



RURAL COUNTY REPRESENTATIVES
OF CALIFORNIA

July 9, 2020

Ms. Sophia Park
Administrative Law Judge
California Public Utilities Commission
Division of Administrative Law Judges
505 Van Ness Avenue
San Francisco, CA 94102

Transmittal Via E-mail: Sophia.Park@cpuc.ca.gov

RE: Rules of Practice and Procedure, Draft Resolution ALJ-381

Dear Ms. Park:

On behalf of the Rural County Representatives of California (RCRC), we offer comments on Draft Resolution ALJ-381 regarding amendments to the California Public Utilities Commission's (CPUC's) Rules of Practice and Procedure (Rules). RCRC is an association of thirty-seven rural California counties, and the RCRC Board of Directors is comprised of elected supervisors from those member counties.

RCRC appreciates and supports the CPUC's efforts to facilitate greater public engagement in its proceedings. While we support many of the amendments proposed in ALJ-381, we believe that some modifications and additional changes are necessary. Unfortunately, the current Rules effectively disenfranchise many members of the public and interested stakeholder communities by making participation overly cumbersome to navigate and rife with opportunities to disqualify participation. Public engagement is especially important because, unlike the traditional marketplace, consumers impacted by CPUC decisions often have few alternatives to the services provided by the regulated utilities. We hope the CPUC will similarly overhaul other aspects of the Rules, as described below, to facilitate more meaningful engagement with residents, customers, and agencies that have a vested interest in the outcomes of these regulatory decisions.

Rule 1.4 – Participation in Proceedings

While ALJ-381 does not suggest any changes to Rule 1.4, RCRC believes that two discrete changes could improve and de-mystify the process for those wishing to engage in CPUC proceedings as a party.

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First, we suggest imposing deadlines for approval or rejection of motions for party status. We have observed a significant disparity in the time it takes administrative law judges (ALJs) to rule on motions for party status. While some ALJs quickly approve motions for party status, it can take a couple weeks or more in other cases. More uniformity and predictability is needed for these actions.

Second, we suggest explicitly stating that comments can be submitted in anticipation of the ALJ granting party status. This change will clarify some of the uncertainty that may currently exist for those unfamiliar with CPUC proceedings, who wish to participate, and are hesitant to expend the resources necessary to prepare and submit comments until they are certain they will be granted party status:

(c) The assigned Administrative Law Judge may, where circumstances warrant, deny party status or limit the degree to which a party may participate in the proceeding. **The assigned Administrative Law Judge shall approve or deny party status, or limit participation of a party, within two business days of the date of a motion made pursuant to (a)(3) or (a)(4) the person's motion.**

Nothing in this section shall be construed to limit the ability of an entity to submit comments in anticipation of being granted party status.

Rule 1.10 –Electronic Mail Service

RCRC appreciates and supports ALJ-381's efforts to simplify the process for electronic service of documents submitted to the CPUC. We agree with the CPUC that it is unnecessary to require attachment of the Certificate of Service to e-mails in which documents submitted to the CPUC are distributed to the service list for that proceeding. We also agree that it should not be necessary to re-serve a document when there is a failure of the e-mail service – it should be the responsibility of each party to ensure that the e-mail address on the official service list is accurate.

While we support the proposed changes to Rule 1.10, we suggest that the CPUC take the opportunity to provide even more flexibility to parties to guard against the inadvertent commission of minor technical errors in e-mail communications. Rule 1.10 is unnecessarily prescriptive in specifying the exact order for the subject line of e-mails that serve documents to the official service list of a proceeding. Rather than specifying the exact order in which information must be presented in the subject line, Rule 1.10(c) should instead simply require those items to be included, as follows:

The subject line of the e-mail message must include **in the following order** (1) the docket number of the proceeding, (2) a brief name of the proceeding, and (3) a brief identification of the document to be served, including the name of the serving person.

Rule 1.18 Public Participation in Proceedings

RCRC supports the proposed Rule 1.18, which allows members of the public to submit written comments and for those comments to be accorded due weight in a formal proceeding. As previously expressed, engaging in CPUC proceedings can be extremely complicated, even for those well versed in traditional modes of public engagement. Given the complexity of those rules, and the sometimes rigid and unforgiving manner in which they are enforced, it can be difficult for many individuals and organizations to obtain party status and successfully navigate the process to provide meaningful input in a proceeding. Rule 1.18 is a welcome pathway to facilitate greater public engagement; however, we suggest that the process also apply to catastrophic wildfire proceedings as well.

As part of this change, the CPUC should endeavor to afford members of the public the ability to upload documents of their comments as Word or PDF attachments. Organizations that serve specific constituencies or communities would similarly benefit from submitting a formal letter as public comments without having to become a formal party to a proceeding. It is important to recognize that the current Rule 1.13 requirement for documents to be submitted in a PDF/A format may be beyond the capabilities or budgets of many members of the public; however, they may be well situated to upload letters and other documents to a portal or directly to the CPUC.

To better achieve the CPUC's intent as articulated in the draft resolution, which states this new rule seeks to "ensure that public input will be accorded due weight consistently across all proceedings"¹ we suggest making the following changes:

Any member of the public may submit written comments^s in any Commission ratesetting, **catastrophic wildfire**, or quasi-legislative proceeding using the "Public Comment" tab of the online Docket Card for that proceeding on the Commission's website. **The Public Comment tab shall provide the public with the ability to upload documents, which shall not be limited beyond the page limits that otherwise apply to parties and need not be provided in PDF/A format.**

(a) All written public comments submitted in a ratesetting, **catastrophic wildfire**, or quasi-legislative proceeding will be entered into the record of that proceeding and reviewed and considered by the Presiding Officer.

(b) **Relevant written Written** comments^s submitted in a ratesetting, **catastrophic wildfire**, or quasi-legislative proceeding will be summarized in the body of the final decision issued in that proceeding.

(c) Parties may respond to, and cite to, any public comment submitted in a ratesetting, **catastrophic wildfire**, or quasi-legislative proceeding in their submissions to the Commission in that proceeding.

(d) The assigned Commissioner and/or Administrative Law Judge may invite parties to a proceeding to comment on any matter identified in public comment

¹ Page 5.

submitted in that ratesetting, **catastrophic wildfire**, or quasi-legislative proceeding.

Rule 2.9 – Requests for Expedited Schedule

We appreciate the creation of a process to request an expedited schedule; however, we respectfully request slight changes to subdivision (h) for extending the date for issuance of a proposed decision in order to retain its expeditious purpose. For example, the provision allowing the assigned Commissioner to extend the deadline is completely discretionary and does not require a showing of good cause to extend the deadline. The provision is also open ended and fails to specify an absolute deadline for conclusion of the expedited process, thereby potentially leading to indefinite extensions. We suggest establishing an absolute deadline of fifteen months after the application was filed. We suggest the following revisions to implement these recommendations:

(h) The assigned Commissioner may extend the date for issuance of a proposed decision in an expedited proceeding **for good cause, but that deadline may not be extended beyond 15 months after the application was filed.**

Rule 7.2 – Prehearing Conferences

RCRC supports the proposed changes to allow parties to participate remotely in prehearing conferences in order to facilitate greater public engagement while recognizing the challenges associated with traveling to distant locations.

Rule 10.1 – Discovery from Parties

We appreciate the provision granting parties the ability to request the ALJ establish a process whereby discovery requests and non-confidential responses would be distributed to the other parties in the proceeding.

Rule 13.1 – Notice of Hearing

With regard to Rule 13.1, the CPUC should ensure that public comments made during public participation hearings are afforded due weight in the proceeding. We appreciate the proposed revision to this rule to provide a better pathway for public engagement; however, we want to make it clear that those public comments are properly considered, as is within the spirit of the proposed new Rule 1.18.

Rule 14.3 – Comments on Proposed or Alternate Decisions

In addition to the suggested revisions to Rule 14.3, RCRC believes several additional changes are necessary to better facilitate engagement from interested parties, generate a more thorough understanding of stakeholder positions, and produce a better outcome.

Under Rule 14.3, parties are limited to commenting upon factual, legal, or technical errors in the proposed decision. Comments that fail to focus on those issues will be accorded no weight. While we recognize the significant record that is often generated before Proposed Decisions are issued, these limits have a chilling impact on the ability for

interested parties to properly and fully comment on the Proposed Decision. There is no opportunity under this scheme for a party to express areas of agreement with or objections to a Proposed Decision or suggest other modifications to the Proposed Decision and be accorded due weight. We have suggested changes to Rule 14.3 below to improve this process.

Additional clarifications should be made to clearly note the deadlines that apply for submission of comments on a Proposed Decision. While Proposed Decisions often come with a cover page addressed to the parties of record in a particular proceeding indicating when the Commission may hear the item, it lacks important information, such as when, exactly, parties may file comments. Instead, it points to Rule 14.3, which does not provide a clear deadline and instead forces both parties and the public to try to determine when the real deadline is. The CPUC should clearly note the deadline for filing comments and reply comments on the cover page of the Proposed Decision.

We suggest making the following necessary revisions to Rule 14.3:

(a) **(1) Parties may file comments on a proposed or alternate decision within 20 *business* days of the date of its service on the parties. *The assigned Administrative Law Judge shall clearly indicate the deadline for parties to file comments and reply comments in its cover letter for the Proposed Decision.***

(2) *Written public comments shall be accepted through the Commission's Business Meeting containing the applicable agenda item.*

...
(c) ~~Comments~~ **Party comments shall should** focus on factual, legal or technical errors in the proposed or alternate decision and in citing such errors shall make specific references to the record or applicable law. ~~Comments which fail to do so will be accorded no weight. Party comments may support, object, or suggest changes to the contents of the proposed decision.~~ **Party comments may support, object, or suggest changes to the contents of the proposed decision.** Comments proposing specific changes to the proposed or alternate decision shall include supporting findings of fact and conclusions of law.

(d) Replies to **party** comments may be filed within five **business** days after the last day for filing comments and shall ~~be limited to~~ focus on identifying misrepresentations of law, fact or condition of the record contained in the comments of other parties. Replies shall not exceed five pages in length.

Other Suggestions

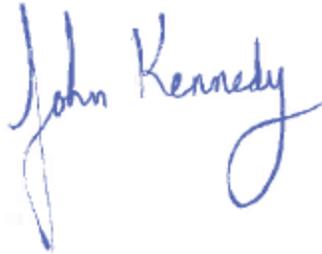
We hope the CPUC will take this opportunity to make other changes to encourage meaningful public participation in the CPUC's decision making process. The CPUC should consider how to break down some of the inherent barriers that presume the commenting entity has sophisticated legal expertise. One should not have to retain a lawyer to be able to meaningfully engage in CPUC proceedings. Aside from textual changes to the Rules of Practice and Procedure, the CPUC could provide model

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templates and narrative instructions for some of the documents that must be filed to provide comments in the various types of proceedings.

While the proposed changes included in ALJ-381 are a good start, this effort should not be the end of that process. If you should have any questions, please do not hesitate to contact me at jkennedy@rcrcnet.org or (916) 447-4806.

Sincerely,

A handwritten signature in blue ink that reads "John Kennedy". The signature is written in a cursive style with a large, looping "J" and "K".

John Kennedy
Legislative Advocate