

ALJ/BTC/gab

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-166
Administrative Law Judge Division
June 8, 1995

R E S O L U T I O N

Establishes Interim Procedures to Receive Corrections
of Errors and Omissions in Agenda Item Documents

Assembly Bill 2850, enacted last year, added § 311.5 to the Public Utilities Code. Section 311.5 requires the Commission to make "agenda item documents" publicly available prior to the meeting at which the Commission will vote on the agenda items. In Resolution (Res.) ALJ-165 (December 21, 1994), we adopted interim procedures to implement the requirements of § 311.5, and today, by separate decision, we are proposing formal rules on the availability of agenda item documents.

Both Res. ALJ-165 and our proposed rules state that any agenda item documents that are ready will be mailed with the Commission's agenda for a particular meeting and made publicly available for copying shortly thereafter. The agenda is usually mailed ten to twelve days before the date of the Commission meeting. Agenda item documents that are not ready on the date the agenda is distributed are made available the morning of the Commission meeting.

Our experience under the interim procedures of Res. ALJ-165 has demonstrated that parties who receive agenda item documents ten days before the Commission meeting often wish to bring some aspect of the documents to the Commission's attention. The subject of these expressions range from reargument of the party's position in the proceeding to correction of minor typographical errors, and these communications have taken the form of letters, motions to amend pleadings referred to in the document, and ex parte communications with decisionmakers, among others.

In this resolution we adopt interim procedures to allow reviewers of decisions to bring to the Commission's attention only obvious, inadvertent errors and omissions in agenda item documents.

We choose not to provide a procedural vehicle for substantive comment on agenda item documents for two primary reasons. First, the short period of time between the mailing of the agenda item document and the Commission meeting at which it will be considered is insufficient for a fair consideration of

substantive concerns. Ten days is simply too short for the filing of comments, the filing of replies to those comments, and deliberation on the points raised in those filings. To allow comments but not replies would be fundamentally unfair and would expose us to the risk of making decisions based on misunderstanding and innuendo. To accept comments and replies but to leave no time for deliberation on their contents would be unwise and would predictably lead to regrettable decisions. Second, the documents that are at issue here are usually not controversial; other procedures exist or are being proposed for commenting on the substance of decisions in proceedings that have gone to hearing and are therefore subject to the provisions of § 311 and Rules 77.1 through 77.5 of our Rules of Practice and Procedure (Rules).

As an interim procedure, reviewers who find obvious, inadvertent errors and omissions in agenda item documents, prior to the Commission meeting at which the document will be considered, may bring them to the Commission's attention by means of a letter to the Chief Administrative Law Judge. Since merely noting the existence of obvious errors and omissions is not substantive (although the subject of the errors or omissions may be substantive), such letters are not ex parte communications under the definitions of Rule 1.1. Moreover, for similar reasons, such letters need not be served on other parties. On the other hand, if a party strays beyond the limits we set and attempts a substantive communication under the procedure we establish today, the rules requiring reporting of ex parte communications may apply. If parties have substantive concerns about an agenda item document, they may raise these concerns after the Commission has issued its decision by filing petitions to modify or applications for rehearing, as appropriate. (We have recently adopted rules to broaden the scope of petitions to modify.)

This procedure is designated as interim because we wish to get some experience using it. We expect that there will be refinements of this procedure as we gain that experience. When we are eventually satisfied that our procedure for reacting to agenda item documents works reasonably well, we will formally adopt rules describing that procedure.

IT IS RESOLVED that:

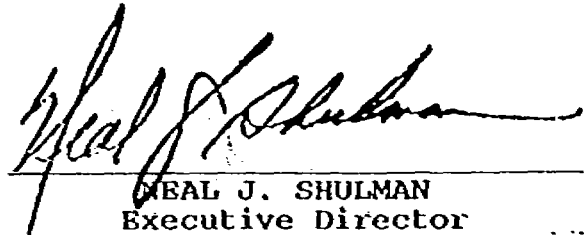
1. Persons who discover obvious, inadvertent errors or omissions in an agenda item document (see Public Utilities Code § 311.5) prior to the Commission meeting at which the document is voted on may inform the Chief Administrative Law Judge by letter of such errors or omissions. The letter should not be filed with the Docket Office, and need not be served on the parties to the proceeding to which the document relates.

2. The interim procedure described in Paragraph 1 may not be used to communicate substantive concerns.

3. The Executive Director shall serve a copy of this resolution on all Commission-regulated electric, gas, water, heat, and telephone companies and on parties on the service list of Rulemaking 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 June 8, 1995. The following Commissioners approved it:



NEAL J. SHULMAN
Executive Director

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