

To: Policy & Governance Committee (Commissioners Peterman and Randolph)
From: Dave Gamson, Rachel Peterson, Leuwam Tesfai
Re: Options for Building the CPUC's Transparency via Ex Parte Practices

This memo presents recommendations and options for building transparency at the Commission via our ex parte communication practices. Currently there is no legal requirement for Commissioners or staff to disclose ex parte communications, however, the Commission has developed a voluntary system for reporting such communications. Improving and refining the log is one of several transparency-related initiatives going on at the CPUC.

Our recommendations incorporate Commissioner input at the 1/27/2016 Policy and Governance meeting, focus group feedback, advisor input, IT input on the technical feasibility of adding features to the existing communications log, and our own experience as advisors.

Either approach requires a commitment by Commissioners and senior management to this part of building the CPUC's transparency. We request Commissioner reach consensus about the purposes set out here, and provide direction to pursue any of the options, or a different approach.

Purpose

The purposes of modifying the Commission's voluntary ex parte disclosure practices are to:

- Provide transparency into the range of one-on-one meetings that decisionmakers hold with persons or organizations interested in the outcome of a ratesetting proceeding.
- Build trust that the universe of such meetings is being made transparent to the public, and that the content of the meetings is being accurately represented by the reporting person/party.
- Seek to ensure that the internal burden on CPUC staff to implement any of the options is exceeded by the public value that it builds.

Options

Recommended option: Enhance the public-facing elements of the ex parte communications log, enhance the IT aspects of the log to ensure consistency, and reduce the internal burden by eliminating the logging responsibility for division directors.

Other options:

- End the use of the log and allow individual decisionmakers to develop transparency in their own manner.
- Retain the requirement that division directors complete the log.

Discussion

Recommended option:

We recommend that the Commission retain the log, enhance its public-facing elements, enhance its IT elements for greater consistency, and eliminate the logging responsibility for division directors. We believe that this approach enhances the core public value of the log, and we recommend the modifications set out below.

Core public value of the log:

- Allows users to see and search among all ex parte meetings held across decision-makers, time, and ratesetting proceedings.
- Allows users to cross-reference between the log and ex parte filings on docket cards.
- Provides standardized way for decisionmakers to verify an ex parte filing (if approved by Commissioners)

Target audience:

- General public and media

Type of proceedings in which meetings are logged:

- All ratesetting proceedings (no change from the current log).

Entities requesting/holding the meeting:

- Any/all stakeholders requesting a meeting in a ratesetting proceeding, not just regulated entities. This is an expansion from the original directive and more accurately tracks the parties and interested persons filing ex parte notices.

Definition of decisionmaker:

- Require logging by those who are defined by the CPUC's Rules of Practice and Procedure as decision-makers or those who are covered by the ex parte rules: Commissioners, Administrative Law Judges, and advisors.

This eliminates the requirement for division directors to log their meetings in ratesetting proceedings with regulated entities. From feedback during the focus groups and internal discussions, we determined that this requirement led primarily to confusion about which meetings with division directors were required to be logged. We feel the internal administrative burden outweighs the public transparency value of continuing this requirement.

Recommended new or enhanced public-facing elements:

- Editing on CPUC website to more clearly define communications and describe the log

- Editing and relabeling of log search categories for clarity and ease of use to a general public audience
- Easy access to a table showing all logged meetings
- Link from entries in the log to the corresponding docket card (which is where the filed ex parte notice will appear)
- A verification button showing that the decisionmaker has reviewed the ex parte notice and agrees that it correctly reflects the content of the meeting.
- Drop down menus so that admin can consistently input the same proceeding number, participant name, party/company name.

Pros: Retains the unique CPUC communications log with the public values described above. Of several state and Federal agency websites reviewed, only the FCC maintains a similar log. This also allows for consistent internal logging practices.

Cons: Verification button may be viewed by users as an insufficiently robust indicator of completeness or accuracy of an ex parte filing.

IT estimate of time frame to complete beta version with above features:

- 93 person-hours of IT time from start date of project.

Other options

- a) End the use of the log and instead amplify decisionmaker responsibilities to find demonstrable ways to meet the transparency and trust-building purposes above. Individual accomplishment would be left to each affected division or office. For example, Commissioner offices would determine whether or not to accept ex parte meetings in ratesetting cases, and if yes, how to best demonstrate that the ex parte notice was timely filed and is a fair representation of the content of the meeting. Other decisionmakers, such division directors, would develop their own approach.

Pros: Individualized approaches make it more likely that Commissioner offices will appropriately balance the burden and public value according to their work load and priorities.

Cons: No ability to view ex parte meetings across proceedings, time, or decisionmaker, individualized approaches can lead to differences in implementation and thus confusion and potential for misunderstanding/mistrust.

- b) Retain the logging responsibility for division directors. See above discussion for pros and cons.

Appendix: Comparison to State and Federal Agencies

Federal Communications Commission

- Maintains an ex parte log most similar to the CPUC's, accompanied by an e-comment filing system allowing the public and stakeholders to submit comments ranging from informal (fill in a short text box) to formal (attach a brief), which become part of the administrative record. The log is searchable by name of filer, proceeding number, and other fields.
- Categorizes proceedings as "exempt" from ex parte disclosure rules, "permit-but-disclose", and "restricted". Rules require ex parte notice filer to cite to portions of the record containing facts and arguments brought up during the ex parte. FCC staff permitted to forward suspected ex parte rules violations to FCC General Counsel. Rules set out in 47 CFR §§ 1.1200-1.1216.
- IT approach: Public comments and ex parte notices searchable by various terms (e.g., docket number, docket title, name of filer, date); search results can be exported into spreadsheet. Search results link to written comment or ex parte filing. Maintains an "Archive of Filings" page (<https://www.fcc.gov/proceedings-actions/ex-parte/archive-of-filings>) by date.

California Coastal Commission

- Pursuant to statute, Commissioners report ex parte communications (Pub. Resources Code section 30324(a)). Outside parties have no obligation to report ex parte communications.
- IT approach: No individual Commissioner meeting request forms on website; Commissioner page contains description of ex parte rules and link to Commissioner ex parte disclosure form. No log/database of all ex parte disclosure forms across time or cases; individual notices available via CCC website search tool.

California Energy Commission

- CEC Commissioners subject to California APA.
- IT approach: Individual Commissioner meeting request forms on website; maintains e-comment system on website for public comments on any proceeding. No database of all submitted e-comments available.

California Air Resources Board

- All public comments on rulemakings become part of administrative record; ex parte communications not applicable/defined.
- IT approach: No log/database of public comments across ARB rulemaking dockets or time.

Federal Energy Regulatory Commission

- "Off-the-record" communication rules set out in 18 CFR §385.2201
- IT approach: Fillable meeting request form for each Commissioner, includes link to 18 CFR §385.2201. No log/database of all off-the-record communications across time or dockets; individual notices of contact available by searching in individual dockets