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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking to Update, Clarify and Recodify Rules of Practice and Procedure.	**FILED** **PUBLIC UTILITIES COMMISSION** **FEBRUARY 16, 2006** **SAN FRANCISCO, CALIFORNIA** **RULEMAKING 06-02-011**

ORDER INSTITUTING RULEMAKING

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I. Summary

We propose to amend and recodify the Rules of Practice and Procedure in order to update, clarify and simplify them. For the most part, the proposed amendments (1) repeal rules that have been rendered obsolete by changes in statute or practice; (2) delete redundant rules, rules which define commonly understood terms and phrases, and rules which merely state the Commission's existing authority or reiterate statutory requirements; (3) edit rules to reflect and formalize standard Commission practices; and (4) simplify the language and organization of the rules. The proposed recodification reorganizes the rules in a more logical fashion reflective of the course of Commission proceedings, making it easier to identify and locate rules regarding particular subjects.

Some of the proposed amendments would also enact substantive changes prompted by our experience with the rules, changes in statute or Commission practice, and the opportunity to codify interim rules currently in effect under Commission resolutions. We address these amendments separately below.

Taken together, these changes shorten the bulk of the Rules of Practice and Procedure by nearly 40 percent.

II. Recodification

We propose a major reorganization of the rules to more closely reflect the course of Commission proceedings from inception to decision, and eliminate redundancies.

Most notably as part of this effort, we disperse the rules currently contained in Article 2.5, entitled "Rules and Procedures Applicable to All Proceedings Filed After January 1, 1998, and to Some Proceedings Filed Before January 1, 1998," to articles addressing their subject matter, and consolidate them

with other rules on the same subjects. Article 2.5 addresses a myriad of procedural matters including (1) the Commission's initial categorization and determination of need for hearing in a proceeding, (2) the parties' obligations to address categorization and scope in their initial pleadings, (3) requirements regarding *ex parte* communications, (4) Commissioner presence at hearings and oral arguments, and (5) the issuance and review of recommended decisions in various proceedings. We propose to segregate the rules regarding these different procedural matters, and to recodify them in appropriate articles.

Specifically, we propose (1) consolidating the rules addressing the categorization and scoping of proceedings and other associated procedural matters (e.g., prehearing conferences and consolidation of proceedings) in a separate, distinct article, (2) dispersing the rules in Article 2.5 regarding the parties' obligations to address categorization in their initial pleadings to the rules regarding the filing and contents of such pleadings in particular types of proceedings, (3) consolidating the rules on *ex parte* communication requirements in a separate, distinct article, (4) consolidating the rules regarding Commissioner presence at hearings (currently addressed both in Article 2.5 and Article 18), and placing them in an article addressing hearings, and (5) consolidating the rules regarding the issuance and review of recommended decisions (currently addressed both in Article 2.5 and Article 19), and placing them in an article specifically addressing those matters.

We propose additional amendments to provide similar structure for the rules regarding the various types of proceedings. Specifically, we separate the rules regarding complaints and those regarding investigations into two separate articles, consistent with the treatment of the rules on other types of proceedings (i.e., applications and rulemakings). We incorporate the rules contained in

Article 12, "Protests and Responses to Applications," into the article regarding "Applications Generally," and we propose edits and amendments to provide parallel guidance regarding the procedures and requirements for responding to complaints, rulemakings and investigations. We also propose to group Articles 5, 6, 7, 9, 10, 11, and 11.5, regarding particular types of applications, in a single article titled "Particular Applications."

We propose to consolidate the rules on discovery contained in Article 15, "Subpoenas," with those contained in Article 17.1, "Access to Computer Models," in a new article entitled "Discovery," and to include in the article a new rule clarifying parties' rights to discovery from parties.

We propose to consolidate the rules on motion practice (Article 12.5) and the rule on motions to dismiss (Rule 56) with proposed new rules codifying our law and motion procedures of Resolution ALJ-168, in a new article entitled "Law and Motion."

We propose to group the rules contained in Article 14 ("Hearings"), Article 17 ("Evidence"), Article 18 ("Briefs and Oral Arguments"), Article 20 ("Reopening Proceedings") and Rule 77 ("Submission of Any Proceeding for Decision by the Commission") in a single article entitled "Hearings and Evidence."

We separate the rules regarding the issuance and review of recommended decisions from the rules regarding Commission decisions, which are currently included in a single article (Article 7), into two separate articles.

We relocate the rule on petitions for modification of Commission decisions to an article also addressing application for rehearing which, consistent with the course of Commission proceedings, is codified to follow the article on the issuance of Commission decisions.

We consolidate, to the extent practicable, all definitional rules into a single rule titled "Definitions," and place it in the article regarding "General Provisions."

Finally, as part of this recodification effort, we edit the rules for clarity and technical accuracy. These edits include repealing redundant rules, consolidating multiple rules concerning the same subject into a single rule, and editing the titles of rules and articles to better reflect their content.

A table listing the current rules and their codification in the proposed rules revisions is shown in Appendix B.

III. General Provisions

As currently written, Rule 2.5(a) requires parties to provide an original and seven copies of a document for filing until a service list is established in a proceeding, at which time the original and only four copies are required. For practical purposes, once an administrative law judge is assigned to a proceeding, the Commission requires only the original and four copies of a filed document. We propose to amend Rule 2.5(a) accordingly, to eliminate the waste of paper and the unnecessary burden on parties.

As currently written, Rule 2.7(b) provides that, generally, prepared testimony is not to be filed with the Docket Office. Nevertheless, practitioners often attempt to file prepared testimony that is prepared in support of, and issued concurrently with, a filed document. We propose to amend Rule 2.7(b) to emphasize that prepared testimony is not to be filed, and to set forth its appropriate treatment, that is, that it shall be served on parties and on the Administrative Law Judge or, if none is yet assigned, on the Chief Administrative Law Judge.

We propose to amend Rule 3.4 to reflect the fact that the Daily Calendar notices the submission of proceedings and the mailing of recommended decisions.

Affected rule:	**New rule:**
Rule 2.5	Rule 1.13(b)
Rule 2.7(b)	Rule 1.7(b)
Rule 3.4	Rule 1.17

IV. Cross-references to General Provisions

Article 2 sets forth rules governing the filing of all documents, including for example requirements regarding form, size, signatures, and service. These rules are cross-referenced in certain other rules on a sporadic basis. In order to streamline the rules, to avoid ambiguity as to whether Article 2 applies to documents whose governing rules do not explicitly reference Article 2, and to do so in the most efficient fashion, we propose to delete cross-references to the rules contained in Article 2.

Similarly, Article 4 sets forth rules governing the filing of applications. These rules, in whole or in part, are cross-referenced on a sporadic basis in other rules regarding particular applications. We propose to delete cross-references to the general rules governing the filing of applications.

We also propose to repeal Article 11, captioned "Other Applications or Petitions," as it is redundant (Article 4 speaks to applications generally) or outdated (the transportation minimum rates addressed in Rules 42.1 and 42.2 no longer exist).

Affected rule:	**New rule:**
Rule 10	Article 1 Rule 4.2

Rule 13.1	Article 1 Rule 4.4
Rule 14.5	Article 1 Rule 6.2
Rule 14.6	Article 1
Rule 14.7	Article 1 Rule 6.3
Rule 15	Article 1 Article 2 Rule 2.1 Rule 3.4
Rule 18	Article 1 Article 2 Rule 3.1
Rule 21	Article 1 Article 2 Rule 3.3
Rule 23	Article 1 Article 2 Rule 3.2(a)
Rule 33	Article 1 Article 2 Rule 3.5(a-e)
Rule 35	Article 1 Article 2 Rule 2.1(d) Rule 3.6(a-d)
Rule 37	Article 1 Article 2 Rule 3.6(h)
Rule 42	Article 1 Article 2
Rule 43.2	Article 1 Article 2
Rule 43.8	Article 1 Article 2
Rule 44.1	Article 1 Rule 2.6(a)

Rule 44.3	Article 1 Rule 2.6(a)
Rule 44.6	Article 1 Rule 2.6(e)
Rule 45	Article 1 Rule 1.2 Rule 1.4 Rule 11.1
Rule 47	Article 1 Rule 16.4 Rule 16.5
Rule 51.1	Article 1 Rule 12.1
Rule 51.3	Article 1
Rule 77.2	Article 1 Rule 11.5 Rule 14.3
Rule 77.6	Article 1 Rule 14.1(d) Rule 14.3 Rule 14.6

V. Code of Ethics

We propose to modify Rule 1, the code of ethics, to extend its applicability to persons who offer testimony at a hearing. The rule holds that those subject to it shall comply with the laws of the State, maintain the respect due to the Commission, its members and its Administrative Law Judges, and not mislead the Commission or its staff by an artifice or false statement of fact or law. As currently written, the rule applies only to persons who sign a pleading or brief, enter an appearance at hearing, or transact business with the Commission. This standard of behavior is reasonably expected of any person who makes a representation to the Commission, whether in a pleading (or other submission to the Commission) or in testimony.

Affected rule:	New rule:
Rule 1	Rule 1.1

VI. *Ex Parte* Rules

Our current rules contain two sets of *ex parte* rules with different requirements: those applicable to proceedings filed before January 1, 1998 (Article 1.5), and those applicable to most proceedings filed after January 1, 1998 and certain proceedings filed before that date (Article 2.5). We propose to consolidate the two sets of rules in a single article, while retaining the substance of the different sets of applicable rules. Our proposed amendments eliminate the reference to pre-January 1, 1998, proceedings that are nevertheless subject to Article 2.5 either by virtue of being an "included proceeding" pursuant to Resolution ALJ-170, or because a prehearing conference had not been held in the proceeding as of that date (Rule 4(b)(2)). There is, however, only one proceeding in this category that remains open and active; clarification of the applicable *ex parte* rules in the proceeding is more appropriately made by ruling, rather than by a Rule of Practice and Procedure.

We propose to retain and apply to the current rules governing *ex parte* communications the provisions of Article 1.5 regarding the reporting of notices of *ex parte* communications in the Daily Calendar and procedures for obtaining such notices. This modification reflects current practice, including with respect to communications in proceedings filed after January 1, 1998.

We propose to retain and apply to the current rules governing *ex parte* communications the provision of Article 1.5 placing parties on notice that the Commission's decisions are based on the record and that notices of communications with decisionmakers and their personal advisors are not part of the record.

Pub. Util. Code §§ 1701.2 through 1701.4, and our rules implementing them, set forth restrictions and reporting requirements for *ex parte* communications in proceedings where a hearing is required. While the statute is silent on this point, our current rules exempt uncontested proceedings or proceedings without hearing from the otherwise applicable restrictions and reporting requirements. We propose a modification to clarify that the Commission or the assigned Administrative Law Judge, with the approval of the assigned Commissioner, may apply the otherwise applicable restrictions and reporting requirements to adjudicatory or ratesetting proceedings in which there are no hearings. This generally reflects the current provision of Article 1.5 (applicable to proceedings filed before January 1, 1998) giving the Commission and the assigned Administrative Law Judge the discretion to issue an *ex parte* communications ruling tailored to the needs of any specific proceeding.

We propose to require same-day electronic service of notices of *ex parte* communication by any party who has consented to e-mail service for other purposes. Current rules require parties to file, but not serve, notices of *ex parte* communication. As noted above, notices are currently reported in the Daily Calendar and available upon request; nevertheless, there may be a time lag before the report appears in the Daily Calendar. With the advent and ease of service by electronic mail, there no longer appears to be a reason to excuse service of *ex parte* notices to the extent that it can be done electronically.

Article 2.5 as currently written does not address the applicability of the *ex parte* rules to proceedings while the decision in the proceeding is subject to an application for rehearing, or to proceedings that are reopened by virtue of the filing of a petition for modification. We propose to clarify the applicability of the *ex parte* rules in such circumstances. Specifically, we propose to clarify,

consistent with the *ex parte* rules in Article 1.5, that the *ex parte* rules that apply to the underlying proceeding continue to apply until the time for filing applications for rehearing has passed and none has been filed or, if an application for rehearing is filed, until it is resolved. Similarly, we propose to clarify that the *ex parte* rules that applied to the underlying proceeding will resume upon the filing of a petition to modify a decision that issued in it, unless there are no responses or requests for hearing, or it is determined that there will be no further hearings, or that the proceeding should be categorized differently.

We propose to clarify the circumstances under which a party may request to meet individually with a decisionmaker in a ratesetting proceeding if the decisionmaker has granted an individual meeting with another party. As currently written, the rule is silent as to how much time a party has within in which to request "equal time" meeting. We propose to require any party requesting an individual meeting with a decisionmaker after another party has been granted such a meeting to make such request within 15 days of being notified of the initial individual meeting.

We also propose to amend the definition of "decisionmaker" to exclude Commissioners' personal advisors in adjudicatory proceedings. As currently written, Article 2.5 defines "decisionmaker" to include Commissioners' personal advisors, but only in adjudicatory proceedings. It is unnecessarily confusing to define who is a decisionmaker by reference to circumstances rather than the individual's role. We propose other amendments, however, to preserve the effect of the current definition, e.g., to prohibit communications with Commissioners' personal advisors in adjudicatory proceedings and to require the reporting of communications with them in ratesetting proceedings.

We propose to move the rule banning *ex parte* communications regarding assignment or reassignment of a proceeding to an administrative law judge, Rule 63.9, from its current location in the article addressing presiding officers and reassignment of proceedings to the article addressing *ex parte* rules and requirements. The article on *ex parte* communications is the logical place for parties to look for requirements governing any such communications.

Affected rule:	**New rule:**
Rule 1.1	Rule 8.6
Rule 1.1(d)	Rule 8.2(g)
Rule 1.2	Rule 8.2(j)
Rule 1.3	Rule 8.6
Rule 1.4(a)	Rule 8.3(a)
Rule 1.4(b)	Rule 8.3(c)
Rule 1.4(c)	Rule 8.3(b), (d)
Rule 1.6	Rule 8.3(d) Rule 8.6(d)
Rule 4	Rule 4.5 Article 8
Rule 7(c)	Rule 8.2(c)(2)(ii)
Rule 63.9	Rule 8.2(f)

VII. Scoping Memo

We propose to modify the rules to eliminate the requirement of an assigned Commissioner's scoping memo in an uncontested proceeding, or in a proceeding in which no party states any objections to the preliminary scoping memo. The current rules require the assigned Commissioner to rule on a scoping memo in all proceedings, for the purpose of determining the scope and schedule for the proceeding and need for hearing, and to finally determine the categorization where that final determination has not yet been made. In an uncontested proceeding, i.e., where no answer, response, or protest is filed in

response to the pleading initiating the proceeding, it may be unnecessary to undertake to refine the scope of the proceeding. Likewise, in a proceeding initiated by a Commission order where the Commission preliminarily determines that no hearings are needed, and no party requests hearings or objects to the preliminary scoping memo, it may be superfluous to issue a final, confirming scoping memo.

While, under other circumstances, a final scoping memo is required in order to finally determine the categorization and need for hearing and, therefore, the applicable *ex parte* rules, we note that Rule 7(e) provides that any *ex parte* prohibitions or reporting requirements cease to apply in proceedings where no timely answer, response, protest, or request for hearing is filed. We also note that Pub. Util. Code § 1701.1(b), which imposes the scoping memo requirement, does not require a scoping memo in the absence of a hearing. For all these reasons, we therefore propose to allow the assigned Commissioner to exercise discretion in issuing a scoping memo under these limited circumstances.

Affected rule:	**New rule:**
Rule 6.3	Rule 7.3

VIII. Radiotelephone Utilities

Rule 10.1 addresses complaints by radiotelephone utilities (RTUs) against other RTUs, and is specifically intended to address complaints of service area invasion. Rule 18(o) prescribes the process for applying for authority to furnish one-way paging or two-way mobile radiotelephone service. We propose to repeal both of these rules because the Commission no longer regulates one-way paging radiotelephone services (Pub. Util. Code § 234(b)(2)), and no longer has authority over the rates and entry requirements for two-way mobile telephone

services (Pub. Util. Code § 247; Section 332(c)(3) of the Federal Communications Act of 1934, as amended.)

Affected rule:	**New rule:**
Rule 10.1	[repeal]
Rule 18	Rule 3.1

IX. Rulemaking Definition

Rule 14.1 defines rulemakings as formal proceedings in which written comments are used instead of evidentiary hearings. This definition is obsolete, both because Commission rulemakings may involve evidentiary hearings as appropriate, and Commission proceedings other than rulemakings may rely solely on written comments in lieu of hearings. We propose to repeal this rule.

We also propose to amend Rule 14.2 to add, as one of the purposes of a Commission-instituted rulemaking proceeding, amendment of the Commission's Rules of Practice and Procedure. This amendment reflects the Legislative amendment to Pub. Util. Code § 311, which added the requirement that changes to the Commission's Rules of Practice and Procedure be submitted to the Office of Administrative Law for prior review. (Stats. 1998, c. 886.)

Affected rule:	**New rule:**
Rule 14.1	[repeal]
Rule 14.2	Rule 6.1

X. Articles of Incorporation

Rule 16 requires an applicant that is not a natural person to provide evidence of its organization and qualification to transact business in California. As currently written, Rule 16 only addresses the requirements for corporations and partnerships; it does not address the requirements for other types of

organizations. We propose modifications to apply Rule 16, on a more generic basis, to any applicant that is not a natural person. In addition, we propose to eliminate the unnecessary requirement that copies of a non-domestic corporation's articles of incorporation be certified.

Affected rule:	**New rule:**
Rule 16	Rule 2.2

XI. Service of Rate Increase Applications

Rule 24, as currently written, does not reflect amendments to Pub. Util. Code § 454 as enacted in 1988 (Stats. 1988, c. 108), regarding the circumstances requiring, and content of, notice of certain applications for rate increases. We propose minor modifications to the rule to reflect the amendments to the Code.

Affected rule:	**New rule:**
Rule 24	Rule 3.2(d)

XII. Restatements of Law and Statutory Requirements

Several of our rules merely reference or restate statutory requirements, or restate otherwise applicable rules of law. We propose to repeal these rules. In addition to being unnecessary to effect their provisions, their restatement in the Rules of Practice and Procedure is confusing to the extent that they provide only a partial statement of applicable law. We also propose to repeal rules which merely state the purpose of other rules.

Most notably, we propose to repeal the substantial portions of Rule 17.1 which simply restate the statutory and regulatory requirements of the California Environmental Quality Act (CEQA).

We propose to repeal Rule 76.73, which provides that a customer seeking intervenor compensation may include the reasonable costs incurred as a result of an application for rehearing. This rule does not adequately reflect the extent of compensable costs provided by Pub. Util. Code § 1802(a), which allows compensation for the reasonable costs of obtaining judicial review.

These and other similarly proposed modifications are reflected in the following table:

Affected rule:	**New rule:**
Rule 1.2	Rule 13.14
Rule 17.1	Rule 2.4 Rule 2.5
Rule 17.3	Rule 2.4
Rule 45(a)	[repeal]
Rule 47(h)	[repeal]
Rule 63.1	[repeal]
Rule 76.73	[repeal]
Rule 86.3(b)	[repeal]

XIII. Shortened Procedure Tariff Docket

We propose to eliminate Article 7, "Applications of Common Carriers to Increase Rates Under the Shortened Procedure Tariff Docket" (Rules 25 through 34). These rules were established, as the title implies, to provide an expedited procedure for common carriers to apply to increase rates, where the increase would not increase the applicant's California revenues by as much as one percent. No carrier appears to have has used this procedure in at least the last ten years. As the rules serve no apparent purpose, we propose to repeal them.

Affected rule:	New rule:
Rule 25 through Rule 34	[repeal]
Rule 88	Rule 19.1

XIV. Additional Requirements for Carriers, and Complaints Against Carriers

Rules 9(b) and (c), 21, 23(c)[1] and 37 include provisions concerning complaints and applications that involve highway common carriers, highway permit carriers, cement carriers, express corporations and freight forwarders. These entities are no longer regulated by the Commission. (Stats. 1996, c. 1042.) Accordingly, we propose to amend these rules to eliminate references to the regulation of highway common carriers, highway permit carriers, cement carriers, express corporations and freight forwarders.

Affected rule:	New rule:
Rule 9(b-c)	[repeal]
Rule 21	Rule 3.3
Rule 23(c)	Rule 3.2(a)(3)
Rule 37	Rule 3.6(h)

XV. Railroad and Light-Rail Transit Crossings

Rule 38(a), as currently written, requires applicants to construct a railroad crossing to provide a legal description of the proposed crossing. We propose to modify the rule to permit applicants to provide, in lieu of a legal description, a location description using a coordinate system that has the accuracy comparable

[1] Rule 23(c) refers to "carriers" generally.

to a legal description. This will provide a less costly means for applicants to provide the necessary information to the Commission.

Rule 38(e), as currently written, requires applicants to provide a statement of the recommended signs, signals, or other protections for the proposed crossing. We propose amendments to clarify that this requirement refers to crossing warning devices, and only applies to applications to construct proposed crossings that are at grade. Likewise, we propose to amend Rule 38(c) to indicate that its requirement only applies to applications to construct crossings that are at grade.

Rule 38(f) requires applicants to provide a map showing the locations of nearby streets, roads, property lines, tracks, buildings, structures and other obstructions. We propose to add the requirement that, if the proposed crossing is grade-separated, the map include the vertical and horizontal clearances from the rail tracks to bridge structures. This is necessary information for the Commission's consideration of such applications.

Rules 38(b) and 39, as currently written, refer to "crossing numbers." We propose to amend this to refer to "crossing identification numbers," which more accurately describes the required information.

We propose a new rule to reflect the Commission's General Order 143-B, Section 9.08. Section 9.08 requires Commission authorization for all crossings or intersections of a public road, street, highway or railroad and a light-rail transit system subject to the Commission's jurisdiction under Pub. Util. Code §§ 778 and 99152. The proposed rule sets forth the requirements for applications for such authority.

Affected rule:	**New rule:**
Rule 38	Rule 3.7

Rule 39	Rule 3.8
[new]	Rule 3.11

XVI. Deviations from Established Minimum Rates

Rules 42.1 and 42.2 concerns applications by carriers for deviations from minimum rates pursuant to Pub. Util. Code §§ 452, 3666 and 5195. Because the Commission no longer regulates highway common carriers, there are no longer any such applications under § 452. The Legislature has repealed §§ 3666 and 5195. (Stat. 1996, c. 1042 and Stats. 1999, c. 1005.) Accordingly, we propose to repeal these rules.

Affected rule:	**New rule:**
Rule 42.1	[repeal]
Rule 42.2	[repeal]

XVII. Law and Motion

Commission Resolution ALJ-164 implemented, on an experimental basis, a law and motion procedure to hear discovery disputes and other procedural motions. We propose to codify this procedure, with modifications, as permanent rules.

We propose to eliminate (1) the requirement of a declaration (as opposed to a statement in the motion) stating facts showing a good faith attempt at informal resolution of the discovery dispute; (2) the automatic assignment of discovery dispute motions to the Law and Motion Administrative Law Judge (ALJ); (3) notice to the parties upon assignment of a procedural motion to the Law and Motion ALJ for resolution; and (4) the provisions regarding the scheduling and reporting of law and motion hearings.

Rule 2.2(b) provides that a signature on a document tendered for filing certifies that, to the signer's best knowledge, the facts stated are true. The requirement of a separate declaration is unnecessarily burdensome.

We conclude from our experience that discovery motions are generally best suited for resolution by the assigned ALJ. While the designation of Law and Motion ALJs and the internal administrative practices associated with the law and motion procedure have enhanced the predictability and timeliness of disposition of discovery motions, these benefits are not dependent upon their automatic assignment to the Law and Motion ALJs.

The experimental program includes provisions regarding the time and manner of law and motion hearings. Our experience is that matters handled under the law and motion procedure are timely resolved without the need for adherence to the schedule set out in the experimental program. In addition, while discovery matters handled by the Law and Motion ALJs, like those handled by the assigned ALJs, rarely require a court reporter's transcript of any hearing, we see no cause to continue to categorically exclude matters referred to the law and motion procedure from formal reporting. Instead, we authorize the Law and Motion ALJ to take appropriate and necessary action to resolve the motion.

Affected rule:	**New rule:**
[new]	Rule 11.3
[new]	Rule 11.4
[new]	Rule 11.6

XVIII. Discovery

As discussed generally in Part II, we propose to consolidate the rules on discovery contained in Article 15, "Subpoenas," with those contained in

Article 17.1, "Access to Computer Models," in a new article entitled "Discovery," and to include in the article a new rule clarifying parties' rights to discovery from parties. We also propose amendments to clarify that discovery of parties does not require subpoenas, and that subpoenas shall be issued only to compel the appearance of, or production of documents from, a non-party. We propose edits to the rules governing access to computer models to eliminate redundancies of other rules and definitional rules unnecessary to the understanding of the requirements.

Affected rule:	**New rule:**
Rule 59	Rule 10.2
Rule 59.1	Rule 10.1
Rule 59.2	Rule 10.2
Rule 60	Rule 10.2
Rule 61	Rule 11.3
Rule 61.1	Rule 10.2
Rule 74.1	[repeal]
Rule 74.2	Rule 10.3 Rule 10.4
Rule 74.3	Rule 10.3(a)
Rule 74.4	Rule 10.4
Rule 74.5	Rule 10.3(b-c)
Rule 74.6	Rule 11.3 Rule 11.4
Rule 74.7	Rule 11.4

XIX. Prehearing Conference and Facts Disclosed at Prehearing Conference Privileged

Rule 50 provides that facts disclosed at prehearing conference are privileged. This rule is obsolete, having developed when the practice was for parties to explore settlement in prehearing conference. Under current practice and Rules 51 *et seq.*, settlement discussions take place in settlement conferences

outside of prehearing conferences. There is no basis for creating a privilege for non-settlement statements of fact at prehearing conference. Accordingly, we propose to repeal Rule 50.

Rule 49 provides that a prehearing conference may be conducted to identify the scope and schedule of the proceeding. This rule is redundant with the more recent and comprehensive Rule 6.2. Accordingly, we propose to repeal it.

Affected rule:	**New rule:**
Rule 49	Rule 7.2
Rule 50	[repeal]

XX. Settlements

We propose to delete the distinction between "settlements" and "stipulations," as this distinction serves no useful purpose. The Commission entertains both partial and comprehensive settlements, and the rules governing the proposal and consideration of both types of settlements are the same. The remaining definitions in Rule 51 are either adequately defined elsewhere ("party") or not reasonably subject to misinterpretation ("Commission proceeding," "contested" and "uncontested"); we therefore propose to delete the rule.

As currently written, Rule 51.10 applies the settlement rules only to formal proceedings involving gas, electric, telephone, and Class A water utilities. The rule permits parties to move for waiver of settlement rules, where all parties join in the proposed settlement, supported by a showing that the public interest will not be impaired by such waiver. The rule also permits parties to move to apply the settlement rules to proceedings to which the rule does not otherwise apply, supported by a showing that it is in the public interest to apply the rules.

We propose to amend Rule 51.10 to (1) apply the settlement rules to formal proceedings regarding all industries, and (2) to provide that parties may move for waiver of the rules upon a showing that such waiver is in the public interest, without regard to whether all parties join in the proposed settlement. This amendment provides a uniform and consistent presumption that the settlement rules are reasonable and in the public interest, and that the burden is on the party seeking waiver to demonstrate that particular circumstances warrant the exception.

Rule 51.5, as currently written, provides that replies to comments may be filed 15 days after comments are filed. This can cause confusion when multiple comments are filed, and some are filed before the deadline for filing comments. We propose to amend this rule to permit replies to be filed up to 15 days after the last day of filing comments, rather than after the comments are filed. This proposed modification will avoid the burdensome potential for requiring parties to prepare multiple, staggered replies.

Affected rule:	**New rule:**
Rule 51(a)	Rule 1.4
Rule 51(b-f)	Rule 12.1 Rule 12.3
Rule 51.5	Rule 12.2
Rule 51.10	Rule 12.7

XXI. Participation in Proceedings

As currently written, our rules define the process for obtaining party status only for persons who seek to intervene in a complaint proceeding (Rule 53) and persons who enter an appearance at hearing in an investigation or application proceeding (Rule 54). It is unnecessary to address this matter through two separate rules: for practical purposes, both rules require a person requesting

party status to identify his or her interest and to not unduly broaden a proceeding. In addition, the rules are silent on how one becomes a party to a rulemaking, or to an investigation or application in advance of or in the absence of a hearing.

We propose to consolidate and modify Rules 53 and 54 to create a uniform set of rules for obtaining party status in all proceedings, and regardless of whether there is a hearing. Specifically, we propose to clarify that any applicant, protestant, respondent, petitioner, complainant, or defendant is a party to the proceeding, and how any other person seeking to participate in a proceeding may do so. We also propose a new rule defining who is a party for purposes of filing an application for rehearing, relying heavily on other rules dealing with related topics.

Affected rule:	**New rule:**
Rule 53	Rule 1.4
Rule 54	Rule 1.4
Rule 77.7	Rule 16.2

XXII. Prepared Testimony

Rule 68 provides for prepared testimony in lieu of oral testimony. As currently written, the rule allows a witness to read prepared testimony into the record if copies have been previously provided to the parties. This provision serves no practical purpose and, if invoked, would only delay the proceeding; our experience is that this provision is never invoked. We propose to repeal it.

We propose to expand the rule to require that prepared testimony comprise all of a witness's direct testimony, and that a party must justify the admission of any additional direct testimony. These modifications are consistent

with current practice and the parties' duty to timely disclose the information which they intend to offer into evidence.

Affected rule:	New rule:
Rule 68	Rule 13.8

XXIII. Additional Evidence, Submission of the Record, and Oral Argument

Rule 77 provides for the submission of the record of a proceeding, which occurs after the taking of evidence, oral argument, and the filing of briefs. Rule 74 provides for the production of additional evidence after the hearing is adjourned, and Rule 84 provides for the taking of additional evidence after submission.

As currently written, these rules mistakenly refer to the submission and reopening of the "proceeding." More accurately, it is the record, not the proceeding, that is submitted or reopened to take the additional evidence; the proceeding itself is not closed until a final decision issues. Accordingly, we propose to substitute the word "record" for the word "proceeding."

Rule 74 mistakenly states that (1) further evidence under this rule is taken "after submission," and (2) it is to be filed. More accurately, in contrast to Rule 84 which addresses the taking of further evidence *after* submission, Rule 74 is intended to address the further production of evidence, pursuant to ruling of the presiding officer at hearing, *prior* to submission. In addition, Rule 74 mistakenly provides for the filing of such further evidence. However, while it is appropriate to serve such further evidence, documentary evidence is generally not to be filed. (See Rule 2.7(b).) Rather, it is admitted into the evidentiary record by ruling of the presiding officer. We propose to modify Rule 74 to correct these inaccuracies.

Rule 76 provides that the Commission "or the presiding officer" may direct the presentation of oral argument before the Commission. The Commission has the discretion, where not otherwise obligated by law, to schedule the presentation of oral argument before it. However, it is not apparent to us that the presiding officer has the authority to direct the Commission to entertain oral argument before it, without further review. We therefore propose to modify the rule to provide, instead, that the assigned Commissioner or Administrative Law Judge may recommend to the Commission that it direct the presentation of oral argument.

Affected rule:	**New rule:**
Rule 74	Rule 13.10
Rule 76	Rule 13.13(a)
Rule 77	Rule 14.3(a)
Rule 84	Rule 14.3(b)

XXIV. Comment on Recommended Decisions

Rule 77.6, as currently written, sets forth the standard period for public review and comment on alternate decisions which, depending on when the alternate decision is mailed, might have been shorter than the 30-day public review and comment period required for the proposed decision. Chapter 591 (Escutia) of the 2005 statutes amended Pub. Util. Code § 311(e) to require the same 30-day public review and comment period for alternate decisions as applies to proposed decisions. Accordingly, we propose to amend the rules to apply the same public review and comment period to alternate decisions as applies to proposed decisions, and to provide for the proper scheduling of the Commission's consideration of the matter as required by the recent amendments.

Chapter 591 also generally requires a 30-day comment period on draft resolutions and their alternates. We propose amendments to implement this.

Rule 77.7(f), as currently written, would allow the Commission to reduce the public review and comment period for alternates to proposed decisions under certain circumstances not applicable to proposed decisions that have gone to hearing. We propose to repeal this provision, consistent with the discussion above regarding Chapter 591 (Escutia) and its requirement that the same public review and comment period apply to alternates as applies to proposed decisions.

Rule 77.7(f), as currently written, provides that "draft decisions" and their alternates may have the public review and comment period reduced or waived under certain circumstances. This rule is intended to implement Pub. Util. Code § 311(g)(3), which permits reduction or waiver of public review and comment in these circumstances for decisions in proceedings in which hearings have not been held as well as for draft resolutions. However, the rules do not adequately define the term "draft decision" or distinguish it from the related term "proposed decision." Furthermore, it is unnecessary to use a definitional term in order to state the circumstances under which the public review and comment period may be reduced. We therefore propose to eliminate the term "draft decision" and to edit the rule to simply state the circumstances under which the public review and comment period may be reduced.

Rule 77.5, as currently written, provides that replies to comments may be filed five days after comments are filed. We propose to amend this rule to permit replies to be filed up to five days after the last day for filing comments, rather than five days after the comments are filed. Because Pub. Util. Code § 311 generally requires 30 days of public review and comment, the early filing of comments on recommended decisions does not accelerate resolution of

Commission proceedings. Thus, the early filing of comments may unnecessarily require other parties to prepare replies to comments at the same time that they are preparing their own comments on recommended decisions. This proposed modification will eliminate that potential.

Rules 8.1(b) and 77.1, as currently written, permit applicants in ratesetting or quasi-legislative matters involving buses, vessels or public utility sewer (Rule 77.1 also includes public utility pipelines) to move to waive comment on proposed decisions, and places on any party objecting to such waiver the burden of demonstrating that comment is in the public interest. We are not aware of any statutory requirement for this waiver opportunity. We further note that the provisions are at odds with Pub. Util. Code § 311, which sets forth the circumstances under which the period for public review and comment may be reduced or waived. We therefore propose to repeal these provisions.

Affected rule:	**New rule:**
Rule 8.1(b)	Rule 14.6
Rule 77.1	Rule 14.6
Rule 77.5	Rule 14.3
Rule 77.6	Rule 14.2 Rule 14.3 Rule 14.6 Rule 15.1(e)
Rule 77.7	Rule 14.1 Rule 14.2 Rule 14.3 Rule 14.6

XXV. "Unforeseen Emergency"

Rules 77.6(f) and 77.7(f) provide that the time for comment on certain recommended decisions may be reduced or waived in an "unforeseen emergency situation," and refer to Rule 81 for the definition of that term.

Similarly, Rules 78(b) and 79(a) provide, respectively, that an unscheduled meeting may take place and that an item not appearing on a meeting agenda may be decided upon a majority vote of the Commission that an "unforeseen emergency situation" exists, and likewise refers to Rule 81 for the definition of that term.

Although the list of definitions of "unforeseen emergency situation" in Rule 81 properly applies to circumstances permitting the reduction or waiver of the time for comment under Rules 77.6(f) and 77.7(f), it goes beyond the definition of "unforeseen emergency situation" provided in the Bagley-Keene Open Meeting Act for purposes of permitting unscheduled meetings and decision on an item not on the agenda. Conversely, the definition of "unforeseen emergency situation" in Rule 81 does not identify all circumstances permitted by the Bagley-Keene Open Meeting Act under which the Commission may conduct an unscheduled meeting or decide an item not on the agenda.

Accordingly, we propose recodification and modifications to the rules to correct the erroneous reference to certain circumstances as constituting an "unforeseen emergency situation," and to reflect additional circumstances permitting an unscheduled meeting and decision on an item not on the agenda that are permitted under the Bagley-Keene Open Meeting Act.

Affected rule:	**New rule:**
Rule 77.6(f)	Rule 14.6
Rule 77.7(f)	Rule 14.6
Rule 78(b)	Rule 15.1
Rule 79(a)	Rule 15.2
Rule 81	Rule 14.6

XXVI. "Petition" versus "Motion"

We propose to repeal Rule 46, which states that petitions are the same as motions, and to amend our rules to redesignate requests for relief within open proceedings as "motions" instead of "petitions." These modifications will clarify that motions are pleadings that seek relief within existing, open proceedings, while petitions, which are addressed in specific rules, are pleadings that seek to open new proceedings or to reopen closed proceedings.

Affected rule:	**New rule:**
Rule 46	[repeal]
Rule 53	Rule 1.4
Rule 63.2	Rule 9.2
Rule 63.3	Rule 9.3
Rule 63.4	Rule 9.4
Rule 63.9	Rule 8.2(f)
Rule 84	Rule 13.14(b)

XXVII. Text of the Proposed Rules

The Commission proposes to modify and recodify the existing Rules of Practice and Procedure, Title 20, Division 1, of the California Code of Regulations as shown in Appendix A. A table describing the proposed modification and listing the recodified rule is shown in Appendix B. A version of the proposed amendments, indicating deletions in strikethrough font and insertions in underlined font, is shown in Appendix C.[2]

[2] To the extent practicable, where a current rule is modified but recodified in the proposed rules, it is deleted in its current location, and changes to it are shown in underline/strikethrough format in its new location. Where this is not practicable, e.g., where sections of the current rule are recodified throughout several proposed rules, they are underlined, even if they are replaced with only minor or no changes. In order

Footnote continued on next page

XXVIII. Next Steps

The Chief Administrative Law Judge will submit a Notice of Proposed Rulemaking, the attached draft of the proposed rule amendments and all other required documents to the Office of Administrative Law (OAL) for publication in the California Regulatory Notice Register. This publication starts the 45-day notice and comment period, which is the first stage leading to the adoption and codification (in the California Code of Regulations) of the proposed amendments to the Rules of Practice and Procedure. For purposes of such publication, the Chief Administrative Law Judge is authorized to propose nonsubstantive changes to the draft whenever such nonsubstantive change will improve the clarity or consistency of the rule. This order, including the text of the proposed rule amendment, and other documents submitted to the OAL will also be published on our website.

We invite written comments on the proposal. We have attempted to include in Appendix C, in red-lined format, all changes to the existing rules that we are currently proposing. However, it is possible that some changes may not have been red-lined, or that the clean copy included as Appendix A may not entirely match the red-lined version in Appendix C. We encourage parties to draw any such inconsistencies to our attention. Comments may be filed and served on or before April 24, 2006.

XXIX. Scoping

In this part of today's decision, we announce preliminary determinations and scoping, as required by Rule 6(c)(2). This proceeding is quasi-legislative in

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to track both proposed deletions and replacements, it is advisable to consult the Table of Recodified Rules in Appendix B in conjunction with Appendix C.

character. We see no need for a formal hearing. The issues for the proceeding are set forth in the "summary" at the beginning of the decision. We project final adoption and submission of the amended rule to the OAL within six months of the publication of the Notice of Proposed Rulemaking in the California Regulatory Notice Register; however, in no event will the time to finally resolve this proceeding exceed 18 months from the effective date of today's decision.

Finding of Fact

The proposed amendments to the Rules of Practice and Procedure (Title 20, Division 1, Chapter 1 of the California Code of Regulations) will update, clarify or simplify the Rules, and repeal outdated Rules.

Conclusion of Law

The proposed amendments to the Rules of Practice and Procedure and other required documents should be sent to the OAL for publication in the California Regulatory Notice Register. In order to begin and complete the adoption process promptly, this order should be effective immediately.

IT IS ORDERED that:

1. This Order Instituting Rulemaking will be served on the attached service list (Appendix D). Any interested person may request inclusion on the service list for this rulemaking by writing to the Commission's Process Office by March 24, 2006; the updated service list will be published by ruling and at the Commission's Internet site (www.cpuc.ca.gov).

2. The Chief Administrative Law Judge will send today's decision and all required forms to the Office of Administrative Law in accordance with applicable provisions of the Government Code. For purposes of publishing the appended proposed rule amendments in the California Regulatory Notice

Register, the Chief Administrative Law Judge is authorized to make nonsubstantive changes to the proposed rule amendments as may be required to prepare the rule for publication or to improve the overall clarity or consistency of the proposal.

3. The Chief Administrative Law Judge will publish the Notice of Proposed Rulemaking, the text of the proposed rule, and our initial statement of reasons for the proposed rule amendments on the Commission's Internet site.

4. Comments on the proposed rule amendments appended to this Order shall be filed and served on the updated service list on or before April 24, 2006. The comment period may be extended by a ruling of the assigned Administrative Law Judge.

This order is effective today.

Dated February 16, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

R0602011 Appendices A - D