CITY OF SAN BRUNO
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Via E-mail: policyandgovernance@cpuc.ca.gov
Policy and Governance Committee
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102

Re: Pilot Program on Ex Parte Communications

Dear Policy & Governance Committee:

Thank you for providing the City of San Bruno with the opportunity to comment on the California Public Utilities Commission's proposed pilot program on ex parte communications. The City remains vitally interested the Policy and Governance Committee's efforts to promote transparency and prevent regulated utilities' improper influence over CPUC decision-makers.

Overall, the City agrees with the objectives of the ex parte pilot program. The status quo is not working. The City concurs that something must be done to curb utility representatives' ex parte access to decision-makers, which is largely unreported or underreported through the current ex parte rules. This access has improperly influenced the outcome of Commission decisions. However, the City does not believe that the pilot program sufficiently addresses the findings of the Strumwasser report.

The Strumwasser report validates what the City has long suspected: that regulated utilities have extraordinary back-door access and improper influence over decisions made by the CPUC. That access has been encouraged, instead of rebuked, by one or more Commissioners. The Strumwasser report confirms the City's observation that the CPUC is subject to state laws and internally-created rules that are unique among public entities. As the Strumwasser report documents, the CPUC has created incentives that actually encourage secret communications, ensure unfettered access to decisionmakers by utilities, and shield the public from similar access.

The ex parte forum is used heavily by the representatives of regulated entities, at a much higher rate than consumer groups, environmental organizations, or public entities like San Bruno. According to the Strumwasser report, within the past 12 years parties noticed collectively around 10,000 ex parte communications, or on average 755 a year. Of the 1,456 parties who noticed those ex parte communications, almost half were noticed by just seven utility corporations. Those corporations clearly have greater influence over CPUC decision-making. Furthermore,

these notices only identify – and are only required to report – the communications of the interested party and not the decisionmaker's communications, or in essence half a conversation. The Stumwasser report also noted that many industry ex parte communications go unreported. Overall, the report concluded that this ex parte access creates a fundamentally unfair advantage to the detriment to consumer and environmental groups, and the public at large. It also ultimately undermines Commission decisions which should be based on record-based evidence, not conversations over cocktails with corporate representatives.

This pilot program experiments on a limited basis to curtail ex parte communications in ratesetting proceedings, specifically in post-Proposed Decision Commission decision-making. However, this program only addresses indirectly a small portion of the Strumwasser recommendations. The report recommended, in part, that:

- Ex parte communications be abolished completely in ratesetting matters;
- CPUC rules should change to require decisionmakers to report ex parte communications in quasi-legislative proceedings;
- Sanctions be increased for persons who violate ex parte rules, including sanctions for Commissioners and their staff;
- Advisory staff's roles to be clearly defined in each proceeding, including a requirement that Commissioners' advisors be treated as decisionmakers;
- Industry conferences be prevented from serving as conduits for ex parte communications;
- Oral arguments and all-parties meetings be used more frequently as a means to present evidence;
- Commission public meetings be transformed into a forum where parties are heard and decisions made, instead of its current ceremonial role; and
- The Commission should appoint an independent ethics officer to monitor the compliance of ex parte rules and provide training and codes of conduct to staff and parties alike.

The pilot program does not address these recommendations.

The City also questions the applicability of this program. It is unclear whether regulated utilities would agree to such a pilot program. The utilities' reservations regarding this program may thwart the success of a pilot program from receiving accurate information on the ex parte problems in ratesetting matters.

The City supports the reforms suggested by the Strumwasser report, especially the recommendation of an independent ethics officer to monitor ex parte compliance both within the CPUC corridors and those entities who appear in CPUC proceedings. The City also supports ex parte reporting obligations for Commissioners and their staff as a means to curb improper access.

If the CPUC is truly interested in reform, they should fully encompass the Strumwasser report's recommendations into its pilot program.

I thank you for your attention to this matter, and please feel free to contact me if you have any questions or would like to discuss this matter further. The City would be interested in hearing from you with respect to what next steps the CPUC intends to take in response to the comments received.

Very truly yours,

Marc Zafferano
City Attorney

cc: Connie Jackson, City Manager, City of San Bruno
Steven Meyers, Special Counsel
Britt Strottman, Special Counsel