28 pgs

ALJ/KOT/bwg **

Mailed

JAN 14 1997

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-170
Administrative Law Judge Division
January 13, 1997

R E S O L U T I O N

RESOLUTION ALJ-170. Establishes experimental rules and procedures to gain experience, where practicable, with management of Commission proceedings under requirements of SB 960.

INTRODUCTION

Senate Bill (SB) 960 (Leonard, ch. 96-0856) contains many requirements regarding how the Commission manages its proceedings. These requirements become effective on January 1, 1998. There are several reasons why the Commission, before the effective date, wants experience operating under these requirements.

Most important, the Commission wants to improve the efficiency and accountability of its decisionmaking process, consistent with the legislative intent expressed in Section 1 of SB 960. This resolution takes specific steps to further the Legislative intent that Commissioners be integrally and directly involved in supervising formal proceedings, and that Commissioners increase their attendance at hearings and other public events during proceedings. To the extent it has the authority to work toward such improvements before the effective date of SB 960, the Commission is anxious to do so.

Further, the Commission is directed under the statute to make certain reports to the Legislature before the effective date of SB 960. For example, under Section 11, the Commission must make recommendations by March 31, 1997, regarding categorization of its proceedings, and must also report its procedures for dealing with those proceedings that may fit into multiple categories or that may change in nature over the course of hearings. Actual experience with a categorization process and the impacts of categorization choices would enhance the Commission's ability to make such recommendations and develop and refine such procedures.

Moreover, the Commission understands that the Legislature intends the Commission to conduct an experimental implementation of the changes required under SB 960. A period of fine-tuning is appropriate to ensure, as far as possible, that a clear, consistent, and effective set of rules and procedures is ready for final adoption by the Commission as of the date that the requirements of SB 960 become mandatory.

Commission staff held a public workshop on November 25, 1996, to present and discuss a set of draft experimental rules. A revised draft was presented and discussed at a second workshop held on December 6. The draft was further revised and published on December 23 for additional comment. The experimental rules appended to this resolution build on these drafts but also incorporate many further revisions, taking into consideration both the feedback at the workshops and written comments filed in the Commission's procedural rulemaking docket (R.84-12-028).

The Commission is now ready to begin an experiment on or shortly after January 13, 1997, in which the rules appended to this resolution will apply to a representative sample of proceedings. The sample will be selected from identified candidate proceedings to reflect the range of proceedings before the Commission and to gain experience, as far as practicable, with all of the new procedures contemplated by SB 960. The sample will be limited in order to minimize burden and inconvenience to stakeholders. The selection process will also include an opportunity for all those concerned with a particular proceeding to object to inclusion of that proceeding in the experiment.

Also, the Chief Administrative Law Judge is directed to prepare the appended rules for transmittal to the Office of Administrative Law for publication in the California Regulatory Notice Register. This will entail recasting the experimental rules as "final" rules and also proposing changes to the Commission's existing procedural rules. The goal is internal consistency in a single set of procedural rules that ultimately will apply to all Commission proceedings. Such publication will start the notice-and-comment process leading to adoption into the Commission's Rules of Practice and Procedure (codified at Title 20 of the California Code of Regulations) of rules implementing SB 960 requirements. The final rules will include modifications to the experimental rules reflecting our experience during the experiment.

Finally, the Chief Administrative Law Judge and the General Counsel are directed to develop practice materials designed to assist decisionmakers and practitioners involved in this experiment. These materials will include helpful exemplars (e.g., for scoping memos), and should also supplement the annotations in the experimental rules that cross-reference existing statutes and Rules of Practice and Procedure.

MAJOR ELEMENTS OF THE EXPERIMENT

Creation of a Representative Sample

The experimental rules for SB 960 implementation are not intended as rules of general applicability but rather as a means to gain experience for eventual implementation of such rules, and also to gather information for reports to the Legislature, the first of which is due March 31, 1997. A reasonable sample for these purposes should be fairly representative of the breadth and kinds of proceedings before the Commission. There is no magic number for the size of such a sample. We believe it need not exceed 100 proceedings and could be as small as 50. Such a sample would constitute less than 15% of the total proceedings typically active at the Commission at any given time.

The sample will consist of a mix of proceedings, including some proceedings that were filed before January 1, 1997, but have not yet gone to hearings. Our reasons for inclusion of some previously filed proceedings will be discussed later (see "Scope of the Experiment" below), but we note here that both the selection process and other factors (such as applying only certain sections of the experimental rules to previously filed proceedings included in the experiment) should minimize any impact caused by their inclusion in the sample.

The major sources for candidate proceedings will be utility applications and proceedings initiated by the Commission. There will also be an opportunity for complainants to offer to participate. The process for identifying candidate proceedings is as follows.

Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, Southern California Gas Company, Pacific Bell, and GTE California Inc. are each requested to identify 6-8 of their respective applications for possible inclusion in the sample. Of these applications, at least half would be "previously filed," i.e., filed before January 1, 1997, but reasonably anticipated to start hearings in the first quarter of 1997. The remainder would be "new" applications, i.e., planned for filing early in 1997 (ideally, in January). An identification of an application as a candidate proceeding should include the applicant's recommended categorization for the proceeding.

We also ask the industry associations of California public water utilities and long-distance companies to seek voluntary participation among their membership. About 2-4 applications from the members of each association, allocated between previously filed and new applications as above, would be adequate. Finally, any utility--large or small--could identify one of its applications for possible inclusion in the sample. As above, the identification of an application as a candidate proceeding should include the applicant's recommended categorization. These sources, cumulatively, should provide some 40-50 candidate proceedings for the sample.

We anticipate about an equal number of candidate proceedings will come from proceedings initiated by the Commission itself, e.g., through an order to show cause (OSC), or order instituting rulemaking or investigation (OIR or OII, respectively). Each Commissioner will identify 3-4 previously-filed proceedings from among those assigned to the Commissioner. Again, our intent is that such proceedings be drawn from those not yet heard but considered likely to go to hearing in the first quarter of 1997, and that the Commissioner will recommend a categorization concurrent with identifying the candidate proceeding.

Additional candidate proceedings needed to make up a representative sample would be identified principally from new proceedings initiated by the Commission. Also, in new complaint cases, the complainant would be offered the opportunity to identify that case as a candidate proceeding.

We stress that the identification process described above results only in a list of candidate proceedings for the sample. Parties will have an opportunity to provide comments and objections to (1) inclusion of a candidate proceeding in the sample, and/or (2) the proposed categorization for the proceeding.

Here is how the process would work, from identification of a candidate proceeding to the final decision to include or exclude the proceeding for purposes of the experiment:

> Previously Filed Applications. The identifying utility files and serves on all parties to the candidate proceeding its identification of the proceeding as candidate for the experiment and its proposed categorization. Parties have 15 days to file and serve comments or objections. The assigned Commissioner issues a ruling on whether to include the candidate proceeding in the sample and, if so, the appropriate categorization. A ruling that includes the candidate proceeding in the sample is appealable to the Commission under the procedures in Rules 4.b and 4.c.
>
> Previously Filed OSCs, OIIs, OIRs. The assigned Commissioner issues a ruling identifying a candidate proceeding and proposing a categorization. The ruling is appealable to the Commission under the procedures in Rules 4.b and 4.c.
>
> New Applications; New Complaints. The pleading initiating the proceeding identifies it as a candidate proceeding and proposes a categorization. The Commission preliminarily categorizes the proceeding and assigns it to a Commissioner and Administrative Law Judge. A party's first responsive pleading (e.g., a

protest or answer) contains any comments or objections regarding inclusion in the sample and categorization. Where appropriate, a prehearing conference (PHC) is held. The assigned Commissioner issues a ruling (after the PHC if one is held) on inclusion of the candidate proceeding and categorization. A ruling that includes the candidate proceeding is appealable to the Commission under the procedures in Rules 4.b and 4.c.

New OSCs, OIRs, OIIs. The Commission order initiating the proceeding assigns it to a Commissioner and Administrative Law Judge, and indicates whether it is identified as a candidate proceeding and if so, the preliminary categorization. The first responsive pleading of each party contains any comments or objections regarding inclusion in the sample and categorization. Where appropriate, a PHC is held. The assigned Commissioner issues a ruling (after the PHC if one is held) on inclusion of the candidate proceeding and categorization. A ruling that includes the candidate proceeding is appealable to the Commission under the procedures in Rule 4.b and 4.c.

For all candidate proceedings, an assigned Commissioner's ruling or Commission decision excluding the proceeding from the experiment is not appealable. The Commission would handle the proceeding under the otherwise applicable Commission rules and procedures.

The process we describe above will enable us to sift through the candidate proceedings and decide whether to include or exclude a given candidate proceeding based on considerations specific to that proceeding. Since the identification process should produce about 100 candidate proceedings, we can exclude a substantial number and still have a reasonable sample for the experiment.

Issues in Creating a Representative Sample

Some workshop participants assert that the Commission can conduct this experiment only by either (1) adopting the experimental rules into our Rules of Practice and Procedure in the California Code of Regulations, or (2) receiving the consent of all parties to a candidate proceeding for that proceeding's inclusion in the experiment. We disagree.

We emphasize that we will go through the entire process of adopting into the California Code of Regulations our rules implementing SB 960 at such time as it is appropriate to adopt and put into effect rules of general applicability. Indeed, we are starting the adoption process concurrently with the experiment, and we

anticipate that the rules eventually adopted will draw heavily on the experimental rules, with such changes and refinements as experience should teach us.

The Commission has ample authority, however, to apply rules in addition to or in lieu of the Rules of Practice and Procedure where we find a need to do so for a particular proceeding or proceedings. A notable proceeding where this occurred was the reasonableness review for the Diablo Canyon nuclear power plants, where we applied settlement rules that existed as a rulemaking proposal but had not yet been adopted into the Rules of Practice and Procedure. Our decision in that proceeding was sustained on appeal to the California Supreme Court. Our ability to apply, in a specific proceeding, a set of rules still under development follows logically from the Commission's constitutional and statutory authority.

Section 2 of Article XII of the California Constitution says in relevant part, "Subject to statute and due process, the commission may establish its own procedures." Consistent with this constitutional provision, Public Utilities Code §§ 701 and 1701(a) grant the Commission broad authority to conduct its proceedings and adopt such rules as are necessary and appropriate in the exercise of the Commission's power and jurisdiction. Nowhere does the Constitution or the Public Utilities Code prevent the Commission from applying rules on a limited basis where the Commission has found a compelling need to do so. That such need occasionally will arise is acknowledged in Rule 87 of the Commission's Rules of Practice and Procedure, which says in part that "In special cases and for good cause shown, the Commission may permit deviations from the rules."

The circumstances of SB 960 and the experimental rules exemplify such a need. We intend to make every effort to satisfy both the letter and the spirit of SB 960, fully recognizing that the statute makes sweeping changes in many areas of Commission practice. Our understanding is that the Legislature wants us to conduct an experiment, and prudence dictates that we do so. The experiment will enable us to spot and fix any major problems while we are dealing with only a small fraction of our caseload. Failure to conduct an experiment now will mean, in essence that the real experiment will start on January 1, 1998, when the requirements of SB 960 become mandatory for all 700-750 proceedings then active before the Commission.

Unlike the Commission's Rules of Practice and Procedure, which are intended to apply generally to the Commission's proceedings, the experimental rules will apply only to individually selected proceedings, after a process in which we solicit and carefully consider any objections that parties to a candidate proceeding may have to its inclusion in the experiment. It is possible that a substantial number of candidate proceedings ultimately will be excluded, based on an appropriate showing of unsuitability.

We will not treat lightly any party's objections to inclusion of a particular candidate proceeding, and we urge the cooperation of all stakeholders in making this experiment meaningful. However, we cannot commit to a criterion whereby a candidate proceeding would be excluded wherever any party objects. Commission procedures, of necessity, do not require for their effectiveness the approval of all parties to Commission proceedings. Moreover, requiring all-party consent here would result in a clearly unrepresentative sample, since the only proceedings left in the experiment would be those to which the application of the experimental rules is wholly uncontroversial. No meaningful results would be forthcoming from such a limited experiment.

Scope of the Experiment

Some workshop participants note that for the report to the Legislature due on March 31, 1997, SB 960 (Section 11) expressly seeks our recommendations on categorization of proceedings and on ways to deal with proceedings that (1) may fit into multiple categories, or (2) may change nature after hearings commence. These participants suggest limiting the experiment to the categorization issues, thus ignoring SB 960's other procedural reforms. We think that attempting to limit the experiment in this way would leave us without experience on the bulk of the reforms that become mandatory on January 1, 1998, and would not even produce meaningful data regarding categorization issues.

Most of SB 960's procedural reforms are integrally related to or dependent on how a proceeding is categorized. To give informed recommendations to the Legislature, we need to understand and experience the impact of our categorization choices throughout the proceedings that we categorize. This is why we are trying to implement, as part of the experiment, all of SB 960's procedural reforms to the extent practicable. Further, we need to apply at least some of the reforms not only to new proceedings but also to a sample of proceedings filed before January 1, 1997, if we are to gain experience with many of the reforms (e.g., those pertaining to proposed decisions and adjudicatory procedure) in time for that experience to be reflected in our recommendations to the Legislature.

Theory on the precise boundaries between adjudicatory, ratesetting, and quasi-legislative procedure needs to be put to a realistic test. But if we conduct an experiment in which the choice of category has no practical consequences, the experiment will have been an academic exercise. Moreover, no one will have an incentive to carefully consider categorization if the choice of category has no practical consequences. A limited experiment is unlikely to yield meaningful information on, e.g., our process for categorizing and for allowing appeals on categorization. Thus, our experimental design calls for implementing the SB 960 procedural reforms as broadly as practicable within the experiment.

Duration of the Experiment

The process of identifying candidate proceedings and deciding which to include should begin immediately, so that the sample will begin to take shape in January 1997. We hope to have a reasonable sample constituted before the end of February. When we are satisfied that we have a representative sample, we will close the experiment to further candidates.

In general, any proceeding included in the sample will be handled under the experimental rules to and including the final order in the proceeding; however, if final rules implementing SB 960 are adopted, we expect that they would supersede the experimental rules from the effective date of the final rules. Finally, we reserve the authority, where the circumstances of a proceeding so dictate, to modify the experimental rules for purposes of that proceeding or to remove the proceeding from the experiment.

Even under the above timetable, we will have only a few weeks of practical experience under the experimental rules on which to base our March 31 report to the Legislature. At present, we contemplate submitting a supplement to the March 31 report in order to augment the data and confirm or revise the tentative recommendations provided in the report.

Categorization

SB 960 defines three categories of Commission proceedings: adjudicatory, ratesetting, and quasi-legislative proceedings. For each category, SB 960 contains many procedural directives. Much discussion at the workshops concerned how to categorize proceedings that do not fall clearly within any of the defined categories, or that might fall into more than one category.

Workshop participants advocated at least four different approaches: (1) choose the most appropriate of the defined categories using a case-by-case analysis; (2) create more categories; (3) treat any problematic proceeding as ratesetting unless one of the other categories seems more appropriate; and (4) treat any problematic proceeding as quasi-legislative unless one of the other categories seems more appropriate.

We think the first two approaches are inappropriate for an experiment. Experience may teach us that case-by-case analysis or creating additional categories is feasible and desirable, but at this early stage we prefer to try to live with the categories the Legislature has given us rather than compounding the complexity of the categorization task without any clear benefit to doing so. However, with respect to a proceeding that may fall into more than one category, our experimental rule will allow parties to recommend picking the most suitable category or dividing the subject matter of the proceeding into different phases or one or more new proceedings.

The choice between the third and fourth approaches may well prove to be a tempest in a teapot. In essence, they require only a preliminary categorization that would be either changed or confirmed, based on our review of comments and objections. The preliminary categorization, if changed, likely would have had only minimal impact on the handling of the proceeding.

For the experiment, a proceeding that does not clearly fit into any of SB 960's defined categories will be conducted under the rules applicable to the ratesetting category unless and until we determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding. Ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, we believe that ratesetting procedures are <u>in general</u> preferable for those proceedings as well.

<u>Ex Parte Communications</u>

In this experiment, we will implement as much of SB 960 as possible relative to the changes it makes in our ex parte communications procedure. Thus, the experimental rules reflect the statute's prohibitions and restrictions on ex parte communications in the defined categories of proceedings.

For purposes of our experiment, we will permit ex parte communications on categorization issues, but require that they be reported (Rule 8.b).

We note that, separately, we have issued for comment several proposals for changes to our current ex parte rules. With the exception of two provisions which are noncontroversial, involving the number of copies of ex parte notices that must be filed with our Docket Office and a requirement that any audiovisual materials used in a communication be made available, we do not intend to include these proposed changes in our experiment. We believe that the experiment should be limited to changes effectuated by SB 960.

Some commenters argue that the language in SB 960 stating that "ex parte communications shall be permitted [in quasi-legislative proceedings] without any restrictions" means that such communications need not be reported. Other commenters maintain that reporting in itself is not a restriction. We will not require reporting of ex parte communications in quasi-legislative proceedings.

Finally, the experiment will not include implementation of certain provisions of SB 960 that are interrelated with changes in the Bagley-Keene Open Meeting Act. These changes do not become

effective until January 1, 1998, so implementation before that date would not be appropriate.

Automatic Reassignment of Administrative Law Judges

SB 960 provides for two classes of "peremptory" challenges of the assignment of Administrative Law Judge. First, in adjudicatory and ratesetting proceedings, there are "unlimited" peremptory challenges whenever the assigned Administrative Law Judge (1) within the previous 12 months, has served 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. Second, in any adjudicatory proceeding, SB 960 provides a peremptory challenge for all parties but limited to one-time-per-party in any given proceeding.

Our experimental rule implements these provisions by authorizing a petition setting forth the basis for the peremptory challenge. The form of petition is adapted from Code of Civil Procedure Section 170.6 and the automatic reassignment procedure at the Workers' Compensation Appeals Board. The petitioner is not required to show, e.g., actual prejudice or financial interest on the part of the assigned Administrative Law Judge, and reassignment is automatic unless the petitioner in an adjudicatory proceeding is violating the one-time-only limitation.

Commenters disagree on whether the experimental rule should provide one peremptory challenge per party per proceeding for ratesetting as well as for adjudicatory proceedings. Although the one-time-only peremptory challenge appears only in Section 8 of SB 960, dealing with adjudicatory proceedings, we will allow for purposes of the experiment a modified version of that peremptory in ratesetting proceedings. The modification is intended to ensure that finality regarding the assignment of Administrative Law Judge is achieved early in the proceeding.

Commissioner Presence

SB 960 contains various directives to the Commission regarding the presence of Commissioners during proceedings. For example, in a ratesetting proceeding, the assigned Commissioner must be present at closing argument, and any party to the proceeding may request the assigned Commissioner's presence at a formal hearing or specific portion of a formal hearing. Also, in quasi-legislative proceedings, SB 960 requires the presence of the assigned Commissioner for all formal hearings. Our experimental rules implement these directives. In addition, these rules further the goal that Commissioners are directly involved in the management of their proceedings, and that they increase their attendance at formal hearings and other public events during proceedings.

In defining "present" or "presence," we must balance competing factors. Commissioners have many and varied decisionmaking responsibilities, including voting every two weeks on numerous matters in which they did not serve as "assigned Commissioner." These responsibilities encompass all of the Commission's business. Thus, Commissioners may be required to leave the hearing room on occasion to meet competing demands for their attention to Commission business.

The experimental rule strikes a balance between these responsibilities and the desire of the Legislature to foster more direct Commissioner involvement in the hearing process. The rule requires "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." It thus recognizes that the assigned Commissioner attending a hearing may not be continuously in the hearing room, but must spend sufficient time there to be familiar with the substantive record. For example, the assigned Commissioner need not be present for procedural arguments (such as some discovery disputes or arguments on procedural motions; and other "housekeeping" matters) which do not implicate the substantive record. The experimental rule also allows Commissioner attendance from a remote location, e.g., by teleconference, to the extent permitted by law.

SB 960 requires that the number of days of Commissioner presence be tracked and presented in the proposed decision in proceedings subject to Sections 1701.3 and 1701.4. Furthermore, SB 960 requires an annual report to the Legislature on the number of days that Commissioners presided in hearings. To that end, the Chief Administrative Law Judge will be responsible for tracking this Commissioner involvement, including Commissioner attendance at oral argument.

Decision of Presiding Officer in Adjudicatory Proceeding

Until January 1, 1998, the Commission lacks statutory authority for the presiding officer's decision in an adjudicatory proceeding to become final without further Commission action. Therefore, during this experimental period the presiding officer's decision in adjudicatory proceedings in which there is neither an appeal nor request for review will be placed on the Commission's Consent Agenda for approval. This procedure will be unnecessary after January 1, 1998, when the provisions of SB 960 become operative.

THEREFORE, IT IS ORDERED that the rules contained in the appendix to this resolution are adopted on an experimental basis effective on January 13, 1997.

Rule 3.3 Content

A request for arbitration must contain:

a. A statement of all unresolved issues.

b. A description of the position of all parties to the negotiation on the unresolved issues.

c. A description of all issues discussed and resolved by the parties.

d. Direct testimony supporting the requester's position.

e. Documentation that the request complies with the time requirements of the 1996 Act.

Rule 3.4 Appointment of Arbitrator

Upon receipt of a request for arbitration, the Commission's President or a designee in consultation with the Chief Administrative Law Judge, shall appoint an Arbitrator to facilitate resolution of the issues raised by the request.

Rule 3.5 Discovery

Discovery should be completed before a request for arbitration is filed. For good cause, the Arbitrator or Administrative Law Judge assigned to Law and Motion may compel response to a data request; in such cases, the response normally will be required in three working days or less.

Rule 3. 6 Opportunity to Respond

Pursuant to Subsection 252(b)(3), any party to a negotiation which did not make the request for arbitration ("respondent") may file a response to the request with the Commission within 25 days of the request for arbitration. The response shall address each issue listed in the request and describe the respondent's position on these issues. The response shall also present any additional issues for which respondent seeks resolution and provide such additional information and evidence necessary for the Commission's review. Finally, the response should contain any direct testimony supporting the respondent's position.

On the same day that it files its response before the Commission, the respondent must serve a copy of the Response and all supporting documentation on any other party to the negotiation.

Rule 3.7 Initial Arbitration Meeting

An Arbitrator may call an initial meeting for the purpose of setting a schedule, simplifying issues, or resolving the scope and timing of discovery.

Rule 3.8 Arbitration Hearing

Within 10 days after the filing of a response to the request for arbitration, the arbitration hearing shall begin. The conduct of the hearing shall be noticed on the Commission calendar and notice shall be provided to all parties on the service list.

Rule 3.9 Limitation of Issues

Pursuant to Subsection 252(b)(4)(A), the Arbitrator shall keep the arbitration limited to the resolution of issues raised by the negotiating parties. However, in resolving these issues, the Arbitrator shall ensure that such resolution meets the requirements of the 1996 Act. In resolving the issues raised, the Arbitrator may take into account any issues already resolved between the parties.

Rule 3.10 Arbitrator's Reliance on Experts

During the arbitration, the Arbitrator may rely on experts retained by, or on the Staff of, the Commission. Such expert(s) shall assist the Arbitrator prior to and during the hearing process and shall also assist the Arbitrator in reviewing the record for purposes of formulating an arbitrated agreement.

Rule 3.11 Close of Arbitration

All evidence shall be presented and heard within 10 days of the hearing's commencement, unless the Arbitrator determines otherwise.

Rule 3.12 Expedited Stenographic Record

An expedited stenographic record of each arbitration hearing shall be made. The cost of preparation of the expedited transcript shall be borne in equal shares by the parties.

Rule 3.13 Filing of Post-Hearing Briefs and Recommended Arbitrated Agreements

Each party to the arbitration may file a post-hearing brief with an attached recommended arbitrated agreement. Such documents shall be filed within 10 days of the filing of the expedited hearing transcript unless the Arbitrator rules otherwise.
Post-hearing briefs shall summarize relevant portions of the recommended arbitrated agreement and shall present a party's argument in support of adopting its recommended arbitrated agreement with all supporting evidence and legal authorities cited therein. The length of post-hearing briefs may be limited by the Arbitrator and shall otherwise comply with the Commission's Rules of Practice and Procedure. Each party may file a

reply brief limited to rebutting arguments made in post-hearing briefs; any reply brief must be filed within 5 days after filing of the post-hearing brief and shall not exceed 20 pages.

Rule 3.14 Authority of the Arbitrator

The Arbitrator shall have the same authority to conduct the arbitration hearing as an Administrative Law Judge has in conducting hearings under the Rules of Practice and Procedure. The Arbitrator shall have the authority to change the arbitration schedule contained in these rules as long as the revised schedule adheres to the deadlines contained in the 1996 Act.

Rule 3.15 Participation in the Arbitration Hearings

Participation in the arbitration process is strictly limited to the parties that were negotiating an agreement pursuant to Section 251 and 252.

Rule 3.16 Arbitration Open to the Public

Though participation at arbitration hearings is strictly limited to the parties that were negotiating the agreements being arbitrated, the general public is permitted to attend arbitration hearings unless circumstances dictate that a hearing, or portion thereof, be conducted in closed session. Any party to an arbitration seeking a closed session must make a written request to the Arbitrator describing the circumstances compelling a closed session at the same time that party files its request for arbitration or its response to a request for arbitration. The Arbitrator shall consult with the assigned Commissioner and rule on such request before hearings begin.

Rule 3.17 Filing of Arbitrator's Report

Within 20 days following the submission (Rule 77 of the Rules of Practice and Procedure) of the proceedings, the Arbitrator shall adopt and file an Arbitrator's Report. The Arbitrator's Report will include (a) a concise summary of the resolved issues, and (b) a reasoned articulation of the basis for the decision. The arbitrating parties' respective recommended arbitrated agreements shall be attached as exhibits to the Arbitrator's Report.

Rule 4 Applications for Approval of Agreements entered into pursuant to Sections 251 and 252

Rule 4.1 Agreements Reached by Mediation

Rule 4.1.1 Content

Applications for approval of agreements reached by mediation shall contain a copy of the agreement. The agreement shall itemize the charges for interconnection and each service or network element included in the agreement.

Rule 4.1.2 Time for Commission Action

The Commission shall reject or approve the agreement within 90 days of submission of an application for approval. If the Commission fails to act within the specified time then the agreement is deemed approved.

Rule 4.1.3 Comments by Members of the Public

Any member of the public (including the parties to the agreement and competitors) may file comments concerning the mediated agreement within 30 days of the submission of an application for approval. Such comments shall be limited to the standards for rejection provided in Rule 4.1.4.

Rule 4.1.4 Standards for Rejection

The Commission shall reject an agreement (or portion thereof) if it finds that:

a. the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

b. the implementation of the agreement (or portion thereof) is not consistent with the public interest, convenience, and necessity; or

c. the agreement (or portion thereof) violates other requirements of the Commission, including, but not limited to, quality of service standards adopted by the Commission.

Any order rejecting an agreement shall contain written findings as to the deficiencies.

Rule 4.2 Agreements reached by Arbitration

Rule 4.2.1 Filing of Arbitrated Agreement

Within 7 days of the filing of the Arbitrator's Report, the parties shall file the entire agreement for approval.

Rule 4.2.2 Comments by Members of the Public

Any member of the public (including the parties to the agreement) may file comments concerning the Arbitrator's Report and/or the arbitrated agreement within 10 days of the filing of each. The scope of such comments shall be limited to the standards for review provided in Rule 4.2.6.

Rule 4.2.3 Commission Review of Arbitrated Agreement

Within 30 days following filing of the arbitrated agreement, the Commission shall issue a decision approving or rejecting the arbitrated agreement (including those parts

arrived at through negotiations) pursuant to Subsection 252(e) and all its subparts. If the Commission fails to act within the specified time, then the agreement is deemed approved.

Rule 4.2.4 Standards for Review

Pursuant to Subsection 252(3)(2)(B), the Commission may reject arbitrated agreements or portions thereof that do not meet the requirements of Section 251, the FCC's regulations prescribed under Section 251, or the pricing standards set forth in Subsection 252(d). Pursuant to Subsection 252(e)(3), the Commission may also reject agreements or portions thereof which violate other requirements of the Commission, including, but not limited to, quality of service standards adopted by the Commission.

Rule 4.2.5 Written Findings

The Commission's decision approving or rejecting an arbitration agreement shall contain written findings. In the event of rejection, the Commission shall address the deficiencies of the arbitrated agreement in writing and may state what modifications of such agreement would make the agreement acceptable to the Commission.

Rule 4.3 Approval of Agreements reached by Negotiation

Rule 4.3.1 Content

Request for approval of an agreement reached by negotiation shall be filed as an Advice Letter as provided in General Order 96-A and must state that it is a voluntary agreement being filed for approval under Section 252 of the Act. The request for approval of agreements reached by negotiation shall contain a copy of the agreement and a showing that the agreement meets the standards contained in Rule 2.18. The agreement shall itemize the charges for interconnection and each service or network element included in the agreement.

Rule 4.3.2 Comments by Members of the Public

Any member of the public (including the parties to the agreement and competitors) may file a protest concerning the negotiated agreement as provided by General Order 96-A. Such protest shall be limited to the standards for rejection provided in Rule 4.1.4 .

Rule 4.3.3 Time for Commission Action

The Commission shall reject or approve the agreement based on the standards contained in Rule 4.1.4 within 90 days of submission of the Advice Letter. If the Commission fails to act within the specified time then the agreement is deemed approved.

Rule 5 Application for Approval of Statement of Generally Available Terms

Rule 5.1 Time for Filing

A Bell Operating Company may file a statement of generally available terms to comply with Section 251.

Rule 5.2 Comments by Members of the Public

Any member of the public may file comments concerning the statement of generally available terms within 30 days of the submission of the statement for approval. Such comments shall be limited to the standards for review provided in Rule 5.4.

Rule 5.3 Commission Review of Statement of Generally Available Terms

The Commission shall reject the statement of generally available terms within 60 days of its submission or the statement shall go into effect. The Commission may continue to review the statement after it has gone into effect.

Rule 5.4 Standards for Review

The Commission shall reject a statement if it finds that it does not meet the requirements of Section 251, the FCC's regulations prescribed under Section 251, or the pricing standards set forth in Subsection 252(d). Pursuant to Subsection 252(e)(3), the Commission may also reject statements which violate other requirements of the Commission, including, but not limited to, quality of service standards adopted by the Commission.

STATE OF CALIFORNIA
PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

PETE WILSON, Governor

July 18, 1996

To: All parties

During the Commission meeting of July 17, 1996, Commissioner Jessie Knight raised two additional issues on which he would like parties to comment.

These issues are:

1. How can the Commissioners be more involved in this process?
2. How can this process be made more "user-friendly" to the parties involved?

Your comments on these two additional points can be added to those submitted under the attached resolution (ALJ-167) and are due on July 26, 1996.

Lynn T. Carew

LYNN T. CAREW
Chief Administrative Law Judge