



Public Advocates Office
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102
Tel: 415-703-1584
www.publicadvocates.cpuc.ca.gov

April 29, 2020

Commissioner Liane Randolph
Commissioner Cliff Rechtschaffen
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 04102

RE: Comments on Proposed Rules Changes

Dear Commissioners Randolph and Rechtschaffen,

Attached are the Comments of the Public Advocates Office on the proposed changes to the Commission's Rules of Practice and Procedure as presented and discussed at the April 22, 2020 meeting of the Commission's Policy and Governance Committee.

The Public Advocates Office appreciates the opportunity to participate in this process.

Sincerely,

/s/ Philip Weismehl

Philip Weismehl
Deputy Chief Counsel
Public Advocates Office

cc: Policy and Governance Committee
ALJ Hallie Yacknin
Suzanne Casazza

Policy and Governance Committee

**COMMENTS OF THE PUBLIC ADVOCATES OFFICE ON
PROPOSED REVISIONS TO RULES OF PRACTICE AND PROCEDURE**

April 29, 2020

The Public Advocates Office at the California Public Utilities Commission (Public Advocates Office) appreciates the opportunity to submit comments to the Policy and Governance Committee on their current draft proposal.

The Public Advocates Office appreciates the efforts of the Committee and generally supports most of the proposed changes. There are some, however, on which we offer comments to hopefully improve the proposals or bring to the Committee's attention information that may be crucial in understanding the potential impact of certain proposed changes.

Quasi-legislative proceedings

Proposed Revision to Rule 1.3(e) such that the quasi-legislative (QL) category can include matters that have "incidental effect on ratepayer costs."

A concern goes to the definition of "incidental effect." While operating on the expectation that almost every action may have some impact on "ratepayer costs," there has been misuse or misapplication of the QL category in the past. Major proceedings have been categorized as "quasi-legislative" in order to avoid evidentiary hearings, have commissioners rather than ALJs be the Presiding Officer, allow unreported ex parte communications and otherwise avoid the statutory elements of ratesetting proceedings.

It is not clear why any change in the QL definition is needed. Affirmatively changing the definition may imply a broader acceptance of ratepayer impact from QL proceedings than appropriate.

Revise Rule 2.9 to allow for proceedings to be classified as "expedited"

The Public Advocates Office appreciates the desire and need to give special attention and expedited treatment to matters of public safety or a major direct financial impact to customers. The proposed rule change would have a goal of holding a prehearing conference within 20-30 days after categorization and issuing a scoping memo within 45 days of categorization. The target date to issue a

proposed decision would be within 12 months of filing, but the Commission could extend this.

The Public Advocates Office believes this proposal is not necessary and should not be adopted.

The Commission already has the complete and total authority to expedite proceedings where public health and safety, or significant financial impact on customers is involved or for any other purpose where there is a need to act urgently. It has done so in the past, including one historical situation in which the Commission went from the occurrence of a terrible incident involving a fire in the BART tunnel to holding a hearing and issuing a decision in less than 24 hours.¹ Other matters over the years have, for various reasons, been put on a fast track to develop an appropriate record and decision.

In fact, the timelines proposed for a prehearing conference (PHC) and Scoping Memo should truly be the norm and not the exception. The Public Advocates Office has experienced recent proceedings in which, for relatively straightforward matters, Scoping Memos have not been issued for many months after a PHC. The Public Advocates Office is concerned that having a special designation for proceedings to be classified as “expedited” would lead to inappropriate and unnecessary delays in matters not so classified or to classifying matters for expedited treatment that are not so deserving.

Revise Rule 13.9 to require a mandatory “meet and confer”

The rule change proposed would have the mandatory “meet and confer” take place within 10 days after rebuttal testimony has been submitted. It would have a goal of reducing facts or issues in dispute and addressing the potential for settlement. All parties would be invited to participate.

The Public Advocates Office applauds the concept but there are implementation challenges with the proposed schedule.

Utilities often file applications that may meet minimum requirements but are then significantly supplemented/augmented when they serve rebuttal. The Public Advocates Office has had this experience in every industry and over extended time, including very recently. The adopted schedule for these proceedings, whether general rate cases, mergers, requests to build new plant or other matters, often has hearings beginning relatively soon after rebuttal testimony has been served.

¹ Decision 89902, 1979 Cal. PUC LEXIS 87, *1, 1 CPUC2d 165 (Cal. P.U.C. January 19, 1979).

In some proceedings, the utilities' failure to provide complete information until serving rebuttal testimony has led to the need to delay evidentiary hearings due to the Public Advocates Office and other parties having the significant burden to analyze the utilities' (potentially massive) rebuttal testimony, and prepare for hearings. Mandating a "meet and confer" within 10 days will often present an enormous challenge, taking parties away from these other essential tasks.

The Public Advocates Office pursues the narrowing of issues and settlement options in most proceedings in which we engage. In many instances, a utility's rebuttal testimony itself reflects an agreement with the positions of the Public Advocates Office or other parties, or more fully demonstrates the correctness of their position or a compromise, functioning in much the same manner as the proposed meet and confer.

The Public Advocates Office would suggest that the scheduling of a "meet and confer" be left to the discretion of the assigned ALJ or assigned Commissioner when appropriate, rather than be mandated on a specified schedule.

Revise Rule 14.2 regarding mailing of PDs

The Public Advocates Office believes the proposed change is actually just a clarification of what is already required. The proposal requires revised PDs to be mailed to the service list prior to the Commission meeting where the item will be voted on.

One element on which clarification may be appropriate, however, is that PDs not required to be mailed for comment should still be served on the service list.

The Public Advocates Office has had recent controversy over what is a "PD not required to be served on service list" for comment. Public Utilities Code §311(g)(2) does not put out for comment PDs that "grant the relief requested," i.e., an unopposed application. Over the last several months, some ALJs have interpreted "grant the relief requested" to include all party, all issue settlements. They are not the same since they do not grant the relief requested by the applicant in the application, which is the intention of the statute, but rather the compromises of the parties. The Public Advocates Office and other parties have had to ask for matters to be pulled from the agenda or file petitions for modification where there were technical problems with a PD, but it was not early identified since it was not mailed to the parties for comment.

Revise Rule 12.1(d) regarding settlements

The proposal has two parts - one of which may well be fine and one of which is very problematic due to vagueness.

Part one says:

“the motion [to adopt a settlement] must be supported by a comparison exhibit ... including any separate arrangements between the parties outside the scope of the proposed settlement but related to issues in the proposed settlement.”

Part two says the Commission can reject any settlement where parties have failed to disclose “information potentially relevant.”

Both parts require significantly greater clarity, revision or deletion to avoid parties being faced with uncertainties of what “related to” or “information potentially relevant” means. Both are exceptionally vague terms. Are they agreements that specifically resolve matters that are exclusively the province of the Commission or require a Commission decision to implement or are they something else? While one interpretation could be to say “include everything that might be related in any way, no matter how tangential, or even as non-tangential as how something similar might be handled differently in another matter,” that leaves parties at open-ended risk they will have guessed wrong, no matter how good faith their decision is.

Additional Rule 13.6 regarding evidence

The current rule says, “Although technical rules of evidence ordinarily need not be applied in hearings before the Commission, substantial rights of the parties shall be preserved.”

The new text is:

“(a) In hearings before the Commission, technical rules of evidence, whether statutory, common law, or adopted by court, need not be applied. Although evidence need not be excluded merely by application of rules governing admissibility, competency, weight, or foundation in the record, the substantial rights of the parties to fundamental due process and public policy protections shall be preserved.”

The Committee was quite clear in its oral comments that its goal is to basically allow almost anything to be admitted. It would then be up to the ALJ and Commission to assign appropriate weight to evidence in considering it. One of the public commenters spoke to this item during the Committee's meeting and said if you are going to do that, you need to articulate in the decision just why and how that weight assignment was made. Another expressed concerns that "due process" has a particular meaning, established over time and the proposed change may be contra to that.

The Public Advocates Office respectfully requests that no change be made. ALJs are trained to evaluate the quality of evidence using formal rules as guidance and acting to ensure the due process rights of parties are respected. A fundamental element of Commission processes is record-based decision-making. It is the quality of that record that must support Commission decisions. Proffered "evidence" that has no fundamental link to accuracy or veracity should have no place in the Commission's record development. It is not a question of "weight."

Conform Rule 8.2(c)(3(A) regarding written ex parte communications

While this Rule is slightly modified, it still reflects current practice.

The Public Advocates Office believes, however, that current practice has a defect that should be corrected.

If a written ex parte communication is sent concurrently to all parties, there is no need to file it as well. The problem is that unless you are a formal party, there is no record of the ex parte communication. Nothing appears on the Docket Card. No matter how significant a written ex parte communication may be, there is no record for the public or anyone other than a party. Parties are not the only ones potentially interested in such communications. Therefore, the Public Advocates Office recommends that the Commission require that written ex parte communications be filed.

Rule 14.3 Comments on Proposed or Alternate Decisions

The Rule proposes to limit comments on proposed decisions to 15 pages in anything except general rate case proceedings. The current Rule allows up to 25 pages for comments on proposed decisions issued in general rate cases and other major proceedings. There are many non-GRC proceedings that are as significant or more significant than many GRCs with exceptionally long and complex records and comparably long and complex proposed decisions.

The Public Advocates Office recommends the Commission either retain the existing language or, at least, give the assigned ALJ or assigned Commissioner the flexibility to authorize longer page limits for comments as appropriate upon party requests.

Respectfully submitted,

/s/ PHILIP SCOTT WEISMEHL

Philip Scott Weismehl
Deputy Chief Counsel

Public Advocates Office
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-2314
Email: Philip.Weismehl@cpuc.ca.gov