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Via Email

E: Sophia.Park@cpuc.ca.gov

Administrative Law Judge Sophia J. Park

RE: Draft Resolution ALJ-381 – proposed modifications to the Rules of Practice and Procedure (Title 20, Division 1, of the California Code of Regulations)

Dear Administrative Law Judge Park,

Pursuant to the directions set forth in the cover letter attached to draft Resolution ALJ-381 (“Draft Resolution”), CCTA hereby submits these timely comments on proposed amendments to the Rules of Practice and Procedure (“Rules”) of the California Public Utilities Commission (“Commission”). CCTA appreciates the Commission’s efforts to update its Rules to ensure consistency with recent legislation and to provide clear guidance to parties appearing before the Commission. CCTA takes this opportunity to highlight its concerns with a small subset of the proposed rule changes.

CCTA’s comments address and propose revisions to the following Rules:

- New Proposed Rule 1.18 – Public Participation in Proceedings;
- New Proposed Rule 2.9 – Requests for Expedited Schedule; and
- New Proposed Rule 13.9 – Meet and Confer.

New Proposed Rule 1.18 – Public Participation in Proceedings

The Draft Resolution states that new Proposed Rule 1.18 is intended to promote public engagement in Commission proceedings, and it would allow the public to submit comments electronically on the Commission’s website. Significantly, the proposed rule would *require* written public comments in both ratesetting and quasi-legislative proceedings to be entered into the record and be considered by the presiding officer.¹ The draft rule further states that “relevant public comment will be summarized” in any final decision.

¹ The rule does not allow for public participation comments in the newly created “catastrophic wildfire proceedings.”

CCTA appreciates the Commission initiating measures to allow the public to submit relevant comments in open Commission proceedings but recommends revisions to ensure that this proposed rule is aligned with and consistent with other Rules governing how the record in formal proceedings is developed. In particular, CCTA's proposed revisions address the weight to be given public participation comments and the need to provide an adequate opportunity for other parties to respond to those comments.

For example, under the current Rules, parties to a formal proceeding are required to file submissions addressing the specific issues identified for resolution in the Scoping Memo. These submissions must be relevant to the matters at issue in the proceeding. Further, parties in formal proceedings have the opportunity to respond to the submissions of other parties. These same requirements must also apply to any public participation comments that are entered into the record of a given proceeding. The proposed new rule as drafted, however, fails to offer these procedural opportunities and safeguards.

In addition, the category of ratemaking proceedings includes a wide range of proceedings, and it may not be appropriate or reasonable for the Commission to solicit public participation comments for all the types of applications that are categorized as ratesetting. For example, public participation comments may be appropriate in general rate cases for electric, gas and water public utilities, but do not seem appropriate or likely helpful in the Commission's consideration of an uncontested application for transfer of control or an application in which a carrier seeks eligible telecommunications carrier designation. Simply, consumers' input in the context of these types of applications will provide little benefit to assist the Commission in its evaluation of the applicable requirements.

Moreover, if permitted, public participation comments in uncontested application proceedings could result in greater harm than good. The Commission must make findings based on the record in ratesetting proceedings. Requiring that public participation comments be part of the record of an uncontested proceeding could create additional administrative inefficiencies. By allowing the potential introduction of issues that are beyond the scope of a proceeding, it would increase the burden associated with the Commission's need to acknowledge and address the comments given that they are part of the record. Moreover, public participation comments in certain types of application proceedings could unnecessarily and unreasonably delay the processing of uncontested applications that would and should otherwise be timely processed and approved. For these reasons, CCTA proposes that the assigned Commissioner/ALJ weigh the relative merits of soliciting public participation comments on a case-by-case basis and reflect their decision whether to do so in the Scoping Memo.

Further, in the context of quasi-legislative proceedings, CCTA notes that a wide range of organizations representing consumers' interests are typically active in these types of proceedings. The Commission must ensure that public participation comments are not used to merely duplicate views already being presented by groups active in a given proceeding.

Finally, if public participation comments are generally entered into the record for quasi-legislative proceedings, then the Commission will need to be cautious in relying on them.² Individual consumer's experiences cannot and should not carry greater weight than the record that is developed through the formal process. The Commission must ensure the integrity of its decision-making process and not make policy solely based on individual consumer experiences. Indeed, to the extent that an issue of broader consumer interest arises, the consumer groups that actively participate in quasi-legislative proceedings remain well-equipped to identify and address those issues in the formal rulemaking process.

Accordingly, CCTA recommends that the Commission adopt the proposed revisions to new Proposed Rule 1.18, as set forth in Attachment A.

New Proposed Rule 2.9 – Requests for Expedited Schedule

CCTA very much appreciates the Commission pursuing a rule that would allow parties to seek expedited treatment of certain applications. Unfortunately, however, the proposed rule is very narrow in that only two types of applications would fall within the scope of the new rule. Specifically, new Proposed Rule 2.9(c) is limited to applications in which the “requested relief concerns a threat to public safety or a major direct financial impact to customers that justifies an expedited schedule.”

CCTA proposes that the Commission expand the new rule so that uncontested applications may also be processed on an expedited basis upon request. Specifically, to the extent there is no protest filed in response to an application, the Commission should be able to process such application within twelve months. The twelve-month period would still allow time for the assigned administrative law judge to solicit additional information if necessary for resolving the application.

² CCTA notes that this proposed new rule, especially when coupled with the proposed revisions to Rule 13.6, has the potential to permit the Commission to put far too much weight on third-hand, unsubstantiated information from a public participation hearing in lieu of tested evidence admitted in the record meeting legal standards of admissibility. As noted by Commissioners Randolph and Peterman in their dissent to D.16-12-066 (at p. 1), the Commission's controversial decision in the Rural Call Completion docket, extensive reliance on anecdotal comments at public participation hearings can be detrimental to record-based decision-making. In their words:

“...the Decision gives great weight to the anecdotal comments made at [Public Participation] hearings. But parties were not given a specific opportunity to comment on the representations. Nor were the comments put into any type of context. While specific consumers' experiences are relevant and important, it is not appropriate to make policy simply based on individual experiences without a better sense whether they are widespread or possible to be addressed on a statewide basis.”

In addition to proposing text that would broaden the scope of the proposed rule to include uncontested applications, CCTA also proposes other revisions to ensure the rule will be effective, as set forth Attachment A.

New Proposed Rule 13.9 – Meet and Confer.

CCTA commends the Commission for considering new Proposed Rule 13.9, which would establish a new meet and confer process. CCTA generally concurs that a meet and confer process can lead to parties narrowing – and even eliminating -- issues for Commission consideration. However, the proposed rule is not reasonable or realistic in that it requires parties to meet and confer on very detailed list of issues and without reference to when a hearing may be scheduled. A meet and confer will be successful only if parties have adequate time to engage in this process without also being required to concurrently prepare for hearing. Thus, to the extent a meet and confer will be required, the schedule must also ensure that any hearing is set at least 30 days after the date for rebuttal testimony.

Accordingly, CCTA recommends that the Commission adopt the proposed revisions to new Proposed Rule 13.9, as set forth in Attachment A.

Sincerely,

/s/ Jerome F. Candelaria
Jerome F. Candelaria, for CCTA

Attachment A
Proposed Revisions to Draft Rules

Revisions to Proposed New Rule: 1.18 (Rule 1.18) Public Participation in Proceedings.

(a) Any member of the public may submit written comment in any Commission ~~ratesetting~~ or quasi-legislative proceeding using the “Public Comment” tab of the online Docket Card for that proceeding on the Commission’s website.

(1 a) All written public comment submitted in a ~~ratesetting~~ or quasi-legislative proceeding will be entered into the record of that proceeding and reviewed ~~and considered~~ by the Presiding Officer.

(2 b) Relevant written comment submitted in a ~~ratesetting~~ or quasi-legislative proceeding will be summarized in the body of the final decision issued in that proceeding.

(3 e) Parties may respond to, and cite to, any public comment submitted in a ~~ratesetting~~ or quasi-legislative proceeding in their submissions to the Commission in that proceeding.

(b) If permitted in the Scoping Memo and prior to a matter being submitted, any member of the public may submit written comment in any Commission ~~ratesetting~~-proceeding using the “Public Comment” tab of the online Docket Card for that proceeding on the Commission’s website.

(1 d) If ~~the~~ assigned Commissioner and/or Administrative Law Judge intends to rely on any public comments submitted in a ratesetting proceeding, then may invite parties to that a proceeding will be provided an opportunity to comment on any matter identified in such public comment, submitted in that ~~ratesetting~~ or quasi-legislative proceeding.

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Revisions to Proposed New Rule: 2.9. (Rule 2.9) Requests for Expedited Schedule

(a) An application may be submitted to the Commission with a request for an expedited schedule.

(b) Notwithstanding Rule 1.7(a), the title page of an application requesting an expedited schedule shall contain the caption “Request for Expedited Schedule” below the title of the application. Such application shall include an attachment, not exceeding 3 pages, titled “Request for Expedited Schedule.”

(c) For any application in which the requested relief concerns a threat to public safety or a major direct financial impact to customers that justifies an expedited schedule, ~~¶~~ the assigned Commissioner may grant a request for an expedited schedule if the attachment demonstrates, referencing specific facts, that special circumstances necessitate expedited action by the Commission, ~~and that the requested relief concerns a threat to public safety or a major direct financial impact to customers that justifies an expedited schedule.~~

~~(d)~~ Requests for an expedited schedule in these types of applications shall be granted at the sole discretion of the assigned Commissioner, and only in exceptional circumstances.

(d) Applications other than those set forth in (c) above may include a request for an expedited schedule and such request will be granted unless a timely protest is submitted in response to such application.

(e) In an expedited proceeding, the assigned Commissioner and/or Administrative Law Judge shall notice a prehearing conference no later than 20 days from the date of preliminary categorization of the proceeding under Rule 7.1(a), and hold a prehearing conference no later than 30 days from the date of preliminary categorization. The notice shall inform parties that the proceeding has been designated as expedited and the assigned Commissioner may take comments from parties regarding the designation of the proceeding as expedited at the prehearing conference. In an expedited proceeding, a scoping memo shall be issued no later than 45 days from the date of preliminary categorization.

(f) The assigned Commissioner may, at their discretion, provide a different schedule.

(g) In an expedited proceeding, the scoping memo shall include a date for issuance ~~of a proposed~~ decision which is no later than 12 months after the application was filed.

(h) In exceptional circumstances, ~~¶~~ the assigned Commissioner may extend the date for issuance of a proposed decision in an expedited proceeding.

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Revisions to Proposed New Rule: 13.9. (Rule 13.9) Duty to Meet and Confer.

(a) ~~Unless the assigned Commissioner or assigned Administrative Law Judge orders otherwise, no later than 10 calendar days a~~ After the submission of rebuttal testimony and provided that a hearing is not scheduled for at least 30 days after such submission, the parties must meet and confer, in person or via remote participation to consider the following:

- (1) Identifying and, if possible, informally resolving any anticipated motions;
- ~~(2) Identifying the facts and issues in the case that are uncontested and may be the subject of stipulation;~~
- ~~(3) Identifying the facts and issues in the case that are in dispute;~~
- (3 4) Determining whether the contested issues in the case can be narrowed; and
- ~~(4 5)~~ Determining whether settlement is possible.

(b) Subject to (a), the parties will meet and confer within ten days of the date for submission of rebuttal testimony. Notice of the date, time, and place shall be served on all parties in advance of the meet and confer, unless all parties stipulate to waive the need for service. Parties shall notice the service list after the meet and confer has been held.