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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-171
Administrative Law Judge Division
March 18, 1997

R E S O L U T I O N

RESOLUTION 171. Approves draft of final rules implementing requirements of SB 960; draft to be published in the California Regulatory Notice Register, commencing notice-and-comment process leading to formal adoption and codification of SB 960 rules in the Commission's Rules of Practice and Procedure.

SUMMARY

The appendix to this resolution contains a draft of final rules implementing the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856). SB 960 becomes effective on January 1, 1998; in the draft, the final rules are designated to become effective on the same date.

The draft rules derive from but also modify the "experimental" rules contained in Resolution (Res.) ALJ-170 (adopted January 13, 1997), under which the Commission is gaining experience by applying SB 960's requirements to a selected sample of proceedings. The modifications are necessary in order to (1) convert the experimental rules into rules of general application, and (2) remove overlap, duplication, or inconsistency between the SB 960 rules and the Commission's existing Rules of Practice and Procedure. (These existing rules are codified in Title 20 of the California Code of Regulations; they will be referred to below as the Title 20 rules.) Further modifications may be proposed, depending on comments on the draft as well as the results of the "experiment;" however, the notice-and-comment process should be started as soon as possible to ensure timely implementation.

BACKGROUND

Res. ALJ-170 explains the genesis of the Commission's SB 960 experiment and discusses the major issues in designing the experiment. Res. ALJ-170 also notes the need to start the notice-and-comment process leading to adoption of final rules to implement SB 960. The Commission's stated goal for the finalization process is to achieve "internal consistency in a single set of procedural

rules that ultimately will apply to all Commission proceedings." (Id., page 2.)

The discussion below describes what changes to the experimental rules and to the Title 20 rules are proposed in the draft, and how these changes serve the stated goal. The concluding portion of this resolution describes the next steps the Commission plans in furthering SB 960 and other procedural reform efforts.

DISCUSSION

1. Deletion of Rules on Experimental "Sample" Several experimental rules address the process by which a representative sample of proceedings is identified, categorized, and ultimately included in or excluded from the experiment. These rules are unnecessary when SB 960 becomes effective; consequently, they are deleted from the final rules.

2. Proceedings to Which SB 960 Requirements Apply SB 960 becomes effective on January 1, 1998. At a minimum, the final rules implementing SB 960 should apply its requirements to all proceedings that are opened (or conceivably reopened) after January 1, 1998, and that go to hearing. However, SB 960 does not say explicitly whether all or any of its requirements apply to proceedings pending at the Commission on or before January 1, 1998. The draft would implement SB 960 by applying its requirements only to "new" proceedings (those started after January 1, 1998) and to any proceedings included in the experiment that are still open as of that date. The rationale for this implementation approach follows.

Under SB 960 as written, there are three possible implementation approaches for this issue regarding "old" proceedings (those started before January 1, 1998): (1) apply all SB 960 requirements both prospectively and retrospectively to all formal proceedings that have been or will be to hearing and that are open at the Commission on or after January 1, 1998; (2) apply SB 960 requirements only on a "going forward" basis to those open proceedings started before January 1, 1998; and (3) apply SB 960 requirements only to open proceedings that were included in the experiment. The draft follows this third approach.

The first approach has the benefit of creating a "flash cut" to a single set of rules for all formal Commission proceedings after SB 960 becomes effective. However, the disadvantages outweigh the benefit. The Commission would have to categorize hundreds of old proceedings pending as of January 1, 1998. Depending on the categorization of any particular old proceeding, the newly applicable procedural rules could be inconsistent with the rules under which the proceeding was handled before January 1, 1998.

There is a strong likelihood that some parties will argue for repeating portions of the proceeding or even dismissal and refile; and even if the procedural wrangles are handled to everyone's satisfaction, delay and uncertainty are probably unavoidable.

The second approach seems intended to avoid arguments over the prior handling of proceedings, but the Commission still would have to categorize hundreds of proceedings solely to determine what requirements of SB 960 should apply on a "going forward" basis. Debate is also likely over the "going forward" concept itself.¹ Part of the Commission's experience with the experiment to date, in trying to include "previously filed" proceedings, is that there is great resistance and confusion among parties to importing a large number of new rules into a proceeding that is well under way. Thus, both the first and second approaches seem likely to result in much procedural wrangling.

The third (recommended) approach seems simpler and easier than either of the others. The third approach also smoothes the transition to SB 960, as the Commission will not have to perform a massive categorization exercise for old proceedings. The disadvantage of the third approach is that two sets of procedural rules will govern different Commission proceedings based on the vintage of the proceedings. However, the number of proceedings conducted under pre-SB 960 rules will diminish steadily, and any proceeding that is reopened after January 1, 1998 would be handled under the SB 960 rules regardless of the original filing date of the proceeding. On balance, the third approach seems best and is followed in the draft final rules.

3. Exclusion of Cases Under Expedited Complaint Procedure

SB 960 does not say explicitly how it affects the Commission's expedited complaint procedure (ECP). The ECP is designed to follow

¹ Consider the example of a quasi-legislative proceeding that has been to hearing and that as of January 1, 1998, is under submission awaiting issuance of a proposed decision. Under Section 10 of SB 960, the assigned Commissioner is supposed to "prepare the proposed rule or order" but the assigned Commissioner may not have been "present for formal hearings" in the proceeding, as required by SB 960. In situations like this, where the SB 960 requirements seem tied to parts of a proceeding completed before the effective date of SB 960, it is not easy to decide how the "going forward" concept would work.

both the simplified process of a small claims court trial (see Rule 13.2 of the Title 20 rules) and the small claims court jurisdictional limit on the amount in dispute (see Public Utilities Code § 1702.1). An ECP case, from filing to final decision, should take only a little over two months, as described in Res. ALJ-163. Applying SB 960 requirements to the ECP would add complexity for complainants (who are typically individual residential and small business consumers), and largely turn the ECP into the Commission's regular complaint procedure. Such an outcome seems contrary to the legislative intent underlying SB 960.

The draft therefore does not apply the final rules to every complaint.² Instead, they would apply only (1) to the Commission's regular complaint procedure, and (2) any ECP case that is converted to the regular procedure either before trial of the case or after the Commission grants an application for rehearing in the case. A complainant that wants to have the case heard under the SB 960 rules can do so simply by choosing the regular complaint procedure rather than the ECP when filing the case.

4. Changes to Current Law Several provisions of SB 960 are not implemented in the experimental rules because these provisions conflict with current law and thus can be implemented only after the effective date of SB 960. Examples of such provisions include liberalization of the Commission's ability to deliberate in closed session (see Section 9 of SB 960) and delegation of expanded decisionmaking authority to Administrative Law Judges in adjudicatory proceedings (see Section 8 of SB 960). Also, SB 960 makes the assigned Commissioner responsible for preparing the proposed decision in quasi-legislative proceedings and in ratesetting proceedings in which the assigned Commissioner is the principal hearing officer. (*Id.*, Sections 9 and 10.) The draft would implement these provisions, effective January 1, 1998.

5. Applicability to Proceedings Without Hearings SB 960 applies by its terms to proceedings that go to hearing. However, at least the SB 960 procedures regarding categorization should apply to all formal proceedings at the Commission, since the need for and scope of hearings in a given proceeding may not be clear until the proceeding is well under way. In addition, some processes may not depend on whether or not a hearing is held. For

² However, the draft would make the procedures for challenging an assigned Administrative Law Judge available in all complaint cases, not just those following the regular complaint procedure. See Section 6 below.

example, it may be appropriate for the assigned Commissioner to prepare and present the proposed decision in a quasi-legislative proceeding, regardless of whether a formal hearing was held. Finally, to further the Commission's goal of achieving a single set of procedural rules, it makes sense to apply the SB 960 rules to all formal proceedings, with the exception of those rules that clearly are specific to proceedings in which hearings are held.³ The draft would implement this concept of applying SB 960 procedures to proceedings without hearings to the extent appropriate.

6. Codification As discussed in Section 2 above, there will be a transition period during which a steadily dwindling number of "old" proceedings will be handled under pre-SB 960 rules. During the transition period, it seems best to codify the bulk of the SB 960 rules in a single article in Title 20, so that the SB 960 rules can be easily distinguished from the pre-SB 960 rules. Under the draft, codification would be in a new article following the existing Article 2 ("Filing of Documents") in the Title 20 rules.

The exception to this codification approach is the SB 960 rules on challenges to the assigned Administrative Law Judge. Under the draft, all of the Commission's procedures for challenges (both peremptory challenges and challenges for cause) would be consolidated in Article 16 and would apply to all proceedings at the Commission (including ECP cases) that are filed or pending after January 1, 1998. The draft would supersede existing Rule 63.4(c) (peremptory challenges) and would revise existing Rule 63.2 ("Grounds for Disqualification") to bring that rule into conformity with SB 960.

NEXT STEPS

The Chief Administrative Law Judge shall send the attached draft of final rules to the Office of Administrative Law for publication in the California Regulatory Notice Register. This publication starts the 45-day notice-and-comment process, which is the first stage leading to adoption and codification (in the California Code of Regulations) of rules implementing SB 960. For purposes of such

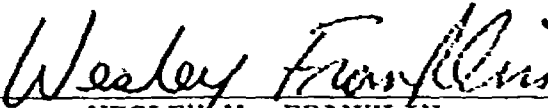
³ Advice Letters are not considered formal proceedings in either the experimental rules or the draft of final rules. ECP cases often go to hearing, but the hearing process in those cases is very informal; as discussed in Section 3 of this resolution, SB 960 requirements should not apply to the ECP.

publication, the Chief Administrative Law Judge is authorized to propose nonsubstantive changes (e.g., new numbering, new headings for articles and individual rules) to the draft and to the existing Title 20 rules, wherever such nonsubstantive changes will improve the clarity, organization, or consistency of the Commission's Rules of Practice and Procedure.

The Chief Administrative Law Judge and General Counsel should hold further workshops, both to receive feedback regarding practice under the experimental rules and to discuss the necessary changes proposed in today's draft. Accomplishing the changes described in the above Discussion requires careful thought, in order to achieve a complete and internally consistent set of Title 20 rules. The implementation process should start now, well before January 1, 1998, because revisions to the draft proposed today may be necessary before final adoption.

THEREFORE, IT IS ORDERED that the Chief Administrative Law Judge shall submit all required forms to the Office of Administrative Law preparatory to publishing in the California Regulatory Notice Register the attached draft of final rules implementing SB 960. For purposes of such publication, the Chief Administrative Law Judge is authorized to propose nonsubstantive changes to the draft and to the existing Title 20 rules, wherever such nonsubstantive changes will improve the clarity, organization, or consistency of the Commission's Rules of Practice and Procedure.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on March 18, 1997. The following Commissioners approved it:


WESLEY M. FRANKLIN
Executive Director

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

**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.

The rules and procedures in this Article apply to any formal proceeding (except for a complaint under Rule 13.2) that is filed after January 1, 1998, and to any "included proceeding" pursuant to Resolution ALJ-170 (January 13, 1997). 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.

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 identified as an adjudicatory, ratesetting, or quasi-legislative proceeding.
- (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.

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

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

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

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

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

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

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

before the Commission, even if that association is not a party to the proceeding.

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

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

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

6. (Rule 6) Start of Proceedings; Proposed Scoping Memos.

- (a) **Applications; Complaints.** Any complainant and any applicant that files the pleading initiating a proceeding after January 1, 1998, shall propose in such pleading (1) a category for the proceeding, and (2) whether the proceeding should be set for hearing. As described in Rule 6.1(a) below, the Commission shall issue a resolution that preliminarily categorizes such proceeding and preliminarily determines the need for a hearing in the proceeding. The assigned Commissioner shall consider the initiating and first responsive pleadings (see subsection (e) of this rule) and comments at the prehearing conference (if one is held), and shall thereafter issue a ruling on the category and need for hearing in the proceeding. If the proceeding is categorized as ratesetting, the ruling shall also designate the principal hearing officer, who shall be present (as defined in Rule 8(f) below) for more than one-half of the hearing days and who shall prepare the proposed decision. The ruling, only as to the category, is appealable under the procedures in Rule 6.4 below.

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

- (b) Each pleading that initiates a proceeding as described in subsection (a) of this rule shall include a proposed scoping memo. The proposed scoping memo shall include the following information:
 - (1) suggested category, together with supporting analysis;
 - (2) a list of the issues to be considered in the proceeding; and

- (3) a suggested schedule for the proceeding. The schedule shall be consistent with the suggested category, including a deadline for concluding the proceeding within 12 months or less (adjudicatory proceeding) or 18 months or less (ratesetting or quasi-legislative proceeding). The 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 filing party wants the assigned Commissioner to weigh in issuing the final scoping memo.

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

- (c) OSCs, OIIs, OIRs. A Commission order to show cause, order instituting investigation, or order instituting rulemaking, issued after January 1, 1998, shall preliminarily determine the category and need for hearing for such proceeding. The assigned Commissioner shall issue a ruling (after the prehearing conference if one is held) on the category and need for hearing. If the proceeding is categorized as ratesetting, the ruling shall also designate the principal hearing officer, who shall be present (as defined in Rule 8(f) below) for more than one-half of the hearing days and who shall prepare the proposed decision. The ruling, only as to the category, is appealable under the procedures in Rule 6.4 below.

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

- (d) For any proceeding described in subsection (c) of this rule, the order shall attach a proposed scoping memo that includes the information set forth in subsections (b)(1), (b)(2), and (b)(3) of this rule.

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

- (e) Each first responsive pleading (e.g., a protest or answer) in a proceeding described in subsections (a) or (c) of this rule shall include a proposed scoping memo with the information described in subsections (b)(1), (b)(2), and (b)(3) of this rule.
- (f) The Commission intends that proposed scoping memos be brief, recognizing that much of the information relevant to such memos is already routinely included in pleadings that initiate a proceeding and in first responsive pleadings.

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 or complaint filed on or after the Commission's prior business meeting, the category of the proceeding and the need for a 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) or 6(c) above, and such ruling as to the category is subject to appeal under Rule 6.4 below. If there is no timely appeal, and the assigned Commissioner's ruling changes the preliminary categorization, the assigned Commissioner's categorization pursuant to Rule 6(a) or 6(c) shall be placed on the Commission's Consent Agenda for approval.

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) above, 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) above, 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 include comment on the proposed scoping memos (see Rules 6 above), and may also address 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) Final Scoping Memos.

Following the prehearing conference, the assigned Commissioner shall issue the final scoping memo for the proceeding, which shall include the category, timetable (with projected submission date), and issues to be addressed.

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 mailing of an assigned Commissioner's ruling pursuant to Rule 6(a) or 6(c) above. Such appeal shall state why the ruling on the 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.

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

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

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

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

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

- (c) In any ratesetting proceeding, ex parte communications are permitted only if consistent with the following restrictions, and are subject to the reporting requirements set forth in Rule 7.1 below:
- (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, except 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), (c) or (d) of this rule cease to apply to a proceeding in which (1) no timely answer, response, protest, or request for hearing is filed after the pleading initiating the proceeding, or (2) all such responsive pleadings are withdrawn. 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) below.

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 below, 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 shall be reported as 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.

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 proposed scoping memo 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 without further consideration.

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 final scoping memo or later ruling in the proceeding. A quorum of the Commission shall be present for such final oral argument.

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

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

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

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

- (1) "Adjudicative facts" answer questions such as who did what, where, when, how, why, with what motive or intent.
- (2) "Formal hearing" generally refers to a hearing at which testimony is offered or comments or argument taken on the record; "formal hearing" does not include a workshop. In a quasi-legislative proceeding, "formal hearing" includes a hearing at which testimony is offered on legislative facts, but does not include a hearing at which testimony is offered on adjudicative facts.
- (3) "Legislative facts" are the general facts that help the tribunal decide questions of law and policy and discretion.
- (4) "Present" or "presence" at a hearing means physical attendance in the hearing room, or remote attendance (to the extent permitted by law) by teleconference or similar means, or by monitoring a real-time transcript in progress, 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 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 ratemaking and quasi-legislative proceedings where hearings were held, the assigned Commissioner (or the assigned Administrative Law Judge if acting as principal hearing officer in a ratesetting proceeding) 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.

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(k)(4) above. In no event shall the period during which the Commission may meet in closed session exceed the period for which the communications described above are prohibited.

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 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 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, respondent, or any intervenor in an adjudicatory proceeding may file and serve an appeal of a 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 a decision of a presiding officer in an adjudicatory proceeding by filing and serving a request for review of a decision 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 a 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

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 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 the 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 deemed to be adjudicatory (see Rules 6(c) and 6.1(a)) shall be entitled to petition, on behalf of, 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 on 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 an affidavit 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 is 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 (see Rules 6(c) and 6.1(a)), or a person or entity declaring the intention in good faith to become a party to the 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).

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

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

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

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

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

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

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

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

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

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

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

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

63.57.(Rule 63.57) Waiver.

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

63.8. (Rule 63.8) Prior Rulings.

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

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

63.69. (Rule 63.69) Ban on Ex Parte Communications.

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

63.710.(Rule 63.710) Definitions.

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

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

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

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

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

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

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

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

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

(fd) "Ex parte communication" ~~is~~ includes 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.

that the rules applicable to one of the other categories, or some hybrid of the rules, are best suited to the proceeding.

- f. In exercising its discretion under subsections d and e above, the Commission shall so categorize an included proceeding and 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.

5. Prehearing Conferences

Whenever a proceeding identified as a candidate 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 include comment on the proposed scoping memos (see Rule 3 above), and may also address any other matter specified in the ruling setting the prehearing conference. Following the prehearing conference, the assigned Commissioner, with the assistance of the assigned Administrative Law Judge, shall issue the final scoping memo for the proceeding, which shall include the category, timetable (with projected submission date), and issues to be addressed.

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

6. Petitions for Reassignment

- a. In addition to the disqualification provisions of Rules 63.1 through 63.7 of the Rules of Practice and Procedure, and notwithstanding Rule 63.1, any party to an adjudicatory 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 and of subsection e of this rule. 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 6.a, any prior petition for automatic reassignment in the proceeding.

Dated _____, at _____, California.

[Signature]

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.

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

- b. In addition to the disqualification provisions of Rules 63.1 through 63.7 of the Rules of Practice and Procedure, and notwithstanding Rule 63.1, a party to a ratesetting proceeding, or a person or entity declaring the intention in good faith to become a party to the 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 subsections a and e 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 e 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 following such ruling. The petition shall be filed and served as provided in subsections a and e 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.

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

- c. 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. Except as provided in subsection d of this rule, 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. 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.

Related Existing CPUC Rules (Title 20): 45, 46, 63.4(b)

- d. Irrespective of the limits in subsections a and b of this rule 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.

Related Existing CPUC Rules (Title 20): 63.2(a)(2)

SB 960 Reference: Sec. 8 [PU Code § 1701.2(a)]; Sec. 9 [PU Code § 1701.3(b)]

- e. Any petition and supporting declaration pursuant to subsections a, b, or d of this rule shall be filed no more than 10 days after the date of the resolution or ruling making the challenged assignment or reassignment.

7. Ex Parte Communications: Applicable Requirements

- a. In any adjudicatory proceeding, ex parte communications are prohibited. This prohibition shall apply from the preliminary determination on category of the proceeding to the date of issuance of a final order in that proceeding.

Related Existing CPUC Rules (Title 20): 1.3(a)

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

- b. 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 8 below:

- (1) Oral ex parte communications are permitted at any time with a Commissioner provided that the Commissioner involved (i) invites all parties to attend 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 in advance of the meeting or call at which the communication will take place.
- (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, and shall be offered individual meetings of a substantially equal period of time with that decisionmaker. The party requesting the initial individual meeting shall bear the burden of notifying 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 ex parte 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 transmitted 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 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, except that the period of prohibition shall begin not more than 14 days before the Commission meeting date to which the decision is held. (Note: Subsection b (4) becomes effective only when Bagley-Keene relief enacted in SB 960 becomes effective.)

Related Existing CPUC Rules (Title 20): 1.3(b)
SB 960 Reference: Sec. 9 [PU Code § 1701.3(c)]

- c. In any quasi-legislative proceeding, ex parte communications are allowed without restriction.

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

- d. The requirements of subsections a, b, or c of this rule shall cease to apply to an included proceeding in which (1) no timely answer, response, protest, or request for hearing is filed responding to the pleading initiating the proceeding, or (2) all such responsive pleadings are withdrawn. However, if there has been a request for hearing, the proceeding remains included unless and until the request has been denied.

Related Existing CPUC Rules (Title 20): 1.1(c)

- e. Ex parte communications concerning categorization are permitted, but must be reported pursuant to Rule 8 below.

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

8. 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.

Related Existing CPUC Rules (Title 20): 1.4(a)

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

- b. These reporting requirements shall apply to ex parte communications in ratesetting proceedings and to ex parte communications concerning categorization. In a ratesetting proceeding, communications on a substantive issue between an interested person and a Commissioner's personal advisor, other than communications occurring in a public hearing, workshop, or other public

setting, or on the official record of the proceeding, shall be reported as specified in subsection a of this rule.

Related Existing CPUC Rules (Title 20): 1.1-1.7

9. 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).

Related Existing CPUC Rules (Title 20): 76
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.

Related Existing CPUC Rules (Title 20): 76
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 proposed scoping memo 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 without further consideration.

Related Existing CPUC Rules (Title 20): 76
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 final scoping memo or later ruling in the proceeding. A quorum of the Commission shall be present for such final oral argument.

Related Existing CPUC Rules (Title 20): 76

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. "Present" or "presence" at a hearing means physical attendance in the hearing room, or remote attendance (to the extent permitted by law) by teleconference or similar means, including monitoring outside the hearing room a real-time transcript in progress, 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. "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 introduced on legislative facts, but does not include a hearing at which testimony is introduced on adjudicative facts. Adjudicative facts answer questions such as who did what, where, when, how, why, with what motive or intent. Legislative facts are the general facts that help the tribunal decide questions of law and policy and discretion.

Related Existing CPUC Rules (Title 20): 76

10. 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 such briefs or the presentation of such oral arguments as may have been 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.

Related Existing CPUC Rules (Title 20): 8.15, 77

- b. In all ratemaking and quasi-legislative proceedings, the presiding officer shall prepare a proposed decision setting forth the recommendations, findings, and conclusions. The proposed decision of the presiding officer shall be filed with the Commission and served on all parties without undue delay, not later than 90 days after submission. Where Public Utilities Code Section 311 does not require that the assigned Administrative Law Judge prepare the proposed decision, the assigned Commissioner may prepare the proposed decision instead, within the time limits specified above.

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 and comment on the proposed decision. Any party objecting to such waiver will have the burden of demonstrating that such filing and comment is in the public interest.

Related Existing CPUC Rules (Title 20): 77.1

SB 960 Reference: Sec. 5 [PU Code § 311(d)]; Sec. 6 [PU Code § 311(d)]

- c. The Commission, in issuing its decision in a ratesetting or quasi-legislative proceeding, may adopt, modify or set aside the proposed decision or any part thereof based on the evidence in the record. The decision of the Commission shall be issued not later than 60 days after the issuance of the proposed decision. The Commission may extend the date for a reasonable period under extraordinary circumstances. The 60-day period shall be extended for 30 days if any alternate decision is proposed.
- d. In any ratesetting proceeding, the Commission may meet in closed session to consider its decision, but only if such meeting occurs during a period established as described in Rule 7.b(4). (Note: Subsection d becomes effective only when Bagley-Keene relief enacted in SB 960 becomes effective.)

Related Existing CPUC Rules (Title 20): 79

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

11. 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 such briefs or the presentation of such oral arguments as may have been 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.

Related Existing CPUC Rules (Title 20): 8.15, 77

- b. In any adjudicatory proceeding, 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 be placed on the Commission's Consent Agenda for approval by 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.

Related Existing CPUC Rules (Title 20): 77.1, 79
SB 960 Reference: Sec. 8 [PU Code § 1701.2(a)]

- c. Any party in an adjudicatory proceeding may file and serve an appeal of a decision of the presiding officer within 30 days of the date the decision is mailed to the parties in the proceeding.

Related Existing CPUC Rules (Title 20): 77.2
SB 960 Reference: Sec. 8 [PU Code § 1701.2(a)]

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

Related Existing CPUC Rules (Title 20): 77.2
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 by a Commissioner shall be served on all parties and accompanied by a certificate of service.

Related Existing CPUC Rules (Title 20): 77.3

- 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.

Related Existing CPUC Rules (Title 20): 77.5


- g. The Commission may meet in closed session to consider the decision of a presiding officer that is being appealed or reviewed pursuant to a request for review by a Commissioner. The vote on the appeal or request for review shall be in a public meeting and shall be accompanied by an explanation of the decision on the appeal. The decision on the appeal or request for review 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 decision. (Note: The first sentence of subsection g

becomes effective only when Bagley-Keene relief enacted in SB 960 becomes effective.)

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

ALJ/KOT/bwg ****

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on January 13, 1997. The following Commissioners approved it:



WESLEY M. FRANKLIN
Executive Director

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

I dissent in part (on Rule 4.e only).

/s/ JOSIAH L. NEEPER
Commissioner

I abstain.

/s/ RICHARD A. BILAS
Commissioner

**Experimental Rules and Procedures to Gain Experience, Where Practicable, With
Management of Commission Proceedings Under Requirements of SB 960**

1. Definitions

- a. "Included proceeding" is any proceeding categorized as an adjudicatory, ratesetting, or quasi-legislative proceeding to which the rules and procedures in this resolution apply pursuant to Rule 2 below.

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

- b. "Category," "categorized," or "categorization" refers to the procedure whereby an included proceeding is identified as and determined to be an adjudicatory, ratesetting, or quasi-legislative proceeding for purposes of the experimental rules and procedures authorized by this resolution.
- c. "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.

Related Existing CPUC Rules (Title 20): 1.1(f)

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

- d. "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.

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

- e. "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)]

- f. "Ex parte communication" means a written or oral communication on any substantive issue in an included proceeding, between an interested person and a

decisionmaker that does not occur in a public hearing, workshop, or other public setting, or on the official record of the proceeding. "Written communication" includes a communication by letter or electronic medium. "Oral communication" includes a communication in person or by telephone. "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. 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 set forth herein.

Related Existing CPUC Rules (Title 20): 1.3 (a)-(c)
SB 960 Reference: Sec. 7 [PU Code § 1701.1(c)(4), (c)(4)(C)]

- g. "Ex parte communication concerning categorization" means a written or oral communication on the category of any candidate or included 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 official record of the proceeding.
- h. "Interested person" means a person or entity that is any of the following:
- (1) any applicant, protestant, respondent, petitioner, complainant, defendant, interested party who has made a formal appearance in the proceeding, or Commission staff of record in the proceeding, or the agents or employees of any of them, including persons receiving consideration to represent any of them;

Related Existing CPUC Rules (Title 20): 1.1(h)

- (2) any person with a financial interest, as described in Article I (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code, in a matter at issue in the proceeding, or such person's agents or employees, including persons receiving consideration for representing 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. "Commission staff of record" includes staff from the Office of Ratepayer Advocates assigned to the proceeding, staff from the Consumer Services Division assigned to the proceeding, and any other staff assigned to an adjudicatory proceeding in an advocacy capacity. "Commission staff of record" does not include staff from any of the industry divisions who are acting in an advisory capacity to the Commission with respect to the proceeding.

Related Existing CPUC Rules (Title 20): 1.1(b)

- j. "Sample" refers to included proceedings as a group.
- k. Until Sections 5, 8, 9, and 10 of SB 960 become effective, "presiding officer" means the Administrative Law Judge assigned to an included proceeding, and the decision of the presiding officer shall constitute the "proposed decision" if one is required under Public Utilities Code Section 311(d).

2. Applicability

- a. The rules in this resolution apply to a sample of formal proceedings, some of which were filed at the Commission prior to the effective date of the resolution and some of which were filed on or after the effective date of the resolution. An advice letter filing is not a formal proceeding. The rules are fully applicable to proceedings included in the sample pursuant to Rules 2.d or 2.e below. For proceedings included in the sample pursuant to Rule 2.b or 2.c below, only the rules in this resolution with regard to ex parte communications (Rules 7 and 8), oral arguments and Commissioner presence (Rule 9), proposed decisions (Rule 10), and adjudicatory procedure (Rule 11) shall apply.
- b. Previously Filed Applications. Any utility applicant may identify one (or more) of its applications filed prior to the effective date of this resolution as a candidate proceeding for inclusion in the sample. Any such candidate proceeding should not yet have been to hearing, but should be anticipated to start hearings in the first quarter of 1997. The utility shall file and serve on all parties to the candidate proceeding its identification of the proceeding as candidate, its proposed category, and the approximate date when it anticipates hearings to start. Parties shall have 15 days from the date of service of the identification within which to file and serve their responses thereto. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, Southern California Gas Company, Pacific Bell, and GTE California Incorporated are each requested to identify 3-4 of their respective applications pursuant to this subsection. After considering the identification and responses thereto, the Commissioner assigned to any candidate proceeding identified pursuant to this subsection shall issue a ruling on inclusion in the sample and the category for the proceeding. A ruling

that includes a candidate proceeding in the sample shall be appealable to the Commission under the procedures in Rules 4.b and 4.c..

- c. **Previously Filed OSCs, OIIs, OIRs.** The Commissioner assigned to any proceeding commenced by the Commission, prior to the effective date of this resolution, by order to show cause, order instituting investigation, or order instituting rulemaking, may issue a ruling identifying such proceeding as a candidate proceeding for inclusion in the sample and determining a category for the proceeding. Any such candidate proceeding should not yet have been to hearing but should be anticipated to start hearings in the first quarter of 1997. The ruling is appealable to the Commission under the procedures in Rules 4.b and 4.c.
- d. **New Applications; New Complaints.** Any complainant and any utility applicant that files the pleading initiating a proceeding on or after the effective date of this resolution may identify the proceeding in such pleading as a candidate proceeding for inclusion in the sample, and may concurrently propose a category. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, Southern California Gas Company, Pacific Bell, and GTE California Incorporated are each requested to identify 3-4 of their respective applications, filed during the first quarter of 1997, pursuant to this subsection. The Commission shall issue an order that preliminarily categorizes such proceeding and assigns it to a Commissioner and Administrative Law Judge. The first responsive pleading (e.g., a protest or answer) of any party filing such response in the proceeding shall set forth any comments or objections regarding inclusion in the sample and the category for the proceeding. The assigned Commissioner shall issue a ruling (after the prehearing conference if one is held) on inclusion in the sample and the category for the proceeding. A ruling that includes the candidate proceeding is appealable to the Commission under the procedures in Rules 4.b and 4.c.
- e. **New OSCs, OIIs, OIRs.** On or after the effective date of this resolution, a Commission order to show cause, order instituting investigation, or order instituting rulemaking, if the proceeding so initiated is identified as a candidate proceeding, shall preliminarily determine a category for the proceeding. The first responsive pleading of any party filing such response in the proceeding shall set forth any comments or objections regarding inclusion in the sample and the category for the proceeding. The assigned Commissioner shall issue a ruling (after the prehearing conference if one is held) on inclusion in the sample and the category for the proceeding. A ruling that includes the candidate proceeding is appealable to the Commission under the procedures in Rules 4.b and 4.c.
- f. For any candidate proceeding, an assigned Commissioner's ruling or Commission decision excluding the proceeding from the sample is not appealable, and the proceeding will be handled under the otherwise applicable Commission rules and procedures.

- g. The rules in this resolution supplement the Commission's Rules of Practice and Procedure with respect to included proceedings. In the event of any inconsistency between the rules in this resolution and the Rules of Practice and Procedure, the provisions of the resolution shall control. Questions regarding the applicability of these rules shall be addressed to the Chief Administrative Law Judge and to the Office of the Commission President. The Chief Administrative Law Judge will respond, in coordination with that office.

3. Proposed Scoping Memos

- a. Each pleading that initiates a proceeding identified as a candidate proceeding pursuant to Rule 2.d above shall include a proposed scoping memo. The proposed scoping memo shall include the following information:

- (1) suggested category, together with supporting analysis;
- (2) a list of the issues to be considered in the proceeding; and
- (3) a suggested schedule for the proceeding. Such schedule shall be consistent with the suggested category, and 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 filing party wants the assigned Commissioner to weigh in issuing the final scoping memo.

SB 960 Reference: Sec. 1; Sec. 6 [PU Code § 311 (b)]; Sec. 7 [PU Code § 1701.1(b)]

- b. For any proceeding identified as a candidate proceeding pursuant to Rule 2.e above, the Commission order that initiates the proceeding shall indicate whether a hearing is necessary, and if so, shall attach a proposed scoping memo that includes the information set forth in subsections a(2) and a(3) of this rule. The order shall also designate an assigned Commissioner and Administrative Law Judge.

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

- c. A party's first responsive pleading in a proceeding identified as a candidate proceeding shall include a proposed scoping memo with the information described in subsections a(1), a(2), and a(3) of this rule.
- d. The Commission intends that proposed scoping memos be brief, recognizing that much of the information relevant to such memos is already routinely included in pleadings that initiate a proceeding and in first responsive pleadings.

4. Determination of Category and Need for Hearing; Assignment

- a. By resolution at each Commission business meeting, the Commission shall preliminarily determine, for each candidate proceeding initiated by a pleading filed on or after the Commission's prior business meeting, whether such proceeding is an adjudicatory, ratesetting, or quasi-legislative proceeding, and whether the proceeding requires a hearing. The resolution shall also designate an assigned Commissioner and Administrative Law Judge in each proceeding categorized by the resolution. 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 2.d or 2.e, and such ruling is subject to appeal under subsections b and c of this rule. If there is no timely appeal under subsection b of this rule, and the assigned Commissioner's ruling changes the preliminary categorization, the assigned Commissioner's categorization pursuant to Rule 2.d or 2.e shall be placed on the Commission's Consent Agenda for approval.

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

- b. Any party may file and serve an appeal, no later than 10 days after the date of mailing of an assigned Commissioner's ruling pursuant to Rule 2.b, 2.c, 2.d, or 2.e. Such appeal shall state why the ruling 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.

Related Existing CPUC Rules (Title 20): 5(a), 45, 46

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

- c. Any party, no later than 15 days after the date of mailing of an assigned Commissioner's ruling from which timely appeal has been taken pursuant to Rule 4.b above, may file and serve a response to any appeal of that ruling. Such response shall be served on the appellant and on all persons who were served with the ruling. The Commission is not obligated to withhold a decision on an appeal to allow time for responses. Replies to responses are not permitted.
- d. When a proceeding may fit more than one category as defined in Rules 1.c, 1.d, and 1.e above, 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.
- e. When a proceeding does not clearly fit into any of the categories as defined in Rules 1.c, 1.d, and 1.e above, the proceeding will be conducted under the rules applicable to the ratesetting category unless and until the Commission determines