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**ORIGINAL**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Rulemaking for Purposes of Implementing  
Certain Statutory Requirements Regarding  
Public Review and Comment for Specified  
Commission Decisions.

FILED  
PUBLIC UTILITIES COMMISSION  
FEBRUARY 4, 1999  
SAN FRANCISCO OFFICE  
Rulemaking 99-02-001

**ORDER INSTITUTING RULEMAKING**

**Summary**

By Senate Bill (SB) 779 (Calderon), which is Chapter 886 of the 1998 Statutes, the Legislature enacted and the Governor approved various additions and amendments to the Public Utilities Code. As relevant to this rulemaking, SB 779 adds or expands requirements, effective January 1, 1999, pertaining to the availability of specified Commission decisions, and of alternates to those Commission decisions, for public review and comment. We hereby propose amendments to Article 19 of the Commission's Rules of Practice and Procedure (Title 20, Division 1, Chapter 1 of the California Code of Regulations) to implement these requirements.<sup>1</sup> The proposed amendments include some minor revisions to improve consistency between Article 19 and other Commission procedural rules, chiefly Article 2.5.

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<sup>1</sup> Unless otherwise specified, all section citations are to the Public Utilities Code, and all rule citations are to the Commission's Rules of Practice and Procedure.

## **Content of Proposed Amendments and Additions to Commission Rules**

For present purposes, we focus on subdivision (g) of Section 311, as amended by SB 779. The amended subdivision reads as follows:

**“(g) (1) Prior to voting on any commission decision not subject to subdivision (d), the decision shall be served on parties and subject to at least 30 days public review and comment. Any alternate to any commission decision shall be subject to the same requirements as provided for alternate decisions under subdivision (e). For purposes of this subdivision, ‘decision’ also includes resolutions, including resolutions on advice letter filings.**

**“(2) The 30-day period may be reduced or waived in an unforeseen emergency situation, upon the stipulation of all parties in the proceeding, for an uncontested matter in which the decision grants the relief requested, or for an order seeking temporary injunctive relief.**

**“(3) This subdivision does not apply to advice letter filings or to uncontested matters, that pertain solely to water corporations, or to orders instituting investigations or rulemakings, categorization resolutions under Sections 1701.1 to 1701.4, inclusive, or orders authorized by law to be considered in executive session. Consistent with regulatory efficiency and the need for adequate prior notice and comment on commission decisions, the commission may adopt rules, after notice and comment, establishing additional categories of decisions subject to waiver or reduction of the time period in this section.”**

There has long been a statutory requirement for public review prior to the Commission’s voting on certain orders. Subdivisions (d) and (e) of Section 311 have such a requirement, which applies to “proposed decisions” under Sections 1701.3 and 1701.4; SB 779 now extends the requirement to additional kinds of Commission orders. Our strategy for implementing SB 779 is to use, as far as possible, the review and comment procedure already in place in Article 19 for proposed decisions. We and the stakeholders have considerable experience

under Article 19, which accommodates comments and replies within a 30-day review period, as envisioned by subdivision (g) of Section 311.

Certain aspects of subdivision (g) require more elaborate implementation. Specifically, SB 779 requires opportunity for public review and comment regarding many draft resolutions, which generally come before the Commission as the result of advice letters or other informal process; for these purposes, we need to determine who should be considered as the "parties" to such resolutions and to make certain modifications to the comment procedure. Also, SB 779 authorizes the Commission, through rulemaking, to establish "additional categories of decisions subject to waiver or reduction" of the period for public review and comment. We address these subjects in the proposed new Rule 77.7.

#### **Changes to Rules 77.1 through 77.6**

We propose to make three basic changes to these existing rules. First, consistent with our rules in Article 2.5 implementing SB 960, Rules 77.1, 77.2, and 77.6 should be amended to indicate that a proposed decision may be prepared by either an assigned Commissioner or an assigned Administrative Law Judge; also, the definition of "alternate" in Rule 77.6 is clarified. Second, Rule 77.1 should be amended such that its procedure will apply only to ratesetting or quasi-legislative matters that have been heard; under SB 960 and our implementing rules, in an adjudicatory proceeding, the decision of a presiding officer may become the Commission's decision unless there is an appeal or request for review, and there is no mandated process for prior comment on the

presiding officer's decision.<sup>1</sup> Third, Rule 77.2 should be amended to require filing of an original and four (not 12) copies of comments. Cf. Rule 2.5(a).

### New Rule 77.7

As noted earlier, our basic strategy in this proposal is to rely, wherever possible, on existing procedures for public review and comment. For decisions in formal proceedings that, under SB 779, are now to be subject to public review and comment, these existing procedures can simply be cross-referenced to meet the requirements of SB 779. See proposed Rule 77.7(b). Most of the truly new material in proposed Rule 77.7 is necessary in order to implement SB 779 for resolutions. Because resolutions are typically issued outside of formal proceedings, defining "party" for purposes of public review and comment cannot simply apply a process developed for formal proceedings, where prehearing conferences, motions to intervene, and official service lists enable a reasonably systematic tracking of party status.

Our proposal defines "party" for four major types of resolutions, depending partly on subject matter and partly on processes used to identify persons interested in the subject matter. Nevertheless, there will likely be resolutions for which a rule of general applicability to determine "parties" is infeasible. For such resolutions, we plan to include, with the Daily Calendar notice of the resolution's agenda item number, instructions to persons wanting to file comments. The notice may provide for service of comments on other persons; for example, the notice may specify the use of a service list from a recent

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<sup>1</sup> The presiding officer, however, has discretion to solicit prior comment on all or a part of a draft of his or her decision. See Rule 8.2 (b).

proceeding whose subject matter bears a reasonable relation to that of the resolution.

Because Rules 77.1 through 77.6 contain many references that are specific to formal proceedings at the Commission, we cannot apply these rules to resolutions by cross-reference without raising many questions or causing ambiguities. Thus, instead of such cross-reference, proposed Rule 77.7(c) contains explicit instructions for comments regarding resolutions and alternates to resolutions. In several respects, these instructions simplify the requirements that apply to comments regarding decisions in formal proceedings. For example, the instructions regarding resolutions and alternates to resolutions do not restrict the scope of comments or require, e.g., a table of authorities; however, these instructions do not permit consideration of late-filed comments or replies to comments. The reason for these differences in comment procedure with respect to resolutions is that resolutions generally concern matters not requiring an evidentiary record. Where a genuine, material issue of law or fact arises in connection with a resolution, the Commission may defer the issue or convert the entire resolution to a formal matter by various procedural means. The proposed Rule 77.7(c) also permits variation to the comment procedure in particular instances, where appropriate.

Regarding alternates to resolutions, our practice will be similar to our practice regarding alternates to a proposed decision (see Rule 77.6) in that we plan to serve any alternate at least 14 days before taking action on the alternate and the resolution to which the alternate relates. Under this practice, we would reschedule the consideration to a later Commission meeting if service of the alternate occurs less than 14 days before the Commission meeting at which the resolution was originally scheduled to be considered. The practice will ensure that parties have a reasonable time to comment on the alternate, and that the

Commission and its staff have a reasonable time to analyze the comments, before the Commission makes its disposition of the matter.

SB 779 recites various situations where a Commission order is wholly exempt from the statute, or where the Commission or the parties can reduce or waive the review and comment period. These statutory provisions are reflected in proposed Rule 77.7(e),(f), and (g).<sup>3</sup> SB 779 also permits the Commission, through rulemaking, to establish additional categories of decisions for which the period might be reduced or waived. We propose such additional categories in Rule 77.7(f)(3) through (8). These additional categories meet the SB 779 criteria of "regulatory efficiency" and "adequate prior notice and comment," as we discuss further below.

Pursuant to earlier legislation (SB 960,) adjudicatory proceedings at the Commission normally must be resolved within 12 months. SB 960 also permits the decision of the presiding officer in an adjudicatory proceeding to become the decision of the Commission without being brought to a Commission vote unless, for example, a Commissioner requests review. However, tacking on a 30-day public review and comment period for decisions following a request for review could often result in our missing the SB 960 deadline. Nothing in SB 779 indicates that the Legislature intended by its enactment to extend this deadline. Moreover, since all parties to the complaint already have had the opportunity to respond to a request for review, and since the Commission's decision on the

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<sup>3</sup> Proposed Rule 77(e) also states the exemption from public review and comment of the assigned Administrative Law Judge's decision in a complaint under the expedited complaint procedure. This exemption stems from the Commission's authority under Sections 311(f) and 1702.1. Note that SB 779 does not permit parties to reduce or waive the review period for alternates, nor does it give the Commission such discretion except with respect to unforeseen emergency situations.

request for review must rely on the record before the presiding officer, we believe that the "need for adequate prior notice and comment" has been adequately accommodated. Thus, the review and comment period generally should be waived for decisions following a request for review in adjudicatory proceedings.

We also see no need for 30 days' public review and comment when the Commission finds it necessary to extend the 12-month period for resolving an adjudicatory proceeding. Although we expect that we will rarely exercise our authority to extend the 12-month deadline, we also expect that, on occasion and for compelling reasons, such extension will be requested by the parties themselves or the need for extension will be clear to all concerned (e.g., illness of an important witness). Thus, generally speaking, the review and comment period should be waived for decisions extending this deadline.

The federal Telecommunications Act of 1996 sets a deadline for states in resolving certain arbitration proceedings. We have already heard from parties in Rulemaking (R.) 98-07-038 that they consider waiver or reduction of the review and comment period appropriate for these arbitrations. We agree with their recommendation.

Decisions on compensation requests are subject to statutory deadlines.<sup>4</sup> These decisions are often noncontroversial because earlier decisions establish, e.g., the claimant's success or failure on the substantive issues in the proceeding or the appropriate hourly rate for attorneys. Thus, we think that waiver or reduction of the review and comment period will be appropriate for many, if not all, decisions on compensation requests.

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<sup>4</sup> See Section 1804(e): Commission must issue its determination on a request for compensation within 75 days of filing of the request.

In situations where the Commission must respond to a subpoena, waiver of the review and comment period is often appropriate or even necessary. The persons concerned with civil subpoenas may have had prior notice in the underlying court proceeding. In the criminal context, prior review and comment may frustrate legitimate investigative or enforcement activity. Thus, waiver of the review and comment period will be appropriate for many, if not all, decisions on disclosure of documents pursuant to subpoena.

Many statutes provide comprehensively for public review and comment in the decision-making process, together with a deadline for action by the regulatory agency. In practice at the Commission, the California Environmental Quality Act (CEQA) provides perhaps the most frequently encountered example of such a statute. Under CEQA, the required environmental documents, such as the draft environmental impact report, must be circulated broadly, and comments must be taken, before final agency approval. Furthermore, CEQA (by incorporating provisions of the Permit Streamlining Act) requires lead and responsible agencies to complete their consideration of projects within stated time periods. Thus, adequate prior notice and comment is defined and required by CEQA, and tacking on an additional 30 days' public review and comment might prevent the Commission from meeting the CEQA deadline. We propose that the Commission have discretion to waive or reduce the review and comment period in carrying out its duties under CEQA and other statutes with such comprehensive provisions.

### **Next Steps**

The Executive Director, in coordination with the Chief Administrative Law Judge, will send the attached draft of rules implementing SB 779 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 these rules. For purposes of such publication, the Executive Director 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.

Also, at the Commission's hearing room at 505 Van Ness Avenue, San Francisco, on March 3, 1999, from 10:00 a.m. to noon, we will hold a workshop to discuss the changes proposed in today's draft. Accomplishing these changes is challenging because of the great variety of orders that SB 779 addresses. We are especially interested in any feedback that might simplify the review and comment procedures. We also welcome suggestions on utilization of the Internet to facilitate review and comment, particularly for those resolutions where implementation of the "party" concept presents difficulties.

### Scoping

In this part of today's decision, we announce preliminary determinations and scoping, as required by Rule 6 (c)(2). This proceeding is quasi-legislative in character. We will hold at least one workshop, but we see no need for a formal hearing. Consequently, our SB 960 rules (Article 2.5) will apply only to the extent indicated in Rule 6.6. The general issue for the proceeding is implementation of certain provisions of SB 779 as they relate to public review and comment regarding specified Commission decisions and alternates. The foregoing discussion lays out particular issues that we see at this time. We project final adoption and submission of the new rules to the Office of Administrative Law within six months of the publication of the proposed rules in the California

Regulatory Notice Register; however, in no event will the time to finally resolve this proceeding exceed 18 months from the effective date of today's decision.

### **Finding of Fact**

The proposed rules appended to this Order Instituting Rulemaking would clarify, make specific, and otherwise implement certain provisions of SB 779 as they relate to public review and comment regarding specified Commission decisions and alternates.

### **Conclusion of Law**

The proposed rules should be sent to the Office of Administrative Law for publication in the California Regulatory Notice Register. In order to begin and complete the adoption process promptly, this order should be effective immediately.

## **O R D E R**

### **IT IS ORDERED that:**

1. This Order Instituting Rulemaking shall be served initially on the service list for Rulemaking (R.) 98-07-038. Any party to R.98-07-038, and any other interested person, may request inclusion in the service list for this rulemaking by writing to Administrative Law Judge Steven Kotz (kot@cpuc.ca.gov) by March 1, 1999; the updated service list will be published by ruling and at the Commission's Internet site (www.cpuc.ca.gov). Parties willing to accept service of documents by e-mail shall include their e-mail address with their postal address when they ask to be added to the service list; by asking for e-mail service, a party commits, in turn, to make e-mail service on other parties that so request. If a party does not request e-mail service, or if such service is

unsuccessful for any reason, the serving party shall promptly complete service by other means authorized under the Commission's rules.

2. The Executive Director, in coordination with the Chief Administrative Law Judge, shall send today's decision and all required forms to the Office of Administrative Law in accordance with applicable provisions of the Government Code. For purposes of publishing the appended proposed rules in the California Regulatory Notice Register, the Executive Director is authorized to make nonsubstantive changes to the proposed rules as may be required to prepare them for such publication or to improve the overall clarity, organization, or consistency of the proposal.

3. A workshop will be held at the Commission's hearing room, 505 Van Ness Avenue, San Francisco, on March 3, 1999, starting at 10:00 a.m., to discuss the proposed amendments set forth in the Appendix to this Order.

4. Concurrent opening comments on the proposed rules appended to this Order shall be filed and served no later than March 22, 1999. Concurrent reply comments shall be filed and served no later than April 12, 1999.

This Order is effective today.

Dated February 4, 1999, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners

## APPENDIX

### Proposed Amendments to Article 19 of the Commission's Rules of Practice and Procedure

#### *Article 19. Decisions, Proposed Decisions, and Commission Meetings*

##### **77. (Rule 77) Submission of Proceedings.**

A 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 argument as may have been prescribed by the Commission or the presiding officer.

##### **77.1. (Rule 77.1) Filing Proposed Decision.**

The assigned Commissioner or Administrative Law Judge shall prepare a proposed decision, whether interim or final, setting forth the recommendations, findings and conclusions. After discussion with the assigned Commissioner, ~~t~~The proposed decision of the assigned Commissioner or Administrative Law Judge shall be filed with the Commission and served on all parties without undue delay, not later than 90 days after submission.

This procedure will apply to all ratesetting or quasi-legislative matters which have been heard, except those initiated by customer or subscriber complaint unless the Commission finds that such procedure is required in the public interest in a particular case.

Applicants in matters involving passenger buses, sewer utilities, or vessels 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.

##### **77.2. (Rule 77.2) Time for Filing Comments.**

Parties may file comments on the proposed decision within 20 days of its date of mailing. An original and ~~four~~<sup>two</sup> copies of the comments with a certificate of service shall be filed with the Docket Office and copies shall be served on all parties. The assigned Commissioner and Administrative Law Judge shall be served separately.

An applicant may file a motion for an extension of the comment period if it accepts the burden of any resulting delay. Any other party requesting

an extension of time to comment must show that the benefits of the extension outweigh the burdens of the delay.

**77.3. (Rule 77.3) Scope of Comments.**

Except in general rate cases, major plant addition proceedings, and major generic investigations, comments shall be limited to 15 pages in length plus a subject index listing the recommended changes to the proposed decision, a table of authorities and an appendix setting forth proposed findings of fact and conclusions of law. Comments in general rate cases, major plant addition proceedings, and major generic investigations shall not exceed 25 pages.

Comments shall focus on factual, legal or technical errors in the proposed decision and in citing such errors shall make specific references to the record. Comments which merely reargue positions taken in briefs will be accorded no weight and are not to be filed.

New factual information, untested by cross-examination, shall not be included in comments and shall not be relied on as the basis for assertions made in post publication comments.

**77.4. (Rule 77.4) Specific Changes Proposed in Comments.**

Comments proposing specific changes to the proposed decision shall include supporting findings of fact and conclusions of law.

**77.5. (Rule 77.5) Late-Filed Comments and Replies to Comments.**

Late-filed comments will ordinarily be rejected. However, in extraordinary circumstances a motion for leave to file late may be filed. An accompanying declaration under penalty of perjury shall be submitted setting forth all the reasons for the late filing.

Replies to comments may be filed five days after comments are filed and shall be limited to identifying misrepresentations of law, fact or condition of the record contained in the comments of other parties. Replies shall not exceed five pages in length, and shall be filed and served as set forth in Rule 77.2.

**77.6. (Rule 77.6) Review of and Comment on Alternates.**

(a) For purposes of this rule, "alternate" means a substantive revision by a Commissioner to a proposed decision not prepared by that Commissioner, which revision either:

(1) a substantive revision to an Administrative Law Judge's proposed decision circulated under Rule 77.1 that materially changes the resolution of a contested issue, or

(2) makes any substantive addition to the findings of fact, conclusions of law, or ordering paragraphs, of an Administrative Law Judge's proposed decision circulated under Rule 77.1.

(b) A revision or addition to an Administrative Law Judge's a proposed decision will be considered "substantive" for purposes of this rule if the sponsoring Commissioner determines that the revision or addition is substantive. If the sponsoring Commissioner determines that a revision or addition is not substantive, the President of the Commission in consultation with the Chief Administrative Law Judge may nevertheless determine that the revision or addition is substantive, in which case the President's determination is controlling. The President may delegate this review function to another Commissioner and must delegate it when the President is the sponsoring Commissioner.

(c) An alternate will be filed and served on all parties to the proceeding and, except as provided in subsection (g) of this Rule, will be subject to public review and comment before the Commission may vote on it. The date of the Commission meeting when the alternate is first scheduled to be considered will be indicated on the first page of the alternate.

(d) If the alternate is served with the Administrative Law Judge's proposed decision, or if the alternate is served at least 30 days before the Commission meeting at which the Administrative Law Judge's proposed decision is scheduled to be considered, the provisions of Rules 77.1 through 77.5 concerning comments on the proposed decision will also apply to comments on the alternate. The page limits of Rule 77.3 apply separately to comments on the proposed decision and to comments on the alternate.

(e) If the alternate is served less than 30 days, but at least 14 days, before the Commission meeting at which the Administrative Law Judge's proposed decision is scheduled to be considered, parties may file comments on the alternate at least seven days before the Commission

meeting. The provisions of Rules 77.3, 77.4, and 77.5 on comments on proposed decisions and replies to comments will also apply to comments on alternates and corresponding replies. Comments and replies must comply with Rules 2, 2.1, 2.2, and 2.5. Comments and replies must be served on all parties in compliance with Rule 2.3, and must be separately served on the assigned Administrative Law Judge and all Commissioners.

(f) If service of the alternate occurs less than 14 days before the Commission meeting at which the Administrative Law Judge's proposed decision is scheduled to be considered, consideration of the proposed decision and the alternate will be rescheduled to a later Commission meeting. Comments on the alternate will be governed by either subsection (d) or subsection (e) of this Rule, depending on the time between the date the alternate is served and the date of the rescheduled consideration of the proposed decision and alternate.

(g) The assigned Commissioner or Administrative Law Judge may waive or reduce the comment period on alternates in an unforeseen emergency situation (Rule 81), and may extend the comment period in appropriate circumstances.

**(Rule 77.7) Public Review and Comment Pursuant to SB 779.**

(a) Definitions. This Rule implements provisions of Public Utilities Code Section 311(g), as effective January 1, 1999, for public review and comment by parties on Commission decisions and alternates. For purposes of this Rule, the following definitions apply:

- (1) "Decision" is any resolution or decision to be voted on by the Commission except (i) an order, resolution, or decision specified in subsection (e) of this Rule, or (ii) a proposed decision that is filed and served pursuant to Public Utilities Code Section 311(d) and Rule 77.1;
- (2) "Draft" refers to a decision that has been circulated under this Rule but not yet acted upon by the Commission;
- (3) "Alternate," with respect to a draft decision, is an alternate as defined in Rule 77.6(a) with respect to a proposed decision;
- (4) "Person" includes natural persons and legal entities;
- (5) "Party," with respect to a formal proceeding (i.e., an application, a complaint, or a proceeding initiated by Commission order),

includes all of the following: applicant, protestant, petitioner, complainant, defendant, intervenor, interested party who has made a formal appearance, respondent, and Commission staff of record in the proceeding;

- (6) "Party," with respect to a resolution disposing of an advice letter, is the advice letter filer, anyone filing a protest or response to the advice letter, and any third party whose name and interest in the relief sought appears on the face of the advice letter (as where the advice letter seeks approval of a contract or deviation for the benefit of such third party);
- (7) "Party," with respect to a resolution disposing of a request for disclosure of documents in the Commission's possession, is (i) the person who requested the disclosure, (ii) any Commission regulatee about which information protected by Public Utilities Code Section 583 would be disclosed if the request were granted, and (iii) any person (whether or not a Commission regulatee) who, pursuant to protective order, had submitted information to the Commission, which information would be disclosed if the request were granted;
- (8) "Party," with respect to a resolution disposing of one or more requests for motor carrier operating authority, is any person whose request would be denied, in whole or part, and any person protesting a request, regardless of whether the resolution would sustain the protest;
- (9) "Party," with respect to a resolution establishing a rule or setting a fee schedule for a class of Commission-regulated entities, is any person providing written comment solicited by Commission staff (e.g., at a workshop or by letter) for purposes of preparing the draft resolution.

(b) Comments and Replies on Decision Other Than Resolution. Unless otherwise directed by the Commission, the assigned Commissioner, or the assigned Administrative Law Judge or Examiner, Rules 77.2 through 77.5 govern comments and replies to comments on draft decisions other than resolutions, and Rule 77.6 governs comments and replies to comments on alternates to draft decisions other than resolutions.

(c) Comments on Resolution With "Party." Unless otherwise directed by the Commission division that issued the draft resolution, comments may be filed on any resolution for which "party" is defined, or on any alternate to such resolution, under the procedures in this subsection.



No later than seven days before the Commission meeting when the resolution is first scheduled for consideration (as indicated on the first page of the resolution), any person may file comments, not to exceed five pages, with the Commission division that issued the resolution, and shall concurrently serve them on (i) all parties shown on the service list appended to the draft resolution, (ii) all Commissioners, and (iii) the Chief Administrative Law Judge, the General Counsel, or other Division Director, depending on which Commission division issued the resolution. Comments on alternates to resolutions shall be filed and served under the same procedures, but no later than seven days before the date of the Commission meeting when the alternate is first scheduled for consideration (as indicated on the first page of the alternate). Late-filed comments will not be considered, and replies to comments are not permitted.

(d) Resolution Without "Party." With respect to a resolution that would establish a rule or set a fee schedule but that lacks any "party," as defined in subsection (a)(9) of this Rule, any person may file comments on the resolution, or on any alternate to the resolution, under the procedures of subsection (c) of this Rule, and shall serve them in accordance with the instructions accompanying the notice of the resolution as an agenda item in the Commission's Daily Calendar.

(e) Exemptions. This Rule does not apply to (i) a resolution or decision on an advice letter filing or uncontested matter where the filing or matter pertains solely to one or more water corporations as defined in Public Utilities Code Section 241, (ii) an order instituting investigation or rulemaking, (iii) a categorization resolution under Public Utilities Code Sections 1701.1 through 1701.4, or (iv) an order, including a decision on an appeal from the presiding officer's decision in an adjudicatory proceeding, that the Commission is authorized by law to consider in executive session. In addition, except to the extent that the Commission finds is required in the public interest in a particular case, this Rule does not apply to the decision of the assigned Administrative Law Judge in a complaint under the expedited complaint procedure (Public Utilities Code Sections 311(f) and 1702.1).

(f) Reduction or Waiver by Commission. In an unforeseen emergency situation (see Rule 81), the Commission may reduce or waive the period for public review and comment under this Rule regarding draft decisions and alternates. In the following circumstances, the Commission may reduce or waive the period for public review and comment under this Rule regarding draft decisions but not regarding alternates:

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- (1) in a matter where temporary injunctive relief is under consideration;
- (2) in an uncontested matter where the decision grants the relief requested;
- (3) for a decision on a request for review of the presiding officer's decision in an adjudicatory proceeding;
- (4) for a decision extending the deadline for resolving adjudicatory proceedings (Public Utilities Code Section 1701.2(d));
- (5) for a decision under the state arbitration provisions of the federal Telecommunications Act of 1996;
- (6) for a decision on a request for compensation pursuant to Public Utilities Code Section 1801 et seq.;
- (7) for a decision authorizing disclosure of documents in the Commission's possession when such disclosure is pursuant to subpoena;
- (8) for a decision under a federal or California statute (such as the California Environmental Quality Act) that both makes comprehensive provision for public review and comment in the decision-making process and sets a deadline from initiation of the proceeding within which the Commission must resolve the proceeding.

(g) Reduction or Waiver by Parties. The parties may reduce or waive the provisions of this Rule for public review and comment regarding decisions, but not regarding alternates, where all the parties so stipulate.

**(END OF APPENDIX)**