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2015 DRAFT REGULATIONS

Purpose, Rationale and Necessity of Supplemental 15 Day Language

Docket No. 15-OIR-1



**CALIFORNIA
ENERGY COMMISSION**

Edmund G. Brown Jr., Governor

AUGUST 11, 2015

Purpose, Rationale and Necessity of Supplemental 15 Day Language

Supplemental language changes shown in double underline and double strikeout.

§ 1104. Meetings

(a) Presiding Member. The chairman shall preside over all meetings of the commission at which he is present. In his or her absence, the vice chairman shall preside. If neither the chairman nor the vice chairman is in attendance, the member present who has the greatest seniority on the Commission shall preside. The presiding member may yield the chair.

(b) Robert's Rules of Order. Except as otherwise provided by this article and except when all the members present indicate otherwise, meetings of the commission shall be conducted pursuant to the latest edition of Robert's Rules of Order. Failure to comply with this subsection shall not invalidate any action of the commission.

(c) Order of Agenda. The presiding member may determine the order in which agenda items shall be considered.

(d) Consent Calendar. The agenda may include an item designated "the consent calendar."

(1) The consent calendar shall include only those matters for which there appears to be no controversy. The consent calendar shall contain any such matter specified for inclusion by the person proposing the agenda item. A brief description of each matter on the consent calendar shall be included in the agenda.

(2) At the request of any member, any matter shall be removed from the consent calendar and may be considered at the same meeting as a separate item of business.

(3) After an opportunity for the requests to remove matters from the consent calendar has been given, a vote shall be taken on the consent calendar. If three members vote to approve the consent calendar, each matter on the consent calendar shall be approved and shall have the same force and effect as it would have if approved as a separate agenda item.

(e) Public Comments. Any person may file ~~submit~~ comments in writing on any agenda item. ~~Any person submitting such comments shall, if possible, provide the commission with either twelve paper copies of such comments, or one paper copy and electronic copies in the number, media and format specified in Section 1209.5 in advance of the meeting at which it is to be considered. Unless otherwise directed by the presiding member, all written comments shall be filed three days before the~~

commission meeting. Any person present ~~and so desiring~~ shall be given an opportunity to make oral comments on any agenda item; provided however, that the presiding members may limit or preclude such comments as necessary for the orderly conduct of business.

(f) The procedures governing motion filing by parties in proceedings before the commission can be found in section 1200 et seq. of these regulations.

Purpose and Rationale: Changes to how documents are filed with the commission and some renumbering of sections require that the language in subsection (e) be updated. The number of copies required is no longer needed so those requirements have been eliminated. More precise language was added regarding the timing for comments. By specifying a deadline for comments, greater clarity is added to the process. In addition, the three day time period allows the commission to be prepared to respond and take action based on the comments.

New subsection (f) cross references and guides parties to the provisions of the regulations related to motions and adjudicative proceedings.

Necessity: The changes are necessary to remove language made obsolete due to updates to document handling procedures, to ensure clarity in the timing of filing comments in advance of commission meetings and guide parties to the section of the regulations relevant to adjudicative proceedings and motions.

§ 1208.1. Media, Format, Content, and Other Required Characteristics of Filed Documents; Electronic Signatures Changes in the Requirements by the Executive Director.

(e) ~~Signatures.~~ Except as otherwise required by the executive director or the presiding member of a proceeding, signatures may be electronic.

(1) For electronic filings containing a signature, including for submissions into electronic data bases requiring a signature as attestation of information, the signature may be in electronic form and represented as. ~~The signature may be shown on the electronic copy by inserting a scanned signature graphic, a typed in name or by~~ "Original Signed By", "/S/", or similar notation.

(2) In a proceeding, if an electronic copy of an originally signed hardcopy document is filed, the filer must retain the document containing the original signature, and produce it at the presiding member's request, until the commission's final decision in the proceeding is no longer subject to judicial review.

Purpose and Rationale: The new electronic signatures provision required additional language to account for data base submittals used by a number of programs such as Appliance Efficiency and Fuels and Transportation. The language clarifies how

electronic signatures can be used in conjunction with submittals to automated data bases.

Necessity: To maximize the ease and efficiency of data base submissions, language clarifying the ability to utilize electronic signatures and what comprises an electronic signature is necessary.

1211.5. Motions.

(a) Any party may request the presiding member or, where applicable, the commission, to issue orders or rulings, including but not limited to requests to require another person to act or to refrain from acting, or requests for adjudication of procedural or substantive issues. All such requests shall, except as otherwise required by these regulations or allowed by the presiding member, be in the form of a written motion. Motions shall be filed and responded to according to a schedule established by the presiding member. In the absence of such a schedule, responses to motions shall be filed within 14 days of the service of the motions. Unless otherwise ordered by the presiding member, there shall be no replies to responses. The presiding member shall rule on the motion within 21 days of its filing, or a later deadline established by the presiding member; if the presiding member does not rule within 30 days or the time prescribed, the motion is deemed denied.

(b) Requests for action made during any hearing may be made orally to the presiding member and need not be in the form of a written motion. Rulings by the presiding member may be made orally. If the presiding member does not make a ruling on the motion by the end of the hearing, the motion is deemed denied.

(c) A party to a proceeding, currently before the commission for consideration and identified on the commission's agenda, must file any related motion, requiring the commission to take some action, five days prior to the meeting date. Consideration of the motion is at the discretion of the presiding member.

Purpose and Rationale: Subsection (c) provides specific rules for the timely filing of motions by parties for commission consideration at business meetings. Most motions are appropriately heard by committees charged with managing proceedings and the schedule set forth in subsection (a) and (b) will guide parties on the process for filing motions. Currently there are no specific rules for filing motions with the commission related to agenda items on the business meeting. Subsection (c) covers this gap and identifies the deadline for filing. Requiring motions in advance of the commission meeting will allow for the commission and other parties time to review. Since most motions should be filed with the committee, except for specific appeals identified in the regulations which are heard by the commission, the chair may rule not to consider the motion at the commission business meeting to ensure an orderly meeting.

Necessity: The language is necessary to clarify the time table to file motions related to proceedings before the commission at its monthly business meeting. This will

ensure parties do not file motions the day of the business meeting leaving no time for the commission and other parties to assess the motion.

§ 1212. ~~Rules of Evidence.~~ Rights of Parties, Record and Basis for Decision.

(a) **Rights of Parties.** Subject to the presiding member's authority to regulate a proceeding as prescribed in section 1210, and other rights identified in specific proceedings, each party shall have the right to call and examine witnesses, to offer oral and written testimony under oath, to introduce exhibits, to cross-examine opposing witnesses on any matters relevant to the issues in the proceeding, and to rebut evidence.

(b) **Record.**

(1) The "hearing record", in an adjudicatory proceeding, is all of the information the commission may consider in reaching a decision. The hearing record shall contain:

(A) all documents, filed comments, materials, oral statements, or testimony received into evidence by the committee or commission at a hearing;

(B) public comment offered at a hearing;

(C) any materials or facts officially noticed; and

(D) for siting cases, subject to 1212(b)(3), staff's Final Staff Assessment and any timely filed supplemental assessments.

(2) Parties may move to exclude information from consideration by the commission on the ground that it is not relevant, is duplicative of information already in the record, or on another basis. If the presiding member grants such a motion, the information shall be excluded from the hearing record. While the hearing need not be conducted according to technical rules relating to evidence and witnesses, questions of relevance and the inclusion of information into the hearing record shall be decided by the presiding member after considering fairness to the parties, hearing efficiency, and adequacy of the record.

(3) In a siting case, if a party requests a staff witness be present to sponsor specific portions of the Final Staff Assessment, or any supplemental assessments, and no witness is made available for questioning, the relevant portions of the staff assessment or supplemental assessments at issue shall be treated as comment and shall not be sufficient, in and of itself, to support a finding by the commission.

(c) **Basis for and Contents of Decisions.**

1) Decisions in adjudicative proceedings shall be based on the evidence in the hearing record, explain the basis for the decision, and shall include but need not be limited to all legally-required findings of fact and conclusions of law.

2) A finding may be based on any evidence in the hearing record, if the evidence is the sort of information on which responsible persons are accustomed to relying on in the conduct of serious affairs. Such evidence does not include, among other things, speculation, argument, conjecture, and unsupported conclusions or opinions. The committee or commission may rely on public comment, standing alone, to support a finding if the committee or commission provides notice of its intent to rely upon such comment at the time the comment is presented, other parties are provided an opportunity to question the commenter, and parties are given a reasonable opportunity, as ordered by the presiding member, ~~the opportunity to provide rebuttal evidence.~~ The committee or commission shall ~~may~~ give appropriate weight to information in the record as allowed by law.

3) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objections in civil actions.

Purpose and Rationale: These changes clarify that while the staff assessment is automatically in the hearing record, if a staff witness is requested to sponsor a particular portion of the staff assessment, and no witness is provided, than the portions at issue cannot be used to support a finding. This procedural fact is made clear by adding new subsection (3) and by citing to subsection (3) in section 1212 (b)(1)(D). The other changes clarify the opportunity for rebuttal.

Necessity: The language is necessary to address concerns raised by stakeholders regarding how the staff assessment would be treated if no staff witness is produced.

§ 1240. Renewables Portfolio Standard Enforcement.

(a) Notwithstanding anything in this article to the contrary, the following shall apply to any complaint pertaining to a Renewables Portfolio Standard requirement, or any regulation, order, or decision adopted by the commission pertaining to the Renewables Portfolio Standard, for local publicly owned electric utilities.

(b) Complaints

(1) — No complaint for the failure of a local publicly owned electric utility to meet a Renewables Portfolio Standard requirement, or any regulation, order, or decision adopted by the Commission pertaining to the Renewables Portfolio Standard for local publicly owned electric utilities, may be filed by any person or entity listed in section 1231, except Commission staff. The executive director may file a complaint against a

local publicly owned electric utility for failure to meet a Renewables Portfolio Standard requirement, or any regulation, order, or decision adopted by the commission pertaining to the Renewables Portfolio Standard for local publicly owned electric utilities.

(2) A complaint for the failure of a local publicly owned electric utility to meet a requirement of the Renewables Portfolio Standard, or any regulation, order, or decision adopted by the commission pertaining to the Renewables Portfolio Standard for local publicly owned electric utilities, shall include, but not be limited to, the following:

(A) A statement of facts upon which the complaint is based.

(B) A statement indicating the statute, regulation, order, or decision upon which the complaint is based.

(C) The action the commission is requested to take.

(D) The authority for the commission to take such action.

~~(3) A declaration under penalty of perjury shall not be required for the filing of a complaint under this section 1240.~~

(c) Any person or entity may participate in a proceeding filed under this section but shall not be entitled to intervene or otherwise become a party to the proceeding. Participation includes the ability to provide oral and written comments in the proceeding.

(d) Answer

(1) The local publicly owned electric utility shall file an answer with the chief counsel within 45 calendar days after service of the complaint. In addition to those matters set out in section ~~4233 (b)~~ 1233.2, the answer shall include all data, reports, analyses, and any other information deemed relevant by the local publicly owned electric utility to any claims, allegations, or defenses made in the answer. The answer may also include information deemed relevant by the local publicly owned electric utility to support findings of fact regarding any mitigating or otherwise pertinent factors related to any alleged violation or to a possible monetary penalty that may be imposed if for noncompliance is determined pursuant to this section. The information included regarding any mitigating or otherwise pertinent factors may describe all relevant circumstances, including, but not limited to, the following:

(A) The extent to which the alleged violation has or will cause harm.

(B) The nature and expected persistence of the alleged violation.

(C) The history of past violations.

(D) Any action taken by the local publicly owned electric utility to mitigate the alleged violation.

(E) The financial burden to the local publicly owned electric utility.

(2) In the event that the local publicly owned electric utility includes in the answer any confidential business information, trade secrets, or other information sought to be withheld from public disclosure, respondent shall submit such information in a separate filing, under seal, at the time the local publicly owned electric utility files the answer. The information shall be submitted to the executive director along with a complete request for confidential designation in accordance with section 2505.

(e) Response

(1) Commission staff may file with the chief counsel a response to the answer no later than 15 calendar days after receipt of the answer. The response shall be served upon the local publicly owned electric utility upon filing.

(2) In the event that commission staff files a response under (e)(1), the local publicly owned electric utility may file with the chief counsel a reply to such response no later than 10 calendar days from receipt of such response. The reply shall be served upon commission staff upon filing.

(f) Hearing

(1) A hearing on the complaint shall be scheduled to commence no sooner than 30 calendar days after the filing of a staff response pursuant to subdivision (e) of this section.

(2) A notice of hearing on the complaint shall be provided in accordance with section ~~1234(b)~~ 1233.3(b). Such notice shall be provided no later than 30 calendar days after the last filing is made.

(3) The hearing may be scheduled before the full ~~C~~-commission, a committee designated by the ~~C~~-commission, or a hearing officer assigned by the ~~C~~-chair at the request of the committee as provided in section 1205.

(4) If the hearing is not held before the full commission, the proposed decision set out in section ~~1235~~ 1233.4(a) shall be forwarded to the full commission, to the extent reasonably possible, no later than 45 calendar days after the hearing has been concluded. If the hearing is held before the full commission, to the extent reasonably possible, the commission shall publish its decision within 45 calendar days after the hearing has been concluded.

(g) The decision of the full commission shall be a final decision. There is no right of reconsideration of a final decision issued under this section 1240. The decision will include all findings, including findings regarding mitigating and aggravating factors related to noncompliance. The decision may also include findings regarding mitigating and aggravating factors, upon which the California Air Resources Board may rely in assessing a penalty against a local publicly owned electric utility pursuant to Public Utilities Code section 399.30, subdivisions ~~(l)~~ and ~~(m)~~ and ~~(n)~~. The decision may also include suggested penalties for the California Air Resources Board to consider, as

appropriate. Any suggested penalties shall be comparable to penalties adopted by the California Public Utilities Commission for noncompliance with a Renewables Portfolio Standard requirement for retail sellers.

(h) Referral

(1) No sooner than five days after the time for filing a petition for writ of mandate in accordance with Public Resources Code section 25901 has passed, commission staff shall forward a notice of violation, based on the final decision of the full commission, together with the record of proceedings, to the California Air Resources Board for determination of a penalty. The record of proceedings shall include all filings made in the course of the proceedings, the transcripts of the hearing and any exhibits used during the course of that hearing, and any correspondence between the respondent and the commission pertaining to the proceedings.

(2) If a petition for writ of mandate is filed by respondent, commission staff shall not forward the notice of violation to the California Air Resources Board until the matter is fully and finally determined. In the event a petition for writ of mandate is filed by respondent, the record of proceedings shall also include all filings made by all parties in the action and any appeals thereof.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and section 399.30, Public Utilities Code. Reference: Section 399.30, Public Utilities Code.

Purpose and Rationale: These changes were made as part of the section 1240 Renewable Portfolio Standard rulemaking.

Necessity: These changes are necessary to ensure consistency with the 1240 rulemaking currently happening in parallel with this rulemaking.