DRAFT Proposed Modifications to
Rules of Practice & Procedure

For presentation to Policy & Governance Committee
March 22, 2017, meeting

Revisions to 2/16/17 draft:

• Section 4 (Ex Parte Definition)
  o Insert 2/22/2017 errata to discussion
  o Revise Rule 8.1(f) regarding “procedural matter”

• Section 5 (Ex Parte Restrictions and Reporting)
  o New Rule 8.3 Communications at Conferences (and associated renumbering of rules)
  o Make requirement to report prohibited communications a stand-alone Rule 8.2(g)
  o Add “5 factors” in sanctions consideration to Rule 8.2(l) (formerly (k))
  o Revise Rule 8.2(c)(2)(C) regarding pre-meeting ex parte ban
  o Revise Rule 8.4(a)(3) (formerly 8.3) regarding contents of notice

• Section 6 (Administrative matters in closed session)
  o Revise Rule 15.1(g)

• (Former) Section 15 (subpoenas)
  o delete revisions to Rule 10.2(a)

• Section 17 (Uploading exhibits) (formerly 18)
  o Revise Rule 13.7(f)(ii)

• Section 18 (unopposed receipt of evidence) (formerly 19)
  o Revise Rule 13.8(c)
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1. Disqualification of Commissioners/ALJs

Rule 9.4 (Motion for Reassignment for Cause) as currently written implements former Section 309.6(a) requiring the Commission to “adopt procedures on the disqualification of administrative law judges due to bias or prejudice similar to those of other state agencies and superior courts” and Sections 1701.2(a) and 1701.3(b) providing for challenging ALJs for cause, which “shall include, but are not limited to, financial interest and prejudice.” SB 215 extends the mandate of Section 309.6(a) to Commissioners, and amends Section 309.6(b) to provide that, in ratesetting and adjudicatory proceedings, a Commissioner or ALJ shall be disqualified for bias or prejudice based on “actions taken during the proceeding that demonstrate bias or prejudice” and “actions taken outside the public record of a proceeding demonstrating any commitment to provide relief to a party.” The proposed modifications therefore (1) amend Rule 9.4 to include disqualification of an ALJ for the actions identified in Section 309.6(b); and (2) adopt a new Rule 9.5 implementing SB 215 with respect to the procedure for disqualification of a Commissioner for bias or prejudice. (Although SB 215 does not likewise amend Sections 1701.2(a) and 1701.3(b)) to extend those statutes to Commissioners, the new Rule 9.5 reasonably defines “bias or prejudice” as defined in the current Rule 9.4.)

As currently written, Rule 9.4 requires any response to a motion for reassignment to be formally filed (and Rule 8.3(f) bars communications between an ALJ and other decisionmakers regarding motions for reassignment). There is no statutory basis for these requirements, and such requirement is inconsistent with how motions for disqualification are handled in superior court. Accordingly, the proposed modifications to Rule 9.4 delete the provision requiring responses to be filed (and the proposed modifications to Rule 8.3(f) regarding ex parte communications delete the provision barring communications between the ALJ and decisionmakers).

The proposed modifications also revise Rule 9.4 by (1) revising its heading to specify its applicability to ALJs (as compared to new Rule 9.5 which applies to Commissioners); (2) substituting the term “disqualification” for the term “reassignment;” and (3) deleting the words “or interest” from section (a)(2) as the term is redundant of the term “financial interest” as addressed in section (a)(1). We also delete section (f) defining “financial interest,” and instead propose a new section to Rule 1.1 (Definitions) to define “financial interest” for all purposes, including disqualification of an ALJ or Commissioner under Article 9 and the definition of an “interested person” pursuant to Rule 8.1 (Definitions) regarding ex parte communications (Article 8).

The proposed modifications extend current Rule 9.5 (Circumstances Not Constituting Cause) to Commissioners, adds minor clarifying language to define “experience” as “past work experience,” and renumbers it.

Current Rule 9.6 (Administrative Law Judge’s Request for Reassignment) provides that the ALJ shall withdraw from a proceeding in which there are grounds for reassignment unless the parties waive the reassignment pursuant to Rule 9.7 (Waiver). The proposed modifications delete these rules as ALJs are
subject to Canon 3B of the California Judicial Code of Ethics, which requires the ALJ to withdraw from such proceedings and does not allow an exception for waiver by the parties.

The proposed modifications to Rule 14.6 (Reduction or Waiver) provide for waiver of public review and comment on a Commission decision resolving a motion to disqualify a Commissioner, pursuant to our authority under Section 311(g)(3). Otherwise, the resolution of a motion to disqualify a Commissioner would unduly delay the proceeding and compromise the Commission’s ability to meet the statutory deadlines for resolving a proceeding. (See Sections 1701.2(i) and 1701.5(a).)

ARTICLE 9. ADMINISTRATIVE LAW JUDGES AND COMMISSIONERS

9.4. (Rule 9.4) Motion for Reassignment Disqualification of Administrative Law Judge for Cause.

(a) Irrespective of the limits in Rule 9.2 on number of motions for reassignment, a party may move for reassignment in any proceeding to disqualify in which the assigned Administrative Law Judge for having:

(1) has a financial interest in the subject matter in a proceeding or in a party to the proceeding. “Financial interest” means that the action or decision on the matter will have a direct and significant financial impact, distinguishable from its impact on the public generally or a significant segment of the public, as described in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code and Title 2, Division 6, Sections 18109-18997 of the California Code of Regulations.

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.

(2) has bias, or prejudice, or interest in the proceeding. In a ratesetting or adjudicatory proceeding, bias or prejudice may include either of the following:

(A) Actions taken during the proceeding that demonstrate bias or prejudice.
(B) Actions taken outside the public record of a proceeding demonstrating any commitment to provide relief to a party.

(b) A motion 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 motion, and shall be filed and served as provided in Rule 9.2(a).

(c) A motion 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 party discovered or should have discovered facts set forth in the declaration filed pursuant to this rule.

(d) Any written response by the assigned Administrative Law Judge to a motion for reassignment for cause shall be filed and served in the proceeding where the motion was filed.

(e) 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 rule on issue a ruling addressing the any motion to disqualify the assigned Administrative Law Judge. The assigned Administrative Law Judge shall not rule on the motion.

(f) For the purposes of this rule, "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 Commissioner or 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.
9.5. (Rule 9.5) Motion for Reassignment Disqualification of Commissioner for Cause.

(a) A party may move in any proceeding to disqualify a Commissioner for having:

(1) a financial interest in the subject matter in a proceeding or in a party to the proceeding. “Financial interest” means that the action or decision on the matter will have a direct and significant financial impact, distinguishable from its impact on the public generally or a significant segment of the public, as described in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code and Title 2, Division 6, Sections 18109-18997 of the California Code of Regulations

(2) has bias or prejudice in the proceeding. In a ratesetting or adjudicatory proceeding, bias or prejudice may include either of the following:

(A) Actions taken during the proceeding that demonstrate bias or prejudice.

(B) Actions taken outside the public record of a proceeding demonstrating any commitment to provide relief to a party.

(b) A motion 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 motion, and shall be filed and served as provided in Rule 9.2(a).

(c) A motion 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 party discovered or should have discovered facts set forth in the declaration filed pursuant to this rule.

(d) The Executive Director, in consultation with the General Counsel, shall present a recommended resolution for a vote of the Commission.

(e) A Commissioner who is the subject of a motion for disqualification may not vote on the Executive Director’s recommended resolution of the motion.
9.56. (Rule 9.56) Circumstances Not Constituting Cause.

It shall not be cause for disqualification or reassignment for cause that the Commissioner or 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 past work 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 9.3.

(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.


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 9.7.


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 is 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.


14.6. (Rule 14.6) Reduction or Waiver of Review.

(a) In an unforeseen emergency situation, the Commission may reduce or waive the period for public review and comment on proposed decision, draft resolutions, and their alternates. "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:

(1) Activities that severely impair or threaten to severely impair public health or safety.

(2) Crippling disasters that severely impair public health or safety.

(3) Administrative disciplinary matters, including, but not limited to, consideration of proposed decisions and stipulations, and pending litigation, that require immediate attention.

(4) Consideration of applications for licenses or certificates for which a decision must be made in less than ten days.

(5) 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.

(6) Requests for relief based on extraordinary conditions in which time is of the essence.

(7) Deadlines for Commission action imposed by legislative bodies, courts, other administrative bodies or tribunals, the office of the Governor, or a legislator.
(8) 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.

(b) The Commission may reduce or waive the period for public review and comment on proposed decisions and their alternates, where all the parties so stipulate, and on draft resolutions and their alternates, where all persons identified in subsection (1), (2), (3) or (4) of Rule 14.2(c) so stipulate.

(c) In the following circumstances, the Commission may reduce or waive the period for public review and comment on draft resolutions and proposed decisions, and may reduce but not waive the period for public review and comment on alternate draft resolutions and alternate proposed decisions:

(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)) or for resolving the issues raised in the scoping memo in a ratesetting or quasi-legislative proceeding (Public Utilities Code Section 1701.5).

(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 on a motion for disqualification of a Commissioner.
for a decision in a proceeding in which no hearings were conducted 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.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 306(b), 311(e), 311(g), 1701.2(d) and 1701.5, Public Utilities Code; and Section 11125.5, Government Code.
2. PHC, scoping memo, and designation of presiding officer

Current Sections 1701.1, 1701.2 and 1701.3 require a prehearing conference and scoping memo in a proceeding in which it is determined that a hearing is needed. In implementing the current statutes, Rule 7.2 (Prehearing Conference) and Rule 7.3 (Scoping Memo) provide for the discretion not to hold a prehearing conference or issue a scoping memo if it is preliminarily determined that a hearing is not needed and no protest or other pleading is filed in response to the document that initiates the proceeding.

As amended by SB 215, Sections 1701.1, 1701.2 and 1701.3 now require a scoping memo in all adjudicatory, ratesetting and quasi-legislative proceedings, and a prehearing conference in all adjudicatory and ratesetting proceedings. The proposed modifications to Rule 7.2 and Rule 7.3 therefore rescind the discretion not to conduct a prehearing conference or issue a scoping memo under those circumstances.

7.2. (Rule 7.2) Prehearing Conference.

(a) The assigned Commissioner shall set a prehearing conference in an adjudicatory or ratesetting proceeding In any proceeding in which it is preliminarily determined that a hearing is needed, the assigned Commissioner shall set a prehearing conference for 45 to 60 days after the initiation of the proceeding or 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, and any other matter specified in the ruling setting the prehearing conference.

(b) The assigned Commissioner has the discretion not to set a prehearing conference in a quasi-legislative proceeding any proceeding in which it is preliminarily determined that a hearing is not needed and (1) in a proceeding initiated by application, complaint, or order instituting investigation, no timely protest, answer, or response is filed, or (2) in any proceeding initiated by Commission order, no timely request for hearing is filed.


7.3. (Rule 7.3) Scoping Memos.

(a) At or after the prehearing conference (if one is held), the assigned
Commissioner shall issue the scoping memo for the proceeding, which shall determine the schedule (with projected submission date) and issues to be addressed. In an adjudicatory or ratesetting proceeding in which there is evidentiary hearing, the scoping memo shall also designate the presiding officer. In a proceeding initiated by application or order instituting rulemaking, the scoping memo shall also determine the category and need for hearing.

(b) The assigned Commissioner has the discretion not to issue a scoping memo in any proceeding in which it is preliminarily determined that a hearing is not needed and (1) in a proceeding initiated by application, complaint, or order instituting investigation, no timely protest, answer, or response is filed, or (2) in any proceeding initiated by Commission order, no timely request for hearing is filed.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(b) and (c), Public Utilities Code.
3. Appeal of category after change in scope

SB 215 amends Section 1701.1 to add the provision that the determination of a proceeding’s category shall be subject to a request for rehearing within 10 days of any ruling subsequent to the scoping memo that expands the scope of the proceeding. The proposed modifications to Rule 7.6 (Appeals of Categorization) reflect that amendment.

7.6. (Rule 7.6) Appeals of Categorization.

(a) Any party may file and serve an appeal regarding the categorization of a proceeding to the Commission, no later than 10 days after the date of: (1) an assigned Commissioner's ruling on category pursuant to Rule 7.3(a); (2) the instructions to answer pursuant to Rule 7.1(b); or (3) any subsequent ruling that expands the scope of the proceeding. 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.

4. Ex parte communication definition

SB 215 amends Section 1701.1 pertaining to the definition of “ex parte communications” as follows:

- Requires the Commission to develop a rule to define “procedural matters.”
- Requires the Commission to ban “one-way communications” from a decisionmaker to an interested person. We interpret this to require clarification that such communications are not exempt from the definition of “ex parte communication.”
- Adds persons involved in issuing credit ratings or advising entities or persons who invest in shares or operations of a party to the definition of “interested person.”
- Allows the Commission to develop a rule identifying additional persons or entities in the definition of “interested person.”
- Adds Commissioners’ policy and legal advisory staff assigned to a Commissioner’s office to the definition of “decisionmaker.”
- Clarifies that ex parte communications include communications at public conferences.

The proposed modifications to Rule 8.1 (Definitions) and deletion of Rule 8.2 (Communications with Advisors) implement these amendments.

As currently written, Rule 8.1(c)(3) defines “ex parte communications” to include communications at a public forum if the forum was not set by ruling or order in the proceeding. The proposed modifications would only require notice of the public forum to the official service list in order for the communications at the event to fall outside of the definition of “ex parte communication,” as such notice is sufficient to afford transparency of the communications and equal opportunity to participate in them.

Finally, the proposed modifications to Rule 8.1 (1) deletes the definition of “Commission staff of record,” as that term is not used in any rule, (2) adds the definition of “party” to include Commission staff assigned to the proceeding in an advocacy capacity; (3) replaces the term “association” as used in the description of representatives who fall within the definition of “interested person” with the word “organization,” for consistency with statute; and (4) expands on the definition of “financial interest.” These proposed modifications provide greater clarity, accuracy and consistency with statute.

8.1. (Rule 8.1) Definitions.

For purposes of this Article, the following definitions apply:
(a) "Commission staff of record" includes staff from the Division Office of Ratepayer Advocates assigned to the proceeding, staff from the Consumer Protection and Safety Division assigned to an adjudicatory proceeding or to a ratesetting proceeding initiated by complaint, 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 Protection and Safety Division in a quasi-legislative proceeding, or in a ratesetting proceeding not initiated by complaint.

(ba) "Decisionmaker" means any Commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the policy or legal advisory staff assigned to a Commissioner’s office, the assigned Administrative Law Judge, or the Law and Motion Administrative Law Judge.

(eb) "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, other than procedural matters,

(2) takes place between an interested person and a decisionmaker, whether from the interested person to the decisionmaker or from the decisionmaker to the interested person or a combination thereof, and

(3) does not occur in a public hearing, workshop, or other public forum, with notice to the official service list noticed by ruling or order in the proceeding, or on the record of the proceeding.

“Ex parte communications” may include communications that occur at a conference, whether the communication is made in a presentation at the conference, in a private setting or during meals, entertainment events or tours, or in informal discussions among conference attendees.

“Ex parte communications” may include communications that are one-way from a decisionmaker to an interested person.
Communications regarding the schedule, location, or format for hearings, filing dates, identity of parties, and other such nonsubstantive information are procedural inquiries, not ex parte communications.

(d¢) "Interested person" means any of the following:

(1) any party to the proceeding or the agents or employees of any party, 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;

(3) a representative acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association organization 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; or

(4) a person involved in issuing credit ratings or advising entities or persons who invest in shares or operations of any party to a proceeding.

(d) "Financial interest" means that the action or decision on the matter at issue before the Commission will have a direct and significant financial impact, distinguishable from its impact on the public generally or a significant segment of the public, as described in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code and Title 2, Division 6, Sections 18109-18997 of the California Code of Regulations.

(e) "Party" includes staff from the Office of Ratepayer Advocates assigned to the proceeding and any other staff assigned to a proceeding in an advocacy capacity.

(f) "Procedural matter" means:

(i) an inquiry regarding the proceeding schedule, location or format of a hearing, general Commission practice, or the requirements of the Rules of Practice and Procedure, provided that the person making the inquiry reasonably believes that the matter is not in controversy and that no party will gain a procedural or tactical advantage as a result of the communication.
(ii) an emergency request for a specific procedural action, so long as the parties are included in the communication; or

(iii) a matter pertaining to an intervenor compensation notice of intent or request for compensation.


8.2. (Rule 8.2) Communications with Advisors.

Communications with Commissioners' personal advisors are subject to all of the restrictions on, and reporting requirements applicable to, ex parte communications, except that oral communications in ratesetting proceedings are permitted without the restrictions of Rule 8.3(c)(1) and (2).

5. Ex parte restrictions and reporting requirements

Prior to SB 215, Sections 1701.2, 1701.3 and 1701.4 imposed ex parte restrictions only on proceedings in which it is determined that a hearing is needed. As amended by SB 215, the statutory requirements of Sections 1701.2, 1701.3 and 1701.4 apply regardless of whether a hearing is needed.

SB 215 further amends Sections 1701.2, 1701.3 and 1701.4 pertaining to the ex parte restrictions and reporting requirements as follows:

- Confers express authority on the Commission to ban ex parte communications in ratesetting proceedings and to ban or require reporting of ex parte communications in quasi-legislative proceedings.
- Bars communications regarding the assignment of a Commissioner or ALJ to a proceeding;
- Bars decisionmakers other than ALJs from engaging in procedural communications in adjudicatory proceedings.
- Bars individual oral ex parte communications in ratesetting proceedings within 3 days of the scheduled vote on the matter.
- Amends the required advance notice of all-party ex parte meetings and reporting of individual ex parte communications to three working days as opposed to three days.
- In ratesetting proceedings, exempts oral ex parte communications at all-party meetings from reporting requirements.
- In adjudicatory proceedings, requires the reporting of prohibited ex parte communications should they occur.
- Requires the Commission to adopt a rule specifying sanctions for violations of the ex parte rules.
- Provides that, in a proceeding in which an ex parte communication is not disclosed until after the decision has issued, a party may, as part of a petition to rescind or modify the decision, seek a finding that the ex parte communication significantly influenced the decision’s process or outcome.

The proposed modifications to Rules 8.3 and 8.4 (as proposed, recodified as Rules 8.2 and 8.3), and the proposed modifications to Rule 15.1 regarding Commission meetings (addressed in Part 6) implement these statutory amendments.

In so doing, we interpret Section 1701.1(e)(2)(A)’s ban on “one-way ex parte communications from a decisionmaker to an interested person” as intending to clarify that such ex parte communications are subject to the same rules and restrictions as all other provisions of the statutes. It is unreasonable to interpret this provision as patently barring decisionmakers from communicating to an interested person where the interested person does not respond; if that were the case, the one-way communication could ostensibly be cured by the interested person’s mere affirmation of having received the communication.
In addition, the proposed modifications would exempt written ex parte communications in ratesetting proceedings from reporting requirements, for the following reason: As currently written, Rule 8.3(c) requires reporting of ex parte communications in ratesetting proceedings, without exception. As amended, Section 1701.1(e)(3) now exempts reporting of oral ex parte communications occurring at permissible all-party meetings, presumably because all parties are afforded an opportunity to be present at such meetings and do not require a post-meeting report of such communications. While SB 215 does not similarly expressly exempt reporting of permissible written ex parte communications, Section 1701.3(h)(4) continues to require concurrent service of written ex parte communications on all parties. The requirement that written ex parte communications be concurrently served on all parties provides even more transparency and notice than the requirement that all parties be afforded the opportunity to participate in an all-party meeting, not only because parties may misremember the oral communication, but also because a party may not be able to avail themselves of the opportunity to be present at the meeting. Accordingly, it would be incongruous to interpret SB 215 as requiring reporting of concurrently served written communications, but not of oral communications at all-party meetings.

In addition, the proposed modifications delete (and do not extend to Commissioners) the provision that extends the definition of “ex parte communications” to communications between an ALJ and other decisionmakers regarding a motion to reassign (or disqualify) an ALJ. As discussed previously in Part 1, above, there is no statutory basis for this requirement, and such a requirement is inconsistent with how motions for disqualification are handled in superior court.

8.32. (Rule 8.32) Ex Parte Requirements.

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

(b) In any adjudicatory proceeding, ex parte communications and communications concerning procedural matters between interested persons and decisionmakers other than the assigned Administrative Law Judge are prohibited.

(c) In any ratesetting proceeding, ex parte communications are subject to the reporting requirements set forth in Rule 8.4. In addition, ex parte restrictions are permitted if consistent with the following requirements: the following restrictions apply:

(1) All-party meetings:

(A) 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 working days before the meeting or call.

(B) Oral ex parte communications at all-party meetings are not subject to the reporting requirements set forth in Rule 8.4.

(2) Individual oral ex parte communications:

(A) If a decisionmaker, other than the policy or legal advisory staff assigned to a Commissioner’s office, grants an ex parte communication meeting or call to any interested person individually, all other parties shall be granted an individual meeting of a substantially equal period of time with that decisionmaker.

(B) If a decisionmaker grants an ex parte communication meeting or call to any interested person individually, the interested person requesting the initial individual meeting shall notify the parties that its request has been granted, and shall file a certificate of service of this notification, at least three working days before the meeting or call.

(C) Individual oral ex parte communications are not permitted during the three working days before the Commission’s scheduled vote on the decision in the proceeding and extending until after the Commission’s voting meeting concludes.

(D) Individual oral ex parte communications are subject to the reporting requirements set forth in Rule 8.4.

(3) Written ex parte communications:

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

(B) Written ex parte communications are not subject to the reporting requirements set forth in Rule 8.4.

(4) Ratesetting Deliberative Meetings and Ex Parte Prohibitions:

(A) The Commission may prohibit ex parte communications for a period beginning not more than 14 days before the day of the Commission Business Meeting at which the decision in the proceeding is scheduled for Commission action, during which period the Commission may hold a Ratesetting Deliberative Meeting. 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 day of the Business Meeting to which the decision is held.

(B) In proceedings in which a Ratesetting Deliberative Meeting has been scheduled, ex parte communications are prohibited from the day of the Ratesetting Deliberative Meeting at which the decision in the proceeding is scheduled to be discussed through the conclusion of the Business Meeting at which the decision is scheduled for Commission action.

(d) Notwithstanding subsections (a) and (c) of this rule, Rule 8.5, unless otherwise directed by the assigned Administrative Law Judge with the approval of the assigned Commissioner may issue a ruling to restrict or prohibit ex parte communications in a quasi-legislative or ratesetting proceeding or to require reporting of ex parte communications in a quasi-legislative proceeding. The provisions of subsections (b) and (c) of this rule, and any reporting requirements under Rule 8.4, 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, (2) all such responsive pleadings are withdrawn, or (3) a scoping memo has issued determining that a hearing is not needed in the proceeding.

(e) Ex parte communications concerning categorization of a given proceeding are permitted, but must be reported pursuant to Rule 8.43.

(f) Ex parte communications regarding the assignment of a proceeding to a particular Commissioner or Administrative Law Judge, or reassignment of a proceeding to another Commissioner or Administrative Law Judge, are prohibited. For purposes of this rule, "ex parte communications" include communications between an Administrative Law Judge and other decisionmakers about a motion for reassignment of a proceeding assigned to that Administrative Law Judge.

(g) If a prohibited communication occurs, the interested person shall report it pursuant to Rule 8.4.

(h) The requirements of this rule, and any reporting requirements under Rule 8.4, shall apply until (1) the date when the Commission serves the decision finally resolving any application for rehearing, or (2) where the period to apply for rehearing has expired and no application for rehearing has been filed.
Upon the filing of a petition for modification, the requirements of this rule, and any reporting requirements under Rule 8.4, that applied to the proceeding in which the decision that would be modified was issued shall apply until and unless—(1) no timely response, protest or request for hearing is filed, (2) all such responsive pleadings are withdrawn, or (3) a scoping memo has issued determining that a hearing is not needed in the proceeding or that a different category shall apply.

Where a proceeding is remanded to the Commission by a court or where the Commission re-opens a proceeding, the requirements of this rule and any reporting requirements under Rule 8.4 that previously applied to the proceeding shall apply until and unless a Commission order or a scoping memo has issued determining that a hearing is not needed in the proceeding or that a different category shall apply.

When the Commission determines that there has been a violation of this rule or of Rule 8.43, the Commission may impose penalties and sanctions, or make any other order, including but not limited to: as it deems appropriate to ensure the integrity of the record and to protect the public interest.

(i) penalty of from $500 up to $50,000 for each offense, except that, if the person or entity that committed the violation may obtain financial benefits that exceed this maximum penalty, the Commission may impose a penalty up to that amount of those benefits. If the violation consists of engaging in a prohibited ex parte communication, each day that the violation is not disclosed to the Commission and to parties to the proceeding is a separate violation.

(ii) adverse consequences in the subject proceeding or in other Commission proceedings.

In determining the appropriate penalties or sanctions, the Commission shall consider (i) the harm caused by virtue of the violation, (ii) the person’s or entity’s conduct in preventing, detecting, correcting, disclosing, and rectifying the violation, (iii) the amount of penalty that will achieve the objective of deterrence based on the person’s or entity’s financial resources, (iv) penalties or sanctions that the Commission has imposed under reasonably comparable factual circumstances, and (v) the totality of circumstances from the perspective of the public interest.

The Commission shall render its decision based on the evidence of record. Ex parte communications, and any notice filed pursuant to Rule 8.43, are not a part of the evidentiary record of the proceeding.
8.3. (Rule 8.3) Communications at Conferences.

This rule governs communications concerning any issue in a formal adjudicatory or ratesetting proceeding between interested persons and decisionmakers at a conference.

(a) Individual oral ex parte communications at a conference are subject to the otherwise-applicable requirements of Rule 8.2.

(b) A decisionmaker’s presentation or dialogue during a question and answer session at a conference where the audience includes an interested person is not a one-way communication.

(c) An interested person’s presentation or dialogue during a question and answer session at a conference where the audience includes a decisionmaker is not an ex parte communication.

8.4. (Rule 8.4) 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. Notice of ex parte communications shall be filed no more than within three working days of after the communication and, in addition to the service requirements of Rule 1.9, shall be served on the decisionmakers who participated in the communication. The notice may address multiple ex parte communications in the same proceeding, provided that notice of each communication identified therein is timely. The notice shall include the following information:

(a1) The date, time, and location of the communication, and whether it was oral, written, or a combination;

(b2) The identities of each decisionmaker (or Commissioner’s personal
advisor) involved, the person initiating the communication, and any persons present during such communication;

(e3) A description of the interested person's, but not the decisionmaker's (or Commissioner's personal advisor's), communication and its content including a summary of all of the points or arguments made in the communication, together with any request, recommendation, or advice provided to the decisionmaker, to which description shall be attached a copy of any written, audiovisual, or other material used for or during the communication.

(b) If an ex parte communication is not disclosed as required by Rule 8.2 and this rule until after the Commission has issued a decision on the matter to which the communication pertained, a party not participating in the communication may file a petition to rescind or modify the decision. A petition filed pursuant to this rule shall be filed no later than 30 days after the date the ex parte communication is disclosed.

6. Administrative matters in closed session

SB 215 amends Section 1701.1 to add Section 1701.1(f) requiring the Commission to adopt by rule a definition of “administrative matters” that may be discussed in closed session. The proposed modifications to Rule 15.1 (Commission Meetings) implement this statute.

The proposed modifications also implement SB 215’s provision that the Commission may not vote on a matter in which a notice of prohibited ex parte communications has been filed until all parties have been provided a reasonable opportunity to respond to the communication, as discussed in Part 5.

15.1. (Rule 15.1) Commission Meetings.

(a) Commission Business 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. Commission Business 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) In a ratesetting proceeding where a hearing was held, the Commission may hold a Ratesetting Deliberative Meeting to consider its decision in closed session.

(c) Notice of the time and place of these meetings will appear in the Commission's Daily Calendar.

(d) No unscheduled meeting to take action will be held unless: (1) 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, as defined in the Bagley-Keene Open Meeting Act, exists, or (2) wherever otherwise permitted by the Bagley-Keene Open Meeting Act.

(e) If an alternate is mailed less than 30 days before the Commission meeting at which the proposed decision or draft resolution is scheduled to be considered, the items will continue to be listed on the Commission's agenda, but will be held to the extent necessary to comply with Public Utilities Code Section 311(e).

(f) The Commission shall not take any vote on a matter in which a notice of a prohibited ex parte communication has been filed until all parties to the proceeding have been provided a reasonable opportunity to respond to the communication.
(g) The Commission may meet in closed session to discuss administrative matters. For purposes of this rule, “administrative matters” means matters relevant to effective oversight of the Commission’s operations, and does not include any matter that may be pending disposition by a Commission decision or order that is subject to Pub. Util. Code section 311.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 306, and 311(e), and 1701.1(f), Public Utilities Code; and Sections 11123, 11125.4, 11125.5 and 11126, Government Code.
7. Concurrent alternate decision

SB 215 amends Section 1701.3(c) to eliminate the requirement that an assigned Commissioner’s alternate decision issue concurrently with the ALJ’s proposed decision, allowing it to issue at any time. Accordingly, the proposed modification to Rule 14.2(issuance of Recommended Decision) deletes the requirement that the assigned Commissioner’s or ALJ’s alternate decision issue concurrently with the proposed decision.

14.2. (Rule 14.2) Issuance of Recommended Decision.

(a) A proposed decision shall be filed no later than 90 days after submission. In a ratesetting case that requires a hearing, an alternate proposed decision by the assigned commissioner or assigned administrative law judge shall be filed concurrently with the proposed decision.

(b) A presiding officer’s decision shall be filed no later than 60 days after submission.

(c) An alternate proposed decision shall be filed without undue delay.

(d) A draft resolution shall not be filed with the Commission, but shall be served as follows, and on other persons as the Commission deems appropriate:

   (1) A draft resolution disposing of an advice letter shall be served on the utility that proposed the advice letter, on any person who served a protest or response to the advice letter, and any person 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 person);

   (2) A draft resolution disposing of a request for disclosure of documents in the Commission’s possession shall be served on (A) the person who requested the disclosure, (B) any Commission regulate about which information protected by Public Utilities Code Section 583 would be disclosed if the request were granted, and (C) any person (whether or not a Commission regulate) who, pursuant to protective order, had submitted information to the Commission, which information would be disclosed if the request were granted;

   (3) A draft resolution disposing of one or more requests for motor carrier operating authority shall be served on 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;

(4) A draft resolution establishing a rule or setting a fee schedule for a class of Commission-regulated entities shall be served on any person providing written comment solicited by Commission staff (e.g., at a workshop or by letter) for purposes of preparing the draft resolution.

An alternate draft resolution shall be served consistent with the service of the draft resolution.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 311(d), 311(f), 1701.1, 1701.2, 1701.3 and 1701.4, Public Utilities Code.
8. Notice of Intent to Claim Intervenor Compensation

Prior to SB 215, Sections 1701.1 et seq. only required a prehearing conference and a scoping memo in an adjudicatory, ratesetting, or quasi-legislative proceeding in which hearing are needed. Section 1804(a) provides that a notice of intent to claim intervenor compensation shall be filed within 30 days of the prehearing conference or, if no prehearing conference is held, pursuant to the procedure determined by the Commission. Rule 17.1(a)(2) sets forth the deadline for filing a notice of intent to claim intervenor compensation in the event that a prehearing conference is held because it is anticipated that no hearing is needed.

SB 215 amends Section 1701.1(b) to require a prehearing conference scoping memo in any proceeding that is categorized as adjudicatory or ratesetting, without regard to the need for hearing, and Section 1701.1(c) to require a scoping memo in any proceeding that is categorized as quasi-legislative, without regard to the need for hearing. Accordingly, the proposed modifications revise Rule 17.1(a)(2) to narrowly apply to quasi-legislative proceedings and to provide a more straight-forward procedure, i.e., set the deadline with reference to the date of issuance of the requisite scoping memo.

SB 512 amends Section 1804 to provide that an eligible local government entity, as defined in Section 1802(d) as also amended, may seek intervenor compensation. Accordingly, the proposed modifications also incorporate these changes.

17.1. (Rule 17.1) Notice of Intent to Claim Compensation.

(a) A notice of intent to claim compensation may be filed:

(1) in a proceeding in which a prehearing conference is held, any time after the start of the proceeding until 30 days after the prehearing conference.

(2) if it has been preliminarily determined that a hearing is not needed, any time after the start of the proceeding until 30 days after the time for filing responsive pleadings (e.g., protests, responses, answers, or comments). If a prehearing conference is later held, the notice may be filed pursuant to subsection (a)(1). in a quasi-legislative proceeding in which a prehearing conference is not held in advance of the issuance of the scoping memo, any time until 30 days after the issuance of the scoping memo.

(3) in a petition for rulemaking, any time after the petition is filed until 30 days after the time for filing responses. If the petitioner intends to request compensation, the petition itself may include a notice of intent. If a prehearing conference is later held, the notice may be filed pursuant to subsection (a)(1).
(4) In a proceeding where the Commission anticipates that the proceeding will take less than 30 days, by any deadline that may be established by the Administrative Law Judge.

(b) An amended notice of intent may be filed within 15 days after the issuance of the scoping memo in the proceeding.

(c) The notice of intent shall identify all issues on which the intervenor intends to participate and seek compensation, and shall separately state the expected budget for participating on each issue. The notice of intent may include a category of general costs not attributable to a particular issue.

(d) If the intervenor claims eligibility on the basis of customer status, the notice of intent shall provide either (1) verification of the intervenor's customer status pursuant to Public Utilities Code Section 1802(b)(1)(A) or (B), or (2) a copy of articles of incorporation or bylaws demonstrating the intervenor's customer status pursuant to Public Utilities Code Section 1802(b)(1)(C). If current articles or bylaws have already been filed with the Commission, the notice of intent need only make a specific reference to such filings.

(e) If the intervenor claims eligibility on the basis of being an eligible local government entity, the notice of intent shall provide verification that it meets the definition pursuant to Public Utilities Code Section 1802(d).

(f) The notice of intent shall state the intervenor's economic interest in the proceeding, as that interest relates to the issues on which the intervenor intends to participate.

(fg) An intervenor who intends to request compensation for costs of judicial review shall file a supplemental notice of intent within 30 days after the date that the intervenor first appears or files a pleading in the judicial review proceeding. The supplemental notice of intent shall identify the issues upon which the intervenor intends to participate in judicial review, and an itemized estimate of the compensation that the intervenor expects to request by reference to those identified issues. If the intervenor intends to support the Commission's decision on review, the supplemental notice of intent shall include a showing of why the intervenor expects that its participation in judicial review will supplement, complement or contribute to the Commission's defense of its decision.

(gh) Responses to notices of intent to claim compensation shall be filed within 15 days of service of the notice.

Rule 1.4 (Participation in Proceedings) provides for persons to automatically obtain party status upon the person’s filing of a document that initiates a proceeding or upon the person’s filing of document in response to the initiating document. In a rulemaking proceeding, responsive documents are designated as “comments.” However, that term is also used to refer to documents commenting on the merits of a recommended decision. (See Rule 14.3, Comments on Proposed or Alternate Decisions.” The proposed modification to Rule 1.4 clarifies that the “comments” that, when filed, automatically confer party status are comments in response to the document initiating a rulemaking.

1.4. (Rule 1.4) Participation in Proceedings.

(a) A person may become a party to a proceeding by:

(1) filing an application (other than an application for rehearing pursuant to Rule 16.1), petition, or complaint;

(2) filing (i) a protest or response to an application (other than an application for rehearing pursuant to Rule 16.1) or petition, or (ii) comments in response to an order instituting rulemaking;

(3) making an oral motion to become a party at a prehearing conference or hearing; or

(4) filing a motion to become a party.
10. Eliminate service of certificate of service; eliminate State Service category.

The proposed modifications to Rule 1.9(e) eliminate the requirement that a copy of the certificate of service be attached to each copy of the document that is served. This requirement is unnecessary, as the certificate of service is on record with the Commission and publicly available on the electronic docket card for the proceeding.

The proposed modifications to Rule 1.9(f) eliminate the “State Service” category on the Official Service List. As currently written, “State Service” is available only to California state employees and affords those persons hard-copy service of documents that parties serve by hard copy and not electronically. Other non-parties may request “Information Only,” which entitles them only to electronic service of documents that are electronically served. There is little practical purpose to retaining the “State Service” category as most documents are served electronically, particularly in proceedings that non-party state employees regularly subscribe (in contrast to, e.g., small consumer complaint proceedings and license applications).

1.9. (Rule 1.9) Service Generally.

(e) 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 caption for the proceeding, (2) the docket number (if one has been assigned), (3) the exact title of the document served, (4) the place, date, and manner of service, and (5) 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 1.8(e)). The certificate filed with the original of the document must also include a list of the names, addresses, and, where relevant, the e-mail addresses of the persons and entities served and must indicate whether they received the complete document or a Notice of Availability. (See Rule 18.1, Form No. 4.)

(f) The Process Office shall maintain the official service list for each pending proceeding and post the service list on the Commission's web site. The official service list shall include the following categories:

(1) Parties, as determined pursuant to Rule 1.4, and
(2) State Service, for service of all documents (available to California State employees only), and

(3) Information Only, for electronic service of all documents only, unless otherwise directed by the Administrative Law Judge.

Persons will be added to the official service list, either as State Service or Information Only, upon request to the Process Office. It is the responsibility of each person or entity on the official service list to ensure that its designated person for service, mailing address and/or e-mail address shown on the official service list are current and accurate. A person may change its mailing address or e-mail address for service or its designation of a person for service by sending a written notice to the Process Office.

Under current rule, parties have the option of tendering documents (other than those for which the party seeks confidential treatment) for filing either in hard copy or by utilizing the Commission’s electronic filing system. If tendered in hard copy, the document is not accessible on the electronic docket card for the proceeding. The proposed modifications to Rule 1.13 eliminate the option of tendering documents for filing in hard copy. This will provide greater transparency and public access to Commission records.


(a) Documents, other than those for which the party seeks confidential treatment, may be tendered for filing in hard copy or electronically, as follows, except that documents which a person seeks to file under seal (Rule 11.4), must be tendered for filing using the Electronic Filing System on the Commission’s website at http://www.cpuc.ca.gov/PUC/efiling. A utility whose gross intrastate revenues, as reported in the utility’s most recent annual report to the Commission, exceed $10 million shall electronically file all documents unless otherwise prohibited or excused by these rules:

(a) Hard copy:

(1) Documents must be tendered for filing at the Commission’s Docket Office at the State Building, 505 Van Ness Avenue, San Francisco, California 94102, or at the Commission’s Offices in the State Building, 320 West 4th Street, Suite 500, Los Angeles. All documents tendered by mail must be addressed to the Commission’s Docket Office in San Francisco. Only hand-delivered documents will be accepted by the Los Angeles office. First-class postage charges to San Francisco must be paid at the time documents are tendered to the Los Angeles office. Payment of postage charges may be made by check or money order.

(2) Except for Proponent’s Environmental Assessments (see Rule 2.4(b)) and complaints (see Article 4), an original and six exact copies of the document (including any attachments but not including the transmittal letter, if any) shall be tendered. After assignment of the proceeding to an Administrative Law Judge, an original and three copies of the document shall be tendered.
In lieu of the original, one additional copy of the document may be tendered. If a copy is tendered instead of the original, the person 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.

(b) Electronic:


   (i) Documents must be transmitted in PDF Archive format (PDF/A). This PDF document must be searchable unless creation of a searchable document is infeasible.

   (ii) A single transmission may not exceed 20.0 megabytes in size. Documents tendered in a transmission that exceeds this limit shall not be filed electronically.

   (iii) The certificate of service must be transmitted with the document as a separate attachment.

2. Electronically tendered documents will not be filed under seal. Documents which a person seeks leave to file under seal (Rule 11.4) must be tendered by hard copy. However, redacted versions of such documents may be electronically tendered for filing.

3. A Notice of Acknowledgment of Receipt of the document is immediately available to the person tendering the document confirming the date and time of receipt of the document by the Docket Office for review. In the absence of a Notice of Acknowledgment of Receipt, it is the responsibility of the person tendering the document to obtain confirmation that the Docket Office received it.

4. The Docket Office shall deem the electronic filing system to be subject to a technical failure on a given day if it is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon that day, in which case filings due that day shall be deemed filed that day if they are filed the next day the system is able to accept filings.

(b) Documents which a person seeks leave to file under seal (Rule 11.4) must be tendered for filing in hard copy at the Commission's Docket Office at the State Building, 505 Van Ness Avenue, San Francisco, California 94102.
or at the Commission's Offices in the State Building, 320 West 4th Street, Suite 500, Los Angeles.

(1) All documents tendered by mail must be addressed to the Commission's Docket Office in San Francisco.

(2) Only hand-delivered documents will be accepted by the Los Angeles office. First-class postage charges to San Francisco must be paid at the time documents are tendered to the Los Angeles office. Payment of postage charges may be made by check or money order.

(3) Except for Proponent’s Environmental Assessments (see Rule 2.4(b)), an original and six exact copies of the document (including any attachments but not including the transmittal letter, if any) shall be tendered. After assignment of the proceeding to an Administrative Law Judge, an original and three copies of the document shall be tendered.

(4) In lieu of the original, one additional copy of the document may be tendered. If a copy is tendered instead of the original, the person 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. Reference: Section 1701, Public Utilities Code.
12. **Availability and contents of Daily Calendar.**

As currently written, Rule 1.17 provides that the Daily Calendar shall be available at the Commission’s Los Angeles office. There is no statutory requirement for this and, as the Daily Calendar is available on the Commission’s website, there is no practical requirement for this. The proposed modifications eliminate this provision, and conform the availability of the Daily Calendar to the availability of the Commission agenda.

In addition, as currently written, Rule 1.17 provides that the Daily Calendar will include notice of submission of proceedings. There is no statutory or practical requirement for this. The proposed modifications eliminate this provision.

### 1.17 (Rule 1.17) Daily Calendar

A Daily Calendar of the time and place of the next three regularly scheduled Commission meetings, newly filed proceedings, proceedings set for hearings, submission of proceedings and newly filed recommended decisions shall be published on the Commission’s Internet website. The Daily Calendar is also available for viewing and photocopying (for a fee) at the Central Files Office, 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. Electronic access to the Daily Calendar is available at the Commission's website ([www.cpuc.ca.gov](http://www.cpuc.ca.gov)).

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 1701, Public Utilities Code.
13. Promulgate Resolution A-4638 (1977) allowing Executive Director order dismissing complaint.

As authorized by Section 308, Commission Resolution A-4638 (1977) provides that the Executive Director may issue an order dismissing a complaint upon stipulation of the parties. New proposed Rule 4.5 promulgates the resolution as a rule. The proposed modifications renumber the subsequent rule.

4.5. (Rule 4.5) Voluntary Dismissal of Complaint

Upon motion by all parties stipulating to the dismissal of a complaint, the Executive Director may issue an order granting such motion.

4.6 (Rule 4.6) Expedited Complaint Procedure.

Rule 8.6 sets forth the ex parte requirements applicable to proceedings initiated before January 1, 1998. There are no longer any such open proceedings. The proposed modifications delete this rule for being obsolete.


The following requirements apply to proceedings filed before January 1, 1998:

(a) In any investigation or complaint where the order instituting investigation or complaint raises the alleged violation of any provision of law or Commission order or rule, ex parte communications and communications with Commissioners’ personal advisors are prohibited after the proceeding has been submitted to the Commission.

(b) Ex parte communications and communications with Commissioners’ personal advisors are permitted, and shall not be reported, in rulemakings and in investigations consolidated with rulemakings to the extent that the investigation raises the identical issues raised in the rulemaking.

(c) All other ex parte communications and communications with Commissioners’ personal advisors are permitted, and are subject to the reporting requirements of Rule 8.4.

(d) The Commission, or the assigned Administrative Law Judge with the approval of the assigned Commissioner, may issue a ruling tailoring these requirements to the needs of any specific proceeding.

15. **Allow waiver of 7-day settlement conference notice.**

Rule 12.1 requires seven days’ advance notice of any settlement conference. The intent of this rule is to ensure that all parties are afforded an opportunity to participate in a settlement conference. It is unreasonable to require such notice if all parties agree to waive it. The proposed modification to Rule 12.1 allows for such waiver.

12.1. **(Rule 12.1) Proposal of Settlements.**

(b) Prior to signing any 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 settlements in the proceeding. Notice of the date, time, and place shall be served on all parties at least seven (7) days in advance of the conference, unless all parties stipulate to reduce the time or waive the need for service. Notice of any subsequent settlement conferences 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.
16. **Require electronic uploading of exhibits.**

We also propose a new rule requiring the electronic uploading of evidentiary exhibits utilizing the Commission’s electronic filing system. Again, this will provide greater transparency and public access to Commission records.

13.7. *(Rule 13.7) Exhibits.*

(a) Exhibits and copies of exhibits shall be legible and either prepared on paper not exceeding 8 ½ x 13 inches in size, or folded to that approximate size. Exhibits of two or more pages shall be bound or stapled and, wherever practicable, the pages of each exhibit shall be numbered. Exhibits that contain multiple chapters or attachments shall include a table of contents. Rate comparisons and other figures shall be set forth in tabular form. 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.

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

(c) Documentary exhibits shall be limited to those portions of the document that are relevant and material to the proceeding.

(d) If relevant and material matter offered in evidence is embraced in a document containing other matter, parties shall be afforded opportunity to examine the document, and to offer in evidence other portions thereof believed material and relevant.

(e) All documents that are prepared, directly or indirectly, by the party offering them into evidence shall be 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 documents.

(i) Prepared testimony (see Rule 13.8) shall be submitted on the same day as it is served.

(ii) All other exhibits shall be submitted by no later than three business days from when they are offered in evidence.

17. Clarify receipt of prepared testimony without examination.

As provided in Rule 13.8, it is Commission practice for parties to present witnesses’ direct testimony in the form of written prepared testimony which is introduced through the witness and offered as a documentary exhibit at evidentiary hearing. Rule 13.8(c) identifies the opportunity for parties to offer such prepared testimony into evidence by motion. It is intended to alert practitioners to the opportunity to move for the receipt of prepared testimony as an exhibit without the need to appear at an evidentiary hearing if no party seeks the opportunity to cross-examine the witness. The proposed modifications to Rule 13.8(c) clarify and simplify this opportunity.


(c) In the absence of an evidentiary hearing, prepared testimony and accompanying exhibits may be offered and received into evidence without direct or cross examination absent objection by any party, by written motion or by oral motion at a prehearing conference, if any. If the offer is by written motion, the prepared testimony shall not be filed with the motion, but shall be concurrently served with the motion. Two copies shall be served on the Administrative Law Judge or, if none is yet assigned, on the Chief Administrative Law Judge. The motion shall include a declaration under penalty of perjury by the person preparing or in charge of preparing the prepared testimony 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 documents.
18. Delete ambiguous term.

Rule 13.11 addresses requirements for summation briefs, and refers to them in the title as “closing” briefs. It is Commission practice for parties to file concurrent “opening” briefs and concurrent “reply” briefs responding to the “opening” briefs. Under these circumstances, the use of the word “closing” in the title of Rule 13.11 confusing. The proposed modification to Rule 13.11 therefore deletes it.


The Administrative Law Judge or presiding officer, as applicable, may fix the time for the filing of briefs. Concurrent briefs are preferable. Factual statements must be supported by identified evidence of record. Citations to the transcript must indicate the transcript page number(s) and identify the party and witness sponsoring the cited testimony. Citations to exhibits must indicate the exhibit number and exhibit page number. A brief of more than 20 pages shall contain a subject index, a table of authorities, and a summary of the briefing party's recommendations following the table of authorities.
19. Require separate motion to request oral argument.

As currently written, Rule 13.13(b) requires parties to request oral argument before the Commission by making such request in their summation briefs. In practice, such requests can be inadvertently overlooked until late in the proceeding.

The proposed modifications to Rule 13.13(b) change this provision to require parties to make such request by separate motion. This change provides clearer notice of the request.

In addition, the proposed modifications delete the term “final” in referring to oral argument before the Commission; this term is superfluous.


(a) The Commission may, on its own motion or upon recommendation of the assigned Commissioner or Administrative Law Judge, direct the presentation of oral argument before it.

(b) In ratesetting and quasi-legislative proceedings in which hearings were held, a party has the right to make a final oral argument before the Commission, provided that the party makes such request by motion no later than the time for filing opening in its closing briefs or, if closing opening briefs are not permitted by the scoping memo, 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; however, a Commissioner may be present by teleconference to the extent permitted by the Bagley-Keene Open Meeting Act.
20. Clarify set aside submission for further argument.

Rule 13.14(b) addresses motions to set aside submission for the taking of additional evidence. The proposed modifications clarify that such motions may also seek the taking of additional argument.


(a) A proceeding shall stand submitted for decision by the Commission after the taking of evidence, the filing of briefs, and the presentation of oral argument as may have been prescribed.

(b) A motion to set aside submission and reopen the record for the taking of additional evidence or argument, or for consideration of a settlement under Article 12 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.

21. Conform comment on draft resolutions.

As currently written, Rule 14.5 is confusing with respect to the deadline for offering comments on a draft resolution. The proposed modifications provide that the time for offering comments is 20 days after notice of the draft resolution, in conformance with Rule 14.3 regarding comment on proposed and alternate proposed decisions.

14.5. (Rule 14.5) Comment on Draft or Alternate Draft Resolution.

Any person may comment on a draft or alternate draft resolution by serving (but not filing) comments on the Commission by no later than ten days before the Commission meeting when the draft or alternate resolution is first scheduled for consideration (as indicated on the first page of the draft or alternate resolution) within 20 days of the date of its notice in the Commission’s Daily Calendar and in accordance with the instructions accompanying the notice of the draft or alternate draft resolution in the Commission's Daily Calendar.
22. **Eliminate deadline hour for agenda item documents.**

Rule 15.3 as currently written provides that the Commission will make agenda item documents available at 9 a.m. on the day of the Commission meeting. However, statute only requires that the Commission make such documents at the meeting. (Section 311.5 and Govt.C. 11125.1(b).) It is unduly restrictive for the Commission to impose an earlier deadline on itself. The proposed modification to Rule 15.3(b) eliminates it.

**15.3. (Rule 15.3) Agenda Item Documents.**

(b) 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.
23. **Chief ALJ ruling on motions related to applications for rehearing.**

As currently written, Rule 16.1(c) provides that motions related to applications for rehearing shall be directed to the Chief ALJ for resolution. Just as applications for rehearing are not properly addressed or resolved by ALJs including the Chief ALJ, it is inappropriate for the Chief ALJ to resolve motions relating to them. The proposed modification to Rule 16.1 therefore deletes this provision.

**16.1. (Rule 16.1) Application for Rehearing.**

(e) Motions related to applications for rehearing shall be directed to the Chief Administrative Law Judge for resolution.
24. Eliminate need for supplemental notice of intent with respect to judicial review.

As currently written, Rule 17.1(f) requires an intervenor who intends to request compensation for costs of judicial review to file a supplemental notice of intent after appearing in the judicial review proceeding. There is no apparent purpose served by this requirement. The proposed modification to Rule 17.1 eliminates this requirement.

17.1. (Rule 17.1) Notice of Intent to Claim Compensation.

(f) An intervenor who intends to request compensation for costs of judicial review shall file a supplemental notice of intent within 30 days after the date that the intervenor first appears or files a pleading in the judicial review proceeding. The supplemental notice of intent shall identify the issues upon which the intervenor intends to participate in judicial review, and an itemized estimate of the compensation that the intervenor expects to request by reference to those identified issues. If the intervenor intends to support the Commission's decision on review, the supplemental notice of intent shall include a showing of why the intervenor expects that its participation in judicial review will supplement, complement or contribute to the Commission's defense of its decision.

(g) Responses to notices of intent to claim compensation shall be filed within 15 days of service of the notice.

The following proposed modifications correct references and typographical and semantical errors.

1.7. (Rule 1.7) Scope of Filing.

(a) 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 to File Under Seal" would be improper; two separate documents must be used for the complaint and for the motion). Motions that seek leave to file another document (e.g., to accept a later filing or to file a document under seal) shall be tendered concurrently and separately with the document that is the subject of the motion.

1.14. (Rule 1.14) Review and Filing of Tendered Documents

(2) Electronic: Upon the filing of any document tendered electronically, the document will be stamped with the electronic filing stamp and, it in the case of an initiating document, a docket number and the Docket Office shall electronically transmit to the person tendering the document a Confirmation of Acceptance and a link to the filed stamped copy of the document on the Commission's website. Electronically filed documents so endorsed carry the same force and effect as a manually affixed endorsement stamp.

3.1. (Rule 3.1) Construction or Extension of Facilities.

(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 Energy Regulatory 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 Energy Regulatory 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 Energy Regulatory Power Commission.

3.3. (Rule 3.3) Certificate to Operate.

(b) Every applicant for a passenger stage certificate shall forward a notice of the application to each city and county governmental entity and regional transportation planning agency within whose boundaries passengers will be loaded or unloaded. This notice shall inform parties that a complete copy of the application may be made available on the website of the California Public Utilities Commission and, if not made available online, that a copy of the application can be obtained by contacting the applicant or the California Public Utilities Commission and requesting a paper copy. A certificate of service shall be filed with the application.

6.3. (Rule 6.3) Petition for Rulemaking.

(d) Responses and Replies. Responses to a petition must be filed and served on all parties persons who were served with the petition within 30 days of the date that the petition was served, unless the assigned Administrative Law Judge sets a different date. The petitioner and any other party person may reply to responses to the petition. Replies must be filed and served within 10 days of the last day for filing responses, unless the Administrative Law Judge sets a different date.


In any adjudicatory proceeding, if an application for rehearing is granted, the parties shall have an opportunity for final oral argument before the presiding officer, if a party so requests within the time and in the manner specified.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.2(d), Public Utilities Code.
14.6. (Rule 14.6) Reduction or Waiver of Review.

(4) for a decision extending the deadline for resolving adjudicatory proceedings (Public Utilities Code Section 1701.2(d(e))) or for resolving the issues raised in the scoping memo in a ratesetting or quasi-legislative proceeding (Public Utilities Code Section 1701.5).

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 306(b), 311(e), 311(g), 1701.2(d) and 1701.5, Public Utilities Code; and Section 11125.5, Government Code.

16.2. (Rule 16.2) Parties Eligible to File Applications for Rehearing and Responses.

(a) For purposes of filing an application for rehearing in a formal proceeding, "parties" include any person who is a party pursuant to Rule 1.4.

(b) For purposes of filing an application for rehearing of a resolution, "parties" include any person described in paragraphs (1) through (4) of Rule 14.2(ed) and any person who has served written comments on a draft or alternate resolution pursuant to Rule 14.5.