

**VIA E-MAIL**

December 6, 2010

Hon. Hallie Yacknin  
Administrative Law Judge  
California Public Utilities Commission  
505 Van Ness Avenue, Room 5005  
San Francisco, CA 94102

**Re: Comments of Manatt, Phelps & Phillips on Draft Resolution ALJ-260**

Dear Administrative Law Judge Yacknin:

Pursuant to California Public Utilities Commission (“Commission”) Draft Resolution ALJ -260 (“Resolution”) and Government Code § 11346.4, Manatt, Phelps & Phillips (“Manatt”) submits the following comments on its own behalf. Manatt represents numerous parties that appear before this Commission and other administrative agencies nationwide and internationally, in the areas of natural gas, electric power, water, telecommunications and transportation matters. Thus, it has a strong interest in assisting the Commission in its efforts to ensure that the Rules of Practice and Procedure (“Rules”) provide for a fair and efficient process. The Resolution would, if adopted, amend the Rules in various respects. Manatt supports the Commission’s continued efforts to streamline its process. As described below, Manatt proposes the following limited modifications to the proposed rule changes, as well as other procedural reforms that will improve the clarity and efficiency of proceedings for all who appear before the Commission.

**I. Existing Ex Parte Reporting Requirements Are Sufficient.**

Existing Rule 8.3 requires that notices of ex parte communication be filed and served within three working days of the communication. The Resolution proposes to amend Rule 8.3 to require parties to file and serve notices of oral ex parte communications within one working day and to file and serve notices of written ex parte communications on the same day as the

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communication.<sup>1</sup> The Resolution reasons that “[w]ith the advent of electronic filing and electronic service, there is no reasonable basis to delay the filing and service of ex parte communications.”<sup>2</sup>

This proposed rule appears to be a complex solution to a nonexistent problem. It is unclear what problem the Commission is trying to address by shortening the time for filing notices of ex parte communications. The timing and communication difficulties that will arise to comply with this proposed rule will unquestionably outweigh the any possible increase in efficiency from electronic filing and service. For instance, counsel is not always present when ex parte communications occur, and in those instances, counsel will need to have time to communicate with the client to give an accurate account of the circumstances and content of the communications.

Furthermore, oral and written ex parte communications often occur in the course of the same meeting. It will be far more efficient to provide notice of all communications made in the same meeting at the same time than to separate notices of written communications from oral communications that were made at the same time. Finally, ex parte meetings in which written communications occur can happen late in the day. In such cases, the proposed same day notice requirement would not allow for a reasonable amount of time for those present to travel from the Commission to their offices. Parties may not always be available to communicate the content of the meetings within the same day for counsel to file a notice before close of business that day—particularly if they must travel from outside the State or country.

The existing three day notice requirement ensures adequate transparency and provides ample notice to interested parties. Manatt urges the Commission to preserve the existing rule and avoid the confusion, potential inaccuracy, and inefficiency that would result from the proposed change to Rule 8.3.

**II. If The Rules Increase Minimum Font Size, The Rules Should Extend The Maximum Page Length Accordingly.**

Existing Rule 1.5 provides that documents tendered for filing must use type that is no smaller than 10 point font. The Resolution would increase the minimum font size to 12 point. If the proposed rule increases the mandatory font size, it will effectively shorten the page limitations for tendered documents and thus hinder a party’s ability to address areas of concern. Furthermore, text in footnotes, tables, and graphics is commonly presented in size 8 or 10 point font to provide supporting references without detracting from the issues addressed in a pleading. Accordingly, Manatt proposes that if the Commission decides to increase the minimum font size

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<sup>1</sup> CPUC Res. ALJ-260, at A-26

<sup>2</sup> Id., at 6.

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for tendered documents, it should create an exception for text contained in footnotes, tables, and graphics and also increase the page limitations contained in Rule 14.3.

**III. Additional Proposed Procedural Reforms To Commission Rules Will Improve Clarity And Efficiency Of Practice Before The Commission.**

**A. The Commission Should Clarify Rules 1.9 and 1.4 For Service Lists To Include Multiple Individuals and Organizations on Behalf of a Single Party.**

At present, Rule 1.9 directs the Commission's Process Office to maintain the official service list for pending proceedings. The Commission has interpreted Rules 1.4 and 1.9 to mean that only one person per party may be listed as a "party" in a given proceeding. This means that for clients with outside counsel, only the client or the attorney can be listed as a "party" and those not listed as a party are listed as "information only". The service rules applicable to the "information only" category of participants differ from the rules applicable to parties.<sup>3</sup> To prevent this disparate treatment, Rules 1.4 and 1.9 should be clarified so that a party to a proceeding can list multiple persons and organizations as representatives of the same "party" on the official service list.

**B. The Commission Should Maximize Clarity and Transparency With Respect to Filing Requirements.**

Manatt appreciates the commendable job that the Commission's Process Office does in reviewing the thousands of voluminous filings tendered each year. Manatt also appreciates the Process Office's efforts to communicate with the assigned Administrative Law Judge, and with parties and their counsel, when disputes over form of filings arise. Nonetheless, there are instances when inconsistent application of the Rules results in the rejection of otherwise compliant filings. Manatt urges the Commission to continue to revise and clarify the Rules as necessary in order to provide the maximum amount of clarity and transparency regarding filing requirements. Consistent and transparent application of filing rules will promote efficiency and fairness for both practitioners and the parties they represent.

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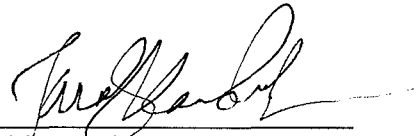
<sup>3</sup> See CPUC Rule 1.10, "Electronic Mail Service."

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**IV. Conclusion**

For the above reasons, Manatt respectfully requests that the Commission reject the proposed changes to Rules 8.3 and 1.5. Additionally, Manatt encourages the Commission to amend Rules 1.4 and 1.9 as described above, to promote clarity, consistency and transparency.

Respectfully submitted,



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