

Decision 87-11-053 November 25, 1987

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's own)
Motion for purposes of compiling the)
Commission's rules of procedure in)
accordance with Public Utilities)
Code Section 322 and considering)
changes in the Commission's Rules of)
Practice and Procedure.)

R.84-12-028
(Filed December 19, 1984)

OPINION PROPOSING RULES GOVERNING
SETTLEMENTS AND STIPULATIONS

On February 20, 1987, Administrative Law Judge Kotz issued a ruling convening a hearing, to be conducted in workshop format, to define problems that the Commission needs to address in proposing rules governing settlements and stipulations. Copies of an informal draft of proposed rules, with comments and questions, and the rules of the New Mexico Public Service Commission were attached.

The workshop was held on March 30, 1987 and was well attended. Statements were made at the workshop by Southern California Edison Company, Toward Utility Rate Normalization (TURN), Industrial Users (General Motors Corporation and Nabisco Brands, Inc), AT&T Communications of California, Inc., Sierra Pacific Power Company, the Attorney General, California Trucking Association, Pacific Gas and Electric Company, General Telephone Company of California, San Diego Gas & Electric Company, Southern California Gas Company (SoCal), and Division of Ratepayer Advocates. The following parties filed written comments only: Suburban Water Systems and California Manufacturers Association.

We have reviewed the oral and written comments of all parties and are now ready to send the Office of Administrative Law our proposed rules for publication in the California Administrative Notice Register.

Written comments on the proposed rules may be filed with the Commission's Docket Office (in original and 12 copies). A copy of the comments shall be served separately on the Chief Administrative Law Judge and on the staff attorney. Service of comments on other parties shall be made on request of the party but is not otherwise required. Comments will be due no later than January 25, 1988, and we expect to adopt final rules in February, 1988.

In addition to the proposed rules for settlements and stipulations, we will take this opportunity to amend a number of rules which contain obsolete references to the Commission Secretary and Assistant Secretary. We recognize that some of these rules are also in need of substantive revision, which we will undertake in the course of this proceeding as time permits.

Stipulations and settlements can provide useful methods for resolving public utility proceedings, and these methods can achieve mutually acceptable solutions, reduce uncertainty, expedite regulatory review and conserve public and private resources. Stipulations have been an integral part of the Rate Case Plan since its inception, with specific areas of agreement placed on the record together with the original position of the agreeing parties and the effect of the agreement on the rate request. Stipulations have also been used, with less formality, in other types of Commission proceedings. Stipulations address only parts of the whole application however, and over the last year and a half, the Commission has been increasingly presented with settlements between parties which dispose of entire, major proceedings.

If this trend continues, we need a more formal structure for the consideration and review of both stipulations and settlements. Such a structure will give notice and opportunity for all parties to address stipulations and settlements, to raise and explore concerns in a formal setting and to develop a record on which the Commission may render an informed decision on the

stipulation or settlement. A formal structure will also place parties to the stipulation or settlement on notice of what we require to be a part of each such agreement and the procedural course of action they can expect to see each time they propose a stipulation or settlement.

We will not, in this decision, take up each suggestion by every participant in the workshop on the proposed rules. It is, however, useful to explain the considerations underlying some of the major items we have considered in compiling the proposed rules which are attached as Appendix A.

A party has been defined to include anyone who is a formal appearance or who has indicated an intent to participate in a proceeding, and a proceeding has been defined to include filed Notices of Intent (NOI). These changes have been made to start the process as early as possible, consistent with reaching the broadest number of potentially interested participants. A filed NOI has a number, is noticed on the Commission's Daily Calendar, is required to be served on all parties to the applicant's last general rate case and has a formal docket in which pleadings such as stipulations and settlements can be filed. Further, the NOI contains all material set forth in the standard requirement list attached to the Rate Case Plan and the workpapers underlying this material are available to anyone requesting them.

Since we have provided for filing stipulations and settlements in filed NOIs, we see no reason to permit filing them as petitions to modify decisions we have previously rendered (as was the case with SoCal's petition to modify its last general rate case as part of the settlement of its 1989 test year general rate case). We see little application of these rules to matters we have already decided, and in many cases the service lists in such matters may well be out of date.

When a settlement pertains to a proceeding under the Rate Case Plan, we have provided that the settlement be supported by a

comparison exhibit showing the impact of the proposal in relation to the utility application. If the participating Staff supports the settlement, it shall prepare a similar exhibit indicating the impact of the proposal in relation to the issues it contested or would have contested at hearing. This requirement should provide the Commission and other parties with an elemental framework within which to evaluate the settlement.

We have provided that a stipulation or settlement may be filed as early as a formal docket is created and as late as 30 days after the last day of hearing. Parties will thus have filed any agreement generally before the Administrative Law Judge has completed substantial work on a proposed decision and before the potential of knowing the outcome of an issue becomes the reality that concerned several workshop participants. We remind parties that the purpose of stipulations and settlements is to promote overall efficiency in the process, consistent with the public interest, and not to provide an opportunity to "game" the process to individual advantage.

A comment period of 30 days has been provided so that parties may comment on the stipulation or settlement, and a response period of 15 days is included. We reject the suggestion that we use "working days" since different companies have different official holidays. Further it is inconsistent with our other rules, which commonly use calendar days. We have, however lengthened the original time proposed for comments to account for weekends and holidays. With this extension, we do not expect to see many motions for further extensions of time; however, we will provide that such motions may be filed and, for good cause shown, granted by the administrative law judge.

Because a stipulation or settlement substantially shortcuts the usual process of developing a record upon which to base our decision, we will require a hearing on any contested agreement as soon after the close of the comment period as

possible. This will provide contesting parties an opportunity to question proponents of the agreement concerning its development and content and will provide an opportunity to be heard and to argue objections orally. We place parties on notice that we may also provide for prehearing conferences and discovery so that the record at the hearing on the stipulation or settlement may be developed fully.

We also place parties on notice that we will reject without hearing any stipulation or settlement which is not in the public interest or which is so substantially opposed that hearing on the entire matter is clearly in order.

Lastly, we have made these rules applicable only to formal proceedings involving gas, electric, telephone and Class A water utilities, although we have used stipulations in the transportation arena for many years. We do not wish to discourage use of settlements and stipulations in other proceedings, and we are mindful that application of extensive rules in proceedings involving smaller utilities may well have a chilling effect on the use of such agreements. We have therefore not made these rules uniformly applicable to all entities we regulate. We have provided that any party to a proceeding not otherwise covered may, by motion, request that these rules be applied in that proceeding and the burden then shifts to opposing parties to demonstrate why this is not in the public interest.

In drafting these rules we have tried to keep the process of stipulations and settlements open and accessible to all parties while preserving the efficiencies inherent in disposing of matters without extended hearings. We have not provided that all parties be notified of negotiations between agreeing parties nor have we required that any and all interested participants be included in negotiating sessions. We did this not to limit participation, but to facilitate opportunities for agreement that might never come to fruition if multiple conflicting positions had to be addressed at

the beginning. We have provided instead for a longer period in which to comment (and protest) and for formal hearings on any contested stipulation or settlement. We are concerned about the "bandwagon effect" that TURN and Industrial Users predict if participating Staff and the utility enter into an agreement. We wish to assure parties that it is the Commission and not the stipulating parties which must make the decision in any matter. We are not bound to approve a stipulation or settlement simply because it is offered. We will do so only if we are confident that a stipulation or settlement is in the public interest and that all parties have had opportunity to raise their concerns and explore the basis for the agreement on the record.

Findings of Fact

1. On March 30, 1987, a workshop was conducted to discuss proposed rules governing stipulations and settlements in formal proceedings before the Commission. All parties to this Rulemaking proceeding were notified.

2. Both oral and written comments were accepted from participating parties.

3. Stipulations and settlements can provide useful methods for resolving public utility proceedings and can achieve mutually acceptable solutions, reduce uncertainty, expedite regulatory review and conserve public and private resources.

4. The structure of formal rules for stipulations and settlements will provide notice and opportunity to all parties to address stipulations and settlements, to raise and explore concerns in a formal setting and to develop a record on which the Commission may render an informed decision on the stipulation or settlement.

5. Appendix A attached sets forth proposed additions to the Rules of Practice and Procedure to implement rules governing Stipulations and Settlements.

Conclusions of Law

1. The Executive Director should transmit the proposed new rules to the Office of Administrative Law for publication.
2. Comments on the proposed rules should be solicited from parties to this proceeding.

ORDER

IT IS ORDERED that:

1. Parties who wish to file written comments on the proposed rules shall file an original and 12 copies with the Docket Office by January 25, 1988 and shall separately serve copies on the Chief Administrative Law Judge and the staff attorney. Because the service list in this proceeding is long, in lieu of service, parties may notify all other parties that a copy of their comments will be sent on request.
2. The Executive Director, in coordination with the Administrative Law Judge Division, shall transmit a copy of this order to the Office of Administrative Law in accordance with any applicable provisions of the Government Code.

This order is effective today.

Dated NOV 25 1987, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Victor Weiss, Executive Director

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The following article is added to the Rules of Practice and Procedure:

Article 13.5 - Stipulations and Settlements

51. (Rule 51) Definitions.

The following definitions apply for purposes of this article.

(a) "Party" or "Parties" means any person who has filed an appearance in the proceeding or who has otherwise indicated an intent to participate in the proceeding. "Party" does not include persons who are on service lists for purposes of receiving information only.

(b) "Commission Proceeding" means a filed notice of intent, application, complaint, investigation or rulemaking before the California Public Utilities Commission.

(c) "Settlement" means an agreement between some or all of the parties to a Commission proceeding on a mutually acceptable outcome to the proceedings.

(d) "Stipulation" means an agreement between some or all of the parties to a Commission proceeding on the resolution of any issue of law or fact material to the proceeding.

(e) "Contested" describes a stipulation or settlement that is opposed in whole or part, as provided in this article, by any of the parties to the proceeding in which such stipulation or settlement is proposed for adoption by the Commission.

(f) "Uncontested" describes a stipulation or settlement that (1) is filed concurrently by all parties to the proceeding in which such stipulation or settlement is proposed for adoption by the Commission, or (2) is not contested by any party to the proceeding within the comment period after service of the stipulation or settlement on all parties to the proceeding.

51.1. (Rule 51.1) Proposal of Settlements or Stipulations.

Parties to a Commission proceeding may stipulate to the resolution of any issue of law or fact material to the proceeding, or may settle on a mutually acceptable outcome to the proceeding, with or without resolving material issues, and may by motion

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propose such stipulation or settlement for adoption by the Commission in accordance with this article. The motion shall contain a statement of the factual and legal considerations adequate to advise the Commission and parties not expressly joining the agreement of its scope and of the grounds on which adoption is urged.

When a settlement pertains to a proceeding under the Rate Case Plan, the settlement must be supported by a comparison exhibit indicating the impact of the settlement in relation to the utility's application. If the participating Staff supports the settlement, it must prepare a similar exhibit indicating the impact of the proposal in relation to the issues it contested or would have contested, in a hearing.

Stipulations and 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.

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

51.2. (Rule 51.2) Timing.

Parties to a Commission proceeding may propose a stipulation or settlement for adoption by the Commission (1) at any time after the proceeding is given a docket number and accepted for filing, (2) at any time before the proceeding is submitted, or (3) within 30 days following the last day of hearing.

51.2. (Rule 51.3) Filing.

Parties proposing a stipulation or settlement for adoption by the Commission shall concurrently file their proposal in accordance with the rules applicable to pleadings (See Article 2), and shall serve the proposal on all parties to the proceeding.

51.4. (Rule 51.4) Comment Period.

Whenever a party to a proceeding does not expressly join in a stipulation or settlement proposed for adoption by the Commission in that proceeding, such party shall have 30 days from the date of mailing of the stipulation or settlement within which to file comments contesting all or part of the stipulation or settlement, and shall serve such comments on all parties to the proceeding.

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Parties shall have 15 days after the comments are filed within which to file reply comments. The assigned administrative law judge may extend the comment and/or response period on motion and for good cause.

51.5. (Rule 51.5) Contents of Comments.

A party contesting a proposed stipulation or settlement must specify in its comments the portions of the stipulation or settlement that it opposes, the legal basis of its opposition, and the factual issue(s) that it raises. If the contesting party wants a hearing on the proposed stipulation or settlement, the party must so state and must specify whether any provision of law, in its view, requires such hearing. Any failure by a party to file comments constitutes waiver by that party of all objections to the stipulation or settlement, and any failure by a party to request a hearing constitutes waiver by the party of the hearing.

51.6. (Rule 51.6) Contested Stipulations and Settlements.

If the stipulation or settlement is contested in whole or in part by any party, the Commission will schedule a hearing on the agreement as soon after the close of the comment period as reasonably possible. Parties to the stipulation or settlement must provide one or more witnesses to testify concerning the agreement and to undergo cross examination by contesting parties. In order to ensure that the agreement to shortcut the normal hearing process is in the public interest, opportunity may also be provided for prehearing conferences, discovery and any other procedure deemed reasonable to develop the record on which the Commission will base its decision.

If contested issues are severable, the uncontested portions may be severed and decided without further hearing as in the case of uncontested stipulations.

51.7. (Rule 51.7) Commission Rejection of a Stipulation or Settlement.

The Commission will reject a proposed stipulation or settlement without hearing whenever it determines that the stipulation or settlement is not in the public interest or whenever it determines that the nature and extent of the opposition is such that hearing on the stipulation or settlement would not materially assist in disposing of the proceeding. In that event, parties to the stipulation or settlement may either withdraw it or they may offer it as joint testimony.

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51.8. (Rule 51.8) Adoption Binding, Not Precedential.

Commission adoption of a stipulation or settlement is binding on all parties to the proceeding in which the stipulation or settlement is proposed. Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.

51.9. (Rule 51.9) Inadmissibility.

No statements, admissions, or offers to stipulate or settle made during negotiations of stipulations or settlements shall be admissible in any evidentiary hearing unless agreed to by all parties participating in the negotiation. If a stipulation or settlement is not adopted by the Commission, the terms of the proposed stipulation or settlement are also inadmissible unless their admission is agreed to by all parties joining in the proposal.

51.10. (Rule 51.10) Applicability.

These rules shall apply to all formal proceedings involving gas, electric, telephone and Class A water utilities. In proceedings where all parties join in the proposed stipulation or settlement, a motion for waiver of these rules may be filed. Such motion should demonstrate that the public interest will not be impaired by the waiver of these rules.

Any party in other proceedings before the Commission may file a motion showing good cause for applying these rules to settlements or stipulations in a particular matter. Anyone protesting such motion must demonstrate that it is not in the public interest to do so.

The following rule is amended to provide for filing settlements or stipulations after the conclusion of hearings:

84. (Rule 84) Petition to Set Aside Submission.

After conclusion of hearings, but before issuance of a decision, a party to the proceeding may serve on all other parties, and file with the Commission, a petition to set aside submission and reopen the proceeding for the taking of additional evidence, or for reconsideration of a settlement or stipulation under Article 13.5. Such petition 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

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hearing. It shall contain a brief statement of proposed additional evidence, and explain why such evidence was not previously adduced.

42. (Rule 42) Generally.

Applications and pleadings relating to matters not specifically mentioned in these rules shall be in compliance with Rules 2 through 8, 15 and 16. Inquiries may be directed to the Secretary Executive Director of the Commission. An application for authorization to modify the subject matter of a previous related proceeding may incorporate such proceeding by reference.

43. (Rule 43) Petitions for Modification or for Extension of Time or Effective Date.

Petitions for modification of a Commission decision, or for an extension of time to comply with a Commission order or for an extension of an effective date of a Commission order shall indicate the reasons justifying relief and shall contain a certificate of service on all parties. Petitions for modification, other than in highway carrier tariff matters, shall only be filed to make minor changes in a Commission decision or order. Other desired changes shall be by application for rehearing or by a new application. Requests for extension of time to comply with decisions or orders may also be made by letter to the Secretary Executive Director. The letter shall indicate that a copy has been sent to all parties.

44.2. (Rule 44.2) Computation of Time.

The time within which any document may be filed, as provided by any rule or statute or direction of the Commission, the Secretary Executive Director, or the presiding officer, shall be so computed as to exclude the first day and include the last day; provided, that when the last day of any such period falls on Saturday, Sunday, or a holiday under the laws of this State, the computation of time shall omit such day and include the first business day thereafter.

46. (Rule 46) Rejection of Documents.

Documents which are not in substantial compliance with these rules, Commission orders, or applicable statutes may be rejected. If rejected, such papers will be with an indication of the deficiencies therein. Tendered documents which have been rejected

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shall not be entered on the Commission's docket. Acceptance of a document for filing is not a determination that the document complies with all requirements of the Commission and is not a waiver of such requirements. The Commission, the Secretary Executive Director, or the presiding officer may require amendments of a document and the Commission or the presiding officer may entertain appropriate petitions or motions in connection therewith.

48. (Rule 48) Daily Calendar.

A daily calendar of newly filed proceedings and proceedings set for hearing shall be available for public inspection at the offices of the Secretary Executive Director in San Francisco and Los Angeles. The daily calendar shall indicate the time and place of the next three regularly scheduled Commission meetings. (See Rule 81.5.) Printed copies of such calendar may be obtained by subscription at such price as may be established by the Commission.

Article 13. Prehearing Procedure and Exchange of Exhibits

59. (Rule 59) Issuance.

Requests for subpoenas and subpoenas duces tecum should be made to the Executive Director in San Francisco or Los Angeles. The subpoena or subpoena duces tecum shall be issued, signed and sealed, but otherwise in blank. In appropriate circumstances requests for subpoenas and subpoenas duces tecum may be made to the Commission, a Commissioner, an Assistant Secretary Assistant Executive Director, or an Administrative Law Judge.

81.5. (Rule 81.5) Commission Meetings.

Commission meetings shall be held on a regularly scheduled basis for the purpose of considering and signing decisions and orders and taking such other action as the Commission deems appropriate. The time and place of these meetings will appear daily in the Commission calendar at least three weeks in advance. The meetings are open to the public. An agenda of the meeting is available from the Secretary Executive Director on request. No unscheduled meeting to take action shall be held, and no matter not on the agenda of a meeting shall be decided, unless there is a determination by the Commission of an unforeseen emergency condition.

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82. (Rule 82) Service of Orders.

Decisions and orders shall be served by the Secretary's Executive Director's office by mailing copies thereof to the parties of record. When service is not accomplished by mail, it may be effected by personal delivery of a copy thereof. When a party to an application proceeding has appeared by a representative, service upon such representative shall be deemed to be service upon the party.

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2. Both oral and written comments were accepted from participating parties.

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