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ORIGINAL

Decision 88 08 057 AUG 24 1988

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 ADOPTING AMENDMENTS
TO RULES OF PRACTICE AND PROCEDURE

In this rulemaking, the Commission has compiled its rules of practice and procedure (California Code of Regulations, Title 20, Chapter 1, Subchapter 1) and has issued various proposed rules. It has also adopted various new rules and repealed some of its existing rules. In today's opinion, amendments are adopted (1) to remove out-of-date references in the rules, (2) to add certain new formal requirements for filings at the Commission, (3) to update rules on notice and filing fees affecting transportation entities in certain types of proceedings, (4) to require that a certificate of service, whenever required under the Commission's rules, include a list of the names and addresses of the parties served, (5) to establish rules governing the service of motions and the timing and service of responses to motions, and (6) to require the filing of certain documents in connection with applications filed by corporations or partnerships. We describe the specific amendments below.

I. The Adopted Amendments

A. Out-of-Date References

1. Addresses and Telephone Numbers

The rules currently name specific branches of Commission staff and contain several addresses and telephone numbers for Commission offices. Several of these are out-of-date due to staff reorganization and the move of the Commission's San Francisco offices. Moreover, the Commission believes that organizational names, addresses, and telephone numbers are transitory information and not appropriate for inclusion in the rules. Current addresses and telephone numbers are printed in the Commission's daily calendars, and are also available from the Commission's Public Advisor and published periodically in a Commission-wide telephone directory for sale to the public. The rules are amended by deleting the branch names, addresses, and telephone numbers. The affected rules are Rules 14, 17.1, 17.3, 18, and 44. Also, the Preface to Subchapter 1 contains addresses and is rendered redundant by the authority and legislative history notes that follow each rule; the Preface is therefore deleted. Finally, the Note to Subchapter 2 (the Commission's Conflict of Interest Code) of the rules is revised by deleting the addresses and by replacing the reference to "California Administrative Code" with "California Code of Regulations." (The modifications to the Preface and Note are not amendments, since neither the Preface nor the Note is a "regulation" as that term is used in the Government Code.)

2. Superseded Resolutions

Rule 42.1 presently refers to two forms contained in Resolution No. TS-284, dated January 24, 1978. That resolution has been superseded. The rule is amended by deleting the reference and indicating that copies of a sample application form with instructions for filling it out are available from Commission staff.

3. Wharfingers

Senate Bill 169 (Rosenthal), approved August 18, 1987, deletes "wharfinger" as a category of public utility. The amendments delete this category from the rules. The deletion affects Rule 14 and Rule 15.1(b).

B. New Formal Requirements

1. Summary, Subject Index

Commission proceedings in recent years have tended to include more parties and result in larger records. The Commission believes that certain additional formal requirements will help its own and the parties' review of these records.

Rule 75 contains formal requirements for briefs filed with the Commission. Briefs of more than 20 pages are required to contain a subject index and table of authorities. The Commission has found that long briefs are becoming increasingly frequent in its proceedings. The amendments add to Rule 75 the requirements that (1) briefs of more than 20 pages also contain a summary of the briefing party's recommendations following the table of authorities, and that (2) any citation to the transcript in a proceeding indicate the transcript page number(s) and identify the witness and sponsoring party being cited.

Rule 68 contains formal requirements for prepared testimony served in Commission proceedings. The Commission has found that prepared testimony is becoming increasingly lengthy and often covers more than one subject. Also, the question-and-answer format generally used for prepared testimony tends to obscure the organization of such testimony. The amendment adds to Rule 68 the requirement that prepared testimony of more than 20 pages contain a subject index.

2. Exhibit Stamp

Rule 70 contains formal requirements for exhibits (including prepared testimony) received into the record of Commission proceedings. Commission practice is that all such

exhibits are marked with an exhibit stamp by the administrative law judge, who then (1) fills out the identifying matter that is specified on the stamp, and (2) upon receipt of the exhibit into evidence, sends the exhibit to Central Files for storage. Thus, a space that is two inches high by four inches wide is needed on the top sheet of each exhibit to accommodate the exhibit stamp. The amendment adds to Rule 70 the requirement that the sponsoring party affix a cover sheet with adequate space (as indicated above) to any document offered by the party as an exhibit in a Commission proceeding.

C. Notice of Certain Commission Investigations

Rule 14 says, among other things, how the Commission will give notice to affected persons or entities when the Commission on its own motion institutes an investigation. Part of Rule 14 concerns notice procedure where an investigation affects an entire class of regulated entities. The rule says in pertinent part that "investigation proceedings affecting as a class highway carriers, railroads, express corporations, freight forwarders, pipelines, passenger stage corporations, charter-party carriers, or vessels will be noticed only on the Daily Transportation Calendar." This is inaccurate. The Commission publishes a Daily Calendar in addition to the Daily Transportation Calendar. The contents of both calendars include notice of Commission investigations affecting highway carriers, etc., as a class. We amend Rule 14 to refer to both calendars.

D. Filing Fees for Passenger Stage Corporations

Rule 45(b) has a schedule of filing fees required to accompany the applications of passenger stage corporations for certain Commission authorizations under the Public Utilities Code. The collection of these filing fees is required by Public Utilities Code Section 1036. This section was recently amended. We amend the rule to conform to the statute.

E. Documentation in Certificates of Service

The rules do not presently require certificates of service filed with the Commission to list the names and addresses of the parties served. The lack of such a listing creates confusion and uncertainty, and complicates the resolution of service disputes. We add a new rule (Rule 4.5) to Article 2 ("Formal Requirements for All Pleadings and Briefs") requiring that any certificate of service filed with the Commission contain a list of the names and addresses of the parties served.

F. Motions and Responses to Motions

The rules do not presently contain general provisions governing the service of motions and the timing and service of responses to motions. We add to Rule 42 a new Subsection (b), requiring that motions and responses to motions be filed and served on all parties to the proceeding and that responses be filed within 15 days of the date of service of the motion unless the assigned administrative law judge sets a different date for responses.

G. Applications by Corporations or Partnerships

Rule 16 presently requires a corporate applicant to file a copy of its articles of incorporation. The rule does not expressly require the articles to be the corporation's current articles of incorporation, nor does the rule expressly require a corporation that is not a domestic corporation to file its certificate of qualification to transact intrastate business. We amend Rule 16 and recodify it as Rule 16(a). The amendment requires the filing of current articles of incorporation and (for a corporate applicant that is not a domestic corporation) a certificate of qualification to transact intrastate business.

Rule 16 does not presently address applications by partnerships. Commission practice has been to require partnership applicants to produce their partnership agreement pursuant to Rule 15(c), pertaining to "additional information" that the Commission may require. We add Rule 16(b), requiring that a

partnership applicant provide its current partnership agreement or, in lieu of that, a current statement of partnership recorded pursuant to Corporations Code Section 15010.5, or a current certificate of limited partnership recorded pursuant to Corporations Code Section 15502, as appropriate.

II. Comments on Proposed Rules

The proposals were issued in Decision 88-05-066 (mailed May 27, 1988), and a notice of proposed regulatory action was duly published in the California Regulatory Notice Register (June 10, 1988). We accepted comments through August 1, 1988. The proposals proved generally noncontroversial.

Pacific Bell (Pacific) has submitted a comment on Proposed Rule 42(b), on motions and responses to motions. The second sentence of the proposed rule requires that motions and responses comply with "Rules 2 through 4.5, 6, and 7." Pacific points out that the inclusion of Rule 6 is a mistake. Rule 6 deals with verification of pleadings and on its face does not relate to motions. Furthermore, we note that Rule 4 expressly applies to signatures on motions. We are deleting from Proposed Rule 42 the reference to compliance with Rule 6. Given the clear irrelevance of that rule, this is essentially a change without regulatory effect.

Pacific also asks that the time for responses be increased to 20 days (instead of 15 days) from the date of service. Pacific Gas and Electric Company (PG&E), on the other hand, expressly supports the proposed rule with the 15-day response period. We agree with PG&E; under the proposed rule, the assigned administrative law judge may extend (or shorten) the response time on an appropriate showing, but 15 days should be adequate in most circumstances.

Toward Utility Rate Normalization (TURN) sees "some improvement over the current procedures" in the proposed rules but fears that some of the proposals are more burdensome than beneficial to litigants (such as TURN) on tight budgets. TURN is particularly concerned by the requirement in new Rule 4.5 that parties attach a certificate of service to any document for which service is required. We will clarify this proposal (and lighten the burden) by specifying that the certificate need only be attached to the original document filed with the Commission. This was our intent. We assure TURN that service problems are fairly commonplace, and it is difficult to determine how extensive the failure to serve might be without comparing the current service list with that used by the party.

TURN's other objections are based on TURN's subjective assessment of burdensomeness. Reasonable people could differ on this. For example, TURN would not require a summary to accompany a brief over 20 pages (as in Proposed Rule 75) but would impose this requirement for briefs over 50 pages. For our purposes, we think the 20-page threshold is appropriate. Parties whose briefs are well-written and organized will be able to generate their summaries from their headings and topic sentences. Other parties will find that the requirement makes more work, but they are the parties whose briefs presently make more work for us. TURN's other objections fail to persuade us for similar reasons.

Findings of Fact

1. Certain additional formal and service requirements and the removal of outdated or confusing information from the Rules of Practice and Procedure can improve the clarity of the rules and of the record in Commission proceedings.

2. The California Regulatory Notice Register, dated June 10, 1988, contained notice of Commission consideration of certain amendments to the Rules of Practice and Procedure. The amendments are set forth in the appendix to this decision.

Conclusions of Law

1. The Commission has provided due notice of, and opportunity for comment on, the consideration of the amendments set forth in the appendix to this decision. The amendments are identical to those originally proposed except for two changes without regulatory effect.

2. The Commission should adopt the amendments set forth in the appendix to this decision.

ORDER

IT IS ORDERED that:

1. Rule 4.5 is adopted, and Rules 14, 15.1(b), 16, 17.1(d)(3), 17.3, 18(o)(5), 42, 42.1(a)(1), 42.1(b), 44, 45(b), 68, 70, and 75 are amended as set forth in the appendix.

2. The Executive Director, in coordination with the Administrative Law Judge Division, shall send a certified copy of this order to the Office of Administrative Law in accordance with the provisions of the Government Code.

This order is effective today.

Dated AUG 24 1988, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
C. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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

Victor Weisser

Victor Weisser, Executive Director

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Adopted Amendments and Other Modifications to California
Code of Regulations, Title 20, Chapter 1, Subchapters 1 and 2

The express terms of the adopted amendments follow.
Deletions from existing rules are struck-out; additions are
underlined.

Rule 14. second paragraph

Notice of Commission-instituted investigations directed at specific utilities or regulated entities will be served on them. However, investigation proceedings affecting as a class highway carriers, railroads, express corporations, freight forwarders, pipelines, wharfingers, passenger stage corporations, charter-party carriers, or vessels will be noticed only on the Daily Calendar and the Daily Transportation Calendar. The order instituting such the proceeding, in addition to being noticed on such calendars, may be mailed with the Daily Transportation Calendar, ~~may be mailed with the Calendar~~, or the Calendar may state how to obtain a copy from the Transportation Division Commission staff.

Rule 15.1(b)

(b) Applications or other filings to increase, reduce, or adjust rates of highway carriers, railroads, express corporations, freight forwarders, ~~or pipelines, or wharfingers~~ (except deviations from established minimum rates; see Rule 42.1).

Rule 16 Articles of Incorporation, Partnership Agreements.

(a) If applicant is a domestic corporation, as defined by Section 167 of the Corporations Code, a copy of its current articles of incorporation, certified by the California Secretary of State, shall be annexed to the original of the application, but need not be annexed to copies of the application. If a corporate applicant is not a domestic corporation, as so defined, a properly certified current copy of its articles of incorporation, and a copy of its certificate of qualification to transact intrastate business certified by the California Secretary of State, shall be annexed to the original of the application.

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but need not be annexed to copies of the application. If current articles or certificates of qualification have already been filed, the application need only make a specific reference to such filings.

(b) If applicant is a partnership, a copy of its current partnership agreement shall be annexed to the original application, but need not be annexed to copies of the application. - If a current partnership agreement has already been filed, the application need only make specific reference to such filing. In lieu of filing the partnership agreement, applicant may file a current statement of partnership recorded pursuant to Section 15010.5 of the Corporations Code, or a current certificate of limited partnership recorded pursuant to Section 15502 of the Corporations Code, as appropriate.

Rule 17.1(d)(3)

(3) Commission Information and Criteria Lists. The Commission shall adopt and revise as necessary a list specifying in detail the information and studies which will be required from proponents of projects subject to this rule. These information lists shall also contain criteria which the Commission will apply in order to determine the completeness of PEAs. These lists shall be contained within the Commission's Information and Criteria List adopted pursuant to Chapter 1200 of the Statutes of 1977 (Government Code Sections 65940 through 65942), and shall be made available to the public upon request from California-Public-Utilities Commission staff Environmental-Impact-Branch, 350 McAllister-Street, San-Francisco, California-94102.

Rule 17.3

Review of development projects within the meaning of Chapter 1200 of Statutes of 1977 (Government Code Sections 65920 et seq.) shall be in accord with the procedures and requirements of that chapter, the Permit Guidelines promulgated by the Office of Planning and Research for-implementation-thereof (State Administrative Manual Sections 1070 et seq.), and applicable rules and procedures of the Commission. Commission Information and Criteria

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Lists for applications subject to Chapter 1200, Statutes 1977 shall be available from ~~California Public Utilities the Commission staff, Environmental Impact Branch, 350 McAllister Street, San Francisco, California 94102, (415) 557-0443.~~

Rule 18(o) (5)

(5) Should an existing utility propose an extension of service area which it believes to be minor in nature, but to which (4) above is inapplicable, it shall submit the relevant engineering data to the Commission staff, with a written request for determination of the necessity for a certificate application. Reply will be by letter from an authorized representative of the Commission's ~~Communications-Division staff.~~ In general, an extension will be considered minor if it does not overlap the radio service area of another utility by more than 10% of either utility's radio service area and also does not provide substantial coverage of additional major communities.

Rule 42

(a) 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 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.

(b) Except as otherwise specifically provided in this Chapter, this rule governs the service of motions and the timing and service of responses to motions. Motions and responses shall comply with Rules 2, 3, 3.5, 4, 4.5, and 7, shall be filed and served on all parties, and shall contain a certificate of service. Responses to motions shall be filed and served within 15 days of the date that the motion was served, unless the administrative law judge assigned to the proceeding sets a different date for responses.

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Rule 42.1(a)(1), third paragraph

~~The specific forms and requirements are contained in Resolution No. TS-204, Form 1, dated January 24, 1978. Copies of a sample application form and instructions are available at Commission offices. Copies of the application must be served on all carriers known to be providing this service, and a certificate of service showing the individual carriers served shall be attached to the application. Furthermore, copies of the application must be served on any party who makes a written request for the application, within five (5) calendar days from the postmark on said written request. Depositing a properly addressed and stamped copy of the application in the United States mail shall constitute such service.~~

Rule 42.1(b), second and third paragraphs

~~Renewal of existing deviations authorized under Sections 3666 and 5195 are filed under the Special Deviation Docket. The specific form and requirements are contained in Resolution No. TS-204, Form 2, dated January 24, 1978. Copies of a sample application form and instructions are available at Commission offices.~~

~~Renewal of existing deviations authorized under Section 452 are filed under the normal procedure governing all applications. The specific form and requirements are contained in Resolution No. TS-204, Form 1, dated January 24, 1978. Copies of a sample application form and instructions are available at Commission offices.~~

Rule 44, first paragraph

~~Unless otherwise directed, all documents shall be received in the Commission's Docket Office, at the State Building, 350 McAllister Street, in San Francisco, California 94102, at the State Building, 107 South Broadway, Los Angeles, California 90012, or at the State Building, 1350 Front Street, San Diego, California 92101.~~

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Rule 45(b)

(1) Section 1036(a). Each application for a certificate of public convenience and necessity under this section shall be accompanied by a fee of \$500 unless the applicant is already operating in the immediate vicinity under the jurisdiction of the Commission, in which case the fee shall be \$75, pursuant to Section 1904(a).

(2) Section ~~1904(a)~~ 1036(b). Each application for ~~the mortgage, lease, transfer, or assignment of to sell, lease, assign, or otherwise transfer or encumber~~ a passenger stage certificate of public convenience and necessity shall be accompanied by a fee of ~~\$75.00~~ \$300.

Rule 68, new paragraph

With the approval of the presiding officer, a witness may read into the record his or her testimony on direct examination. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall deliver copies thereof to the presiding officer, the reporter, and all counsel or parties. Admissibility shall be subject to the rules governing oral testimony. If the presiding officer deems that substantial saving in time will result, and where the parties so agree, prepared testimony may be identified and accepted as an exhibit or copied into the record without reading, provided that copies thereof shall have been served upon all parties and the Commission ten days before the hearing or such prior service is waived.

Prepared testimony of more than 20 pages must contain a subject index.

Rule 70

Exhibits shall be legible and either prepared on paper not exceeding 8-1/2 x 13 inches in size, or bound or folded to that approximate size. Wherever practicable, the sheets of each exhibit should be numbered, and rate comparisons and other figures shall be set forth in tabular form. Copies of exhibits must be clear and permanently legible. The

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top sheet of an exhibit must have a blank space two inches high by four inches wide to accommodate the Commission's exhibit stamp.

Rule 75

The presiding officer may fix the time for the filing of briefs. Concurrent briefs are preferable. Exhibits may be reproduced in an appendix to a brief. Citations to the transcript in a proceeding must indicate the transcript page number(s) and identify the party and witness sponsoring the cited testimony. A brief of more than twenty pages shall contain a subject index, and a table of authorities, and a summary of the briefing party's recommendations following the table of authorities. Requests for extension of time to file briefs must be made to the Commission in writing, and a copy thereof served upon or mailed to the other parties to the proceeding. Ordinarily, when a matter has been submitted on concurrent briefs, extensions will not be granted unless a stipulation is filed with the Commission. The original of each brief shall contain a certification that copies have been served upon or mailed to each party or his the party's attorney.

The following new rule is adopted:

4.5 (Rule 4.5) Certificate of Service

Whenever this Chapter requires a certificate of service, such certificate shall be attached to the document served, and the original certificate filed with the Commission shall include a list of the names and addresses of the persons and entities served.

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In addition to the adopted new rule and amendments shown above, two modifications without regulatory effect are approved. The Preface to Chapter 1, Subchapter 1 of Title 20 (the Commission's Rules of Practice and Procedure) is deleted, and the Note to Chapter 1, Subchapter 2 of Title 20 (the Commission's Conflict of Interest Code) is modified to read in full as follows:

NOTE: It having been found, pursuant to Government Code Section 11409(a), that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the Public Utilities Commission in San Francisco, and the Fair Political Practices Commission and the Archives of the Secretary of State in Sacramento.

(END OF APPENDIX)