

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's
Own Motion to Conduct a Comprehensive
Examination of Investor Owned Electric Utilities'
Residential Rate Structures, the Transition to Time
Varying and Dynamic Rates, and Other Statutory
Obligations.

Rulemaking 12-06-013
(Filed March 22, 2012)

MOTION OF THE UTILITY REFORM NETWORK
FOR REASSIGNMENT OF THE PROCEEDING

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July 9, 2012

**MOTION OF THE UTILITY REFORM NETWORK
FOR REASSIGNMENT OF THE PROCEEDING**

Pursuant to Rule 9.2 of the Commission Rules of Practice and Procedure, The Utility Reform Network (TURN) submits this motion for a reassignment of the proceeding. On June 28, 2012, Chief ALJ Clopton issued a ruling assigning this proceeding to Commission President Peevey and ALJs Timothy Sullivan and Jeanne McKinney. This motion is submitted within 10 days of the ruling, as specified in Rule 9.2.¹

TURN seeks to have ALJ Timothy Sullivan reassigned from this proceeding on the basis that this ALJ will not provide TURN with a fair hearing of the issues presented in the rulemaking. This proceeding involves proposals to modify residential rate design. The assigned ALJs must be fair, impartial and willing to consider the factual and policy arguments submitted by all parties without bias. Based on many recent experiences, TURN does not believe that ALJ Sullivan will satisfy this requirement. The declaration required by Rule 9.2 is attached as Appendix A to this filing.

TURN recognizes that Rule 9.2 primarily applies to proceedings classified as either adjudicatory or ratesetting. However, TURN believes that the instant rulemaking will potentially reach findings and conclusions relating to factual, legal and policy issues that will be cited, and relied upon, by other parties in ratesetting proceedings. To the extent that this proceeding establishes precedents that will be cited to support outcomes in current or future ratesetting proceedings, TURN must be assured of receiving a fair hearing of its concerns and arguments in this case.

Specifically, any rate design preferences or legal interpretations embraced by the Commission in this proceeding will likely be cited by parties seeking changes to rates in a concurrent rate design window or general rate case. TURN therefore faces the

¹ Because the 10 days falls on Sunday, July 8th, TURN's submission of this motion on the next business day is timely.

prospect of a Commission decision in this this rulemaking effectively resolving certain factual or policy disputes that may not be eligible for relitigation in a subsequent application. This result places TURN at a severe disadvantage and would be tantamount to denying TURN its due process rights in the relevant ratesetting proceeding.

Moreover, TURN is concerned that this proceeding could be reclassified as ratesetting to address specific proposals that will have an immediate impact on rates. For example, if the Legislature enacts any statutory changes to relevant code sections, these new provisions could be subject to interpretation and implementation in this proceeding.² Upon enactment, the Commission may choose to reclassify this proceeding as ratesetting for the purpose of implementing these changes and modifying rates rather than having certain issues litigated in separate utility applications. If the proceeding is reclassified, it is not clear whether, under Rule 9.2(b) and 9.2(c), TURN would have an opportunity to challenge the assignment of ALJ Sullivan since the assignment would have occurred more than 10 days prior to the reclassification of the proceeding. In this event, TURN would be denied any opportunity to exercise its due process rights under Rule 9.2.

TURN therefore moves that ALJ Sullivan be reassigned immediately. In the event that the Commission denies this primary request, TURN alternatively moves for the reassignment of ALJ Sullivan in the event that this proceeding is reclassified as ratesetting at any future date. In either case, the Commission may not deny TURN a meaningful opportunity to challenge the assignment of an ALJ pursuant to Rule 9.2 by merely waiting until the 10 day period has lapsed and then reclassifying the proceeding to avoid the opportunity to exercise a peremptory challenge.

² For example, PG&E and SCE have sponsored legislation in the current session that would allow the Commission to consider the adoption of new or expanded fixed residential customer charges (AB 1755, Perea).

TURN seeks an opportunity to reply to any responses to this motion consistent with the provisions of Rule 11.1(f).

Respectfully submitted,

_____/S/_____
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Dated: July 9, 2012

ATTACHMENT A
DECLARATION OF MATTHEW FREEDMAN

I, Matthew Freedman, am an attorney of record for THE UTILITY REFORM NETWORK in this proceeding and am authorized to make this declaration on the organization's behalf. I believe that that THE UTILITY REFORM NETWORK cannot have a fair and impartial hearing and consideration of factual and policy issues presented in this proceeding before Administrative Law Judge Timothy Sullivan. Neither I nor TURN has previously filed, pursuant to Rule 9.2, any prior motion for reassignment on peremptory challenge in the proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Dated July 9, 2012, at San Francisco, California.

_____/S/_____
Matthew Freedman
Staff Attorney

VERIFICATION

I, Matthew Freedman, am an attorney of record for THE UTILITY REFORM NETWORK in this proceeding and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true of my own knowledge, except for those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I am making this verification on TURN's behalf because, as the lead attorney in the proceeding, I have unique personal knowledge of certain facts stated in the foregoing document.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 9, 2012, at San Francisco, California.

_____/S/____

Matthew Freedman
Staff Attorney