

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-161
Administrative Law Judge DivisionR E S O L U T I O NOpinion Adopting Revised
Expedited Application Procedure

By Resolution ALJ-159, the Commission approved an experimental Expedited Application Docket (EAD) for use in reviewing and approving special contracts at other than tariff rates between utilities and individual gas or electric customers. The EAD took effect on June 15, 1987, and was authorized on an experimental basis for one year; the authorization expired June 30, 1988. This decision adopts a revised EAD which expands the applicability of the EAD and modifies some of its provisions.

The EAD procedure has proved useful in reviewing applications for special contracts and has not been misused. Most of the few contracts filed under the EAD have been designed to retain a customer who would otherwise bypass a utility's system.

The EAD was originally intended to address only contracts aimed at deterring bypass. However, the 3Rs proceeding, I.86-10-001, pointed out the need for a similar approval process for contracts for incremental sales. Decision (D.) 88-03-008 discussed incremental contracts at pp. 5 and 6. The Commission determined in that decision that the EAD procedure should be modified to allow for review of such contracts for incremental sales.

By D.88-09-059 dated September 28, 1988 in Application 85-01-034, et al., the Commission adopted an EAD procedure for certain services of telecommunication utilities which will be incorporated into the revised procedure adopted by this decision.

On October 5, 1988 the Commission sent a letter to all parties in R.84-12-028 requesting comments on a draft of the revised EAD procedure. Five utilities, the Commission's Division of Ratepayer Advocates (DRA), and Assemblywoman Gwen Moore responded to the proposed revision.

SOUTHERN CALIFORNIA GAS COMPANY (SoCalGas) believes an EAD is unnecessary and redundant for gas utilities. It maintains that under the substantial restructure of gas utility services now going on, the Commission has already established an approval

process for gas utility contracts that accomplishes the same purposes as the proposed revision to the EAD.

SoCalGas believes the 5-day response time to data requests is too short. It recommends 10 days with flexibility given to the parties to agree to a longer time (up to 30 days if needed) for responses that cannot be completed within 10 working days.

PACIFIC GAS AND ELECTRIC COMPANY (PG&E) supports extension of the procedure for another year and its expansion to include contracts covering incremental sales that would not be made at existing tariff rates.

PG&E recommends 10 working days for responses to written data requests instead of the proposed 5 days with the option of a longer response time if the parties involved agree.

SOUTHERN CALIFORNIA EDISON COMPANY (Edison) supports the EAD procedure but recommends the following additions:

- The proposed procedure should be modified to incorporate the guidelines for developing special contracts the Commission adopted in D.88-03-008, March 9, 1988, in I.86-10-001.
- Confidential data furnished by a customer to a utility for the purpose of developing a special contract should be protected and revealed only to the Commission staff under Section 583.
- A standard definition of "lost contribution to margin" should be developed in order to avoid any confusion over the use of the term and provide a common basis for the evaluation of EADs.
- The analysis of what benefits accrue to other customers as a result of making additional sales should include a determination of the net revenue contribution associated with the sales at the contract rate.
- There should be a provision that more than one "knowledgeable person" may participate in workshops.

PACIFIC BELL (PacBell) strongly supports adoption of an EAD procedure for telecommunication utilities but recommends that it be optional for local exchange carriers (LECs).

PacBell recommends expansion of the EAD procedure to LEC requests for pricing flexibility for any existing or proposed service, for tariff restructuring of any service, and for approval of special contracts.

PacBell recommends that service requirements under the EAD should parallel those for advice letter filings if the application does not contain a request for a rate increase other than one ordered by a previous Commission decision. If a rate increase is involved, then notice should be given as required by Public Utilities (PU) Code § 454 and Rule 24 of the Commission's rules. If the EAD is a request to approve an increase ordered in a previous decision, a special contract, a rate decrease, or the restructuring of a tariff not resulting in an overall increase, than the EAD should specify that a Rule 24 notice is not necessary. As an alternative, consideration should be given to circumstances where all or certain of the notice and service requirements could be waived or substituted with other adequate means of notice to ratepayers.

PacBell also recommends a modification to the 5-day response to written data requests to clarify that the 5 days starts from the receipt of the request. And it makes some recommendations concerning the protection of proprietary information furnished on request of the Commission staff and subject to General Order 66-C.

GTE CALIFORNIA INCORPORATED (GTE) supports integration of telecommunication companies into the EAD but recommends that the restriction set out in D.88-09-059, that is, the EAD would be applicable only to intraLATA high capacity digital private line services, should be deleted and the procedure made applicable to all telecommunication services.

ASSEMBLYWOMAN GWEN MOORE opposes PacBell's recommendations.

DRA opposes PacBell's and GTE's recommendations. DRA supports the EAD procedure for applications by telecommunication utilities which result in no change to the billing of any ratepayer. It believes the changes recommended by PacBell and GTE (1) should be considered in I.87-11-033 and, (2) would violate the Section 454 and Rule 24 customer notification requirements.

DRA also offers comments on the gas and electric side of the EAD proposal.

- The Commission should clarify that allowing an EAD contract to go into effect does not mean it has been found reasonable.
- Some refinements of the process are needed to insure that the Commission is fully informed.
- Edison's proposal for confidential treatment of certain customer data is not complete and will lead to problems.

We have considered all comments and replies to comments on the draft procedure sent out on October 5, 1988 and find and conclude that the draft should be adopted with the following changes:

- The data request response time is extended to 10 days with the further provision that by agreement among the parties it may be extended beyond 10 days.
- LEC filings shall be pursuant to the provisions of D.88-09-059 until further order of the Commission in I.87-11-033.
- The notice requirements of PU Code § 454 and Rule 24 of the Commission's Rules shall apply to all rate changes except those specifically excepted in PU Code § 454.
- Access by parties to claimed proprietary information shall be handled by the Administrative Law Judge in the same manner as for other Commission proceedings.
- Utilities may have more than one knowledgeable person present at workshops.

Changes to the October 5, 1988 draft consistent with the above have been made in Appendix A.

Therefore IT IS RESOLVED that:

1. The revised Expedited Application Docket set out in Appendix A is established on an experimental basis for one year from the date of this order.

2. The Executive Director shall serve a copy of this resolution and the appendix on all gas, electric, and

telecommunication utilities in California and all interested parties in R.84-12-028.

This resolution is effective today.

I certify that this resolution was adopted by the Public Utilities Commission at its regular meeting on APR 12 1989.
The following Commissioners approving it:

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. OHANIAN
Commissioners

Commissioner Frederick R. Duda being necessarily absent, did not participate.

Commissioner Patricia M. Eckert present but not participating.


Executive Director

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EXPEDITED APPLICATION DOCKET

This docket is established on an experimental basis for a period of one year and is limited to requests for approval of:

1. Special service contracts offered expressly to:
 - a. Prevent a customer from bypassing a utility's gas and/or electric system or from substantially reducing its requirements by fuel switching, or
 - b. Allow a utility to make additional electric sales that would not be made at existing tariff rates, or
2. Pricing flexibility for high speed digital private line services and restructuring of tariff schedules for centrex and high speed digital services of telecommunications local exchange carriers (LECs) filed pursuant to Decision 88-09-059.

An application, titled Expedited Application Docket (EAD), will be filed in original and 12 copies with the Commission's Docket Office. Each application will receive a separate number, preceded by the prefix "EAD".

The application shall comply with Rules 2 through 8, 15, and 16 of the Rules of Practice and Procedure (e.g., signature, verification, format, etc.), the requirements of Public Utilities (PU) Code § 454 and Commission Rule 24 if applicable, and, in addition, shall include the following, as applicable:

1. Energy utilities:
 - a. An allegation that it is for a contract rate with an individual customer.
 - b. An affidavit or verified statement from the customer either that it will commit to leave the utility system at a given date or substantially reduce its requirements unless the contract is approved, or that the contract rate will allow the utility to make additional sales that would not be made at existing tariff rates.

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- c. A written supporting explanation prepared by the utility or on its behalf to justify and explain the relief requested. The supporting material shall be in the nature of testimony but shall be in the form of a declaration under the penalty of perjury. The explanation must demonstrate that the deviation from existing tariffs or rates is necessary to retain the customer(s) on the utility system either as a sales or transportation customer(s), to keep the customer from substantially reducing requirements by fuel switching, or to allow the utility to make additional sales. It must also include a statement quantifying any lost contribution to margin and where that lost contribution is made up. An analysis of benefits to other ratepayers of retaining the customer or making additional sales must be provided. The utility may include an analysis of any detriments to other ratepayers should the customer leave the system or substantially reduce requirements.
- d. Any contracts for service under the new rates or terms and conditions must be attached to the application.
- e. A statement that work papers are available on request and have been provided to the Commission staff. (See service requirement below.)

2. LECs:

- a. Proposed tariff schedules.
- b. If an LEC proposes changes to tariff schedules for its high speed digital services, it shall include a comparison of rates for private line and special access services and a discussion of any perceived tariff shopping problems.

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- c. If an LEC requests pricing flexibility for high speed digital private line services, the application shall contain the cap, the initial rates and charges, and, unless confidentiality is requested and justified before the Administrative Law Judge (ALJ), the floor rates.
- d. Cost support and a statement that work papers are available upon request. If the LEC makes a claim of confidentiality, it justify that status before the ALJ.

Copies of the application shall be served separately on the Commission Advisory and Compliance Division, Division of Ratepayer Advocates, and Legal Division and shall contain copies of the work papers. Copies of the application shall also be served (1) for energy utilities, on all parties to the utility's last general rate case and most recent energy offset proceeding, or (2) for LECs, on all parties in 1.87-11-033. Copies of the application shall be served on anyone requesting such service.

Notice of the application will appear on the Commission's Daily Calendar, and a workshop will automatically be set and noticed for the first Monday (electric), Tuesday (telecommunications), or Wednesday (gas) not less than 27 days after filing, or as soon thereafter as possible if this requirement would schedule more than one workshop for applications made in an EAD docket on the same day.

The application will be assigned to an ALJ who will act as workshop moderator and to a Commissioner.

Protests or comments may be filed not later than 20 days after the application is filed. Protests must request the opportunity to question the utility about the application and must set out disputed issues of fact to be explored at the workshop. For protests that request evidentiary hearings, good cause for the hearing must be shown.

All other responsive pleadings (e.g., answers to protests, requests for further discovery, etc.) may be made either in writing before the workshop or orally at the workshop and if necessary, argued at that time. The utility shall respond, within 10 working days of their receipt, to either written or oral data requests by the Commission staff and to written data requests by other parties. Parties may request copies of all data requests and

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responses. The 10-day requirement may be extended by agreement of the parties.

Access by parties to information furnished to the Commission under the provisions of PU Code § 583 and General Order 66-C shall be handled by the ALJ in the same manner as for other Commission proceedings.

The utility shall produce knowledgeable persons to explain the application and answer questions about it at the workshop. The workshop moderator may accept written or oral statements by workshop participants. The moderator may also require the applicant to file any additional documentation or explanation necessary for the Commission to reach an informed opinion on the matter at issue.

Workshops will ordinarily be limited to a single day, and will be reported. Facts disclosed in the workshop are privileged. Except by agreement, they shall not be used against participating parties, before the Commission or elsewhere, unless proved by evidence other than that employed in disclosing such facts.

If there are no protests to the application, the workshop will be cancelled and an ex parte order will be prepared and placed on the Commission's agenda.

At the close of the workshop, the moderator will confer immediately with the assigned Commissioner if it appears that the matter is sufficiently controversial to warrant the regular hearing process.

If the matter is ready for decision at the close of the workshop, it will be placed on the next public agenda and a proposed decision will be prepared. Since no hearing has been held, no witnesses sworn, and no testimony taken, the proposed decision will not be circulated to workshop participants for comment prior to Commission action.

Rule 76.51 et seq. respecting compensation shall apply to the EAD.