

ORIGINAL

Decision 96-09-099 September 20, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's own motion to consider
the line extension rules of electric
and gas utilities.

R.92-03-050

DECISION GRANTING LIMITED
REHEARING OF DECISION 94-12-026

Decision (D.) 94-12-026 adopted a Settlement Agreement proposed by the Settlement Parties in R.92-03-050. The Summary of the Decision notes that the Settlement Agreement implements changes to the existing gas and electric line extension rules which modernize the rules by providing for revenue-based allowances and other rule changes such as a nonrefundable discount option.

Three of the parties that opposed the Settlement Agreement, the California Building Industry Association (CBIA), the San Francisco Bay Area Rapid Transit (BART) District, and Western Mobile Parkowners Association (WMA), applied for rehearing of D.94-12-026. They contend that D.94-12-026 is legally defective due to the failure to conduct a hearing in this matter despite repeated requests for evidentiary hearings by various parties.

All three parties claim that D.94-12-026 violates Public Utilities (PU) Code Section 783(b) by amending the terms and conditions for the extension of services provided by gas and electric corporations without making written findings on the issues as required by that statutory provision. They further submit that the Section 783 findings requirement can only be satisfied if those findings are based on an evidentiary record

permitting parties to submit and cross-examine testimony and evidence.

CBIA additionally argues that by failing to afford it with the evidentiary hearing that it requested prior to the issuance of D.94-12-026, the Decision violated PU Code Section 1708. It states that since the Decision altered a prior Commission order, D.82-04-068, Section 1708 obligated the Commission to conduct an evidentiary hearing. CBIA also makes the argument that the Decision violates Rule 14.2(d) of our Rules of Practice and Procedure which specifically limits the applicability and availability of our rulemaking procedure to proceedings that may modify prior Commission decisions which were adopted by rulemaking.

We conclude that a focused evidentiary hearing must be held in this instance. This determination is consistent with PU Code Sections 783 and 1708 as well as with our recent holding in D.95-07-054, dated July 24, 1996. In D.95-07-054, we found that as part of our quasi-legislative capacity, we may adopt rules without conducting evidentiary hearings only on issues in which questions of law and public policy are involved. (D.95-07-054, mimeo at p. 21; Conclusion of Law 10.) We further found that evidentiary hearings are warranted to address factual issues that would result in changes of prior decisions or that involve resolution of ratemaking issues. (D.95-07-054, Conclusion of Law 9.) We also held that under Section 1708 of the PU Code, evidentiary hearings are required before the Commission changes a prior decision which was the subject of evidentiary hearings. (D.95-07-054, Conclusion of Law 8.)

Our determination that an evidentiary hearing is required in the instant proceeding does not mean that all factual questions or disagreements that arise during the proceeding warrant an evidentiary hearing. We will grant an evidentiary hearing only to the extent that it can be shown that material factual disputed issues exist that will result in changes to prior decisions. To the extent Section 1708 has any

applicability to the issues in this rulemaking (i.e. where a rule from a prior decision is being modified), the hearings granted in the rehearing order provide the appropriate remedy.

We direct the assigned ALJ to use all appropriate means to streamline the hearing process while preserving due process rights of the parties. Where factual disputes require hearings, parties with similar positions should consolidate testimony and cross-examination. Parties should also seek to reach stipulations or settlements where possible.

Therefore, IT IS ORDERED that:

1. Limited rehearing of Decision 94-12-026 is granted.
2. A prehearing conference (PHC) shall be convened by the assigned Administrative Law Judge (ALJ).
3. Parties are directed to present lists of material factual issues which they believe warrant an evidentiary hearing prior to the PHC, pursuant to the instructions contained in an ALJ Ruling that the assigned ALJ is directed to prepare and mail to the parties.
4. Subsequent to the PHC, an ALJ Ruling will be issued that addresses the scope of the issues that will be heard at the time of the evidentiary hearing. That ruling shall also set forth a procedural and evidentiary hearing schedule.

This order is effective today.

Dated September 20, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners

Commissioner Josiah L. Neep, being necessarily absent, did not participate.