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Decision 97-11-021 November 5, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's own motion for purposes of compiling the Commission's rules of procedure in accordance with Public Utilities Code Section 322 and considering changes in the Commission's Rules of Practice and Procedure.	R.84-12-028 (Filed December 19, 1984)

ORIGINAL

OPINION ON FINAL RULES IMPLEMENTING SB 960

1. Introduction

In today's decision, we make revisions to a few of the rules in our "Draft of Final Rules" (as set forth in Decision (D.) 97-07-065) implementing Senate Bill (SB) 960 (Leonard, ch. 96-0856). The complete draft, with these revisions indicated in the margin, appears in the Appendix to today's decision.

The background to the development of these rules is detailed in D.97-07-065 and Resolutions (Res.) ALJ-170 (Jan. 13, 1997) and ALJ-171 (March 18, 1997). All three of these orders, as well as related materials, can be reviewed at the Commission's Internet site (www.cpuc.ca.gov). In the following pages, we will describe the revisions, note necessary codification changes (renumbering certain rules and changing cross-references to those rules), respond to comments on the draft rules, and summarize our current plans for further improvements to our handling of formal proceedings and of informal matters (advice letters).

2. Revisions

We today make available the last revisions we anticipate before our adoption of the rules implementing SB 960. All of the revisions are either nonsubstantial, solely grammatical, or closely related to the draft rules set forth in D.97-07-065. Comment, limited to these revisions, will be due 15 days from today's decision.

Rule 4(b). In Res. ALJ-171, we explained that our SB 960 rules would not apply to the expedited complaint procedure. The revised draft of the final rules reflected this exclusion in Rule 4(a); however, for clarity, the exclusion should also be stated in Rule 4(b).

Rule 5(l). There is a typo: The term "ratemaking," used twice in this subsection, should be "ratesetting," which is the term used in SB 960. Also, Rule 5(k) makes clear that "presiding officer" is a generic term that includes the "principal hearing officer" in a ratesetting proceeding. There is no need to extend the latter term to include the assigned Commissioner in a quasi-legislative proceeding; in fact, such extension would be inconsistent with Rule 5(k). Thus, the phrase "or quasi-legislative " should be stricken from Rule 5(l).

Rule 6(b)(3). Typo: The comma following "the" at the end of the first line should be stricken.

Rule 6(d). For consistency with the other headings, change this heading to "Proceedings Filed Before January 1, 1998."

Rule 6(e). For consistency with the other subsections in Rule 6, give subsection (e) a heading ("Proposed Schedules").

Rule 7(a). Clarify requirements regarding ex parte communications occurring during the period between the filing of a proceeding and the determination of the category of the proceeding.

Rule 8(d), 8(f)(4). Revise definition of Commissioner "presence" to mean physical attendance at a hearing or argument, except that a Commissioner who is surplus to the existence of a quorum may attend an argument from a remote location linked via real-time, two-way communication to the hearing room.

Rule 8.1(b). Change "ratemaking" to "ratesetting;" change "principal hearing officer" to "presiding officer." For discussion, see explanation of revisions to Rule 5(l), above.

Rule 63.2(a). Incorrect cross-references: In the second line of this subsection, the reference to Rule 6(e) should be to Rule 6(d), and the reference to Rule 6(d)(1) should be to Rule 6 (e)(1).

Rule 63.9. Clarify the rule to indicate that any written response by an Administrative Law Judge to a petition for reassignment for cause, as authorized by Rule 63.4(c), will be filed and served in the proceeding in which the petitioner requested such reassignment.

3. Changes to Codification

To accommodate new Article 2.5, which will contain the SB 960 rules, the rules in existing Article 2 ("Filing of Documents") will be renumbered. The rules currently numbered 2 through 8.01 contain formal requirements (e.g., captions, verifications, errata); these rules will be renumbered 2 through 2.7. The rules currently numbered 8.11 through 8.15 describe filing procedures (e.g., where to file, computation of time, filing fees); these rules will be renumbered 3 to 3.4. Table 1 shows the renumbering for each rule in Article 2.

TABLE 1

Renumbering of Article 2

Existing Rule#	Becomes Rule#
2	no change
3	2.1
4	2.2
5	2.3
6	2.4
7	2.5
8	2.6
8.01	2.7
8.11	3
8.12	3.1
8.13	3.2
8.14	3.3
8.15	3.4

The renumbering shown in Table 1, and the revised cross-references shown in Table 2, are the only changes to Article 2 under today's decision. In other words, the changes to these rules are strictly nonsubstantive.

The rules in Article 2 are referred to frequently in the Rules of Practice and Procedure. These references are revised to reflect the renumbering summarized above. Table 2 shows rules where the references to Article 2 are revised accordingly. Again, the changes to these rules are strictly nonsubstantive.

TABLE 2

Rules to be Revised to Refer to Renumbered Article 2 Rules

Note that several of the rules in this table will exhibit both kinds of codification changes, i.e., they will be renumbered and their references to <u>other</u> rules will be revised, consistent with the renumbering.

Existing Rule 3 (becomes Rule 2.1)	Article 7 (Preamble)
Existing Rule 4 (becomes Rule 2.2)	Rule 33
Existing Rule 5 (becomes Rule 2.3)	Rule 35
Existing Rule 6 (becomes Rule 2.4)	Article 10 (Preamble)
Existing Rule 7 (becomes Rule 2.5)	Rule 42.2
Existing Rule 8.01 (becomes Rule 2.7)	Rule 43.2
Existing Rule 8.11 (becomes Rule 3)	Rule 43.8
Rule 10	Rule 44.1
Rule 13.1	Rule 44.3
Rule 14.6	Rule 44.6
Rule 18 (Rule 18(o)(3) also will be revised to refer to the current rules on protests, i.e., Rules 44 through 44.6)	Rule 45 Rule 47
Rule 21	Rule 77.6
Rule 23	Rule 78

4. Discussion of Comments

The rules set forth in the Appendix are the result of several years of discussions and deliberations concerning improvements in how the Commission handles its formal proceedings. Over the past year, since the Governor signed SB 960 into law, our work on these improvements has intensified.[1] The resulting rules have benefited from our experience in the experiment commenced with Res.ALJ-170, from freewheeling discussion in workshops and other public forums, and from five rounds of written comments on successive iterations of the experimental and proposed final rules. The internal effort and solicitation of public input are commensurate with the importance of our charge from the Governor and the Legislature to put our house in order.

The final rules incorporate a great many suggestions from the commenters. Where controversy remains, it concerns, generally, issues over which there was no consensus even among the commenters. These issues are: categorization of proceedings; Commissioner presence; and reassignment of administrative law judges (ALJs). For these issues, as discussed below, we have made our best judgment, which has benefited from experience gained in our experimental implementation of SB 960 requirements.

Categorization of Proceedings. There seems to be a philosophical debate between those commenters who think the bulk of the Commission's business is, or should be, the making of policy guidelines, to be applied prospectively, and those commenters who think the bulk of the Commission's business consists of proceedings that mix questions of fact and questions of policy. The former commenters would like to see most proceedings categorized as quasi-legislative; the latter commenters would like to see most proceedings assigned to the category that lies between adjudicatory and quasi-legislative. In SB 960, the in-between category is called "ratesetting," although the category clearly embraces many other types of proceedings, such as certifying a major new utility facility or reviewing a proposed merger of utilities.

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[1] Further initiatives will follow today's decision. See Section 5 below.

Our analysis does not start with any preference for one or another category of proceeding. Our focus, instead, is on the nature of the determinations we will need to make in the proceeding we are categorizing. It is clear from both SB 960 and our implementing rules that policy enforcement, whether initiated by the Commission itself or by a complainant, is by nature adjudicatory and should be so categorized; policy development, on the other hand, involves entirely or predominantly legislative determinations, and proceedings concerned entirely or predominantly with such determinations should be categorized as quasi-legislative. Policy implementation, however, is not simply a matter of adjudicatory facts or legislative facts but commonly mixes the two. The ratesetting category most nearly approximates the mixed nature of policy implementation, and for this reason our rules state that a proceeding not clearly falling within any of the statutorily defined categories will be conducted under the rules applicable to the ratesetting category unless we find that another category (or a special hybrid of procedural rules) is better suited to that particular proceeding.

Currently, much of the Commission's caseload is taken up with policy implementation, which is not surprising considering the enormous amount of policy development that has gone into the restructuring of the telecommunications and energy industries and that is now largely behind us. Over time, the emphasis may shift to policy enforcement or back to policy development. We are satisfied that we now have the procedural mechanisms in place to swiftly and effectively register such shifts and to reflect them in our case management.

Commissioner Presence. Our own rethinking of the Commission's processes has consistently emphasized direct Commissioner involvement in case management and Commissioner accountability for outcomes. The legislative intent of SB 960 has the same emphasis, and to these ends, SB 960 requires Commissioners to be "present" for certain events, depending (among other things) on the category of proceeding and whether the Commissioner is presiding. We have proposed that this requirement can be satisfied by "remote attendance (to the extent permitted by law) by electronic communications link...establishing real-time, two-way communication between the hearing room and the attending Commissioner."

There is concern that such remote attendance may fall short of the quality of participation made possible only by the physical presence of the Commissioner in the hearing room. We share this concern. We have decided that, consistent with good practice and the spirit of SB 960 as we understand them, Commissioner "presence" should be defined generally to mean physical presence in the hearing room. We provide for remote attendance in one situation: Where SB 960 requires that a quorum of the Commission be present for "final oral argument," see Public Utilities Code §§ 1701.3(d) and 1701.4(c), those Commissioners who are surplus to the existence of a quorum at the site where the argument is held may choose to participate in the argument via electronic communications link. We have revised our proposed rule accordingly.

ALJ Reassignment. Before enactment of SB 960, the Commission had adopted rules (in Article 16 of the Rules of Practice and Procedure) for disqualification of ALJs. These existing rules responded to PU Code Section 309.6 (enacted in 1993), which directed the Commission to "adopt procedures on the disqualification of [ALJs] due to bias or prejudice similar to those of other state agencies and superior courts." Implementing this general direction, the rules contained a detailed list of "grounds for disqualification."

Unlike the general direction on the subject in PU Code Section 309.6, SB 960 is very specific about the grounds for disqualification. In an adjudicatory or ratesetting proceedings, SB 960 provides "unlimited peremptory" challenges to all parties whenever the assigned ALJ (1) has, within the previous 12 months, served in an advocacy position at the Commission or 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.[2]

[2] We understand the Legislature's characterization of this challenge as "peremptory" to mean that the challenging party need not demonstrate actual bias on the part of the assigned ALJ but need show only that the factual predicate exists, namely, that the ALJ, before his or her assignment, functioned in one of the roles specified by the statute.

In addition to the "unlimited peremptory" challenge, SB 960 provides, for adjudicatory proceedings, that "all parties are entitled to one peremptory challenge" of the assigned ALJ. (Emphasis added.)[3] SB 960 does not instruct the Commission how these new provisions should relate to the Commission's existing rules on ALJ disqualification, nor does SB 960 repeal PU Code Section 309.6, under which the existing rules were adopted. In these circumstances, implementing SB 960 regarding disqualification procedure required us to make several judgments on interpretation and policy. We describe below the more significant judgment calls.

First, we decided that it would not make sense to have two distinct procedures for ALJ disqualification, depending on the vintage of the proceeding. To do so would not be necessary, and would be confusing to all concerned. We therefore revised the existing rules to apply to all open proceedings, pre- or post-SB 960.

We also pared back the existing rules' detailed list of "grounds for disqualification" in light of the specificity now provided by SB 960. However, along with the specific peremptories in SB 960, the revised rules continue to provide generally for challenges for cause where the assigned ALJ (1) has a financial interest in the subject of a proceeding or in a party to the proceeding, or (2) has bias, prejudice, or interest in the proceeding.

We also implemented the limited peremptory in adjudicatory proceedings as a limitation to one per side. We expect that many adjudicatory proceedings will have only two parties, and hence two sides. In the multi-party situation, we provided that a party seeking to exercise the limited peremptory would have the opportunity to show that its interests are "substantially adverse" to other parties that might seem to be aligned on its side in the proceeding.

Finally, although SB 960 only provides a limited peremptory in adjudicatory proceedings, our rules also allow such a peremptory in ratesetting proceedings.

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[3] Our rules refer to this one-time-only challenge as an "automatic" peremptory.

However, because ratesetting proceedings often have many parties and many different sides, our rule provides that there will be not more than two reassignments pursuant to such peremptories in the same ratesetting proceeding.

Some commenters have criticized our proposed rules as being too liberal in allowing challenges to assigned ALJs; other commenters have criticized the rules as too narrow. Our response, simply, is that the rules continue to allow challenges on all reasonable grounds, and they allow challenges to assigned ALJs in both categories of proceeding (adjudicatory and ratesetting) in which ALJs are authorized to preside over formal hearings and to write decisions. We are confident that the rules, consistent with SB 960, ensure both actual fairness and the perception that the process gives all participants a fair shake.

Other Comments. Many commenters suggested additional areas for rulemaking (e.g., clarification of the term "party" and requirements for party status), and they also urged us to increase our utilization of the Internet to give access to documents and notice of events in proceedings. These suggestions go beyond the scope of the current rulemaking but they dovetail with our plans for further procedural reforms. See Section 5 below.

Several commenters raise points of clarification, which we address below.

California Manufacturers Association (CMA), referring to our statement in D.97-07-065 that orders instituting investigation (OIIs) "commonly will be adjudicatory proceedings," cautions that OIIs often, in the past, have been consolidated with general rate cases and industry restructuring, neither of which seems properly categorized as adjudicatory. We agree with this caution. The categorization of any OII, especially one that is part of a consolidated proceeding, should give due consideration to the character of the particular OII.

CMA also asserts that service on all parties, the ALJ, and the Docket Office of copies of a written ex parte communication should satisfy the reporting requirements of Rule 7.1(a). There seems to be some confusion over what those requirements are, in practice. The copies to Docket Office must be accompanied by a "Notice of Ex Parte Communication," as required by that rule, to ensure proper handling of the document.

We agree, however, that Rule 7.1(a)(3), which requires that the Notice include a "description of the...communication and its content", is satisfied by referring to the copy of the written communication provided with the Notice. In other words, it is not necessary for the Notice to separately describe or paraphrase the content of the written communication. Similarly, the written communication will likely disclose on its face the information specified in Rules 7(a)(1) and 7(a)(2). To the extent such information does not appear on the face of the written communication (e.g., if it is undated), the Notice must include the information.

Pacific Bell thinks "consumer organization" should be specifically included in Rule 5(h)(3), where "interested person" is defined to include:

> 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.

This definition is part of SB 960's framework for dealing with ex parte communication, and the list of organizations comes from the statute. We believe the list is already sufficiently comprehensive to encompass consumer organizations.

Southern California Edison (SCE) reads the draft rules to require an ALJ to preside at workshops in a quasi-legislative proceeding. SCE is mistaken. The rules require the assigned Commissioner to preside over hearings at which testimony is offered on "legislative facts." Such a proceeding might also involve a hearing at which testimony is offered on "adjudicative facts."[1] The draft rules direct the assigned ALJ to preside at the latter type of hearing in the absence of the assigned Commissioner. There is nothing in the draft rules that either requires or prevents the assigned ALJ or the assigned Commissioner from presiding at "workshops," which is not a term we use to refer to "hearings." Workshops are not a "hearing" of any kind, whether formal or

[1] For example, in electric restructuring (a proceeding that would likely be categorized as quasi-legislative), we held evidentiary hearings on the issue of transition costs.

informal; they are seldom transcribed, and "testimony" cannot be offered in a workshop.

The Utility Reform Network (TURN) finds confusing our use of the term "appeal of categorization" to implement SB 960's "request for rehearing" of our determination "as to the nature of the proceeding." We created the term "appeal of categorization" because the statutory terminology is easily (and wrongly) confused with applications for rehearing pursuant to PU Code Section 1731(b). Any time within 30 days after an application for rehearing is denied, the rehearing applicant may seek judicial relief. This is not true of a categorization appeal. Under SB 960, the appellant cannot immediately seek judicial review of a Commission decision rejecting the appeal; instead, the appellant must wait until "conclusion of the proceeding" before it can challenge, in court, the decision rejecting the categorization appeal. In these circumstances, we think clarity is better served by not using "rehearing" in connection with the categorization process.

TURN believes the "date of issuance" of an order or decision should be defined. TURN is correct in its assumption that we are using the term consistent with its definition, in Rule 85 of the Rules of Practice and Procedure, as the date of mailing. However, we hope in the near future to be able to make our decisions and orders accessible via the Internet, so we defer to later rulemaking the development of a new or modified definition of "date of issuance." See Section 5 below.

Regarding the formal complaint procedure, TURN correctly notes that the Docket Office will need to serve the "Instructions to Answer" on complainants as well as defendants, so that all the parties will be aware of the assigned ALJ and category of the proceeding. Our internal operating procedures already provide for such service.

Regarding the deadline for resolving a proceeding (12 or 18 months, depending on the category), TURN correctly assumes that the deadline does not include such post-decision filings as applications for rehearing. The Commission can only plan to complete processes within its control, and cannot know in advance which decisions will be challenged. To assume all decisions will be challenged, and to shorten the process

leading to a decision in order to accommodate a rehearing, would be speculative, impractical, and counterproductive in many situations.

TURN correctly assumes that the term "public utility pipelines" in Rule 8.1(b) refers to oil pipelines. The PU Code includes "pipeline corporation" in the list of public utilities, and it defines "pipeline" as "property [used to deliver] crude oil or other fluid substances (except water)." See PU Code §§ 216(a), 227, and 228.

TURN makes several requests for clarification that, essentially, urge the Commission to be flexible and sensitive to the characteristics of particular proceedings in applying the new SB 960 rules. In response, we call everyone's attention to existing Rule 87, which continues to apply to all our Rules of Practice and Procedure (including the SB 960 rules), and which says in relevant part:

> "These rules shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented. In special cases and for good cause shown, the Commission may permit deviations from the rules."

No one should believe, however, that Rule 87 is a way to get around the spirit and intent of SB 960.

We find disturbing, in this regard, TURN's question, "Is it...part of the 'culture change' brought about by these new rules that parties must formally request hearings in every case, even when it seems obvious that they will be held anyway?" (Emphasis in original.) This question misses a fundamental point. The message we hear from the Governor and the Legislature is that the Commission should actively manage its proceedings from beginning to end. The SB 960 rules provide ample opportunity for participants in a particular proceeding to suggest how we should manage that proceeding. However, a party that does not bother to participate in the scoping process because of prior practice (e.g., the proceeding is of a kind for which, according to TURN, "parties traditionally have not bothered to file protests or requests for a hearing") will run the risk that the hearings held (if any) and the issues considered in the proceeding will differ from what the party expected. We will not indulge belated requests from such a party to add hearings or issues.

5. Further Improvements to Commission Processes

Today's decision marks a major step, but by no means the last step, in our comprehensive rethinking of how the Commission processes should work. We have a three-part plan for further improvements.

First, we will continue to work on ways to better handle formal proceedings. We will close this rulemaking when final adoption of the SB 960 rules is completed (before the end of this calendar year), but at the same time, we recognize that our Rules of Practice and Procedure need improvement in other specific areas. Among these areas we intend to begin new rulemakings in the near future on discovery and settlement rules, both of which are deeply affected by SB 960 reforms. As the number of proceedings handled under pre-SB 960 procedure dwindles with the completion of these old proceedings, parts of the existing Rules of Practice and Procedure should be repealed, as should other parts that, arguably, are out-of-date. With more experience, we will also fine-tune the SB 960 rules.

Second, we have process concerns that go beyond our formal proceedings. Much of the Commission's business consists of informal matters known as "advice letters." As the name implies, these are informal notices to the Commission of an action proposed by the filing utility, which action the filing utility believes, for various reasons, does not need a formal application for Commission approval. However, advice letters are subject to protest. With competition expanding across many utility sectors, we expect that advice letters will increase as new market entrants, as well as incumbent utilities, gain flexibility to offer a greater variety of services under a vast array of pricing and other terms and conditions of service. For these reasons, we believe that the process for review of advice letters must be as open, transparent, and precisely defined as our process for formal proceedings. Our staff has already held workshops with stakeholders to discuss the existing general order on advice letters (General Order 96-A), and as our thinking matures, we plan to start a rulemaking on the advice letter process that will complement our efforts with respect to formal proceedings.

The third part of our plan for improvement will affect both advice letters and formal proceedings, as well as our efforts, independent of particular proceedings, to provide

service and safety information to consumers and the general public. In essence, we want to intensify our use of electronic communications, most notably via the Internet, to enable wider, more rapid dissemination of information regarding all of the Commission's activities.

We already use our Internet site (www.cpuc.ca.gov) for many things, including posting our Daily Calendar and providing information about important proceedings and developments in the restructuring of the energy and telecommunications industries. We can and should do much more.

We envision a Commission Internet site from which, eventually, our decisions, resolutions, rulings, and general orders could be downloaded, while links to other sites would enable the downloading from those sites of tariffs and a host of other documents submitted to the Commission. By providing electronic notice and access, we can reach a broader community, enable more timely communication of documents and deadlines, and save on mailing, copying, and associated costs.

Our staff has already begun the outreach effort through formation of an informal "electronic notice and access technical (ENAT) working group." The ENAT group will focus on the "how to" issues. We plan to open a rulemaking soon to address the "what next" issues, i.e., goals and priorities for our Internet utilization, and to ensure that our Rules of Practice and Procedure on service of documents and related topics keep up with our electronic capabilities.

Findings of Fact

1. The Appendix to today's decision contains appropriate revisions to the previous draft, i.e., the "Draft of Final Rules" proposed in D.97-07-065 to implement SB 960. These revisions are nonsubstantial, solely grammatical, or closely related to the text of the previous draft.

2. The renumbering summarized in Tables 1 and 2 is nonsubstantive.

Conclusions of Law

1. The "Draft of Final Rules, "with the revisions shown in the Appendix, should be made available to the public for 15 days before final action by the Commission.

Comment, limited to these revisions, should be filed and served no later than 15 days after the effective date of today's decision.

2. To ensure timely final action on the "Draft of Final Rules," today's decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Comments on the revisions to the "Draft of Final Rules," as shown in the Appendix to today's decision, are due to be filed and served no later than 15 days after the effective date of today's decision.

2. The Chief Administrative Law Judge shall prepare all necessary forms, and submit them to the Office of Administrative Law to accomplish the nonsubstantive renumbering summarized in Tables 1 and 2 of today's decision.

3. This order is effective immediately upon approval today.

Dated November 5, 1997, at San Francisco, California.

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

APPENDIX

Proposed Final Rules and Procedures on Management of Commission Proceedings under Requirements of SB 960

Proposed Amendments to Rule 13.2

Proposed Amendments to Existing Article 16. Presiding Officers

KOT/bwg

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 (except for a complaint under Rule 13.2) 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 1 (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 ratesetting proceeding, or the assigned Administrative Law Judge in a ratesetting 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, OIIs, 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) Proceedings 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) Proposed Schedules.

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 shall apply to ex parte communications during the period between the beginning of a proceeding and the determination of the category of that proceeding, including the decision by the Commission on any appeal of such determination. After determination of the category, the requirements of subsection (b), (c), or (d) of this rule shall apply, as appropriate.

(1) In a proceeding initiated by application filed after January 1, 1998, the requirements of subsection (c) shall apply during the period during the filing and the Commission's preliminary determination of category pursuant to Rule 6(a)(1), after which the requirements of subsection (b), (c), or (d) shall apply, depending on the preliminary determination. After the assigned Commissioner's appealable determination of category under Rule 6(a)(3), the applicable requirements shall depend on such determination unless and until it is modified by the Commission pursuant to Rule 6.4 or 6.5(a).

(2) In a proceeding initiated by complaint filed after January 1, 1998, regardless of the complainant's proposed category for the proceeding, ex parte communications shall be prohibited until the date of service of the instructions to answer, after which the applicable requirements shall depend on the determination of category in the instructions to answer, unless and until such determination is modified by the Commission pursuant to Rule 6.4.

(3) In a proceeding initiated after January 1, 1998, by order instituting investigation or order to show cause, the requirements of subsection (b), (c), or (d) shall apply, depending on the order's determination of category, unless and until such determination is modified by the Commission pursuant to Rule 6.4.

(4) In a proceeding initiated after January 1, 1998, by order instituting rulemaking, the requirements of subsection (b), (c), or (d) shall apply, depending on the order's preliminary determination of category. After the assigned Commissioner's appealable determination of category, the

applicable requirements shall depend on such determination unless and until it is modified by the Commission pursuant to Rule 6.4 or 6.5(a).

(5) In a proceeding to which this Article applies by virtue of Rule 4(b)(2), the requirements of subsection (b), (c), or (d) shall apply, depending on the preliminary determination of category pursuant to Rule 6(d). After the assigned Commissioner's appealable determination of category, the applicable requirements shall depend on such determination unless and until it is modified by the Commission pursuant to Rule 6.4 or 6.5(a).

(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. To the extent permitted by law, any Commissioner who is surplus to the quorum may attend the argument from a remote location linked to the hearing room via audio, visual, and/or textual media establishing real-time, two-way communication.

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 or argument means physical attendance in the hearing room, 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.

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 ratesetting and quasi-legislative proceedings, the presiding 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.

Proposed Amendments to Existing Article 16. Presiding Officers

62. (Rule 62) Designation.

When evidence is to be taken in a proceeding before the Commission, one or more of the Commissioners, or an Administrative Law Judge, may preside at the hearing.

63. (Rule 63) Authority.

The presiding officer may set hearings and control the course thereof; administer oaths; issue subpoenas; receive evidence; hold appropriate conferences before or during hearings; rule upon all objections or motions which do not involve final determination of proceedings; receive offers of proof; hear argument; and fix the time for the filing of briefs. The presiding officer ~~He~~ may take such other action as may be necessary and appropriate to the discharge of his or her duties, consistent with the statutory or other authorities under which the Commission functions and with the rules and policies of the Commission.

63.1 (Rule 63.1) Petition for Reassignment - Exclusive Means to Request ~~of Disqualification~~ Reassignment of Administrative Law Judge.

The provisions of this article are the exclusive means available to a party to a Commission proceeding to seek reassignment of that proceeding to another ~~to disqualify an~~ Administrative Law Judge ~~from participating in deciding the issues or outcome of the proceeding~~.

63.2 (Rule 63.2) Petitions for Automatic Reassignment.

(a) A party to a proceeding preliminarily determined to be adjudicatory under Rule 6(a)(1) or 6(d), or determined to be adjudicatory under Rule 6(b)(1) or 6(c)(1), 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. The petition shall be filed and served in the proceeding where reassignment is sought, and on the Chief Administrative Law Judge and the President of the Commission. The petition shall be supported by declaration under penalty of perjury (or affidavit by an out-of-state person) in substantially the following form:

> _____, [declares under penalty of perjury:] That [s]he is [a party] [attorney for a party] to the above-captioned adjudicatory proceeding. That [declarant] believes that [s]he cannot have a [fair] [expeditious] hearing before Administrative Law Judge [to whom the proceeding is assigned]. That declarant [or the party declarant represents]

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:

(31) 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. Any written response by the assigned Administrative Law Judge to a petition for reassignment for cause shall be filed and served in the proceeding where the reassignment was requested.

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 Llaw 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.~~

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

(fd) "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. 1(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.

(END OF APPENDIX)