

Decision 88 11 058 NOV 23 1988**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking )  
Pursuant to Section 485 of the )  
Public Utilities Code to Establish )  
Procedures and Safeguards Regarding )  
Access to Computer Models. )

R.88-04-030  
(Filed April 13, 1988)

INTERIM OPINION REPUBLISHING PROPOSED RULES  
REGARDING ACCESS TO COMPUTER MODELS

I. Summary of Order

This Order revises and republishes for further public comment proposed rules relating to access to certain computer models and data bases by the Commission, Commission staff and parties in Commission proceedings.

II. Background

On September 30, 1986, Governor Deukmejian signed into law Assembly Bill (AB) 475 (Moore; Stats. 1985, Ch. 1297). This bill, as enacted, consists of four principal parts:

1. Public Utilities (PU) Code Section 1822, relating to access to certain computer models and data bases by the Commission, Commission staff and parties in Commission proceedings,
2. Section 585, relating to access by the Commission itself to computer models which are used by a utility, regulated subsidiary or affiliate to substantiate their showing in a rate proceeding,
3. Section 1823, requiring the Commission to periodically review and monitor the development and use of any operations model used by any public utility, and

4. Section 1824, requiring the Commission to conduct studies to verify, validate and improve the production cost planning models and financial models of public utilities.

Following enactment of AB 475, the Division of Ratepayer Advocates (DRA) conducted a series of public workshops to consider a computer access rule. DRA then drafted a proposed rule based upon written and oral comments addressed to the staff.

By Order Instituting Rulemaking (OIR) 88-04-030 the Commission announced its intent to establish procedures and safeguards governing access to and initial verification of computer models. R.88-04-030 invoked Public Utilities Code Section 585 and did not refer to Section 1822. Both sections relate to access to computer models in Commission proceedings, but Section 585 refers particularly to the Commission's rules "governing its access to computer models" and is limited to rate proceedings. Section 585 does not address access by other parties or access in other types of proceedings. Section 1822, on the other hand, refers to access by the Commission and other parties, and applies to any hearing or proceeding before the Commission. As noted below, the rules we are considering here are intended to implement Section 1822.

The proposed computer access rule, as drafted by DRA, was attached to the OIR and distributed to all parties in this proceeding. The proposed rule was also transmitted to the Office of Administrative Law and published in the Administrative Notice Register. Comments were received from AT&T Communications of California, Inc. (AT&T), Citizens Utilities Company of California (Citizens), Contel of California, Inc. (Contel), GTE California Incorporated (GTE), Pacific Bell, Pacific Gas & Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), Southern California Edison (SCE), the Western Mobilehome Association (WMA), and DRA.

### III. Discussion

The rule proposed by DRA (the original rule) reflects considerable thought and effort. At the same time, the proposed rule is lengthy and complex. Several parties offered excellent suggestions for simplifying or clarifying the rule. After carefully reviewing all comments on the proposed rule, we have simplified and revised significant portions of the proposed rule. Because these revisions are so extensive, we will republish the revised rules (see "Revised Rule" in Appendix A to this order) and we will allow for a second round of comments. Any interested party may file comments on the revised rule with the Commission Docket Office by February 1, 1989. We ask that parties' comments be confined to the changes in the revised rule and not repeat arguments in previous filings.

The revised rule is intended to implement Section 1822. This rule does not extend to the monitoring, validation, and verification of computer models pursuant to Sections 1823 and 1824. The Commission and its staff are continuing to study these subjects and the Commission will institute a future rulemaking or other appropriate proceeding on these aspects of AB 475 at a later date.<sup>1</sup> Nor does this rule address the broader questions of confidentiality and proprietary information, which will be considered further in R.84-12-028 regarding revision of the Commission's Rules of Practice and Procedure.

The revised rule differs from the original Rule in that we have emphasized the primary statutory intent of Section 1822 which requires access to computer models or data bases that are the

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<sup>1</sup> The revised rule refers to "Article 17.2." This article has been reserved for the rules regarding validation of computer models by the Commission.

basis for testimony or exhibits in a proceeding. Section 1822 mandates that any computer model that is the basis for any testimony or exhibit in a hearing or proceeding before the Commission shall be available to, and subject to verification by, the Commission and parties to the proceedings to the extent necessary for cross-examination or rebuttal, subject to applicable rules of evidence.

To carry out the statutory mandate, the revised rule significantly modifies the original rule in four general areas.

First, consistent with Section 1822(b) we require more data be included in the testimony itself. Section 1822(b) requires that any testimony presented in a hearing or proceeding before the Commission that is based in whole, or in part, upon a computer model shall include a listing of all the equations and assumptions built into the model.

In contrast to Section 1822(b), the original rule does not require that any testimony presented in a hearing that is based on a computer model include a listing of all the equations and assumptions built into the model. Instead, the original rule merely requires that a party whose showing is based on a computer model be prepared, upon request, to sponsor testimony and offer a witness to explain the model.

We believe that Section 1822 clearly requires that any testimony based on a computer model must include the listing of equations and assumptions in the testimony itself. Therefore, the rule has been revised to require that these threshold data be included in the testimony itself, or to be made available at the time the testimony or exhibit is first offered.

Second, we have reduced the numerous procedural barriers which the original rule raised in the path of other parties seeking access to computer models used in our proceedings. Section 1822 is based on the presumption that computer models which support testimony should be available to and subject to verification by the

parties. In contrast, the original rule presumes that no person, other than staff or public utility that is an applicant or respondent, will have access to the models and data bases used in a proceeding unless and until they have satisfied numerous procedural hurdles.

Under the original rule, where a computer model is the basis for testimony or an exhibit in a proceeding, any person, other than the Commission staff or the utility which is an applicant, must satisfy the following steps before receiving access to the model:

1. The person must first become a party by filing an appearance. Assuming a typical proceeding, this appearance would generally be filed at the first prehearing conference, from 10 to 45 days after the application and related testimony is filed.
2. Having obtained party status, the party must file a motion for recognition as a requesting party.
3. Any other party may file an objection to the motion for recognition. (The original rule does not provide a deadline for filing an objection, nor is it clear whether the requesting party may reply to the objection.)
4. The ALJ must rule on the motion for recognition.
5. After recognition is granted, the requesting party must then request access.
6. The sponsoring party may then require the requesting party to sign a confidentiality agreement or licensing agreement. The sponsoring party may also request additional compensation for providing certain forms of access.

These procedural hurdles to a party's access to a computer model which is the basis for testimony in a proceeding are

too numerous, too elaborate, and too time-consuming to be accomplished in a timely manner in the typical Commission proceeding. In a typical ECAC proceeding, for example, interested parties must file testimony on the forecast phase within 90 days after the application is filed. The procedural hurdles in the original rule, assuming that they could be satisfied within 30 to 60 days, could either deny interested parties timely access to computer models, or alternatively, cause significant regulatory delay.

Rather than require that all requests for access by parties other than DRA or the utility be preapproved, the revised rule allows prompt and reasonable access to the computer models upon which testimony is based to every party which clearly explains its need for the information, absent timely objection by the party sponsoring the model. We believe that these revisions will reasonably protect a responding party from access which would be damaging or unduly burdensome, while allowing timely access to all necessary information.

Third, we have revised that portion of the rule regarding confidentiality agreements. AB 475 requires that the rules we adopt to implement Section 1822(a)-(c) include procedural safeguards to protect data bases and models not owned by the public utility. The revised rule grants such protection in a manner consistent with current practice.

Under current Commission practice, a party seeking to limit disclosure of information which is relevant to matters at issue in a proceeding cannot unilaterally require other parties to sign a confidentiality agreement. Instead, a party seeking to limit disclosure must file a motion for a protective order.

In contrast to current practice, the original rule denies parties access to computer models which are merely claimed as confidential or proprietary by the responding party, unless the requesting party agrees to sign a "reasonable confidentiality

agreement or licensing agreement required by the owner." Moreover, even where a requesting party agrees to sign a protective order, the original rule authorizes the sponsoring party to deny access anyway, if the sponsoring party believes that absolute confidentiality is required for other reasons.

Fourth, we have revised the rule regarding compensation. Section 1822(e) authorizes the Commission to establish procedures for determining the appropriate level of compensation for a party's access. The original rule requires each requesting party, other than the Commission staff, to pay all reasonable costs incurred by the responding party for such activities as making computer runs at the request of another party, making a data base available to a requesting party, or providing an explanation or documentation of the model, in addition to what is provided in workpapers.<sup>2</sup>

Under current practice, a party is not entitled to charge another party for the cost of providing a response to a data request in Commission proceedings. In D.85-08-047 we expressly ratified a presiding Commissioner's Ruling that one party cannot charge another party for copies of requested documents. We held that if a party receives a request which is, in its view, so overwhelming and costly to comply with, or which is vexatious, the

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<sup>2</sup> The original rule also provides that costs incurred by requesting parties under these rules are eligible for inclusion as costs of intervention under the Commission's Rules of Practice and Procedure. Since a utility's costs of providing requested documentation are recovered through rates, there is no benefit to charging an intervenor for these costs, if such costs are ultimately to be charged back to ratepayers as a cost of intervention. Indeed, unless the costs of providing access are very substantial, the utility's total administrative costs of calculating the charge, billing the intervenor, collecting the fee, reviewing the application for intervention, and reimbursing the intervenor (which ratepayers must also bear) could be greater than the actual cost of providing access.

party may bring the matter to the ALJ for resolution. As we stated:

"Public utilities are monopolies franchised by the State to operate and provide service in the public trust. Oversight of their activities which directly affect their customers falls to us, and our proceedings are our only means of compiling a fully aired evidentiary record upon which to make informed well-balanced decisions. Therefore, it is vital that our procedures not impede the fullest exchange of information between participating parties, and that we not condone any barriers between parties which may lead to our having second-rate showings. Utilities are the primary repositories of tremendous amounts of data which are of interest to parties in preparing to participate in our proceedings, either to prepare cross-examination or direct showings. Allowing utilities to thwart or slow the progress of interested parties' investigation or analysis, particularly in view of our relatively tightly scheduled proceedings, would seriously impair our regulatory process. Imposing a charge for documents may impede expeditious discovery, regardless of the financial resources of interested parties, and it is a practice inappropriate to proceedings before this Commission."

Consistent with the principles enunciated in D.85-08-047, we do not find it appropriate to require a party requesting access to a computer model which is the basis of testimony, to provide compensation to the party sponsoring such testimony as a precondition to receiving access. We do not believe that allowing access without charge to such computer models will lead to vexatious requests, inordinate burdens or uncontrollable expenses. However, if a party receives a request which is, in its view, too overwhelming and costly to comply with, the revised rule permits such party to bring the matter to the ALJ for resolution.



**A. General Comments**

AT&T requests a ruling that it is exempt from PU Code Sections 585 and 1821-1824 and that it is exempt from these rules. Section 1821(d) excludes from the provisions of Section 585 "a telephone corporation whose service is determined to be competitive by the Commission." AT&T contends here that the Commission's current investigation in I.85-11-013 is in recognition of the extent of competition in the interLATA marketplace. However, in I.85-11-013 AT&T has argued that the "Observation Approach" is designed by the Commission to avoid a detailed review of the extent or degree of competition for AT&T's services. AT&T's latter argument is correct. The Commission has not yet found AT&T's services to be "competitive." AT&T's argument may have merit depending on the outcome of the flexibility proposals. When we subsequently consider rules to implement Section 585, AT&T may renew its request for an exemption from those rules by initiating a request that the Commission determine particular services to be competitive.

AT&T's request for an exemption from the rules adopted pursuant to Section 1822 is denied. Section 1822 expressly applies to any computer model and any data base that is used for any testimony or exhibit in a hearing or proceeding. Unlike Section 585, Section 1822 is not limited to those utilities defined by Section 1821. Therefore, we find no basis for granting AT&T an exemption from rules which implement Section 1822.

PG&E requests that all references to data bases be eliminated. PG&E contends that the issue of access to data bases is different and independent of the issues associated with computer models, but PG&E does not explain how or why such issues are different. PG&E simply suggests that there is no need to develop a special data base access rule at this time.

We disagree with PG&E on this point. Section 1822 expressly requires that both computer models and data bases be reasonably accessible to the Commission, staff, and parties. Thus,

the Legislature has found that the issue of access to data bases is an integral element of any computer access rule.

SDG&E proposes that the rule be narrowed to apply only in those instances in which "a genuine issue exists regarding the computer model." SDG&E does not explain what it means by a "genuine issue." Whenever a computer model provides a direct basis for a party's showing in a proceeding, then other parties should be entitled to obtain information sufficient to understand the model. A party's right to understand the evidentiary basis of another party's showing represents a genuine issue for purposes of discovery, regardless of whether the evidence will be contested once it is understood.

**B. Specific Comments**

**1. Definitions**

**a. Access**

PacBell and SDG&E suggest that the definition of access should conform to Section 1822 of the PU Code. We agree. Rule 2a has been revised to define "access" in the same terms used in the Code.

**b. Party**

The original rule defines a "party" as any participant of record to a proceeding or any participant that states an intention to file a formal appearance in the proceeding. PG&E and SDG&E believe that the term "party" is defined too broadly. Rules 53 and 54 address the circumstances under which a person or entity may become a party and may participate in a proceeding. Rule 53 permits written petitions to intervene in complaint proceedings. Rule 54 permits an appearance to enter at a hearing in an investigation or application proceeding without filing a pleading. We will use a definition of party which is consistent with existing rules.

c. Proceeding

SDG&E criticizes the definition of proceeding. SDG&E states that the phrase "other matters before the Commission" is ambiguous. We agree. We have revised the definition of proceeding to expressly refer to the five types of formal proceedings that may be heard by the Commission.

d. Verification

Four parties propose changes to the definition of "verification," which as originally proposed stated:

"Verification" or "verify" means to assess the extent to which a computer model mimics reality, and may include checking or testing:

- (1) The reliability of the computer used to input data, process it, and produce output;
- (2) The manner in which the basic data were initially collected and input into the computer;
- (3) The measures taken to ensure the accuracy of the data inputted;
- (4) The method of storing the data base and the precautions taken to prevent loss or modification while in storage;
- (5) The reliability and accuracy of computer programs used for processing data;
- (6) The sensitivity of the output of a computer program to changes in its input data;
- (7) The preparation of print-outs or other output; and
- (8) The validation of computer models.

Edison proposes eliminating Item 6 under the definition. PG&E proposes eliminating Items 2, 4, and 5. SDG&E believes the definition to be overbroad and repetitive, and would eliminate

items 3, 4, 5, and 7, as well as modifying Items 1 and 2. Citizens suggests minor clarification of Items 5 and 6.

We believe that the definition proposed by SDG&E, together with Item 5, presents the examples most clearly related to the term as defined. Therefore, we adopt the definition as follows:

74.2 (Rule 74.2) - Definitions

When used in this Article, whether in the singular or in the plural, the following terms shall have the following meanings:

- "(m) "Verification" or "verify" means to assess the extent to which a computer model mimics reality, and may include checking or testing:
  - "(1) The reliability of the computer equipment used to input data, process it, and produce output;
  - "(2) The manner and accuracy of inputting the basic data into the computer;
  - "(3) The reliability and accuracy of computer programs used for processing data;
  - "(4) The sensitivity of the output of a computer program to changes in its input data; and
  - "(5) The validation of computer models."

e. Various Definitions Deleted

In response to PG&E's suggestion, the definitions of "assumptions," "computer," "data," "data base," "machine medium," and "printout" are deleted. As PG&E notes, these definitions add no significant precision or clarity to these terms as they are commonly understood. The definition of "modification" is similarly deleted.

The definition of "discriminatory" is deleted because the provisions regarding confidential agreements no longer use this term.

The term "monitor," which is defined to mean the same as two other already defined terms, is repetitive and has been deleted.

The definitions of "position," "public utility," "responding party," and "showing" are deleted because these terms are no longer used in the revised rule.

**f. Minor Clarifications**

We also adopt very slight clarifications and editorial changes to various definitions which are too minor to address further in this opinion.

**2. Modifications to the Model**

The original rule addresses the circumstances under which modifications to the model may be made. The original rule precludes a party from sponsoring the results of a modified computer model unless (1) the modification is provided to all requesting parties at least 15 days prior to its use in the proceeding, and (2) the modification has been verified.

SDG&E believes that the 15-day notice period should be longer. Edison believes that the period may, in some cases, be shorter. Obviously, no time period will satisfy everyone. Existing rules require written testimony to be filed at least 10 days prior to a hearing. We believe that a 10-day notice period is a reasonable time period in normal circumstances. This time period may be modified in extraordinary circumstances under this rule.

PG&E, SDG&E and Edison object to the clause which requires that any modification to the model be verified before results are introduced. This clause exceeds the scope of this phase of the rulemaking (verification has been deferred to a subsequent phase) and is therefore deleted.

**3. Requesting Party Recognition**

Section 7 of the original rule required any party, other than the staff or utility which is an applicant or respondent in the proceeding, prior to gaining access to the computer model, to

be recognized by the assigned administrative law judge as a "requesting party."

WMA believes that this requirement for recognition is burdensome to interested parties. WMA proposes that the rule be modified to allow access to any model by any party, unless an objection is filed by the sponsoring party. We have adopted WMA's recommendation.

The need for prior authorization of parties as "requesting parties" has not been demonstrated. We are hesitant to develop a mandatory procedural mechanism which would apply to all requests for access, whether or not such requests are deemed to be burdensome. We expect that many, if not most, requests for access will be routine and easily accommodated, without the need for an elaborate preapproval process.

On the other hand, if a party makes a request for access that the other party believes to be unreasonably burdensome or otherwise improper, our procedures must provide for timely resolution of the dispute. Therefore, in lieu of a procedure for prior recognition of requesting parties, the revised rule provides a procedure whereby a sponsoring party may seek relief from a request for access it deems to be unreasonable.

We believe that these revisions will reasonably protect a sponsoring party from access which would be damaging or unduly burdensome, while allowing timely access to all necessary information.

#### 4. Priority of Access Requests

SDG&E objects to the requirement that the sponsoring party provide the requesting party a written estimate of the date of completion within 5 business days of receipt of a request pursuant to these rules. SDG&E says it can't guarantee an estimate of response time in 5 days.

We believe this time period to be reasonable. However, if a responding party is unable to comply with this provision in a

particular case, it should work to resolve its difficulty in compliance with Rule 74.6. That is, the sponsoring party should notify the requesting party of its difficulty in a timely manner, and attempt to resolve the matter among the affected parties. If the responding party cannot comply within 5 days and cannot agree on a mutually satisfactory extension, it should promptly bring the matter to the attention of the administrative law judge.

5. Indemnification

Section 13 of the original rule provides that a sponsoring party can require a release and indemnification from the requesting party for liability which may arise from access provided pursuant to this rule. SDG&E, PG&E, and GTE propose language to further strengthen the terms of this Section.

Although no party has objected to this section, we question the need for such requirements. A release and indemnification is not a normal precondition for obtaining discovery under rules of civil discovery, nor do we find any precedent for such a precondition in the practice and procedures of this Commission. We are not aware of any claim or liability which has arisen in any case against any party relating to the access or use of computer models or computer data. Therefore, this provision is deleted.

INTERIM ORDER

IT IS ORDERED that:

1. Respondents and any interested party may file further comments on this rulemaking with the Commission Docket Office by February 1, 1989. Comments shall be served on the list attached hereto in Appendix B.

2. The Executive Director shall serve a copy of this order on all parties named in Appendix B.

This order is effective today.

Dated NOV 23 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 Weiss*  
Victor Weiss, Executive Director



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PROPOSED RULE FOR COMPUTER MODEL ACCESS

Article 17.1 Access to Computer Models

74.1 (Rule 74.1) - Purpose

The purpose of this article is to establish procedures to be followed by each party to a proceeding who desires to rely upon a computer model for developing exhibits or testimony, or to verify a computer model which has been, or will be, relied upon by another party for establishing exhibits or testimony.

NOTE: Authority cited: Section 1822(d), Public Utilities Code.  
Reference: Sections 1821-1822, Public Utilities Code.

74.2 (Rule 74.2) - Definitions

When used in this Article, whether in the singular or in the plural, the following terms shall have the following meanings:

- (a) "Access" means the examination or use by a party of any other party's computer model or data base that is the basis for the other party's testimony or exhibits for purposes of verification or to the extent necessary for cross-examination or rebuttal, subject to applicable rules of evidence.
- (b) "Computer model" means a computer program created to simulate or otherwise represent some physical phenomenon or utility function, by using input data and producing output based on those data.
- (c) "Computer program" means a set of instructions which directs a computer to follow a specific processing sequence.
- (d) "Input data" means the data to be processed by the computer in the operation of a computer program.
- (e) "Output" means the data resulting from a computer program run.
- (f) "Party" means any person who has filed an appearance in the proceeding.
- (g) "Proceeding" means any application, investigation, rulemaking, complaint or petition before the Commission.

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- (h) "Requesting party" means a party recognized as a requesting party pursuant to Rule 74.6.
- (i) "Run" means an execution by a computer of a computer program resulting in output.
- (j) "Sponsoring party" means a party sponsoring testimony or an exhibit that is based in whole or in part on a computer model.
- (k) "Validation" means the evaluation of the ability of a computer model to accurately record, simulate or forecast utility operations.
- (l) "Verification" or "verify" means to assess the extent to which a computer model mimics reality, and may include checking or testing:
  - (1) The reliability of the computer equipment used to input data, process it, and produce output;
  - (2) The manner and accuracy of inputting the basic data into the computer;
  - (3) The reliability and accuracy of computer programs used for processing data;
  - (4) The sensitivity of the output of a computer program to changes in its input data; and
  - (5) The validation of computer models.

NOTE: Authority cited: Section 1822(d), Public Utilities Code.  
Reference: Sections 1821-1822, Public Utilities Code.

74.3 (Rule 74.3) - Computer Model Equations, Input, and Documentation

(a) Any testimony or exhibit presented in a hearing or proceeding that is based in whole, or in part, on a computer model shall identify each computer model upon which the testimony or exhibit is based and, with regard to each such model, include a listing of all the algorithms, equations and assumptions built into the model, except as provided in subsection (b), (c) or (d).

(b) If the model has been validated by the Commission pursuant to Article 17.2, the testimony or exhibit may refer to the

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validated model and shall list those algorithms, equations or assumptions, if any, which differ from the model as validated.

(c) If the listing of all algorithms, equations and assumptions is too voluminous to include in the testimony or exhibit, the information specified in subsection (a) may be included in workpapers. Such workpapers shall be available to any party upon request at the time the testimony or exhibit is first served or filed.

(d) If the sponsoring party has obtained a protective order pursuant to Rule 74.7, the information specified in subsections (a) and (e) shall be included in the sponsoring party's workpapers and shall be made available to any party who accepts the protective order's restrictions on disclosure.

(e) In addition to the information specified in subsection (a), whenever a computer model provides a direct basis, in whole or in part, for a party's testimony or exhibits in a proceeding, such party shall provide to all parties upon request, the following information:

- (1) The source of all input data;
- (2) The input data as used in the sponsoring party's computer run(s);
- (3) Documentation sufficient for an experienced professional to understand the basic logical processes linking the input data to the output, including but not limited to (a) translation of data appearing in data bases into the input data as used for the sponsoring party's computer run(s) and (b) the algorithms, equations, assumptions, or other processes used by the sponsoring party's computer model to produce its output; and
- (4) The output.

NOTE: Authority cited: Section 1822(d), Public Utilities Code.  
Reference: Sections 1821-1822, Public Utilities Code.

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74.4 (Rule 74.4) - Computer Model and Data Base Access

(a) Each party to a proceeding which intends to seek access to a computer model or data base pursuant to Rule 74.4 shall explain, when it first files an appearance in the proceeding, why it requests access to the information and how its request relates to its interest or position in the proceeding.

(b) In addition to the documentation required by Rule 74.3, each party using a computer model or data base which is the basis, in whole or in part, for its testimony or exhibits in a proceeding shall provide reasonable access to, and explanation of, that computer model or data base to all parties. Immediately upon service of any testimony or exhibit, any computer model or data base that is used for the testimony or exhibit shall be reasonably accessible to the Commission Staff and other parties to a hearing or proceeding to the extent necessary for cross-examination or rebuttal, subject to applicable rules of evidence.

(c) If a party requests access to a computerized data base in a machine medium, the sponsoring party may, at its election, either provide such access on its own computer, perform any requested data sorts and produce any requested model runs using the input provided by the requesting party, make the data base available to the requesting party to run on its own computer, or make the data base available through an external computer service.

(d) If asked by a requesting party to make runs, whether for verification or to the extent necessary for cross-examination or rebuttal, the sponsoring party may, at its election, either make such runs on its own computer, make the model available to the requesting party to run on that party's own computer, or have the model run produced for the requesting party by an external computer service.

(e) Computer runs, pursuant to subsection (c) and (d) shall be limited to a reasonable number of runs as agreed to by sponsoring and requesting parties. If the parties are unable to agree, the sponsoring party may seek relief pursuant to Rule 74.6, before providing such access.

(f) The sponsoring party, in providing access pursuant to subsections (c) and (d), is not required to modify its model in order to accommodate, or to install its model on, the requesting party's computer, or to provide detailed training on how to operate the model beyond provision of written documentation. The sponsoring party is not required to provide a remote terminal or other direct physical link to its computer for use by requesting parties. The sponsoring party may take reasonable precautions to

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preclude access to other software or data not applicable to the specific model being used.

(g) Each sponsoring party's own computer use, necessary for daily operation of business, shall have first priority over any access requests by requesting parties. Each requesting party's request for access shall be treated in the order received and responded to in a time frame which does not interfere with the sponsoring party's daily operation of business.

(h) Within five business days of receipt of a request from a requesting party pursuant to this section, the sponsoring party shall indicate whether the request is clear and complete and shall provide the requesting party a written estimate of the date of completion of the request. If the requesting party deems the time estimate unacceptable, it may make a motion for expedited response pursuant to Rule 74.6.

NOTE: Authority cited: Section 1822(d), Public Utilities Code.  
Reference: Sections 1821-1822, Public Utilities Code.

74.5 (Rule 74.5) - Model and Data Modifications

(a) Except as provided in subsection (b), a party shall be required to maintain copies of computer models and data in unmodified form throughout the length of a proceeding if they continue to provide the basis, in whole or in part, for that party's showing. For purposes of this article, the length of a proceeding shall be considered to extend 90 days after the date of issuance of the Commission's last order or decision in the proceeding, including any order or decision on applications for rehearing filed in accordance with Rule 85 of the Commission's Rules of Practice and Procedure.

(b) Where a party's computer model or data provides the basis, in whole or in part, for its showing in a proceeding, and notwithstanding subsection (a), such party may thereafter modify the computer model or the data, and may introduce the results so produced in the proceeding, on the condition that such party has provided timely access to the modified model or data to any requesting party who has previously requested access to the original model or data. Each party who relies on the modified model or data shall provide the modification to all parties at least 10 calendar days prior to its use in the proceeding.

NOTE: Authority cited: Section 1822(d), Public Utilities Code.  
Reference: Sections 1821-1822, Public Utilities Code.

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74.6 (Rule 74.6) - Relief of Parties

(a) Whenever possible, questions concerning computer model access pursuant to this article shall be resolved among the parties. Unresolved differences shall be brought to the attention of the assigned Administrative Law Judge.

(b) Either a requesting or a sponsoring party may make a motion seeking relief concerning a dispute regarding access to computer models or data under the Commission's current practices governing discovery disputes. Such motion shall be made in writing, shall be served upon all parties to the proceeding, and shall state clearly and concisely the grounds and authority for the requested relief. The grounds and extent of available relief are the same as those that excuse or limit the obligation to respond to other types of discovery requests. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

(c) If a party seeks relief under subsection (b), the party or parties affected by the requested relief may file and serve an answer no later than 10 calendar days after the motion for relief was served.

NOTE: Authority cited: Section 1822(d), Public Utilities Code.  
Reference: Sections 1821-1822, Public Utilities Code.

74.7 (Rule 74.7) - Confidential and Proprietary Information

Each sponsoring party who objects to providing access to any computer model, data base, or other information which is used in a computer model pursuant to this article, on the grounds that such data is confidential, proprietary, or subject to a licensing agreement, shall file a motion for a protective order. The motion shall be filed concurrently with the service of the testimony or exhibit which is based in whole, or in part, upon the matters to be protected. Any party may file and serve an answer to the motion for a protective order no later than 10 calendar days after such motion was served. The assigned administrative law judge, for good cause shown, may make any ruling to protect confidential, proprietary or licensed information from unwarranted disclosure.

NOTE: Authority cited: Section 1822(d), Public Utilities Code.  
Reference: Sections 1821-1822, Public Utilities Code.

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74.8 (Rule 74.8) - Electricity Demand Models

This Rule is not applicable to electricity demand models or forecasts prepared by the State Energy Resources Conservation and Development Commission pursuant to Section 25309 or 25402.1 of the Public Resources Code and approved and adopted after a hearing during which testimony was offered subject to cross-examination.

NOTE: Authority cited: Section 1822(d), Public Utilities Code.  
Reference: Sections 1821-1822, Public Utilities Code; Sections 25309, 25402.1, Public Resources Code.

(END OF APPENDIX A)



APPENDIX B

R. 88-04-030

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(END OF APPENDIX B)



A. General Comments

AT&T requests a ruling that it is exempt from PU Code Sections 585 and 1821-1824 and that it is exempt from these rules. Section 1821(d) excludes from the provisions of Section 585 "a telephone corporation whose service is determined to be competitive by the Commission." AT&T contends here that the Commission's current investigation in I.85-11-013 is in recognition of the extent of competition in the interLATA marketplace. However, in I.85-11-013 AT&T has argued that the "Observation Approach" is designed by the Commission to avoid a detailed review of the extent or degree of competition for AT&T's services. AT&T's latter argument is correct. The Commission has not found AT&T's services to be "competitive." When we subsequently consider rules to implement Section 585, AT&T may renew its request for an exemption from those rules by initiating a request that the Commission determine particular services to be competitive.

AT&T's request for an exemption from the rules adopted pursuant to Section 1822 is denied. Section 1822 expressly applies to any computer model and any data base that is used for any testimony or exhibit in a hearing or proceeding. Unlike Section 585, Section 1822 is not limited to those utilities defined by Section 1821. Therefore, we find no basis for granting AT&T an exemption from rules which implement Section 1822.

PG&E requests that all references to data bases be eliminated. PG&E contends that the issue of access to data bases is different and independent of the issues associated with computer models, but PG&E does not explain how or why such issues are different. PG&E simply suggests that there is no need to develop a special data base access rule at this time.

We disagree with PG&E on this point. Section 1822 expressly requires that both computer models and data bases be reasonably accessible to the Commission, staff, and parties. Thus,

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74.8 (Rule 74.8) - Electricity Demand Models

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