

Draft Reform Proposals – Discussion Document
CPUC Policy and Governance Committee
UPDATED WITH NEXT STEPS – November 18, 2015

In light of recommendations from the reports by Michael Strumwasser and Edward O’Neill, the Policy and Governance Committee is interested in discussing actions to enhance transparency, accessibility, and effectiveness of CPUC decision-making. The Committee is aware that extensive consideration of these issues will take place in 2016 in the Legislature, and that these issues are a critical part of the Commission’s multi-year strategic planning process that is just beginning. However, in the near term the Committee has identified the proposals below to evaluate for possible consideration by the full Commission. The Committee anticipates numerous discussions with Legal Division, ALJ Division, and outside parties about these proposals. Thus, these proposals are not meant to supplant any broader conversations or proposals but rather to begin review of discrete proposals that are within the Commission’s authority to enact.

1. Ex parte rules

11/18/2015 Update: The Policy and Governance Committee has requested guidance from Legal Division about whether a clarification of the definition of procedural communications can be achieved through a guidance document or whether it requires a change in the Rules of Practice and Procedure.

- Consider reviewing and clarifying the definition of procedural communications for purposes of PUC section 1701.1(b)(4), which excludes procedural communication from the definition of an “ex parte” communication, and developing publicly available guidance for decision-makers and practitioners about procedural communications. (Strumwasser recommendation #17.)
- Consider and develop publicly available best practices for managing and reporting “one-sided” communications that involve a decision-maker and an interested party. (Strumwasser recommendation #6.)

2. Disclosure Requirements

11/18/2015 Update: Next steps –

- **Review 10/8/2014 Executive Director directive and how the Commission has implemented the directive:**
 - i. **Qualifying meetings are logged each Wednesday,**
 - ii. **Log is in searchable format on CPUC website,**
 - iii. **Commissioner offices are reporting ex parte meetings held in all ratesetting proceedings with all parties, not just regulated entities, in which hearings have been held or are identified as potentially needed.**

iv. Currently Commissioner offices hold different types of meetings that are not ex parte contacts and/or are not required to be reported. Not all of those meetings are included in the log. Consistent with the law and Commission practice, the ex parte communications log does not contain i) meetings that are meet-and-greets with general content not related to proceedings, or ii) meetings in quasi-legislative proceedings. Also consistent with the law and Commission practice, Commissioner offices do not hold meetings in adjudicatory cases or in cases with pending applications for rehearing. Finally, the 2014 directive required logging only meetings held with regulated entities, not all parties to a proceeding.

- Conduct two focus groups (one internal, one external) on the format and usefulness of the online log. Internal focus group participants will include: Administrative Law Judge Division, IT, Legal Division, and Public Advisors Office. Invitations to participate in the external focus group will be extended to parties that practice regularly before the Commission, including ORA, TURN, environmental groups (such as Union of Concerned Scientists, Sierra Club, NRDC), and labor groups (such as CUE, UWUA). The focus groups will be managed by Commissioner Randolph staff and will focus on the usefulness and format of the online communications log. IT will be involved in case suggested modifications would require IT work. The discussions will occur in December 2015 and January 2016 with a report to the Policy and Governance committee in January 2016.
- Using focus group results, modify and propose a new directive that establishes the communications log as a permanent practice.
- Discuss disclosure requirements and practices, including the ex parte notice obligation, the content, timing, and the right of reply. Develop publicly available guidance for decision-makers and practitioners about disclosure best practices. Consider formalizing and standardizing the current informal reporting system used by Commissioners to report ex parte contacts to ensure consistency and transparency. (Strumwasser recommendation #6.)

3. "Quiet Time" Period Practice

11/18/2015 Update: The Policy and Governance Committee has requested guidance from Legal Division about whether modifications to the Commission's practices with respect to quiet time periods can be achieved through a guidance document or whether it requires a change in the Rules of Practice and Procedure.

- Examine the possibility of instituting more frequent use of quiet time periods, such as a period of time after a proposed decision is issued and the comment cycle is complete, and before the item is taken up by the Commission at a business meeting. (See Strumwasser report at pp. 71, 103.)

- The discussion would include evaluating the types of proceedings in which quiet time periods would benefit both decision-makers and practitioners.

3. Guidance and Training

11/18/2015 Update: The Policy and Governance Committee has requested that Legal Division prepare an updated training slide deck on ex parte communications and practices for use in internal trainings.

- Consider and discuss implementation of new training programs on ex parte communications and practices, such as standard training as part of onboarding new Commissioners, advisors, and industry division staff, and standardized training materials for practitioners before the Commission about ex parte rules and practice. A focus should be on creating training that will help clarify nuances in the existing rules and provide hypotheticals to educate practitioners. This program could be offered by a third party such as the CCPUC. (Strumwasser recommendation #15.)

4. Categorization of Proceedings

11/18/2015 Update: The Policy and Governance Committee has requested guidance from Legal Division about whether a clarification of the categorization of proceedings can be achieved through a guidance document or whether it requires a change in the Rules of Practice and Procedure.

- Review the Commission's practice of categorizing proceedings as ratesetting and quasi-legislative, and consider the criteria to be used in categorizing proceedings. (Strumwasser recommendation #2, O'Neill report at p. 19.)