PROPOSED TEXT:

Please note: all underlined text indicates additions to the regulatory text and all ~~strikethrough~~ text indicates deleted material.

CHAPTER 1. PUBLIC EMPLOYMENT RELATIONS BOARD

SUBCHAPTER 1. INTERNAL PROCEDURES

Article 1. Public Meetings

31001. Meetings.

Except as permitted by law, the Public Employment Relations Board itself shall deliberate and take all actions only at public meetings. The Board's policy on public meetings shall be available to the public.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b) and 102399(b), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 71639.1 and 71825, Government Code; and Section s 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b) and 102399(b), Public Utilities Code.

SUBCHAPTER 2. DEFINITIONS AND GENERAL PROVISIONS

Article 1. Definitions

32019.7 Santa Cruz Metropolitan Transit District Act.

(a) "Santa Cruz Metro Act" means the Santa Cruz Metropolitan Transit District Act of 1967 as contained in Chapter 1 of Part 10 of Division 10 of the Public Utilities Code (commencing with Section 98000).

(b) "Employer," "PUC transit employer," or "District" includes the Santa Cruz Metropolitan Transit District, including all operations and extensions of its transportation system, regardless of modality or vehicle type as defined in section 98160(b), Chapter 1 of Part 2 of Division 10 (commencing with Section 98000).

Authority cited: Section 98160.5(b), Public Utilities Code. Reference: Section 98000 et seq., Public Utilities Code.

32019.8 Santa Clara Valley Transportation Authority Act.

(a) "VTA Act" means the Santa Clara Valley Transportation Authority Act as contained in Chapter 1 of Part 12 of Division 10 of the Public Utilities Code (commencing with Section 100000).

(b) "Employer," "PUC transit employer," or "District" includes the Santa Clara Valley Transportation Authority, including all operations and extensions of its transportation system, regardless of modality or vehicle type as described in Part 12 of Division 10 (commencing with Section 100000).

(c) "Exclusive representative" means an accredited employee organization recognized or certified as the exclusive negotiating representative of employees in an appropriate unit within the District.

(d) An exclusive representative may elect to move one or more of its bargaining units to PERB's jurisdiction for unfair practice charges. Notification by the exclusive representative of such election shall be filed through e-PERB with the General Counsel or the General Counsel's designee. The exclusive representative shall serve the District pursuant to Section 32140. An election by an exclusive representative for one or more of its bargaining units to be subject to PERB's jurisdiction shall be irrevocable for that unit.

(e) "Opt in unit" means a bargaining unit which the exclusive representative elects to be subject to PERB's jurisdiction for unfair practice charges pursuant to section 100310 of the Public Utilities Code.

Authority cited: 100309(b), Public Utilities Code. Reference: Section 100000 et seq., Public Utilities Code.

32020. Board.

"Board" means the five-member Public Employment Relations Board, any individual Board member or any Board agent.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3501(f), 3509, 3513(h), 3540.1(a), 3541, 3551(a), 3555.5(c), 3562(b), 71639.1(a) and 71825(a), Government Code; and Sections 25052, 28849(b), 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99560.1(b), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32030. Board Itself.

"Board itself" means only the five-member Public Employment Relations Board, or members thereof authorized by law to act on behalf of the Board.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122,

40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f) 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3501(f), 3509, 3513(h), 3540.1(a), 3541, 3551(a), 3555.5(c), 3562(b), 71639.1(a) and 71825(a), Government Code; and Sections 25052, 28849(b), 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99560.1(b), 100309(b), 100301, 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32040. Executive Director.

"Executive Director" means the officer of that title appointed by the Board pursuant to Government Code Section 3541(f).

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b), and 102399(b), Public Utilities Code. Reference: Section 3541(f), Government Code.

32050. General Counsel.

"General Counsel" means the officer of that title appointed pursuant to Government Code Section 3541(f).

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b), and 102399(b), Public Utilities Code. Reference: Section 3541(f), Government Code.

32055. Chief Administrative Law Judge.

"Chief Administrative Law Judge" means the officer of that title designated by the Board.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section s 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b), and 102399(b), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3551(a), 3555.5(c), 3563(j), 71639.1 and 71825, Government Code; and Section s 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b), and 102399(b), Public Utilities Code.

32060. Headquarters Office.

"The headquarters office" means the main office of the Board itself, the General Counsel, the Chief Administrative Law Judge, the Director of State Mediation and Conciliation Service, and the Executive Director. The headquarters office shall be located in Sacramento, CA.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section s 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b), and 102399(b), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3551(a), 3555.5(c), 3563(j), 71639.1 and 71825, Government Code; and Section s 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b), and 102399(b), Public Utilities Code.

32075. Regional Office.

"The regional office" means the office established by the Board which serves the county in which the principal office of an employer is located according to the following schedule:

Counties included in the Sacramento Regional Office jurisdiction: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Inyo, Kings, Lassen, Madera, Mariposa, Merced, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, Yuba.

Counties included in San Francisco Regional Office jurisdiction: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma.

Counties included in Los Angeles Regional Office jurisdiction: Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Ventura.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5, 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28860(b), 28851, 37051, 40122, 40122.1, 50121, 70122, 90300, 95651, 98160.5, 98162.5, 99561, 99561.2, 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32080. Day.

"Day" means calendar day unless otherwise specified.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5, 98162.5, 99561(f), 100301, 100309(b), 101344,

102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28860(b), 28851, 37051, 40122, 40122.1, 50121, 70122, 90300, 95651, 98160.5, 98162.5, 99561, 99561.2, 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32090. e-PERB.

"e-PERB" means the Public Employment Relations Board's electronic filing system accessible through the agency's website.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5, 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28860(b), 28851, 37051, 40122, 40122.1, 50121, 70122, 90300, 95651, 98160.5, 98162.5, 99561, 99561.2, 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32091. Electronic Filing.

"Electronic filing" means the transmission of a document to PERB via e-PERB.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5, 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28860(b), 28851, 37051, 40122, 40122.1, 50121, 70122, 90300, 95651, 98160.5, 98162.5, 99561, 99561.2, 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32092. Electronic Signature.

(a) "Electronic signature" means an electronic sound, symbol, or process attached to, or logically associated with, an electronic record and executed or adopted by a person with the intent to sign the electronic record. Electronic signatures are permitted only where expressly authorized by statute or these PERB regulations.

(b) When a document to be filed electronically requires a signature of any person, whether under penalty of perjury or otherwise, the document is deemed to have been signed by that person when electronically filed. The filing party, when electronically filing a document, certifies that the document has been properly signed or electronically signed. This subsection (b) shall not apply to proof of support under section 32700.

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5, 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3551(a), 3555.5(c), 3563, 3563.2, 71639.1 and 71825, Government Code; Sections 25052, 28849(b), 28860(b), 28851, 37051, 40122, 40122.1, 50121, 70122, 90300, 95651, 98160.5, 98162.5, 99561, 99561.2, 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code; and California Rule of Court 2.257.

32093. Electronic Service.

"Electronic service" means the service of documents under Section 32140 through e-PERB or e-mail.

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5, 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3551(a), 3555.5(c), 3563, 3563.2, 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28860(b), 28851, 37051, 40122, 40122.1, 50121, 70122, 90300, 95651, 98160.5, 98162.5, 99561, 99561.2, 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32094. Filed.

"Filed" means a document is received and accepted by PERB after the filing party has complied with applicable statutory and regulatory filing requirements whether filing electronically, in person, or through a mail delivery service.

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5, 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3551(a), 3555.5(c), 3563, 3563.2, 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28860(b), 28851, 37051, 40122,

40122.1, 50121, 70122, 90300, 95651, 98160.5, 98162.5, 99561, 99561.2, 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32095. Bargain

The term "bargain" is equivalent to "meet and confer," as well as "meet and negotiate."

Authority cited: Sections 3509(a), 3513(h), 3524.52(a), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5, 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3514.5, 3524.52(a), 3541.3(n), 3541.5, 3551(a), 3555.5(c), 3563(m), 3563.2, 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28860(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5, 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

Article 2. General Provisions

32100. Application of Regulations.

(a) All rules and regulations within this Chapter shall apply to proceedings conducted under EERA, Ralph C. Dills Act, and HEERA and to Chapters 2, 3 and 4 within this Division.

(b) All rules and regulations within this Chapter, except for Subchapter 6, shall apply to proceedings conducted under MMBA and to Chapter 5 within this Division.

(c) All rules and regulations within this Chapter, except for Article 6 of Subchapter 6, shall apply to proceedings conducted under TEERA and to Chapter 6, Subchapter 2, within this Division.

(d) All rules and regulations within this Chapter, except for Subchapter 6, shall apply to proceedings conducted under the Trial Court Act and to Chapter 7 within this Division.

(e) All rules and regulations within this Chapter, except for Subchapter 6, shall apply to proceedings conducted under the Court Interpreter Act and to Chapter 8 within this Division.

(f) Except as expressly provided otherwise, the rules and regulations within this Chapter, and Chapters 2 through 8, do not apply to mediation, election or other services provided by mediators or conciliators pursuant to Government Code sections 3600 and 3601.

(g) All rules and regulations within this Chapter, except for Subchapters 6 and 8, shall apply to proceedings conducted under the PEDD and the PECC, excluding the administration of interest arbitration pursuant to Government Code Section 3557(b)(4). The rules and regulations in Articles 1 and 2 of Subchapter 2, and Subchapter 10 within this Chapter, shall apply to the administration of interest arbitration conducted under the PECC pursuant to Government Code Section 3557(b)(4).

(h) As set forth in Section 72001, applicable regulations in Chapter 1, Subchapter 2, apply to filings with SMCS.

(i) All rules and regulations within this Chapter, except for Subchapter 6, shall apply to proceedings conducted under the OCTDA, SFBART Act, ~~and~~ Sacramento RTD (for opt in units), Santa Cruz Metro Act and VTA Act (for opt in units). Representation proceedings under the OCTDA, SFBART, Sacramento RTD Act, Santa Cruz Metro Act, and VTA Act are governed by Chapter 6, Subchapter 3, of these regulations.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5, 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Section 19604, Business and Professions Code; Section 57031, Food and Agricultural Code; Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509, 3513(h), 3541.3, 3551(a), 3555.5(c), 3557, 3563, 3600, 3601, 3602, 3603, 3611, 71632.5, 71636, 71636.1, 71636.3, 71637, 71637.1, 71639.1, 71823 and 71825, Government Code; Section 2686, Labor Code; and Sections 25051, 25052, 28849(b), 28850, 28851, 30750, 30751, 30754, 30756, 40120, 40122, 40122.1(a), 50120, 50121, 70120, 70122, 90300, 95650, 95651, 98160.5, 98162.5, 99561, 100301, 100305, 100309(b), 101341, 101342, 101344, 102399(b), 102401, 102403, 103401, 103404, 103405, 103406, 125521, 125526, Appendix 1, Sections 4.2 and 4.4 and Appendix 2, Sections 13.90, 13.91 and 13.96, Public Utilities Code.

32105. Severability.

If any section, subsection, clause or provision of these regulations is found to be invalid, the same shall not affect the remaining portion of the regulations.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5, 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 40122.1(a), 28851, 28860 (b), 30751, 40122, 40122.1, 50121, 70122, 90300, 95651, 98160.5, 98162.5, 99561, 100301, 100309(b), 101344, 102399(b),

102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32110. Electronic Filing Requirements.

(a) Except as otherwise provided by this Chapter, electronic filing is mandatory when filing documents with PERB. For the initial filing of a case, the filing party shall serve all parties pursuant to Section 32140, subdivision (a), and electronically file with PERB the initial filing and a proof of service. After the initial filing of a case, service of documents shall occur automatically through e-PERB, except for unrepresented individuals not utilizing e-PERB, in which case the filing party must serve the documents by personal delivery, mail, or with another delivery service properly addressed. Electronic filing is not required when submitting documents at formal hearing.

(b) Electronic filing is available but not mandatory for an unrepresented individual. For purposes of this subsection, the term "unrepresented individual" shall mean an individual natural person not represented by an attorney or a union representative. However, an unrepresented individual that files electronically shall be required to electronically file all subsequent documents, and to accept electronic service, unless she or he provides written notice to all parties that future filings shall occur through a different authorized means.

(c) A party filing a document through e-PERB may use an electronic signature as defined in section 32092. However, a party submitting proof of support under section 32700 of these regulations, either through e-PERB or otherwise, may rely on electronic signatures only to the extent permitted under section 32700.

(d) Documents electronically filed shall be in PDF format and text searchable. However, a party lacking the capacity to make a PDF file text searchable shall file the document in a non-text searchable PDF format, and shall telephonically notify the Board that it has done so. Unless documents are compressed (in a zip file format), the maximum size of any single document that can be electronically filed is 25 MB. For documents larger than 25 MB, the filer shall separate them into multiple parts so that each part is no larger than 25 MB.

(e) Each document shall be filed individually. Attachments and exhibits are part of the document to which they are associated. Where a document exceeds the size limit specified under subsection (d), the document must be split into parts and each filed individually. When a document is filed in multiple parts, each part must be identified as part of the document, e.g., unfair practice charge part 1, unfair practice charge part 2, etc.

(f) Filers may electronically file a document through e-PERB at any time. However, all documents electronically filed after 11:59 p.m. on a business day, or at any time on a non-business day, will be deemed filed the next regular PERB business day. This section shall not apply to requests for injunctive relief whose filing requirements are governed by sections 32450 and 32455.

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5, 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3551(a), 3555.5(c), 3563, 3563.2, 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 28860 (b), 30751, 40122, 40122.1, 50121, 70122, 90300, 95651, 98160.5, 98162.5, 99561, 99561.2, 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32111. Notices to Employees Assigned Remote Work.

(a) Notwithstanding any regulation under Chapters 1 through 8~~10~~ of this Division, the Board may direct a public employer to provide notice of filing of a representation petition to its employees by electronic message, intranet, internet site, or other electronic means when the Board determines that a physical posting at the worksite is not practicable or effective because of remote work.

(b) For purposes of this section, the term “remote work” shall mean an arrangement where public employees perform their duties at a location other than a workplace provided by the public employer.

(c) Nothing herein shall prevent the Board from directing a public employer to provide notice by both physical and electronic means.

(d) This section does not limit or otherwise change the authority of the Board itself to order the posting of any notice.

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5, 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3551(a), 3555.5(c), 3563, 3563.2, 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 28860 (b), 30751, 40122, 40122.1, 50121, 70122, 90300, 95651, 98160.5, 98162.5, 99561, 99561.2, 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32115. Location to File Representation Matters.

(a) This regulation applies to documents that are not electronically filed. Except as provided for in subsections (b), (c), (d), (e) and (f), the appropriate location for filing documents in representation matters shall be the regional office which serves the

county in which the principal office of an employer is located, as described in Section 32075 of these regulations.

(b) The appropriate location for filing documents in representation matters under the Court Interpreter Act shall be as follows: in the case of Regions 1 and 4, the Los Angeles Regional Office; for Region 2, the San Francisco Regional Office; and for Region 3, the Sacramento Regional Office.

(c) The Sacramento Regional Office shall be the appropriate location for filing all documents in representation matters relating to the State of California.

(d) The San Francisco Regional Office shall be the appropriate location for filing documents in representation matters relating to the University of California or University of California College of the Law, San Francisco (formerly known as Hastings College of the Law).

(e) The Los Angeles Regional Office shall be the appropriate location for filing documents in representation matters relating to the California State University.

(f) The Sacramento Regional Office shall be the appropriate location for filing all documents with SMCS in PUC transit representation matters.

(g) Notwithstanding the above, documents filed through e-PERB shall be deemed filed at the appropriate location.

Authority cited: Sections 3509, 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 30751, 40122, 70122, 90300, 99561(f), 98160.5, 98162.5, 100301, 100309(b), 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3524, 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1, 71807 and 71825, Government Code; and Sections 25052, 28851, 30751, 30756, 40122, 50121, 70122, 90300, 95651, 99561(m), 98160.5, 98162.5, 100301, 100309(b), 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Sections13.91, Public Utilities Code.

32120. Filing Contracts with Board.

Each employer entering into a written agreement or memorandum of understanding with an exclusive representative pursuant to the Trial Court Act, Court Interpreter Act, TEERA, MMBA, EERA, Ralph C. Dills Act, HEERA, OCTDA, SFBART Act, ~~or~~ Sacramento RTD Act, Santa Cruz Metro Act, and VTA Act, if requested by the Board, shall file one copy of the agreement and any amendments thereto with the Board within 15 days of the request.

Authority cited: Sections 3509(a), 3524, 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3513(h), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5, 99561(f), 100300, and 102399(b), Public Utilities Code. Reference: Sections 3509, 3513(h), 3524, 3541.3(n), 3551(a), 3555.5(c), 3563(m), 3541.3(f), 3541.3(g), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a), 98160.5, 99561(f), 100300, and 102399(b), Public Utilities Code.

32125. Filing Confidential Documents.

(a) Unless the Board orders otherwise, in an electronic or paper filing that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:

(1) the last four digits of a social-security number or taxpayer-identification number, or, alternatively, a non-sensitive placeholder number in place of a social-security number or taxpayer-identification number;

(2) the year of the individual's birth;

(3) the minor's initial, or, alternatively, a non-sensitive, de-identified, and non-identifiable placeholder in place of the minor's name; and

(4) the last four digits of a financial-account number, or, alternatively, a non-sensitive placeholder number in place of a financial-account number.

(b) Prior to filing any document with PERB, a party shall redact the document as necessary to comply with subsection (a) and shall endeavor to redact other sensitive information that is not relevant to resolution of any matter before PERB. When redacting a document, a party shall endeavor to substitute non-sensitive and de-identified placeholders if needed to make a document or set of documents understandable.

(c) The Board may take any or all of the following measures to protect sensitive information:

(1) direct a party to refile or resubmit a document with redactions or modifications as requested by the Board, and in such cases the filing shall be deemed to be retroactive to the original filing date unless otherwise ordered by the Board; and

(2) protect sensitive information by redacting or modifying a document, placing all or part of a document under seal, or otherwise limiting public access to a document in a manner that complies with the Board's legal obligations and authority.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5, 99561(f), 98162.5, 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3, 3544.7(b), 3551(a), 3555.5(c), 3563, 3577(b), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5, 98162.5, 99561, 99564.4(b), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32130. Computation of Time.

(a) In computing any period of time under these regulations, except under Section 32776(c), (d), (e) and (f), the period of time begins to run the day after the act or occurrence referred to.

(b) Whenever the last date to file a document falls on Saturday, Sunday, or a holiday, as defined in Government Code Sections 6700 and 6701, or PERB offices are closed, the time period for filing shall be extended to and include the next regular PERB business day. The extension of time provided herein shall be applied subsequent to the application of any other extension of time provided by these regulations or by other applicable law.

(c) A five-day extension of time shall apply to any filing made in response to documents served by mail if the place of address is within the State of California, ten days if the place of address is outside the State of California but within the United States, and twenty days if the place of address is outside the United States. No extension of time applies in the case of documents served in person, or by electronic service as permitted by section 32140.

(d) A two-day extension of time shall apply to any filing made in response to documents served by overnight delivery.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5, 99561(f), 98162.5, 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3, 3544.7(b), 3551(a), 3555.5(c), 3563, 3577(b), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5, 98162.5, 99561, 99564.4(b), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32132. Extension of Time.

(a) A request for an extension of time within which to file any document with the Board itself shall be in writing and shall be filed at the headquarters office at least three days before the expiration of the time required for filing. The request shall indicate the reason for the request and, if known, the position of each other party regarding the extension. Service and proof of service pursuant to Section 32140 are required. Extensions of time may be granted by the Board itself or an agent designated by the Board itself for good cause only.

(b) No extensions of time shall be granted in cases before the Board itself that are subject to the limitations described in Section 32305(b).

(c) A request for an extension of time within which to file any document with a Board agent shall be in writing and shall be filed with the Board agent at least three days before the expiration of the time required for filing. The request shall indicate the reason for the request and, if known, the position of each other party regarding the extension and shall be accompanied by proof of service of the request upon each party. Extensions of time may be granted by the Board agent for good cause only. A Board agent may accept and approve a late filed request for an extension of time as provided for in Section 32136.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 99561(f), 98160.5, 98162.5, 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3509.3, 3513(h), 3520.8, 3541.3(n), 3541.35, 3563(m), 3551(a), 3555.5(c), 3563.5, 71639.1, 71639.15, 71825 and 71825.05, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5, 98162.5, 99561(m), 99561.4, 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32135. Non-Electronic Filing.

The following rules shall apply to parties authorized to file documents by a mail delivery service or in person:

(a) All documents not filed through e-PERB shall be considered “filed” when the originals are actually received by the appropriate PERB office, as stated in section 32115 of these regulations, during a regular PERB business day. All documents, except for proof of support as described in sections 32700, must also be accompanied by proof of service pursuant to Section 32140.

(b) Documents must be scan-ready, which means that documents must not be stapled or otherwise bound. Parties may submit two-sided documents.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5, 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5, 98162.5, 99561(m), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32136. Late Filing.

A late filing may be excused in the discretion of the Board for good cause only. A late filing which has been excused becomes a timely filing under these regulations. An error or malfunction of e-PERB shall be deemed good cause for late filing.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5, 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; Sections 12, 12(a) and 1013, Code of Civil Procedure; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5, 98162.5, 99561(m), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32140. Service; Proper Recipient for Filing or Service.

(a) All documents referred to in these regulations requiring “service,” except subpoenas, shall be considered “served” by the Board or a party when personally delivered, when deposited in the mail or with a delivery service properly addressed, or when sent by electronic service, as defined by Section 32093, and authorized in subdivision (b) of this section. All documents required to be served shall include a “proof of service” declaration signed under penalty of perjury which contains the following information: (1) The name of the declarant; (2) the county and state in which the declarant is employed or resides; (3) a statement that the declarant is over the age of 18 years; (4) the address of the declarant; (5) a description of the documents served; (6) the method of service and a statement that any postage or other costs were prepaid; (7) the name(s), address(es) and, if applicable, electronic mail address(es) used for service on the party(ies); and (8) the date of service.

(b) Electronic service of a document is authorized only when a party has agreed to accept service electronically in that action. A party indicates that the party agrees to accept electronic service by:

(1) Serving a notice on all parties that the party accepts electronic service and filing the notice with the Board. The notice must include the electronic mail address at which the party agrees to accept service; or

(2) Electronically filing any document with the Board. The act of electronic filing is evidence that the party agrees to accept service at the electronic mail address the party has furnished to the Board.

(c) Whenever "service" is required by these regulations, service shall be on all parties to the proceeding and shall be concurrent with the filing in question.

(d) Whenever a document is required to be "filed" or "served" with any of the below listed entities, the proper recipient shall be:

(1) The Board: the appropriate or designated regional office (see, e.g. Section 32075) unless the headquarters office is specified, or the document is filed through e-PERB;

(2) The Board itself: only at the headquarters office unless the document is filed through e-PERB;

(3) An employer

(A) in the case of a public school employer: the superintendent, deputy superintendent, or a designated representative of a school district; or other public school employer under the Board's jurisdiction; or to the school board at a regular or extraordinary meeting;

(B) in case of a state employer: The Governor or his designated representative on behalf of the State of California;

(C) in the case of a higher education employer:

(i) If the employer is the Regents of the University of California, the Office of the General Counsel of the University;

(ii) If the employer is the Board of Directors of University of California College of Law, San Francisco (formerly University of California Hastings College of the Law), the Office of the General Counsel of the College~~Hastings~~;

(iii) If the employer is the Trustees of the California State University for unfair practice proceedings, service shall be on the

Office of the General Counsel of the California State University; for representation proceedings, filing or service shall be on the Office of the Director of Employee Relations.

(D) in the case of a public agency employer as defined in Government Code section 3501(c): the chief executive officer, chief legal counsel, or individual whose job responsibilities includes receiving official documents on behalf of the chief executive officer, governing board, or chief legal counsel.

(E) in the case of a transit district employer as defined in Public Utilities Code section 99560.1(g), any person authorized to act on behalf of the employer.

(F) in the case of a trial court employer as defined in Government Code section 71601(k) or 71801(k): the individual designated to receive service or the executive officer.

(G) in the case of a regional committee employer as defined in Government Code section 71801(h) and 71807: the individual designated to receive service or the chair of the regional committee.

(H) in the case of the Judicial Council: the Administrative Director of the Courts or his or her designated representative.

(I) in the case of a PUC transit district employer as defined in Public Utilities Code sections 28848(a), 40122.1(a), 98160(b), 100011 and 102011, any person authorized to act on behalf of the employer.

(4) An employee organization: the individual designated to receive service or to the president or if there is no president, an officer of the organization.

(5) An individual: to the named person or to their representative of record.

(e) Documents filed electronically with PERB will be deemed to have been served with the appropriate recipient, except: (1) all initial filings with PERB must be served by personal delivery, mail or through another delivery service properly addressed, and (2) electronic service shall not qualify as sufficient for service on an unrepresented individual party who has declined to use e-PERB as permitted by section 32110 of PERB's regulations.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5, 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and

Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5, 98162.5, 99561(m), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32143. Abeyances.

(a) Upon request, the Board may place any matter in abeyance for a period that does not exceed six months. The Board may extend the abeyance for additional periods of six or less months if all parties agree. No case, however, shall remain in abeyance for more than two years without approval by the Board itself.

(b) Nothing herein shall preclude the Board from placing a matter in abeyance on its own accord.

(c) This section shall not apply to matters pending before the Board itself that are subject to the 180-day adjudication rule under section 32305 of these regulations.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b), and 102399(b), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; Sections 12, 12(a) and 1013, Code of Civil Procedure; and Sections 28849(b), 40122.1(a), 99561(m) and 102399(b), Public Utilities Code.

32145. Waiver of Time Periods.

The Board itself may waive or all parties to a proceeding, subject to the approval of the Board, may jointly waive any time period allowed for action by a party or the Board in order to expedite any pending matter.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(m), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32147. Expediting Matters Before the Board.

(a) Motions to Expedite

(1) A motion to expedite proceedings within a single division of the Board shall

be filed with the General Counsel, Chief Administrative Law Judge, Director of State Mediation and Conciliation Services, or the Board itself, as appropriate. A motion to expedite proceedings at all divisions shall be filed with the Board itself.

(2) A motion to expedite a case must be clearly labeled as a motion to expedite. The motion may not be part of or combined with any other document other than a brief or declarations supporting the motion. The motion shall state with specificity why one or more of the criteria in subparagraph (b)(2) of this Section are satisfied.

(3) Any other party to the proceeding may file a response to a motion to expedite within 5 business days of service of the motion. No reply briefs shall be filed unless otherwise ordered.

(4) Denial of any motion to expedite, in whole or in part, shall be without prejudice to a party's ability to renew its motion, unless otherwise ordered.

(5) The General Counsel, Chief Administrative Law Judge, Director of State Mediation and Conciliation Services, or the Board itself may expedite any case on its own motion.

(b) Applicable Criteria

(1) All divisions must expedite the following types of cases from initial filing to conclusion, without any motion or order:

(A) All cases arising under Section 32761, 32770, 32781, 33050, 33070, 33700, 40170, 40200, 51030, 51040, 51100, 51680, 61210, 61215, 61300, 61350, 61400, 61450, 71030, 71040, 71100, 71680, 81210, 81300, 81350, 81400, 81450, 91210, 91300, 91350, 91400, ~~or~~ 91450, 95030, or 95100.

(B) All cases in which a representation election or other certification or recognition process or procedure has been stayed pending resolution of the case.

(2) In all cases not subject to mandatory expedited processing under subparagraph (b)(1) of this Section, the following criteria shall be considered in determining whether a case should be expedited:

(A) whether expedited processing is necessary to preserve the Board's ability to issue an effective remedy;

(B) whether the case involves alleged conduct that would irreparably harm the exercise of employee or employee organization rights;

(C) whether the case involves an important and unresolved question of law, the

prompt resolution of which would significantly benefit one or more segments of the public sector labor-management community;

(D) whether the case arises from or relates to a representation or recognition dispute;

(E) whether a court injunction is in place pending resolution of the case;

(F) the number of employees affected, the size of any potential monetary remedy, or the nature, scope, or importance of any potential non-monetary remedy; and

(G) any compelling circumstances showing that expedited processing is warranted.

(c) Required Procedures for Expedited Cases

(1) In all cases falling under subparagraph (b)(1) of this Section, and in other cases after an order expediting the matter has issued, the case shall be given priority and decided on an expedited basis in the manner determined to be appropriate by, as applicable, the General Counsel, Chief Administrative Law Judge, Director of State Mediation and Conciliation Services, or the Board itself.

(2) Any document filed in a case falling under subparagraph (b)(1) of this Section, or in any other case if the document is filed in a division in which the case has been expedited, shall prominently display the words "EXPEDITED CASE" on the document's first page.

(3) When exceptions are pending in a case falling under subparagraph (b) of Section 32305, no abeyance or extension of time may be granted.

(4) In any expedited case not falling under subparagraph (b) of Section 32305, an abeyance may only be granted if all parties agree. An extension of time to file any document, or a request to continue a formal hearing, may be granted only when:

(A) the parties mutually agree to the extension of time or continuance;

(B) the continuance is necessary to mitigate prejudice caused by an amended pleading; or

(C) the party requesting the extension of time or continuance demonstrates extraordinary circumstances that outweigh any prejudice to other parties.

Authority cited: Sections 3509(a), 3513(h), 3524.52(a), 3541.3(g), 3541.35, 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f),

100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code; and Section 10421(e), Welfare and Institutions Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3541.35, 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(m), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code; and Section 10421(e), Welfare and Institutions Code.

32149. Investigative Subpoenas.

The Board may issue investigative subpoenas and subpoenas duces tecum compelling the attendance of witnesses and production of records at investigative proceedings. The provisions in Section 32150 governing issuance of subpoenas and motions to quash subpoenas shall be applicable to investigative subpoenas issued by the Board.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(g), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32150. Subpoenas.

(a) Definitions

(1) “Testimonial subpoena” means a subpoena that solely requires a witness to appear at a Board hearing.

(2) “Records subpoena” means a subpoena that requires production of documents, electronically stored information, video records, audio records, or other records or things, either at a Board hearing or at a time and location in advance of such a hearing. A records subpoena may also require a witness to appear at a Board hearing to testify.

(3) “Declaration of materiality” means a declaration signed under penalty of perjury, submitted by the requesting party or that party's representative, which:

(A) Describes the requested items; and

(B) Explains why the requested items are relevant to the issues involved in the case.

(4) “Consumer or employee notice” means a notice provided to a non-party consumer or employee as set forth in Code of Civil Procedure sections 1985.3 and 1985.6.

(b) Geographic Coverage of Subpoenas: Testimonial and records subpoenas issued shall extend to all parts of the State of California.

(c) Requests to Shorten or Lengthen Timelines: A Board agent has discretion to alter the timelines under subsections (d), (e), (f), (g) and (i).

(d) Procedures for Obtaining Subpoenas: After the Board notifies the parties that an evidentiary hearing has been scheduled, and before the hearing is complete, any party may obtain signed testimonial and records subpoenas from the assigned Board agent (typically an Administrative Law Judge or hearing officer) or designee by using the following procedures:

(1) Blank subpoenas may be obtained at each of the Board's offices as well as on the Board's website. A party or party representative shall fill out the blank subpoena and provide it to the Board agent for review and signature.

(2) When filling out a blank records subpoena, a requesting party shall specify the records requested, and shall specify a production date that complies with subsection (f) below.

(3) When submitting a records subpoena to a Board agent for signature, a party or party representative must include a declaration of materiality.

(4) The Board agent has discretion to require a requesting party to serve a consumer or employee notice if a records subpoena seeks confidential personal records of a natural person who is not a party, an agent of a party, or an employee exclusively represented by a party.

(e) Procedures for Serving Subpoenas: After obtaining a signed subpoena from a Board agent or designee, a party or party representative shall serve the subpoena by using the following procedures.

(1) Method of service: For a subpoena to be effective, it must be (a) personally served on the witness; or (b) if a subpoena is being served on a party or an agent of a party, it is permissible to serve a representative who is designated in a notice of appearance or who has signed a filing in the matter on behalf of the party, unless that representative no longer represents the party.

(2) Time of service: If a testimonial subpoena is served fewer than ten (10) days before the date on which the witness must testify, or if a records subpoena is served fewer than twenty (20) days before the records must be produced, then the person or entity subject to the subpoena may request that the subpoena be

revoked or limited for insufficient notice. The Board agent shall have discretion to find that the amount of notice was sufficient under the circumstances and the subpoena is therefore effective, to declare the subpoena ineffective, or to adjust, as may be appropriate under the circumstances, the scope, timing, methods, or other details regarding the testimony or records requested.

(3) Service of the declaration of materiality: The declaration of materiality must be served together with the corresponding records subpoena.

(4) Witness fee and mileage reimbursement: A witness who is neither a party nor an agent of a party may demand, at the time of service, a witness fee of $35.00 and a mileage reimbursement of $0.20 per mile, round-trip, for travel required to testify. If such a demand is made, the requesting party must provide the requested fee and reimbursement at the time of service.

(5) Service of the consumer or employee notice: If the Board agent has required a consumer or employee notice, such notice must be served, together with a copy of the records subpoena and the declaration of materiality, on the non-party consumer or employee. Such service must be made at least ten (10) days prior to the production date.

(f) Production Schedule for Records Subpoenas

(1) The requesting party shall specify in the records subpoena the date, time, and location for production of requested items. The requested production date may be a hearing date. If the responding witness, entity, or party has at least twenty (20) days to respond following service of the records subpoena, then the requested production date may be a non-hearing date. The requested production date may not be later than the last scheduled day of hearing, unless otherwise ordered by the Board agent.

(2) The responding person or entity shall produce the requested items as specified in the records subpoena unless agreed otherwise or the Board orders otherwise. The responding person or entity need not produce items covered by a motion to revoke or limit a subpoena filed pursuant to subsection (h), pending resolution of the motion.

(3) If a records subpoena specifies a requested production date that is not a hearing date, and requires both records production and witness testimony, then the subpoena shall be deemed to require such testimony at the next scheduled hearing date, unless agreed otherwise or the Board orders otherwise.

(g) Motion to Extend Records Production Date: If a scheduled records production date is prior to the next scheduled hearing date, the responding person or entity with good cause may file a written motion to extend the requested production date by up to an additional ten (10) days or to the date of the scheduled formal hearing, if less than ten (10) days. The motion must be filed and served at least seven (7) days before the

scheduled records production date.

(h) Motion to Revoke or Limit a Testimonial Subpoena: A motion to revoke a testimonial subpoena may be filed and served on the requesting party in writing or made orally at the scheduled formal hearing. The Board agent may grant or deny the motion, limit a witness's testimony, or grant a protective order in light of the arguments presented by the parties.

(i) Motion to Revoke or Limit a Records Subpoena: A responding person or entity may file a written motion to revoke or limit a records subpoena pursuant to the following procedures:

(1) The motion must be filed and served no later than twelve (12) days following service of the subpoena. The requesting party must submit any opposition no later than six (6) days after the responding person or entity serves such a motion. There shall be no reply briefs unless the Board agent directs otherwise.

(2) In resolving any dispute regarding a records subpoena, the Board agent may exercise discretion to set prehearing conferences, other formal hearings, or otherwise order other production dates. The Board agent may revoke or limit a records subpoena to the extent items requested to be produced are not relevant to any matter under consideration in the proceeding or are protected by an applicable privilege, or the subpoena is otherwise invalid. When the Board agent resolves such a dispute at a prehearing conference and orders production of certain items covered by the motion, the Board agent shall direct the date, format, and means of producing such items. When the Board agent resolves such a dispute on or after the first day of hearing and orders production of certain items covered by the motion, all such items shall be produced within 24 hours of the Board agent's ruling. The Board agent is also empowered to resolve any objections filed by a consumer or employee resulting from a consumer or employee notice regarding subpoenaed records.

(j) Motion to Enforce Testimonial or Records Subpoena in Superior Court: The Board itself may direct the General Counsel to apply to an appropriate superior court for an order requiring compliance with a subpoena. The following procedures shall apply.

(1) A party may make a request to initiate enforcement proceedings to the Board agent assigned.

(2) At any stage in the proceeding, a Board agent may request, through the General Counsel, that the Board itself authorize the General Counsel to apply for an order of enforcement.

(3) The Board itself shall authorize the General Counsel to seek enforcement on the recommendation of the Board agent or General Counsel, unless, in the judgment of the Board itself, the enforcement of such testimonial or records subpoena would be inconsistent with the law or policies of the applicable Act.

(4) If the Board itself directs the General Counsel to seek enforcement, the evidentiary record will remain open until the Board agent determines that the court order will not be forthcoming or that further delay would frustrate the policies of the applicable Act, or until the responding party produces the testimony or records sought.

(5) At any time, the Board itself may direct the General Counsel to withdraw an enforcement action based upon voluntary compliance or otherwise as the interests of fairness may require.

(k) Inferences and Sanctions for Failure to Comply with Subpoenas: As an alternative to seeking Superior Court enforcement as set forth in subsection (j), the Board agent may draw adverse inferences from a party's failure to comply with a valid subpoena, and may prohibit such a party from presenting evidence or arguments, as the interests of fairness may require. The Board agent may not, however, draw an adverse inference against a party unless that party has been given advance notice and an opportunity to respond regarding such a potential adverse inference.

(l) Board Agent as Witness at a Hearing: The Board itself may order that a subpoenaed Board agent be produced at a formal hearing, only if that Board agent is deemed essential to the resolution of the case and no rational decision can be reached without such agent being produced.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 3601, 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(g), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32155. Recusals.

(a) (1) “Recusal” means refraining from participation in a case or proceeding, including but not limited to refraining from an attempt to influence any other person with respect to the matter.

(2) “Party representative,” as used in this Section, means any person who has advised a party regarding the specific events giving rise to the case or proceeding at issue, entered an appearance in the case or proceeding, or otherwise been designated by a party as that party's representative in the case or proceeding.

(b) A Board member, Board agent, conciliator, mediator, or other PERB officer,

employee, or contractor shall recuse himself or herself from a case or proceeding if any one of the following circumstances exists:

(1) He or she has a financial interest in the outcome of the case or proceeding, or is indebted, through money borrowed as a loan, to a party, party representative, or witness in the case or proceeding.

(2) He or she is related, by consanguinity or affinity within the third degree computed according to the rules of law, to a party, party representative, or witness in the case or proceeding.

(3) He or she at any time participated in the specific events giving rise to the case or proceeding, or served as a party representative in the case or proceeding.

(4)(A) For personnel covered by this Section other than Board members and Legal Advisors, within one year prior to the initial filing date of the case or proceeding, or at any time thereafter, he or she:

1. was an officer, director, trustee, or employee of an entity that is a party in the case or proceeding;

2. personally served as an attorney, or as a non-attorney representative, on behalf of any person or entity that is a party or witness in the case or proceeding; or

3. held a paid position, including but not limited to a position as an employee, contractor, partner, or shareholder, with a law firm, legal department, or other organization representing a person or entity that is a party or witness in the case or proceeding.

(B) For Board members and Legal Advisors, if, within one year prior to the date that any appeal, exceptions, motion, or request in the case or proceeding was first placed on the Board's docket or at any time thereafter, he or she:

1. was an officer, director, trustee, or employee of an entity that is a party in the case or proceeding;

2. personally served as an attorney, or as a non-attorney representative, on behalf of any person or entity that is a party or witness in the case or proceeding; or

3. held a paid position, including but not limited to a position as an employee, contractor, partner, or shareholder, with a law firm, legal department, or other organization representing a person or entity that is a party or witness in the case or proceeding.

(5) As a result of other circumstances, he or she cannot fairly consider the case

or proceeding, or the interests of justice require recusal.

(c) If a Board member learns of any facts which, under the provisions of this Section, warrant recusal from a case or proceeding before the Board itself, he or she shall recuse and notify the Board of such recusal. If the General Counsel, Chief Administrative Law Judge, or Division Chief of the State Mediation and Conciliation Service learns of any facts which, under the provisions of this Section, warrant recusal from a case or proceeding in which he or she would otherwise be directly or indirectly involved, he or she shall recuse, notify the Board of such recusal, and designate a replacement to act in his or her place regarding such case or proceeding. If any other Board agent, conciliator, mediator, or PERB official, employee, or contractor learns of any facts which, under the provisions of this Section, warrant recusal from a case or proceeding in which he or she might otherwise be directly or indirectly involved, he or she shall notify his or her supervisor, who shall take appropriate action.

(d) Any party to a case or proceeding before the Board itself may file directly with a Board member a written motion for recusal. The motion shall set forth by competent evidence all relevant facts. A motion for recusal must be filed and served on all parties no later than twenty (20) days after the party seeking recusal first knew or should have known that the Board member was eligible to be assigned to a panel in the case or proceeding and should be recused from the case or proceeding. Any response to such a motion by another party must be filed and served on all parties within ten (10) days after service of the motion. There shall be no reply briefs unless requested by the Board. The Board member subject to the recusal motion shall decide the motion. If the motion is denied, then the party seeking recusal can seek review from the Board itself within ten (10) days from such denial. Any response by another party to such a request for review must be filed and served on all parties within ten (10) days after service of the motion. There shall be no reply briefs regarding such a request for review, unless requested by the Board.

(e) Any party to a case or proceeding that is not before the Board itself may file a motion for recusal directly with any Board agent, conciliator, or mediator to whom the matter is assigned. Such motion shall be written, or if oral, reduced to writing within 24 hours of the motion. The motion shall set forth by competent evidence all relevant facts. A motion for recusal must be filed no later than twenty (20) days after the party first knew or should have known that the Board agent, conciliator, or mediator has been assigned a formal role in the case or proceeding. Any response to such a motion by another party must be filed and served on all parties within ten (10) days after service of the motion. There shall be no reply briefs unless requested by the Board agent. The Board agent, conciliator, or mediator subject to the recusal motion shall decide the motion, unless otherwise ordered. If the motion is granted, a new Board agent, conciliator, or mediator shall be assigned. If the motion is denied, the party seeking recusal may, within ten (10) days after its motion for recusal is denied, file with the Board itself a request for special permission to appeal such denial. If the Board does not grant special permission to appeal the denial, the party seeking recusal may file an appeal after hearing or investigation and issuance of any decision, and may choose to combine such an appeal with an appeal or exceptions as to the merits.

(f) Any party aggrieved by the Board's determination regarding a motion for recusal may include the matter in a writ of extraordinary relief filed pursuant to Government Code Section 3509.5, 3520, 3542, 3564, 71639.4 or 71825.1 or Public Utilities Code section 99562 seeking judicial review of the Board's decision on the merits, or, in cases reviewed by the Board itself pursuant to Section 32635, in a writ proceeding in superior court challenging the Board's refusal to issue a complaint.

(g) Nothing herein shall preclude any person subject to recusal from invoking the rule of necessity as provided for under section 87101 of the Government Code.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563, 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3509.5, 3513, 3520, 3541.3, 3542, 3551(a), 3555.5(c), 3557, 3563, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code; and Sections 4.4, 13.91, 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561, 99562, 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Public Utilities Code.

32162. Confidentiality of Board Investigations.

The Board shall not disclose any confidential statement submitted by a party, or the identity of any person who submits such a statement, unless the person submitting the statement agrees to disclosure or disclosure is required:

(a) Pursuant to Section 32206, concerning production of statements of witnesses after direct testimony;

(b) In a court proceeding upon a complaint for injunctive relief;

(c) By order of the Board itself;

(d) By final order of a court of competent jurisdiction.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(g), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32164. Application for Joinder of Parties.

(a) Any employee, employee organization or employer may file with the Board agent an application for joinder as a party in a case. Service and proof of service of the application pursuant to Section 32140 are required.

(b) The application for joinder shall be in writing, signed by the representative filing it and contain a statement of the extent to which joinder is sought and a statement of all the facts upon which the application is based. The Board shall allow each party an opportunity to oppose the application.

(c) The Board may allow joinder if it determines that the party has a substantial interest in the case or will contribute substantially to a just resolution of the case and will not unduly impede the proceeding.

(d) The Board may order joinder of an employer, employee organization or individual, subject to its jurisdiction, on application of any party or its own motion if it determines that:

(1) In the absence of the employer, employee organization or individual, as a party, complete relief cannot be accorded; or

(2) The employer, employee organization or individual has an interest relating to the subject of the action and is so situated that the disposition of the action in their absence may:

(A) As a practical matter impair or impede their ability to protect that interest; or

(B) Leave any of the parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of said interest.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(g), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

SUBCHAPTER 3. HEARINGS.

32165. Application to Join a Representation Hearing As a Limited Party.

In a representation proceeding the Board agent may allow any person, employer, or employee organization which did not file a timely request for recognition, intervention or petition to join the hearing as a limited party provided:

(a) The person, employer, or employee organization files a written application prior to the commencement of the hearing stating facts showing that it has an interest in the proceeding; and

(b) The Board agent determines that the person, employee organization or employer has an interest in the case and will not unduly impede the proceeding.

(c) The Board agent may grant participation in the hearing which shall be limited to the right to make an oral statement on the record and to file a written brief subject to such conditions as may be prescribed.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 30751, 40122, 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(a), 3541.3(b), 3541.3(h), 3541.3(l), 3541.3(m), 3541.3(n), 3563(a), 3563(c), 3563(g), 3563(k), 3563(l), 71639.1 and 71825, Government Code; and Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(a), 99561(c), 99561(g), 99561(k), ~~and~~ 99561(l), 100301, 100309(b), 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32166. Application to Join a Representation Hearing As a Full Party.

(a) An employee organization shall be allowed to participate fully in a representation hearing provided it has filed a written application with the regional office not less than 10 days prior to the commencement of the hearing, accompanied by either 10 percent support of any unit in dispute at the hearing, or 10 percent support of a proposed unit which overlaps another unit in dispute at the hearing. Proof of support is defined in Chapter 1, Section 32700. A copy of the written application, excluding the proof of support, shall be served on the parties. Proof of service pursuant to Section 32140 is required.

(b) The Board agent may waive the deadline for filing an application pursuant to this Section for good cause.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 30751, 40122, 70122, 90300, 98160.5(b),

98162.5, 99561(f), 100301, 100309(b), 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(a), 3541.3(b), 3541.3(h), 3541.3(l), 3541.3(m), 3541.3(n), 3563(a), 3563(c), 3563(g), 3563(k), 3563(l), 71639.1 and 71825, Government Code; and Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(a), 99561(c), 99561(g), 99561(k), ~~and~~ 99561(l), 100301, 100309(b), 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32168. Conduct of Hearing

(a) Hearings shall be conducted by a Board agent designated by the Board, except that the Board itself or a Board member may act as a hearing officer.

(b) A Board agent may be substituted for another Board agent at any time during the proceeding at the discretion of the Chief Administrative Law Judge in unfair practice cases or the General Counsel in representation matters. Prior to ordering a substitution the parties shall be notified and provided an opportunity to state objections to the proposed substitution. Substitutions of Board agents shall be appealable only in accordance with Sections 32200 or 32300.

(c) Hearings shall be open to the public, except as provided in Section 32170.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 30751, 40122, 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(a), 3541.3(b), 3541.3(h), 3541.3(l), 3541.3(m), 3541.3(n), 3563(a), 3563(c), 3563(g), 3563(k), 3563(l), 71639.1 and 71825, Government Code; and Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(a), 99561(c), 99561(g), 99561(k), ~~and~~ 99561(l), 100301, 100309(b), 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32169. Depositions.

The Board may order the taking of testimony of a material witness within or outside the State by deposition in the manner prescribed for civil actions only upon the filing of an application by a party showing that:

(a) The witness is unable to attend the hearing because of illness, infirmity or imprisonment; or

(b) The witness cannot be compelled to attend the hearing by subpoena. The application shall state the case number, name and address of the witness, show the materiality of the testimony, and shall request an order requiring the witness to appear and testify before a named officer authorized by law to take depositions. Where the

witness resides outside the State and the Board has authorized a deposition of the witness, the Board shall obtain an order of the Superior Court in Sacramento County for that purpose pursuant to Section 11189 of the Government Code.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(g), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32170. Authority of Board Agent Conducting a Hearing.

(a) Definitions:

(1) “Prehearing conference” means a proceeding conducted by the Board agent with the parties, either before a formal hearing or between scheduled formal hearing days in order to resolve procedural issues; coordinate and organize the hearing; rule on preliminary and jurisdictional matters; take limited sworn witness testimony, admit documentary or other evidence, take official notice of facts, and approve stipulated facts; and consider any other matters.

(2) “Formal Hearing” means an adjudicative proceeding conducted by the Board agent with the parties, which may include taking sworn witness testimony, admitting documentary or other evidence, taking official notice of facts, and approving stipulated facts.

(3) “Hearing” means those prehearing conference(s) and/or formal hearing day(s) conducted for an individual case or consolidated cases.

(b) The Board agent conducting a hearing shall have authority to:

(1) Inquire fully into all issues and obtain a complete record upon which the decision can be rendered;

(2) Authorize the taking of depositions;

(3) Issue appropriate subpoenas and rule upon motions related to petitions to revoke subpoenas, set dates, formats, and means for production in response to a records subpoena, and limit the parties' use of produced records;

(4) Regulate the course and conduct of the hearing, including, but not limited to, the power to exclude a witness from the hearing room;

(5) Order the parties to participate in (A) in-person, video, or telephonic settlement conferences with a designated Board agent; and/or (B) in-person, video, or telephonic prehearing conferences to clarify and resolve issues raised by the parties or by the Board agent, including but not limited to scheduling issues, subpoena disputes, motions, requests to consolidate proceedings, requests to bifurcate proceedings, requests to stay, abate, or continue proceedings, and other substantive or procedural matters;

(6) Rule on objections, motions and questions of procedure;

(7) Administer oaths and affirmations;

(8) Take evidence and rule on the admissibility of evidence, and rule on offers of proof;

(9) Examine witnesses for the purpose of clarifying the facts and issues;

(10) Approve or reject proposed stipulations, including stipulations of fact, or requests for administrative notice;

(11) Issue any needed protective orders limiting use of, or access to, records produced pursuant to a subpoena, exhibits, transcripts, and any other parts of the hearing file;

(12) Conduct an in camera review of records;

(13) Authorize the submission of briefs and set the time for the filing thereof;

(14) Hear oral argument;

(15) Render and serve the proposed decision on each party;

(16) Carry out the duties of administrative law judge as provided or otherwise authorized by these regulations or by the applicable Act.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3541.3(k), 3551(a), 3555.5(c), 3563(g), 3563(j), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(g), 99561(j), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32175. Rules of Evidence: Representation Cases.

(a) Compliance with the technical rules of evidence applied in the courts shall not be required. Oral evidence shall be taken only on oath or affirmation. However, immaterial, irrelevant, or unduly repetitious evidence may be excluded. The rules of privilege shall apply.

(b) A party seeking to offer a written document into evidence shall provide a copy of the document for each party to the hearing.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 30751, 40122, 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(a), 3541.3(b), 3541.3(h), 3541.3(l), 3541.3(m), 3563(a), 3563(c), 3563(g), 3563(k), 3563(l), 71639.1 and 71825, Government Code; and Sections 25052, 28851, 37051, 40122, 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(a), 99561(c), 99561(g), 99561(k), 99561(l), 100301, 100309(b), 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32176. Rules of Evidence: Unfair Practice Cases.

Compliance with the technical rules of evidence applied in the courts shall not be required. Oral evidence shall be taken only on oath or affirmation. Hearsay evidence is admissible but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. Immaterial, irrelevant, or unduly repetitious evidence may be excluded. The rules of privilege shall apply. Evidence of any discussion of the case that occurs in an informal settlement conference shall be inadmissible in accordance with Evidence Code Section 1152.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b), and 102399(b), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3541.3(i), 3551(a), 3555.5(c), 3563(g), 3563(h), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(g), 99561(h), 100309(b), and 102399(b), Public Utilities Code.

32178. Burden of Proof: Unfair Practice Cases.

The charging party shall prove the complaint by a preponderance of the evidence in order to prevail.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b), and 102399(b), Public Utilities Code. Reference:

Sections 3509, 3513(h), 3541.3(h), 3541.3(i), 3551(a), 3555.5(c), 3563(g), 3563(h), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(g), 99561(h), 100309(b), and 102399(b), Public Utilities Code.

32180. Rights of Parties.

(a) Each party to a hearing has the right to self-representation, or representation by counsel or by non-attorney representative.

(b) Each party to a hearing may, subject to appropriate rulings by the Board agent conducting the hearing pursuant to section 32170 of these regulations, introduce non-testimonial evidence and to call, examine, and cross-examine witnesses and introduce documentary and other evidence on the issues.

(c) The Board agent conducting a hearing shall determine the location of the hearing and whether parties, representatives, and witnesses shall participate in a hearing in person, telephonically, by video, or a combination thereof.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(g), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32185. Ex Parte Communications.

(a) No party to a formal hearing before the Board on an unfair practice complaint shall, outside the hearing of the other parties, orally communicate about the merits of the matter at issue with the Board agent presiding. Nor shall any party to a formal hearing communicate in writing with the Board agent presiding without providing a copy of the writing to the other parties.

(b) A Board agent who receives such an ex parte communication shall state on the record that the communication was made, identify the person who made it and either summarize the contents of the communication, or provide all parties with a copy of such communication. The Board agent shall then afford the other parties to the hearing the opportunity to rebut the communication on the record.

Authority cited: Sections 3509(a), 3541.3, 3513(h), 3551(a), 3555.5(c), 3563, 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 100309(b), and 102399(b), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3541.3(i), 3541.3(n), 3551(a), 3555.5(c), 3563(g), 3563(h) 3563(m), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a),

98160.5(b), 99561(g), 99561(h), 99561(m), 100309(b), and 102399(b), Public Utilities Code.

32190. Motions.

(a) After a complaint has been issued, written motions made before, during or after a formal hearing shall be filed with the Board agent assigned to the proceeding. Service and proof of service pursuant to Section 32140 are required.

(1) Motions to strike an allegation, to defer a case to arbitration, or to dismiss or partially dismiss a complaint, including motions styled as motions for summary judgment or for judgment on the pleadings, must be filed with the Board agent assigned to the proceeding no later than forty-five (45) days prior to the first day of the scheduled formal hearing, unless otherwise ordered by the Board. Service and proof of service pursuant to Section 32140 are required.

(2) A response to a motion filed pursuant to subsection (a)(1) shall be filed with the Board agent within twenty (20) days of service of the motion, or within such time as is directed by the Board agent. Service and proof of service pursuant to Section 32140 are required. There shall be no reply briefs unless requested by the Board agent.

(3) The above filing deadlines shall not apply in any proceeding designated for expedited treatment pursuant to Section 32147. In expedited hearings, the Board agent shall have the authority and discretion to set timelines for the filing of motions and responses.

(4) Once the scheduled formal hearing has commenced, no motion specified in subsection (a)(1) above may be filed or orally presented until the charging party has fully presented evidence in its case, exclusive of rebuttal evidence.

(b) Except as specified in subsection (a)(2) above, responses to all other motions shall be filed with the Board agent within fourteen (14) days of service of the motion, or within such time as is directed by the Board agent. Service and proof of service pursuant to Section 32140 are required. There shall be no reply briefs unless requested by the Board agent.

(c) Except as specified in subsections (a)(1) and (a)(4), during the hearing, a motion or the response thereto may be made orally on the record.

(d) The Board agent may hear oral argument or take evidence on any motion.

(e) No hearing shall be delayed because a motion is filed unless the Board so directs.

(f) Rulings on motions shall not be appealable except as specified in Sections 32200 and 32360.

(g) This Section shall not apply to motions pertaining to subpoenas under Section

32150, nor to motions to amend a complaint.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a) 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(g), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32200. Appeal of Rulings on Motions and Interlocutory Matters.

A party may object to a Board agent's interlocutory order or ruling on a motion and request a ruling by the Board itself. The request shall be in writing to the Board agent and a copy shall be sent to the Board itself. Service and proof of service pursuant to Section 32140 are required. The Board agent may refuse the request, or may join in the request and certify the matter to the Board. The Board itself will not accept the request unless the Board agent joins in the request. The Board agent may join in the request only where all of the following apply:

(a) The issue involved is one of law;

(b) The issue involved is controlling in the case;

(c) An immediate appeal will materially advance the resolution of the case.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(g), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32205. Request to Continue a Formal Hearing.

(a) Request Filed At Least Seven Days Prior to the Hearing. Prior to filing a request for continuance, the requesting party must attempt to contact representatives from all other parties to ascertain their positions on the request. The request for continuance must explain in writing the grounds for the request and, to the extent the requesting party has been able to ascertain, the other parties' positions regarding the request. The request

shall be granted only if the requesting party demonstrates good cause for the continuance that outweighs any prejudice to other parties.

(b) Request Filed Fewer Than Seven Days Prior to the Hearing. A request for continuance filed fewer than seven days prior to the hearing may only be considered if it demonstrates extraordinary circumstances. Prior to filing such a request, the requesting party must attempt to contact representatives from all other parties to ascertain their positions on the request. The request must be in writing or, if made orally, explain why it cannot be reduced to writing. It must explain the grounds for the request, any reasons the request was not made earlier, and, to the extent the requesting party has been able to ascertain, the other parties' positions regarding the request. The request shall be granted only if the requesting party demonstrates extraordinary circumstances justifying the continuance that outweigh any prejudice to other parties.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(g), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32206. Production of Statements of Witnesses After Direct Testimony.

(a) After direct examination of a witness, and upon motion of any party, the hearing officer shall order the production of any statement made by the witness to a Board agent that relates to the subject matter of the testimony.

(b) A statement includes a written declaration by the witness, signed or otherwise approved by the witness, or a recording or a transcription of a recording which is a verbatim recital of something said by the witness.

(c) If the party sponsoring the testimony claims that a statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony, the party shall deliver the statement to the hearing officer for his or her private inspection. The hearing officer may excise those portions of the statements which do not relate to the subject matter of the testimony. The remainder of the statement shall be delivered to the moving party.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and

Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(g), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32207. Hearings.

The parties may submit stipulated facts where appropriate to the Board agent. No hearing shall be required unless the parties dispute the facts in the case.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(g), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32209. Correction of Transcript.

A motion to correct alleged errors in the transcript of a proceeding before a Board agent must be filed with the Board agent presiding at the proceeding within 20 days of the date of service of the transcript. The motion shall specify the alleged errors and provide a proposed corrected version. Within 10 days following the date of service of such a motion, any party may file with the Board agent a response to the motion. Service and proof of service of the motion and of any response to a motion pursuant to Section 32140 are required. Failure to file a timely motion to correct will be deemed a waiver of any objection to the accuracy of the transcript.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(g), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32210. Informational Briefs and Arguments.

(a) Any person may file a petition to submit an informational brief or to argue orally in any case at a hearing or before the Board itself.

(b) The petition shall include the following information:

(1) The case number;

(2) The title of the case;

(3) The name, address, telephone number and any affiliation of the petitioner;

(4) The name, address and telephone number of any agent to be contacted;

(5) A statement setting forth the nature of the petitioner's interest or involvement in the case;

(6) A statement setting forth the specific issues of procedure, fact, law or policy which the petitioner wishes to address.

(c) The petition may be granted or denied at the discretion of the Board.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3541.3(n), 3551(a), 3555.5(c), 3563(f), 3563(m), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(a), 3541.3(b), 3541.3(e), 3541.3(g), 3541.3(h), 3541.3(i), 3541.3(l), 3541.3(m), 3541.3(n), 3551(a), 3555.5(c), 3563(a), 3563(b), 3563(e), 3563(f), 3563(g), 3563(h), 3563(k), 3563(l), 3563(m), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561, 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32212. Briefs and Oral Argument.

Prior to the close of the hearing, the board agent shall rule on any request to make oral argument or to file a written brief. The Board agent shall set the time required for the filing of briefs. Any party filing a brief shall file the brief with the Board agent. Service and proof of service of the brief pursuant to Section 32140 are required.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h),

3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(g), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32215. Proposed Decision.

A Board agent shall issue a written proposed decision or submit the record of the case to the Board itself for decision pursuant to instructions from the Board itself. The Board shall serve the proposed decision on each party. Unless expressly adopted by the Board itself, a proposed or final Board agent decision, including supporting rationale, shall be without precedent for future cases.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(g), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32220. Contemptuous Conduct.

Contemptuous conduct of a party or its agent shall be grounds for the exclusion of the party or agent from any proceeding related to the case.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(g), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32230. Refusal of Witness to Testify.

The refusal of a witness at a hearing to answer any question which has been ruled proper by the board agent conducting the hearing may be grounds for striking the full

testimony of such witness on the same matter and or such other action as deemed appropriate by the Board.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(g), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

SUBCHAPTER 4. DECISIONS OF THE BOARD ITSELF.

Article 1. Ex Parte Communications.

32295. Ex Parte Communications.

No party shall communicate with the Board itself, any member of the Board itself or any legal adviser to a member of the Board, orally or in writing, about any matter pending before the Board except as provided for in these regulations.

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3551(a), 3555.5(c), 3563, 3563.2, 71639.1 and 71825, Government Code; and Sections 2502, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561, ~~and~~ 99561.2, 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

Article 2. Appeal of Board Agent Decision to the Board Itself.

32300. Exceptions to Board Agent Decision.

(a) A party may file with the Board itself a statement of exceptions to a Board agent's proposed decision issued pursuant to Section 32215 within 20 days following the date of service of the decision, or as provided in Section 32310. The statement of exceptions shall be filed with the Board itself in the headquarters office pursuant to

Section 32135. Service and proof of service of the statement of exceptions pursuant to Section 32140 are required. The statement of exceptions shall:

(1) clearly and concisely state why the proposed decision is in error;

(2) cite to the relevant exhibit or transcript page in the case record to support factual arguments; and

(3) cite to relevant legal authority to support legal arguments.

(b) A statement of exceptions shall be a single integrated document that must not exceed 14,000 words, including footnotes. A statement of exceptions may be in the form of a brief and may contain tables of contents and authorities. Tables of contents and tables of authorities do not count toward the word limit.

(c) Exceptions shall cite only to evidence: (1) in the record of the case, and (2) of which administrative notice may properly be taken.

(d) Absent good cause, a statement of exceptions that does not comply with this Section will not be considered by the Board itself.

(e) Absent good cause, the Board itself will not consider: (1) issues and arguments not raised in the statement of exceptions, or (2) arguments raised in the statement of exceptions that do not impact the outcome of a case. This subsection shall not preclude the Board itself from applying the unalleged violations doctrine or making sua sponte findings of fact or conclusion of law.

(f) A request for permission to file a statement of exceptions exceeding 14,000 words must be filed with the Board itself and served on all parties pursuant to Section 32140 no later than five days before the exceptions are due. The request must establish good cause to permit a longer statement of exceptions. The party requesting to exceed the word limit may not file its exceptions until the Board rules on the request.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3551(a), 3555.5(c), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(j), 99561(m), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Public Utilities Code.

32305. Finality of Board Agent Decisions.

(a) Unless a party files a timely statement of exceptions to the proposed decision, the decision shall become final on the date specified therein.

(b) In cases arising under Section 32761, 32770, 32781, 33050, 33070, 33700, 40170, 40200, 51030, 51040, 51100, 51680, 61210, 61215, 61300, 61350, 61400, 61450, 71030, 71040, 71100, 71680, 81210, 81300, 81350, 81400, 81450, 91210, 91300, 91350, 91400, 91450, 95030, or 95100, and where exceptions are filed pursuant to Section 32300, the Board agent's decision shall become final unless the Board itself issues a decision not later than 180 days from the date the exceptions were filed with the Board.

(c) The Board shall not grant abeyances or extensions of time in cases before the Board itself that are subject to subparagraph (b), above.

Authority cited: Sections 3509(a), 3513(h), 3524.52(a), 3541.3(g), 3541.35, 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code; and Section 10421(c), Welfare and Institutions Code. Reference: Sections 3509, 3509.3, 3513(h), 3520.8, 3524.76, 3541.3(k), 3541.3(n), 3541.35, 3551(a), 3555.5(c), 3563(j), 3563(m), 3563.5, 71639.1, 71639.15, 71825 and 71825.05, Government Code; Sections 25052, 28849(a), 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(j), 99561(m), 99561.4, 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code; and Section 10428.5(a), Welfare and Institutions Code.

32310. Response to Exceptions.

(a) Within 20 days following the date of service of the statement of exceptions, any party may file with the Board itself a response to the statement of exceptions. The response shall be filed with the Board itself in the headquarters office pursuant to Section 32135.

(b) The response shall clearly and concisely state why the exceptions should not be granted. The response shall cite to relevant legal authority to support legal arguments and shall cite to the relevant exhibit or transcript page in the case record to support factual arguments. Subsections (b) through (f) of Section 32300 shall apply to a response to exceptions. Absent good cause, a response to exceptions that does not comply with these requirements will not be considered by the Board itself.

(c) The response may contain a statement of any cross-exceptions the responding party wishes to take to the proposed decision. Any such statement of cross-exceptions shall comply with the requirements of Section 32300, except that a party that is both responding to exceptions and filing cross-exceptions shall be permitted to submit up to 28,000 words total, including footnotes, without requesting permission.

(d) A response to cross-exceptions may be filed within 20 days. Such response shall comply with the provisions of this Section.

(e) Service and proof of service of these documents pursuant to Section 32140 are required.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3551(a), 3555.5(c), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(j), 99561(m), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Public Utilities Code.

32312. Reply Briefs.

(a) Within 10 days following the date of service of the response to its exceptions or cross-exceptions, a party may file with the Board itself a reply brief of no more than 5,000 words. A reply brief may contain a table of contents and table of authorities, but such tables, if any, shall not count toward the word limit. A request for permission to file a reply brief exceeding 5,000 words must be filed with the Board itself and served on all parties pursuant to Section 32140 no later than five days before the brief is due. The request must establish good cause to permit a longer reply brief. The party requesting to exceed the word limit may not file its reply brief until the Board rules on the request.

(b) Subsections (c) through (e) of Section 32300 shall apply to a reply brief. The reply brief shall be filed with the Board itself in the headquarters office pursuant to Section 32135. Service and proof of service of the reply brief pursuant to Section 32140 are required.

(c) The Board itself may exercise its discretion to consider a reply brief in support of exceptions or cross-exceptions if (1) the response has raised new issues, discussed new case law, or formulated a new defense, or (2) the Board otherwise determines that consideration of the reply would assist the Board in deciding the case. The Board itself has discretion to disregard a reply brief if neither of these criteria is satisfied.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 3603, 71639.l(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix l, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(j), 99561(m), 100301, 100309(b), 101344, 102399(b), 102403, 103401,

120505 and 125521, Appendix I, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32315. Oral Argument on Exceptions.

A party desiring to argue orally before the Board itself regarding the exceptions to the proposed decision shall file with the statement of exceptions or the response to the statement of exceptions a written request stating the reasons for the request. Upon such request or its own motion the Board itself may direct oral argument.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3551(a), 3555.5(c), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(j), 99561(m), 100301, 100309(b),101344, 102399(b), 102403, 103401, 120505 and 125521, Public Utilities Code.

32320. Decision of the Board Itself.

(a) The Board itself may:

(1) Issue a decision based upon the record of hearing, or

(2) Affirm, modify or reverse the proposed decision, order the record re-opened for the taking of further evidence, or take such other action as it considers proper.

(b) The Board shall serve a copy of the decision on each party.

(c) Unless expressly designated otherwise, all decisions and orders issued by the Board itself are precedential and may be cited in any matter pending before a Board agent or the Board itself.

(d) A majority of the Board members issuing a decision or order shall determine whether the decision or order, or any part thereof, shall be designated as non-precedential. In determining whether all or part of a decision or order shall be designated as non-precedential, the Board may consider whether the decision or order:

(1) Establishes new law or policy;

(2) Applies existing law to a set of facts significantly different from those stated in prior precedential decisions;

(3) Modifies, clarifies or explains existing law or policy;

(4) Resolves a conflict in law;

(5) Addresses a legal or factual issue of continuing interest;

(6) Provides an overview of existing law or policy; or

(7) Is accompanied by a separate opinion concurring or dissenting on a legal issue, and designation of the majority and separate opinions as precedential would make a significant contribution to the development of public sector labor law.

(e) The Board itself may reverse, in whole or in part, the prior designation of a decision or order as precedential or non-precedential. A request to reverse the precedential or non-precedential designation of a decision or order shall be made within 20 days following the date of service of the decision or order. An original and five copies of the request shall be filed with the Board itself in the headquarters office. A request seeking designation of a decision as precedential shall state with specificity why one or more of the criteria in subparagraph (d) of this Section are satisfied. A request seeking designation of a decision as non-precedential shall state with specificity why none of the criteria in subparagraph (d) are satisfied. Service and proof of service of the request pursuant to Section 32140 are required.

(f) Any response to a request to change the precedential or non-precedential designation of a decision or order must be filed within 20 days from service of the request. An original and five copies of the response shall be filed with the Board itself in the headquarters office. Service and proof of service of the response pursuant to Section 32140 are required.

(g) A request to change the precedential or non-precedential designation of a decision or order shall not stay the effectiveness of the decision or order.

(h) A ruling on a request to change the precedential or non-precedential designation of a decision or order is not subject to reconsideration under Section 32410.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3514.5, 3541.3(k), 3541.3(n), 3551(a), 3555.5(c), 3563(j), 3563(m), 3563.2, 11425.60, 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(j), 99561(m), 99561.2, 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32325. Remedial Power of the Board.

The Board shall have the power to issue a decision and order in an unfair practice case directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of the applicable statute.

Authority cited: Sections 3509(a), 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b), and 102399(b), Public Utilities Code. Reference: Sections 3509, 3509.5, 3514.5(c), 3520, 3541.5(c), 3542, 3551(a), 3555.5(c), 3563.3, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code; Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b), and 102399(b), Public Utilities Code; and *Firefighters Union, Local 1186 v. City of Vallejo* (1974) 12 Cal.3d 608.

Article 3. Administrative Appeals.

32350. Definition of Administrative Decision.

(a) An administrative decision is any determination made by a Board agent other than:

(1) a refusal to issue a complaint in an unfair practice case pursuant to Section 32630,

(2) a dismissal of an unfair practice charge,

(3) a decision which results from the conduct of a formal hearing or from an investigation which results in the submission of a stipulated record and a proposed decision written pursuant to Section 32215, or

(4) a decision issued following interest arbitration conducted pursuant to Government Code Section 3557(b)(4).

(b) An administrative decision shall contain a statement of the issues, fact, law and rationale used in reaching the determination.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3551(a), 3555.5(c), 3557, 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(j), 99561(m), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Public Utilities Code.

32360. Appeal Requirements.

(a) An appeal may be filed with the Board itself from any administrative decision, except as noted in Section 32380.

(b) The appeal shall be filed with the Board itself in the headquarters office within 10 days following the date of service of the decision or letter of determination.

(c) The appeal must be in writing and must state the specific issue(s) of procedure, fact, law or rationale that is appealed and state the grounds for the appeal.

(d) Service and proof of service of the appeal pursuant to Section 32140 are required.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(j), 99561(m), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Public Utilities Code.

32370. Request for Stay of Activity.

An appeal will not automatically prevent the Board from proceeding in a case. Parties seeking a stay of any activity may file a request for a stay with the administrative appeal which shall include all pertinent facts and justification for the request. The Board may stay the matter, except as is otherwise provided in these regulations.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(j), 99561(m), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Public Utilities Code.

32375. Response to Administrative Appeal.

Within 10 days following the date of service of the appeal, any party may file a response to the appeal. The response shall be filed with the Board itself in the headquarters office. Service and proof of service of the response pursuant to Section 32140 are required.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(j), 99561(m), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Public Utilities Code.

32380. Limitation of Appeals.

The following administrative decisions shall not be appealable:

(a) A decision by a Board agent regarding the mechanics of an election provided the decision does not affect standing of a party to appear on a ballot;

(b) Except as provided in Section 32200, any interlocutory order or ruling on a motion.

(c) A decision by a Board agent pursuant to Section 32793 regarding the existence of an impasse.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3505.4, 3509, 3513(h), 3541.3(k), 3541.3(n), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(j), 99561(m), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Public Utilities Code.

Article 4. Reconsideration.

32400. Administrative Remedies.

A motion for reconsideration need not be filed to exhaust administrative remedies.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3509.5, 3520, 3542, 3551(a), 3555.5(c), 3564, 71639.4 and 71825.1, Government Code; and Sections 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651,

98160.5(b), 98162.5, 99562, 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

32410. Request for Reconsideration.

(a) Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. The request for reconsideration shall be filed with the Board itself in the headquarters office and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to Section 32140 are required. The grounds for requesting reconsideration are limited to claims that: (1) the decision of the Board itself contains prejudicial errors of fact, or (2) the party has newly discovered evidence which was not previously available and could not have been discovered with the exercise of reasonable diligence. A request for reconsideration based upon the discovery of new evidence must be supported by a declaration under the penalty of perjury which establishes that the evidence: (1) was not previously available; (2) could not have been discovered prior to the hearing with the exercise of reasonable diligence; (3) was submitted within a reasonable time of its discovery; (4) is relevant to the issues sought to be reconsidered; and (5) impacts or alters the decision of the previously decided case.

(b) Any party shall have 20 days from service to file a response to the request for reconsideration with the Board itself in the headquarters office. Service and proof of service of the response pursuant to Section 32140 are required.

(c) Unless otherwise ordered by the Board, the filing of a Request for Reconsideration shall not stay the effectiveness of a decision of the Board itself except that the Board's order in an unfair practice case shall automatically be stayed upon filing of a Request for Reconsideration.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3551(a), 3555.5(c), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99561(j), 99561(m), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Public Utilities Code.

Article 5. Request for Injunctive Relief.

32450. Request.

(a) A request from a party that the Board seek injunctive relief shall be filed with the General Counsel at the headquarters office. Requests filed after PERB's regular business hours shall be deemed filed on the next regular business day. The request shall include:

(1) The written request, accompanied by reasons stating why injunctive relief is appropriate;

(2) A copy of the unfair practice charge or complaint on which the request is based; and

(3) Declarations, on personal knowledge, setting forth in detail all pertinent facts underlying the request for injunctive relief.

(b) Service and proof of service on the respondent is required of all documents filed with the General Counsel. Under this section, service and proof of service shall be conducted pursuant to section 32140 except that service must be by personal delivery, facsimile transmission, or electronic mail.

(c) Notice that such a request is being made shall be provided no less than 24 hours prior to the filing to the General Counsel and the party against whom the relief is sought. Such notice may be by telephone or in person, or by any other means reasonably calculated to provide notice.

(d) An affidavit of notice shall be filed with the request. Such affidavit shall indicate to whom, at what time, and in what manner the notice required by subparagraph (c) above was accomplished.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f) 100309(b), and 102399(b), Public Utilities Code. Reference: Sections 3509, 3513(h), 3551(a), 3555.5(c), 3541.3(j), 3541.3(n), 3563(i), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(i) 100309(b), and 102399(b), Public Utilities Code.

32455. Investigation.

Upon filing of a request for the Board to seek injunctive relief, the General Counsel shall initiate an investigation. The General Counsel shall give notice reasonably calculated to inform the parties an investigation is proceeding. The respondent shall be apprised of the allegations against it, and may state its position in the course of the inquiries. The respondent's position statements or other documents filed with the General Counsel must be filed at the headquarters office, and service and proof of service on the

opposite party. For purposes of this section, a Board agent shall establish and inform the parties of all filing deadlines, which shall include the date and time that a party must file a document. The Board agent may contact and question such persons as necessary to effectuate the investigation.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f) 100309(b), and 102399(b), Public Utilities Code. Reference: Sections 3509, 3513(h), 3551(a), 3555.5(c), 3541.3(j), 3541.3(n), 3563(i), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(i) 100309(b), and 102399(b), Public Utilities Code.

32460. Recommendation.

After investigation, the General Counsel shall make a recommendation to the Board within 120 hours after the receipt of a request, unless the request is made during a work stoppage or lockout, in which case the General Counsel shall make a recommendation to the Board within 24 hours after the request is received.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f) 100309(b), and 102399(b), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(j), 3541.3(n), 3551(a), 3555.5(c), 3563(i), 3563(m), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(i), 99561(m) 100309(b), and 102399(b), Public Utilities Code.

32465. Decision of the Board Itself.

Upon receipt of the General Counsel's report, the Board itself shall determine whether to seek injunctive relief.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f) 100309(b), and 102399(b), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(j), 3541.3(n), 3551(a), 3555.5(c), 3563(i), 3563(m), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(i), 99561(m) 100309(b), and 102399(b), Public Utilities Code.

32470. Lack of Board Quorum.

In the event that a quorum of the Board itself is unavailable to act upon the request for injunctive relief within 24 hours after the time the General Counsel's recommendation is filed, the Board authorizes the General Counsel to seek injunctive relief in every case in which the General Counsel has reasonable cause to believe that such action is in accordance with Board policy and that legal grounds for injunctive relief are present.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f) 100309(b), and 102399(b), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(j), 3541.3(n), 3551(a), 3555.5(c), 3563(i), 3563(m), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(i), 99561(m) 100309(b), and 102399(b), Public Utilities Code.

Article 6. Request for Judicial Review

32500. Review of Representation Case.

(a) Any party to a decision in a representation case by the Board itself, except for decisions rendered pursuant to Chapter 5, Subchapter 3 of Chapter 6, Chapter 7 or Chapter 8 of these Regulations, may file a request to seek judicial review within 20 days following the date of service of the decision. The request shall be filed with the Board itself in the headquarters office and shall include statements setting forth those factors upon which the party asserts that the case is one of special importance. Service and proof of service of the request pursuant to Section 32140 are required.

(b) Any party shall have 20 days following the date of service of the request to file a response. The response shall be filed with the Board itself in the headquarters office. Service and proof of service of the request pursuant to Section 32140 are required.

(c) The Board may join in a request for judicial review or may decline to join, at its discretion.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98160.5(b), 98162.5, 99561(f), 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3509.5, 3520, 3542, 3564, 71639.4 and 71825.1, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98160.5(b), 98162.5, 99562, 100301, 100309(b), 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

SUBCHAPTER 5. UNFAIR PRACTICE PROCEEDINGS

32602. Processing Violations.

(a) Alleged violations of the EERA, Ralph C. Dills Act, HEERA, MMBA, TEERA, Article 3 of the Trial Court Act, the Court Interpreter Act, the PECC, the PEDD, the OCTDA, the SFBART Act, the Sacramento RTD Act, the Santa Cruz Metro Act, the VTA Act, and alleged violations of local rules adopted pursuant to the MMBA, Trial Court Act, Court Interpreter Act, or the OCTDA ~~and alleged violations of rules or regulations adopted by the Statewide Authority pursuant to IHSSEERA,~~ shall be processed as unfair practice charges.

(b) Except as provided in subsections (c) and (d), unfair practice charges may be filed by an employee, employee organization, or employer against an employee organization or employer.

(c) A charge alleging that an employer or an exclusive representative has failed to comply with Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569, may be filed by any affected member of the public.

(d) A charge alleging that an exclusive representative has failed to comply with Government Code section 3515.7(e), 3546.5, 3584(b), or 3587, or Public Utilities Code Section 99566.3 may only be filed by an affected employee.

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b), and 102399(b), Public Utilities Code; and Sections 10427.5, 10427.7, 10428, 10428.3, and 10428.5, Welfare and Institutions Code. Reference: Sections 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71636, 71636.3, 71637.1, 71639.1, 71823 and 71825, Government Code; and Sections 28849(b), 28860(b), 40122.1, 98160.5(b), 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, 99569, 100309(b), 102399(b) and 102408(b)(2), Public Utilities Code; and Sections 10427.5, 10427.7, 10428, 10428.3, and 10428.5, Welfare and Institutions Code.

32612. Venue of Charge.

(a) Except as otherwise provided in this section, a charge may be filed in any regional office described in Section 32075 which serves any county in which the conduct or act constituting the alleged unfair practice occurred or is occurring, the county in which any employee affected by the alleged unfair practice works, or the county in which the principal office of the employer is located.

(b) Any charge involving a worksite located outside the State of California shall be filed with the regional office serving the county in which the principal office of the employer is located. The Board may transfer any case to a different regional office.

(c) Any charge involving a regional committee established pursuant to Government Code section 71807 shall be filed with the Los Angeles Regional Office in the cases of Regions 1 and 4; with the San Francisco Regional Office in the case of Region 2; and with the Sacramento Regional Office in the case of Region 3.

(d) The Board may consolidate charges as it deems appropriate.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a),

98160.5(b), 99561(f), 100309(b), and 102399(b), Public Utilities Code. Reference: Sections 3509, 3513(h), 3514.5, 3541.3(i), 3541.5, 3551(a), 3555.5(c), 3563(h), 3563.2, 71639.1, 71807 and 71825, Government Code; and Sections 28849(b), 28860(b), 40122.1, 98160.5(b), 99561(h), 99561.2, 102399(b), 100309(b), and 102408(b)(2), Public Utilities Code.

32614.4 Employer Unfair Practices under Santa Cruz Metro Act.

It shall be an unfair practice for the District to do any of the following:

(a) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the Santa Cruz Metro Act. As used in this provision, "employee" includes an applicant for employment or reemployment with the District.

(b) Deny to employee organizations rights guaranteed to them by the Santa Cruz Metro Act.

(c) Knowingly provide an exclusive representative with inaccurate information or otherwise fail or refuse to bargain in good faith with an exclusive representative as required by the Santa Cruz Metro Act.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

(e) Fail to exercise good faith while participating in any impasse procedure mutually agreed to, including pursuant to Public Utilities Code Section 98169, or contained in Chapter 3, Division 4.5, Title 1 of the Government Code (commencing with Government Code section 3611) (Public Transit Labor Disputes Act).

(f) Violate in any way the Public Employees Communication Chapter as contained in Title 1 of the Government Code (commencing with Section 3555), or Section 32610 of these regulations.

(g) Violate in any way the Prohibition on Public Employers Deterring or Discouraging Union Membership as contained in Title 1 of the Government Code (commencing with Section 3550), or Section 32611 of these regulations.

(h) In any other way violate Santa Cruz Metro Act.

Authority cited: Section 3541.3(g), Government Code; and Section 98160.5(b), 98169, Public Utilities Code. Reference: Sections 3550 et seq., 3555 et seq. and 3611 et seq., Government Code; Sections 98160.5(b), 98167, 98168(b), 98169, 98171(b), 98173, Public Utilities Code.

32614.5 Employee Organization Unfair Practices under Santa Cruz Metro Act.

It shall be an unfair practice for an employee organization to do any of the following:

(a) Cause or attempt to cause the District to engage in conduct prohibited by the Santa Cruz Metro Act.

(b) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the Santa Cruz Metro Act.

(c) Refuse or fail to bargain in good faith as required by Public Utilities Code Section 98170.

(d) Fail to exercise good faith while participating in any impasse procedure mutually agreed to, including pursuant to Public Utilities Code Section 98167, or contained in Chapter 3, Division 4.5, Title 1 of the Government Code (commencing with Government Code Section 3611) (Public Transit Labor Disputes Act).

(e) Violate in any way the Public Employees Communication Chapter as contained in Title 1 of the Government Code (commencing with Section 3555) or Section 32610.5 of these regulations.

(f) Violate in any way the Prohibition on Public Employers Deterring or Discouraging Union Membership as contained in Title 1 of the Government Code (commencing with Section 3550), or Section 32611.5 of these regulations.

(g) In any other way violate the Santa Cruz Metro Act.

Authority cited: Section 3541.3(g), Government Code; and Section 98160.5(b), 98170, Public Utilities Code. Reference: Sections 3550 et seq., 3555 et seq. and 3611 et seq., Government Code; Sections 98160.5(b), 98168(b), 98170, 98171(b), 98173, Public Utilities Code.

32614.6 Employer Unfair Practices under VTA Act.

It shall be an unfair practice for the District to do any of the following:

(a) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the VTA Act.

(b) Deny to employee organizations rights guaranteed to them by the VTA Act.

(c) Fail or refuse to bargain in good faith with an exclusive representative as required by the VTA Act.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

(e) Fail to exercise good faith while participating in any impasse procedure mutually agreed to, including pursuant to Public Utilities Code Sections 100302 and 100305, or contained in Chapter 3, Division 4.5, Title 1 of the Government Code (commencing with Government Code section 3611) (Public Transit Labor Disputes Act).

(f) Violate in any way the Public Employees Communication Chapter as contained in Title 1 of the Government Code (commencing with Section 3555), or Section 32610 of these regulations.

(g) Violate in any way the Prohibition on Public Employers Deterring or Discouraging Union Membership as contained in Title 1 of the Government Code (commencing with Section 3550), or Section 32611 of these regulations.

(h) In any other way violate the VTA Act.

Authority cited: Section 3541.3(g), Government Code; and Section 100309(b), Public Utilities Code. Reference: Sections 3550 et seq., 3555 et seq. and 3611 et seq., Government Code; Sections 98160.5(b), 100302, 100305, 100309(b), 100310, 100311, Public Utilities Code.

32614.7 Employee Organization Unfair Practices under VTA Act.

It shall be an unfair practice for an employee organization to do any of the following:

(a) Cause or attempt to cause the District to engage in conduct prohibited by the VTA Act.

(b) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the VTA Act.

(c) Refuse or fail to bargain in good faith as required by Public Utilities Code Section 100302.

(d) Fail to exercise good faith while participating in any impasse procedure mutually agreed to, including pursuant to Public Utilities Code Sections 100302 and 100305, or contained in Chapter 3, Division 4.5, Title 1 of the Government Code (commencing with Government Code Section 3611) (Public Transit Labor Disputes Act).

(e) Violate in any way the Public Employees Communication Chapter as contained in Title 1 of the Government Code (commencing with Section 3555) or Section 32610.5 of these regulations.

(f) Violate in any way the Prohibition on Public Employers Deterring or Discouraging Union Membership as contained in Title 1 of the Government Code (commencing with Section 3550), or Section 32611.5 of these regulations.

(g) In any other way violate the VTA Act.

Authority cited: Section 3541.3(g), Government Code; and Section 100309(b), Public Utilities Code. Reference: Sections 3550 et seq., 3555 et seq. and 3611 et seq., Government Code; Sections 100302, 100305, 100309(b), 100310, 100311, Public Utilities Code.

32615. Contents of Charge.

(a) A charge may be filed alleging that an unfair practice or practices have been committed. The charge shall be in writing, signed under penalty of perjury by the party or its agent with the declaration that the charge is true, and complete to the best of the charging party's knowledge and belief, and contain the following information:

(1) The name and address of the party alleged to have engaged in an unfair practice. If the party is the State of California, the name and address of the "appointing power" as defined in Government Code Section 18524, and of the Governor shall be set forth;

(2) The name, address, and telephone number of the charging party;

(3) The name, address, and telephone number of an authorized agent of the charging party to be contacted;

(4) The sections of the Government Code, the Public Utilities Code, or the Welfare and Institutions Code and the applicable local rules, if any, ~~the applicable rule or regulation adopted by the Statewide Authority pursuant to IHSSEERA or the sections of the Public Utilities Code,~~ alleged to have been violated;

(5) A clear and concise statement of the facts and conduct alleged to constitute an unfair practice; and

(6) A statement of the remedy sought by the charging party.

(b) A charge filed under MMBA, Article 3 of the Trial Court Act, ~~or~~ the Court Interpreter Act, or OCTDA alleging a violation of local rules must also contain a copy of the applicable rule(s).

(c) Service and proof of service on the respondent pursuant to Section 32140 are required.

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; ~~and~~ Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b), and 102399(b), Public Utilities Code; and Sections 10427.5, 10427.7, 10428, 10428.3, and 10428.5, Welfare and Institutions Code. Reference: Sections 3502.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 98160.5(b), 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, 99569, 100309(b), 102399(b), 102400, 102401, 102404, 102405, 102406, 102407, 102408(b)(2), and 102414, Public Utilities Code; and Sections 10427.5, 10427.7, 10428, 10428.3, and 10428.5, Welfare and Institutions Code.

32620. Processing of Case.

(a) When a charge is filed, it shall be assigned to a Board agent for processing.

(b) The powers and duties of such Board agent shall be to:

(1) Assist the charging party to state in proper form the information required by section 32615;

(2) Answer procedural questions of each party regarding the processing of the case;

(3) Facilitate communication and the exchange of information between the parties;

(4) Make inquiries and review the charge and any accompanying materials to determine whether an unfair practice has been, or is being, committed, and determine whether the charge is subject to deferral to arbitration, or to dismissal for lack of timeliness.

(5) Dismiss the charge or any part thereof as provided in Section 32630 if ~~it is determined that~~ the charge or the evidence is insufficient to establish a prima facie case; or if ~~it is determined that~~ a complaint may not be issued in light of the statute of limitations; or if the dispute is subject to deferral to final and binding arbitration under a collective bargaining agreement and the case arises under the Dills Act, EERA, JCEERA, or Welfare and Institutions Code Section 10420 et seq. ~~Government Code Sections 3514.5, 3541.5, 3563.2, 71639.1(c) or 71825(c), or Public Utilities Code Section 99561.2; or if it is determined that a~~

~~charge filed pursuant to Government Code section 3509(b) or Public Utilities Code Sections 28860(b), 40122.1, or 102408(b)(2) is based upon conduct occurring more than six months prior to the filing of the charge.~~

(6) ~~Place the charge in abeyance if the dispute arises under MMBA, HEERA, TEERA, Trial Court Act, or Court Interpreter Act, SFBART Act or Sacramento RTD Act.~~ If the dispute is subject to deferral to final and binding arbitration pursuant to a collective bargaining agreement and the case does not arise under the Dills Act, EERA, JCEERA, or Welfare and Institutions Code Section 10420 et seq., then place the charge in abeyance and dismiss the charge at the conclusion of the arbitration process unless the charging party demonstrates that the settlement or arbitration award is repugnant to the purposes of the applicable Act, ~~MMBA, HEERA, TEERA, Trial Court Act, Court Interpreter Act, OCTDA, SFBART Act, or Sacramento RTD Act,~~ as provided in ~~s~~Section 32661.

(7) Issue a complaint pursuant to Section 32640.

(c) The respondent shall be apprised of the allegations, and may state its position on the charge during the course of the inquiries. Any response must be in writing, and signed under penalty of perjury by the party or its agent with the declaration that the response is true and complete to the best of the respondent's knowledge and belief. Service and proof of service pursuant to Section 32140 are required.

(d) The Board agent shall advise the charging party in writing of any deficiencies in the charge in a warning letter, unless otherwise agreed by the Board agent and the charging party, prior to dismissal of any allegations contained in the charge. The warning letter shall identify the facts obtained from the charge or any response to the charge which reveal a deficiency in the charge. The dismissal of a charge shall also be in writing and must identify the deficiencies in the charging party's allegations.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b) and 102399(b), Public Utilities Code, and Section 10428.5, Welfare and Institutions Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1 and 71825, Government Code; Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 98160.5(b), 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, 99569, 100309(b), 102399(b), 102400, 102401, 102404, 102405, 102406, 102407, 102408(b)(2) and 102414, Public Utilities Code; Section 10428.5, Welfare and Institutions Code; *Firefighters Union, Local 1186 v. City of Vallejo* (1974) 12 Cal.3d 608; and *Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board* (2005) 35 Cal.4th 1072.

32621. Amendment of Charge.

Before the Board agent issues or refuses to issue a complaint, the charging party may file an amended charge. The amended charge must contain all allegations on which the

charging party relies and must meet all of the requirements of Section 32615. The amended charge shall be processed pursuant to Section 32620.

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; ~~and~~ Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f) 100309(b), and 102399(b), Public Utilities Code; and Sections 10427.5, 10427.7, 10428, 10428.3, and 10428.5, Welfare and Institutions Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71636, 71636.3, 71637.1, 71639.1, 71814, 71823 and 71825, Government Code; ~~and~~ Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 98160.5(b), 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, 99569, 100309(b), 102399(b), 102400, 102401, 102404, 102405, 102406, 102407, 102408(b)(2) and 102414, Public Utilities Code; and Sections 10427.5, 10427.7, 10428, 10428.3, and 10428.5, Welfare and Institutions Code.

32625. Withdrawal of Charge.

Any request for withdrawal of the charge shall be in writing, signed by the charging party or its agent, and state whether the party desires the withdrawal to be with or without prejudice. Request for withdrawal of the charge before complaint has issued shall be granted. Repeated withdrawal and refiling of charges alleging substantially identical conduct may result in refusal to issue a complaint. If the complaint has issued, the Board agent shall determine whether the withdrawal shall be with or without prejudice. If, during hearing, the respondent objects to withdrawal, the hearing officer may refuse to allow it. Service and proof of service of the withdrawal pursuant to Section 32140 are required.

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; ~~and~~ Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b), and 102399(b), Public Utilities Code; and Sections 10427.5, 10427.7, 10428, 10428.3, and 10428.5, Welfare and Institutions Code. Reference: Sections 3502.5, 3506.5, 3509, 3513, 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; ~~and~~ Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 98160.5(b), 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, 99569, 100309(b), 102399(b), 102400, 102401, 102404, 102405, 102406, 102407, 102408(b)(2) and 102414, Public Utilities Code; and Sections 10427.5, 10427.7, 10428, 10428.3, and 10428.5, Welfare and Institutions Code.

32630. Dismissal/Refusal to Issue a Complaint.

If the Board agent concludes that the charge or the evidence is insufficient to establish a prima facie case, the Board agent shall refuse to issue a complaint, in whole or in part. The refusal shall constitute a dismissal of the charge. The refusal, including a statement of the grounds for refusal, shall be in writing and shall be served on the charging party and respondent.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b) and 102399(b), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 98160.5(b), 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, ~~and~~ 99569, 100309(b), 102399(b), 102400, 102401, 102404, 102405, 102406, 102407, 102408(b)(2) and 102414, Public Utilities Code.

32635. Review of Dismissals.

(a) Within 20 days of the date of service of a dismissal, the charging party may file an appeal of the dismissal with the Board itself. Service and proof of service of the appeal on the respondent pursuant to Section 32140 are required.

The Appeal shall:

(1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken;

(2) Identify the page or part of the dismissal to which each appeal is taken;

(3) State the grounds for each issue stated.

(b) Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence.

(c) If the charging party files a timely appeal of the dismissal, any other party may file a statement in opposition to the appeal within 20 days following the date of service of the appeal. Service and proof of service of the statement pursuant to Section 32140 are required.

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b) and 102399(b), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 98160.5(b), 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, 99569, 100301, 100309(b), 102399(b), 102400, 102401, 102404, 102405, 102406, 102407, 102408(b)(2) and 102414, Public Utilities Code.

32640. Issuance of a Complaint.

(a) The Board agent shall issue a complaint if the charge or the evidence is sufficient to establish a prima facie case. The complaint shall contain a statement of the specific facts upon which Board jurisdiction is based, including the identity of the respondent, and shall state with particularity the conduct which is alleged to constitute an unfair practice. The complaint shall include, when known, when and where the conduct alleged to constitute an unfair practice occurred or is occurring, and the name(s) of the person(s) who allegedly committed the acts in question. The Board may disregard any error or defect in the complaint that does not substantially affect the rights of the parties.

(b) The Board shall serve the complaint on the charging party and respondent.

(c) The decision of a Board agent to issue a complaint is not appealable to the Board itself except in accordance with Section 32200.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b) and 102399(b), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 98160.5(b), 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, 99569, 100309(b), 102399(b), 102400, 102401, 102404, 102405, 102406, 102407, 102408(b)(2) and 102414, Public Utilities Code.

32644. Answer.

(a) The respondent shall file with the Board an answer to the complaint within 20 days or at a time set by the Board agent following the date of service of the complaint. Service and proof of service of the answer pursuant to Section 32140 are required. If a formal hearing is set less than 20 days after the complaint is served, the answer shall be filed no later than the date of hearing stated in the notice of hearing or as otherwise directed by the Board agent. Amended complaints served after the answer is filed shall be deemed denied, except for those matters which were admitted in the answer and which have not been changed in the amended complaint.

(b) The answer shall be in writing, signed by the party or its agent and contain the following information:

(1) The case number appearing on the complaint;

(2) The name of the charging party;

(3) The name, address, telephone number and any affiliation of the respondent;

(4) The name, address, telephone number and capacity of any agent of the respondent to be contacted;

(5) A specific admission or denial of each allegation contained in the complaint. If the respondent does not have knowledge of information sufficient to form a belief as to the truth of a particular allegation, the respondent shall so state and such statement shall operate as a denial of the allegation;

(6) A statement of any affirmative defense;

(7) Notwithstanding the Code of Civil Procedure Section 446, a declaration under penalty of perjury that the answer is true and complete to the best of the respondent's knowledge and belief.

(c) If the respondent fails to file an answer as provided in this section, the Board may find such failure constitutes an admission of the truth of the material facts alleged in the charge and a waiver of respondent's right to a hearing.

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b), and 102399(b), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 98160.5(b),99561(h), 99561.2, 99563.7, 99563.8, 99566.3, 99569, 100309(b), 102399(b), 102400, 102401, 102404, 102405, 102406, 102407, 102408(b)(2) and 102414, Public Utilities Code.

32645. Non-Prejudicial Error.

The Board may disregard any error or defect in the original or amended charge, complaint, answer or other pleading which does not affect the substantial rights of the parties.

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b), and 102399(b), Public Utilities Code. Reference: Sections 3509, 3514.5(a), 3541.5(a), 3551(a), 3555.5(c), 3563.2, 71639.1 and 71825, Government Code; and Sections 28849(b), 28860(b), 40122.1, 98160.5(b), 99561(h), 99561.2, 99563.7, 99563.8, 100309(b), 102399(b) and 102408(b)(2), Public Utilities Code.

32647. Amendment of Complaint Before Hearing.

After issuance of a complaint, the charging party may move to amend the complaint by filing with the Board agent:

(a) a request to amend the complaint, and

(b) an amended charge meeting the requirements of Section 32615.

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b), and 102399(b), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 98160.5(b), 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, 99569, 100309(b), 102399(b), 102400, 102401, 102404, 102405, 102406, 102407, 102408(b)(2) and 102414, Public Utilities Code.

32648. Amendment of Complaint During Hearing.

During hearing, the charging party may move to amend the complaint by amending the charge in writing, or by oral motion on the record. If the Board agent determines that amendment of the charge and complaint is appropriate, the Board agent shall permit an amendment. In determining the appropriateness of the amendment, the Board agent shall consider, among other factors, the possibility of prejudice to the respondent.

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b), and 102399(b), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 98160.5(b), 99561(g), 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, 99569, 100309(b), 102399(b), 102400, 102401, 102404, 102405, 102406, 102407, 102408(b)(2) and 102414, Public Utilities Code.

32649. Answer to Amendment.

Within 20 days or a time set by the Board agent after service of an amendment to the complaint, the Board agent may require the respondent to file an amendment to its answer, which shall respond only to the new allegations in the amended complaint. The respondent shall file with the Board proof of service of its amended answer.

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b), and 102399(b), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5,

3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 98160.5(b), 99561(g), 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, 99569, 100309(b), 102399(b), 102400, 102401, 102404, 102405, 102406, 102407, 102408(b)(2) and 102414, Public Utilities Code.

32650. Informal Conference.

(a) A Board agent may conduct an informal conference or conferences to clarify the issues and explore the possibility of voluntary settlement. No record shall be made at such a conference.

(b) A Board agent shall give reasonable notice of such conference to each party directed to attend.

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b), and 102399(b), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 98160.5(b), 99561(g), 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, 99569, 100309(b), 102399(b), 102400, 102401, 102404, 102405, 102406, 102407, 102408(b)(2) and 102414, Public Utilities Code.

32661. Repugnancy Claims.

(a) An unfair practice charge ~~concerning conduct subject to Government Code Section 3505.8, 3514.5(a)(2), or 3541.5(a)(2), or Education Code Section 8439.5(b)(1)(B), or subject to final and binding arbitration pursuant to a collective bargaining agreement for parties governed by the TEERA, HEERA, Trial Court Act, Court Interpreter Act, OCTDA, SFBART Act, or Sacramento RTD Act,~~ may be filed based on a claim that the settlement or arbitration award is repugnant to the applicable Act.

(b) The charge shall comply with the requirements of Section 32615. It shall allege with specificity the facts underlying the charging party's claim that the arbitrator's award is repugnant to the purposes of the applicable Act.

(c) In reviewing the charge to determine whether a complaint shall issue, the Board agent shall have all of the powers and duties specified in Sections 32620, 32630, and 32640. A Board agent's issuance of a complaint under this section shall not be appealable to the Board itself except as provided in Section 32360.

(d) The Board itself may, at any time, direct that the record be submitted to the Board itself for decision.

Authority cited: ~~Sections 8431(e), 8432(m), and 8439.5(a), Education Code;~~ Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; ~~and~~ Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b) and 102399(b), Public Utilities Code; and Sections 10427.5, 10427.7, 10428, 10428.3, and 10428.5, Welfare and Institutions Code. Reference: ~~Section 8439.5(b)(1)(B), Education Code;~~ Sections 3506.5, 3505.8, 3509, 3514.5, 3519, 3519.5, 3541.5, 3543.5, 3543.6, 3551(a), 3555.5(c), 3558.8, 3563.2, 3571, 3571.1, 3571.3, 3589, 71639.1 and 71825, Government Code; and Sections 28849(b), 28858, 28859, 28860(b), 40122.1, 98160.5(b), 99561(h), 99561.2, 99563.7, 99563.8, 99567, 100309(b), 102399(b), 102400, 102401, 102404, 102405, 102406, 102407, 102408(b)(2) and 102414, Public Utilities Code; and Sections 10427.5, 10427.7, 10428, 10428.3, and 10428.5, Welfare and Institutions Code.

32680. Formal Hearing.

If the informal conference procedure fails to result in voluntary settlement, the Board may order a hearing. The hearing shall be conducted by the Board according to the provisions of Chapter 1, Subchapter 3 (commencing with Section 32165) of these regulations.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b), and 102399(b), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 98160.5(b), 99561(g), 99561(h), 99561.2, 99563.7, 99563.8, 99566.3~~,~~ 99569, 100309(b), 102399(b), 102400, 102401, 102404, 102405, 102406, 102407, 102408(b)(2) and 102414, Public Utilities Code.

32690. Notice of Formal Hearing and Prehearing Memorandum.

(a) The Board shall serve on each party a notice of the formal hearing which shall state the date, time and place of the hearing.

(b) The Board may also serve on each party a pre-hearing memorandum which shall set forth the following information:

(1) A summary of the proceedings to date, including but not limited to a statement of the charge, a summary of any negotiations excluding offers of settlement and a statement of the issues settled;

(2) A statement of the issues to be decided at the formal hearing.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b), 99561(f) and 102399(b), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 98160.5(b), 99561(g), 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, 99569, 100309(b),102399(b), 102400, 102401, 102404, 102405, 102406, 102407, 102408(b)(2) and 102414, Public Utilities Code.

SUBCHAPTER 7. COMPLIANCE

Article 1. Compliance

32980. Compliance.

(a) The General Counsel is responsible for determining that parties have complied with final Board orders. The General Counsel or his/her designate may conduct an inquiry, informal conference, investigation, or hearing, as appropriate, concerning any compliance matter. The Board itself may, based on a recommendation of the General Counsel, authorize the General Counsel to seek court enforcement of a final Board order.

(b) If an administrative decision based on an investigation is issued, the decision may be appealed to the Board itself pursuant to Chapter 1, Subchapter 4, Article 3 of these regulations.

(c) If a proposed decision based on a hearing is issued, the decision may be appealed to the Board itself pursuant to Chapter 1, Subchapter 4, Article 2 of these regulations.

Authority cited: Sections 3509(a), 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 98160.5(b), 99561(f), 100309(b) and 102399(b), Public Utilities Code. Reference: Sections 3509, 3509.5, 3514.5(c), 3520, 3541.5(c), 3542, 3551(a), 3555.5(c), 3563.3, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code; Sections 28849(b), 28860(b), 40122.1, 98160.5(b), 99561.3, 99562, 100309(b), 102399(b) and 102408(b)(2), Public Utilities Code; and *Firefighters Union, Local 1186 v. City of Vallejo* (1974) 12 Cal.3d 608.