

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement  
Portions of AB 117 Concerning Community  
Choice Aggregation.

Rulemaking 03-10-003  
(Filed October 2, 2003)

**ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO**

**1. Summary**

This ruling and scoping memo describes the issues to be considered in this proceeding and the timetable for their resolution. As required by Rules 6(c)(2) and 6.3 of the Commission's Rules of Practice and Procedure (Rules), this ruling affirms the proceeding category and the need for evidentiary hearings, designates a principal hearing officer, and addresses the projected submission date of this proceeding, following a prehearing conference (PHC) in this proceeding on October 29, 2003.

**2. Proceeding Issues**

The Commission opened this rulemaking to implement those provisions of Assembly Bill 117 that would permit local governments to purchase energy on behalf of local customers as "community choice aggregators" or CCAs. Recently on November 26, 2003, the Administrative Law Judge (ALJ) in this proceeding issued a ruling bifurcating the proceeding so that the Commission would first consider issues relating to certain utility costs that would be assumed by CCAs and later consider issues more concerned with transactions between CCAs, utilities, and energy customers. The ruling summarizes the PHC and lists the

issues for each phase of the proceeding. It schedules a workshop and evidentiary hearings on costing issues and requires the utilities to submit reports to the Commission on the informational needs of CCAs and prospective CCAs following meetings with interested parties.

This scoping memo incorporates by reference the November 26 ALJ ruling and its identification of issues for each phase of the proceeding.

### **3. Procedural Schedule**

The procedural schedule in this proceeding at this time is as follows:

Workshop on costing issues	January 9, 2004
Utility reports to Commission on informational requirements of CCAs and prospective CCAs	January 30, 2004
Evidentiary hearings on costing issues	February 4 and 5, 2004
Comments on Utility reports regarding information requirements	February 13, 2004
Opening briefs for costing issues	March 1, 2004
Reply briefs for costing issues	March 16, 2004 (submittal of Phase 1)
ALJ draft decision in Phase 1	May 12, 2004
Final Commission order in Phase 1	June 2004

The schedule for Phase 2 will be determined for Phase 2 after the second PHC and following issuance of a Phase 1 decision.

This ruling affirms the Commission's intent to resolve all matters in this proceeding within 18 months of the date of this scoping memo, consistent with Pub. Util. Code § 1701.5.

#### **4. Category of Proceeding**

Rulemaking (R.) 03-10-003 preliminarily determined that this is a ratesetting proceeding. The Commission invited objections to its initial categorization. No party has expressed any objection. This ruling confirms that the proceeding is ratesetting.

#### **5. Need for Evidentiary Hearings**

R.03-10-003 anticipated that hearings would be needed in this proceeding. The ALJ has correctly determined that evidentiary hearings are required for the Commission's resolution of Phase 1 costing issues. The Commission will determine at a later date whether to conduct hearings for Phase 2 issues. This ruling affirms the preliminary determination that hearings are required in this rulemaking.

#### **6. Principal Hearing Officer**

This ruling designates ALJ Kim Malcolm as the principal hearing officer in this proceeding.

#### **7. Service List**

The service list for this proceeding is located at the Commission's Website ([www.cpuc.ca.gov](http://www.cpuc.ca.gov)). Those who are not already parties, but who wish to participate in this proceeding as full parties must make their request by written motion to intervene, or orally on the record during the proceeding. Those not already participating, but who wish to do so as nonparties, may request that their names be added to the service list (in the "information only" or "state service" category) by sending an e-mail note to ALJ Malcolm ([kim@cpuc.ca.gov](mailto:kim@cpuc.ca.gov)).

The Commission will follow the electronic service protocols attached to R.03-10-003.

### **8. Rules Governing Ex Parte Communications**

This proceeding is subject to Pub. Util. Code § 1701.3(c), which means that ex parte communications are prohibited unless certain statutory requirements are met (see also, Rule 7(c)). An ex parte communication is defined as “any oral or written communication between a decisionmaker and a person with an interest in a matter before the commission concerning substantive, but not procedural issues, that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter.” (Pub. Util. Code § 1701.1(c)(4)). Commission rules further define the terms “decisionmaker” and “interested person” and only off-the-record communications between these two entities are “ex parte communications.”

The law permits Commissioners to engage in ex parte communications if all interested parties are invited and with no less than three business days’ notice. If a Commissioner agrees to meet with an individual party, the Commission must grant all other parties individual ex parte meetings of a substantially equal period of time. The law permits written ex parte communications provided that those who provide the letter to a decisionmaker must provide a copy the communication to each party on the same day. (Pub. Util. Code § 1701.3(c); Rule 7.) Parties must report ex parte communications as specified in Rule 7.1.

#### **IT IS RULED** that:

1. The scope of Phase 1 and Phase 2 of this proceeding is set forth in the Administrative Law Judge’s (ALJ) ruling dated November 26, 2003, and is incorporated by reference.
2. The schedule for Phase 1 of this proceeding, including its projected submission date, is set forth in this ruling. The assigned ALJ may specify the

schedule for Phase 2 of this proceeding after issuance of a Commission order in Phase 1. The ALJ may make any revisions to this schedule necessary for the fair and efficient management of the proceeding.

3. This proceeding is categorized as ratesetting and evidentiary hearings may be necessary, consistent with Rulemaking 03-10-003. This ruling on category may be appealed, as provided in Rule 6.4 of the Commission's Rules of Practice and Procedure (Rules).

4. ALJ Kim Malcolm is the principal hearing officer in this proceeding.

5. This ratesetting proceeding is subject to Pub. Util. Code § 1701.3(c), meaning that ex parte communications are prohibited unless certain statutory requirements are met. Such communications are also governed by Rule 7(c), and must be reported, as provided in Rule 7.1.

Dated December 4, 2003, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey  
Assigned Commissioner

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Assigned Commissioner's Ruling and Scoping Memo on all parties of record in this proceeding or their attorneys of record.

Dated December 4, 2003, at San Francisco, California.

/s/ KE HUANG

Ke Huang

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.