



Workshop to Address the Accessibility of CPUC Proceedings

Thursday, August 30, 2018, 1 – 4 p.m.

CPUC Auditorium, 505 Van Ness Ave., San Francisco, CA

Webcast: www.adminmonitor.com/ca/cpuc

Call-in: 866-919-7803, **passcode:** 9629185#

Email to ask questions: PolicyandGovernance@cpuc.ca.gov

Commissioners Liane M. Randolph and Clifford Rechtschaffen

Workshop purpose: The purpose of this workshop is to brainstorm and discuss ideas for enhancing public participation in CPUC proceedings. The ideas we discuss today may be implemented through further reforms to the Rules of Practice and Procedure or through other means.

We would like to hear from participants about the following topics:

1. How can the CPUC obtain more public comment in its proceedings?
2. How should the CPUC treat public comments in its decision-making?
3. How can the CPUC encourage more organizations across California to participate as practitioners in our proceedings?

The questions below are meant to spark discussion. We are planning a second workshop about these topics this Fall, followed by an invitation to submit written comments.

AGENDA

- **Opening Remarks by Commissioners**
- **Recent Innovations in CPUC Public Participation Hearings and Early Lessons Learned** – Christine Walwyn, Administrative Law Judge Division
- **New Ideas on the Horizon** – Terrie Prosper, Director, News and Outreach Office, and Allison Brown, Public Advisor

- **Topic 1: How can the CPUC obtain more public comment in its proceedings?**

The CPUC sets rates for gas and electric companies, some telephone services, and some water bills. It also funds programs for rooftop solar, energy efficiency, and electric vehicle infrastructure. If you think the people you work with would have an interest in such programs, do you think they would come to a hearing to give input on the CPUC's programs? How can the CPUC encourage more public attendance at hearings and meetings?

- **What issues do you think would be of interest?**

- Programs such as utility bill discounts or low- and no-cost home energy efficiency like lighting and weatherization.
- Programs that are implemented on a community-wide basis (community solar, electric vehicle infrastructure, distributed energy resources).
- Rate affordability
- Service problems (such as telecommunication service reliability)
- Disconnection of service
- Help such as payment plans for paying energy, telephone, or water bills
- Other

- **If you think the people you serve would be interested in the topics listed, what do you think would encourage them to attend a hearing about one or more of these matters:**

- Good information on why the CPUC needs the input
- Ability to sign up for utility programs at or after the hearing
- Bill assistance from utility staff at the hearing (payment plans, help with disconnection)
- Ability to talk to the CPUC staff about a complaint regarding gas, electric, telephone, or water
- Transportation to/from the hearing
- Other

- **Topic 2: How should the CPUC use public comments in its decision-making?**

The CPUC has numerous opportunities for the public to provide input to a proceeding: Public Participation Hearings, letters and emails to the Public Advisor, online surveys, and social media, among others. The CPUC is also improving its practices for documenting how the public comment we receive is considered during deliberation in a given proceeding.

- **Some questions we would like participants to address are:**

- Are there ways for the CPUC to better incorporate and meaningfully consider public comment? Is it valuable for a Proposed Decision to summarize the public comment?
- How easy is it for your organization to follow a given proceeding, keep track of and offer comments on the proceeding? Are there specific ways that process can be improved?
- How can we get public comment early enough to shape the record? Which methods of outreach (social media, Daily Calendar, email to proceeding service list, utility bill inserts, etc.) presently used by the CPUC do the public and parties find most useful? Which methods should the CPUC promote more?
- Do you use any of the CPUC's outreach tools (e.g., social media, the Daily Calendar) to get information about events at the CPUC?
- Is there a state or federal agency with strong practices in the treatment of public comment?
- Should the CPUC's practices in how it treats public comment be different depending on the categorization as quasi-legislative or ratesetting?

- **Topic 3: How can the CPUC encourage more organizations across California to participate as practitioners in our proceedings?**

Becoming an active participant and practitioner in a CPUC proceeding requires a commitment of resources and achieving a level of proficiency with our Rules of Practice and Procedure. The CPUC's intervenor compensation program can compensate individuals and organizations for their contributions to a proceeding, subject to established rules and standards.

- **Below are some general questions about how organizations can become active participants, followed by several technical questions related to recent trends and experiences:**

- If your organization has sought to become involved in a specific proceeding in the last year, what kinds of experiences did you have with respect to obtaining information about the proceeding, following it, and participating in formal events such as evidentiary hearings, workshops, oral argument, or commenting on the Proposed Decision?
- Did your organization learn about the intervenor compensation program? How did you learn about it?
- Are there examples of federal or state agencies that implement formal proceedings that have strong practices in the area of encouraging new organizations to become practitioners?

- **Settlements during a proceeding by parties to that proceeding**

The CPUC has recently considered some proposed settlements where separate side agreements existed but were not presented to the CPUC. The Rules of Practice and Procedure do not presently address how such side agreements should be disclosed and weighed as the CPUC evaluates a proposed settlement.

- Should the CPUC establish principles to consider when weighing a proposed settlement to which there is also a side agreement? For example, should there be rules requiring disclosure, and should the CPUC consider the details of the side agreement when evaluating whether the proposed settlement is in the public interest? How should the CPUC evaluate side agreements that purport to compensate a party's attorney fees outside of the CPUC's Intervenor Compensation program?

- **Rules of Evidence**

According to the CPUC's Rules of Practice and Procedure (Rule 13.9), the use of sister agency reports and staff expert reports (that are not in evidence) in CPUC decision-making is subject to the provisions of Evidence Code section 450 et seq. "Sister agency reports" means reports that are voted on by the boards of an agency like the Energy Commission, State Water Board, or Air Resources Board. "Staff expert reports" mean work products developed by advisory staff of the CPUC or staff of another state agency, whether or not formally adopted by the agency.

The Evidence Code generally limits a court's ability to judicially notice and rely on the truth of statements of facts that are not formally in evidence and that are reasonably subject to dispute. At the same time, the Public Utilities Code 1701(a) states that the technical rules of evidence need not be applied in CPUC proceedings, and that "no informality" in the taking of evidence shall invalidate any order of the CPUC.

The question of how strictly to apply formal rules of evidence comes up in the context of sister agency reports. Parties can and often do stipulate to the truth of such reports within CPUC proceedings.

- What are the pros and cons of reducing the judicial notice requirements for sister agency reports within CPUC proceedings?

- More generally, since the Public Utilities Code does not require strict adherence to the formal rules of evidence, are there other areas in which it makes sense for the CPUC to depart from these rules? Are there benefits to the public from doing so? Are there other public utilities commissions or other state or federal agencies that follow less formal rules?
- **Default categorization as ratesetting:**

Rule 7.1(e)(2) sets ratesetting as the default categorization when there is no clear fit. The rule was established in order to clarify the ex parte reporting requirements for proceedings for which establishing the category (quasi-legislative or ratesetting) took more time. However, as categorization happens routinely now, the rule is rarely used today.

 - Is any default categorization still necessary?

- **Conclusion**