

APR 24 1997

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-173
Administrative Law Judge Division
April 23, 1997

R E S O L U T I O N

RESOLUTION 173. Adopts special procedural rules implementing requirements of Public Utilities Code Section 841(e).

Summary

In anticipation of initial applications for financing orders pursuant to Public Utilities (PU) Code Section 841(a), we establish procedures for the expeditious processing of such financing orders, as required by PU Code Section 841(e).

Background

By June 1, 1997, each electrical corporation must apply to this Commission for a determination that certain transition costs (as defined in PU Code Section 840(f)) may be recovered through fixed transition amounts (as defined in PU Code Section 840(d)). We are to approve or disapprove such applications within 120 days. The approval of such an application would be reflected in a financing order (as defined in PU Code Section 840(c)).

Except in limited circumstances, for the purpose of adjusting fixed transition amounts to take into account certain variable expenses associated with rate reduction bonds (as defined in PU Code Section 840(e)), financing orders are final and irrevocable. (PU Code Section 841(c).) Thus, it is even more important than usual carefully to consider these types of applications, for we will have no opportunity to revisit any final decision that issues a financing order. In particular, subject to a very limited exception, financing orders will not be subject to the usual rules permitting petitions for modification.

The relatively short time available for our review and the irrevocable nature of our decision are joined by two other factors: Financing orders will be the basis for a novel type of security for this Commission (rate reduction bonds), and we will concurrently be considering the same or very similar issues in other proceedings, such as Application 96-08-001 and related proceedings, in which we are considering quantification of transition costs. Interested parties in the financing order applications are also likely to be subject to the same complexities and time constraints.

Rule 1. Citation

The special rules set forth in this Resolution may be referred to as the Financing Order Rules.

Rule 2. Contents of Applications

Electrical corporations shall file and serve all testimony in support of applications for financing orders at the same time as they file and serve applications. Electrical corporations shall include in their applications the form of financing order requested.

Rule 3. Dates for Financing Order Applications

Electrical corporations shall file financing order applications only on dates that fall 120 days before a scheduled Commission conference, not counting the date of the conference.

Rule 4. Service of Applications

Any person wishing to become an interested party in any financing order application may serve a notice to that effect on the electrical corporation at any time prior to the date on which such electrical corporation files an application. The electrical corporation shall serve a copy of its application on such person at the time the electrical corporation files such application and, if requested in such notice, the electrical corporation shall also serve a copy of any subsequent financing order application on such person; provided, that the electrical corporation need not serve a copy of any subsequent application on such person if the electrical corporation is notified that such person does not wish to receive service of subsequent applications.

Rule 5. Shortened Time for Protests/Responses

Any protest or response (which shall include any testimony in support of such protest or response) to a financing order application shall be filed and served within 14 days of the date of filing of the application. Persons filing protests or responses should inquire of the Docket Office to determine the administrative law judge (ALJ) to be served with a copy of the protest or response.

Rule 6. Pre-scheduled Hearings

A pre-hearing conference (PHC) shall be held 21 days after the date of filing of the application; provided, that if such PHC date is on a day on which the Commission is not open for business, the PHC shall be held on the next day on which the Commission is open for business. At the PHC, any person who has filed a protest to the financing order application shall identify with particularity each disputed issue of material fact in the application and testimony of the electrical corporation and shall

indicate where the specific testimony sponsored by such person presents contradictory evidence. Opinion evidence will not be deemed to create a factual issue unless the witness is determined to be an expert within the relevant field and offers testimony that would be admissible in a court as expert opinion. At the PHC, the presiding officer will determine if triable issues of fact exist and, if they do, order evidentiary hearings or other appropriate procedure. If required, evidentiary hearings shall be complete within 28 days after the date of filing of the application.

Rule 7. Briefing Schedule

The presiding officer shall establish a briefing schedule at the PHC or the last day of hearings, as the case may be, that provides for concurrent opening briefs to be filed and served not later than the 40th day after the date of filing of the application. Concurrent reply briefs shall be filed and served not later than the 50th day after the date of filing of the application.

Rule 8. Draft or Proposed Decision

The assigned ALJ, if testimony is heard, or the assigned Commissioner, otherwise, shall file and serve a proposed decision, if testimony is heard, or a draft decision, otherwise, on or before the 90th day after the date of filing of the application. Parties may comment on a proposed or draft decision pursuant to Rule of Practice and Procedure 77.2-77.6 (except Rule 77.6(f)).

Rule 9. Computation of Time

Within the overall constraint that all financing order applications shall be approved or disapproved within 120 days of the filing thereof, Rule of Practice and Procedure 8.13 shall govern the computation of time, and the presiding officer may vary particular interim dates (except for the date on which a proposed decision is required to be issued).

Rule 10. Rules of Practice and Procedure

To the extent not inconsistent with this Resolution or with approval or disapproval of financing orders within 120 days after the date of filing thereof, proceedings involving applications for financing orders shall be governed by the Rules of Practice and Procedure.

Not to be Published in the California Regulatory Notice Register

Pursuant to PU Code Section 847, the regulations adopted by this resolution are not subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

THEREFORE, IT IS ORDERED that the procedures for the expeditious processing of applications for financing orders outlined in this resolution are adopted effective immediately.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on April 23, 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