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Decision 03-04-018 April 3, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking to Repeal Rule 63.2(b) of Commission Rules of Practice and Procedure.	Rulemaking 02-01-010 (Filed January 9, 2002)

DECISION CLOSING PROCEEDING

Summary

This decision closes the above proceeding based on the Commission's previous decision not to adopt a proposed repeal of Rule 63.2(b)[1] regarding petitions for automatic reassignment of an assigned Administrative Law Judge (petitions) in ratesetting proceedings.

Background

On January 9, 2002, the Commission adopted an Order Instituting Rulemaking (OIR) that proposed the repeal of Rule 63.2(b)[2] and minor

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[1] All Rule citations are to the Commission Rules of Practice and Procedure, unless otherwise stated.

[2] Rule 63.2(b) states:

> A party to a proceeding preliminarily determined to be ratesetting … or determined to be ratesetting…, 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

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amendments to Rule 63.2(c) and 63.2(d) to delete references to Rule 63.2(b). We proposed to repeal Rule 63.2(b) to avoid the delay and disruption to Commission proceedings that may be caused by reassignment of the assigned Administrative Law Judge (ALJ) and to assist the Commission in effectively managing its growing caseload. We reasoned that under Senate Bill (SB) 960 (Leonard, Stats. 1996, Ch. 96-0856), the Commission is not legally required to permit petitions in ratesetting matters,[3] [4] and that Rules 63.2(c) and 63.2(d), which respectively provide for peremptory challenges of an ALJ and challenges of an ALJ for cause, would protect the right of parties to a fair hearing before an impartial ALJ.

In order to give notice of this proposed Rule change and to comply with the Administrative Procedure Act (APA), we served the OIR on the service list for this proceeding, which generally includes persons interested in Commission

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

Whenever 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.

[3] See Pub. Util. Code § 1701.3

[4] In contrast, under SB 960, the Commission is required to permit petitions for the automatic reassignment of the ALJ in adjudicatory cases. D.97-12-043, Pub. Util. Code § 1701.2

procedural rulemakings, and forwarded a Notice of Proposed Regulatory Action (Notice) to the State Office of Administrative Law (OAL) for publication in the California Regulatory Notice Register. The OIR, the Notice, and a subsequent ALJ ruling specified the dates by which interested persons could request a public hearing and/or could file and serve written comments and reply comments. The Notice was published in the California Regulatory Notice Bulletin on February 1, 2002.

On March 18, 2002, the Commission received written comments from both Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison). Both Edison and PG&E opposed the repeal of Rule 63.2(b) and suggested that the Commission reduce delays caused by reassignment of an ALJ pursuant to Rule 63.2(b) by shortening the time within which parties could file petitions. We received no requests for a public hearing.

On June 27, 2002, the Commission voted not to repeal Rule 63.2(b) as proposed in the OIR. However, in order to permit further consideration of this issue in the future, we kept the proceeding open.

Discussion

The Commission has found no need to further consider the repeal or amendment of Rule 63.2(b) since June 2002. This proceeding should therefore be closed. Should the Commission wish to reconsider whether to repeal or amend Rule 63.2(b), the Commission may do so in a new docket.

Waiver of Review Period

Since the Commission has provided for public review and comment on this rulemaking pursuant to the Administrative Procedure Act (Gov't. Code Section 11340 et seq.) the otherwise applicable 30-day period for public review and comment is waived pursuant to Rule 77.7(f)(8).

Assignment of Proceeding

Loretta Lynch is the Assigned Commissioner and Myra J. Prestidge is the assigned ALJ in this proceeding.

Findings of Fact

1. On June 27, 2002, the Commission voted to disapprove the repeal of Rule 63.2(b), regarding petitions for automatic reassignment of the ALJ, and minor related changes to Rule 63.2(c) and (d), which were originally proposed in an OIR adopted by the Commission on January 9, 2002.

2. Since disapproving the repeal of Rule 63.2(b) in June 2002, the Commission has found no need to further consider a Rule change regarding petitions for automatic reassignment of the ALJ.

3. If the Commission wishes to reconsider whether to repeal or amend Rule 63.2(b), it may do so in a new docket.

Conclusion of Law

Since the Commission is not further considering the repeal of Rule 63.2(b) at this time, there is no reason for this proceeding to remain open.

O R D E R

IT IS ORDERED that Rulemaking 02-01-010 is closed.

This order is effective today.

Dated April 3, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY

Commissioners