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115 Sansome Street, Suite 900
San Francisco, CA 94104

415-929-8876 • www.turn.org

Hayley Goodson, Staff Attorney

December 6, 2010

Hallie Yacknin
Administrative Law Judge
California Public Utilities Commission
505 Van Ness Avenue, Room 5005
San Francisco, CA 94102
e-mail: hsy@cpuc.ca.gov

Re: TURN Comments on Draft Resolution ALJ-260 (Amending the Rules of Practice and Procedure)

Dear Administrative Law Judge Yacknin:

On October 7, 2010, the Commission issued for comment Draft Resolution ALJ-260, proposing amendments to the Commission's Rules of Practice and Procedure (Title 20, Division 1, of the California Code of Regulations). Notice of Resolution ALJ-260 was published in the October 22, 2010, California Regulatory Notice Register, making December 6, 2010, the last day to submit comments concerning the proposed rule amendments. Accordingly, The Utility Reform Network (TURN) respectfully and timely submits these comments on Draft Resolution ALJ-260. As discussed below, TURN recommends that the Commission modify the amendments proposed for Rule of Practice and Procedure (Rule) 1.5, which addresses font size and page margins, and Rule 1.15, concerning the computation of time for deadlines.

- 1. The proposed increase in minimum font size required by Rule 1.5 should be accompanied by a proportional increase in page limits, where page limits are prescribed elsewhere by the Rules of Practice and Procedure.**

The Commission proposes to amend Rule 1.5 to require that documents tendered for filing use at least 12 point font and have left page margins at least 1 inch and right margins at least 1/2 inch. The current rules allow font size 10 or larger and do not address page margins. Since Rule 1.5 does not distinguish between text in the body of a document and footnotes, it would appear that the new font size limit would apply to both. The Draft Resolution explains that this rule change is intended to increase "ease of reading" and be "consistent with the California Rules of Court." (Draft Res. ALJ-260, p. 2).

On November 23, 2010, the California Water Association submitted comments on this proposed amendment to Rule 1.5. CWA argues that the increased type-size should be accompanied by proportionate increases in the page limits specified in Rule 14.3, which limits the number of pages permitted in comments and reply comments on proposed and alternate decisions. CWA proposes that the 15 and 25-page limits for comments specified in Rule 14.3(b) be increased to 18 and 30 pages, respectively, and that the 5-page limit for reply comments in Rule 14.3(d) be increased to 6 pages.

While TURN does not oppose the Commission's proposal to increase the minimum permissible font size to 12 for documents tendered for filing, TURN agrees with CWA that the page limits dictated by Rule 14.3 should also be adjusted. Simply increasing the font size, while holding page limits constant, will materially reduce parties' opportunity to comment on proposed Commission decisions and alternates relative to existing rules. This reduction is no trivial matter. Some Commission proposed or alternate decisions are highly complex and address a number of issues. Like CWA, TURN and many other parties have tendered comments on proposed or alternate decisions with font size 10 or 11, in order to have space to adequately address within the Rule 14.3 page limits the factual, legal or technical errors contained in such documents. Even when parties use font size 12 for body text, it is common practice under the existing Commission Rules to use a smaller font size for footnotes including citations, such as 10- or 11-point font. Increasing the minimum font size for footnotes to 12 point would require parties to truncate the substance of comments that otherwise just fit within the Rule 14.3 page limits.

To provide parties with the same opportunity to comment on proposed and alternate decisions as currently exists, TURN recommends that any increase in minimum font size for filed documents be accompanied by a proportional increase in the page limits imposed by Rule 14.3. TURN supports the resolution proffered by CWA to address this concern.

2. The proposed amendment to Rule 1.15 should not apply to the service of documents that are not required to be tendered for filing with the Commission.

The Commission proposes to add the following underlined language to Rule 1.15, which addresses the calculation of due dates:

When a statute or Commission decision, rule, order, or ruling sets a time limit for performance of an act, the time is computed by excluding the first day (i.e., the day of the act or event from which the designated time begins to run) and including the last day. If an act occurs after 5:00 p.m., it is deemed as having been performed on the next day.

Currently, documents tendered for filing – whether submitted to the Commission's Docket Office in person, via U.S. Mail, or through the Commission's Electronic Filing System – must be

submitted by 5:00 pm to be eligible for filing that day. Documents submitted after 5:00 pm are eligible for filing the next business day. (*See E-Filing User Guide, October 13, 2009, p. 1*). The proposed amendment to Rule 1.15 would extend this definition of timeliness to all acts subject to a deadline.

TURN recommends that the Commission modify the proposed amendment to Rule 1.15 to exclude from the definition of “act” the electronic service of documents that are to be served *but not filed* with the Commission, such as prepared testimony. Instead, the Commission should continue the existing practice of considering timely those documents served by e-mail at any time during the due date, which technically extends until midnight (or 11:59:59), except where otherwise directed by Commission ruling or order in a particular instance.

TURN is not aware of any problem with current practices regarding the service of documents that are not filed, and Draft Resolution ALJ-260 does not address this. Although the Draft Resolution explains the purpose of many other proposed Rule amendments, it is silent as to the purpose of this particular amendment. The discussion of this amendment in Draft Resolution ALJ-260 is limited to the following language: “We amend Rule 1.15 to clarify that an act must occur by 5:00 p.m. in order to be deemed performed on that day.” (Draft Resolution ALJ-260, p. 3).

In fact, documents served electronically by midnight on the due date will reach the intended recipients well before those documents served by First Class U.S. Mail on the due date would have, assuming successful transmission in both cases. Service by U.S. Mail is complete as soon as the document is deposited in the mail. (*See Rule 1.9, as corrected by Draft Resolution ALJ-260 to address a typographical error*). Yet recipients will receive documents by mail at some point during the next business day, if not later. In contrast, documents served by e-mail will usually be received almost instantaneously, long before the next business day commences. In this way, the existing electronic service rules, without amendment, will fulfill the purpose of increasing the convenience to recipients.

It is important to note that the electronic service rules are intended to increase the convenience to the party transmitting the document, as well as the recipient. One of the numerous benefits of conducting business electronically is the ability to operate beyond the traditional time constraints imposed by docket offices at courts and regulatory agencies, like the Commission. For this reason, the U.S. Federal Courts and many federal agencies accept electronically tendered filings until midnight on the last day for filing. For instance, Rule 26 of the Federal Rules of Appellate Procedure provides that computation of time for the “last day” for submitting a document is defined as follows, unless a different time is set by a statute, local rule, or court order:

- (A) for electronic filing in the district court, at midnight in the court’s time zone;
- (B) for electronic filing in the court of appeals, at midnight in the time zone of the circuit clerk’s principal office;

(C) for filing under Rules 4(c)(1), 25(a)(2)(B), and 25(a)(2)(C) — and filing by mail under Rule 13(b) — at the latest time for the method chosen for delivery to the post office, third-party commercial carrier, or prison mailing system; and
(D) for filing by other means, when the clerk’s office is scheduled to close.

Similarly, the Federal eRulemaking Program, an E-Government initiative committed to increasing public access to and participation in developing regulations at 25 partnering federal agencies, provides a portal for electronic filing of comments at www.Regulations.gov. Comments filed through this website are considered timely if submitted by 11:59:59 pm Eastern Time on the due date. (See <http://www.regulations.gov/search/Regs/home.html#faqs>).

Nevertheless, TURN also recognizes that there may be severe time constraints in particular instances that make the difference between a service deadline of 5:00 pm and a deadline of midnight significant. Where that may be the case, the assigned Administrative Law Judge or Commissioner in a particular proceeding, or the Division soliciting input on a pending matter, can always direct parties to serve documents no later than 5:00 pm, something the Commission has previously done on rare occasions. For example, the Scoping Memo issued in A.07-11-011 (SCE’s Test Year 2009 GRC) directed that all parties should “serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m. on the date scheduled for service to occur.” (*Scoping Memo and Ruling of Assigned Commissioner*, A.07-11-011, Feb. 7, 2008, p. 12). TURN also recalls situations in which the Commission has directed that documents be served by noon (and filed by 5:00 pm) in order to allow the Commission more time to incorporate recommended changes to a proposed decision in time for the next Commission Business Meeting. Excluding the service of documents not filed with the Commission from the reach of the amendment to Rule 1.15 would not hinder the Commission’s discretion to impose additional time constraints in particular instances.

For these reasons, TURN recommends that the Commission continue to afford parties the convenience of serving documents not bound by the Docket Office’s business hours, such as prepared testimony, at any time on the due date. The proposed amendment to Rule 1.15 should accordingly be modified to exempt such documents from the definition of “acts” that must occur by 5:00 pm on the due date to be timely. The following addition (in italics) to the proposed amendment to Rule 1.15 would effectuate this change: “If an act *that requires filing with the Commission’s Docket Office* occurs after 5:00 p.m., it is deemed as having been performed on the next day.”

3. Conclusion

For the foregoing reasons, TURN recommends that the Commission modify the amendments to Rules of Practice and Procedure 1.5 and 1.15 proposed by Draft Resolution ALJ-260, as discussed above.

TURN Comments, Draft Resolution ALJ-260

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TURN appreciates your attention to this important matter. Please feel free to contact us if you have any questions. We would be glad to assist you in any way that we can.

Sincerely,

/S/

Hayley Goodson
Staff Attorney
The Utility Reform Network
115 Sansome Street, Suite 900
San Francisco, CA 94104

Cc: Commission Rules of Practice and Procedure Notification Listserve