

Chapter 1. Rules of Practice and Procedure

Article 1. Code of Ethics

1. (Rule 1) Code of Ethics.

Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

Note: Authority cited for Chapter 1: Public Utilities Code (Stats. 1951, Ch. 764 as amended), particularly Section 1701 thereof.

Article 1.5. Ex Parte Communications in Those Proceedings Not Subject to Article 2.5.

1.1. (Rule 1.1) Definitions.

For purpose of this Article , the following definitions apply:

(a) “Commencement of a proceeding” is the tender to the Commission of a notice of intention, the filing with the Commission of an application or complaint, or the adoption by the Commission of an order instituting investigation (OII).

(b) “Commission Staff of Record” means

(1) all members of the staff organization or division created pursuant to Public Utilities Code Section 309.5, except those temporarily assigned to other staff organizations or divisions; and

(2) members of other staff organizations or divisions not specifically covered under Section 309.5, who are appearing as advocates or as witnesses for a particular party in covered proceedings, but excluding other members of such staff organizations or divisions. The Executive Director, General Counsel, and Division Directors (except the director of the staff

division created pursuant to Section 309.5) are not Commission Staff of Record.

(c) “Covered Proceeding” is any formal proceeding other than a rulemaking, or an OII consolidated with a rulemaking to the extent that the OII raises the identical issues raised in the rulemaking. An OII is otherwise a covered proceeding. Except for OIIs, if no timely answer or protest or request for hearing is filed in response to a pleading initiating a covered proceeding, the proceeding ceases to be covered. If an answer or protest is withdrawn, the proceeding ceases to be a covered proceeding. However, if there has been a request for hearing, the proceeding remains covered until the request has been denied.

(d) “Date of Issuance of a Final Order” is (1) the date when the Commission mails the decision after rehearing or denying rehearing; or (2) where the period to apply for rehearing has expired and no application for rehearing has been filed, the last date for filing an application for rehearing under PU Code Section 1731. However, where a decision does not close a docket, there has been no issuance of a final order with respect to any issues that remain pending in the proceeding.

(e) “Decisionmaker” means any Commissioner, Commissioner’s Personal Advisor(s), the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, and any Administrative Law Judge assigned to the proceeding.

(f) Enforcement-related proceedings are those OIIs and complaint proceedings where (1) the order instituting investigation or (2) the complaint raises the alleged violation of any provision of law, or of any order or rule of the Commission. Complaints solely challenging the “reasonableness of any rates or charges” pursuant to Public Utilities Code Section 1702 are not enforcement-related proceedings.

(g) “Ex parte communication” means a written or oral communication on any substantive issue in a covered proceeding, between a party and a decisionmaker, off the record and without opportunity for all parties to participate in the communication.

(h) “Party” means any applicant, protestant, respondent, petitioner, complainant, defendant, interested party who has made a formal appearance in the proceeding, or Commission staff of record in covered proceedings, and their agent(s) or employee(s). A member of the public who is not acting as the agent or employee of a party is not a party.

(i) "Submission of a proceeding" is as described in Rule 77 of the Commission's Rules of Practice and Procedure.

1.2. (Rule 1.2) The Record.

The Commission shall render its decision based on the evidence of record. Any notice filed pursuant to Rule 1.4 is not a part of the record of the proceeding. The record is closed for the receipt of evidence after the proceeding is submitted under Rule 77, unless it is reopened under Rule 84.

1.3. (Rule 1.3) Applicable Proceedings.

(a) In any enforcement-related proceeding, no decisionmaker shall have any oral or written ex parte communication with any party to the proceeding concerning any substantive issue involved in the proceeding, unless the communication is reported within three working days in accordance with the reporting requirements set forth in Rule 1.4. Communications limited to the hearing schedule, location, and format, filing dates and identity of parties are procedural inquiries which need not be reported. This rule shall apply from the commencement of such proceeding to its submission to the Commission. After such proceeding has been submitted to the Commission, and until the date of issuance of a final order in such proceeding, ex parte communications between parties and decisionmakers concerning any substantive issue involved in the proceeding are prohibited.

(b) In all other covered proceedings, any oral or written ex parte communication between a decisionmaker and any party to the proceeding concerning any substantive issue involved in the proceeding, shall be reported within three working days, in accordance with the reporting requirements set forth in Rule 1.4. These reporting requirements shall apply from the commencement of the proceeding to the date of issuance of a final order in that proceeding.

(c) Where proceedings covered by subsections (a) and (b) above are consolidated, the ALJ shall, by ruling prior to the date of submission, determine the extent to which the prohibition provisions of subsection (a) shall apply.

1.4. (Rule 1.4) Reporting Ex Parte Communications.

(a) Reportable communications shall be reported by the party, whether the communication was initiated by the party or the decisionmaker. They shall be reported within three working days of the communication by filing (but not serving) the original and 12 copies of a “Notice of Ex Parte Communication” (Notice) with the Commission’s San Francisco Docket Office. Such Notice shall be provided simultaneously to the assigned ALJ. The Notice shall include the following information:

(1) the date, time and location of the communication, and whether it was oral, written or a combination;

(2) the identity of the recipient(s) and the person(s) initiating the communication, as well as the identity of any persons present during such communication;

(3) a description of the party’s, but not the decisionmaker’s, communication and its content, to which shall be attached a copy of any written material or text used during the communication.

(b) The filing of a Notice will be reported promptly thereafter in the Commission’s Daily Calendar.

(c) Parties may obtain a copy of the Notice and any attachments from the Commission’s Central File room or from the filing party, who must provide it to the requesting party without delay.

1.5. (Rule 1.5) Sanctions.

The Commission may impose such penalties and sanctions, or make any other order, as it deems appropriate to ensure the integrity of the formal record and to protect the public interest.

1.6. (Rule 1.6) Specific Proceedings.

In augmentation of the provisions of this Article, the Commission, or the assigned Administrative Law Judge with the approval of the assigned Commissioner, may issue an ex parte communications ruling tailored to the needs of any specific proceeding.

1.7. (Rule 1.7) Applicability.

This Article applies to all covered proceedings (as set forth in Rule 1.3) pending on the date it is effective, and to all covered proceedings commenced on or after the date it is effective.

Article 2. Filing of Documents

2. (Rule 2) Form and Size of Tendered Documents.

Documents tendered for filing must be typewritten, printed, or reproduced on paper 8 ½ inches wide and 11 inches long. Any larger attachments must be legibly reduced or folded to the same size. The type must be no smaller than 10 points. The impression must use 1 ½ -line or double spacing, except that footnotes and quotations in excess of a few lines may be single-spaced. Both sides of the paper may be used. A document of more than one page must be bound on the left side or upper left-hand corner. If a transmittal letter is submitted (see Rule 2.7(c)), it must not be bound to the tendered document. All copies must be clear and permanently legible.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

2.1. (Rule 2.1) Caption, Title, and Docket Number.

(a) All documents tendered for filing must have a blank space of at least 1 ½ inches tall by 2 ½ inches wide in the upper right-hand corner for a docket stamp and must show on the first page:

- (1) at the top, the heading “BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA”;
- (2) in the upper left below the heading, the caption for the proceeding;
- (3) to the right of the caption, the docket number (if one has been assigned);
- (4) below the caption and docket number, the title of the document and the name of or shortened designation for the party tendering the document.

The title page may extend to additional pages if these required items cannot be set forth on one page. The name, mailing address, telephone

number, and, if available, facsimile transmission number of the person authorized to receive service and other communications on behalf of the party tendering the document must be set forth either on the title page of the document or following the signature at the end of the document (see Rule 2.2). Documents initiating new proceedings must leave a space to the right of the caption for the docket number. (See Rule 88.)

(b) Separate documents must be used to address unrelated subjects or to ask the Commission or the administrative law judge to take essentially different types of action (e.g., a document entitled “Complaint and Motion for Protective Order” would be improper; the filing must be split up into two separate documents).

(c) Persons and corporations regulated by the Commission must include their assigned Case Information System (CIS) Identification Number in the captions of documents initiating new proceedings and in the titles of other documents filed in existing cases (e.g., “Application of Pacific Bell (U 1001 C) for Rehearing of Decision 91-01-001”).

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 701, Public Utilities Code.

2.2. (Rule 2.2) Signatures.

(a) A document tendered for filing must have a signature at the end of the document and must state the date of signing, the signer’s address, and the signer’s telephone number.

(b) A signature on a document tendered for filing certifies that the signer has read the document and knows its contents; that to the signer’s best knowledge, information, and belief, formed after reasonable inquiry, the facts are true as stated; that any legal contentions are warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; that the document is not tendered for any improper purpose; and that the signer has full power and authority to sign the document. (See Rule 1.)

(c) A document tendered for filing must be signed either by a party or by the attorney or representative of the party. If the document is signed by the party, it must be signed as follows:

(1) If the party is an individual or sole proprietorship, by the individual or proprietor.

- (2) If the party is a corporation, trust, or association, by an officer.
- (3) If the party is a partnership or limited partnership, by a partner or general partner, respectively.
- (4) If the party is a governmental entity, by an officer, agent, or authorized employee.

(d) If a document is tendered for filing on behalf of more than one party, only one party (or one party's attorney or representative) need sign the document unless otherwise required by these rules. The title or first paragraph of the document must identify all parties on whose behalf the document is tendered and state their Case Information System Identification Numbers, if applicable (see Rule 2.1(c)). The signature of a party in these circumstances certifies that the signer has been fully authorized by the indicated parties to sign and tender the document and to make the representations stated in subsection (b) on their behalf.

(e) Except as otherwise required in these rules or applicable statute, either the original signature page or a copy of the original signature page is acceptable for tendering for filing. If a copy of the signature page is tendered, the signer must retain the original, and produce it at the administrative law judge's request, until the Commission's final decision in the proceeding is no longer subject to judicial review.

(f) The Commission may summarily deny a party's request, strike the party's pleadings, or impose other appropriate sanctions for willful violation of subsections (b) or (d) of this rule. The Commission may seek appropriate disciplinary action against an attorney for a willful violation of subsections (b) or (d) of this rule.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 447, Code of Civil Procedure.

2.3. (Rule 2.3) Service.

(a) Except as otherwise provided in these rules or applicable statute, service of a document may be effected by delivering or mailing a copy of the document by first-class mail to each person whose name is on the official service list or applicable special service list, to the assigned administrative law judge, and to any other person required to be served

by statute, by Commission rule or order, or by the administrative law judge. Delivery may be made by handing a copy of the document to the person or leaving it in a place where the person may reasonably be expected to obtain actual and timely receipt. Service by mail is complete when the document is deposited in the mail. The administrative law judge may require more expeditious service or a particular form of service in appropriate circumstances.

(b) With the prior consent of the party being served or at the direction of the administrative law judge, service may be made by facsimile transmission, by modem, or by other electronic means. Such service is complete upon successful transmission.

(c) If a document, including attachments, exceeds 75 pages or with the permission of the administrative law judge, parties may serve a Notice of Availability in lieu of all or part of the document. (The original document and copies filed with the Commission, however, must be complete (see Rule 2.5).) A copy of the complete document must be served on any party who has previously informed the serving party of its desire to receive a complete copy. The Notice of Availability must comply with Rule 2.1(a) and must state the document's exact title and summarize its contents. The Notice must state that a copy of the document will be served at the request of the party receiving the notice and must state the name, telephone number, and facsimile transmission number, if any, of the person to whom such requests should be directed. The party sending the Notice must serve any party making such request within one business day after receipt of the request.

(d) A copy of the certificate of service must be attached to each copy of the document (or Notice of Availability) served and to each copy filed with the Commission. If a Notice of Availability is served, a copy of the Notice must also be attached to each copy of the document filed with the Commission. The certificate of service must state: (1) the exact title of the document served, (2) the place, date, and manner of service, and (3) the name of the person making the service. The certificate filed with the original of the document must be signed by the person making the service (see Rule 2.2(e)). The certificate filed with the original of the document must also include a list of the names and addresses of the persons and entities served and must indicate whether they received the complete document or a Notice of Availability. (See Rule 88, Form No. 6.)

(e) The Process Office shall maintain the official service list for each pending proceeding. A party may change its address for service or its

designation of a person for service by sending a written notice to the Process Office and serving a copy of the notice on each party on the official service list.

(f) The administrative law judge may correct and make minor changes to the official service list and may revise the official service list to delete inactive parties. Before establishing a revised service list, the administrative law judge will give each person on the existing service list notice of the proposed revision and an opportunity to respond to the proposal.

(g) The administrative law judge may establish a special service list for documents related to a portion of a proceeding. A special service list allows service to be made on only a portion of the official service list. A special service list may be established, for example, for one phase of a multi-phase proceeding or for documents related to issues that are of interest only to certain parties. Before any special service list is established, the administrative law judge will give each person on the official service list notice of the proposal to establish a special service list and an opportunity to show why that person should be included on the special service list or why a special service list should not be established.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. References: Sections 1704, 3732-3735, Public Utilities Code; Sections 1013, 1013a, Code of Civil Procedure.

2.4. (Rule 2.4) Verification.

(a) Whenever a document is required to be verified by these rules, statute, order, or ruling, the verification must be made either by affidavit sworn or affirmed before a notary public or by declaration under penalty of perjury. When the verification is made by the person who signs the document, the verification must be separately stated and signed.

(b) The verification must be signed (see Rule 2.2(e)) and state that the contents of the document are true of the verifying person's own knowledge, except as to matters that are stated on information or belief, and as to those matters that he or she believes them to be true. (See Rule 88.)

(c) At least one applicant must verify applications (except applications for rehearing) and amendments thereto. Applications under Article 9 must be signed and verified by all applicants. At least one complainant

must verify complaints and amendments thereto. At least one of the defendants filing an answer must verify it, but if more than one answer is filed in response to a complaint against multiple defendants, each answer must be separately verified.

(d) If these rules require a party to verify a document, it must be verified as follows (except as provided in subsection (e)):

- (1) If the party is an individual or sole proprietorship, by the individual or sole proprietor.
- (2) If the party is a corporation, trust, or association, by an officer.
- (3) If a party is a partnership or limited partnership, by a partner or general partner, respectively.
- (4) If the party is a governmental entity, by an officer, agent, or authorized employee.

(e) A party's attorney or representative may verify a document on behalf of a party if the party is absent from the county where the attorney's or representative's office is located, or if the party for some other reason is unable to verify the document. When a document is verified by the attorney or representative, he or she must set forth in the affidavit or declaration why the verification is not made by the party and must state that he or she has read the document and that he or she is informed and believes, and on that ground alleges, that the matters stated in it are true.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 446, Code of Civil Procedure.

2.5. (Rule 2.5) Copies.

(a) Unless otherwise required by these rules, and except for complaints (see Article 3), any person tendering a document for filing must submit an original and seven exact copies of the document (including any attachments but not including the transmittal letter, if any (see Rules 2.7(c), 3.1)). After an official service list is established in a proceeding (see Rule 2.3(e), (f), (g)), any person tendering a document for filing in that proceeding must submit an original and four copies of the document.

(b) In lieu of the original, one additional copy of the document may be tendered. If a copy is tendered instead of the original, the party tendering the document must retain the original, and produce it at the administrative law judge's request, until the Commission's final decision in the proceeding is no longer subject to judicial review.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

2.6. (Rule 2.6) Amendments and Errata.

(a) An amendment is a document that replaces and supersedes a previously filed document or adds new material to an existing document.

(1) An amendment to a previously filed application, protest, complaint, or answer must be filed and served at least five days before the scheduled date of hearing. Thereafter, amendments to these documents may be filed and served as permitted or directed by the administrative law judge. Amendments to other documents may be filed and served at any time, with the permission of the administrative law judge.

(2) If replies, responses, protests, or answers to a document are required or permitted, the time for filing a reply, response, protest, or answer to an amended document is calculated from the date the amendment is served. If a party has responded to, replied to, protested, or answered the document as previously filed, no additional response, reply, protest, or answer to new information or material presented by an amendment is necessary. If the changes presented in the amendment are minor and the parties have already had an opportunity to respond to, reply to, protest, or answer the original document, the administrative law judge may limit or prohibit any further replies, responses, protests, or answers.

(b) Minor typographical corrections or wording changes that do not alter the substance or tenor of a document or the relief requested therein need not be made. However, an optional filing of errata listing such corrections to a previously filed document may be made at any time, provided the correcting document is served on all parties. The filing of such errata will not be noted in the Daily Calendar.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

2.7. (Rule 2.7) Other Requirements.

(a) Specific types of documents may be subject to additional requirements stated in other articles of these rules. Additional or different requirements for certain types of filings are stated in the Public Utilities Code or in the Commission's decisions, General Orders, or resolutions.

(b) Except as otherwise required or permitted by these Rules or the Commission's decisions, General Orders, or resolutions, testimony and exhibits shall not be filed with the Docket Office (see Article 17).

(c) A letter transmitting documents to the Docket Office for filing is not required unless acknowledgment of the filing (Rule 3.1) is requested.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

3. (Rule 3) Time, Place, and Review of Filing; Docket.

(a) Unless otherwise directed, all documents must be tendered for filing at the Commission's Docket Office at the State Building, 505 Van Ness Avenue, San Francisco, California 94102, at the Commission's Offices in the State Building, 107 Broadway, Los Angeles, or at the Commission's Offices in the State Building, 1350 Front Street, San Diego.

All documents sent through the mail must be addressed to the Commission's Docket Office in San Francisco. Only hand-delivered documents will be accepted by the Los Angeles or San Diego office. First-class postage charges to San Francisco must be paid at the time documents are tendered to the Los Angeles or San Diego office. Payment of postage charges may be made by check or money order.

(b) Tendered documents are not considered filed until they have been reviewed and accepted for filing by the Docket Office in San Francisco.

(c) If a document complies with these rules and is accepted for filing by the Docket Office in San Francisco, the filing will be recorded as of the date it was first tendered for filing at the Commission's San Francisco, Los Angeles, or San Diego office.

(d) Any tendered document that does not comply with applicable rules, Commission orders, or statutes may be rejected. Rejected documents will be returned with a statement of the reasons for the rejection. Documents submitted in response to a rejected document will not be filed.

(e) If a tendered document does not comply with applicable requirements, the Docket Office, with the consent of the party tendering the document, may retitle the document or strike part of the document, and the document as modified may be accepted for filing. The party tendering the document must notify all parties served with the document of the modification or striking.

(f) If a tendered document does not comply with applicable requirements, the party tendering the document may, in the body of the document, request waiver of the requirements to which the document does not conform. The request must state the reasons justifying the waiver. The assigned administrative law judge will decide whether or not to waive the requirements as requested. If the waiver is granted, the document will be filed as of the date it was tendered for filing.

(g) If a tendered document is in substantial, but not complete, compliance with Rules 2 through 2.6, the Docket Office may notify the party tendering the document of the defect. If the defect is cured within seven days of the date of this notification, the document will be filed as of the date it was tendered for filing, provided that the document was properly served as required by these Rules on or before the date the document was tendered for filing.

(h) Acceptance of a document for filing is not a final determination that the document complies with all requirements of the Commission and is not a waiver of such requirements. The Commission, the Executive Director, or the administrative law judge may require amendments to a document, and the Commission or the administrative law judge may entertain appropriate motions concerning the document's deficiencies.

(i) If a document initiates a new proceeding, the proceeding will be assigned a docket number when the document is accepted for filing. The Chief Administrative Law Judge shall maintain a docket of all proceedings.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

3.1. (Rule 3.1) Acknowledgments.

The Docket Office will provide an acknowledgment of the filing of any document on request, provided the filing party furnishes, at the time the document is tendered, an extra copy of a letter of transmittal or of the document and a self-addressed envelope with postage fully prepaid. The extra copy of the letter of transmittal or of the document will be stamped with the filing stamp and docket number and returned by mail.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

3.2. (Rule 3.2) Computation of Time.

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 the last day falls on a Saturday, Sunday, or holiday when the Commission offices are closed, the time limit is extended to include the first day thereafter.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 12, Code of Civil Procedure.

3.3 (Rule 3.3) Filing Fees.

Filing fees required by the Public Utilities Code are set forth in the following table. If the fee in the table conflicts with the fee stated in the appropriate statute, the statute prevails. Filings marked with an asterisk should be submitted to the Tariff and License Branch of the Rail Safety and Carriers Division.

(see Table of Filing Fees at end of Rules)

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. References: Section 1001, 1007, 1008, 1036, 1904, 2754, 2756, 3902, 4006, 5136, 5371.1, 5373.1 and 5377.1, Public Utilities Code.

3.4. (Rule 3.4) Daily Calendar.

A Daily Calendar of newly filed proceedings and proceedings set for hearings shall be available for public inspection at the Commission's San

Francisco and Los Angeles offices. The Daily Calendar shall indicate the time and place of the next three regularly scheduled Commission meetings. Printed copies of the Daily Calendar may be obtained by subscription at such price as may be established by the Commission. The Commission may also provide for electronic access to the Daily Calendar.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

Article 2.5. Rules and Procedures Applicable to All Proceedings Filed After January 1, 1998, and to Some Proceedings Filed Before January 1, 1998.

4. (Rule 4) Applicability.

(a) The rules and procedures in this Article shall apply to any formal proceeding (except for a complaint under Rule 13.2) that is filed after January 1, 1998.

(b) The rules and procedures in this Article shall also apply to a formal proceeding (except for a complaint under Rule 13.2) that is filed before January 1, 1998, in the following circumstances:

(1) the proceeding is an “included proceeding” pursuant to Resolution ALJ-170 (January 13, 1997); or

(2) there has not, as of January 1, 1998, been a prehearing conference held or a determination made to hold a hearing in the proceeding, and the Commission, assigned Commissioner, or assigned Administrative Law Judge thereafter determines, by ruling or order, that a hearing should be held in the proceeding.

(c) Any proceeding to which the rules and procedures in this Article do not apply will be handled under the otherwise applicable Commission rules and procedures.

(d) For purposes of this Article, a proceeding initiated by a Commission order is filed as of the date of issuance of the order. A proceeding initiated by an application or complaint is filed as of the date it was tendered for filing in compliance with the rules and procedures of Article 2.

(e) Where the rules and procedures of this Article apply to a proceeding by virtue of subsection (b)(2) of this rule, nothing in this

Article shall be construed to render invalid, or to require repetition of, procedural steps taken prior to such applicability. However, those procedural steps taken after such applicability must comply with this Article wherever requiring such compliance would not invalidate or repeat procedural steps taken previously.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(a)-(c)(1)-(3), Public Utilities Code.

5. (Rule 5) Definitions.

(a) “Category,” “categorization,” or “categorized” refers to the procedure whereby a proceeding is determined for purposes of this Article to be an adjudicatory, ratesetting, or quasi-legislative proceeding. “Appeal of categorization” means a request for rehearing of the determination of the category of a proceeding.

(b) “Adjudicatory” proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

(c) “Ratesetting” proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). “Ratesetting” proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting, as described in Rule 6.1(c).

(d) “Quasi-legislative” proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.

(e) “Ex parte communication” means a written communication (including a communication by letter or electronic medium) or oral communication (including a communication by telephone or in person) that:

- (1) concerns any substantive issue in a formal proceeding,
- (2) takes place between an interested person and a decisionmaker, and
- (3) does not occur in a public hearing, workshop, or other public setting, or on the record of the proceeding.

Communications limited to inquiries regarding the schedule, location, or format for hearings, filing dates, identity of parties, and other such nonsubstantive information are procedural inquiries not subject to any restriction or reporting requirement in this Article.

(f) “Decisionmaker” means any Commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, or the assigned Administrative Law Judge, and in adjudicatory proceedings any Commissioner’s personal advisor.

(g) “Ex parte communication concerning categorization” means a written or oral communication on the category of any proceeding, between an interested person and any Commissioner, any Commissioner’s personal advisor, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, or the assigned Administrative Law Judge that does not occur in a public hearing, workshop, or other public setting, or on the record of the proceeding.

(h) “Interested person” means any of the following:

- (1) any applicant, protestant, respondent, petitioner, complainant, defendant, interested party who has made a formal appearance, Commission staff of record, or the agents or employees of any of them, including persons receiving consideration to represent any of them;
- (2) any person with a financial interest, as described in Article I (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code, in a matter at issue before the Commission, or such person’s agents or employees, including persons receiving consideration to represent such a person; or
- (3) a representative acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association who intends to influence the decision of a

Commission member on a matter before the Commission, even if that association is not a party to the proceeding.

(i) “Person” means a person or entity.

(j) “Commission staff of record” includes staff from the Office of Ratepayer Advocates assigned to the proceeding, staff from the Consumer Services Division assigned to an adjudicatory or other complaint proceeding, and any other staff assigned to an adjudicatory proceeding in an advocacy capacity.

“Commission staff of record” does not include the following staff when and to the extent they are acting in an advisory capacity to the Commission with respect to a formal proceeding: (1) staff from any of the industry divisions; or (2) staff from the Consumer Services Division in a quasi-legislative proceeding, or in a ratesetting proceeding not initiated by complaint.

(k) “Presiding officer” means, for purposes of this Article, one of the following, as appropriate:

(1) In an adjudicatory proceeding, either the assigned Commissioner or the assigned Administrative Law Judge, depending on which of them is designated, in the scoping memo, to preside in the proceeding;

(2) In a ratesetting proceeding, the principal hearing officer designated as such by the assigned Commissioner prior to the first hearing in the proceeding, except that, where the assigned Commissioner is acting as principal hearing officer, the assigned Administrative Law Judge shall act as presiding officer in the assigned Commissioner’s absence; or

(3) In a quasi-legislative proceeding, the assigned Commissioner, except that the assigned Administrative Law Judge, in the assigned Commissioner’s absence, shall act as presiding officer at any hearing other than a formal hearing, as defined in Rule 8(f)(2).

(l) “Principal hearing officer” means the assigned Commissioner in a ratesetting proceeding, or the assigned Administrative Law Judge in a ratesetting proceeding if, prior to the first hearing in the proceeding, he or she has been designated by the assigned Commissioner as the principal hearing officer for that proceeding.

(m) "Scoping memo" means an order or ruling describing the issues to be considered in a proceeding and the timetable for resolving the proceeding. In an adjudicatory proceeding, the scoping memo shall also designate the presiding officer.

Note: Authority cited: Section 1701, Public Utilities Code. References: Sections 1701.1(a), 1701.1(c)(1)-(4), Public Utilities Code.

6. (Rule 6) Start of Proceedings; Proposed Schedules.

(a) Applications.

(1) Any person that files an application after January 1, 1998, shall state in the application the proposed category for the proceeding, the need for hearing, the issues to be considered, and a proposed schedule. As described in Rule 6.1(a), the Commission shall issue a resolution that preliminarily categorizes and preliminarily determines the need for hearing in the proceeding.

(2) Any person protesting or responding to an application shall state in the protest or response any comments or objections regarding the applicant's statement on the proposed category, need for hearing, issues to be considered, and proposed schedule.

(3) The assigned Commissioner shall consider the application, protests, and responses, and the prehearing conference statements (if one is held), and shall rule on the category, need for hearing, and scoping memo. The ruling shall also designate the principal hearing officer or presiding officer, as appropriate. The assigned Commissioner has discretion to rule on any or all of these matters on the record at the prehearing conference. The ruling, only as to the category, is appealable under the procedures in Rule 6.4.

(b) Complaints.

(1) Any person that files a complaint after January 1, 1998, shall state in the complaint the proposed category for the proceeding, the need for hearing, the issues to be considered, and a proposed schedule. The Docket Office shall serve instructions to answer on the defendant, with a copy to the complainant, indicating (i) the date when the defendant's answer shall be filed and served, and (ii) the Administrative Law Judge assigned to the proceeding. The

instructions to answer shall also indicate the category of the proceeding and the need for hearing, as determined by the Chief Administrative Law Judge in consultation with the President of the Commission. The determination as to the category is appealable under the procedures in Rule 6.4.

(2) The defendant shall state in the answer any comments or objections regarding the complainant's statement on the need for hearing, issues to be considered, and proposed schedule.

(3) The assigned Commissioner shall consider the complaint and answer, and the prehearing conference statements (if one is held), and shall rule on the scoping memo. The ruling shall also designate the principal hearing officer or presiding officer, as appropriate. The assigned Commissioner has discretion to rule on any or all of these matters on the record at the prehearing conference.

(c) OSCs, OIIs, OIRs.

(1) A Commission order to show cause or order instituting investigation, issued after January 1, 1998, shall determine the category and need for hearing, and shall attach a preliminary scoping memo. The order, only as to the category, is appealable under the procedures in Rule 6.4. Any person filing a response to an order to show cause or order instituting investigation shall state in the response any objections to the order regarding the need for hearing, issues to be considered, or schedule, as set forth in the order. At or after the prehearing conference if one is held, the assigned Commissioner shall rule on the scoping memo. The ruling shall also designate the principal hearing officer or the presiding officer, as appropriate.

(2) A Commission order instituting rulemaking, issued after January 1, 1998, shall preliminarily determine the category and need for hearing, and shall attach a preliminary scoping memo. Any person filing a response to an order instituting rulemaking shall state in the response any objections to the order regarding the category, need for hearing, and preliminary scoping memo. At or after the prehearing conference if one is held, the assigned Commissioner shall rule on the category, need for hearing, and scoping memo. If the proceeding is categorized as ratesetting, the

ruling shall also designate the principal hearing officer. The ruling, only as to category, is appealable under the procedures in Rule 6.4.

(d) Proceedings Filed Before January 1, 1998.

Where the rules and procedures of this Article apply to a proceeding by virtue of Rule 4(b)(2), the ruling or order that determines a hearing should be held shall also preliminarily determine the category for the proceeding, and shall set a prehearing conference. At or after the prehearing conference, the assigned Commissioner shall rule on the category, need for hearing, and scoping memo. The ruling shall also designate the principal hearing officer or presiding officer, as appropriate. The ruling, only as to the category, is appealable under the procedures in Rule 6.4.

(e) Proposed Schedules.

Any party's proposed schedule for purposes of this rule shall be consistent with the proposed or finally determined category, as appropriate, including a deadline for resolving the proceeding within 12 months or less (adjudicatory proceeding) or 18 months or less (ratesetting or quasi-legislative proceeding). The proposed schedule shall also take into account the number and complexity of issues to be considered, the number of parties expected to participate, the need for and expected duration of hearings, and any other factors that the party wants the assigned Commissioner to weigh in ruling on the scoping memo.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1, Public Utilities Code.

6.1. (Rule 6.1) Determination of Category and Need for Hearing.

(a) By resolution at each Commission business meeting, the Commission shall preliminarily determine, for each proceeding initiated by application filed on or after the Commission's prior business meeting, the category of the proceeding and the need for hearing. The preliminary determination may be held for one Commission business meeting if the time of filing did not permit an informed determination. The preliminary determination is not appealable but shall be confirmed or changed by assigned Commissioner's ruling pursuant to Rule 6(a)(3), and such ruling as to the category is subject to appeal under Rule 6.4.

(b) When a proceeding may fit more than one category as defined in Rules 5(b), 5(c), and 5(d), the Commission may determine which category appears most suitable to the proceeding, or may divide the subject matter of the proceeding into different phases or one or more new proceedings.

(c) When a proceeding does not clearly fit into any of the categories as defined in Rules 5(b), 5(c), and 5(d), the proceeding will be conducted under the rules applicable to the ratesetting category unless and until the Commission determines that the rules applicable to one of the other categories, or some hybrid of the rules, are best suited to the proceeding.

(d) In exercising its discretion under subsections (b) and (c) of this rule, the Commission shall so categorize a proceeding and shall make such other procedural orders as best to enable the Commission to achieve a full, timely, and effective resolution of the substantive issues presented in the proceeding.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(a)-(c)(1)-(3), Public Utilities Code.

6.2. (Rule 6.2) Prehearing Conferences.

Whenever a proceeding seems likely to go to hearing, the assigned Commissioner shall set a prehearing conference as soon as practicable after the Commission makes the assignment. The ruling setting the prehearing conference may also set a date for filing and serving prehearing conference statements. Such statements may address the schedule, the issues to be considered, any matter related to the applicability of this Article to the proceeding, and any other matter specified in the ruling setting the prehearing conference.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(b), Public Utilities Code.

6.3. (Rule 6.3) Scoping Memos.

At or after the prehearing conference (if one is held), or if there is no prehearing conference as soon as possible after the timely filing of the responsive pleadings (protests, responses, or answers, as appropriate), the assigned Commissioner shall rule on the scoping memo for the proceeding, which shall finally determine the schedule (with projected

submission date) and issues to be addressed. In an adjudicatory proceeding, the scoping memo shall also designate the presiding officer.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(b), Public Utilities Code.

6.4. (Rule 6.4) Appeals of Categorization.

(a) Any party may file and serve an appeal to the Commission, no later than 10 days after the date of: (1) an assigned Commissioner's ruling on category pursuant to Rule 6(a)(3), 6(c)(2), or 6(d); (2) the instructions to answer pursuant to Rule 6(b)(1); or (3) an order to show cause or order instituting investigation pursuant to Rule 6(c)(1). Such appeal shall state why the designated category is wrong as a matter of law or policy. The appeal shall be served on the Commission's General Counsel, the Chief Administrative Law Judge, the President of the Commission, and all persons who were served with the ruling, instructions to answer, or order.

(b) Any party, no later than 15 days after the date of a categorization from which timely appeal has been taken pursuant to subsection (a) of this rule, may file and serve a response to the appeal. The response shall be served on the appellant and on all persons who were served with the ruling, instructions to answer, or order. The Commission is not obligated to withhold a decision on an appeal to allow time for responses. Replies to responses are not permitted.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(a), Public Utilities Code.

6.5. (Rule 6.5) Approval of Changes to Preliminary Determinations.

(a) If there is no timely appeal under Rule 6.4, but the assigned Commissioner, pursuant to Rules 6(a)(3), 6(c)(2), or 6(d), changes the preliminary determination on category, the assigned Commissioner's ruling shall be placed on the Commission's Agenda for approval of that change.

(b) If the assigned Commissioner, pursuant to Rules 6(a)(3), 6(c)(2), or 6(d), changes the preliminary determination on need for hearing, the assigned Commissioner's ruling shall be placed on the Commission's Consent Agenda for approval of that change.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1,

Public Utilities Code.

6.6. (Rule 6.6) Proceedings Without Hearings.

Whenever there is a final determination in a proceeding, pursuant to Rules 6-6.5, that a hearing is not needed in the proceeding, ex parte communications shall be permitted, as provided in Rule 7(e); in all other respects, the rules and procedures in this Article shall cease to apply to that proceeding. However, the scoping memo issued for the proceeding shall continue to apply to the proceeding as to all matters covered in the memo.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1, Public Utilities Code.

7. (Rule 7) Ex Parte Communications: Applicable Requirements.

(a) The requirements of this subsection shall apply to ex parte communications during the period between the beginning of a proceeding and the determination of the category of that proceeding, including the decision by the Commission on any appeal of such determination. After determination of the category, the requirements of subsection (b), (c), or (d) of this rule shall apply, as appropriate.

(1) In a proceeding initiated by application filed after January 1, 1998, the requirements of subsection (c) shall apply during the period during the filing and the Commission's preliminary determination of category pursuant to Rule 6(a)(1), after which the requirements of subsection (b), (c), or (d) shall apply, depending on the preliminary determination. After the assigned Commissioner's appealable determination of category under Rule 6(a)(3), the applicable requirements shall depend on such determination unless and until it is modified by the Commission pursuant to Rule 6.4 or 6.5(a).

(2) In a proceeding initiated by complaint filed after January 1, 1998, regardless of the complainant's proposed category for the proceeding, ex parte communications shall be prohibited until the date of service of the instructions to answer, after which the applicable requirements shall depend on the determination of category in the instructions to answer, unless and until such determination is modified by the Commission pursuant to Rule 6.4.

(3) In a proceeding initiated after January 1, 1998, by order instituting investigation or order to show cause, the requirements of subsection (b), (c), or (d) shall apply, depending on the order's determination of category, unless and until such determination is modified by the Commission pursuant to Rule 6.4.

(4) In a proceeding initiated after January 1, 1998, by order instituting rulemaking, the requirements of subsection (b), (c), or (d) shall apply, depending on the order's preliminary determination of category. After the assigned Commissioner's appealable determination of category, the applicable requirements shall depend on such determination unless and until it is modified by the Commission pursuant to Rule 6.4 or 6.5(a).

(5) In a proceeding to which this Article applies by virtue of Rule 4(b)(2), the requirements of subsection (b), (c), or (d) shall apply, depending on the preliminary determination of category pursuant to Rule 6(d). After the assigned Commissioner's appealable determination of category, the applicable requirements shall depend on such determination unless and until it is modified by the Commission pursuant to Rule 6.4 or 6.5(a).

(b) In any adjudicatory proceeding, ex parte communications are prohibited.

(c) In any ratesetting proceeding, ex parte communications are permitted only if consistent with the following restrictions, and are subject to the reporting requirements set forth in Rule 7.1:

(1) Oral ex parte communications are permitted at any time with a Commissioner provided that the Commissioner involved (i) invites all parties to attend the meeting or sets up a conference call in which all parties may participate, and (ii) gives notice of this meeting or call as soon as possible, but no less than three days before the meeting or call.

(2) If an ex parte communication meeting or call is granted by a decisionmaker to any party individually, all other parties shall be sent a notice at the time that the request is granted (which shall be no less than three days before the meeting or call), and shall be offered individual meetings of a substantially equal period of time with that decisionmaker. The party requesting the initial individual meeting shall notify the other parties that its request has

been granted, at least three days prior to the date when the meeting is to occur. At the meeting, that party shall produce a certificate of service of this notification on all other parties. If the communication is by telephone, that party shall provide the decisionmaker with the certificate of service before the start of the call. The certificate may be provided by facsimile transmission.

(3) Written ex parte communications are permitted at any time provided that the party making the communication serves copies of the communication on all other parties on the same day the communication is sent to a decisionmaker.

(4) In any ratesetting proceeding, the Commission may establish a period during which no oral or written communications on a substantive issue in the proceeding shall be permitted between an interested person and a Commissioner, a Commissioner's personal advisor, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, or the assigned Administrative Law Judge. Such period shall begin not more than 14 days before the Commission meeting date on which the decision in the proceeding is scheduled for Commission action. If the decision is held, the Commission may permit such communications for the first half of the hold period, and may prohibit such communications for the second half of the period, provided that the period of prohibition shall begin not more than 14 days before the Commission meeting date to which the decision is held.

In all ratesetting proceedings where hearings have been held and a proposed decision has been filed and served, there shall be a prohibition on communications as provided in this subsection.

The first day of the prohibition on communications will be the day of the Ratesetting Deliberative Meeting at which the proposed decision is scheduled to be discussed and will continue through the conclusion of the Business Meeting at which a vote of the proposed decision is scheduled. If a proposed decision is held at the Business Meeting, when the hold is announced the Commission will also announce whether and when there will be a further prohibition on communications, consistent with the requirements of this subsection.

(d) In any quasi-legislative proceeding, ex parte communications are allowed without restriction or reporting requirement.

(e) The requirements of subsections (b) and (c) of this rule, and any reporting requirements under Rule 7.1, shall cease to apply, and ex parte communications shall be permitted, in any proceeding in which (1) no timely answer, response, protest, or request for hearing is filed after the pleading initiating the proceeding, (2) all such responsive pleadings are withdrawn, or (3) there has been a final determination that a hearing is not needed in the proceeding. However, if there has been a request for hearing, the requirements continue to apply unless and until the request has been denied.

(f) Ex parte communications concerning categorization of a given proceeding are permitted, but must be reported pursuant to Rule 7.1(a).

(g) When the Commission determines that there has been a violation of this rule or of Rule 7.1, the Commission may impose penalties and sanctions, or make any other order, as it deems appropriate to ensure the integrity of the record and to protect the public interest.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 1701.1(a), 1701.2(b), 1701.3(c) and 1701.4(b), Public Utilities Code.

7.1. (Rule 7.1) Reporting Ex Parte Communications.

(a) Ex parte communications that are subject to these reporting requirements shall be reported by the interested person, regardless of whether the communication was initiated by the interested person. An original and seven copies of a "Notice of Ex Parte Communication" (Notice) shall be filed with the Commission's San Francisco Docket Office within three working days of the communication. The Notice shall include the following information:

(1) The date, time, and location of the communication, and whether it was oral, written, or a combination;

(2) The identities of each decisionmaker involved, the person initiating the communication, and any persons present during such communication;

(3) A description of the interested person's, but not the decisionmaker's, communication and its content, to which description shall be attached a copy of any written, audiovisual, or other material used for or during the communication.

(b) These reporting requirements apply to ex parte communications in ratesetting proceedings and to ex parte communications concerning categorization. In a ratesetting proceeding, communications with a Commissioner's personal advisor also shall be reported under the procedures specified in subsection (a) of this rule.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(c)(4)(C)(i)-(iii), Public Utilities Code.

8. (Rule 8) Oral Arguments and Commissioner Presence.

(a) In any adjudicatory proceeding, if an application for rehearing is granted, the parties shall have an opportunity for final oral argument before the assigned Administrative Law Judge (or before the assigned Commissioner, if the latter presides at the rehearing).

(b) In any ratesetting proceeding, the assigned Commissioner shall be present at the closing argument and, if acting as principal hearing officer, shall be present for more than one-half of the hearing days.

(c) In any ratesetting proceeding, a party may request the presence of the assigned Commissioner at a formal hearing or specific portion of a formal hearing. The request may be made in a pleading or a prehearing conference statement. Alternatively, the request may be made by filing and serving on all parties a letter to the assigned Commissioner, with a copy to the assigned Administrative Law Judge. The request should be made as far as possible in advance of the formal hearing, and should specify (1) the witnesses and/or issues for which the assigned Commissioner's presence is requested, (2) the party's best estimate of the dates when such witnesses and subject matter will be heard, and (3) the reasons why the assigned Commissioner's presence is requested. The assigned Commissioner has sole discretion to grant or deny, in whole or in part, any such request. Any request that is filed five or fewer business days before the date when the subject hearing begins may be rejected as untimely.

(d) In ratesetting proceedings and in quasi-legislative proceedings, a party has the right to make a final oral argument before the Commission, if the party so requests within the time and in the manner specified in the scoping memo or later ruling in the proceeding. A quorum of the Commission shall be present for such final oral argument. To the extent permitted by law, any Commissioner who is surplus to the quorum may

attend the argument from a remote location linked to the hearing room via audio, visual, and/or textual media establishing real-time, two-way communication.

(e) In quasi-legislative proceedings, the assigned Commissioner shall be present for formal hearings.

(f) For purposes of this rule, the following definitions apply:

(1) “Adjudicative facts” answer questions such as who did what, where, when, how, why, with what motive or intent.

(2) “Formal hearing” generally refers to a hearing at which testimony is offered or comments or argument taken on the record; “formal hearing” does not include a workshop. In a quasi-legislative proceeding, “formal hearing” includes a hearing at which testimony is offered on legislative facts, but does not include a hearing at which testimony is offered on adjudicative facts.

(3) “Legislative facts” are the general facts that help the tribunal decide questions of law and policy and discretion.

(4) “Present” or “presence” at a hearing or argument means physical attendance in the hearing room, sufficient to familiarize the attending Commissioner with the substance of the evidence, testimony, or argument for which the Commissioner’s presence is required or requested.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 1701.2(d), 1701.3(a) and (d), 1701.4(a) and (c), Public Utilities Code.

8.1 (Rule 8.1) Proposed Decisions and Decisions in Ratesetting and Quasi-legislative Proceedings.

(a) A ratesetting or quasi-legislative proceeding shall stand submitted for decision by the Commission after the taking of evidence, and the filing of briefs or the presentation of oral arguments, as ordered in the proceeding. The Commission’s Daily Calendar shall include a table of submission dates listing all such dates (with the corresponding proceedings) that occurred during the two weeks preceding the date of the calendar.

(b) In ratesetting and quasi-legislative proceedings, the presiding officer shall prepare a proposed decision setting forth recommendations,

findings, and conclusions. The proposed decision shall be filed with the Commission and served on all parties without undue delay, not later than 90 days after submission. As provided in Rules 77.1-77.6, parties may comment on the proposed decision.

Applicants in matters involving buses, vessels, public utility sewer systems, or public utility pipelines may make an oral or written motion to waive the filing of comments on the proposed decision. Any party objecting to such waiver will have the burden of demonstrating that filing of comments is in the public interest.

(c) The Commission, in issuing its decision in a ratesetting or quasi-legislative proceeding, may adopt, modify, or set aside all or part of the proposed decision, based on the evidence in the record. The decision of the Commission shall be issued not later than 60 days after issuance of the proposed decision. The Commission may extend the deadline for a reasonable period under extraordinary circumstances. The 60-day deadline shall be extended for 30 days if any alternate decision is proposed.

(d) In a ratesetting proceeding where a hearing was held, the Commission may meet in closed session to consider its decision, provided that the Commission has established a period as described in Rule 7(c)(4). In no event shall the period during which the Commission may meet in closed session exceed the period described in Rule 7(c)(4).

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 311(d), 1701.3(e) and 1701.4(e), Public Utilities Code.

8.2 (Rule 8.2) Decisions, Appeals, and Requests for Review in Adjudicatory Proceedings.

(a) An adjudicatory proceeding shall stand submitted for decision by the Commission after the taking of evidence, and the filing of briefs or the presentation of oral arguments as prescribed by the Commission or the presiding officer. The Commission's Daily Calendar shall include a table of submission dates listing all such dates (with the corresponding proceedings) that occurred during the two weeks preceding the date of the calendar.

(b) In an adjudicatory proceeding in which a hearing was held, the presiding officer shall prepare a decision setting forth the findings, conclusions, and order. The decision of the presiding officer shall be filed

with the Commission and served on all parties without undue delay, not later than 60 days after submission. The decision of the presiding officer shall constitute the proposed decision where one is required by law, and shall become the decision of the Commission if no appeal or request for review is filed within 30 days after the date the decision is mailed to the parties in the proceeding. The comment procedure in Rules 77.1-77.6 does not apply to a presiding officer's decision. However, the presiding officer has discretion, at any time before the 30-day appeal period has begun to run, to authorize comments on a draft decision or a portion thereof. The Commission's Daily Calendar shall include a table that lists, for the two weeks preceding the date of the calendar, each decision of a presiding officer that has become the decision of the Commission. The table shall indicate the proceeding so decided and the date when the presiding officer's decision became the decision of the Commission.

(c) The complainant, defendant, respondent, or any intervenor in an adjudicatory proceeding may file and serve an appeal of the decision of the presiding officer within 30 days of the date the decision is mailed to the parties in the proceeding.

(d) Any Commissioner may request review of the decision of the presiding officer in an adjudicatory proceeding by filing and serving a request for review within 30 days of the date the decision is mailed to the parties in a proceeding.

(e) Appeals and requests for review shall set forth specifically the grounds on which the appellant or requestor believes the decision of the presiding officer to be unlawful or erroneous. The purpose of an appeal or request for review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight. Appeals and requests for review shall be served on all parties and accompanied by a certificate of service.

(f) Any party may file and serve its response no later than 15 days after the date the appeal or request for review was filed. In cases of multiple appeals or requests for review, the response may be to all such filings and may be filed 15 days after the last such appeal or request for review was filed. Replies to responses are not permitted. The Commission is not obligated to withhold a decision on an appeal or request for review to allow time for responses to be filed.

(g) In any adjudicatory proceeding in which a hearing is held, the Commission may meet in closed session to consider the decision of the presiding officer that is under appeal pursuant to subsection (c) of this rule. The vote on the appeal or a request for review shall be in a public meeting and shall be accompanied by an explanation of the Commission's decision, which shall be based on the record developed by the presiding officer. A decision different from that of the presiding officer shall include or be accompanied by a written explanation of each of the changes made to the presiding officer's decision.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 1701.2(a) and (c), Public Utilities Code.

Article 3. Complaints and Commission Investigations

9. (Rule 9) Who May Complain.

(a) A complaint may be filed by any corporation or person, chamber of commerce, board of trade, labor organization, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, setting forth any act or thing done or omitted to be done by any public utility including any rule or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission.

No complaint shall be entertained by the Commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, or telephone corporation, unless it be signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city or city and county within which the alleged violation occurred, or by not less than 25 actual or prospective consumers or purchasers of such gas, electric, water, or telephone service. (See P.U. Code Sec. 1702.)

(b) A complaint may be filed by any interested party, as described in paragraph (a) hereof, setting forth any rate, charge, or provision affecting any rate or charge, of any highway permit carrier, in violation, or claimed to be in violation, of any provision of law (including P.U. Code Section 3662) or of any order or rule of the Commission, except as provided below.

(c) No complaint shall be entertained by the Commission as to the reasonableness of any rate, charge, or provision of a highway carrier if such rate has been specifically found to be reasonable by the Commission, unless the complaint sets forth relevant factors which have changed since the Commission made such finding.

Note: Authority and reference cited: Section 1702, Public Utilities Code; Statutes 1977, Ch. 1091.

10. (Rule 10) Form and Contents of Complaint.

In addition to being drafted to comply with Rules 2 through 2.6, complaints shall state the full name, address and telephone number of each complainant and his attorney, if any, and of each defendant. The specific act complained of shall be set forth in ordinary and concise language. The complaint shall be so drawn as to completely advise the defendant and the Commission of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief which is desired. (See Public Utilities Code Secs. 1702 and 1707.)

A complaint which does not allege that the matter has first been brought to the staff for informal resolution may be referred to the staff to attempt to resolve the matter informally.

10.1 (Rule 10.1) Form and Contents of Complaint (Radio/Telephone Utilities).

In addition, when both the complainant and defendant are radiotelephone utilities, and the complaint alleges unlawful or improper actions or intentions by the defendant, each and every allegation will be documented, and each utility involved will submit a current balance sheet together with an income and expense statement showing the nature and type of operating expenses for the past 12 months. If the matter has been referred to the staff, consideration will be given as to whether the complaint is anti-competitive in nature when both complainant and defendant serve an area common to each. Furthermore, the Commission will not entertain complaints of service area invasion where there are only minor overlaps of service area. Overlaps will be considered minor where the overlap does not exceed 10% of service area of either utility and does not provide substantial coverage of additional major communities.

11. (Rule 11) Copies.

An original plus twelve conformed copies of a complaint or amendment thereto, plus two additional copies for each named defendant, shall be presented to the Commission for filing.

12. (Rule 12) Service of Complaints.

When a complaint or amendment is accepted for filing (see Rule 3), the Docket Office shall serve a copy on each defendant. (P.U. Code Secs. 8, 1704).

13. (Rule 13) Time for Answers.

Within thirty days after the date of service of the complaint, the defendant shall answer the complaint. The Commission, the Chief Administrative Law Judge, or the presiding officer may require the filing of an answer within a shorter time.

Requests for an extension of time to answer shall be directed to the Chief Administrative Law Judge, or the presiding officer, in writing, and a copy shall be served on all parties. The request shall indicate complainant's acquiescence to the extension of time or the measures taken by defendant in his or her unsuccessful effort to obtain acquiescence. The Chief Administrative Law Judge, or the presiding officer, shall notify the parties of his or her ruling.

If an amendment to a complaint is filed before receipt of the answer, the defendant's time to answer the complaint shall be thirty days from the date of service of the amendment, unless otherwise directed. Amendments to a complaint made subsequent to the filing of an answer need not be answered.

13.1. (Rule 13.1) Contents of Answers.

The answer must admit or deny each material allegation in the complaint and shall set forth any new matter constituting a defense. Its purpose is to fully advise the complainant and the Commission of the nature of the defense. It should also set forth any defects in the complaint which require amendment or clarification. Failure to indicate jurisdictional defects does not waive these defects and shall not prevent a motion to dismiss made thereafter.

Answers must comply with the requirements of Rules 2 through 2.6, and include the full name, address, and telephone number of defendant and the defendant's attorney, if any, and indicate service on all complainants.

Note: Authority cited: Section 1701, Public Utilities Code.

13.2. (Rule 13.2) Expedited Complaint Procedure.

(a) This procedure is applicable to complaints against any electric, gas, water, heat, or telephone company where the amount of money claimed does not exceed the jurisdictional limit of the small claims court as set forth in subdivision (a) of Section 116.2 of the Code of Civil Procedure.

(b) No attorney at law shall represent any party other than himself or herself under the Expedited Complaint Procedure.

(c) No pleading other than a complaint and answer is necessary.

(d) A hearing without a reporter shall be held within 30 days after the answer is filed.

(e) Separately stated findings of fact and conclusions of law will not be made, but the decision may set forth a brief summary of the facts.

(f) Complainants and defendants shall comply with all rules in this Article dealing with complaints. Use of the Expedited Complaint Procedure does not excuse compliance with any applicable rule in the Commission's Rules of Practice and Procedure.

(g) The Commission or the presiding officer, when the public interest so requires, may at any time prior to the filing of a decision terminate the Expedited Complaint Procedure and recalendar the matter for hearing under the Commission's regular procedure.

(h) The parties shall have the right to file applications for rehearing pursuant to Section 1731 of the Public Utilities Code. If the Commission grants an application for rehearing, the rehearing shall be conducted under the Commission's regular hearing procedure.

(i) Decisions rendered pursuant to the Expedited Complaint Procedure shall not be considered as precedent or binding on the Commission or the courts of this state.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1702.1, Public Utilities Code.

14. (Rule 14) Commission Investigations.

The Commission may at any time institute investigations on its own motion. Orders instituting investigation shall indicate the nature of the matters to be investigated, and will be served upon the person or entity being investigated. A respondent need not file a pleading in response to the investigatory order unless so directed therein.

Notice of Commission-instituted investigations directed at specific utilities or regulated entities will be served on them. However, investigation proceedings affecting as a class highway carriers, railroads, express corporations, freight forwarders, pipelines, passenger stage corporations, charter-party carriers, or vessels will be noticed only on the Daily Calendar. The order instituting the proceeding, in addition to being

noticed on such calendar, may be mailed with the Daily Calendar, or the Calendar may state how to obtain a copy from the Commission staff.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 701, 703, 705, 728, 728.5, 729, 730, 3502, 3541, 5102 and 5112, Public Utilities Code.

Article 3.5. Rulemaking

14.1. (Rule 14.1) Definition.

Rulemaking is a formal Commission proceeding in which written proposals, comments, or exceptions are used instead of evidentiary hearings.

Note: Authority and reference cited: Section 1701, Public Utilities Code; Statutes 1951, Ch. 764.

14.2. (Rule 14.2) Scope of Rulemaking.

The Commission may elect to apply rulemaking to the following types of formal proceedings:

- (a) Proceedings to establish rules, regulations, and guidelines for a class of public utilities or of other regulated entities.
- (b) Proceedings to consider the adoption, repeal, or amendment of General Orders.
- (c) Proceedings on ratemaking for any class of public utilities or of other regulated entities.
- (d) Proceedings which may modify prior Commission decisions which were adopted by rulemaking.

Note: Authority and reference cited: Section 1701, Public Utilities Code; Statutes 1951, Ch. 764.

14.3. (Rule 14.3) Notice of Rulemaking.

Rulemaking proceedings when instituted shall be noticed on the commission's Daily Calendar. Rulemaking proceedings shall be designated as Orders Instituting Rulemaking (OIR). The Order Instituting Rulemaking shall be served by the Executive Director on all respondents and known interested parties.

Note: Authority and reference cited: Section 1701, Public Utilities Code; Statutes 1951, Ch. 764.

14.4. (Rule 14.4) Rulemaking Procedures.

(a) Rulemaking may be instituted either by the Commission proposing rules, regulations, guidelines, or rates or by the Commission instituting a proceeding for the express purpose of receiving proposals.

(b) The time allowed to submit proposals, comments, or exceptions will be specified either in the Order Instituting Rulemaking or thereafter by the Assigned Commissioner and/or Administrative Law Judge. The Commission may permit respondents and interested parties the opportunity to make oral argument regarding proposals after their written proposals, comments, or exceptions have been filed.

Note: Authority and reference cited: Section 1701, Public Utilities Code; Statutes 1951, Ch. 764.

14.5. (Rule 14.5) Form of Proposals, Comments, and Exceptions.

All proposals, comments, and exceptions submitted by respondents and interested parties shall be tendered for filing to the Docket Office with a certificate of service indicating service by mail on all known interested parties. Rules 2, 2.1, 2.2, and 2.5 shall apply to all pleadings filed in rulemaking proceedings. All pleadings which contain factual assertions shall be verified. Unverified factual assertions will be given only the weight of argument.

Note: Authority and reference cited: Section 1701, Public Utilities Code; Statutes 1951, Ch. 764.

14.6. (Rule 14.6) Cross-References.

- (a) Form and Size of Tendered Documents - Rule 2
- (b) Caption, Title, and Docket Number - Rule 2.1
- (c) Signatures - Rule 2.2
- (d) Service - Rule 2.3
- (e) Verification - Rule 2.4
- (f) Copies - Rule 2.5

Note: Authority and reference cited: Section 1701, Public Utilities Code; Statutes 1951, Ch. 764.

Article 4. Applications Generally

15. (Rule 15) Contents.

All applications shall state clearly and concisely the authorization or relief sought; shall cite by appropriate reference the statutory provision or other authority under which Commission authorization or relief is sought; and, in addition to specific requirements for particular types of applications (see Rules 18 through 41), shall state the following:

(a) The exact legal name of each applicant and the location of principal place of business, and if an applicant is a corporation, trust, association, or other organized group, the State under the laws of which such applicant was created or organized.

(b) The name, title, address and telephone number of the person to whom correspondence or communications in regard to the application are to be addressed. Notices, orders and other papers may be served upon the person so named, and such service shall be deemed to be service upon applicant.

(c) Such additional information as may be required by the Commission in a particular proceeding.

(d) Applications for ex parte action shall set forth the basis for such request, and those seeking the granting of relief pending full hearing shall set forth the necessity for such relief.

(e) In addition to otherwise complying with these rules, each application for authority to abandon passenger stage service, or reduce service to less than one trip per day (excluding Saturday and Sunday), shall include the following exhibits:

NOTE: If more than one point, route, or route segment is included in the application, the indicated data are to be separately stated for each point, route, or route segment.

Exhibit 1. Points and Routes Affected - a listing of points, routes, and route segments to be abandoned, including identification and a brief description of any other passenger transportation service available at the points or along the routes affected.

Exhibit 2. Maps - maps to scale showing each point, route, and route segment to be abandoned.

Exhibit 3. Timetables - copies of current and proposed timetables covering the affected points and routes.

Exhibit 4. Authority - copies of current and proposed certificate authorities covering the affected points and routes.

Exhibit 5. Traffic - traffic data for a recent representative period, showing numbers of interstate and intrastate passengers (by classification if more than one type of ticket is sold) destined to and originating from each point to be abandoned; also package express shipments similarly stated.

Exhibit 6. Fares and Rates - description of the fares and rates applicable to the affected services.

Exhibit 7. Revenues - calculation of the annual interstate and intrastate passenger, express, and other revenues which accrue as a result of the service to be abandoned, along with an explanation of how the revenues were calculated and of any assumptions underlying the calculations.

Exhibit 8. Operating Statistics - calculations of route miles, annual bus miles, and schedule operating time to be eliminated for each point, route, or route segment to be abandoned.

Exhibit 9. Expenses - calculation in the Uniform System of Accounts for Common and Contract Motor Carriers of Passengers, of the variable costs of operating each affected service, with an explanation of how the costs were calculated, and of any assumptions underlying the calculations (assumptions should be consistent with those used to calculate revenues). Any labor costs included shall also be separately identified and described.

Exhibit 10. Financial Assistance - description of any present operating subsidies or financial assistance applicable to the affected service, including identification of source, amounts, duration, and any significant terms or conditions applicable; also description of any proposals or discussions with respect to operating subsidies or financial assistance which have occurred during the year preceding the filing of the application.

Exhibit 11. Additional Evidence - any additional evidence or legal argument applicant believes to be relevant to the application.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 454, 818, 851, 852, 1001-1011, 1031 and 1063, Public Utilities Code.

15.1 (Rule 15.1) Notice of Particular Transportation Applications.

Notice requirements for specific applications and other pleadings are contained in the applicable Rules. However, the Commission's Daily Calendar (available from the Commission's Documents Office in San Francisco) will publish notice of applications filed. Publication in the Daily Calendar constitutes notice of filing to potentially affected competitors, customers, and interested parties for the following applications:

(a) Applications for any highway common carrier, cement carrier, cement contract carrier, dump truck carrier, express corporation, or freight forwarder for operating authority, or to transfer control under Public Utilities Code Section 854.

(b) Applications or other filings to increase, reduce, or adjust rates of highway carriers, railroads, express corporations, freight forwarders, or

pipelines (except deviations from established minimum rates; see Rule 42.1).

(c) Applications for passenger stage corporation or vessel operating authority, to extend or transfer operating authority, or to transfer control under Public Utilities Code Section 854.

(d) Applications for charter-party carrier certificates, or to extend and/or modify such certificates, or to transfer such certificates.

The Daily Calendar will list the applicant's address and telephone number when listing the above applications. Applicants shall furnish or mail a copy of the application or filing to any person making a request, or to any other persons as the Commission may direct.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 452, 454(b), 854, 1010, 1032, 3662, 5191, 5372 and 5377.1, Public Utilities Code.

16. (Rule 16) Articles of Incorporation.

(a) If applicant is a domestic corporation, as defined by Section 167 of the Corporations Code, a copy of its current articles of incorporation, certified by the California Secretary of State, shall be annexed to the original of the application, but need not be annexed to copies of the application. If a corporate applicant is not a domestic corporation, as so defined, a properly certified current copy of its articles of incorporation, and a copy of its certificate of qualification to transact intrastate business certified by the California Secretary of State, shall be annexed to the original of the application, but need not be annexed to copies of the application. If current articles or certificates of qualification have already been filed, the application need only make a specific reference to such filings.

(b) If applicant is a partnership, a copy of its current partnership agreement shall be annexed to the original application, but need not be annexed to copies of the application. If a current partnership agreement has already been filed, the application need only make specific reference to such filing. In lieu of filing the partnership agreement, applicant may file a current statement of partnership recorded pursuant to Section 15010.5 of the Corporations Code, or a current certificate of limited partnership recorded pursuant to Section 15502 of the Corporations Code, as appropriate.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 167 and 15010.5, Corporations Code.

17. (Rule 17) Financial Statement.

Wherever these rules provide that a financial statement shall be annexed to the application, such statement, unless otherwise provided herein, shall be prepared as of the latest available date, and shall show the following information:

- (a) Amount and kinds of stock authorized by articles of incorporation and amount outstanding.
- (b) Terms of preference of preferred stock, whether cumulative or participating, or on dividends or assets, or otherwise.
- (c) Brief description of each security agreement, mortgage and deed of trust upon applicant's property, showing date of execution, debtor and secured party, mortgagor and mortgagee and trustor and beneficiary, amount of indebtedness authorized to be secured thereby, and amount of indebtedness actually secured, together with any sinking fund provisions.
- (d) Amount of bonds authorized and issued, giving name of the public utility which issued same, describing each class separately, and giving date of issue, par value, rate of interest, date of maturity and how secured, together with amount of interest paid thereon during the last fiscal year.
- (e) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid thereon during the last fiscal year.
- (f) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by any person or corporation if the original liability has been transferred, together with amount of interest paid thereon during the last fiscal year.
- (g) Rate and amount of dividends paid during the five previous fiscal years, and the amount of capital stock on which dividends were paid each year.

(h) A balance sheet as of the latest available date, together with an income statement covering period from close of last year for which an annual report has been filed with the Commission to the date of the balance sheet attached to the application.

17.1. (Rule 17.1) Preparation and Submission of Environmental Impact Reports

(a) General. This rule has been developed and adopted pursuant to the California Environmental Quality Act of 1970, Public Resources Code Sections 21000 et seq. (CEQA), and the guidelines for implementation of CEQA promulgated by the Office of the Secretary for Resources, California Administrative Code Sections 15000 et seq. (EIR Guidelines.) The Commission hereby adopts and shall adhere to the principles, objectives, definitions, criteria and procedures of CEQA, the EIR Guidelines, and the additional provisions of this rule.

(b) Objectives.

(1) To carry out the legislative intent expressed in CEQA, Public Resources Code Sections 21000 and 21001, and specifically:

(2) To ensure that environmental issues are thoroughly, expertly, and objectively considered within a reasonable period of time, so that environmental costs and benefits will assume their proper and co-equal place beside the economic, social, and technological issues before the Commission, and so that there will not be undue delays in the Commission's decision-making process.

(3) To assess in detail, as early as possible, the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced, to the fullest extent possible.

(4) To achieve an appropriate accommodation between these procedures and the Commission's existing planning, review, and decision-making process.

(c) Applicability. This rule shall apply to CEQA projects for which Commission approval is required by law, except projects for which an application must be filed with the California Energy Resources

Conservation and Development Commission pursuant to Public Resources Code Section 25500.

(d) Proponent's Environmental Assessment. The proponent of any project subject to this rule shall include with the application for such project an environmental assessment which shall be referred to as the

Proponent's Environmental Assessment (PEA). The PEA shall be employed by the Commission to quickly focus on any impacts of the project which may be of concern, and may be used as an aid in preparing the Commission's Initial Study to determine whether to prepare a Negative Declaration or an Environmental Impact Report. Where it is found that CEQA requires such analysis and documentation the PEA may be employed in the preparation thereof.

(1) Form and Content. If it can be seen with certainty that there is no possibility that the project in question may have a significant adverse effect on the environment, the project PEA should be limited to a statement of this conclusion and any additional explanation or information which may be necessary for an independent assessment of such issue by the Commission. If it cannot be seen with certainty that there is no possibility that the project in question may have a significant adverse effect on the environment, then the PEA shall include all information and studies required by the Commission Information and Criteria List applicable to the project, and shall be submitted in the format specified in such list.

(2) Filing. The PEA shall be filed as a separate exhibit accompanying the application or pleading. It need not be physically attached thereto. The proponent shall file an original, twelve conformed copies and such additional copies of its PEA as may be required by the Commission for the review process.

(3) Commission Information and Criteria Lists. The Commission shall adopt and revise as necessary a list specifying in detail the information and studies which will be required from proponents of projects subject to this rule. These information lists shall also contain criteria which the Commission will apply in order to determine the completeness of PEAs. These lists shall be contained within the Commission's Information and Criteria List adopted pursuant to Chapter 1200 of the Statutes of 1977 (Government Code Sections 65940 through 65942), and shall be made available to the public upon request from Commission staff.

(e) Motions. Appropriate motions may be made in any proceeding subject to this rule.

(1) Such Motions include but are not limited to:

(A) Motion for determination of whether the Commission is the Lead Agency for purposes of CEQA and this rule;

(B) Motion for determination of who is the proponent of the project at issue;

(C) Motion for a public hearing under subsection (g);

(D) Motion for an expedited hearing under subsection (g) (2);

(E) Motion for the determination of the reasonableness of the deposit or fee required under subsection (j).

(2) A motion for determination of whether the proceeding involves a project subject to or exempt from CEQA and this rule may be made pursuant to Rule 17.2.

(3) A motion made under this subsection filed in a proceeding seeking ex parte action or prior to hearing in other proceedings shall be served upon all parties upon which service of the application, complaint, order instituting investigation, or other order was made or required to be made. If a motion is made during the course of a hearing, it shall be served on all parties of record.

(4) The Commission staff and all other parties upon whom the motion is required to be served shall have 10 calendar days in which to respond unless the presiding officer or Administrative Law Judge for good cause shown otherwise orders.

(f) Preparation of Environmental Documents. The procedures for preparation of environmental documents required under CEQA and the EIR Guidelines shall be as prescribed in CEQA, the EIR Guidelines, and the additional provisions of this rule.

(1) Negative Declarations.

(A) Notice of the preparation of a Negative Declaration shall be given by direct mail to all organizations and individuals having previously requested such notice, and to owners of land, under, or on which the project may be located, and owners of land adjacent thereto. Notice shall also be given to the general public by advertisement, not less than once a week, two weeks successively in a newspaper or newspapers of general circulation in the county or counties in which the project will be located.

(B) Negative Declarations shall be completed and adopted within 105 days of the date on which the project application is accepted as complete.

(C) Negative Declarations shall be available for public comment not less than 30 days prior to project approval should the project be approved.

(2) Draft EIRs.

(A) The PEA reviewed, corrected, amended and independently evaluated and analyzed by the staff may become the Commission's Draft EIR.

(B) Notice of Completion of the Draft EIR shall be given by direct mail to the county and municipal planning commissions and the county and municipal legislative bodies for each county or city affected by the project, the state highway engineer, other organizations and individuals having previously requested notification, and to owners of land under, or on which the project may be located, and owners of land adjacent thereto. Notice shall also be given to the general public by advertisement, not less than once a week, two weeks successively in a newspaper or newspapers of general circulation in the county or counties in which the project will be located.

(3) Final EIRs.

(A) Final EIRs shall be completed and certified within one year of the date on which the project application is accepted as complete.

(B) Copies of the Final EIR shall be served upon all parties to the proceeding.

(4) Public Availability of Environmental Documents. Copies of PEAs, Initial Studies, Negative Declarations, Draft EIRs, Final EIRs, and any other public environmental documents shall be available to members of the public who may be charged their actual cost of reproduction and handling.

(5) Extensions of Time. Consistent with the intent and purposes of CEQA, and Chapter 1200 Statutes 1977 (Government Code Sections 65920 et seq.), and to the extent permitted by CEQA, Chapter 1200, and the EIR Guidelines, reasonable extensions of time periods specified in CEQA, Chapter 1200, the EIR Guidelines, and in this rule may be granted. Such extensions include extensions of time periods specified in subsections (f)(1)(B) and (f)(3) of this rule.

(g) Hearings. Unless the Commission, presiding officer or Administrative Law Judge by order otherwise provides, public hearings shall be held upon each Negative Declaration and each Draft EIR for which a protest or motion under subsection (e)(1)(C) or (e)(1)(D) of this rule is received.

(1) Ex Parte Proceedings. If no protest or motion under subsection (e) is received within 30 days following the notice of completion of the Draft EIR or the notice of preparation of the Negative Declaration, the Final EIR or Negative Declaration may be completed and certified or completed and adopted without public hearing.

(2) Expedited Hearings on Environmental Issues. Any public hearing held concerning environmental issues may by order of the Commission, the presiding officer, or Administrative Law Judge be expedited for the purpose of facilitating agency compliance with the time constraints imposed upon Commission application processing by Chapter 1200 Statutes 1977 (Government Code Sections 65950, 65951, and 65952) and Rules 17.1(f)(1)(B) and (f)(3) through the implementation of such procedures as may in the discretion of the Commission, the presiding officer or Administrative Law Judge be found necessary and appropriate. Such procedures may include but need not be limited to any, or any combination of the following:

- (A) Limitations on the time allotted to each party;
- (B) Limitations upon the scope of the issues and testimony;
- (C) Limitation or elimination of cross-examination.

(3) Notice. Any public hearing held shall be held not less than 45 calendar days after the Draft EIR has been made available for public inspection and comment, and no less than 21 calendar days after the Negative Declaration has been made available.

(4) Evidence. Evidence in support of the project based upon the PEA shall be presented by the proponent at any hearing ordered by the Commission. All other parties may offer evidence in support of their environmental positions. Comments received through the consultation process shall be made a part of the record in the proceeding and shall be utilized to the maximum extent permissible under the Commission rules.

(h) Categorical Exemptions.

(1) The following specific projects are within the classes of projects which the Secretary for Resources has exempted from the EIR requirements of CEQA:

(A) Class 1 Exemptions.

1. Restoration and repair of existing structures when they have deteriorated or are damaged, in order to meet current standards of public health and safety under the rules of the Commission or other public authority, where the damage is not substantial and did not result from an environmental hazard.
2. The operation, repair, maintenance, or minor alteration of existing facilities used to convey or distribute electric power, natural gas, water, or other substance.
3. The maintenance of landscaping around utility facilities.
4. The maintenance of native growth around utility facilities.
5. Alteration in railroad crossing protection.

6. Minor railroad crossing alterations as described in Guidelines Section 15101 (c) and (f), including, but not limited to filings under General Order No. 88.
7. Installation of new railroad-highway signals or signs.
8. Abandonment, removal, or replacement of the following railroad facilities: (a) stock corrals, (b) tracks, or (c) platforms.
9. Deviation requests filed under General Orders Nos. 26-b and 118 as to clearances and walkways.

(B) Class 2 Exemptions.

1. The replacement or reconstruction, including reconductoring of existing utility structures and facilities where the new structure or facility will be located on the same site as the replaced structure or facility and will have substantially the same purpose and capacity as the structure replaced.
2. Minor reconstruction or repair of railroad crossings or separations.

(C) Class 3 Exemptions.

1. Stores and offices for utility purposes if designed for an occupant load of 20 persons or less, if not in conjunction with the building of two or more such structures.
2. Water main, sewage, electrical, gas, and other utility extensions of reasonable length to serve such construction.
3. Accessory (appurtenant) structures to utility structures including garages, carports, patios, and fences.

(D) Class 4 Exemptions. New gardening or landscaping in conjunction with utility facilities or structures not to include the removal of mature, scenic trees, the filling of earth into previously excavated land, with material compatible with the natural features of the site, and minor temporary uses of land having negligible or not permanent effect on the environment.

- (E) Class 5 Exemptions. Projects which require the issuance of street opening permits to permit minor alterations in land use limitations.
 - (F) Class 6 Exemptions. The preparation and filing of basic data, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. This includes the filing of informational reports with the Commission.
 - (G) Class 7 Exemptions. Commission decision-making activities which are intended to assure the maintenance, restoration, or enhancement of a natural resource, where procedures for the protection of the environment have been included.
 - (H) Class 8 Exemptions. Commission decision-making activities if they consist of action taken to assure the maintenance, restoration, enhancement, or protection of the environment, such as, in connection with the issuance of instructions or orders having to do with existing utility facilities, where procedures for the protection of the environment have been included. Construction activities are not included in this exemption.
 - (I) Class 21 Exemptions. Commission activities which consist of enforcing or revoking a lease, permit, certificate or other entitlement which activities do not ordinarily involve significant effects on the environment.
- (i) Lead Agency Determinations.
- (1) The Commission is the lead agency for the following stationary utility projects:
 - (A) Electric transmission lines and generation plants under General Order No. 131-B, over which the Energy Resources Conservation and Development Commission does not have primary jurisdiction.
 - (B) Gas storage facilities and major gas transmission lines.
 - (C) New and noncontiguous utility facility projects (independent of subdivisions).

(D) Radiotelephone utility facilities.

(E) Telephone service area expansions.

(F) Proceedings directly related to new construction of utility facilities.

(G) Applications for exemptions from under grounding requirements, except where the electric or telephone distribution lines are incidental to a development project over which a city, county, or other political subdivision has the primary decision-making responsibility.

(2) The Commission is the lead agency in certification proceedings involving passenger stage and railroad corporations, passenger air and highway common carriers, Class B charter-party carriers of passengers, and vessels.

(3) The Commission is the lead agency for railroad projects involving a grade separation, new street crossing, new railroad track crossing, or railroad crossing relocation or widening project, except that where the project is to be carried out by a state or local public agency.

(j) Fees for Recovery of Costs Incurred in Preparing EIRs.

(1) For any project where the Commission is the lead agency responsible for preparing the EIR to Negative Declaration the proponent shall be charged a fee to recover the actual cost of the Commission in preparing the EIR or Negative Declaration. A deposit shall be charged the proponent as set forth below:

A deposit of thirty dollars (\$30) for each one thousand dollars (\$1,000) of the estimated capital cost of the project up to one hundred thousand dollars (\$100,000), ten dollars (\$10) for each one thousand dollars (\$1,000) over one hundred thousand dollars (\$100,000) and up to one million dollars (\$1,000,000), five dollars (\$5) for each one thousand dollars (\$1,000) over one million dollars (\$1,000,000) and up to five million dollars (\$5,000,000), two dollars (\$2) for each one thousand dollars (\$1,000) over five million dollars (\$5,000,000) and up to ten million dollars (\$10,000,000), one dollar (\$1) for each one thousand dollars (\$1,000) over ten million dollars (\$10,000,000) and up to one hundred million dollars (\$100,000,000),

and fifty cents (\$0.50) for each one thousand dollars (\$1,000) over one hundred million dollars (\$100,000,000). A minimum deposit of five hundred dollars (\$500) shall be charged for projects with an estimated capital cost of sixteen thousand dollars (\$16,000) or less.

If a project lacks a capital cost basis, the Commission, presiding officer, or Administrative Law Judge shall determine, as early as possible, the deposit to be charged.

(2) The deposit shall be collected whenever an EIR or Negative Declaration is requested or required. The costs of preparing the EIR or Negative Declaration shall be paid from such deposits.

(3) Proponent shall pay the applicable deposit in progressive payments due as follows: One-third of the deposit at the time the application or pleading is filed, an additional one-third no later than 120 days after the time the application or pleading is filed, and the remaining one-third no later than 180 days after the time the application or pleading is filed. Failure to remit full payment of the deposit no later than 180 days after the time the application or pleading is filed may subject the proponent to a fine not exceeding 10 percent of the outstanding amount due. If the costs exceed such deposit the proponent shall pay for such excess costs within 20 days of the date stated on the Commission's bill for any excess costs. If the costs are less than the deposit paid by the proponent, the excess shall be refunded to the proponent.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 21165, Public Resources Code.

17.2. (Rule 17.2) Motion for Determination of Applicability of CEQA.

Any party may file in any proceeding before the Commission a motion for determination of whether the proceeding involves a project subject to or exempt from the California Environmental Quality Act of 1970, Public Resources Code, Sections 21000 et seq., and Rule 17.1.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 21000 et seq., Public Resources Code.

17.3. (Rule 17.3) Review and Approval of Development Projects.

Review of development projects within the meaning of Chapter 1200 of the Statutes of 1977 (Government Code Sections 65920 et seq.) shall be in accord with the procedures and requirements of that chapter, the Permit Guidelines promulgated by the Office of Planning and Research (State Administrative Manual Sections 1070 et seq.), and applicable rules and procedures of the Commission. Commission Information and Criteria

Lists for applications subject to Chapter 1200, Statutes 1977 shall be available from the Commission staff.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 65920 et seq., Government Code.

Article 5. Applications for Certificates of Public Convenience and Necessity

18. (Rule 18) Construction or Extension.

(Electric or street railroad, gas, electric, telephone, telegraph, or water utility.) This rule applies to applications, under Section 1001 of the Public Utilities Code, by any new public utility for a certificate to begin the construction of its plant or system, or by an existing public utility to begin construction of an extension of such a character as to require certification under Section 1001 of the Public Utilities Code. (See Rule 37.) In addition to being drafted to comply with Rules 2 through 2.6, 15 and 16, such applications shall contain the following data, either in the body of the application or in exhibits attached thereto:

(a) A full description of the proposed construction or extension, and the manner in which the same will be constructed.

(b) The names and addresses of all utilities, corporations, persons or other entities, whether publicly or privately operated, with which the proposed construction is likely to compete, and of the cities or counties within which service will be rendered in the exercise of the requested certificate. Whenever a public utility applies to the Commission to extend or establish its water service within a county water district, a public utility or municipal utility district, or other water or utility district, or any area served by such district, such district shall also be named, if it furnishes a like service. The application shall contain a certification that a copy of the application has been served upon or mailed to each such party named.

(c) A map of suitable scale showing the location or route of the proposed construction or extension, and its relation to other public utilities, corporations, persons, or entities with which the same is likely to compete.

(d) A statement identifying the franchises and such health and safety permits as the appropriate public authorities have required or may require for the proposed construction or extension.

(e) Facts showing that public convenience and necessity require, or will require, the proposed construction or extension, and its operation.

(f) A statement detailing the estimated cost of the proposed construction or extension and the estimated annual costs, both fixed and operating associated therewith. In the case of a utility which has not yet commenced service or which has been rendering service for less than twelve months, the applicant shall file as a part of the application supporting statements or exhibits showing that the proposed construction is in the public interest and whether it is economically feasible.

(g) Statements or exhibits showing the financial ability of the applicant to render the proposed service together with information regarding the manner in which applicant proposes to finance the cost of the proposed construction or extension.

(h) A statement of the proposed rates to be charged for service to be rendered by means of such construction or extension. If any increase in rates is proposed, comply with Rule 23.

(i) A statement corresponding to the statement required by Section 2 of General Order No. 104-A, as to all known matters which both (a) are designated by said section for inclusion in the annual report but occurred or were proposed subsequent to the period covered by the last previous annual report filed by the applicant and (b) are, or will be, connected with the construction or extension proposed in the application; or, if no such matters are known to have so occurred or are then known to be proposed, a statement to that effect; provided, that an applicant whose capital stock, or that of its parent company, is listed on a "national securities exchange," as defined in the Securities Exchange Act of 1934 (15 U.S.C. 78(a) et seq.), in lieu of the statement required by this rule shall include in the application a copy of the latest proxy statement sent to stockholders by it or its parent company if not previously filed with the Commission, provided, further, that an applicant whose capital stock, or that of its parent company, is registered with the Securities and Exchange Commission (SEC) pursuant to the provisions of Section 12 (g) of said Securities Exchange Act of 1934, in lieu of the statement required by this rule shall include in the application a copy of the latest proxy statement sent to stockholders by it or its parent company containing the information required by the rules of the SEC if not previously filed with the Commission.

(j) In the case of a telephone utility, the estimated number of customers and their requirements for the first and fifth years in the future.

(k) In the case of a gas utility seeking authority to construct a pipeline:

(1) Regarding the volumes of gas to be transported:

(A) A statement of the volumes to be transported via the proposed pipeline including information on the quality of gas and the maximum daily and annual average daily delivery rates.

(B) A statement that copies of summaries of all contracts for delivery and receipt of gas to be transported via the proposed pipeline and information on the reserves and delivery life pertaining thereto will be made available for inspection on a confidential basis by the Commission or any authorized employee thereof. The terms and provisions of individual contracts for gas supply and data as to reserves or delivery life of individual gas suppliers shall not be required to be stated in the application or in the record of the proceedings, and if disclosed to the commission or to any officer or employee of the Commission on a confidential bases as herein provided, shall not be made public or be open to public inspection.

(2) A summary of the economic feasibility, the market requirements and other information showing the need for the new pipeline and supply.

(3) Where the gas to be transported through the pipeline is to be purchased by the applicant from, or transported by the applicant for, an out-of-state supplier:

(A) A copy of the proposed tariff under which the gas will be purchased or transported.

(B) A statement that the out-of-state pipeline supplier has agreed: (1) to file with this Commission copies of annual reports which it files with the Federal Power Commission; (2) to file with this Commission monthly statements of its revenues, expenses and rate base components; (3) to file with this Commission copies of its tariffs as filed from time to time with the Federal Power Commission; and (4) at all times to permit

this Commission or its staff reasonable opportunity for field inspection of facilities and examination of books and records, plus assurance that reasonable requests for operating information otherwise prepared in the course of business will be supplied in connection with any proceeding before the Federal Power Commission.

(l) In the case of an electric utility proposing to construct an electric generating plant:

(1) Load and resource data setting forth recorded and estimated loads (energy and demands), available capacity and energy, and margins for two years actual and three years estimated, on an average year basis.

(2) Existing rated and effective operating capacity of generating plants and the planned additions for a three-year period.

(3) Estimated capital and operating costs of power to be generated by the proposed plant for all competitive fuels which may be used under legislative restrictions in the proposed plant.

(4) For any nuclear plant, a statement indicating that the requisite safety and other license approvals have been obtained or will be applied for, and that a copy of the application to this Commission has been furnished to the State Coordinator of Atomic Energy Development and Radiation Protection.

(m) In the case of a water utility:

(1) An estimate of the number of customers and the requirements for water for the first and fifth years in the future, and the ultimate future development anticipated by applicant, together with a description of the proposed normal, and emergency standby, water facilities for production, storage and pressure to serve the area for which the certificate is sought.

(2) A statement of the estimated operating revenues and estimated expenses, by major classes, including taxes and depreciation, for the first and fifth years in the future attributable to operations in the proposed area.

(3) If the applicant has operated as a water utility elsewhere in the State of California for a period in excess of one year prior to filing the application, a general statement of the operating plans for the proposed area, including a statement whether a new area will be served by existing personnel or will constitute a separate district to be served by new personnel. If the applicant has not operated as a water utility elsewhere in the State of California for a period in excess of one year prior to filing the application, a description of the operating plans for the proposed area, including, to the extent available, but not necessarily limited to, such items as qualifications of management and operating personnel, proposed operating pressures for the system, plans for water treatment, availability of utility personnel to customers, billing procedures, emergency operation plans and provision for handling customer complaints.

(n) In the case of an application by a water utility in an area in which the facilities have already been constructed, extended or installed:

(1) A detailed statement of the amount and basis of the original cost (estimated if not known) of all plant and of the depreciation reserve applicable thereto.

(2) If the facilities have been rendering service in the area for which the certificate is sought, and

(A) The rates proposed are the same as the tariff rates in the district which includes the area to be certificated, the application shall also include a summary of earnings on a depreciated rate base with respect to such area for the test period or periods upon which applicant bases its justification for the rates to be applied in such area; otherwise

(B) The application shall also comply with Rule 23, including the furnishing of the information specified in subsections (e) and (f) thereof but made applicable to the proposed rates; provided, however, the information required by subsections (b) and (c) thereof need be furnished only when increases are proposed.

(o) In the case of an application to furnish one-way paging or two-way mobile radiotelephone service (other than cellular mobile radiotelephone service), the following requirements apply in addition to those

enumerated in Rules 1 through 2.6, 15 through 17.1, and subsections (a), (b), (d), first sentence of (f), (g), (h) and (i) above:

- (1) When an applicant files for the relevant construction permit from the Federal Communication Commission (FCC) and the FCC public notice period has expired, it may at any time thereafter submit its application to this Commission. The proposed new service area, or the effect of changed facilities on the utility's existing service area, if any, will be shown on a fully legible engineering service area contour map, of suitable scale, prepared in accordance with the applicable criteria set forth in 47 CFR 22. The use of aeronautical charts for this purpose is unacceptable.
- (2) Each application shall address the following matters in a substantial manner and with particularity, consistent with the scope of the authorization sought:
 - (A) Demonstration that the proposed service is responsive to public need and demand.
 - (B) Technical feasibility of the proposed system and the technical competence of the applicant.
 - (C) Description of the proposed service including terms, conditions, area of coverage, quality, and features of service, and differences from any service presently provided in the proposed service area.
 - (D) Financial responsibility of the applicant.
 - (E) Economic feasibility of the proposed service in the market to be served.
 - (F) Present operations of the applicant and affiliated companies.
- (3) Should an existing utility protest such application, the burden shall rest with the protestant to show that the application should not be granted by affirmatively establishing that granting the application will so damage existing service or the particular marketplace as to deprive the public of adequate service. The protest shall conform to Rules 44 through 44.6 of the Commission's Rules of Practice and Procedure. A service map of protestant's

claimed service area shall be filed with the protest. Protests of a general or nonspecific nature will not be sufficient to warrant consideration by the Commission.

(4) Should an existing utility propose to provide service in an area contiguous to its authorized service area and not presently receiving radiotelephone service by any utility, an application for a certificate need not be made, but the engineering data required in (1) above shall be provided to the Telecommunications Division.

(5) Should an existing utility propose an extension of service area which it believes to be minor in nature, but to which (4) above is inapplicable, it shall submit the relevant engineering data to the Telecommunications Division, with a written request for determination of the necessity for a certificate application. Reply will be by letter from an authorized representative of the Commission's Telecommunications Division. In general, an extension will be considered minor if it does not overlap the radio service area of another utility by more than 10% of either utility's radio service area and also does not provide substantial coverage of additional major communities.

(6) Actions as described in (4) or (5) above, or actions such as construction of fill-in transmitting facilities which do not affect service area boundaries, shall be described in tariff revisions which shall be promptly filed by the utility.

(p) Such additional information and data as may be necessary to a full understanding of the situation.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1001, Public Utilities Code.

21. (Rule 21) Common Carrier Certificates.

All applications for common carrier certificates shall comply with Rules 2 through 2.6, 15, and 16. Highway common carrier applications shall be filed on the proper form available from the license section of the tariff and license branch of the Transportation Division. Vessel common carrier, express corporation, freight forwarder, passenger stage corporation, cement carrier, and highway common carrier applications shall contain the following data, either in the body of the application or in attached exhibits:

- (a) The type of service being performed by applicant, a general description of it, and a reference to the authority under which existing service is performed.
- (b) The specific authority requested and the particular statutory provision under which the certificate is requested.
- (c) If a carrier of property, a description of specified commodities proposed to be transported, and, if general commodities with exceptions are proposed to be transported, a statement specifying such exceptions.
- (d) The geographical scope of the proposed operation, including the termini and other points proposed to be served, and a concise narrative description of the proposed route.
- (e) A map or sketch of the route and points to be served, drawn to suitable indicated scale, and showing present and proposed operation by distinctive coloring or marking.
- (f) A statement of the rates or fares proposed to be charged and rules governing service. Applications for certificates need not contain tariffs, but shall indicate the level and nature of proposed rates and rules and may refer to tariffs on file with or issued by the Commission.
- (g) A statement indicating the frequency of the proposed service. If "on call" service is proposed, the application shall set forth conditions under which such service would be performed.
- (h) The kind and approximate number of units of equipment to be employed in the proposed service.
- (i) A statement of financial ability to render the proposed service.
- (j) Facts showing that the proposed operation is required by public convenience and necessity.
- (k) Every applicant for a passenger stage certificate shall forward a copy of the application to each public transit operator operating in any portion of the territory sought to be served by the applicant. The applicant shall also mail a notice that the application has been filed with the Commission to all city and county governmental entities and

regional transportation planning agencies within whose boundaries passengers will be loaded or unloaded. This notice shall state in general terms the authority sought, including the proposed routes, schedules, fares and equipment. Said notice shall also state that a copy of the application and related exhibits will be furnished by applicant upon written request. A copy of the notice and a certificate of service shall be filed with the application.

(l) Applicants shall mail or give a copy of their application to any potential competitor, governmental entity, or interested party requesting a copy, and to any persons upon direction by the Commission or other Rules.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 701, 1007, 1010, 1032, 1062 and 1701, Public Utilities Code.

Article 6. Applications for Authority to Increase Rates

23. (Rule 23) Rate Increase Applications. (P.U. Code Sec. 454).

This rule applies to applications for authority to raise any rate, fare, toll, rental or charge, or so to alter any classification, contract, practice, or rule as to result in such an increase. In addition to being drafted to comply with Rules 2 through 2.6, 15 and 16, such applications shall contain the following data, either in the body of the application or as exhibits annexed thereto or accompanying the application:

(a) A balance sheet as of the latest available date, together with an income statement covering period from close of last year for which an annual report has been filed with the Commission to the date of the balance sheet attached to the application.

(b) A statement of the presently effective rates, fares, tolls, rentals, or charges which are proposed to be increased, or of the classification, contract, practice, or rule proposed to be altered. Such statement need not be in tariff form.

(c) A statement of the proposed increases or changes which will result in increases, which applicant requests authority to make effective. Such statement need not be in tariff form, but shall set forth the proposed rate structure with reasonable clarity. Except as to carriers, the statement shall also show the amount of proposed gross revenues,

together with the percentage of increase, if in excess of one percent, estimated to result from the proposed rates. In the case of carriers, where a general rate increase application is filed, the statement shall include an estimate of the amount of additional annual gross revenue estimated to result from the increase, which shall be based on the amount of involved traffic handled for the preceding calendar year and shall indicate the percentage by which such estimate exceeds the gross revenues on the involved traffic for the preceding calendar year, if more than one percent. In the case of gas, electric, telephone, telegraph, water and heat utilities, the proposed revenue increase, including the percentage of increase, if in excess of one percent, shall be shown by appropriate rate classifications. If the percentage of increase in revenue is one percent or less, applicant shall so state in its application.

(d) A general rate increase application shall contain a general description of applicant's property and equipment, or reference to such description in a recent prior application, and a statement of the original cost thereof, together with a statement of the depreciation reserve applicable thereto. If it is impossible to state original cost, the facts creating such impossibility shall be set forth.

(e) A summary of earnings (rate of return summary) on a depreciated rate base for the test period or periods upon which applicant bases its justification for an increase. If adjusted or estimated results are shown for successive periods they should be on a consistent basis. Wherever adjusted results are shown, the recorded results for the same periods should also be shown.

(f) In rate applications involving a utility having more than one department, district or exchange, the earnings results should be presented for the total utility operations for the company, as well as for the part of the operation for which rate increases are sought.

(g) Applicant's exhibits must accompany the application and applicant shall state the date it will be ready to proceed with its showing.

(h) The application of a gas, electric, telephone, telegraph, water or heat utility for a general rate increase shall contain a statement by the applicant as to which of the optional methods provided in the Internal Revenue Code applicant has elected to employ in computing the depreciation deduction for the purpose of determining its federal income tax payments, and whether applicant has used the same

method or methods in calculating federal income taxes for the test period for rate fixing purposes.

(i) The application of a gas, electric, telephone, telegraph, water or heat utility for a general rate increase shall contain a statement corresponding to the statement required by Section 2 of General Order No. 104-A, as to all known matters designated by said section for inclusion in the annual report but occurring or proposed subsequent to the period covered by the last annual report filed by applicant; or, if no such matters are known to have so occurred or are known to be then proposed, a statement to that effect; provided, that an applicant whose capital stock, or that of its parent company, is listed on a "national securities exchange," as defined in the Securities Exchange Act of 1934 (15 U.S.C. 78(a) et seq.) in lieu of the statement required by this rule shall include in the application a copy of the latest proxy statement sent to stockholders by it or its parent company if not previously filed with the Commission, provided, further, that an applicant whose capital stock, or that of its parent company, is registered with the Securities and Exchange Commission (SEC) pursuant to the provisions of Section 12(g) of said Securities Exchange Act of 1934, in lieu of the statement required by this rule shall include in the application a copy of the latest proxy statement sent to stockholders by it or its parent company containing the information required by the rules of the SEC if not previously filed with the Commission.

(j) In a general rate increase application involving a telephone utility having an annual operating revenue exceeding \$25,000, the rate of return on a depreciated rate base shall be shown separately for its aggregate exchange operations, for its toll operations, and for the total telephone utility operations of applicant.

(k) In the event that applicant desires to revise the level of rates shown in its original application before hearing on the same, the applicant shall file an Amendment to Application in accordance with Rule 2.6. Such amendment shall contain a complete revised statement of proposed changes as required by subsection (c) hereof, and the information required by subsections (e), (f) and (j) shall also be revised accordingly.

(l) The application of electrical, gas, heat, telephone, water, or sewer system corporations shall separately state whether or not the increase

reflects and passes through to customers only increased costs to the corporation for the services or commodities furnished by it.

Note: Authority cited: Section 1701, Public Utilities Code.

24. (Rule 24) Service of Rate Increase Applications.

If the applicant for an authorization to increase rates is a gas, electric, telephone, telegraph, water, or heat utility, or, with respect to passenger fares a street railroad corporation, a passenger stage corporation, a railroad corporation, a vessel common carrier or a passenger air carrier, applicant shall name in its application and, within ten days after filing its application with the Commission, mail a notice to the following stating in general terms the proposed increases in rates or fares: (1) the State, by mailing to the Attorney General and the Department of General Services, when the State is a customer or subscriber whose rates or fares would be affected by the proposed increase; (2) each county, by mailing to the County Counsel (or District Attorney if the county has no County Counsel) and County Clerk, and each city, by mailing to the City Attorney and City Clerk, listed in the current Roster published by the Secretary of State within, from, to, or in which the proposed increase is to be made effective; and (3) any other parties whom applicant deems appropriate. Applicant shall promptly notify the Commission of such mailing. Said notice shall also state that a copy of the application and related exhibits will be furnished by applicant upon written request. Applicant shall also mail copies of said application and related exhibits to such parties and within such times as may be required by the Commission.

Gas, electric, telephone, telegraph, water or heat utilities, within ten days after the filing of the application, shall publish at least once in a newspaper of general circulation in the county within, from or to which the increases are proposed to be made effective a notice, in general terms, of the proposed increases in rates or fares. Such notice shall state that a copy of said application and related exhibits may be examined at the offices of the California Public Utilities Commission in San Francisco or Los Angeles and in such offices of the applicant as are specified in the notice, and shall state the locations of such offices. Proof of such publication shall be filed with the Commission at or prior to the opening of such hearing as may be had upon the application.

Electric, gas, heat, telephone, water, or sewer system corporations, within 45 days, if the corporation operates on a 30-day billing cycle, or within 75 days, if the corporation operates on a 60-day or longer billing

cycle, after the filing of an application to increase any rate of charge, other than an increase reflecting and passing through to customers only increased costs to the corporation, for the services or commodities furnished by it, shall furnish to its customers affected by the proposed increase notice of its application either by mailing such notice postage prepaid to such customers or by including such notice with the regular bill for charges transmitted to such customers. The notice shall state the amount of the proposed increase expressed in both dollar and percentage terms, a brief statement of the reasons the increase is required or sought, and the mailing address of the Commission to which any customer inquiries relative to the proposed increase, including a request by the customer to receive notice of the date, time, and place of any hearing on the application, may be directed.

Article 7. Applications of Common Carriers to Increase Rates Under the Shortened Procedure Tariff Docket

(See P.U. Code Sec. 454(b))

This article applies to applications of common carriers to increase any rate or so alter any classification, contract, practice or rule as to result in any increase in any rate under the Shortened Procedure Tariff Docket as hereinafter described in this article. Applications and protests under this article are subject to Rules 2, 2.1 and 2.5 of Article 2 but are not subject to the other provisions of Article 2 nor the provisions of Article 4 or Article 6.

25. (Rule 25) Applications Under the Shortened Procedure Tariff Docket.

Applications may not be processed under the Shortened Procedure Tariff Docket unless the application shows that, in the knowledge and belief of applicant, the proposed increases:

- (a) Do not require public hearing and the application contains a statement of the facts and circumstances upon which such belief is based, and
- (b) Would not increase applicant's California intrastate gross revenue by as much as one percent.

26. (Rule 26) Verification or Certification and Signatures.

The original of each application shall be verified under oath or certified under penalty of perjury, and shall be signed by the applicant, a responsible officer thereof, or by an agent to whom power of attorney has been given. Applications concerning joint rates or fares shall be signed by or on behalf of all carriers participating therein.

27. (Rule 27) Contents.

Applications shall state clearly and concisely the authority or relief sought and:

- (a) The legal name, mailing address and telephone number of the applicant. If the carriers are numerous, and constitute all the participants of the specified tariff, they may be identified by reference to the tariff.
- (b) The present rates, fares, charges or rules which are proposed to be changed and those proposed to be established.
- (c) Clearly, specifically, and in detail, the justification in support of each authority sought.
- (d) The position of interested parties regarding the application insofar as known to applicant.

28. (Rule 28) Copy of Application upon Request.

Applicant shall promptly furnish a copy of the application to each interested party making a written request therefor to applicant.

29. (Rule 29) Processing and Notice.

The filing of Shortened Procedure Tariff Docket applications shall be listed in the Daily Calendar. (Rule 3.4.)

The listing shall identify the applicant and the type of application and briefly state the authority sought and the date of filing. Action on an application shall be withheld for thirty days subsequent to the first date of listing in said calendar.

30. (Rule 30) Protests.

Anyone interested may file a protest which shall:

- (a) State the protestant's full name, mailing address and telephone number.
- (b) State the facts constituting the grounds for protest and show how protestant is affected and why the proposed increase may not be justified.
- (c) State the names of each applicant or its attorney or agent upon whom a copy of the protest is being served pursuant to Rule 31.
- (d) Be verified under oath or certified under penalty of perjury and be signed by protestant or its attorney.
- (e) Be addressed to the California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California 94102.
- (f) Be forwarded so as to reach the Commission not later than the thirtieth day following the listing of the application in the Daily Calendar.

31. (Rule 31) Service.

One copy of each protest shall simultaneously be served upon each applicant or its attorney or agent. Service shall be made personally or by deposit in the United States mail of a sealed envelope with first class postage prepaid, containing a true copy of the documents to be served and addressed to the party to be served at the last known address of such party.

32. (Rule 32) Copy of Protest upon Request.

Protestant shall promptly furnish a copy of the protest to each party making a written request therefor to protestant.

Article 8. Applications to Issue Stock or Evidences of Indebtedness, or to Assume Liabilities

33. (Rule 33) Contents.

This article applies to applications under Sections 816-830 of the Public Utilities Code. In addition to being drafted to comply with Rules 2 through 2.6, 15 and 16, such applications shall contain the following data, either in the body of the application or in exhibits attached thereto:

(a) A general description of applicant's property and its field of operation, the original cost of its property and equipment, individually or by class, and the cost thereof to applicant and the depreciation and amortization reserves applicable to such property and equipment, individually or by class. If it is impossible to state original cost, the facts creating such impossibility shall be stated.

(b) The amount and kind of stock, or other evidence of interest or ownership, which applicant desires to issue, and, if preferred, the nature and extent of the preference; the amount of bonds, notes or other evidences of indebtedness which applicant desires to issue, with terms, rate of interest, and whether and how to be secured; the amount and description of the indebtedness which applicant desires to assume.

(c) The purposes for which the securities are to be issued:

(1) If for property acquisition, a detailed description thereof, the consideration to be paid therefor, and the method of arriving at the amount.

(2) If for construction, completion, extension or improvement of facilities, a description thereof in reasonable detail, the cost or estimated cost thereof, and the reason or necessity for the expenditures.

(3) If for improvement of service, a statement of the character of the improvements proposed, or if for maintenance of service, a statement of the reasons why service should be maintained from capital.

(4) If for discharge or refunding of obligations, a full description of the obligations to be discharged or refunded, including the character, principal amount, discount or premium applicable thereto, date of incurrence, date of maturity, rate of interest, and other material facts concerning such obligations, together with a statement showing the purposes for which such obligations had been incurred, or the proceeds expended, and the Commission's decisions, if any, authorizing the incurrence of such obligations.

(5) If for the financing of the acquisition and installation of electrical and plumbing appliances and agricultural equipment which are sold by other than a public utility, for use within the service area of the public utility, a statement of the reason or necessity for such financing.

(6) If for reorganization or readjustment of indebtedness or capitalization, or for retirement or exchange of securities, a full description of the indebtedness or capitalization to be readjusted or exchanged; complete terms and conditions of the merger, consolidation, exchange or other reorganization; a pro forma balance sheet, if possible, giving effect to such reorganization, readjustment or exchange; and a statement of the reason or necessity for the transaction.

(7) If for reimbursement of moneys actually expended from income, or from any other moneys in the treasury, a general description of the expenditures for which reimbursement is sought, the source of

such expenditures, the periods during which such expenditures were made, and the reason or necessity for such reimbursement.

(d) A complete description of the obligation or liability to be assumed by applicant as guarantor, endorser, surety or otherwise, the consideration to be received by applicant, and the reason or necessity for such action.

(e) A statement corresponding to the statement required by Section 2 of General Order No. 104-A, as to all known matters designated by said section for inclusion in the annual report but occurring or proposed subsequent to the period covered by the last annual report filed by applicant; or if no such matters are known to have so occurred or are then known to be proposed, a statement to that effect; provided, that an applicant whose capital stock, or that of its parent company, is listed on a "national securities exchange," as defined in the Securities Exchange Act of 1934 (15 U.S.C. 78(a) et seq.), in lieu of the statement required by this rule shall include in the application a copy of the latest proxy statement sent to stockholders by it or its parent company if not previously filed with the Commission, provided, further, that an applicant whose capital stock, or that of its parent company, is registered with the Securities and Exchange Commission (SEC) pursuant to the provisions of Section 12 (g) of said Securities Exchange Act of 1934, in lieu of the statement required by this rule shall include in the application a copy of the latest proxy statement sent to stockholders by it or its parent company containing the information required by the rules of the SEC if not previously filed with the Commission.

(f) Other pertinent facts. The filing of additional information may be required by the Commission in particular instances.

Note: Authority cited: Section 1701, Public Utilities Code; and Article 12, Section 2, California Constitution. Reference: Section 829, Public Utilities Code.

34. (Rule 34) Exhibits.

With the application shall be filed:

- (a) Articles of incorporation and effective amendments. (See Rule 16.)
- (b) Financial statement. (See Rule 17.)

(c) Copy of deeds of trust, security agreements, mortgages, conditional sales contracts, notes or other instruments (excluding stock certificates) defining the terms of the proposed securities. If the same have already been filed, the application need only make specific reference to such filings.

(d) Copy of each plan, offer or agreement for the reorganization or readjustment of indebtedness or capitalization or for the retirement or exchange of securities.

Article 9. Applications to Sell, Lease or Encumber Utility Property or Rights; to Merge or Consolidate Facilities; to Acquire Stock of Another Utility; or to Acquire or Control a Utility

35. (Rule 35) Contents.

This article applies to applications under Sections 851-854 of the Public Utilities Code.

In addition to being drafted to comply with Rules 2 through 2.6, 15 and 16, such applications shall be signed by all parties to the proposed transaction, except the lender, vendor under a conditional sales contract, or trustee under a deed of trust, unless such party is a public utility. In addition, they shall contain the following data:

- (a) The character of business performed and the territory served by each applicant.
- (b) A description of the property involved in the transaction, including any franchises, permits, or operative rights; and, if the transaction is a sale, lease, assignment, merger or consolidation, a statement of the book cost and the original cost, if known, of the property involved.
- (c) Detailed reasons upon the part of each applicant for entering into the proposed transaction, and all facts warranting the same.
- (d) The agreed purchase price and the terms for payment. If a merger or consolidation, the full terms and conditions thereof.
- (e) Other pertinent facts. The filing of additional information may be required by the Commission in particular cases.

36. (Rule 36) Exhibits.

With the application shall be filed:

- (a) In consolidation and merger proceedings, a financial statement as outlined in Rule 17. In other transfer proceedings, a balance sheet as of the latest available date, together with an income statement covering period from close of last year for which an annual report has been filed with the Commission to the date of the balance sheet attached to the application.
- (b) Copy of proposed deed, bill of sale, lease, security agreement, mortgage, or other encumbrance document, and contract or agreement therefor, if any, and copy of each plan or agreement for purchase, merger or consolidation.
- (c) If a merger or consolidation, a pro forma balance sheet giving effect thereto.

37. (Rule 37) Additional Requirements for Carriers.

This rule applies to applications that involve a certificate or operative right under Sections 1005-1010, 1031-1036, or 1061-1067 of the Public Utilities Code.

Highway common carrier applications shall be filed on the proper form available from the license section of the tariff and license branch of the Rail Safety and Carriers Division. All applications that involve a certificate or operative right as vessel common carrier, express corporation, freight forwarder, passenger stage corporation, cement carrier, or highway common carrier shall contain the following data:

- (a) The territory or points served, the nature of the service, and the effect of the transaction upon present operations or rights of the applicant carrier.
- (b) As to the seller, whether it is a party to any through routes or joint rates or fares with any other carrier, and whether operation under the rights involved is presently being conducted. If there has been any suspension or discontinuance of service during the preceding three years, the application shall state those facts and circumstances.

(c) In an application to transfer a cement carrier certificate, evidence such as a freight bill or bill of lading showing that the authority to be transferred has been exercised within the twelve months immediately preceding the date of filing. (See P.U. Code Section 1065.2.)

Note: Authority cited: Article 12, Section 2, California Constitution; and Section 1701, Public Utilities Code. Reference: Sections 1007, 1010, 1032 and 1062.

Article 10. Applications to Construct, Alter or Abolish Railroad Crossings

This article applies to applications under Sections 1201-1205 of the Public Utilities Code, and the requirements hereof are in addition to Rules 2 through 2.6, 15, and 16.

38. (Rule 38) To Construct a Public Highway Across a Railroad.

Applications to construct a public road, highway, or street across a railroad must be made by the municipal, county, state, or other governmental authority which proposes the construction, and shall contain the following data:

- (a) A legal description of the location of the proposed crossing.
- (b) Crossing numbers of the nearest existing public crossing on each side of the proposed crossing. (Numbers may be obtained from the crossing sign at the crossing, or from the office of the railroad.)
- (c) A statement showing the public need to be served by the proposed crossing.
- (d) If the proposed crossing is at grade, a statement showing why a separation of grades is not practicable.
- (e) A statement showing the signs, signals, or other protection which applicant recommends be provided at the proposed crossing.
- (f) A map of suitable scale (50 to 200 feet per inch) showing accurate locations of all streets, roads, property lines, tracks, buildings, structures or other obstructions to view for a distance of at least 400 feet along the railroad and 200 feet along the highway in each direction from the proposed crossing. Such map shall show the character of surface or pavement and width of same, either existing or proposed,

on the street or road adjacent to the proposed crossing and on each side thereof.

(g) A map of suitable scale (1,000 to 3,000 feet per inch) showing the relation of the proposed crossing to existing roads and railroads in the general vicinity of the proposed crossing.

(h) A profile showing the ground line and grade line and rate of grades of approach on all highways and railroads affected by the proposed crossing.

(i) A certificate showing that a copy of the application has been served by mail on the affected railroad corporations.

Note: Authority and reference cited: Section 1701, Public Utilities Code.

39. (Rule 39) To Widen or Relocate an Existing Crossing.

When the political subdivision or governmental authority having jurisdiction desires to widen, relocate, or otherwise alter an existing crossing, the application shall show the information required by Rule 38, except that the crossing number of the crossing proposed to be altered shall be stated, instead of the information required by Rule 38(b).

40. (Rule 40) To Construct a Railroad Track Across a Public Highway.

When a railroad desires to construct a track across a public road, highway or street, it shall mail a copy of its application to the municipal, county, state or other governmental authority having jurisdiction and control over the highway or charged with its construction and maintenance. The original thereof shall contain a certification of such mailing. Such application shall comply with Rule 38(a), (c), (d), (e), (f), (g), and (h), and shall also contain the following information:

(a) There shall be attached to the original application a certified copy of the franchise or permit, if any be requisite, from the authority having jurisdiction, which gives to the railroad the right to cross the highway involved, and a copy thereof shall be attached to each copy of the application. If such franchise or permit has already been filed, the application need only make specific reference to such filing.

(b) The proposed crossing number shall be stated.

(c) The map referred to in Rule 38(f) shall also show, by distinct colorings or lines, all new tracks or changes in existing tracks, within

the limits of the drawing, which are to be made in connection with the construction of the proposed crossing.

41. (Rule 41) To Construct a Railroad or Street Railroad Across a Railroad or Street Railroad.

Applications to construct a railroad track across a railroad or street railroad shall also contain the following:

- (a) A map of suitable scale (50 to 200 feet per inch) showing accurate locations of all streets, roads, property lines, tracks, buildings, structures or other obstructions to view in the immediate vicinity.
- (b) A map of suitable scale (1,000 to 3,000 feet per inch) showing the relation of the proposed crossing to existing railroads in the general vicinity.
- (c) A profile showing the ground line and grade line of approaches on all railroads affected.
- (d) A true copy of the contract executed by the parties, or other evidence that the carrier to be crossed is willing that the crossing be installed.
- (e) A certificate showing that a copy of the application has been served by mail on the affected railroad corporations.

Note: Authority and reference cited: Section 1701, Public Utilities Code.

Article 11. Other Applications or Petitions

42. (Rule 42) Generally.

Applications and pleadings relating to matters not specifically mentioned in these rules shall be in compliance with Rules 2 through 2.6, 15, and 16. Inquiries may be directed to the Executive Director of the Commission. An application to modify the subject matter of a previous related proceeding may incorporate such proceeding by reference.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 1701, Public Utilities Code.

42.1. (Rule 42.1) Deviations from Established Minimum Rates.

(a) Original Deviations. Transportation performed under operating conditions which are unusually favorable, or are substantially different from those considered in establishing the minimum rates, may justify authority from the Commission to assess a rate lower than the established minimum rate for such transportation.

(1) Applications under Public Utilities Code Sections 3666 and 5195. A carrier seeking to assess less than an established minimum rate must file an application which shows its overall financial condition, as well as the transportation conditions that will permit profitable operations to be performed under the proposed rate. The special circumstances under which the particular transportation will be performed should be shown, such as:

1. High frequency of trips
2. Heavy loadweights
3. Available loading and unloading facilities
4. Efficient loading and unloading procedures
5. Special lightweight equipment
6. Any other favorable operating conditions

The cost of performing the service for which a rate lower than minimum is proposed should be shown in appropriate terms, i.e., cost per mile, cost per 100 pounds, cost per load, or cost per hour. The anticipated revenue yield of the transportation to be performed at the sought rate should be measured against the total cost developed for that transportation.

Copies of a sample application form and instructions are available at Commission offices. Copies of the application must be served on all carriers known to be providing this service, and a certificate of service showing the individual carriers served shall be attached to the application. Furthermore, copies of the application must be served on any party who makes a written request for the application, within five (5) calendar days from the postmark on said written request. Depositing a properly

addressed and stamped copy of the application in the United States mail shall constitute such service.

(2) Petitions under Public Utilities Code Section 452. The filing must be made as a petition in the appropriate minimum rate case and shall include all information required by Rule 42(a) plus a showing that the needs of commerce or the public interest require the requested deviation.

(b) Renewal of Deviations. A carrier seeking renewal of its deviation authority should show its overall operating results and its experience with the particular operations involving the deviation. It should be shown that either increases in operating expenses would be covered by expected revenues or suitable increases in the deviation rate should be requested.

Renewals of existing deviations authorized under Public Utilities Code Sections 3666 and 5195 are filed under the Special Deviation Docket. Copies of a sample application form and instructions are available at Commission offices.

Renewals of existing deviations authorized under Public Utilities Code Section 452 are filed under the normal procedure governing all applications. Copies of a sample application form and instructions are available at Commission offices.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 452, 3666 and 5195, Public Utilities Code.

42.2. (Rule 42.2) Protests to Deviations.

(a) Form and Contents of Protest to Minimum Rate Deviations. A protest to an application or petition for authority to assess less than the established minimum rate(s) under Sections 452, 3666, and 5195 of the Public Utilities Code may be filed by any person or entity. The specific facts upon which the protest is based shall be set forth in ordinary and concise language. The protest shall be so drawn as to completely advise the applicant or petitioner and the Commission of the facts constituting the grounds of the protest, the injury complained of and the exact relief which is desired. The protest shall be verified and contain a certificate of service as required by Rules 2 through 2.6 of the Rules of Practice and Procedure.

A protest to a deviation must be received by the Commission within 20 days of the publication of the filing of the application or petition to deviate in the Commission calendar.

(b) Procedure Upon Filing of Protest. An applicant or petitioner shall be allowed 20 days from the date of the certificate of service of the protest to file in writing any objections or comments it has to the protest, or additional information. The Commission may then, without further argument and without hearing, grant or deny the proposed deviation, or set the matter for hearing. It may also grant the proposed deviation on an interim basis, subject to cancellation or modification after hearing.

Article 11.5. Applications for Exemption from Undergrounding Rules

43.1. (Rule 43.1) Purpose.

The purpose of this article is to set standards for the filing of applications for exemption from the rules in Decision 80864 (74 CPUC 454) for undergrounding electric and telephone lines.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 320, Public Utilities Code.

43.2. (Rule 43.2) Other Rules.

Applications shall be drafted to comply with Rules 2 through 2.6, 15, 16, and 17.1.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 320, Public Utilities Code.

43.3. (Rule 43.3) Description of Project.

Applications shall contain the following information about the project:

- (a) The name of the development or subdivision, if any.
- (b) A map showing the location of the project and any related development or subdivision.
- (c) A legal description, as recorded, of the subdivision or property to which the lines will be extended.
- (d) The length of the line extension proposed.

- (e) The names of the public utilities that will provide service via the line extension.
- (f) Whether the deviation from underground requirements will be permanent or temporary, and, if temporary, the approximate period such facilities will be in place before permanent underground facilities are constructed.
- (g) Whether electric or telephone lines can be installed in joint trenches with water, gas, or sewer lines.
- (h) Whether a Master Plan, Preliminary Map, or Tentative Map was filed pursuant to the Subdivision Map Act before May 5, 1970, the date of filing, and the agency in which the document was filed.
- (i) The minimum parcel size within the subdivision or development.
- (j) Whether deed restrictions allow more than one single-family dwelling or accommodation on each parcel or any portions of parcels of less than three acres.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 320, Public Utilities Code.

43.4. (Rule 43.4) Terrain and Environmental Setting.

Applications shall contain the following information about the project's terrain and environmental setting:

- (a) The information required by Rule 17.1(d) in the Proponent's Environmental Assessment, when the Commission is the lead agency.
- (b) Any unusual environmental circumstances which would cause:
 - (1) Injury or danger to persons.
 - (2) Landslides, soil erosion, or exposure of trenches.
 - (3) Widespread, long-term, or permanent destruction of vegetation.
 - (4) Serious property damage.

(5) Hindrance to other construction or excessive relocation costs in the case of a temporary deviation.

(c) The identity of scenic highways, state or national parks, or any other areas determined by any governmental agency to be of unusual scenic value to the public within 1,000 feet of the proposed overhead lines; a description of the part of the highway, park, or area within 1,000 feet of the line; and a statement whether the lines will be visible from the highway, park, or area.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 320, Public Utilities Code.

43.5. (Rule 43.5) Estimates of Costs.

The application shall include estimates of the costs of undergrounding electric and telephone lines, assuming joint trenching, and of constructing the lines overhead.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 320, Public Utilities Code.

43.6. (Rule 43.6) Justification.

The application shall include a statement of facts justifying exemption from undergrounding rules.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 320, Public Utilities Code.

43.7. (Rule 43.7) Documentation.

The applicant shall attach to the application copies of the following documents:

(a) Environmental Impact Statement, Environmental Impact Report, or Negative Declaration prepared by any public agency having permit authority over the project.

(b) Local ordinances requiring undergrounding.

(c) Local ordinances or land use plans permitting parcels of less than 3 acres.

(d) Local ordinances allowing more than one single-family dwelling or accommodation on each parcel or portion of a parcel of less than 3 acres.

(e) Applications to the utilities for service, all correspondence pertaining to those applications, and a statement whether an agreement to provide overhead service was concluded with the utility before May 5, 1972.

(f) A list of other public agencies (federal, state, regional, county, district, or municipal) from which approval either has been obtained or will be required, and a summary of any action taken by those agencies with respect to the project.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 320, Public Utilities Code.

43.8. (Rule 43.8) Cross-References.

(a) Rule 2 - Form and Size of Tendered Documents.

(b) Rule 2.1 - Title, Caption, and Docket Number.

(c) Rule 2.2 - Signatures.

(d) Rule 2.3 - Service.

(e) Rule 2.4 - Verification.

(f) Rule 2.5 - Copies.

(g) Rule 2.6 - Amendments and Errata.

(h) Rule 15 - Contents of Applications Generally.

(i) Rule 16 - Articles of Incorporation.

(j) Rule 17.1 - Preparation and Submission of Environmental Impact Reports.

(k) P.U. Code Section 320 - Undergrounding Electric and Telephone Lines near Scenic Highways.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 320, Public Utilities Code.

Article 12. Protests and Responses to Applications

44. (Rule 44) Definitions.

A protest is a document objecting to the granting in whole or in part of the authority sought in an application (except an application for rehearing). For purposes of this article, a response is a document that does not object to the authority sought in an application, but nevertheless presents information that the party tendering the response believes would be useful to the Commission in acting on the application.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

44.1. (Rule 44.1) Time for Filing and Filing Requirements.

Unless otherwise provided by rule, decision, or General Order, a protest or response must be filed within 30 days of the date the notice of the filing of the application first appears in the Daily Calendar. Protests and responses to applications must comply with Rules 2, 2.1, 2.2, and 2.5.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

44.2 (Rule 44.2) Contents of Protests.

A protest must state the facts constituting the grounds for the protest, the effect of the application on the protestant, and the reasons the protestant believes the application, or a part of it, is not justified. If the protest requests an evidentiary hearing, the protest must state the facts the protestant would present at an evidentiary hearing to support its request for whole or partial denial of the application.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

44.3. (Rule 44.3) Service of Protest or Response.

A protest or response must be served on each person the application lists as being authorized to receive service (Rule 2.1(a)). Service must comply with Rule 2.3.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

44.4 (Rule 44.4) Effect of Filing a Protest.

The filing of a protest does not insure that an evidentiary hearing will be held. The decision whether or not to hold an evidentiary hearing will be based on the content of the protest. The Commission may also calendar matters for hearing on its own motion.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

44.5 (Rule 44.5) Copy of Document on Request.

Applicants, protestants, and parties tendering responses must promptly furnish a copy of their applications, protests, or responses to each person requesting one.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

44.6 (Rule 44.6) Replies.

An applicant may file replies to protests and responses within 10 days of the last day for filing protests and responses under Rule 44.1, unless the administrative law judge sets a different date. Replies must comply with Rules 2, 2.1, 2.2, and 2.5 and must be served on all protestants, all parties tendering responses, and the assigned administrative law judge (Rule 2.3).

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

Article 12.5 Motions, Petitions, and Other Requests

45. (Rule 45) Motions.

(a) This rule governs motion practice in Commission proceedings, except as otherwise provided in these rules or by statute, Commission order, decision or resolution.

(b) A motion is a request for the Commission or the administrative law judge to take a specific action related to a proceeding before the Commission.

(c) A motion may be made at any time during the pendency of a proceeding by any party to the proceeding. In appropriate circumstances, a motion may also be made by a person or entity who is not a party:

(1) if the person or entity states an intent to become a party to the proceeding at the next opportunity;

(2) if the motion relates to a special appearance or limited participation in the proceeding, e.g., a motion to quash; or

(3) with the permission of the administrative law judge.

(d) Written motions must be filed and served and must comply with Rules 2, 2.1, 2.2, 2.3, and 2.5. The administrative law judge may permit an oral motion to be made during a hearing or conference.

(e) A motion must concisely state the facts and law supporting the motion and the specific relief or ruling requested.

(f) Responses to written motions must be filed and served within 15 days of the date that the motion was served, unless the administrative law judge sets a different date. Written responses must comply with Rules 2, 2.1, 2.2, 2.3, and 2.5. Responses to oral motions may be made as permitted by the administrative law judge.

(g) With the permission of the administrative law judge, the moving party may reply to responses to the motion. Written replies must be filed and served within 10 days of the last day for filing responses under Rule 45(f), unless the administrative law judge sets a different date.

Written replies must comply with Rules 2, 2.1, 2.2, 2.3, and 2.5. A written reply must state in the opening paragraph that the administrative law

judge has authorized its filing and must state the date and the manner in which the authorization was given (i.e., in writing, by telephone conversation, etc.).

(h) Nothing in this rule prevents the Commission or the administrative law judge from ruling on a motion before responses or replies are filed.

(i) In the interests of justice and efficiency, the Commission, the assigned Commissioner, or the administrative law judge may authorize or direct deviations from the requirements of this rule.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

46. (Rule 46) Petitions.

Petitions are functionally equivalent to written motions. The requirements of Rule 45 apply to petitions, except when these rules provide different or more specific requirements for certain types of petitions. (See Rule 47 on petitions for modification, Rule 53 on petitions to intervene, and Rule 84 on petitions to set aside submission.)

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

47. (Rule 47) Petitions for Modification.

(a) A petition for modification asks the Commission to make changes to the text of an issued decision. Filing a petition for modification does not stay the effectiveness of the decision or preserve the party's appellate rights; an application for rehearing (see Article 21) is the vehicle to request rehearing and preserve a party's appellate rights.

(b) A petition for modification must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed (Rule 73). Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

(c) A petition for modification must be filed and served on all parties to the proceeding or proceedings in which the decision proposed to be

modified was made. The petition must comply with Rules 2, 2.1, 2.2, 2.3, and 2.5. If more than one year has elapsed since the effective date of the decision (see subsection (d)), the administrative law judge may direct the petitioner to serve the petition on other or additional persons or entities.

(d) Except as provided in this subsection, a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition.

(e) If the petitioner is not a party to the proceeding in which the decision proposed to be modified was issued, the petition must state specifically how the petitioner is affected by the decision and why the petitioner did not participate in the proceeding earlier. A separate petition to intervene (see Article 14) is not required. The petitioner will become a party to the proceeding for the purpose of resolving the petition.

(f) Responses to petitions for modification must be filed and served within 30 days of the date that the petition was served, unless the administrative law judge sets a different date. Responses must be served on the petitioner and on all parties who were served with the petition and must comply with the requirements of Rules 2, 2.1, 2.2, 2.3, and 2.5.

(g) With the permission of the administrative law judge, the petitioner may reply to responses to the petition. Replies must be filed and served within 10 days of the last day for filing responses under subsection (f), unless the administrative law judge sets a different date. Replies must comply with Rules 2, 2.1, 2.2, 2.3, and 2.5. A reply must state in the opening paragraph that the administrative law judge has authorized its filing and must state the date and the manner in which the authorization was given (i.e., in writing, by telephone conversation, etc.).

(h) In response to a petition for modification, the Commission may modify the decision as requested, modify the affected portion of the decision in some other way consistent with the requested modification, set the matter for further hearings or briefing, summarily deny the petition on the ground that the Commission is not persuaded to modify the decision, or take other appropriate action.

(i) Unless otherwise ordered by the Commission, the filing of a petition for modification does not stay or excuse compliance with the order of the decision proposed to be modified. The decision remains in effect until the effective date of any decision modifying the decision.

(j) Correction of obvious typographical errors or omissions in Commission decisions may be requested by letter to the Executive Director, with a copy sent at the same time to all parties to the proceeding.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

48. (Rule 48) Extension of Time Limits.

(a) Requests for extension of time limits established in these rules or in a ruling of an administrative law judge or commissioner may be made orally or by letter to the administrative law judge. If other parties to the proceeding are affected by the extension, the party requesting the extension must first make a good-faith effort to ask such parties to agree to the extension. The party requesting the extension must report the results of this effort when it makes its request. If the extension is granted, the administrative law judge will require the party requesting the extension to notify all other parties to the proceeding of the extension, and the party must state in the opening paragraph of the document that the administrative law judge has authorized the extension. In the alternative, the administrative law judge may confirm the extension in a written ruling served on all parties or an oral ruling delivered on the record of the proceeding. No extensions will be granted of time requirements established by statute, unless the statute permits extension or waiver of the requirement.

(b) Requests for extension of time to comply with a Commission decision or order may be made by letter to the Executive Director, with a copy sent at the same time to all parties to the proceeding. The letter, or a facsimile of the letter, must be received by the Executive Director at least three business days before the existing date for compliance. If the extension is granted, the party requesting the extension must promptly inform all parties to the proceeding of the Executive Director's decision and must state in the opening paragraph of the document that the Executive Director has authorized the extension.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

Article 13. Prehearing Procedure and Exchange of Exhibits

49. (Rule 49) Prehearing Conference.

(a) A prehearing conference may be held for the purposes of formulating or simplifying the issues, arranging for the exchange of proposed exhibits or prepared expert testimony, limiting the number of witnesses, and such other matters as may expedite the orderly conduct and disposition of the proceeding.

(b) At or before the first prehearing conference, the administrative law judge may require the parties to meet and confer on the following topics:

- (1) Identification of the principal factual and legal issues and the evidentiary bases for claims and defenses;
- (2) Use of settlement techniques or other alternatives to litigation;
- (3) Need for disclosure or discovery of documents or other information;
- (4) Plan for conducting discovery;
- (5) Identification of motions requiring early resolution;
- (6) Recommended dates for completion of discovery, service of prepared testimony, additional prehearing conferences, and hearings; and
- (7) Other topics as the interests of justice and efficient case management require.

(c) Within 10 days of the completion of any meeting and conferring directed under subsection (b), the parties must file a case management statement reporting on the results of their conferring.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

50. (Rule 50) Facts Disclosed Privileged.

Facts disclosed in prehearing conferences are privileged. Except by agreement, they shall not be used against participating parties, before the

Commission or elsewhere, unless proved by evidence other than that employed in disclosing such facts.

Article 13.5. Stipulations and Settlements

51. (Rule 51) Definitions.

The following definitions apply for purposes of this article:

- (a) “Party or Parties” means any person on whose behalf an appearance has been filed in the proceeding.
- (b) “Commission Proceeding” means an application, complaint, investigation or rulemaking before the California Public Utilities Commission.
- (c) “Settlement” means an agreement between some or all of the parties to a Commission proceeding on a mutually acceptable outcome to the proceedings. In addition to other parties to an agreement, settlements in applications must be signed by the applicant and in complaints, by the complainant and defendant.
- (d) “Stipulation” means an agreement between some or all of the parties to a Commission proceeding on the resolution of any issue of law or fact material to the proceeding.
- (e) “Contested” describes a stipulation or settlement that is opposed in whole or part, as provided in this article, by any of the parties to the proceeding in which such stipulation or settlement is proposed for adoption by the Commission.
- (f) “Uncontested” describes a stipulation or settlement that (1) is filed concurrently by all parties to the proceeding in which such stipulation or settlement is proposed for adoption by the Commission, or (2) is not contested by any party to the proceeding within the comment period after service of the stipulation or settlement on all parties to the proceeding.

Note: Authority and reference cited: Section 1701, Public Utilities Code.

51.1. (Rule 51.1) Proposal of Settlements or Stipulations.

(a) Parties to a Commission proceeding may stipulate to the resolution of any issue of law or fact material to the proceeding, or may settle on a mutually acceptable outcome to the proceeding, with or without resolving material issues. Resolution shall be limited to the issues in that proceeding and shall not extend to substantive issues which may come before the Commission in other or future proceedings.

(b) Prior to signing any stipulation or settlement, the settling parties shall convene at least one conference with notice and opportunity to participate provided to all parties for the purpose of discussing stipulations and settlements in a given proceeding. Written notice of the date, time, and place shall be furnished at least seven (7) days in advance to all parties to the proceeding. Notice of any subsequent meetings may be oral, may occur less than seven days in advance, and may be limited to prior conference attendees and those parties specifically requesting notice.

(c) Attendance at any stipulation or settlement conference or discussion conducted outside the public hearing room shall be limited to the parties to a proceeding and their representatives.

Parties may by written motion propose stipulations or settlements for adoption by the Commission in accordance with this article. The motion shall contain a statement of the factual and legal considerations adequate to advise the Commission and parties not expressly joining the agreement of its scope and of the grounds on which adoption is urged.

When a settlement pertains to a proceeding under the Rate Case Plan or other proceeding in which a comparison exhibit would ordinarily be filed, the settlement must be supported by a comparison exhibit indicating the impact of the settlement in relation to the utility's application. If the participating staff supports the settlement, it must prepare a similar exhibit indicating the impact of the proposal in relation to the issues it contested, or would have contested, in a hearing.

(d) Stipulations and settlements should ordinarily not include deadlines for Commission approval; however, in the rare case where delay beyond a certain date would invalidate the basis for the proposal, the timing urgency must be clearly stated and fully justified in the motion.

(e) The Commission will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

Note: Authority and reference cited: Section 1701, Public Utilities Code.

51.2. (Rule 51.2) Timing.

Parties to a Commission proceeding may propose a stipulation or settlement for adoption by the Commission (1) any time after the first prehearing conference and (2) within 30 days after the last day of hearing.

Note: Authority and reference cited: Section 1701, Public Utilities Code.

51.3. (Rule 51.3) Filing.

Parties proposing a stipulation or settlement for adoption by the Commission shall concurrently file their proposal in accordance with the rules applicable to pleadings (see Article 2), and shall serve the proposal on all parties to the proceeding.

Note: Authority and reference cited: Section 1701, Public Utilities Code.

51.4. (Rule 51.4) Comment Period.

Whenever a party to a proceeding does not expressly join in a stipulation or settlement proposed for adoption by the Commission in that proceeding, such party shall have 30 days from the date of mailing of the stipulation or settlement within which to file comments contesting all or part of the stipulation or settlement, and shall serve such comments on all parties to the proceeding. Parties shall have 15 days after the comments are filed within which to file reply comments. The assigned administrative law judge may extend the comment and/or response period on motion and for good cause.

Note: Authority and reference cited: Section 1701, Public Utilities Code.

51.5. (Rule 51.5) Contents of Comments.

A party contesting a proposed stipulation or settlement must specify in its comments the portions of the stipulation or settlement that it opposes, the legal basis of its opposition, and the factual issues that it contests. Parties should indicate the extent of their planned participation at any hearing. If the contesting party asserts that hearing is required by law, appropriate citation shall be provided. Any failure by a party to file comments constitutes waiver by that party of all objections to the

stipulation or settlement, including the right to hearing to the extent that such hearing is not otherwise required by law.

Note: Authority and reference cited: Section 1701, Public Utilities Code.

51.6. (Rule 51.6) Contested Stipulations and Settlements.

(a) If the stipulation or settlement is contested, pursuant to Rule 51.4, in whole or in part on any material issue of fact by any party, the Commission will schedule a hearing on the contested issue(s) as soon after the close of the comment period as reasonably possible. Discovery will be permitted and should be well underway prior to the close of the comment period. Parties to the stipulation or settlement must provide one or more witnesses to testify concerning the contested issues and to undergo cross-examination by contesting parties. Contesting parties may present evidence and testimony on the contested issues.

(b) The Commission may decline to set hearing in any case where the contested issue of fact is not material or where the contested issue is one of law. In the latter case, opportunity for briefs will be provided.

To ensure that the process of considering stipulations and settlements is in the public interest, opportunity may also be provided for additional prehearing conferences and any other procedure deemed reasonable to develop the record on which the Commission will base its decision.

(c) Stipulations may be accepted on the record in any proceeding and the assigned administrative law judge may waive application of these rules to the stipulation upon motion and for good cause shown.

Note: Authority and reference cited: Section 1701, Public Utilities Code.

51.7. (Rule 51.7) Commission Rejection of a Stipulation or Settlement.

The Commission may reject a proposed stipulation or settlement without hearing whenever it determines that the stipulation or settlement is not in the public interest. Upon rejection of the settlement, the Commission may take various steps, including the following:

1. Hold hearings on the underlying issues, in which case the parties to the stipulation may either withdraw it or offer it as joint testimony,

2. Allow the parties time to renegotiate the settlement,
3. Propose alternative terms to the parties to the settlement which are acceptable to the Commission and allow the parties reasonable time within which to elect to accept such terms or to request other relief.

Note: Authority and reference cited: Section 1701, Public Utilities Code.

51.8. (Rule 51.8) Adoption Binding, Not Precedential.

Commission adoption of a stipulation or settlement is binding on all parties to the proceeding in which the stipulation or settlement is proposed. Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.

Note: Authority and reference cited: Section 1701, Public Utilities Code.

51.9. (Rule 51.9) Inadmissibility.

No discussion, admission, concession or offer to stipulate or settle, whether oral or written, made during any negotiation on a stipulation or settlement shall be subject to discovery, or admissible in any evidentiary hearing against any participant who objects to its admission. Participating parties and their representatives shall hold such discussions, admissions, concessions, and offers to stipulate or settle confidential and shall not disclose them outside the negotiations without the consent of the parties participating in the negotiations.

If a stipulation or settlement is not adopted by the Commission, the terms of the proposed stipulation or settlement are also inadmissible unless their admission is agreed to by all parties joining in the proposal.

Note: Authority and reference cited: Section 1701, Public Utilities Code.

51.10. (Rule 51.10) Applicability.

These rules shall apply on and after the effective date of the decision promulgating them in all formal proceedings involving gas, electric, telephone, and Class A water utilities.

In proceedings where all parties join in the proposed stipulation or settlement, a motion for waiver of these rules may be filed. Such motion should demonstrate that the public interest will not be impaired by the waiver of these rules.

Any party in other proceedings before the Commission may file a motion showing good cause for applying these rules to settlements or stipulations in a particular matter. Such motion shall demonstrate that it is in the public interest to apply these rules in that proceeding. Protests to the motion may be oral or written.

Exhibits may be sponsored by two or more parties in a Commission hearing as joint testimony without application of these rules.

Note: Authority and reference cited: Section 1701, Public Utilities Code.

Article 14. Hearings

52. (Rule 52) Notice.

(a) In complaint or investigation proceedings, the Commission shall give notice of hearing not less than ten days before the date of hearing, unless it be found that public necessity requires hearing at an earlier date. Comparable notice ordinarily will be given when hearings are held in application proceedings. (See P.U. Code Section 1704.)

(b) Whenever any electrical, gas, heat, telephone, water, or sewer system utility files an application to increase any rate, the utility shall give notice of hearing, not less than five nor more than 30 days before the date of hearing, to entities or persons who may be affected thereby, by posting notice in public places and by publishing notice in a newspaper or newspapers of general circulation in the area or areas concerned, of the time, date, and place of hearing. Proof of publication and sample copies of the notices shall be filed at or before the hearing.

(c) In addition to the notice required by this rule, parties shall provide such notice of hearing as the presiding officer may designate. Sample copies of the notices shall be filed at or before the hearing.

53. (Rule 53) Intervention.

In a complaint proceeding petitions to intervene and become a party thereto shall be in writing, shall set forth the grounds of the proposed

intervention, the position and interest of the petitioner in the proceeding, and whether petitioner's position is in support of or opposition to the relief sought. Such a petition shall be served and filed by petitioner at least five days before the proceeding is called for hearing, except for good cause shown. If petitioner seeks a broadening of the issues and shows that they would not thereby be unduly broadened, the petition shall be served and filed by petitioner at least ten days, and the parties may serve and file replies at least five days, before the matter is called for hearing.

Leave will not be granted except on averments which are reasonably pertinent to the issues already presented, but do not unduly broaden them. If leave is granted, the petitioner thereby becomes an intervener and a party to the proceeding to the degree indicated by the order allowing intervention, or by the presiding officer at the hearing.

54. (Rule 54) Participation Without Intervention.

In an investigation or application proceeding, or in such a proceeding when heard on a consolidated record with a complaint proceeding, an appearance may be entered at the hearing without filing a pleading, if no affirmative relief is sought, if there is full disclosure of the persons or entities in whose behalf the appearance is to be entered, if the interest of such persons or entities in the proceeding and the position intended to be taken are stated fairly, and if the contentions will be reasonably pertinent to the issues already presented and any right to broaden them unduly is disclaimed.

A person or entity in whose behalf an appearance is entered in this manner becomes a party to and may participate in the proceeding to the degree indicated by the presiding officer.

55. (Rule 55) Consolidation.

Proceedings involving related questions of law or fact may be consolidated.

56. (Rule 56) Motion to Dismiss.

A motion to dismiss (other than a motion based upon a lack of jurisdiction) any proceeding before this Commission, which is based upon the pleadings or any matter occurring before the first day of hearing may only be made upon five days' written notice thereof duly filed and served

upon all parties to the proceeding and all other parties upon whom service of copies of the pleadings are therein shown to have been made.

57. (Rule 57) Order of Procedure.

In hearings on complaints, applications and petitions, the complainant, applicant, or petitioner shall open and close. In hearings on investigation proceedings where filed rates or rules which do not result in an increase have been suspended, the respondent shall open and close. In other investigation proceedings, the Commission's staff shall open and close. Intervenors shall follow the parties in whose behalf the intervention is made. The presiding officer, where circumstances warrant, may vary the order of presentation.

58. (Rule 58) Limiting Number of Witnesses.

To avoid unnecessary cumulative evidence, the presiding officer may limit the number of witnesses or the time for testimony upon a particular issue.

Article 15. Subpoenas

59. (Rule 59) Definitions.

(a) A subpoena is an order directing a person to appear at a particular time and place to testify as a witness at a hearing or at a deposition.

(b) A subpoena duces tecum is an order directing a person to appear and to bring any documents or other things under the witness's control. A subpoena duces tecum may also be used to require the production of documents or other things when the appearance of the witness is not necessary.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 1985, Code of Civil Procedure; Sections 1560 through 1566, Evidence Code.

59.1. (Rule 59.1) Cooperation and Agreement Encouraged.

Although this article sets forth the formal requirements for compelling the attendance of witnesses and the production of documents and other things, the Commission encourages parties to cooperate and agree among themselves on arrangements for the attendance of party-affiliated witnesses and the production of documents or other things under such

witnesses' control, in keeping with the informal nature of proceedings before the Commission. To the extent permitted by law, the Commission will honor and enforce parties' agreements on the attendance of witnesses and the production of documents and other things to the same extent as subpoenas and subpoenas duces tecum.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

59.2. (Rule 59.2) Issuance.

Requests for subpoenas and subpoenas duces tecum must be made to the administrative law judge assigned to the proceeding. If no administrative law judge is assigned to the proceeding, requests may be made to the Executive Director at the Commission's San Francisco or Los Angeles office. Subpoenas and subpoenas duces tecum may be issued by the Commission, each Commissioner, the Executive Director, the Assistant Executive Director, or the administrative law judge. Persons who are not parties to the proceeding will not be issued subpoenas or subpoenas duces tecum and may not use the Commission's subpoena or subpoena duces tecum to request the attendance of witnesses or the production of documents or other things.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 308, 311 and 1794, Public Utilities Code; Section 1985, Code of Civil Procedure.

60. (Rule 60) Contents and Service.

(a) When it is issued, the subpoena or subpoena duces tecum will be signed and sealed but will otherwise be blank. All appropriate portions of the blank subpoena or subpoena duces tecum must be completed by the party before it is served.

(b) A copy of an affidavit must be served with a subpoena duces tecum. The affidavit must show good cause for the production of the documents or other things described in the subpoena, specify the exact documents or things to be produced, set forth in full detail the materiality of the requested documents or things to the issues raised in the proceeding, and state that the requested documents or things are in the possession or under the control of the witness. The party requesting production of the documents or other things must retain the original affidavit, and produce it at the request of the administrative law judge,

until either all requested documents or other things have been produced or all motions related to the subpoena duces tecum have been finally resolved.

(c) Service of a subpoena or subpoena duces tecum must be made by delivering a copy to the witness personally, giving or offering to the witness at the same time, if demanded by him or her, the fees to which he or she is entitled under Public Utilities Code § 1791 (see Government Code § 68093). The service must be made early enough to allow the witness a reasonable time for preparation and travel to the place of attendance. Service may be made by any person.

(d) The provisions of § 1985.3 of the Code of Civil Procedure apply to subpoenas of a consumer's personal records, as defined by § 1985.3(a) of the Code of Civil Procedure.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 1791, Public Utilities Code; Sections 1985.3, 1986.5 and 1987, Code of Civil Procedure.

61. (Rule 61) Motions to Quash or for Protective Orders.

Motions to quash a subpoena or for protective orders must be filed at the earliest opportunity and must comply with the requirements of Rule 45. In response to such motions or upon the motion of the Commission, a Commissioner, or the administrative law judge after giving notice and an opportunity to be heard, the Commission, a Commissioner, or the administrative law judge may make an order quashing the subpoena entirely, modifying it, or directing compliance with it on appropriate terms or conditions, or may make any other order needed to protect the parties or the witness from unreasonable or oppressive demands, including unreasonable violations of the party's or witness's right to privacy.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 1987.1, Code of Civil Procedure.

61.1. (Rule 61.1) Disobedience of Subpoenas.

Anyone who disobeys a subpoena or subpoena duces tecum issued pursuant to Rule 59.2 may be found to be in contempt of superior court and punished accordingly, as provided in Public Utilities Code §§ 1792

and 1793. In appropriate circumstances, such disobedience may be found to be a violation of Rule 1, punishable as contempt of the Commission under Public Utilities Code § 2113.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 1792, 1793 and 2113, Public Utilities Code; Section 1991, Code of Civil Procedure.

Article 16. Presiding Officers

62. (Rule 62) Designation.

When evidence is to be taken in a proceeding before the Commission, one or more of the Commissioners, or an Administrative Law Judge, may preside at the hearing.

63. (Rule 63) Authority.

The presiding officer may set hearings and control the course thereof; administer oaths; issue subpoenas; receive evidence; hold appropriate conferences before or during hearings; rule upon all objections or motions which do not involve final determination of proceedings; receive offers of proof; hear argument; and fix the time for the filing of briefs. The presiding officer may take such other action as may be necessary and appropriate to the discharge of his or her duties, consistent with the statutory or other authorities under which the Commission functions and with the rules and policies of the Commission.

63.1. (Rule 63.1) Petition for Reassignment - Exclusive Means to Request Reassignment of Administrative Law Judge.

The provisions of this article are the exclusive means available to a party to a Commission proceeding to seek reassignment of that proceeding to another Administrative Law Judge.

63.2. (Rule 63.2) Petitions for Automatic Reassignment.

(a) A party to a proceeding preliminarily determined to be adjudicatory under Rule 6(a)(1) or 6(d), or determined to be adjudicatory under Rule 6(b)(1) or 6(c)(1), shall be entitled to petition, once only, for automatic reassignment of that proceeding to another Administrative Law Judge in accordance with the provisions of this subsection. The petition shall be filed and served in the proceeding where reassignment is sought, and on the Chief Administrative Law Judge and the President of the

Commission. The petition shall be supported by declaration under penalty of perjury (or affidavit by an out-of-state person) in substantially the following form:

_____, [declares under penalty of perjury:] That [s]he is [a party] [attorney for a party] to the above-captioned adjudicatory proceeding. That [declarant] believes that [s]he cannot have a [fair] [expeditious] hearing before Administrative Law Judge [to whom the proceeding is assigned]. That declarant [or the party declarant represents] has not filed, pursuant to Rule 63.2, any prior petition for automatic reassignment in the proceeding.

Dated _____, at _____, California.

[Signature]

Except as provided in Rules 63.3 and 63.4, no party in an adjudicatory proceeding will be permitted to make more than one petition for reassignment in the proceeding. In an adjudicatory proceeding where there is more than one complainant or similar party, or more than one defendant or similar party, only one petition for automatic reassignment for each side may be made.

Where the party seeking automatic reassignment is one of several parties aligned on the same side in the proceeding, the declaration shall include a showing that either (1) no previous petition for automatic reassignment has been filed in the proceeding, or (2) the interests of the petitioner are substantially adverse to those of any prior petitioner for automatic reassignment in the proceeding.

(b) A party to a proceeding preliminarily determined to be ratesetting under Rule 6(a)(1), 6(c)(2), or 6(d), or determined to be ratesetting under Rule 6(b)(1) or 6(c)(1), or a person or entity declaring the intention in good faith to become a party to such proceeding, shall be entitled to petition, once only, for automatic reassignment of that proceeding to another Administrative Law Judge in accordance with the provisions of this subsection; however, no more than two reassignments pursuant to this subsection shall be permitted in the same proceeding. The petition shall be filed and served as provided in subsection (a) of this rule, and shall be

supported by a declaration similar in form and substance to that set forth in subsection (a) of this rule.

Whenever a timely petition for automatic reassignment of a ratesetting proceeding is filed, the Chief Administrative Law Judge, promptly at the end of the 10-day period specified in subsection (c) of this rule, shall issue a ruling reassigning the proceeding. A party to the proceeding, or a person or entity declaring the intention in good faith to become a party to the proceeding, may petition for another automatic reassignment no later than 10 days following the date of such ruling. The petition shall be filed and served as provided in subsection (a) of this rule, and shall be supported by a declaration similar in form and substance to that set forth in subsection (a). The second automatic reassignment of the proceeding shall not be subject to further petitions pursuant to this subsection.

(c) Any petition and supporting declaration filed pursuant to subsections (a) or (b) of this rule shall be filed no later than 10 days after the date of the notice of the assignment or reassignment, except that a second petition for automatic reassignment of a ratesetting proceeding shall be filed no later than 10 days following the date of the ruling on the first petition for automatic reassignment filed pursuant to subsection (b).

(d) Upon the filing of a petition for automatic reassignment, the Chief Administrative Law Judge, subject only to the restrictions in this rule on the number and timeliness of petitions in a given proceeding, shall issue a ruling reassigning the proceeding to another Administrative Law Judge. The Chief Administrative Law Judge, in consultation with the President of the Commission, shall issue a ruling explaining the basis for denial whenever a petition for automatic reassignment is denied.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.2, Public Utilities Code.

63.3. (Rule 63.3) Petitions for Reassignment - Unlimited Peremptory.

(a) Irrespective of the limits in Rule 63.2 on number of petitions for automatic reassignment, any party is entitled to file a petition for reassignment in any adjudicatory proceeding or ratesetting proceeding in which the then-assigned Administrative Law Judge (1) has served within the previous 12 months in any capacity in an advocacy position at the Commission or has been employed by a regulated public utility, (2) has served in a representative capacity in the proceeding, or (3) has been a party to the proceeding. A petition under this subsection shall be

supported by declaration under penalty of perjury (or affidavit by an out-of-state person) setting forth the factual basis for the petition, and shall be filed and served as provided in Rule 63.2(a).

(b) Any petition and supporting declaration filed pursuant to this rule shall be filed no later than 10 days after the date of the notice of the assignment or reassignment. The Chief Administrative Law Judge, in consultation with the President of the Commission, shall issue a ruling explaining the basis for denial whenever a petition for reassignment made pursuant to this rule is denied.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.2, Public Utilities Code.

63.4. (Rule 63.4) Petitions for Reassignment - Cause.

(a) Any party is entitled to file a petition for reassignment in any adjudicatory, ratesetting, or quasi-legislative proceeding where:

(1) The Administrative Law Judge has a financial interest in the subject matter in a proceeding or in a party to the proceeding. An Administrative Law Judge shall be deemed to have a financial interest if:

(A) A spouse or minor child living in the Administrative Law Judge's household has a financial interest; or

(B) The Administrative Law Judge or his or her spouse is a fiduciary who has a financial interest.

An Administrative Law Judge has a duty to make reasonable efforts to be informed about his or her personal and fiduciary interests and those of his or her spouse and the personal financial interests of the children living in the household.

(2) The Administrative Law Judge has bias, prejudice, or interest in the proceeding.

(b) A petition filed pursuant to this rule shall be supported by a declaration under penalty of perjury (or affidavit by an out-of-state person) setting forth the factual basis for the petition, and shall be filed and served as provided in Rule 63.2(a).

(c) A petition and supporting declaration filed pursuant to this rule shall be filed at the earliest practicable opportunity and in any event no later than 10 days after the date the petitioner discovered or should have discovered facts set forth in the declaration filed pursuant to this rule. The Chief Administrative Law Judge, in consultation with the President of the Commission, and after considering any response from the assigned Administrative Law Judge, shall issue a ruling addressing a petition for reassignment filed pursuant to this rule.

(d) A party may file no more than one petition for reassignment of an Administrative Law Judge pursuant to this rule unless facts suggesting new grounds for reassignment are first learned of or arise after the petition was filed. Repetitive petitions for reassignment not alleging facts suggesting new grounds for reassignment shall be denied by either the Chief Administrative Law Judge or by the Administrative Law Judge against whom they are filed.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.2, Public Utilities Code.

63.5 (Rule 63.5) Circumstances Not Constituting Grounds for Reassignment for Cause.

It shall not be grounds for reassignment for cause that the Administrative Law Judge:

- (a) Is or is not a member of a racial, ethnic, religious, sexual or similar group and the proceeding involves the rights of such a group.
- (b) Has experience, technical competence, or specialized knowledge of or has in any capacity expressed a view on a legal, factual or policy issue presented in the proceeding, except as provided in Rule 63.3.
- (c) Has, as a representative or public official participated in the drafting of laws or regulations or in the effort to pass or defeat laws or regulations, the meaning, effect, or application of which is in issue in the proceeding unless the Administrative Law Judge believes that the prior involvement was such as to prevent the Administrative Law Judge from exercising unbiased and impartial judgment in the proceeding.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.2, Public Utilities Code.

63.6 (Rule 63.6) Administrative Law Judge's Ability to Request Reassignment.

The Administrative Law Judge shall request reassignment and withdraw from a proceeding in which there are grounds for reassignment for cause unless the parties waive the reassignment pursuant to Rule 63.7.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.2, Public Utilities Code.

63.7. (Rule 63.7) Waiver.

An Administrative Law Judge, after determining that there is basis for his or her reassignment for cause, shall disclose the basis on the record, and may ask the parties whether they wish to waive the reassignment. A waiver of reassignment shall recite the basis for reassignment and shall be effective only when signed by all parties and included in the record. The Administrative Law Judge shall not seek to induce a waiver and shall avoid any effort to discover which representatives or parties favored or opposed a waiver of reassignment.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.2, Public Utilities Code.

63.8. (Rule 63.8) Prior Rulings.

If an Administrative Law Judge is reassigned, the rulings he or she has made up to that time shall not be set aside in the absence of good cause.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.2, Public Utilities Code.

63.9. (Rule 63.9) Ban on Ex Parte Communications.

Ex parte communications regarding the assignment or reassignment of particular Administrative Law Judges are prohibited. Any written response by the assigned Administrative Law Judge to a petition for reassignment for cause shall be filed and served in the proceeding where the reassignment was requested.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.2, Public Utilities Code.

63.10. (Rule 63.10) Definitions.

For the purposes of Rules 63.1 to 63.9 inclusive, the following definitions apply:

(a) "Financial interest" means ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value in excess of one thousand five hundred dollars (\$1,500), or a relationship as director, advisor or other active participant in the affairs of a party, except as follows:

(1) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in those securities held by the organization unless the Administrative Law Judge participates in the management of the fund.

(2) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization.

(3) The proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest.

(b) "Representative" includes any person authorized to represent a party to a proceeding, whether or not the person is licensed to practice law, or an expert witness or consultant for the party.

(c) "Fiduciary" includes any executor, trustee, guardian, or administrator.

(d) "Ex parte communication" includes all communications defined as ex parte communications elsewhere in these rules and, in addition, a communication between an Administrative Law Judge and other decisionmakers about a petition for reassignment of a proceeding to which the Administrative Law Judge is currently assigned.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(4), Public Utilities Code.

Article 17. Evidence

64. (Rule 64) Form and Admissibility.

Although technical rules of evidence ordinarily need not be applied in hearings before the Commission, substantial rights of the parties shall be preserved.

65. (Rule 65) Rulings.

The presiding officer shall rule on the admissibility of all evidence. Such rulings may be reviewed by the Commission in determining the matter on its merits. In extraordinary circumstances, where prompt decision by the Commission is necessary to promote substantial justice, the presiding officer may refer the matter to the Commission for determination.

66. (Rule 66) Objections and Exceptions.

When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.

67. (Rule 67) Offer of Proof.

An offer of proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained.

68. (Rule 68) Prepared Testimony.

With the approval of the presiding officer, a witness may read into the record his or her testimony on direct examination. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall deliver copies to the presiding officer, the reporter, and all counsel or parties. Admissibility shall be subject to the rules governing oral testimony. If the presiding officer deems that substantial saving in time will result, and where the parties so agree, prepared testimony may be identified and accepted as an exhibit or copied into the record without reading, provided that copies shall have been served upon all parties and the Commission ten days before the hearing or such prior service is waived.

Prepared testimony of more than 20 pages must contain a subject index.

Note: Authority and reference cited: Section 1701, Public Utilities Code.

69. (Rule 69) Documentary Evidence.

(a) If relevant and material matter offered in evidence is embraced in a document containing other matter, the party offering it shall designate specifically the matter so offered. If other matter in the document would unnecessarily encumber the record, the document will not be received in evidence, but at the discretion of the presiding officer, the relevant and material matter may be read into the record or copies thereof received as an exhibit. Other parties shall be afforded opportunity to examine the document, and to offer in evidence other portions thereof believed material and relevant.

(b) Certification of Documents. No documents or records of a public utility or person or corporation which purport to be statements of fact shall be admitted into evidence or shall serve as any basis for the testimony of any witness unless such document or records have been certified under penalty of perjury by the person preparing or in charge of preparing them as being true and correct, unless the person preparing them is dead or has been declared incompetent, in which case any other person having knowledge of such statements of fact may certify such records. If certification pursuant to this section is not possible for any reason, the documents or records shall not be admitted into evidence unless admissible under the Evidence Code. This section shall not apply to any documents not prepared, directly or indirectly by, or under the supervision or direction of, the public utility or person or corporation offering such documents into evidence.

70. (Rule 70) Exhibits.

Exhibits shall be legible and either prepared on paper not exceeding 8 ½ x 13 inches in size, or bound or folded to that approximate size. Wherever practicable, the sheets of each exhibit should be numbered, and rate comparisons and other figures shall be set forth in tabular form. Copies of exhibits must be clear and permanently legible. The top sheet of an exhibit must have a blank space two inches high by four inches wide to accommodate the Commission's exhibit stamp.

Note: Authority and reference cited: Section 1701, Public Utilities Code.

71. (Rule 71) Copies.

When exhibits are offered in evidence, the original shall be furnished to the presiding officer and a copy to the reporter and to each party, unless the presiding officer directs otherwise.

72. (Rule 72) Commission Records.

If any matter contained in a document on file as a public record with the Commission is offered in evidence, unless directed otherwise by the presiding officer, such document need not be produced as an exhibit, but may be received in evidence by reference, provided that the particular portions of such document are specifically identified and are competent, relevant and material. If testimony in proceedings other than the one being heard is offered in evidence, a copy thereof shall be presented as an exhibit, unless otherwise ordered by the presiding officer.

73. (Rule 73) Official Notice of Facts.

Official notice may be taken of such matters as may be judicially noticed by the courts of the State of California.

74. (Rule 74) Additional Evidence.

At the hearing, the presiding officer may require the production of further evidence upon any issue. Upon agreement of the parties, the presiding officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time after submission reserving exhibit numbers therefor.

Article 17.1 Access to Computer Models

74.1. (Rule 74.1) Purpose.

The purpose of this Article is to establish procedures relating to the use of computer models for developing exhibits or testimony and the access to computer models for cross-examination or rebuttal.

Note: Authority cited: Section 1822(d), Public Utilities Code. Reference: Sections 1821-1822, Public Utilities Code.

74.2. (Rule 74.2) Definitions.

When used in this Article , whether in the singular or in the plural, the following terms shall have the following meanings:

- (a) “Access” means the ability of a party to examine, use or verify any other party’s computer model or data base that is the basis for the other party’s testimony or exhibits to the extent necessary for cross-examination or rebuttal, subject to applicable rules of evidence.
- (b) “Computer model” means a computer program created to simulate or otherwise represent some physical phenomenon or utility function, by using input data and producing output based on those data.
- (c) “Computer program” means a set of instructions which directs a computer to follow a specific processing sequence.
- (d) “Input data” means the data to be processed by the computer in a computer run
- (e) “Output data” means the data resulting from a computer run.
- (f) “Party” means any person who has filed an appearance in the proceeding, or who has indicated an intention to file an appearance at the first opportunity.
- (g) “Proceeding” means any application, investigation, rulemaking, or complaint before the Commission.
- (h) “Run” means an execution by a computer of a computer program resulting in output.
- (i) “Sponsoring party” means a party sponsoring testimony or an exhibit that is based in whole or in part on a computer model.
- (j) “Verification” or “verify” means to assess the extent to which a computer model mimics reality, and may include checking or testing:
 - (1) The reliability of the computer equipment used to input the data, process it, and produce output;
 - (2) The manner and accuracy of inputting data into the computer model;

(3) The reliability and accuracy of computer model used for processing data; and

(4) The sensitivity of the output of the computer model to changes in its input data.

Note: Authority cited: Section 1822(d), Public Utilities Code. Reference: Sections 1821-1822, Public Utilities Code.

74.3. (Rule 74.3) Computer Model Equations, Input, and Documentation.

(a) Any party who submits testimony or exhibits in a hearing or proceeding which are based in whole, or in part, on a computer model shall provide to all parties, the following information:

(1) A description of the source of all input data;

(2) The complete set of input data (input file) as used in the sponsoring party's computer run(s);

(3) Documentation sufficient for an experienced professional to understand the basic logical processes linking the input data to the output, including but not limited to a manual which includes:

(i) A complete list of variables (input record types), input record formats, and a description of how input files are created and data entered as used in the sponsoring party's computer model(s).

(ii) A complete description of how the model operates and its logic. This description may make use of equations, algorithms, flow charts, or other descriptive techniques.

(iii) A description of a diagnostics and output report formats as necessary to understand the model's operation.

(4) A complete set of output files relied on to prepare or support the testimony or exhibits; and

(5) A description of post-processing requirements of the model output.

(b) The information specified in subsection (a) shall be submitted either as part of the testimony or exhibit or included in workpapers. Such workpapers shall be available to any party upon request at the time the testimony or exhibit is first served or filed.

Note: Authority cited: Section 1822(d), Public Utilities Code. Reference: Sections 1821-1822, Public Utilities Code.

74.4. (Rule 74.4) Computer Model and Data Base Access.

(a) Each party to a proceeding which intends to seek access to a computer model or data base pursuant to Rule 74.4, when it first requests access, shall serve on the sponsoring party a written explanation of why it requests access to the information and how its request relates to its interest or position in the proceeding.

(b) In addition to the documentation required by Rule 74.3, each party using a computer model or data base which is the basis, in whole or in part, for its testimony or exhibits in a proceeding shall provide reasonable access to, and explanation of, that computer model or data base to all parties complying with Rule 74.4(a). Immediately upon service of any testimony or exhibit, any computer model or data base that is used for the testimony or exhibit shall be reasonably accessible to the Commission staff and other parties complying with Rule 74.4 (a).

(c) If a party requests access to a data base, the sponsoring party may, at its election, either

- (i) provide such access on its own computer,
- (ii) perform any data sorts requested by the requesting party,
- (iii) make the data base available to the requesting party to run on the requesting party's own computer, or
- (iv) make the data base available through an external computer service.

(d) If a party requests access to a computer model, the sponsoring party, may at its election, either

- (i) make the requested runs on its own computer,

(ii) make the model available to the requesting party to run on that party's own computer, or

(iii) have the requested model run produced for the requesting party by an external computer service.

(e) Requests for access pursuant to subsections (c) and (d) shall be limited to a reasonable number of runs as agreed to by sponsoring and requesting parties. If the parties are unable to agree, the sponsoring party may seek relief pursuant to Rule 74.6 before providing such access.

(f) The sponsoring party, in providing access pursuant to subsections (c) and (d), is not required to modify its computer model or data base in order to accommodate a request, or to install its model on the requesting party's computer, or to provide detailed training on how to operate the model beyond provision of written documentation. The sponsoring party is not required to provide a remote terminal or other direct physical link to its computer for use by the requesting party. The sponsoring party may take reasonable precautions to preclude access to other software or data not applicable to the specific model or data base being used.

(g) Within five business days of receipt of a request from a requesting party pursuant to this Rule, the sponsoring party shall indicate whether the request is clear and complete and shall provide the requesting party a written estimate of the date of completion of the response. If the requesting party deems the time estimate unacceptable, it may make a motion for expedited response pursuant to Rule 74.6.

Note: Authority cited: Section 1822(d), Public Utilities Code. Reference: Sections 1821-1822, Public Utilities Code.

74.5. (Rule 74.5) Model and Data Modifications.

(a) Except as provided in subsection (b), a party shall be required to maintain copies of computer models and data bases in unmodified form throughout the length of a proceeding if they continue to provide the basis, in whole or in part, for that party's showing. For purposes of this Article, the length of a proceeding shall be considered to extend 90 days after the date of issuance of the Commission's last order or decision in the proceeding, including any order or decision on applications for rehearing filed in accordance with Rule 85 of the Commission's Rules of Practice and Procedure.

(b) Where a party's computer model provides the basis, in whole or in part, for its showing in a proceeding, and notwithstanding subsection (a), such party may thereafter modify the computer model or the data, and may introduce the results so produced in the proceeding, on the condition that such party has provided timely access to the modified model or data to any requesting party who has previously requested access to the original model or data. Each party who relies on the modified model or data shall provide the modification to all parties at least 10 calendar days prior to its use in the proceeding.

Note: Authority cited: Section 1822(d), Public Utilities Code. Reference: Sections 1821-1822, Public Utilities Code.

74.6. (Rule 74.6) Relief of Parties.

(a) Any party may make a motion seeking relief concerning a dispute regarding access to computer models or data bases under the Commission's current practices governing discovery disputes. Such motion shall be made in writing, shall be served upon all parties to the proceeding, and shall state clearly and concisely the grounds and authority for the requested relief. The grounds and extent of available relief are the same as those that excuse or limit the obligation to respond to other types of discovery requests. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each presented by the motion.

(b) Responses to a motion under Rule 74.6(a) shall be filed and served within 15 days of the date the motion was served.

Note: Authority cited: Section 1822(d), Public Utilities Code. Reference: Sections 1821-1822, Public Utilities Code.

74.7. (Rule 74.7) Confidential and Proprietary Information.

Each sponsoring party who objects to providing access to any computer model, data base, or other information which is used in a computer model pursuant to this article, on the grounds that the requested material is confidential, proprietary, or subject to a licensing agreement, shall file a motion for a protective order. The motion shall be filed concurrently with the service of the testimony or exhibit which is based in whole, or in part, upon the matters to be protected. Any party may file and serve an answer to the motion for a protective order within 15 days after such motion was served. The assigned administrative law

judge, for good cause shown, may make any ruling to protect confidential, proprietary or licensed information from unwarranted disclosure.

Note: Authority cited: Section 1822(d), Public Utilities Code. Reference: Sections 1821-1822, Public Utilities Code.

Article 18. Briefs and Oral Arguments

75. (Rule 75) Briefs.

The presiding officer may fix the time for the filing of briefs. Concurrent briefs are preferable. Exhibits may be reproduced in an appendix to a brief. Citations to the transcript in a proceeding must indicate the transcript page number(s) and identify the party and witness sponsoring the cited testimony. A brief of more than twenty pages shall contain a subject index, a table of authorities, and a summary of the briefing party's recommendations following the table of authorities. Requests for extension of time to file briefs must be made to the Commission in writing, and a copy served upon or mailed to the other parties to the proceeding. Ordinarily, when a matter has been submitted on concurrent briefs, extensions will not be granted unless a stipulation is filed with the Commission. The original of each brief shall contain a certification that copies have been served upon or mailed to each party or the party's attorney.

Note: Authority and reference cited: Section 1701, Public Utilities Code.

76. (Rule 76) Oral Argument.

If the Commission or the presiding officer is of the opinion that the complexity or importance of the issues so warrant, the Commission or the presiding officer may direct or permit the presentation of oral argument.

Article 18.8. Compensation of Intervenors

76.71. (Rule 76.71) In General.

Compensation for participation or intervention in Commission proceedings is governed by the provisions of Division 1, Part 1, Chapter 9, Article 5 (beginning with Section 1801) of the Public Utilities Code.

Note: Authority cited: Sections 1701 and 1801-1812, Public Utilities Code.

76.72. (Rule 76.72) Final Order or Decision.

For purposes of this article, “final order or decision” means an order or decision that resolves an issue on which the customer believes it made a substantial contribution or the order or decision closing the proceeding. If an application for rehearing challenges a decision on an issue on which

the customer believes it made a substantial contribution, the “final order or decision” on that issue means the order or decision denying rehearing on that issue, the order or decision that resolves that issue after rehearing, or the order or decision closing the proceeding.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1804, Public Utilities Code.

76.73. (Rule 76.73) Costs on Rehearing.

The customer may include, in its request for an award of compensation, reasonable advocate’s fees, reasonable expert witness fees, and other reasonable costs incurred as a result of an application for rehearing.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1804, Public Utilities Code.

76.74. (Rule 76.74) Filing a Notice of Intent in Certain Cases; Revised Notices of Intent.

(a) In cases where no prehearing conference is scheduled or where the Commission anticipates that the proceeding will take less than 30 days, the administrative law judge may establish a deadline for the filing of notices of intent.

(b) In cases where parties cannot reasonably identify issues within the time set by statute or by the administrative law judge’s ruling under subsection (a) for the filing of the notice of intent, or where new issues emerge after the time set for filing, the administrative law judge may specify an appropriate procedure for accepting new or revised notices of intent.

Note: Authority cited: Sections 1701 and 1804, Public Utilities Code.

76.75. (Rule 76.75) Replies to Responses to Requests for an Award of Compensation.

If the Commission staff or any other party files a response to a customer's request for an award of compensation, the customer may file a reply within 15 days after service of the response.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1804, Public Utilities Code.

76.76. (Rule 76.76) Eligibility in Phased Proceedings.

A customer found eligible for an award of compensation in one phase of a proceeding remains eligible in later phases, including any rehearing, in the same proceeding.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1804, Public Utilities Code.

Article 19. Submission of Proceedings; Procedures for Comments and Replies to Comments; Commission Meetings.

77. (Rule 77) Submission of Any Proceeding for Decision by the Commission.

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.

Note: Authority and reference cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

77.1. (Rule 77.1) Filing Proposed Decision (Public Utilities Code Section 311(d)).

The procedure in Rules 77.1-77.6 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.

The assigned Commissioner or Administrative Law Judge shall prepare a proposed decision, whether interim or final, setting forth the recommendations, findings and conclusions. The proposed decision of

the assigned Commissioner or of the Administrative Law Judge (after discussion with the assigned Commissioner) shall be filed with the Commission and served on all parties without undue delay, not later than 90 days after submission.

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.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference cited: Sections 311(d), 311(f), 1701.1, 1701.3, 1701.4, Public Utilities Code.

77.2. (Rule 77.2) Time for Filing Comments on Proposed Decision.

Parties may file comments on the proposed decision within 20 days of its date of mailing. An original and four 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.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference cited: Section 311(d), Public Utilities Code.

77.3. (Rule 77.3) Scope of Comments on Proposed Decision.

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.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference cited: Section 311(d), Public Utilities Code.

77.4. (Rule 77.4) Specific Changes Proposed in Comments on Proposed Decision.

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

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference cited: Section 311(d), Public Utilities Code.

77.5. (Rule 77.5) Late-Filed Comments, and Replies to Comments, on Proposed Decision.

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.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference cited: Section 311(d), Public Utilities Code.

77.6. (Rule 77.6) Review of and Comment on Alternates to Proposed Decision.

(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) 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.

A substantive revision to a proposed decision is not an “alternate” if the revision does no more than make changes suggested in prior comments on the proposed decision, or in a prior alternate to the proposed decision.

(b) An alternate will be filed and served on all parties to the proceeding and, except as provided in subsection (f) 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.

(c) If the alternate is served with the proposed decision, or if the alternate is served at least 30 days before the Commission meeting at which the 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.

(d) If the alternate is served less than 30 days, but at least 14 days, before the Commission meeting at which the 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.

(e) If service of the alternate occurs less than 14 days before the Commission meeting at which the 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.

(f) The assigned Commissioner or Administrative Law Judge may waive or reduce the comment period on alternates in an unforeseen emergency situation (Rule 81), may reduce but not waive the comment period in any of the circumstances described in Rule 77.7(f)(1)-(9), and may extend the comment period in appropriate circumstances. The parties to a proceeding may waive or reduce the comment period on an alternate issued in that proceeding if all of the parties so stipulate.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference cited: Section 311(e), Public Utilities Code.

77.7 (Rule 77.7) Public Review and Comment for Draft Decision (Public Utilities Code Section 311(g)).

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.

(a) **Definitions.** 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 and Replies 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 ten 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 ten 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). Replies to comments on resolutions or alternates to resolutions may be filed five days after comments are filed and shall be limited to identifying misrepresentations of law or fact contained in the comments of other parties. Replies shall not exceed five pages in length, and shall be filed and served as set forth above. Late-filed comments or replies to comments will not be considered.

(d) **Comments and Replies on 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 and replies to 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), or in accordance with a stipulation pursuant to subsection (g) of this rule, 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 and may reduce but not waive the public review and comment period regarding alternates:

- (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 or the Administrative Procedure 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.
- (9) for a decision where the Commission determines, on the motion of a party or on its own motion, that public necessity

requires reduction or waiver of the 30-day period for public review and comment. For purposes of this subsection, “public necessity” refers to circumstances in which the public interest in the Commission adopting a decision before expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day period for review and comment. “Public necessity” includes, without limitation, circumstances where failure to adopt a decision before expiration of the 30-day review and comment period would place the Commission or a Commission regulatee in violation of applicable law, or where such failure would cause significant harm to public health or welfare. When acting pursuant to this subsection, the Commission will provide such reduced period for public review and comment as is consistent with the public necessity requiring reduction or waiver.

(g) **Reduction or Waiver by Parties.** The parties may reduce or waive the provisions of this rule for public review and comment regarding decisions or alternates, where all the parties so stipulate.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference cited: Sections 311(e), 311(g), Public Utilities Code.

78. (Rule 78) Commission Meetings.

(a) Commission meetings shall be held on a regularly scheduled basis to consider and vote on decisions and orders and to take such other action as the Commission deems appropriate. Notice of the time and place of these meetings will appear in the Commission’s Daily Calendar (see Rule 3.4) for at least three weeks before the meeting. Commission meetings are open to the public, but the Commission may hold closed sessions as part of a regular or special meeting, as permitted by law.

(b) No unscheduled meeting to take action will be held unless the Commission determines by majority vote, at a meeting prior to the emergency meeting or at the beginning of the emergency meeting, that an unforeseen emergency situation (Rule 81) exists.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 306, Public Utilities Code; Sections 11123, 11125.5 and 11126, Government Code.

79. (Rule 79) Meeting Agenda.

(a) At least ten days in advance of the Commission meeting, the Commission will issue an agenda for the meeting listing the items of business to be transacted or discussed. Requests for subscriptions to the agenda or for individual copies of the agenda should be directed to the Management Services Division. The agenda is available for viewing at the Process Office.

(b) A matter not appearing on the agenda of a meeting will not be decided unless:

(1) The Commission determines by majority vote that an unforeseen emergency situation (Rule 81) exists; or

(2) The Commission determines by a two-thirds majority (or, if less than two-thirds of the Commissioners are present, by a unanimous vote of those Commissioners present) that a need to take immediate action exists and that the need for this action came to the Commission's attention after the agenda for the meeting was issued.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 306(b), Public Utilities Code; Sections 11125(b) and 11125.3, Government

80. (Rule 80) Agenda Item Documents.

(a) Before each Commission meeting, the Commission will make available to the public all draft orders, decisions, resolutions, alternates (other than alternates addressed in Rule 77.6), and written reports appearing on the agenda, except those documents relating to items the Commission considers during its closed session.

(b) Members of the public may place a standing order with the Commission's Management Services Division to receive for a fee all agenda item documents or only those agenda item documents relating to a particular industry. Agenda item documents are also available for viewing and photocopying (for a fee) at the Commission's Central Files in San Francisco and at the Commission's Los Angeles and San Diego offices, and may be available in certain of the Commission's field offices. If agenda item documents are not ready when the agenda is issued, they

will be available at no charge at 9 a.m. on the day and at the location of the Commission meeting.

(c) If the Commission has found that a party's participation or intervention in a proceeding without an award of fees or costs would pose a significant financial hardship (see Public Utilities Code § 1803(b)), or if the party has filed and has pending a showing of significant financial hardship (see Public Utilities Code § 1804(a), (b)), the party is eligible to receive agenda item documents at no charge.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 311.5, 1803 and 1804, Public Utilities Code; Section 11125.1, Government Code.

81. (Rule 81) Unforeseen Emergency Situation.

“Unforeseen emergency situation” means a matter that requires action or a decision by the Commission more quickly than would be permitted if advance publication were made on the regular meeting agenda. Examples include, but are not limited to:

- (a) Activities that severely impair or threaten to severely impair public health or safety.
- (b) Crippling disasters that severely impair public health or safety.
- (c) Administrative disciplinary matters, including, but not limited to, consideration of proposed decisions and stipulations, and pending litigation, that require immediate attention.
- (d) Consideration of applications for licenses or certificates for which a decision must be made in less than ten days.
- (e) Consideration of proposed legislation that requires immediate attention due to legislative action that may be taken before the next regularly scheduled Commission meeting, or due to time limitations imposed by law.
- (f) Requests for relief based on extraordinary conditions in which time is of the essence.

(g) Deadlines for Commission action imposed by legislative bodies, courts, other administrative bodies or tribunals, the office of the Governor, or a legislator.

(h) Unusual matters that cannot be disposed of by normal procedures if the duties of the Commission are to be fulfilled.

A rate increase is not an unforeseen emergency situation.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 306(b), Public Utilities Code; Section 11125.5, Government Code.

82. (Rule 82) Service of Orders.

Decisions and orders shall be served by the Executive Director's office by mailing copies thereof to the parties of record. When service is not accomplished by mail, it may be effected by personal delivery of a copy thereof. When a party to an application proceeding has appeared by a representative, service upon such representative shall be deemed to be service upon the party.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 1701, Public Utilities Code.

83. (Rule 83) Effective Date.

Decisions and orders in complaint or investigation proceedings shall become effective twenty days after service thereof, unless otherwise provided therein. Decisions and orders in other proceedings shall become effective twenty days after issuance thereof, unless otherwise provided therein.

Article 20. Reopening Proceedings

84. (Rule 84) Petition to Set Aside Submission.

After conclusion of hearings, but before issuance of a decision, a party to the proceeding may serve on all other parties, and file with the Commission, a petition to set aside submission and reopen the proceeding for the taking of additional evidence, or for consideration of a settlement or stipulation under Article 13.5. Such petition shall specify the facts

claimed to constitute grounds in justification thereof, including material changes of fact or of law alleged to have occurred since the conclusion of

the hearing. It shall contain a brief statement of proposed additional evidence, and explain why such evidence was not previously adduced.

Note: Authority and reference cited: Section 1701, Public Utilities Code.

Article 21. Rehearings

85. (Rule 85) Time.

Application for rehearing of a Commission order or decision shall be served on all parties and accompanied by a certificate of service. The application shall be filed within 30 days after the date of issuance, or within 10 days of issuance in the case of an order relating to security transactions and the transfer or encumbrance of utility property. For purposes of this rule, "date of issuance" means the date when the Commission mails the order or decision to the parties to the action or proceeding.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 1731, Public Utilities Code.

86. (Rule 86) Effect of Filing.

Mere filing of an application for rehearing shall not excuse compliance with an order or a decision. (See P.U. Code Sec. 1735.) An application filed ten or more days before the effective date of an order suspends the order until the petition is granted or denied. Absent further Commission order, this suspension will lapse after 60 days. The Commission may extend the suspension period. (See P.U. Code Sec. 1733.)

86.1. (Rule 86.1) Contents.

Applications for rehearing shall set forth specifically the grounds on which applicant considers the order or decision of the Commission to be unlawful or erroneous. Applicants are cautioned that vague assertions as to the record or the law, without citation, may be accorded little attention. The purpose of an application for rehearing is to alert the Commission to an error, so that error may be corrected expeditiously by the Commission.

Note: Authority cited: Section 1701, Public Utilities Code.

86.2. (Rule 86.2) Response.

A response to an application for rehearing is not necessary. Any response may be filed no later than fifteen days after the day the application for rehearing was filed. In instances of multiple applications for rehearing the response may be to all such applications, and may be filed fifteen days after the last application for rehearing was filed. The Commission is not obligated to withhold a decision on an application for rehearing to allow time for a response to be filed.

Note: Authority cited: Section 1701, Public Utilities Code.

86.3. (Rule 86.3) Criteria for Oral Arguments.

(a) An application for rehearing will be considered for oral argument if the application or a response to the application (1) demonstrates that oral argument will materially assist the Commission in resolving the application, and (2) the application or response raises issues of major significance for the Commission because the challenged order or decision:

(i) adopts new Commission precedent or departs from existing Commission precedent without adequate explanation;

(ii) changes or refines existing Commission precedent;

(iii) presents legal issues of exceptional controversy, complexity, or public importance; and/or

(iv) raises questions of first impression that are likely to have significant precedential impact.

(b) These criteria are not exclusive and are intended to assist the Commission in choosing which applications for rehearing are suitable for oral argument. The Commission has complete discretion to determine the appropriateness of oral argument in any particular matter. Arguments must be based only on the evidence of record. Oral argument is not deemed part of the evidentiary record. The evidentiary record will stand as it did at the time of the Commission's decision.

(c) For purposes of this rule, "existing Commission precedent" is a prior Commission decision that the Commission expects to follow.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

86.4. (Rule 86.4) Requesting Oral Argument.

A party desiring oral argument should request it in the application for rehearing. The request for oral argument should explain why the issues raised in the application meet the criteria stated in Rule 86.3. Any party, in its response to an application for rehearing, may make its own request, or respond to the rehearing applicant's request, for oral argument; if it does either, the party must comment on why the issues raised meet or do not meet the criteria stated in Rule 86.3.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

86.5. (Rule 86.5) Selection of Rehearing Applications for Oral Argument.

The Legal Division will evaluate all requests for oral argument. Based on that evaluation, the General Counsel will recommend to the President of the Commission whether or not to hold oral argument on a particular application for rehearing. The President has the discretion to accept, deny, or modify the General Counsel's recommendations. At the request of any other Commissioner, the President's determination will be placed on the Commissioner's meeting agenda for consideration by the full Commission.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

86.6. (Rule 86.6) Scheduling and Notice of Oral Argument.

Where oral argument of an application for rehearing is granted, the argument will ordinarily be held before the matter appears on the Commission's closed session meeting agenda for decision. Oral argument will be scheduled in a manner that will not unduly delay the resolution of the application for rehearing. At least ten days prior to the oral argument, the Commission will serve all parties to the proceeding with a notice of the oral argument, which may set forth the issues to be addressed at the argument, the order of presentation, time limitations, and other appropriate procedural matters. Normally, no more than one hour will be allowed for oral argument in any particular proceeding.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

86.7. (Rule 86.7) Participation in Oral Argument.

Participation in the oral argument will ordinarily be limited to those parties who have filed or responded to the application for rehearing. Other parties to the proceeding may participate with the permission or at the invitation of the Commission. Requests to participate should be directed to the General Counsel and should be made at least seven days before the date set for oral argument.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution.

Article 22. Rules

87. (Rule 87) Construction and Amendment.

These rules shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented. In special cases and for good cause shown, the Commission may permit deviations from the rules. Rules may be amended at any time by the Commission.

Article 23. Forms

88. (Rule 88) Forms.

The following skeleton forms of applications, complaint, answer, protest, and certificate of service are merely illustrative. The content of a particular document will vary, depending on the subject matter and applicable rules.

1. Application
2. Complaint
3. Answer
4. Application—Shortened Procedure Tariff Docket
5. Protest—Shortened Procedure Tariff Docket
6. Certificate of Service

No. 6—Certificate of Service

(See Rule 2.3)

Certificate of Service

I hereby certify that I have this day served a copy of [title of document, e.g., “Applicant UtilCorp’s Motion To Strike” or “Notice of Availability of Application”] on all known parties to [proceeding number, e.g., A.93-01-010] by [here describe manner of service, e.g., mailing a properly addressed copy by first-class mail with postage prepaid or transmitting a facsimile copy, etc.] to each party named in the official service list [or appropriate special service list or specific parties required to be served by ruling or order, etc.].

Executed on [date], at [location], California.

_____ [signature] _____

John Jones

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