SECTION 4

ADMINISTRATIVE LAW JUDGES DIVISION

The **Administrative Law Judges Division** supports Commission decision-making by processing formal filings, facilitating alternative dispute resolution, conducting hearings, developing an adequate administrative record, preparing timely proposals for Commission consideration, and preparing and coordinating Commission business meeting agendas.

FIVE TO TEN YEAR OUTLOOK

Competition will be the Commission's operative policy for the industries it regulates over the next five to ten years. During this period of time, we assume the Commission may regulate some industries it does not currently regulate, and it may cease regulating some of the industries it currently oversees.

The Commission will operate on a continuum to balance the twin goals of effective competition and effective regulation. "Ideal" effective competition occurs when markets work efficiently, without market power or predatory pricing, and when consumers make fully informed, sound choices. Ideal effective regulation optimizes universal access, consumer protection, safety, reliability, and environmental protection. In the real world, competition/regulation will always fall somewhere along this continuum.

What will decisionmaking at the Commission look like? And what is the ALJ Division role in that process? For the foreseeable future, the formal caseload will mirror the SB 960 categories of proceedings: ratesetting; adjudicatory; and quasi-legislative.

At the present time, the bulk of the Commission's caseload is ratesetting proceedings involving the most complicated substantive and procedural issues; but as restructuring implementation efforts lessen, ratesetting caseload numbers may be expected to decline accordingly.

We anticipate that quasi-legislative, i.e., policy-setting proceedings where Commissioners directly preside over record development, will remain a large part of the Commission's formal caseload. Because this is so, significant effort should be devoted in the near term to exploring alternative forms of rulemaking and streamlined record development that could be used by Commissioner presiding officers in hearings assisted by ALJs (PU Code Section 1701.4), and in proceedings not requiring hearing (and therefore not subject to SB 960).

The formal adjudicatory caseload is currently the most dynamic. Numbers have declined due to aggressive caseload management practices and aggressive informal pre-filing resolution efforts. For the long term, and in the interests of promoting an effective competitive environment and effective regulation, this is the

area where the Commission could add value in promoting both an effective competitive environment and its own effectiveness as a regulatory body.

We assume that in rendering decisions, the Commission will continue to balance its role as a political body and independent fact finder. Pure quasi-legislative proceedings are the province of the Commissioners, who are charged with setting policy. SB 960 provides a primary role for ALJs in adjudicatory proceedings, where Commission decisions involve independent fact finding.[1] In this regard ALJs are highly-trained individuals with diverse backgrounds in law, economics, engineering, accounting and other professional fields directly related to the industries we regulate. They operate in a specialized regulatory arena and function as impartial weighers of the evidence, applying the relevant law to the facts at hand.

In looking at decision-making, we must constantly ask "who is our constituency and what do they want?" The matters we may be called upon to decide range from simple two party disagreements to highly complex multi-party commercial disputes. One-size dispute resolution does not fit all. We should be positioned to provide an array of forums, both formal and informal, for resolution of these disputes. This requires a fundamental rethinking of administrative decisionmaking dynamics at the Commission, including questioning why certain past practices have worked and why others have not. For example, what is the role of mediation and other alternative forms for resolving disputes? Will these forms work here, or not? Will parties accept delegation of decisionmaking to ALJs in exchange for speedy dispute resolution processes?

Whatever the forum, decisionmaking methods will necessarily have certain common elements:

- Dispute resolution must be speedy.
- Decision-makers must consistently apply policy and law to the facts in dispute.
- The full Commission shouldn't have to decide everything; it may delegate its authority by creating dispute resolution techniques involving a variety of expedited ALJ processes of speedy alternatives to litigation that bypass the agenda.
- A robust, effective, ex parte communication rule must be in place.
- A viable appellate process is critical.

[1] Commissioners sometimes act as presiding officer in adjudicatory proceedings, but past experience is that in the vast majority of such cases, Commissioners expect ALJs to preside.

1999-2000 ADMINISTRATIVE LAW JUDGES OBJECTIVES

Objective A: Support the Commission Regulatory Program

The industry division chapters of this Business Plan contain detailed information about decision-making priorities. On page 12 of this section is a table with estimated allocations of ALJs based on workload expectations outlined for each industry.

Strategy The largest number of ALJ resources are assigned to the energy and telecommunications regulatory programs, due to the ongoing restructuring of these industries. (Ongoing throughout 1999-2000)

Energy Workload for 1999-2000

Electric Restructuring: Transition Costs

- September, 1999: Annual Transition Cost Proceeding to review the reasonableness of entries to the Transition Cost Balancing Account for the July 1998 – June 1999 record period (PG&E, Edison, and SDG&E)

- Continued market valuation of utility generating facilities: To the extent that divestiture has not occurred, the Commission must ensure that market valuation is completed by December 31, 2001. We expect to see Public Utilities Code Section 851 applications filed by Edison in the early fall. Section 851 or Section 372 applications for hydroelectric assets will be considered following the 1999 Legislative session.

- September, 1999: Revenue Adjustment Proceeding to consolidate review of rate changes during the rate freeze period and calculation of headroom to apply to paying off transition costs (PG&E and Edison)

- Consideration of applications regarding Edison's and PG&E's capital additions

- PacifiCorp application (expected 3rd Quarter) to sell California distribution service territory.

Electric Restructuring: Market Issues

- Post-transition period applications to consider overall ratemaking policy after 2001, when the current rate freeze expires (Decision expected by December 1999).

- Revenue cycle services applications are considering geographic de-averaging of rates and long-run marginal costs.

- Continuing refinement of direct access rules and tariffs

- Distribution Rulemaking: consideration of interconnection, safety, and rate design issues, as well as impact on public purpose programs, environmental concerns, incentive mechanisms of distributed generation. (1999-2000 fiscal year) Possible consideration of electric distribution competition, including issues related to market structure, market power, default provider, and the role of the utility distribution company. (Late 1999 and all of 2000).

Electric Ratemaking and Rulemaking Proceedings:

- Review PG&E's request for Performance-Based Ratemaking mechanism; decision targeted for first quarter 2000.

- Proposed decision in PG&E's Phase 1 (Results of Operations) General Rate Case Application targeted for August 1999.

- PG&E's Phase 2 General Rate Case Application: ratemaking and cost allocation issues; decision targeted for Spring 2000.

- SDG&E Ratemaking Application (to be filed August 1999) to establish rate design and cost allocation now that its PBR is in place and the rate freeze is over.

- Edison Ratemaking Application (to be filed December 1999) to establish rate design and cost allocation

- Mid-term review of Edison's PBR targeted for completion by year-end 1999.

- Rulemaking regarding revision of wood pole minimum safety factors and their replacement or reinforcement, specifically considering revision of Rule 44.1 and Rule 44.2 within General Order 95.

- Rulemaking regarding emergency response standards; targeted for completion in 2000.

Other Electric Restructuring Proceedings:

- Public purpose, safety and reliability issues, QF buyouts: proceedings related to these areas continue.

- Consumer Protection: electric and gas; continued refinement of rules, consideration of necessary rules as market evolves; development of complaint procedures for dealing with ESPs; may need additional legislation.

- The Affiliate Transaction Rules Decision, D.97-12-088 states that Commission staff must prepare an appropriate procedural vehicle, (i.e. OIR/OII, etc.) to review the rules adopted by this decision. The document should be prepared no later than within three years, or by December 31, 2000, and sooner if conditions warrant..

- Sale of utility property under Section 851 (such as streetlights, leases, land sales).

Gas and Other Energy Proceedings:

- Natural Gas Strategy Rulemaking: depending on Legislature and parties, potential settlement or cost-benefit analysis of proposed changes in gas transmission competition. If cost-benefit analysis is pursued, will trigger a new proceeding, with a decision expected in early 2000.

- Completion of Southern California Gas Company/SDG&E BCAP; should be completed by third quarter, 1999.

- Lodi Gas Storage application requesting CPCN for constructing a gas storage facility. Proceeding targeted for completion in winter, 2000, depending on outcome of EIR.

- PG&E BCAP. D.98-06-073, OP 4 states that unless otherwise directed, PG&E shall file its next BCAP application on October 29, 1999.

- Review of Western Gas Resources Application for CPCN; resource needs are dependent on disposition of motions to dismiss

- OII into the operations and practices of Southern California Gas Company concerning its Montebello Gas Storage Facility. Proceeding is currently targeted for completion by the end of the 1st Quarter 2000.

- Consideration of various oil pipeline proceedings.

Telecommunications Workload for 1999-2000

Number exhaust and numbering resource planning issues

- Address area code relief efforts and resolve relief complaints and other matters concerning specific relief plans, including the Petition concerning the 310 overlay.

- Address resource issues including NXX lottery and number exhaust conservation efforts.

- Support related rulemakings including the existing overlay rulemaking and the possibility of a rulemaking on pooling and other conservation measures.

Issues necessary to move competition forward including:

- Remaining pricing and interconnection issues including collocation and line sharing.

- Operations Support Systems measurements and performance standards.

- Universal service implementation issues, including the triennial review directed by D.96-10-066

- Pacific Bell long distance entry (§271 and related matters).

- Arbitrations of new and renewing interconnection agreements; this may represent a significant workload due to a number of significant agreements being involved in renegotiation.

- Resolving access issues including control of facilities on multiple dwelling unit properties and right of way issues.

- Geographic deaveraging as ordered by the Federal Communications Commission.

- Access charge reform proceeding.

- Resolving remaining call rating/routing, call termination and compensation issues, primarily where they involve interconnection with carriers primarily serving internet service providers.

- Incumbent local exchange carriers recovery of local competition implementation costs.

- Review small local phone companies' services.

- Revisiting the telecommunications "roadmap" to establish priorities and efficiently delineate activities and assignments. It has been several years since the original "roadmap" was established by Decision 94-12-053. The existing roadmap dockets are not subject to the post-SB 960 procedural regimen and may not provide the most effective way of addressing the issues now pending.

New Regulatory Framework (NRF) Reform

- Both Roseville Telephone and Citizens Communications recently adopted NRF. Each is presently undergoing its first CPUC periodic NRF review.

- Address carriers' requests for new services, recategorizations and related matters.

Consumer Protection Issues

- This includes addressing unauthorized transfers of customers ("slamming") and billing of customers for unauthorized services ("cramming") as a result of individual customer complaints and enforcement actions initiated by the Commission. It includes addressing individual customer complaints on other matters including billing or service disputes. Finally, it also includes rulemaking or other proceedings to address consumer protection rules relating to slamming, cramming or other matters.

- Service quality issues and standards applicable to a competitive industry.

- Enforcement actions, particularly with respect to slamming/cramming (noted above under consumer protection), marketing abuse cases, environmental issues related to construction activities and other matters.

Competitor complaints (telecommunications carrier versus telecommunications carrier).

Mergers, acquisitions and other structural changes of telecommunications carriers.

Respond to new legislative initiatives/directives that may be adopted.

Water Workload for 1999-2000

Cal-American Carmel River Dam Application – Pre-hearing Conference in July 1999. This proceeding will continue for an additional six months after the Water Management District issues its EIR in February - March 2000. Plan B Consultant work starts July 1, 1999 (AB 1182).

Water Quality OII - Decision in September 1999 on original OII. Next phase will address risk analysis and water quality standards. The September decision in this matter may spawn multiple related new proceedings.

Mergers and Acquisitions - 1999-2000 will see a substantial number of applications to acquire small water companies in addition to present applications of:

- California Water Service Co. and Dominguez
- Dominguez, Del Oro, Aquasource and United Water Resources applications to acquire small companies.

Formal General Rate Cases

- California Water Service Co. GRC (7 districts)
- Southern California Water GRC (5 Districts)
- Park Water Co. GRC (1 District)
- Cal-Am Water GRC (1 District)
- Valencia Water GRC (1 District)
- San Jose Water GRC (1 District)

Miscellaneous

- SoCal Water 3 applications - regional rates
- SoCal Water certificate Bolsa Chica water and sewer
- Spring Crest Order to Show Cause

Objective B: <u>Improve Workload Processing by Balancing Resources and Decision-making Priorities</u>

Strategy 1 **Identify Commission priorities** through ongoing dialogue with Commissioners. (Ongoing)

Strategy 2 **Develop better tools to track proceedings and ALJ workload:** ALJ Division management works closely with individual ALJs using the proceeding scoping memo and the Case Information System (CIS) to facilitate better case management and timely decisionmaking.

Major new efforts are underway in two areas: a pilot to test a new monthly time tracking tool to assist in division resource planning and budgeting; and development of a new case control document to simplify internal review of decision drafts. (1999-2000)

<u>Objective C: Shorten Time for Issuance of ALJ Proposed Decisions and Eliminate Decision Backlogs</u>

Strategy 1 **Meet statutory deadlines.** Report progress to the Commission quarterly. (Ongoing)

Strategy 2 **Eliminate Decision Backlogs**. We have reduced the number of applications that have been open more than 18 months by 76.5% and we have cut the number of complaints that have been open for more than 12 months by more than 84.5%.[2] As a result of closing these older cases, all proceedings are moving more quickly. (Ongoing)

Strategy 3 **Continue to track "submission dates".** We are tracking and reporting currently. Tracking currently is done manually. We will

[2] The initial figures included 132 individual bankruptcy cases that were ultimately closed.

begin to automate this within CIS if data processing resources are available.
(Ongoing)

Strategy 4 **Continue to review Individual ALJ caseloads** with particular attention to workload whenever new assignments are made.

(Ongoing)

Objective D: Improve Decisionmaking Quality

Strategy 1 **Provide skills maintenance and development training for ALJs.** In the upcoming fiscal year, we plan to offer two new in-house training programs: Drafting Adequate Findings of Fact, and The Code of Judicial Ethics. In addition, we have significantly expanded the budget for National Judicial College courses.

Strategy 2 **Provide technology training** for all ALJ Division staff. This year we will focus on technology and software necessary to implement SB 779; in fact, a portion of the funds provided by SB 779 were specifically requested for the purpose of providing this training to all CPUC staff.

Strategy 3 **Establish a Decision Editor.** The electronic publication requirements of SB 779 will increase the need for timely formatting, editing and quality control of proposed decisions. We will explore the opportunity, through contract or creation of a new position within the Division, to provide editing support.

Objective E: Reform Processes

Implement Procedural Reform - As it continues to implement recent procedural reform legislation, the Commission will begin a major initiative to improve its SB 960 processes and look at all of its SB 960 rules comprehensively, including ex parte rules. As evidenced by the June '99 Conference of Public Utility Counsel seminar on "Ex Parte Rules for a New Millennium", stakeholder input on this is crucial. To obtain it, the Commission will conduct scoping workshops prior to initiating the rulemaking. Working with key stakeholders, the Commission should be in a position at the conclusion of its rulemaking process to suggest legislative reforms if consensus develops on such a course of action.

Revise Settlement Rules - The Commission will begin a rulemaking to revise Article 13.5 (Stipulations and Settlements) of its Rules. This responds to stakeholders' urging the rules be updated to provide more certainty to the settlements process. This rulemaking provides the opportunity to take a fresh look

at current settlement practice and decisionmaking issues, including the "all party settlement" standards that have evolved through Commission case law.

Propose a Comprehensive Set of Discovery Rules - In addition to codifying and revising existing law and motion practice, the Commission will review confidentiality issues, the timing of discovery, and sanctions, and propose new discovery rules.

Review and Update CEQA Rules - The Commission will review its CEQA/PSA rules, update them, and eliminate unnecessary duplication with CEQA Guidelines. Working with the Telecommunications and Energy divisions, the ALJ Division will review the need for CEQA rules applicable to telecommunications projects.

In addition to the four major undertakings listed above, the Commission will review its rules on a variety of miscellaneous "process" and Docket Office issues that parties and individuals deal with in everyday practice at the CPUC.

Other Reform Issues

SB 779

The Commission is in the early stage of the SB 779-mandated website redesign project. Upon completion, it will give the public access to the Commission's rulings, decisions, and resolutions via the website -- users will also be able to access the entire "Escutia" package (the commission agenda with all of the attached documents) as well as data about currently active cases. Ultimately, users will be able to download CPUC General Orders, as well as other documents currently available only in printed form. The redesigned website will also include a search engine to allow users to search or browse for information in a variety of ways.

In compliance with Governor Davis' directive prohibiting completion of all "non-mission-critical" projects until all Y2K issues have been resolved, we do not expect this project to be completed before early 2000; however, we will be making many improvements in the next few months.

Electronic Notice and Access to CPUC Proceedings Documents

The Commission will focus on improving electronic notice and access as part of the Governor's Innovations in Government Project. The ALJ Division prepared this proposal to improve gatekeeping and information flows, and will work with stakeholders on this issue as described below.

Much of the CPUC's work consists of analyzing information received from utilities and other stakeholders. Similar to a trial court, the CPUC has rules and systems for formally receiving information, making it accessible to the public and to CPUC staff, maintaining the confidentiality of information where required by law, and distributing the Commission's reports, rulings, decisions, and general orders.

Parties to CPUC proceedings and other interested persons find the current filing and service rules to be outdated. Moreover, the systems for filing and service are slow, costly, and sometimes unreliable. This results in inefficient allocation of resources and creates a barrier to participation in Commission proceedings, especially for small consumer groups and the average consumer. The problems stem from the fact that the existing rules and systems were established for print media, and have not been updated to use electronic media such as the Internet.

Thousands of individuals, groups, and corporations or other business entities participate in CPUC proceedings. Any one party to a large or lengthy proceeding may incur thousands of dollars in copying, postage, and similar expenses to file and serve documents to the CPUC and all parties. Even those utilities whose participation is mandatory pass these costs on to ratepayers. To the extent this discourages participation in CPUC proceedings, the Commission has less information and fewer viewpoints on which to base its decisions.

The Legislature and control agencies, such as the Department of Personnel Administration and Department of Finance, must be involved in ensuring that adequate resources and funding are available to make the electronic filing/service platform work. Participants in CPUC proceedings must also be involved to ensure that the system works from their end. CPUC resources must be devoted to maintaining and upgrading the system for both internal and external users.

In the next year, the CPUC will expand the kinds and amount of information published on its Internet site. However, the pace of this expansion depends on new staffing and training programs. CPUC computer programming and support resources are severely inadequate due to salary and budgetary constraints. The Commission already permits electronic service of documents but needs to clarify that such service, where permitted under the rules, is in lieu of, not in addition to, service by mail or other paper media.

Other improvements are longer term in that they may require new rules or protocols that would be developed through consultation between the Commission and affected interests. For example, electronic filing raises issues concerning the security of Commission files and the integrity of the filed document. In addition, the Commission will have to ensure that it has suitable hardware and software to meet growing demands on the system, as well as the personnel to maintain them.

RESOURCE ALLOCATION

Staff (PY's)

Objective	Authorized	Filled	Vacancies
A - Support Commission's Regulatory Program			
Energy	12 ALJs	9 ALJs	3 ALJs
Telecommunications	11.5 ALJs	8 ALJs	3.5 ALJs
Water/Rail and all	4 ALJs	4 ALJs	0
Adjudicatory	7 ALJs	3 ALJs	4 ALJs
Decision-making Support	45 support staff (clerical, paralegal, and reporters)	40 support staff	5 support staff
B - Improve Workload Processing by balancing resources and decision-making priorities	1 Chief ALJ 4 Asst. Chief ALJs	1Chief ALJ 4 Asst. Chief ALJs	
C - Shorten Time for Issuance of ALJ Proposed Decisions and Eliminate Decision Backlogs D - Improve Quality Draft Decisions	↓	↓	
E - Process Reforms	3 ALJs	3 ALJs	
Totals	42.5 ALJs 45 Support Staff	32 ALJs 40 Support Staff	10.5 ALJs 5 Support Staff

7-30-99

Impacts:

Resource Needs Tied To Implementation of Legislation:

1. Funding for essential training and professional development of ALJ Division staff.

2. Additional paralegal and related resources to support Commissioner involvement in the hearing process and to promote quality, timely decision-making.

3. Upgrades of key support staff positions are necessary to ensure that SB 960 is implemented effectively.

Addressing Resource Constraints:

Þ As we proceed to fill our vacancies, we are using the strategies below to assure timely completion of proceedings and other responsibilities.

    1. Use of retired annuitants.

    2. Use of legal interns.

    3. Hiring additional ALJs, assuming related budget and testing processes can be successfully melded with these hiring needs.

Þ Docket, Process, Calendar, Central Files, and Star Unit must be fully and adequately staffed at all times. This is essential to effective implementation of process reforms.

Þ SB 779 authorized three positions for ALJ Division for document control and site maintenance related to the re-designed website. The signed state budget allows only two of these positions. We will need to fill these two positions as soon as the Department of Finance allows the Commission to proceed with the project.