)(4), Public Utilities Code.

8.2. (Rule 8.2) Communications with Advisors.

~~Communications with Commissioners' personal advisors are subject to all of the restrictions on, and reporting requirements applicable to, ex parte communications, except that oral communications in ratesetting proceedings are permitted without the restrictions of Rule 8.3(c)(1) and (2).~~

~~—Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(c)(4), Public Utilities Code.~~

8.32. (Rule 8.32) Ex Parte Requirements.

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

(b) In any adjudicatory proceeding, ex parte communications and communications concerning procedural matters between interested persons and decisionmakers other than the assigned Administrative Law Judge are prohibited.

(c) In any ratesetting proceeding, ~~ex parte communications are subject to the reporting requirements set forth in Rule 8.4. In addition, ex parte communications are permitted if consistent with the following requirements: the following restrictions apply:~~

(1) All-party meetings:

(A) 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 working days before the meeting or call.

(B) Oral ex parte communications at all-party meetings are not subject to the reporting requirements set forth in Rule 8.4.

(2) Individual oral ex parte communications:

(A) If a decisionmaker, other than the policy or legal advisory staff assigned to a Commissioner's office, grants an ex parte communication meeting or call to any interested person individually or to a group of interested persons outside of an all-party meeting, all other parties shall be granted an individual meeting of a substantially equal period of time with that decisionmaker.

(B) If a decisionmaker grants an ex parte communication meeting or call to any interested person individually or to a group of interested persons outside of an all-party meeting, the The interested person requesting the initial individual meeting shall notify the parties that its request has been granted, and shall file ~~a certificate of service of~~ this notification, at least three working days before the meeting or call. A single notification on behalf of a group of interested person will suffice.

(C) Individual oral ex parte communications are not permitted during the three working days before the Commission's scheduled vote on the decision in the proceeding and extending until after the Commission's voting meeting concludes.

(D) Individual oral ex parte communications are subject to the reporting requirements set forth in Rule 8.4.

(3) Written ex parte communications:

(A) Written ex parte communications are permitted at any time provided that the interested person making the communication serves copies of the communication on all parties on the same day the communication is sent to a decisionmaker.

(B) Written ex parte communications are not subject to the reporting requirements set forth in Rule 8.4.

(4) Ratesetting Deliberative Meetings and Ex Parte Prohibitions:

(A) The Commission may prohibit ex parte communications for a period beginning not more than 14 days before the day of the Commission Business Meeting at which the decision in the proceeding is scheduled for Commission action, during which period the Commission may hold a Ratesetting Deliberative Meeting. 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 day of the Business Meeting to which the decision is held.

(B) In proceedings in which a Ratesetting Deliberative Meeting has been scheduled, ex parte communications are prohibited from the day of the Ratesetting Deliberative Meeting at which the decision in the proceeding is scheduled to be discussed through the conclusion of the Business Meeting at which the decision is scheduled for Commission action.

(d) Notwithstanding subsections (a) and (c) of this rule, Rule 8.5, unless otherwise directed by the assigned Administrative Law Judge with the approval of the assigned Commissioner may issue a ruling to restrict or prohibit ex parte communications in a quasi-legislative or ratesetting proceeding or to require reporting of ex parte communications in a quasi-legislative proceeding., the provisions of subsections (b) and (c) of this rule, and any reporting requirements under Rule 8.4, 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, (2) all such responsive pleadings are withdrawn, or (3) a scoping memo has issued determining that a hearing is not needed in the proceeding.

(e) Ex parte communications concerning categorization of a given proceeding are permitted, but must be reported pursuant to Rule 8.4~~3~~.

(f) Ex parte communications regarding the assignment of a proceeding to a particular Commissioner or Administrative Law Judge, or reassignment of a proceeding to another Commissioner or Administrative Law Judge, are prohibited. For purposes of this rule, "ex parte communications" include communications between an Administrative Law Judge and other decisionmakers about a motion for reassignment of a proceeding assigned to that Administrative Law Judge.

(g) Ex parte communications that are one-way from a decisionmaker to an interested person are banned.

(h) If a prohibited communication occurs, the interested person shall report it pursuant to Rule 8.4.

(~~hi~~) The requirements of this rule, and any reporting requirements under Rule 8.4, shall apply until (1) the date when the Commission serves the decision finally resolving any application for rehearing, or (2) where the period to apply for rehearing has expired and no application for rehearing has been filed.

~~(hij)~~ Upon the filing of a petition for modification, the requirements of this rule, and any reporting requirements under Rule 8.4, that applied to the proceeding in which the decision that would be modified was issued shall apply until and unless ~~(1) no timely response, protest or request for hearing is filed, (2) all such responsive pleadings are withdrawn, or (3) a scoping memo has issued determining that a hearing is not needed in the proceeding or that a different category shall apply.~~

~~(ijk)~~ Where a proceeding is remanded to the Commission by a court or where the Commission re-opens a proceeding, the requirements of this rule and any reporting requirements under Rule 8.4 that previously applied to the proceeding shall apply until and unless a Commission order or a scoping memo has issued determining that ~~a hearing is not needed in the proceeding or that a different category shall apply.~~

~~(jkl)~~ When the Commission determines that there has been a violation of this rule or of Rule 8.4~~3~~, the Commission may impose penalties and sanctions, or make any other order, including but not limited to: as it deems appropriate to ensure the integrity of the record and to protect the public interest.

(i) penalty of from \$500 up to \$50,000 for each offense, except that, if the person or entity that committed the violation may obtain financial benefits that exceed this maximum penalty, the Commission may impose a penalty up to the amount of those benefits. If the violation consists of engaging in a prohibited ex parte communication, each day that the violation is not disclosed to the Commission and to parties to the proceeding is a separate violation.

(ii) adverse consequences in the subject proceeding or in other Commission proceedings.

In determining the appropriate penalties or sanctions, the Commission shall consider (i) the harm caused by virtue of the violation, (ii) the person's or entity's conduct in preventing, detecting, correcting, disclosing, and rectifying the violation, (iii) the amount of penalty that will achieve the objective of deterrence based on the person's or entity's financial resources, (iv) penalties or sanctions that the Commission has imposed under reasonably comparable factual circumstances, and (v) the totality of circumstances from the perspective of the public interest.

~~(klm)~~ The Commission shall render its decision based on the evidence of record. Ex parte communications, and any notice filed pursuant to Rule 8.4~~3~~, are not a part of the evidentiary record of the proceeding.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 1701.1(a), 1701.2(b), 1701.3(c) and 1701.4(b), Public Utilities Code.

8.3. (Rule 8.3) Communications at Conferences.

This rule governs communications concerning any issue in a formal adjudicatory or ratesetting proceeding between interested persons and decisionmakers at a conference.

(a) Individual oral ex parte communications are subject to the otherwise-applicable requirements of Rule 8.2. Pursuant to Rule 8.2(b), communications regarding adjudicatory proceedings are prohibited and the limited exceptions set forth in (b) and (c) apply only to ratesetting proceedings.

(b) A decisionmaker's presentation or dialogue during a question and answer session where the audience includes an interested person is not a one-way ex parte communication.

(c) An interested person's presentation or dialogue during a question and answer session where the audience includes a decisionmaker is not an ex parte communication subject to Rule 8.2(c)(2) but must be reported in the same manner as an ex parte communication pursuant to Rule 8.4(a).

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(e)(7), Public Utilities Code.

8.4. (Rule 8.4) 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. Notice of ex parte communications shall be filed no more than within three working days of after the communication and, in addition to the service requirements of Rule 1.9, shall be served on the decisionmakers who participated in the communication. The notice may address multiple ex parte communications in the same proceeding, provided that notice of each communication identified therein is timely. The notice shall include the following information:

(a1) The date, time, and location of the communication, and whether it was

oral, written, or a combination of both, and the communication medium used;

(b~~2~~) The identities of each decisionmaker ~~(or Commissioner's personal advisor)~~ involved, the person initiating the communication, and any persons present during such communication;

(c~~3~~) The topic of the communication, the applicable proceeding numbers, and a description of the interested person's, but not the decisionmaker's (or Commissioner's personal advisor's), communication and its content including a summary of all of the points or arguments made in the communication, together with any request, recommendation, or advice provided to the decisionmaker, to which description shall be attached a copy of any written, audiovisual, or other material used for or during the communication.

(b) If an ex parte communication is not disclosed as required by Rule 8.2 and this rule until after the Commission has issued a decision on the matter to which the communication pertained, a party not participating in the communication may file a petition to rescind or modify the decision. A petition filed pursuant to this rule shall be filed no later than 30 days after the date the ex parte communication is disclosed.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1~~(e)(c)(4)(C)(i)-(iii)~~, Public Utilities Code.

~~8.6. (Rule 8.6) Requirements in Proceedings Filed Before January 1, 1998.~~

~~The following requirements apply to proceedings filed before January 1, 1998:~~

~~(a) In any investigation or complaint where the order instituting investigation or complaint raises the alleged violation of any provision of law or Commission order or rule, ex parte communications and communications with Commissioners' personal advisors are prohibited after the proceeding has been submitted to the Commission.~~

~~(b) Ex parte communications and communications with Commissioners' personal advisors are permitted, and shall not be reported, in rulemakings and in investigations consolidated with rulemakings to the extent that the investigation raises the identical issues raised in the rulemaking.~~

~~(c) All other ex parte communications and communications with Commissioners' personal advisors are permitted, and are subject to the~~

~~reporting requirements of Rule 8.4.~~

~~(d) The Commission, or the assigned Administrative Law Judge with the approval of the assigned Commissioner, may issue a ruling tailoring these requirements to the needs of any specific proceeding.~~

~~—Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(c)(4), Public Utilities Code.~~

ARTICLE 9. ADMINISTRATIVE LAW JUDGES AND COMMISSIONERS

9.4. (Rule 9.4) Motion for Reassignment Disqualification of Administrative Law Judge for Cause.

~~(a) Irrespective of the limits in Rule 9.2 on number of motions for reassignment, a A party may move for reassignment in any proceeding to disqualify in which the assigned Administrative Law Judge for having:~~

~~(1) has a financial interest in the subject matter in a proceeding or in a party to the proceeding.~~

~~An Administrative Law Judge shall be deemed to have a financial interest if:~~

~~(A) A spouse or minor child living in the Administrative Law Judge's household has a financial interest; or~~

~~(B) The Administrative Law Judge or his or her spouse is a fiduciary who has a financial interest.~~

~~(2) has bias, or prejudice, or interest in the proceeding. In a ratesetting or adjudicatory proceeding, bias or prejudice may include either of the following:~~

~~(A) Actions taken during the proceeding that demonstrate bias or prejudice.~~

~~(B) Actions taken outside the public record of a proceeding demonstrating any commitment to provide relief to a party.~~

~~(b) A motion filed pursuant to this rule shall be supported by a declaration under penalty of perjury (or affidavit by an out-of-state person) setting forth the factual basis for the motion, and shall be filed and served as provided in Rule 9.2(a).~~

(c) A motion filed pursuant to this rule shall be filed at the earliest practicable opportunity and in any event no later than 10 days after the date the party discovered or should have discovered facts set forth in the declaration filed pursuant to this rule.

~~(d) Any written response by the assigned Administrative Law Judge to a motion for reassignment for cause shall be filed and served in the proceeding where the motion was filed.~~

(e) The Chief Administrative Law Judge, in consultation with the President of the Commission, and after considering any response from the assigned Administrative Law Judge, shall rule on issue a ruling addressing the any motion to disqualify the assigned Administrative Law Judge. The assigned Administrative Law Judge shall not rule on the motion.

~~(f) For the purposes of this rule, "financial interest" means ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value in excess of one thousand five hundred dollars (\$1,500), or a relationship as director, advisor or other active participant in the affairs of a party, except as follows:~~

~~(1) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in those securities held by the organization unless the Commissioner or Administrative Law Judge participates in the management of the fund.~~

~~(2) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization.~~

~~(3) The proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest.~~

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 309.6, 1701.2(c), and 1701.3(g), Public Utilities Code.

9.5. (Rule 9.5) Motion for Reassignment Disqualification of Commissioner for Cause.

(a) A party may move in any proceeding to disqualify a Commissioner for having a financial interest in the subject matter in a proceeding or in a party to the proceeding, or for having bias or prejudice in the proceeding.

(1) In a ratesetting or adjudicatory proceeding, bias or prejudice may include either of the following:

(A) Actions taken during the proceeding that demonstrate bias or prejudice.

(B) Actions taken outside the public record of a proceeding demonstrating any commitment to provide relief to a party.

(b) A motion filed pursuant to this rule shall be supported by a declaration under penalty of perjury (or affidavit by an out-of-state person) setting forth the factual basis for the motion, and shall be filed and served as provided in Rule 9.2(a).

(c) A motion filed pursuant to this rule shall be filed within 30 days after the date the party discovered or should have discovered facts set forth in the declaration filed pursuant to this rule.

(d) The Executive Director, in consultation with the General Counsel, shall present a recommended resolution for a vote of the Commission.

(e) A Commissioner who is the subject of a motion for disqualification may not vote on the Executive Director's recommended resolution of the motion.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 309.6, 1701.2(c), and 1701.3(g), Public Utilities Code.

9.56. (Rule 9.56) Circumstances Not Constituting Cause.

It shall not be cause for ~~disqualification~~ reassignment for cause that the Commissioner or Administrative Law Judge:

(a) Is or is not a member of a racial, ethnic, religious, sexual or similar group and the proceeding involves the rights of such a group.

(b) Has past work experience, technical competence, or specialized knowledge of or has in any capacity expressed a view on a legal, factual or

policy issue presented in the proceeding, except as provided in Rule 9.3.

(c) Has, as a representative or public official participated in the drafting of laws or regulations or in the effort to pass or defeat laws or regulations, the meaning, effect, or application of which is in issue in the proceeding unless the Commissioner or Administrative Law Judge believes that the prior involvement was such as to prevent the Commissioner or Administrative Law Judge from exercising unbiased and impartial judgment in the proceeding.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 309.6 and 1701.2, Public Utilities Code.

~~9.6. (Rule 9.6) Administrative Law Judge's Request for Reassignment.~~

~~The Administrative Law Judge shall request reassignment and withdraw from a proceeding in which there are grounds for reassignment for cause unless the parties waive the reassignment pursuant to Rule 9.7.~~

~~—Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.2, Public Utilities Code.~~

~~9.7. (Rule 9.7) Waiver.~~

~~An Administrative Law Judge, after determining that there is basis for his or her reassignment for cause, shall disclose the basis on the record, and may ask the parties whether they wish to waive the reassignment. A waiver of reassignment shall recite the basis for reassignment and is effective only when signed by all parties, and included in the record. The Administrative Law Judge shall not seek to induce a waiver and shall avoid any effort to discover which representatives or parties favored or opposed a waiver of reassignment.~~

~~—Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.2, Public Utilities Code.~~

12.1. (Rule 12.1) Proposal of Settlements.

(a) Parties may, by written motion any time after the first prehearing conference and within 30 days after the last day of hearing, propose

settlements on the resolution of any material issue of law or fact or on a mutually agreeable outcome to the proceeding. Settlements need not be joined by all parties; however, settlements in applications must be signed by the applicant and, in complaints, by the complainant and defendant.

The motion shall contain a statement of the factual and legal considerations adequate to advise the Commission of the scope of the settlement and of the grounds on which adoption is urged. Resolution shall be limited to the issues in that proceeding and shall not extend to substantive issues which may come before the Commission in other or future proceedings.

When a settlement pertains to a proceeding under a Rate Case Plan or other proceeding in which a comparison exhibit would ordinarily be filed, the motion must be supported by a comparison exhibit indicating the impact of the settlement in relation to the utility's application and, if the participating staff supports the settlement, in relation to the issues staff contested, or would have contested, in a hearing.

(b) Prior to signing any settlement, the settling parties shall convene at least one conference with notice and opportunity to participate provided to all parties for the purpose of discussing settlements in the proceeding. Notice of the date, time, and place shall be served on all parties at least seven (7) days in advance of the conference, unless all parties stipulate to reduce the time or waive the need for service. Notice of any subsequent settlement conferences may be oral, may occur less than seven days in advance, and may be limited to prior conference attendees and those parties specifically requesting notice.

Attendance at any settlement conference shall be limited to the parties and their representatives.

(c) Settlements should ordinarily not include deadlines for Commission approval; however, in the rare case where delay beyond a certain date would invalidate the basis for the proposal, the timing urgency must be clearly stated and fully justified in the motion.

(d) The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701, Public Utilities Code.

13.7. (Rule 13.7) Exhibits.

(a) Exhibits and copies of exhibits shall be legible and either prepared on paper not exceeding 8 ½ x 13 inches in size, or folded to that approximate size. Exhibits of two or more pages shall be bound or stapled and, wherever practicable, the pages of each exhibit shall be numbered. Exhibits that contain multiple chapters or attachments shall include a table of contents. Rate comparisons and other figures shall be set forth in tabular form. The top sheet of an exhibit must have a blank space two inches high by four inches wide to accommodate the Commission's exhibit stamp.

(b) When exhibits are offered in evidence, the original plus one copy shall be furnished to the presiding officer and one copy to the reporter and to each party, unless the presiding officer directs otherwise.

(c) Documentary exhibits shall be limited to those portions of the document that are relevant and material to the proceeding.

(d) If relevant and material matter offered in evidence is embraced in a document containing other matter, parties shall be afforded opportunity to examine the document, and to offer in evidence other portions thereof believed material and relevant.

(e) All documents that are prepared, directly or indirectly, by the party offering them into evidence shall be certified under penalty of perjury by the person preparing or in charge of preparing them as being true and correct, unless the person preparing them is dead or has been declared incompetent, in which case any other person having knowledge of such statements of fact may certify such documents.

(f) Exhibits shall be submitted as "supporting documents" using the Electronic Filing System on the Commission's website at <http://www.cpuc.ca.gov/PUC/efiling>.

(i) Prepared testimony (see Rule 13.8) shall be submitted on the same day as it is served.

(ii) All other exhibits shall be submitted by no later than three business days from ~~when they are offered in evidence~~ the conclusion of evidentiary hearing.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701, Public Utilities Code.

13.8. (Rule 13.8) Prepared Testimony.

(a) Prepared testimony may be offered in evidence as an exhibit in lieu of oral testimony under direct examination, provided that copies shall have been served upon all parties prior to hearing and pursuant to the schedule adopted in the proceeding. Prepared testimony shall constitute the entirety of the witness's direct testimony, and shall include any exhibits to be offered in support of the testimony and, in the case of an expert witness, a statement of the witness's qualifications.

(b) Direct testimony in addition to the prepared testimony previously served, other than the correction of minor typographical or wording errors that do not alter the substance of the prepared testimony, will not be accepted into evidence unless the sponsoring party shows good cause why the additional testimony could not have been served with the prepared testimony or should otherwise be admitted. Corrections to minor typographical or wording errors in prepared testimony may be offered in evidence as an exhibit in lieu of oral testimony under direct examination.

(c) ~~In the absence of an evidentiary hearing, p~~Prepared testimony and accompanying exhibits may be offered and received into evidence without direct or cross examination absent objection by any party. ~~by written motion or by oral motion at a prehearing conference, if any. If the offer is by written motion, the prepared testimony shall not be filed with the motion, but shall be concurrently served with the motion. Two copies shall be served on the Administrative Law Judge or, if none is yet assigned, on the Chief Administrative Law Judge. The motion shall include a declaration under penalty of perjury by the person preparing or in charge of preparing the prepared testimony as being true and correct, unless the person preparing them is dead or has been declared incompetent, in which case any other person having knowledge of such statements of fact may certify such documents.~~

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701, Public Utilities Code.

13.11. (Rule 13.11) Closing Briefs.

The Administrative Law Judge or presiding officer, as applicable, may fix the time for the filing of briefs. Concurrent briefs are preferable. Factual statements must be supported by identified evidence of record. Citations to the transcript must indicate the transcript page number(s) and identify the party and witness sponsoring the cited testimony. Citations to exhibits must indicate the exhibit number and exhibit page number. A brief of more than 20 pages shall contain a subject index, a table of authorities, and a summary of the briefing party's recommendations following the table of authorities.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701, Public Utilities Code.

13.12. (Rule 13.12) Oral Argument in Adjudicatory Proceeding.

In any adjudicatory proceeding, if an application for rehearing is granted, the parties shall have an opportunity for final oral argument before the presiding officer, if a party so requests within the time and in the manner specified.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.2(~~de~~), Public Utilities Code.

13.13. (Rule 13.13) Oral Argument Before Commission.

(a) The Commission may, on its own motion or upon recommendation of the assigned Commissioner or Administrative Law Judge, direct the presentation of oral argument before it.

(b) In ratesetting and quasi-legislative proceedings ~~in which hearings were held~~, a party has the right to make a final oral argument before the Commission, provided that the party makes such request by motion no later than the time for filing opening in its closing briefs or, if ~~closing opening~~ briefs are not permitted by the scoping memo, within the time and in the manner specified in the scoping memo or later ruling in the proceeding. A quorum of the Commission shall be present; however, a Commissioner may be present by teleconference to the extent permitted by the Bagley-Keene Open Meeting Act.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 1701.3(~~ed~~) and 1701.4(~~ed~~), Public Utilities Code.

13.14. (Rule 13.14) Submission and Reopening of Record.

(a) A proceeding shall stand submitted for decision by the Commission after the taking of evidence, the filing of briefs, and the presentation of oral argument as may have been prescribed.

(b) A motion to set aside submission and ~~reopen the record~~ for the taking of additional evidence or argument, or for consideration of a settlement under Article 12 shall specify the facts claimed to constitute grounds in justification thereof, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing. It shall contain a brief statement of proposed additional evidence, and explain why such evidence was not previously adduced.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701, Public Utilities Code.

14.1. (Rule 14.1) Definitions.

For purposes of this article, the following definitions shall apply:

(a) "Presiding officer's decision" is a recommended decision that is proposed by the presiding officer in an adjudicatory proceeding ~~in which evidentiary hearings have been conducted~~.

(b) "Proposed decision" is a recommended decision, other than a presiding officer's decision as defined in subsection (a), that is proposed by (1) the presiding officer or (2) where there is not a presiding officer, the assigned Administrative Law Judge or the assigned Commissioner.

(c) "Draft resolution" is a recommended resolution that is proposed by a Commission director.

(d) "Alternate proposed decision" or "alternate draft resolution" means a substantive revision by a Commissioner to a proposed decision or draft resolution not proposed by that Commissioner which either:

- (1) materially changes the resolution of a contested issue, or
- (2) makes any substantive addition to the findings of fact, conclusions of law, or ordering paragraphs.

"Alternate proposed decision" also means a recommended decision prepared by the assigned Administrative Law Judge in ratesetting proceeding where the assigned Commissioner is the presiding officer.

A substantive revision to a proposed decision or draft resolution is not an "alternate proposed decision" or "alternate draft resolution" if the revision does no more than make changes suggested in prior comments on the proposed decision or draft resolution, or in a prior alternate to the proposed decision or draft resolution.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 311, Public Utilities Code.

14.2. (Rule 14.2) Issuance of Recommended Decision.

(a) A proposed decision shall be filed no later than 90 days after submission. ~~In a ratesetting case that requires a hearing, an alternate proposed decision by the assigned commissioner or assigned administrative law judge shall be filed concurrently with the proposed decision.~~

(b) A presiding officer's decision shall be filed no later than 60 days after submission.

(c) An alternate proposed decision shall be filed without undue delay.

(d) A draft resolution shall not be filed with the Commission, but shall be served as follows, and on other persons as the Commission deems appropriate:

- (1) A draft resolution disposing of an advice letter shall be served on the utility that proposed the advice letter, on any person who served a protest or response to the advice letter, and any person whose name and interest in the relief sought appears on the face of the advice letter (as where the advice letter seeks approval of a contract or deviation for the benefit of such person);

(2) A draft resolution disposing of a request for disclosure of documents in the Commission's possession shall be served on (A) the person who requested the disclosure, (B) any Commission regulate about which information protected by Public Utilities Code Section 583 would be disclosed if the request were granted, and (C) any person (whether or not a Commission regulate) who, pursuant to protective order, had submitted information to the Commission, which information would be disclosed if the request were granted;

(3) A draft resolution disposing of one or more requests for motor carrier operating authority shall be served on any person whose request would be denied, in whole or part, and any person protesting a request, regardless of whether the resolution would sustain the protest;

(4) A draft resolution establishing a rule or setting a fee schedule for a class of Commission-regulated entities shall be served on any person providing written comment solicited by Commission staff (e.g., at a workshop or by letter) for purposes of preparing the draft resolution.

An alternate draft resolution shall be served consistent with the service of the draft resolution.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 311(d), 311(f), 1701.1, 1701.2, 1701.3 and 1701.4, Public Utilities Code.

14.5. (Rule 14.5) Comment on Draft or Alternate Draft Resolution.

Any person may comment on a draft or alternate draft resolution by serving (but not filing) comments on the Commission ~~by no later than ten days before the Commission meeting when the draft or alternate resolution is first scheduled for consideration (as indicated on the first page of the draft or alternate resolution)~~ within 20 days of the date of its notice in the Commission's Daily Calendar and in accordance with the instructions accompanying the notice ~~of the draft or alternate draft resolution in the Commission's Daily Calendar.~~

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 311(e) and 311(g), Public Utilities Code.

14.6. (Rule 14.6) Reduction or Waiver of Review.

(a) In an unforeseen emergency situation, the Commission may reduce or waive the period for public review and comment on proposed decision, draft resolutions, and their alternates. "Unforeseen emergency situation" means a matter that requires action or a decision by the Commission more quickly than would be permitted if advance publication were made on the regular meeting agenda. Examples include, but are not limited to:

- (1) Activities that severely impair or threaten to severely impair public health or safety.
- (2) Crippling disasters that severely impair public health or safety.
- (3) Administrative disciplinary matters, including, but not limited to, consideration of proposed decisions and stipulations, and pending litigation, that require immediate attention.
- (4) Consideration of applications for licenses or certificates for which a decision must be made in less than ten days.
- (5) Consideration of proposed legislation that requires immediate attention due to legislative action that may be taken before the next regularly scheduled Commission meeting, or due to time limitations imposed by law.
- (6) Requests for relief based on extraordinary conditions in which time is of the essence.
- (7) Deadlines for Commission action imposed by legislative bodies, courts, other administrative bodies or tribunals, the office of the Governor, or a legislator.
- (8) Unusual matters that cannot be disposed of by normal procedures if the duties of the Commission are to be fulfilled.

A rate increase is not an unforeseen emergency situation.

(b) The Commission may reduce or waive the period for public review and comment on proposed decisions and their alternates, where all the parties so stipulate, and on draft resolutions and their alternates, where all persons identified in subsection (1), (2), (3) or (4) of Rule 14.2(c) so stipulate.

(c) In the following circumstances, the Commission may reduce or waive the period for public review and comment on draft resolutions and proposed

decisions, and may reduce but not waive the period for public review and comment on alternate draft resolutions and alternate proposed decisions:

- (1) in a matter where temporary injunctive relief is under consideration.
- (2) in an uncontested matter where the decision grants the relief requested.
- (3) for a decision on a request for review of the presiding officer's decision in an adjudicatory proceeding.
- (4) for a decision extending the deadline for resolving adjudicatory proceedings (Public Utilities Code Section 1701.2(~~de~~)) or for resolving the issues raised in the scoping memo in a ratesetting or quasi-legislative proceeding (Public Utilities Code Section 1701.5).
- (5) for a decision under the state arbitration provisions of the federal Telecommunications Act of 1996.
- (6) for a decision on a request for compensation pursuant to Public Utilities Code Section 1801 et seq.
- (7) for a decision authorizing disclosure of documents in the Commission's possession when such disclosure is pursuant to subpoena.
- (8) for a decision under a federal or California statute (such as the California Environmental Quality Act or the Administrative Procedure Act) that both makes comprehensive provision for public review and comment in the decision-making process and sets a deadline from initiation of the proceeding within which the Commission must resolve the proceeding.
- (9) for a decision on a motion for disqualification of a Commissioner.
- (10) for a decision in a proceeding in which no hearings were conducted where the Commission determines, on the motion of a party or on its own motion, that public necessity requires reduction or waiver of the 30-day period for public review and comment. For purposes of this subsection, "public necessity" refers to circumstances in which the public interest in the Commission adopting a decision before expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day period for review and comment. "Public necessity" includes, without limitation, circumstances where failure to adopt a decision before expiration of the 30-day review and comment period would place the Commission or a Commission regulatee in violation of applicable law, or where such failure would cause significant harm to public health or welfare. When acting pursuant to this

subsection, the Commission will provide such reduced period for public review and comment as is consistent with the public necessity requiring reduction or waiver.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 306(b), 311(e), 311(g), ~~1701.2(d) and 1701.5~~, Public Utilities Code; and Section 11125.5, Government Code.

15.1. (Rule 15.1) Commission Meetings.

(a) Commission Business Meetings shall be held on a regularly scheduled basis to consider and vote on decisions and orders and to take such other action as the Commission deems appropriate. Commission Business Meetings are open to the public, but the Commission may hold closed sessions as part of a regular or special meeting, as permitted by law.

(b) In a ratesetting proceeding where a hearing was held, the Commission may hold a Ratesetting Deliberative Meeting to consider its decision in closed session.

(c) Notice of the time and place of these meetings will appear in the Commission's Daily Calendar.

(d) No unscheduled meeting to take action will be held unless: (1) the Commission determines by majority vote, at a meeting prior to the emergency meeting or at the beginning of the emergency meeting, that an unforeseen emergency situation, as defined in the Bagley-Keene Open Meeting Act, exists, or (2) wherever otherwise permitted by the Bagley-Keene Open Meeting Act.

(e) If an alternate is mailed less than 30 days before the Commission meeting at which the proposed decision or draft resolution is scheduled to be considered, the items will continue to be listed on the Commission's agenda, but will be held to the extent necessary to comply with Public Utilities Code Section 311(e).

(f) The Commission shall not take any vote on a matter in which a notice of a prohibited ex parte communication has been filed until all parties to the proceeding have been provided a reasonable opportunity to respond to the communication.

(g) The Commission may meet in closed session to discuss administrative matters. For purposes of this rule, "administrative matters" means matters relevant to effective oversight of the Commission's operations, and does not include any matter that may be pending disposition by a Commission decision or order that is subject to Pub. Util. Code section 311.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 306, ~~and 311(e)~~, and 1701.1(f), Public Utilities Code; and Sections 11123, 11125.4, 11125.5 and 11126, Government Code.

15.3. (Rule 15.3) Agenda Item Documents.

(a) Before each Commission meeting, the Commission will make available to the public all draft orders, proposed and draft decisions and their alternates, draft resolutions and their alternates, and written reports appearing on the agenda, except those documents relating to items the Commission considers during its closed session, by publishing them on the Commission's Internet web site.

(b) Agenda item documents are also available for viewing and photocopying (for a fee) at the Commission's Central Files in San Francisco and at the Commission's Los Angeles and San Diego offices, and may be available in certain of the Commission's field offices. If agenda item documents are not ready when the agenda is issued, they will be available at no charge at ~~9 a.m.~~ on the day and at the location of the Commission meeting, no later than the start of the meeting.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 311.5, Public Utilities Code; Section 11125.1, Government Code.

16.1. (Rule 16.1) Application for Rehearing.

(a) Application for rehearing of a Commission order or decision shall be filed within 30 days after the date the Commission mails the order or decision, or within 10 days of mailing in the case of an order relating to (1) security transactions and the transfer or encumbrance of utility property as described in Public Utilities Code Section 1731(b), or (2) the Department of Water Resources as described in Public Utilities Code Section 1731(c).

(b) Filing of an application for rehearing shall not excuse compliance with an order or a decision. An application filed ten or more days before the effective date of an order suspends the order until the petition is granted or denied. Absent further Commission order, this suspension will lapse after 60 days. The Commission may extend the suspension period.

(c) Applications for rehearing shall 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. The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously.

(d) A response to an application for rehearing is not necessary. Any response may be filed and served no later than fifteen days after the day the application for rehearing was filed. In instances of multiple applications for rehearing the response may be to all such applications, and may be filed 15 days after the last application for rehearing was filed. The Commission is not obligated to withhold a decision on an application for rehearing to allow time for a response to be filed.

~~(e) Motions related to applications for rehearing shall be directed to the Chief Administrative Law Judge for resolution.~~

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 1731, 1732, 1733 and 1735, Public Utilities Code.

16.2. (Rule 16.2) Parties Eligible to File Applications for Rehearing and Responses.

(a) For purposes of filing an application for rehearing in a formal proceeding, "parties" include any person who is a party pursuant to Rule 1.4.

(b) For purposes of filing an application for rehearing of a resolution, "parties" include any person described in paragraphs (1) through (4) of Rule 14.2(ed) and any person who has served written comments on a draft or alternate resolution pursuant to Rule 14.5.

(c) Except as may be specifically authorized by statute, a person may not become a party by filing an application for rehearing or a response to an application for rehearing.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 1731, 1732, 1733 and 1735, Public Utilities Code.

17.1. (Rule 17.1) Notice of Intent to Claim Compensation.

(a) A notice of intent to claim compensation may be filed:

(1) in a proceeding in which a prehearing conference is held, any time after the start of the proceeding until 30 days after the prehearing conference.

(2) ~~if it has been preliminarily determined that a hearing is not needed, any time after the start of the proceeding until 30 days after the time for filing responsive pleadings (e.g., protests, responses, answers, or comments).~~ If a prehearing conference is later held, the notice may be filed pursuant to subsection (a)(1). in a quasi-legislative proceeding in which a prehearing conference is not held in advance of the issuance of the scoping memo, any time until 30 days after the issuance of the scoping memo.

(3) in a petition for rulemaking, any time after the petition is filed until 30 days after the time for filing responses. If the petitioner intends to request compensation, the petition itself may include a notice of intent. If a prehearing conference is later held, the notice may be filed pursuant to subsection (a)(1).

(4) in a proceeding where the Commission anticipates that the proceeding will take less than 30 days, by any deadline that may be established by the Administrative Law Judge.

(b) An amended notice of intent may be filed within 15 days after the issuance of the scoping memo in the proceeding.

(c) The notice of intent shall identify all issues on which the intervenor intends to participate and seek compensation, and shall separately state the expected budget for participating on each issue. The notice of intent may include a category of general costs not attributable to a particular issue.

(d) If the intervenor claims eligibility on the basis of customer status, ~~The~~ notice of intent shall provide either (1) verification of the intervenor's customer status pursuant to Public Utilities Code Section 1802(b)(1)(A) or (B), or (2) a copy of articles of incorporation or bylaws demonstrating the

intervenor's customer status pursuant to Public Utilities Code Section 1802(b)(1)(C). ~~I or, if current articles or bylaws have already been filed with the Commission, the notice of intent need only make a specific reference to such filings.~~

(e) If the intervenor claims eligibility on the basis of being an eligible local government entity, the notice of intent shall provide verification that it meets the definition pursuant to Public Utilities Code Section 1802(d).

(f) The notice of intent shall state the intervenor's economic interest in the proceeding, as that interest relates to the issues on which the intervenor - intends to participate.

~~(f) An intervenor who intends to request compensation for costs of judicial review shall file a supplemental notice of intent within 30 days after the date that the intervenor first appears or files a pleading in the judicial review proceeding. The supplemental notice of intent shall identify the issues upon which the intervenor intends to participate in judicial review, and an itemized estimate of the compensation that the intervenor expects to request by reference to those identified issues. If the intervenor intends to support the Commission's decision on review, the supplemental notice of intent shall include a showing of why the intervenor expects that its participation in judicial review will supplement, complement or contribute to the Commission's defense of its decision.~~

(g) Responses to notices of intent to claim compensation shall be filed within 15 days of service of the notice.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 1802 and 1804, Public Utilities Code.

(End of Appendix A)