

Decision 97-07-065 July 16, 1997

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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 Section 322 and considering changes in the Commission's Rules of Practice and Procedure.

Rulemaking 84-12-028
(Filed December 20, 1984)

**OPINION REVISING DRAFT OF FINAL RULES
AND INVITING COMMENT ON REVISIONS**

1. Introduction

In today's decision, we make revisions and corrections to our first draft of final rules implementing Senate Bill (SB) 960 (Leonard, ch. 96-0856). The revised draft will be sent to the Office of Administrative Law (OAL) for publication in the California Regulatory Notice Register (Register). We invite written comments, which must be filed and served in this proceeding no later than 45 days after publication.¹ We will review these comments and adopt the final rules, after further revisions, as appropriate.

The revised draft appears in the Appendix to today's decision. Changes, deletions, and additions to the first draft are indicated in the margin.²

¹ The date of publication depends, in part, on factors beyond our control. The Chief Administrative Law Judge shall try to transmit the revised draft to OAL in a time for publication in the August 1, 1997 Register, and shall also ensure that the publication date and exact due date for comments are posted at the Commission's Internet site (www.cpuc.ca.gov), under the heading "CPUC Reform (SB 960)."

² There are no changes to the amendment previously proposed to Rule 13.2 (our expedited complaint procedure); the proposed amendments to the rules on reassignment of an Administrative Law Judge are slightly revised to refer to the revised draft of the SB 960 rules. The Appendix contains all of these rules for the convenience of reviewers.

2. Background

With Resolution ALJ-170 (January 13, 1997), we began implementation of SB 960 by conducting an experiment under rules that we are applying to a limited but reasonably representative sample of proceedings. We have categorized about 30 proceedings under the experiment, and as these proceedings progress, we continue to gain experience with the experimental rules and procedures.

Our first draft of final SB 960 rules appears in Resolution ALJ-171 (March 18, 1997). We held a public workshop on this draft on May 8, and four parties submitted written comments by the May 19 due date.³ We are now proposing revisions to the first draft. These revisions draw on our experience to date with the experimental rules and on feedback from the parties.

3. Summary of Revisions

3.1. Applicability

The first draft proposes to apply SB 960 requirements only to proceedings started after January 1, 1998, and to any proceedings included in the experiment that are still open as of that date. We now propose to revise Rules 4 and 6 from the first draft so that SB 960 requirements would also apply to a proceeding filed before January 1, 1998, in which, as of that date, there has been neither a prehearing conference nor a determination to hold a hearing, and the Commission, assigned Commissioner, or assigned Administrative Law Judge determines after January 1, 1998, that a hearing should be held.

This revision responds to comments by several parties that the applicability rule proposed in the first draft might be overly restrictive.⁴ The determination to hold a hearing is a key procedural step for purposes of SB 960 (as well as for case management

³ Unless otherwise noted, parties' comments cited below are those filed on May 19.

⁴ See, e.g., Comments of Pacific Bell at page 2; Comments of Southern California Edison Company at pages 14-15.

under pre-SB 960 procedures); if that step has not been taken in a given proceeding as of January 1, 1998, then applying SB 960 requirements to that proceeding would not involve repeating or undoing previously completed steps. We agree that in these circumstances, SB 960 requirements should apply, regardless of when the proceeding was filed. We now propose revisions to Rules 4 and 6 to implement this slightly broader applicability.

3.2. Designation of Presiding Officer

Rule 6 in the first draft sets out procedures to be followed when proceedings start. A key procedural step is the assigned Commissioner's ruling, generally at or after a prehearing conference. The ruling is to include various determinations, and (in ratesetting proceedings) the designation of the "principal hearing officer." However, Rule 6 currently does not mention the designation of the "presiding officer" (in adjudicatory proceedings). We now propose revisions to Rule 6 to clarify that the assigned Commissioner's ruling will contain the latter designation.⁵ We also add a definition of "presiding officer" (new Rule 5(k)).

3.3. Procedure at Start of Complaints

Rule 6 in the first draft would apply the same procedures at the start of complaints and of applications. We now have concluded that the SB 960 directives are better met by specifying different procedures for the start of complaints.⁶

⁵ We also clarify Rule 6 to indicate that the assigned Commissioner has discretion, where appropriate, to make this determination, among others, on the record at the prehearing conference.

⁶ The discussion in the text relates to our regular complaint procedure. We retain our proposal, announced in the first draft, to exclude from coverage under the SB 960 rules those cases handled under our expedited complaint procedure. The latter proposal appears noncontroversial, as no party has opposed it.

We base our conclusion on the fact that complaints, for the most part, will be adjudicatory proceedings, and thus under SB 960 must be resolved within 12 months of their initiation.⁷ Because the statutory mandate regarding resolution of adjudicatory proceedings is more stringent than that for ratesetting or quasi-legislative proceedings, we want to categorize complaints, and resolve any appeal of the categorization, as soon as possible.

Therefore, we propose that complaints be categorized in the "instructions to answer" by the Chief Administrative Law Judge, in consultation with the Commission's President. The instructions to answer, which our Docket Office will serve on the defendant (with a copy to the complainant) shortly after the complaint is filed, will be subject to appeal to the Commission. The instructions to answer would also designate the Administrative Law Judge assigned to the proceeding. Rule 6 is revised accordingly, and various cross-references in other rules are changed to reflect this revision.

3.4. Procedure at Start of OSCs, OIs, and OIRs

As with complaints and applications, Rule 6 in the first draft would apply the same procedures at the start of all Commission-initiated proceedings (orders to show cause (OSCs), instituting investigation (OIs), or instituting rulemaking (OIRs)). We have concluded that OSCs and OIs, which commonly will be adjudicatory proceedings, should be treated differently from OIRs.

Our conclusion follows our logic with respect to complaints, namely, that we should categorize as soon as possible any proceeding that is likely to be subject to a 12-month deadline under SB 960. Thus, we will make the appealable determination of category in the OSC or OI itself. OIRs will contain a preliminary categorization that

⁷ A few complaints will come within the ratesetting category because they challenge the reasonableness of rates or charges. In contrast, most applications will be categorized as ratesetting or quasi-legislative proceedings, for which the Commission has greater latitude under SB 960 to establish a reasonable time period (not to exceed 18 months) for resolving the matter.

the assigned Commissioner may affirm or recommend changing in light of responses to the OIR, and the assigned Commissioner's ruling is appealable to the Commission.

3.5 Proceedings Without Hearings

We propose a new rule (Rule 6.6) to clarify how the SB 960 rules affect proceedings without hearings. Briefly, we expect to categorize and do scoping memos for all formal proceedings within the 12-month and 18-month deadlines in SB 960. However, ex parte communications are permitted in proceedings without hearings. In all other respects, the SB 960 rules will not apply to a proceeding that does not go to hearing.

3.6 Changes to Preliminary Determinations

SB 960 contemplates that the Commission will determine the category and need for hearing regarding any formal proceeding. In applications and OIRs, our SB 960 rules provide for preliminary determinations of these matters by the Commission; the assigned Commissioner then affirms these preliminary determinations or recommends a change to either or both. We now propose a new rule (Rule 6.5) to clarify that where the assigned Commissioner rules that either of these preliminary determinations should be changed, the ruling will be placed on the Commission's Agenda for approval of the change(s).

3.7 Comments on Proposed Decision

Rules 77.1-77.6 of our existing Rules of Practice and Procedure contain a process whereby parties may file comments and reply comments on proposed decisions published under Public Utilities Code Section 311. The latter statute is amended by SB 960, and we have concluded that we should clarify how that amendment affects the above comment process.

For purposes of drafting and issuing decisions, SB 960 distinguishes between ratesetting and quasi-legislative proceedings, on the one hand, and adjudicatory proceedings, on the other hand. For the former proceedings, the statute requires issuance of a "proposed decision" (ratesetting) or a "proposed rule or order" (quasi-legislative). For adjudicatory proceedings, however, no proposed disposition is

required; in such proceedings, the presiding officer's decision takes effect unless the Commission is specifically requested to review it. Accordingly, our comment process is well-suited to ratesetting and quasi-legislative proceedings, and we have revised proposed Rule 8.1 to allow comments on the proposed decisions in those proceedings.

We do not allow comment on presiding officer's decisions (adjudicatory proceedings) during the 30-day appeal period after issuance of such decisions. However, under revised Rule 8.2, we give the presiding officer discretion to solicit comment on all or a portion of the decision at any time before the 30-day appeal period has begun to run.

3.8 Commission Presence

Under Rule 8(f)(4) of the first draft, a Commissioner could attend a hearing via electronic link from a remote location. We want the rule to be sufficiently general to enable Commissioners to take full advantage of current and emerging communication technology. However, we intend that a Commissioner who is attending a hearing from a remote location be in two-way communication with the hearing, so as to enable active participation by the Commissioner. Our proposed revision clarifies this intent.

3.9 Other Revisions

We have made a variety of minor changes to the first draft. These changes generally fall into the following categories: changes to make the rules consistent with the revisions summarized above; additional cross-references and definitions to make the rules easier to use and understand; changes to terminology to improve internal consistency; and correction of typographical errors.

Finding of Fact

The revised draft of final rules implementing SB 960, which draft is set forth in the Appendix to today's decision, draws on workshop discussion and written comments regarding the first draft, and on experience under Resolution ALJ-170 (establishing experimental SB 960 rules).

Conclusion of Law

The draft of final rules in the Appendix should be submitted as soon as possible to the Office of Administrative Law for publication in the California Regulatory Notice Register.

O R D E R

IT IS ORDERED that:

1. The Chief Administrative Law Judge shall submit all required forms to the Office of Administrative Law preparatory to publishing in the California Regulatory Notice Register the revised draft of final rules implementing SB 960. For purposes of such publication, the Chief Administrative Law Judge is authorized to propose nonsubstantive changes to the draft and to the existing Title 20 rules, wherever such nonsubstantive changes will improve the clarity, organization, or consistency of the Commission's Rules of Practice and Procedure.
2. No later than 45 days after publication of the revised draft in the California Regulatory Notice Register, parties may file and serve their comments on the revised draft. The comments shall focus on the changes, additions, and deletions to the first draft.

This order is effective today.

Dated July 16, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

I will file a partial dissent.

/s/ HENRY M. DUQUE
Commissioner

**PROPOSED FINAL RULES AND PROCEDURES ON MANAGEMENT OF
COMMISSION PROCEEDINGS UNDER REQUIREMENTS OF SB 960**

[codify as new Article 2.5 of the Commission's Rules of Practice and Procedure]

4. (Rule 4) Applicability.

- (a) The rules and procedures in this Article shall apply to any formal proceeding (except for a complaint under Rule 13.2) that is filed after January 1, 1998.
- (b) The rules and procedures in this Article shall also apply to a formal proceeding that is filed before January 1, 1998, in the following circumstances:
 - (1) the proceeding is an "included proceeding" pursuant to Resolution ALJ-170 (January 13, 1997); or
 - (2) there has not, as of January 1, 1998, been a prehearing conference held or a determination made to hold a hearing in the proceeding, and the Commission, assigned Commissioner, or assigned Administrative Law Judge thereafter determines, by ruling or order, that a hearing should be held in the proceeding.
- (c) Any proceeding to which the rules and procedures in this Article do not apply will be handled under the otherwise applicable Commission rules and procedures.
- (d) For purposes of this Article, a proceeding initiated by a Commission order is filed as of the date of issuance of the order. A proceeding initiated by an application or complaint is filed as of the date it was tendered for filing in compliance with the rules and procedures of Article 2.
- (e) Where the rules and procedures of this Article apply to a proceeding by virtue of subsection (b)(2) of this rule, nothing in this Article shall be construed to render invalid, or to require repetition of, procedural steps taken prior to such applicability. However, those procedural steps taken after such applicability must comply with this Article wherever requiring such compliance would not invalidate or repeat procedural steps taken previously.

SB 960 Reference: Sec. 7 [PU Code § 1701.1(a)(c)(1)-(3)]

5. (Rule 5) Definitions.

- (a) "Category," "categorization," or "categorized" refers to the procedure whereby a proceeding is determined for purposes of this Article to be an adjudicatory, ratesetting, or quasi-legislative proceeding. "Appeal of categorization" means a request for rehearing of the determination of the category of a proceeding.

SB 960 Reference: Sec. 7 [PU Code § 1701.1(a)]

- (b) "Adjudicatory" proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

SB 960 Reference: Sec. 7 [PU Code § 1701.1(a), (c)(2)]

- (c) "Ratesetting" proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). "Ratesetting" proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting, as described in Rule 6.1(c).

SB 960 Reference: Sec. 7 [PU Code § 1701.1(a), (c)(3)]

- (d) "Quasi-legislative" proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.

SB 960 Reference: Sec. 7 [PU Code § 1701.1(a), (c)(1)]

- (e) "Ex parte communication" means a written communication (including a communication by letter or electronic medium) or oral communication (including a communication by telephone or in person) that:
- (1) concerns any substantive issue in a formal proceeding,
 - (2) takes place between an interested person and a decisionmaker, and
 - (3) does not occur in a public hearing, workshop, or other public setting, or on the record of the proceeding.

Communications limited to inquiries regarding the schedule, location, or format for hearings, filing dates, identity of parties, and other such nonsubstantive information are procedural inquiries not subject to any restriction or reporting requirement in this Article.

SB 960 Reference: Sec. 7 [PU Code § 1701.1(c)(4)(A)-(C)]

- (f) "Decisionmaker" means any Commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, or the assigned Administrative Law Judge, and in adjudicatory proceedings any Commissioner's personal advisor.
- (g) "Ex parte communication concerning categorization" means a written or oral communication on the category of any proceeding, between an interested person and any Commissioner, any Commissioner's personal advisor, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, or the assigned Administrative Law Judge that does not occur in a public hearing, workshop, or other public setting, or on the record of the proceeding.
- (h) "Interested person" means any of the following:
 - (1) any applicant, protestant, respondent, petitioner, complainant, defendant, interested party who has made a formal appearance, Commission staff of record, or the agents or employees of any of them, including persons receiving consideration to represent any of them;
 - (2) any person with a financial interest, as described in Article I (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code, in a matter at issue before the Commission, or such person's agents or employees, including persons receiving consideration to represent such a person; or
 - (3) a representative acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association who intends to influence the decision of a Commission member on a matter before the Commission, even if that association is not a party to the proceeding.

SB 960 Reference: Sec. 7 [PU Code § 1701.1(c)(4)(A)-(C)]

- (i) "Person" means a person or entity.
- (j) "Commission staff of record" includes staff from the Office of Ratepayer Advocates assigned to the proceeding, staff from the Consumer Services Division assigned to an adjudicatory or other complaint proceeding, and any other staff assigned to an adjudicatory proceeding in an advocacy capacity.

"Commission staff of record" does not include the following staff when and to the extent they are acting in an advisory capacity to the Commission with respect to a formal proceeding: (1) staff from any of the industry divisions; or (2) staff from the Consumer Services Division in a quasi-legislative proceeding, or in a ratesetting proceeding not initiated by complaint.

(k) "Presiding officer" means, for purposes of this Article, one of the following, as appropriate:

(1) In an adjudicatory proceeding, either the assigned Commissioner or the assigned Administrative Law Judge, depending on which of them is designated, in the scoping memo, to preside in the proceeding;

(2) In a ratesetting proceeding, the principal hearing officer designated as such by the assigned Commissioner prior to the first hearing in the proceeding, except that, where the assigned Commissioner is acting as principal hearing officer, the assigned Administrative Law Judge shall act as presiding officer in the assigned Commissioner's absence; or

(3) In a quasi-legislative proceeding, the assigned Commissioner, except that the assigned Administrative Law Judge, in the assigned Commissioner's absence, shall act as presiding officer at any hearing other than a formal hearing, as defined in Rule 8(f)(2).

(l) "Principal hearing officer" means the assigned Commissioner in a ratemaking or quasi-legislative proceeding, or the assigned Administrative Law Judge in a ratemaking proceeding if, prior to the first hearing in the proceeding, he or she has been designated by the assigned Commissioner as the principal hearing officer for that proceeding.

(m) "Scoping memo" means an order or ruling describing the issues to be considered in a proceeding and the timetable for resolving the proceeding. In an adjudicatory proceeding, the scoping memo shall also designate the presiding officer.

6. (Rule 6) Start of Proceedings; Proposed Schedules.

(a) Applications.

(1) Any person that files an application after January 1, 1998, shall state in the application the proposed category for the proceeding, the need for hearing, the issues to be considered, and a proposed schedule. As described in Rule 6.1(a), the Commission shall issue a resolution that preliminarily categorizes and preliminarily determines the need for hearing in the proceeding.

- (2) Any person protesting or responding to an application shall state in the protest or response any comments or objections regarding the applicant's statement on the proposed category, need for hearing, issues to be considered, and proposed schedule.
- (3) The assigned Commissioner shall consider the application, protests, and responses, and the prehearing conference statements (if one is held), and shall rule on the category, need for hearing, and scoping memo. The ruling shall also designate the principal hearing officer or presiding officer, as appropriate. The assigned Commissioner has discretion to rule on any or all of these matters on the record at the prehearing conference. The ruling, only as to the category, is appealable under the procedures in Rule 6.4.

SB 960 Reference: Sec. 7 [PU Code § 1701.1]

(b) Complaints.

- (1) Any person that files a complaint after January 1, 1998, shall state in the complaint the proposed category for the proceeding, the need for hearing, the issues to be considered, and a proposed schedule. The Docket Office shall serve instructions to answer on the defendant, with a copy to the complainant, indicating (i) the date when the defendant's answer shall be filed and served, and (ii) the Administrative Law Judge assigned to the proceeding. The instructions to answer shall also indicate the category of the proceeding and the need for hearing, as determined by the Chief Administrative Law Judge in consultation with the President of the Commission. The determination as to the category is appealable under the procedures in Rule 6.4.
- (2) The defendant shall state in the answer any comments or objections regarding the complainant's statement on the need for hearing, issues to be considered, and proposed schedule.
- (3) The assigned Commissioner shall consider the complaint and answer, and the prehearing conference statements (if one is held), and shall rule on the scoping memo. The ruling shall also designate the principal hearing officer or presiding officer, as appropriate. The assigned Commissioner has discretion to rule on any or all of these matters on the record at the prehearing conference.

SB 960 Reference: Sec. 7 [PU Code § 1701.1]

(c) OSCs, OIRs, OIRs.

- (1) A Commission order to show cause or order instituting investigation, issued after January 1, 1998, shall determine the category and need for hearing, and shall attach a preliminary scoping memo. The order, only as to the category, is appealable under the procedures in Rule 6.4. Any person filing a response to an order to show cause or order instituting investigation shall state in the response any objections to the order regarding the need for hearing, issues to be considered, or schedule, as set forth in the order. At or after the prehearing conference if one is held, the assigned Commissioner shall rule on the scoping memo. The ruling shall also designate the principal hearing officer or the presiding officer, as appropriate.
- (2) A Commission order instituting rulemaking, issued after January 1, 1998, shall preliminarily determine the category and need for hearing, and shall attach a preliminary scoping memo. Any person filing a response to an order instituting rulemaking shall state in the response any objections to the order regarding the category, need for hearing, and preliminary scoping memo. At or after the prehearing conference if one is held, the assigned Commissioner shall rule on the category, need for hearing, and scoping memo. If the proceeding is categorized as ratesetting, the ruling shall also designate the principal hearing officer. The ruling, only as to category, is appealable under the procedures in Rule 6.4.

SB 960 Reference: Sec. 7 [PU Code § 1701.1]

(d) Proceeding Filed Before January 1, 1998.

Where the rules and procedures of this Article apply to a proceeding by virtue of Rule 4(b)(2), the ruling or order that determines a hearing should be held shall also preliminarily determine the category for the proceeding, and shall set a prehearing conference. At or after the prehearing conference, the assigned Commissioner shall rule on the category, need for hearing, and scoping memo. The ruling shall also designate the principal hearing officer or presiding officer, as appropriate. The ruling, only as to the category, is appealable under the procedures in Rule 6.4.

- (e) Any party's proposed schedule for purposes of this rule shall be consistent with the proposed or finally determined category, as appropriate, including a deadline for resolving the proceeding within 12 months or less (adjudicatory proceeding) or 18 months or less (ratesetting or quasi-legislative proceeding). The proposed schedule shall also take into account the number and complexity of issues to be considered, the number of parties expected to participate, the need for and expected duration of hearings, and any other factors that the party wants the assigned Commissioner to weigh in ruling on the scoping memo.

SB 960 Reference: Sec. 7 [PU Code § 1701.1(b)]

6.1 (Rule 6.1) Determination of Category and Need for Hearing.

(a) By resolution at each Commission business meeting, the Commission shall preliminarily determine, for each proceeding initiated by application filed on or after the Commission's prior business meeting, the category of the proceeding and the need for hearing. The preliminary determination may be held for one Commission business meeting if the time of filing did not permit an informed determination. The preliminary determination is not appealable but shall be confirmed or changed by assigned Commissioner's ruling pursuant to Rule 6(a)(3), and such ruling as to the category is subject to appeal under Rule 6.4. ✓

SB 960 Reference: Sec. 7 [PU Code § 1701.1(a)-(c)(1)-(3)]

(b) When a proceeding may fit more than one category as defined in Rules 5(b), 5(c), and 5(d), the Commission may determine which category appears most suitable to the proceeding, or may divide the subject matter of the proceeding into different phases or one or more new proceedings.

(c) When a proceeding does not clearly fit into any of the categories as defined in Rules 5(b), 5(c), and 5(d), the proceeding will be conducted under the rules applicable to the ratesetting category unless and until the Commission determines that the rules applicable to one of the other categories, or some hybrid of the rules, are best suited to the proceeding.

(d) In exercising its discretion under subsections (b) and (c) of this rule, the Commission shall so categorize a proceeding and shall make such other procedural orders as best to enable the Commission to achieve a full, timely, and effective resolution of the substantive issues presented in the proceeding.

6.2 (Rule 6.2) Prehearing Conferences.

Whenever a proceeding seems likely to go to hearing, the assigned Commissioner shall set a prehearing conference as soon as practicable after the Commission makes the assignment. The ruling setting the prehearing conference may also set a date for filing and serving prehearing conference statements. Such statements may address the schedule, the issues to be considered, any matter related to the applicability of this Article to the proceeding, and any other matter specified in the ruling setting the prehearing conference.

SB 960 Reference: Sec. 7 [PU Code § 1701.1(b)]

6.3 (Rule 6.3) Scoping Memos.

At or after the prehearing conference (if one is held), or if there is no prehearing conference as soon as possible after the timely filing of the responsive pleadings (protests, responses, or answers, as appropriate), the assigned Commissioner shall rule on the scoping memo for the proceeding, which shall finally determine the schedule (with projected submission date) and issues to be addressed. In an adjudicatory proceeding, the scoping memo shall also designate the presiding officer.

6.4 (Rule 6.4) Appeals of Categorization.

(a) Any party may file and serve an appeal to the Commission, no later than 10 days after the date of: (1) an assigned Commissioner's ruling on category pursuant to Rule 6(a)(3), 6(c)(2), or 6(d); (2) the instructions to answer pursuant to Rule 6(b)(1); or (3) an order to show cause or order instituting investigation pursuant to Rule 6(c)(1). Such appeal shall state why the designated category is wrong as a matter of law or policy. The appeal shall be served on the Commission's General Counsel, the Chief Administrative Law Judge, the President of the Commission, and all persons who were served with the ruling, instructions to answer, or order.

SB 960 Reference: Sec. 7 [PU Code § 1701.1(a)]

(b) Any party, no later than 15 days after the date of a categorization from which timely appeal has been taken pursuant to subsection (a) of this rule, may file and serve a response to the appeal. The response shall be served on the appellant and on all persons who were served with the ruling, instructions to answer, or order. The Commission is not obligated to withhold a decision on an appeal to allow time for responses. Replies to responses are not permitted.

6.5 (Rule 6.5) Approval of Changes to Preliminary Determinations.

- (a) If there is no timely appeal under Rule 6.4, but the assigned Commissioner, pursuant to Rules 6(a)(3), 6(c)(2), or 6(d), changes the preliminary determination on category, the assigned Commissioner's ruling shall be placed on the Commission's Agenda for approval of that change.
- (b) If the assigned Commissioner, pursuant to Rules 6(a)(3), 6(c)(2), or 6(d), changes the preliminary determination on need for hearing, the assigned Commissioner's ruling shall be placed on the Commission's Consent Agenda for approval of that change.

6.6 (Rule 6.6) Proceedings Without Hearings.

Whenever there is a final determination in a proceeding, pursuant to Rules 6-6.5, that a hearing is not needed in the proceeding, ex parte communications shall be permitted, as provided in Rule 7(e); in all other respects, the rules and procedures in this Article shall cease to apply to that proceeding. However, the scoping memo issued for the proceeding shall continue to apply to the proceeding as to all matters covered in the memo.

7. (Rule 7) Ex Parte Communications: Applicable Requirements.

- (a) The requirements of this subsection apply during the period between the beginning of a proceeding and the final determination of the category of that proceeding by ruling of the assigned Commissioner or Commission decision on any appeal of categorization. Following the final determination of the category, the requirements of subsections (b), (c), or (d) of this rule apply, as appropriate.
- (1) In a proceeding that the Commission initiates, the requirements of subsections (b), (c), or (d) of this rule shall apply, depending on the Commission's preliminary determination of the category in the order initiating the proceeding.
- (2) In a proceeding initiated by a complaint, regardless of the complainant's proposed category for the proceeding, ex parte communications shall be prohibited.
- (3) In a proceeding initiated by an application, regardless of the applicant's proposed category for the proceeding, the requirements of subsection (c) of this rule shall apply.

(b) In any adjudicatory proceeding, ex parte communications are prohibited.

SB 960 Reference: Sec. 8 [PU Code § 1701.2(b)]

- (c) In any ratesetting proceeding, ex parte communications are permitted only if consistent with the following restrictions, and are subject to the reporting requirements set forth in Rule 7.1:
- (1) Oral ex parte communications are permitted at any time with a Commissioner provided that the Commissioner involved (i) invites all parties to attend the meeting or sets up a conference call in which all parties may participate, and (ii) gives notice of this meeting or call as soon as possible, but no less than three days before the meeting or call.

(2) If an ex parte communication meeting or call is granted by a decisionmaker to any party individually, all other parties shall be sent a notice at the time that the request is granted (which shall be no less than three days before the meeting or call), and shall be offered individual meetings of a substantially equal period of time with that decisionmaker. The party requesting the initial individual meeting shall notify the other parties that its request has been granted, at least three days prior to the date when the meeting is to occur. At the meeting, that party shall produce a certificate of service of this notification on all other parties. If the communication is by telephone, that party shall provide the decisionmaker with the certificate of service before the start of the call. The certificate may be provided by facsimile transmission.

(3) Written ex parte communications are permitted at any time provided that the party making the communication serves copies of the communication on all other parties on the same day the communication is sent to a decisionmaker.

(4) In any ratesetting proceeding, the Commission may establish a period during which no oral or written communications on a substantive issue in the proceeding shall be permitted between an interested person and a Commissioner, a Commissioner's personal advisor, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, or the assigned Administrative Law Judge. Such period shall begin not more than 14 days before the Commission meeting date on which the decision in the proceeding is scheduled for Commission action. If the decision is held, the Commission may permit such communications for the first half of the hold period, and may prohibit such communications for the second half of the period, provided that the period of prohibition shall begin not more than 14 days before the Commission meeting date to which the decision is held. ✓

SB 960 Reference: Sec. 9 [PU Code § 1701.3(c)]

(d) In any quasi-legislative proceeding, ex parte communications are allowed without restriction or reporting requirement.

SB 960 Reference: Sec. 10 [PU Code § 1701.4(b)]

(e) The requirements of subsections (b) and (c) of this rule, and any reporting requirements under Rule 7.1, shall cease to apply, and ex parte communications shall be permitted, in any proceeding in which (1) no timely answer, response, protest, or request for hearing is filed after the pleading initiating the proceeding, (2) all such responsive pleadings are withdrawn, or (3) there has been a final determination that a hearing is not needed in the proceeding. However, if there has been a request for hearing, the requirements continue to apply unless and until the request has been denied. |

- (f) Ex parte communications concerning categorization of a given proceeding are permitted, but must be reported pursuant to Rule 7.1(a).

SB 960 Reference: Sec. 7 [PU Code § 1701.1(a)]

- (g) When the Commission determines that there has been a violation of this rule or of Rule 7.1, the Commission may impose penalties and sanctions, or make any other order, as it deems appropriate to ensure the integrity of the record and to protect the public interest. ✓

7.1 (Rule 7.1) Reporting Ex Parte Communications.

- (a) Ex parte communications that are subject to these reporting requirements shall be reported by the interested person, regardless of whether the communication was initiated by the interested person. An original and seven copies of a "Notice of Ex Parte Communication" (Notice) shall be filed with the Commission's San Francisco Docket Office within three working days of the communication. The Notice shall include the following information:

- (1) The date, time, and location of the communication, and whether it was oral, written, or a combination;
- (2) The identities of each decisionmaker involved, the person initiating the communication, and any persons present during such communication;
- (3) A description of the interested person's, but not the decisionmaker's, communication and its content, to which description shall be attached a copy of any written, audiovisual, or other material used for or during the communication.

SB 960 Reference: Sec. 7 [PU Code § 1701.1(c)(4)(C)(i)-(iii)]

- (b) These reporting requirements apply to ex parte communications in ratesetting proceedings and to ex parte communications concerning categorization. In a ratesetting proceeding, communications with a Commissioner's personal advisor also shall be reported under the procedures specified in subsection (a) of this rule. ✓

8. (Rule 8) Oral Arguments and Commissioner Presence.

- (a) In any adjudicatory proceeding, if an application for rehearing is granted, the parties shall have an opportunity for final oral argument before the assigned Administrative Law Judge (or before the assigned Commissioner, if the latter presides at the rehearing).

SB 960 Reference: Sec. 8 [PU Code § 1701.2(d)]

- (b) In any ratesetting proceeding, the assigned Commissioner shall be present at the closing argument and, if acting as principal hearing officer, shall be present for more than one-half of the hearing days.

SB 960 Reference: Sec. 9 [PU Code § 1701.3(a)]

- (c) In any ratesetting proceeding, a party may request the presence of the assigned Commissioner at a formal hearing or specific portion of a formal hearing. The request may be made in a pleading or a prehearing conference statement. Alternatively, the request may be made by filing and serving on all parties a letter to the assigned Commissioner, with a copy to the assigned Administrative Law Judge. The request should be made as far as possible in advance of the formal hearing, and should specify (1) the witnesses and/or issues for which the assigned Commissioner's presence is requested, (2) the party's best estimate of the dates when such witnesses and subject matter will be heard, and (3) the reasons why the assigned Commissioner's presence is requested. The assigned Commissioner has sole discretion to grant or deny, in whole or in part, any such request. Any request that is filed five or fewer business days before the date when the subject hearing begins may be rejected as untimely.

SB 960 Reference: Sec. 9 [PU Code § 1701.3(a)]

- (d) In ratesetting proceedings and in quasi-legislative proceedings, a party has the right to make a final oral argument before the Commission, if the party so requests within the time and in the manner specified in the scoping memo or later ruling in the proceeding. A quorum of the Commission shall be present for such final oral argument.

SB 960 Reference: Sec. 9 [PU Code § 1701.3(d)]; Sec. 10 [PU Code § 1701.4(c)]

- (e) In quasi-legislative proceedings, the assigned Commissioner shall be present for formal hearings.

SB 960 Reference: Sec. 10 [PU Code § 1701.4(a)]

- (f) For purposes of this rule, the following definitions apply:

- (1) "Adjudicative facts" answer questions such as who did what, where, when, how, why, with what motive or intent.
- (2) "Formal hearing" generally refers to a hearing at which testimony is offered or comments or argument taken on the record; "formal hearing" does not include a workshop. In a quasi-legislative proceeding, "formal hearing" includes a hearing at which testimony is offered on legislative facts, but does not include a hearing at which testimony is offered on adjudicative facts.

- (3) "Legislative facts" are the general facts that help the tribunal decide questions of law and policy and discretion.
- (4) "Present" or "presence" at a hearing means physical attendance in the hearing room, or remote attendance (to the extent permitted by law) by electronic communications link, sufficient to familiarize the attending Commissioner with the substance of the evidence, testimony, or argument for which the Commissioner's presence is required or requested. "Electronic communications links" includes, without limitation, audio, visual, and/or textual media establishing real-time, two-way communication between the hearing room and the attending Commissioner.

8.1 (Rule 8.1) Proposed Decisions and Decisions in Ratesetting and Quasi-legislative Proceedings.

- (a) A ratesetting or quasi-legislative proceeding shall stand submitted for decision by the Commission after the taking of evidence, and the filing of briefs or the presentation of oral arguments, as ordered in the proceeding. The Commission's Daily Calendar shall include a table of submission dates listing all such dates (with the corresponding proceedings) that occurred during the two weeks preceding the date of the calendar. ✓
- (b) In ratemaking and quasi-legislative proceedings, the principal hearing officer shall prepare a proposed decision setting forth recommendations, findings, and conclusions. The proposed decision shall be filed with the Commission and served on all parties without undue delay, not later than 90 days after submission. As provided in Rules 77.1-77.6, parties may comment on the proposed decision. ✓

Applicants in matters involving buses, vessels, public utility sewer systems, or public utility pipelines may make an oral or written motion to waive the filing of comments on the proposed decision. Any party objecting to such waiver will have the burden of demonstrating that filing of comments is in the public interest.

SB 960 Reference: Sec. 5 [PU Code § 311(d)]

- (c) The Commission, in issuing its decision in a ratesetting or quasi-legislative proceeding, may adopt, modify, or set aside all or part of the proposed decision, based on the evidence in the record. The decision of the Commission shall be issued not later than 60 days after issuance of the proposed decision. The Commission may extend the deadline for a reasonable period under extraordinary circumstances. The 60-day deadline shall be extended for 30 days if any alternate decision is proposed.
- (d) In a ratesetting proceeding where a hearing was held, the Commission may meet in closed session to consider its decision, provided that the Commission has

established a period as described in Rule 7(c)(4). In no event shall the period during which the Commission may meet in closed session exceed the period described in Rule 7(c)(4). ✓

SB 960 Reference: Sec. 9 [PU Code § 1701.3(e)]; Sec. 10 [PU Code § 1701.4(e)] ✓

8.2 (Rule 8.2) Decisions, Appeals, and Requests for Review in Adjudicatory Proceedings.

(a) An adjudicatory proceeding shall stand submitted for decision by the Commission after the taking of evidence, and the filing of briefs or the presentation of oral arguments as prescribed by the Commission or the presiding officer. The Commission's Daily Calendar shall include a table of submission dates listing all such dates (with the corresponding proceedings) that occurred during the two weeks preceding the date of the calendar.

(b) In an adjudicatory proceeding in which a hearing was held, the presiding officer shall prepare a decision setting forth the findings, conclusions, and order. The decision of the presiding officer shall be filed with the Commission and served on all parties without undue delay, not later than 60 days after submission. The decision of the presiding officer shall constitute the proposed decision where one is required by law, and shall become the decision of the Commission if no appeal or request for review is filed within 30 days after the date the decision is mailed to the parties in the proceeding. The comment procedure in Rules 77.1-77.6 does not apply to a presiding officer's decision. However, the presiding officer has discretion, at any time before the 30-day appeal period has begun to run, to authorize comments on a draft decision or a portion thereof. The Commission's Daily Calendar shall include a table that lists, for the two weeks preceding the date of the calendar, each decision of a presiding officer that has become the decision of the Commission. The table shall indicate the proceeding so decided and the date when the presiding officer's decision became the decision of the Commission. |

SB 960 Reference: Sec. 8 [PU Code § 1701.2(a)]

(c) The complainant, defendant, respondent, or any intervenor in an adjudicatory proceeding may file and serve an appeal of the decision of the presiding officer within 30 days of the date the decision is mailed to the parties in the proceeding. ✓

SB 960 Reference: Sec. 8 [PU Code § 1701.2(a)]

(d) Any Commissioner may request review of the decision of the presiding officer in an adjudicatory proceeding by filing and serving a request for review within 30 days of the date the decision is mailed to the parties in a proceeding. |

SB 960 Reference: Sec. 8 [PU Code § 1701.2(a)]

- (e) Appeals and requests for review shall set forth specifically the grounds on which the appellant or requestor believes the decision of the presiding officer to be unlawful or erroneous. The purpose of an appeal or request for review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight. Appeals and requests for review shall be served on all parties and accompanied by a certificate of service.
- (f) Any party may file and serve its response no later than 15 days after the date the appeal or request for review was filed. In cases of multiple appeals or requests for review, the response may be to all such filings and may be filed 15 days after the last such appeal or request for review was filed. Replies to responses are not permitted. The Commission is not obligated to withhold a decision on an appeal or request for review to allow time for responses to be filed.
- (g) In any adjudicatory proceeding in which a hearing is held, the Commission may meet in closed session to consider the decision of the presiding officer that is under appeal pursuant to subsection (c) of this rule. The vote on the appeal or a request for review shall be in a public meeting and shall be accompanied by an explanation of the Commission's decision, which shall be based on the record developed by the presiding officer. A decision different from that of the presiding officer shall include or be accompanied by a written explanation of each of the changes made to the presiding officer's decision. ✓

SB 960 Reference: Sec. 8 [PU Code § 1701.2(c)]

**Proposed Amendments to Rule 13.2
(In existing Article 3)**

13.2. (Rule 13.2) Expedited Complaint Procedure.

(a) This procedure is applicable to complaints against any electric, gas, water, heat, or telephone company where the amount of money claimed does not exceed the jurisdictional limit of the small claims court as set forth in subdivision (a) of Section 116.2 of the Code of Civil Procedure.

(b) No attorney at law shall represent any party other than himself or herself under the Expedited Complaint Procedure.

(c) No pleading other than a complaint and answer is necessary.

(d) A hearing without a reporter shall be held within 30 days after the answer is filed.

(e) Separately stated findings of fact and conclusions of law will not be made, but the decision may set forth a brief summary of the facts.

(f) Complainants and defendants shall comply with all rules in this article dealing with complaints. ~~(Rules 9, 10, 11, 12, 13, and 13.1)~~ Use of the Expedited Complaint Procedure does not excuse compliance with any applicable rule in the Commission's Rules of Practice and Procedure.

(g) The Commission or the presiding officer, when the public interest so requires, may at any time prior to the filing of a decision terminate the Expedited Complaint Procedure and recalendar the matter for hearing under the Commission's regular procedure.

(h) The parties shall have the right to file applications for rehearing pursuant to Section 1731 of the Public Utilities Code. If the Commission grants an application for rehearing, the rehearing shall be conducted under the Commission's regular hearing procedure.

(i) Decisions rendered pursuant to the Expedited Complaint Procedure shall not be considered as precedent or binding on the Commission or the courts of this state.

has not filed, pursuant to Rule 63.2, any prior petition for automatic reassignment in the proceeding.

Dated _____, at _____, California.

[Signature]

Except as provided in Rules 63.3 and 63.4, no party in an adjudicatory proceeding will be permitted to make more than one petition for reassignment in the proceeding. In an adjudicatory proceeding where there is more than one complainant or similar party, or more than one defendant or similar party, only one petition for automatic reassignment for each side may be made.

Where the party seeking automatic reassignment is one of several parties aligned on the same side in the proceeding, the declaration shall include a showing that either (1) no previous petition for automatic reassignment has been filed in the proceeding, or (2) the interests of the petitioner are substantially adverse to those of any prior petitioner for automatic reassignment in the proceeding.

(b) A party to a proceeding preliminarily determined to be ratesetting under Rule 6(a)(1), 6(c)(2), or 6(d), or determined to be ratesetting under Rule 6(b)(1) or 6(c)(1), or a person or entity declaring the intention in good faith to become a party to such proceeding, shall be entitled to petition, once only, for automatic reassignment of that proceeding to another Administrative Law Judge in accordance with the provisions of this subsection; however, no more than two reassignments pursuant to this subsection shall be permitted in the same proceeding. The petition shall be filed and served as provided in subsection (a) of this rule, and shall be supported by a declaration similar in form and substance to that set forth in subsection (a) of this rule.

Whenever a timely petition for automatic reassignment of a ratesetting proceeding is filed, the Chief Administrative Law Judge, promptly at the end of the 10-day period specified in subsection (c) of this rule, shall issue a ruling reassigning the proceeding. A party to the proceeding, or a person or entity declaring the intention in good faith to become a party to the proceeding, may petition for another automatic reassignment no later than 10 days following the date of such ruling. The petition shall be filed and served as provided in subsection (a) of this rule, and shall be supported by a declaration similar in form and substance to that set forth in subsection (a). The second automatic reassignment of the proceeding shall not be subject to further petitions pursuant to this subsection.

(c) Any petition and supporting declaration filed pursuant to subsections (a) or (b) of this rule shall be filed no later than 10 days after the date of the notice of the assignment or reassignment, except that a second petition for automatic reassignment of a ratesetting

proceeding shall be filed no later than 10 days following the date of the ruling on the first petition for automatic reassignment filed pursuant to subsection (b).

(d) Upon the filing of a petition for automatic reassignment, the Chief Administrative Law Judge, subject only to the restrictions in this rule on the number and timeliness of petitions in a given proceeding, shall issue a ruling reassigning the proceeding to another Administrative Law Judge. The Chief Administrative Law Judge, in consultation with the President of the Commission, shall issue a ruling explaining the basis for denial whenever a petition for automatic reassignment is denied.

63.3 (Rule 63.3) Petitions for Reassignment - Unlimited Peremptory.

(a) Irrespective of the limits in Rule 63.2 on number of petitions for automatic reassignment, any party is entitled to file a petition for reassignment in any adjudicatory proceeding or ratesetting proceeding in which the then-assigned Administrative Law Judge (1) has served within the previous 12 months in any capacity in an advocacy position at the Commission or has been employed by a regulated public utility, (2) has served in a representative capacity in the proceeding, or (3) has been a party to the proceeding. A petition under this subsection shall be supported by declaration under penalty of perjury (or affidavit by an out-of-state person) setting forth the factual basis for the petition, and shall be filed and served as provided in Rule 63.2(a).

(b) Any petition and supporting declaration filed pursuant to this rule shall be filed no later than 10 days after the date of the notice of the assignment or reassignment. The Chief Administrative Law Judge, in consultation with the President of the Commission, shall issue a ruling explaining the basis for denial whenever a petition for reassignment made pursuant to this rule is denied.

63.24 (Rule 63.24) Grounds for Disqualification - Petitions for Reassignment - Cause.

(a) An Administrative Law Judge shall be disqualified if:

- (1) The Administrative Law Judge, or his or her spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person is to the Administrative Law Judge's knowledge likely to be a material witness in the proceeding.
- (2) The Administrative Law Judge has, within the past two years, (A) served as a representative in the proceeding, or (B) in any other proceeding involving the same issues, served as a representative for, or given advice to, any party in the present proceeding upon any matter involved in the proceeding.

(a) Any party is entitled to file a petition for reassignment in any adjudicatory, ratesetting, or quasi-legislative proceeding where:

(3) The Administrative Law Judge has a financial interest in the subject matter in a proceeding or in a party to the proceeding. An Administrative Law Judge shall be deemed to have a financial interest if:

(A) A spouse or minor child living in the Administrative Law Judge's household has a financial interest; or

(B) The Administrative Law Judge or his or her spouse is a fiduciary who has a financial interest.

An Administrative Law Judge has a duty to make reasonable efforts to be informed about his or her personal and fiduciary interests and those of his or her spouse and the personal financial interests of the children living in the household.

~~(4) The Administrative Law Judge is a member of a party or his or her spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person is a party to the proceeding or an officer, director, or a trustee of a party.~~

~~(5) A representative or a spouse of a representative in the proceeding is the spouse, former spouse, child, sibling, or parent of the Administrative Law Judge or his or her spouse, or if such a person is professionally associated with a representative in the proceeding.~~

~~(6) For any reason (A) the Administrative Law Judge believes his or her recusal would further the interests of justice, (B) the Administrative Law Judge believes there is a substantial doubt as to his or her capacity to be impartial, or (C) a person aware of the facts might reasonably entertain a doubt that the Administrative Law Judge would be able to be impartial. Bias or prejudice towards a lawyer in the proceeding may be grounds for disqualification.~~

(2) The Administrative Law Judge has bias, prejudice, or interest in the proceeding.

(b) A petition filed pursuant to this rule shall be supported by a declaration under penalty of perjury (or affidavit by an out-of-state person) setting forth the factual basis for the petition, and shall be filed and served as provided in Rule 63.2(a).

(c) A petition and supporting declaration filed pursuant to this rule shall be filed at the earliest practicable opportunity and in any event no later than 10 days after the date the petitioner discovered or should have discovered facts set forth in the declaration filed pursuant to this rule. The Chief Administrative Law Judge, in consultation with the President of the Commission, and after considering any response from the assigned Administrative Law Judge, shall issue a ruling addressing a petition for reassignment filed pursuant to this rule.

(ed) A party may file no more than one ~~motion to disqualify~~ petition for reassignment of an Administrative Law Judge pursuant to this rule unless facts suggesting new grounds for ~~disqualification reassignment~~ are first learned of or arise after the ~~motion~~ petition was filed. Repetitive ~~petitions for reassignment~~ ~~motions to disqualify~~ not alleging facts suggesting new grounds for ~~disqualification reassignment~~ shall be denied by either the Chief Administrative Law Judge or by the Administrative Law Judge against whom they are filed.

(Note: Rule 63.4 (d) is a revised version of former Rule 63.4(e))

63.35 (Rule 63.35) Circumstances Not Constituting Grounds for Disqualification Reassignment for Cause.

It shall not be grounds for ~~disqualification reassignment for cause~~ that the Administrative Law Judge:

(a) Is or is not a member of a racial, ethnic, religious, sexual or similar group and the proceeding involves the rights of such a group.

(b) Has experience, technical competence, or specialized knowledge of or has in any capacity expressed a view on a legal, factual or policy issue presented in the proceeding, except as provided in Rule 63.2(a)(2)3.

(c) Has, as a representative or public official participated in the drafting of laws or regulations or in the effort to pass or defeat laws or regulations, the meaning, effect, or application of which is in issue in the proceeding unless the Administrative Law Judge believes that ~~his or her~~ the prior involvement was such as to prevent the Administrative Law Judge from exercising unbiased and impartial judgment in the proceeding, so well known as to raise a reasonable doubt in the public mind as to his or her capacity to be impartial.

63.46 (Rule 63.46) Procedure for Disqualification of Administrative Law Judge's Ability to Request Reassignment.

(a) The Administrative Law Judge shall ~~disqualify himself or herself~~ request reassignment and withdraw from a proceeding in which there are grounds for ~~disqualification reassignment for cause~~ unless the parties waive the ~~disqualification reassignment~~ pursuant to Rule 63.57.

(b) A party may request disqualification of an Administrative Law Judge by filing a ~~motion to disqualify with a verified supporting written statement, which shall state with particularity the grounds for the disqualification. The motion shall be presented at the earliest practicable opportunity, and in any event within 15 days of discovery of the facts constituting the ground for disqualification. Copies of the motion shall be served on the~~

Administrative Law Judge sought to be disqualified, as well as on all parties to the proceeding:

(1) Upon receipt of a motion to disqualify, an Administrative Law Judge shall promptly notify the Chief Administrative Law Judge who shall rule on the motion to disqualify. A party may appeal the ruling of the Chief Administrative Law Judge by filing an appeal. The appeal shall be filed within 10 days of the Chief Administrative Law Judge's ruling. Other parties and the challenged Administrative Law Judge may file a response to the appeal within 10 days of the filing of the appeal. The appeal shall be decided by the full Commission.

(2) Within 15 days of the filing of a motion to disqualify, the Administrative Law Judge may file a verified response admitting or denying any or all of the allegations contained in the motion and setting forth any additional facts material or relevant to the question of disqualification. The Process Office shall serve a copy of the Administrative Law Judge's response on all parties to the proceeding. An Administrative Law Judge who fails to file a response within the time allowed shall be deemed to have consented to his or her disqualification.

(c) In complaint proceedings, a party may file a written motion to disqualify, with a verified written declaration that the Administrative Law Judge to whom the matter is assigned is prejudiced against such party or attorney or the interest of the party or attorney so that the party or attorney cannot or believes that he or she cannot have a fair and impartial hearing before the Administrative Law Judge.

(1) The motion shall be filed within 10 days after notice of assignment is issued.

(2) If the motion is duly presented and the supporting statement is duly verified, thereupon and without any further act or proof, the Chief Administrative Law Judge shall assign some other Administrative Law Judge to hear the matter.

(3) Under no circumstances shall any one party be permitted to make more than one such motion in any case, and in cases where there may be more than one complainant or similar party or more than one defendant or similar party, only one such motion for each side may be made in any one case.

(Note: Former Rule 63.4(d) and (e) are revised and appear in the new rules as Rule 63.4(d) and Rule 63.8, respectively)

63.57 (Rule 63.57) Waiver.

An Administrative Law Judge, after determining that there is basis for his or her reassignment for cause, shall who determines himself or herself to be disqualified after disclosing the basis for his or her disqualification on the record, and may ask the parties whether they wish to waive the disqualification reassignment. A waiver of disqualification reassignment shall recite the basis for disqualification reassignment and is shall be effective only when signed by all parties, and included in the record. The Administrative Law Judge shall not seek to induce a waiver and shall avoid any effort to discover which lawyers representatives or parties favored or opposed a waiver of disqualification reassignment.

63.8 (Rule 63.8) Prior Rulings.

~~(d)~~ If an Administrative Law Judge is disqualified reassigned, the rulings he or she has made up to that time shall not be set aside in the absence of good cause.

(Note: Rule 63.8 is a revised version of former Rule 63.4(d))

63.69 (Rule 63.69) Ban on Ex Parte Communications.

Ex parte communications regarding the assignment, or reassignment or disqualification of particular Administrative Law Judges are prohibited.

63.710 (Rule 63.710) Definitions.

For the purposes of Rules 63.1 to 63.69 inclusive, the following definitions apply:

(a) "Financial interest" means ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value in excess of one thousand five hundred dollars (\$1,500), or a relationship as director, advisor or other active participant in the affairs of a party, except as follows:

(1) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in those securities held by the organization unless the Administrative Law Judge participates in the management of the fund.

(2) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization.

(3) The proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest.

(b) "Representative" includes any person authorized to represent a party to a proceeding, whether or not the person is licensed to practice law, or an expert witness or consultant for the party.

~~(c) The third degree of relationship shall be calculated according to the civil law system.~~

~~(d) "Proceeding" means an application, complaint, investigation, rulemaking, alternative dispute resolution procedures in lieu of formal proceedings as may be sponsored by the Commission, or other formal proceeding before the Commission.~~

~~(e) "Fiduciary" includes any executor, trustee, guardian, or administrator.~~

~~(f) "Ex parte communication" is includes all communications defined as ex parte communications elsewhere in these rules and, in addition, a communication as defined in Rule 1.4(g), except that when a motion seeking to disqualify an Administrative Law Judge has been filed, it shall also include communications between the an Administrative Law Judge so challenged and other decisionmakers about a petition for reassignment of a proceeding to which the Administrative Law Judge is currently assigned.~~

R.84-12-028
D.97-07-065

COMMISSIONER HENRY M. DUQUE, DISSENTING IN PART:

Although I support most of Item 14 today, I file this partial dissent with respect to the definition of Commissioner presence. I do not believe that remote attendance should be considered to meet the requirement of presence, even with the existence of two way communication. I recognize that some of my colleagues may be interested in pursuing this option, but I simply believe that it complies with neither the spirit nor the intent of the law. My staff and I go to great lengths to arrange my schedule to allow me to attend prehearing conferences and evidentiary hearings in my assigned cases so that I can actively manage my caseload. In my mind, this is what SB 960 intended and this is how I intend to implement it. For these reasons, I file this partial dissent on the limited issue of Commissioner presence.

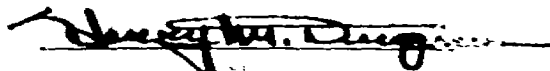
/s/ HENRY M. DUQUE
Henry M. Duque
Commissioner

San Francisco, California
July 16, 1997

R.81-12-028
D.97-07-065

COMMISSIONER HENRY M. DUQUE, DISSENTING IN PART:

Although I support most of Item 14 today, I file this partial dissent with respect to the definition of Commissioner presence. I do not believe that remote attendance should be considered to meet the requirement of presence, even with the existence of two way communication. I recognize that some of my colleagues may be interested in pursuing this option, but I simply believe that it complies with neither the spirit nor the intent of the law. My staff and I go to great lengths to arrange my schedule to allow me to attend prehearing conferences and evidentiary hearings in my assigned cases so that I can actively manage my caseload. In my mind, this is what SB 960 intended and this is how I intend to implement it. For these reasons, I file this partial dissent on the limited issue of Commissioner presence.



Henry M. Duque
Commissioner

San Francisco, California

July 16, 1997