

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** April 2, 2013

**To:** The Commission  
(Meeting of April 4, 2013)

**From:** Lynn Sadler, Director  
Office of Governmental Affairs (OGA) – Sacramento

**Subject: SB 611 (Hill) – Public Utilities Commission: Organization:  
Proceedings.  
As introduced: February 22, 2013**

**RECOMMENDED POSITION: OPPOSE**

**SUMMARY OF BILL:**

This bill would:

1. Eliminate all statutory authority of the CPUC President, other than the authority to preside over meetings.
2. Make Assigned Commissioners in adjudicatory and ratesetting cases subject to peremptory challenges (i.e. challenges not based on a showing of bias or interest), to the same extent that ALJs currently are.
3. Codify a separation of functions requirement that in any adjudication case (or factually related proceeding) a member of the CPUC staff may perform either prosecutorial or adjudicatory functions, but not both.

**CURRENT LAW:**

- The President of the Commission is appointed by the Governor from among the Commission's members and presides at all Commission meetings. Under current statutes, the President directs the Commission's Executive Director, General Counsel, and all other Commission staff, except for the Division of Ratepayer Advocates, in accordance with Commission policies and guidelines.
- In adjudication cases, under PU Code Sec. 1701.2 (a), parties are entitled to one peremptory challenge of the assigned ALJ. Pursuant to the Commission's Rules of Practice and Procedure, Rule 9.2(a), such peremptory challenges are limited to one for each side. Under the statute, parties are also entitled to unlimited peremptory challenges in any case in which the ALJ has

within the previous 12 months served in any capacity in an advocacy position at the Commission, been employed by a regulated public utility, or has represented a party or has been a party of interest in the case. The ALJ may also be challenged for cause, including, but not limited to financial interest and prejudice.

- In ratesetting cases, under PU Code sec. 1701.3 (b), the CPUC is required to adopt regulations providing for peremptory challenges of ALJs. Under Rule 9.2(b) of the Commission's Rules of Practice and Procedure, a party may file a motion, once only, for reassignment of a ratesetting proceeding to another ALJ, however, no more than two reassignments are permitted in the same proceeding. Parties are also entitled to unlimited peremptory challenges based on the same kinds of prior service of the ALJ as in adjudication cases. The ALJ may also be challenged for cause.
- As currently written, the Public Utilities Code does not contain statutory language requiring separation of advocacy attorneys from advisory attorneys. The California Supreme Court in a 2009 decision recognized, however, that separation of advisory attorneys from advocacy attorneys was appropriate in order to protect the due process rights of a respondent in an adjudicatory-style enforcement case. *Morongo Band of Mission Indians v. State Water Resources Control Board*, 45 Cal. 4th 731 (2009). The CPUC's Legal Division currently carefully adheres to the guidance provided by the Supreme Court in that case.

#### **AUTHOR'S PURPOSE:**

In a post on his web-site (dated 2/22/13), the author of the bill stated the following as his purposes:

A) Require the CPUC to develop procedures to allow consumer groups, utilities and other parties to challenge the assignment of a case's assigned commissioner. The author of the bill believes that President Peevey should not have assigned himself to oversee the San Bruno penalty case against PG&E, because he believes that President Peevey has been heavily implicated in creating a culture of complacency that allowed PG&E's problems to go uncorrected for so long. The commissioner assigned to oversee a case determines the case's scope, and therefore needs to be free of bias and conflicts of interest.

B) Enforce due process by requiring an "ethical wall" between the staff who prosecute violations and staff who advise judges and commissioners. To have a judge directing the prosecution or a prosecutor telling the judge how to rule would be a violation of due process.

C) The statutory provision that requires all staff to be directed by the President of the CPUC was inserted in 2000, but was not necessary for the first nine decades of the

CPUC's existence. According to the author, removing this provision allows the CPUC to easily implement the ethical wall concept and ensure due process.

More specifically, the author is concerned with the CPUC's action last October to temporarily suspend public hearings in the San Bruno gas pipeline explosion enforcement proceedings. The author alleges that CPUC President Michael Peevey "direct[ed] the commission's staff, through the commission's general counsel, to force the parties in the San Bruno proceedings" to conduct private settlement discussions with PG&E.

Thus, it appears that the author's purpose is, in large part, to decrease the power of the current President of the CPUC (who has been confirmed by the State Senate as a CPUC Commissioner) because of disagreements that Senator Hill has with the current President.

#### **DIVISION ANALYSIS (Legal Division):**

Disagreements with the current occupant of an office are not a good justification for permanent changes to statutorily required procedures.

The author states that assigned Commissioners should be free of bias and conflicts of interest. However, the main change that SB 611 makes to the procedures governing the assignment of Commissioners is to allow *preemptory* challenges of assigned Commissioners, i.e., challenges *not* based on a showing of bias or interest. In short, there is no need for peremptory challenges to ensure that assigned Commissioners are free from bias or conflicts of interest.

Removing the strong President provisions from current law would require a majority vote by the Commission before the Commission could direct the executive director, general counsel, or other staff, even on routine matters, thereby compromising the Commission's ability to operate efficiently and perform its duties. This statutory change would also reduce the Commission's ability to act quickly to respond to immediate demands. This is due to restrictions imposed by the Bagley-Keene Open Meeting Act, which requires the Commission to meet publicly before it can direct the executive director, general counsel, or other staff to take specific action on a matter. In order to deal with these difficulties, the Commission would have to schedule additional meetings, which would require additional staff.

Moreover, the bill's provisions purporting merely to codify the Supreme Court's guidance in *Morongo Band of Mission Indians* case actually go much further than the Court itself intended. Based on the author's stated intent, the bill would require, for the advocacy function (at least in enforcement cases, and arguably in rate cases as well), an entirely new, parallel, duplicative Legal Division organization, headed up by a separate management structure. In this respect, the bill appears to seek a duplicative bureaucratic structure similar to that is used at the Federal Energy Regulatory Commission in Washington. This would increase by a third the number of attorneys and

supervisors employed at the Public Utilities Commission, at considerable cost to the State.

Senator Yee proposed a bill in the last session (SB 1403, as introduced) that would have used essentially the same statutory changes to remove the strong President provisions from existing law. The Legislative Counsel's Digest for that bill stated: "This bill would also require the commission to assign cases by majority vote of the full commission." If this year's bill would have that effect, then the bill would delay and complicate the process of assigning proceedings and could jeopardize the ability of the Commission to meet its statutory deadlines in resolving proceedings.

Allowing peremptory challenges against Assigned Commissioners (as well as Assigned ALJs) would lead to delays in handling cases. Such peremptory challenges would also likely lead to an inability to make use of Commissioners' expertise and to parties gaming the system in an attempt to achieve a more favorable result. Such peremptory challenges also ignore the fact that Commissioners are appointed, and approved by the Senate, because of, not in spite of, the points of view they have about utility regulation.

There are approximately 40 ALJs, but only 5 Commissioners (at times even less than 5). Thus, it is much easier to find someone who is available to substitute for an ALJ who is removed due to a peremptory challenge, than it would be to find another available Commissioner. Accordingly, peremptory challenges against the assigned Commissioner are more likely to lead to delay in a case, particularly if both of the two available peremptory challenges are used.

Commissioners often have special expertise in certain areas of Commission regulation, e.g., water and telecommunications, and often are assigned cases based on that expertise. If a Commissioner with expertise is peremptorily removed, and a Commissioner with less expertise must be substituted in, then the Commission loses the use of its Commissioner's expertise, the new Commissioner must spend time getting up to speed, and the case may be delayed.

Peremptory challenges could be used to game the system in an inappropriate fashion. For example, ratesetting cases often have more than one utility as a party. If utilities tended to view two of the Commissioners as more favorable to ratepayer interests than the utilities would prefer, then in any ratesetting case in which there were two or more utilities, the utilities might use the two available peremptory challenges to disqualify both of those Commissioners (if they were assigned), and thereby obtain an assigned Commissioner they viewed as more favorable to the utilities.

Commissioners, unlike ALJs, are appointed because they have points of view about the kinds of issues that come before the Commission. They are appointed by the Governor and subject to confirmation by the Senate. Allowing peremptory challenges of assigned Commissioners in a proceeding could prevent Commissioners with the points of view desired by the Governor, and approved by the Senate, from serving in important roles at the Commission (i.e. serving as the assigned Commissioner in any adjudication or

ratesetting case from which a party wishes to remove them). The Commission, unlike a court, is not merely deciding private disputes, but is resolving matters in the public interest. Therefore, it is appropriate that Commissioners who are chosen by the Governor because of what they view as the public interest should not be peremptorily disqualified from serving as assigned Commissioners. It would be inappropriate to allow the parties rather than the Governor (with the consent of the Senate), to decide who should be directing the course of CPUC proceedings.

For the same reasons articulated in the preceding paragraph, it would be inappropriate to allow parties to remove an assigned Commissioner just because the Commissioner had within the previous 12 months served in any capacity in an advocacy position at the Commission or been employed by a regulated public utility. The issue of whether someone should serve as a Commissioner if he or she has, during the preceding 12 months, been an advocate at the Commission or been employed by a regulated public utility is an issue that should be addressed as part of the nomination and confirmation process, not by the parties to a particular case. If the Commissioner assigned to a particular case has been an advocate or witness in that case, or has any other actual conflict, the appropriate remedy is a challenge for bias or interest, and there is no need for a peremptory challenge based on prior service.

#### **FISCAL IMPACT:**

Should the Commission have to assign cases by majority vote of the full Commission as a result of this bill, fiscal impact would be significant. This bill would create 10 permanent positions with an annual expense of \$1,110,890. This bill would also create other expenses totaling \$49,509 annually.

The 10 new positions would break-down as follows:

- Four Commissioner Advisor positions will be needed, one for each office with the exception of the office of the President. These Advisor positions would be necessary to assist Commissioners with preparing for additional Commission Meetings. Advisors would need to alternate between Commission Meetings in order to provide the necessary support and advice Commissioners need to participate in Commission meetings.
- One Associate Governmental Program Analyst (AGPA) position is needed to assist the Public Advisor's Office in planning and the preparing the logistics of the additional Commission Meetings. The new AGPA position would alternate Commission Meeting duties with existing staff in order to comply with the public demands around Commission Meetings.
- One Associate Information System Analyst position is needed to assist with the IT needs around the additional Commission Meeting. For every Commission Meeting, the Advisors meet the week of the Agenda mailing and the Directors meet the week of the Commission Meeting to work out the logistics of the Commission Meeting. Teleconference with Sacramento Office and Los

Angeles Office is necessary in both of these meetings and IT services are necessary to set up these teleconferences. IT also is in charge of the electronic logistics of the Commission Meeting with regard to Power Point presentations and the audio system for the Commission Meeting.

- Two Legal Secretary – Range A positions are needed. One position for ALJ Division and one position for Legal Division. Legal Secretaries assist the ALJs and Attorneys of the Commission preparing, processing, and mailing the orders for Commissioners' consideration and action.
- One Senior Legal Analyst position is needed to oversee and alternate with the existing Senior Legal Analyst the additional Commission Meetings demands. One of the duties of the Senior Legal Analyst is to oversee all Commission Meeting related activities such as: final review of the Commission's Agenda, attends Advisors' Agenda Review and prepares the confidential minutes, attends the Directors' Agenda Review and approves the Hold List, provides instructions to staff regarding final logistics for the Commission Meeting, handles inquires of Agenda Items, attends the Commission Meetings and approves the final Results of the meetings.
- One Agenda Clerk/Senior Legal Typist is needed to alternate with the existing Agenda Clerk the duties of the additional Commission Meetings. The workload does not permit to have only one Agenda Clerk to handle the demands a Commission Meeting entails. The Agenda Clerk prepares the agenda, makes sure that the links for each Agenda Item are actively working, ensures that revisions are up-to-date, each evening by 4:00 p.m. refreshes the Agenda leading up to the Commission Meeting day, distributes Agenda materials according to the Commission Schedule's deadlines, attends the Commission Meeting and prepares the Results of the Commission Meeting.

The additional costs would break-down as follows:

- Interpreters (\$22,509): Presently, sign interpreters come every Commission Meeting to cover the Public Session of the meeting, if this bill is enacted and additional meeting are scheduled, interpreters would need to cover those additional meetings.
- California Highway Patrol (\$14,400): This amount covers for two California Highway Patrol officers per additional Commission Meeting at \$400.00 each. There are 18 Commission Meetings scheduled for 2012 and if there is a need to meet every 10 days, 18 additional meetings need to be scheduled. When high profile issues are addressed in a Commission Meeting and high public attendance is expected, there is a need for up to four officers therefore, this estimated cost could double.
- Public Advisor's Office Travel Costs (\$12,600): Public Advisor Staff from Los Angeles come to San Francisco to assist the public on Commission Meeting days. An estimated cost of \$700.00 per Commission Meeting is needed. This amount is multiplied by the 18 additional meetings.

Depending on the interpretation of the provisions of the bill, Legal Division may require additional staffing to perform new functions necessitating at least 8 new attorneys.

**LEGISLATIVE HISTORY:**

As discussed above, Senator Yee proposed a bill in the last session (SB 1403, as introduced) that would have used essentially the same statutory changes to remove the strong President provisions from existing law.

**SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:**

This bill should be opposed for the following reasons:

- (1) Removing the strong President provisions from current law would compromise the Commission's ability to operate efficiently and reduce the ability of Commission staff to respond quickly to pressing matters.
- (2) Peremptory challenges of assigned Commissioners would allow parties, rather than the Governor and Senate, to decide who should be presiding over Commission proceedings, and would lead to delays.
- (3) Peremptory challenges of assigned Commissioners are not necessary to deal with situations where the assigned Commissioner may be biased or have an actual conflict.
- (4) If interpreted to require an enforced, organizational separation of advocacy attorneys from advisory attorneys, in place of the current practice of keeping attorneys separated on a case-by-case basis, it is unnecessary and would result in duplicative bureaucracy and unjustified expense.

**STATUS:**

SB 611 is pending hearing in the Senate Energy, Utilities and Communications Committee on April 16<sup>th</sup>, 2013.

**SUPPORT/OPPOSITION:**

None yet.

**VOTES:**

None yet.

**STAFF CONTACTS:**

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**BILL LANGUAGE:**

BILL NUMBER: SB 611      INTRODUCED  
BILL TEXT

INTRODUCED BY    Senator Hill

FEBRUARY 22, 2013

An act to amend Sections 305, 307, 308, 309.6, 1701.2, and 1701.3 of the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 611, as introduced, Hill. Public Utilities Commission: organization: proceedings.

The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities, as defined. The California Constitution grants the commission certain general powers over all public utilities, subject to control by the Legislature, and authorizes the Legislature, unlimited by the other provisions of the California Constitution, to confer additional authority and jurisdiction upon the commission, that is cognate and germane to the regulation of public utilities. Existing law requires the Governor to designate the president of the commission from among its members and requires the president to direct the executive director, the attorney, and other staff of the commission, except for the Division of Ratepayer Advocates, in accordance with commission policies and guidelines.

The bill would repeal the requirement that the president direct the executive director, attorney, and other staff of the commission.

Existing law authorizes the attorney for the commission, if directed to do so by the president, except as otherwise directed by vote of the commission, to intervene, if possible, in any action or proceeding involving any question arising pursuant to the Public Utilities Act. Existing law requires the attorney for the commission to commence, prosecute, and expedite the final determination of all actions and proceedings, and to generally perform all duties and services as attorney to the commission, as directed or authorized by the president, except as otherwise directed or authorized by vote of the commission.

This bill would authorize the attorney for the commission, if directed to do so by the commission, to intervene, if possible, in any action or proceeding involving any question arising pursuant to the Public Utilities Act. This bill would require the attorney for the commission to commence, prosecute, and expedite the final determination of all actions and proceedings, and to generally perform all duties and services as attorney to the commission, as directed or authorized by the commission.

Existing law requires the executive director for the commission to

keep a full and true record of all proceedings of the commission, issue all necessary process, writs, warrants, and notices, and perform such other duties as the president, or vote of the commission, prescribes. Existing law provides that the president may authorize the executive director to dismiss complaints or applications when all parties are in agreement thereto, in accordance with rules that the commission may prescribe.

This bill would require the executive director to keep a full and true record of all proceedings of the commission, issue all necessary process, writs, warrants, and notices, and perform the other duties the commission prescribes. The bill would provide that the commission may authorize the executive director to dismiss complaints or applications when all parties are in agreement thereto, in accordance with rules that the commission may prescribe.

The California Constitution authorizes the commission to establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. Existing law provides for the appointment of administrative law judges and the assigning of commissioners to preside over cases before the commission and requires the commission, to adopt procedures on the disqualification of administrative law judges due to bias or prejudice similar to those of other state agencies and superior courts.

This bill would require the commission to additionally adopt procedures on the disqualification of commissioners due to bias or prejudice similar to those of other state agencies and superior courts.

Existing law establishes certain procedures that are applicable to adjudication, rulemaking and ratesetting cases. Existing law requires the commission, by regulation, to provide for peremptory challenges and challenges for cause of an assigned administrative law judge in adjudication and ratesetting cases and entitles parties to unlimited peremptory challenges in any case in which the administrative law judge has, within the previous 12 months, served in any capacity in an advocacy position at the commission, been employed by a regulated public utility, or has represented a party or has been a party of interest in the case.

This bill would require the commission, by rule, to provide for peremptory challenges and challenges for cause of an assigned administrative law judge or assigned commissioner in adjudication and ratesetting cases and entitles parties to unlimited peremptory challenges in any case in which the administrative law judge or assigned commissioner has, within the previous 12 months, served in any capacity in an advocacy position at the commission, been employed by a regulated public utility, or has represented a party or has been a party of interest in the case. The bill would prohibit an officer, employee, or agent of the commission that is assigned to assist in the prosecution of, or to testify in, an adjudication case, from participating in the decision of the case, or in the decision of any factually related proceeding. The bill would permit an officer, employee, or agent of the commission that is assigned to assist in the prosecution of an adjudication case to participate in reaching a settlement of the case, but would prohibit the officer, employee, or agent from participating in the decision of the commission to accept or reject the settlement, except as a witness or counsel in an open hearing or a specified closed hearing.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 305 of the Public Utilities Code is amended to read:

305. The Governor shall designate a president of the commission from among the members of the commission. ~~The president shall direct the executive director, the attorney, and other staff of the commission, except for the staff of the division described in Section 309.5, in the performance of their duties, in accordance with commission policies and guidelines.~~ The president shall preside at all meetings and sessions of the commission.

SEC. 2. Section 307 of the Public Utilities Code is amended to read:

307. (a) The commission may appoint as attorney to the commission an attorney at law of this state, who shall hold office during the pleasure of the commission.

(b) The attorney shall represent and appear for the people of the State of California and the commission in all actions and proceedings involving any question under this part or under any order or act of the commission. If directed to do so by ~~the president, except as otherwise directed by vote of~~ the commission, the attorney shall intervene, if possible, in any action or proceeding in which any such question is involved.

(c) ~~The~~ Except as provided in Section 1701.2, the attorney shall commence, prosecute, and expedite the final determination of all actions and proceedings directed or authorized by ~~the president, except as otherwise directed or authorized by vote of~~ the commission, advise the commission and each commissioner, when so requested, in regard to all matters in connection with the powers and duties of the commission and the members thereof, and generally perform all duties and services as attorney to the commission that ~~the president, or vote of~~ the commission, may require of him.

SEC. 3. Section 308 of the Public Utilities Code is amended to read:

308. (a) The commission shall appoint an executive director, who shall hold office during its pleasure. The executive director shall be responsible for the commission's executive and administrative duties and shall organize, coordinate, supervise, and direct the operations and affairs of the commission and expedite all matters within the commission's jurisdiction.

(b) The executive director shall keep a full and true record of all proceedings of the commission, issue all necessary process, writs, warrants, and notices, and perform such other duties as ~~the president, or vote of~~ the commission, prescribes. The ~~president~~ commission may authorize the executive director to dismiss complaints or applications when all parties are in agreement thereto, in accordance with rules that the commission may prescribe.

(c) The commission may appoint assistant executive directors who may serve warrants and other process in any county or city and county of this state.

SEC. 4. Section 309.6 of the Public Utilities Code is amended to

read:

309.6. (a) The commission shall adopt procedures on the disqualification of administrative law judges *and commissioners* due to bias or prejudice similar to those of other state agencies and superior courts.

(b) The commission shall develop the procedures with the opportunity for public review and comment.

SEC. 5. Section 1701.2 of the Public Utilities Code is amended to read:

1701.2. (a) If the commission pursuant to Section 1701.1 has determined that an adjudication case requires a hearing, the procedures prescribed by this section shall be applicable. The assigned commissioner or the assigned administrative law judge shall hear the case in the manner described in the scoping memo. The scoping memo shall designate whether the assigned commissioner or the assigned administrative law judge shall preside in the case. The commission shall provide by ~~regulation~~ *rule*

for peremptory challenges and challenges for cause of the administrative law judge *or assigned commissioner* . Challenges for cause shall include, but not be limited to, financial interests and prejudice. The ~~regulation~~ *rule*

shall provide that all parties are entitled to one peremptory challenge of the assignment of the administrative law judge *and one peremptory challenge of the assigned commissioner* in all cases. All parties are entitled to unlimited peremptory challenges in any case in which the administrative law judge *or the assigned commissioner* has within the previous 12 months served in any capacity in an advocacy position at the commission, been employed by a regulated public utility, or has represented a party or has been a party of interest in the case. The assigned commissioner or the administrative law judge shall prepare and file a decision setting forth recommendations, findings, and conclusions. The decision shall be filed with the commission and served upon all parties to the action or proceeding without undue delay, not later than 60 days after the matter has been submitted for decision. The decision of the assigned commissioner or the administrative law judge shall become the decision of the commission if no further action is taken within 30 days. Any interested party may appeal the decision to the commission, provided that the appeal is made within 30 days of the issuance of the decision. The commission may itself initiate a review of the proposed decision on any grounds. The commission decision shall be based on the record developed by the assigned commissioner or the administrative law judge. A decision different from that of the assigned commissioner or the administrative law judge shall be accompanied by a written explanation of each of the changes made to the decision.

(b) *No officer, employee, or agent of the commission that is assigned to assist in the prosecution of, or to testify in, an adjudication case, shall participate in the decision of the case, or in the decision of any factually related proceeding, including participation in or advising the commission as to findings of fact, conclusions of law, or orders. An officer, employee, or agent of the commission that is assigned to assist in the prosecution of an adjudication case may participate in reaching a settlement of the case, but shall not participate in the decision of the commission to accept or reject the settlement, except as a witness or counsel in an*

*open hearing or a hearing closed pursuant to subdivision (d). The Legislature finds that the commission performs both prosecutorial and adjudicatory functions in an adjudication case and declares its intent that an officer, employee, or agent of the commission may perform only one of those functions in any adjudication case, or factually related proceeding.*

—(b)

(c) Ex parte communications shall be prohibited in adjudication cases.

—(c)

(d) Notwithstanding any other provision of law, the commission may meet in a closed hearing to consider the decision that is being appealed. The vote on the appeal shall be in a public meeting and shall be accompanied with an explanation of the appeal decision.

—(d)

(e) Adjudication cases shall be resolved within 12 months of initiation unless the commission makes findings why that deadline cannot be met and issues an order extending that deadline. In the event that a rehearing of an adjudication case is granted the parties shall have an opportunity for final oral argument.

—(e)

(f) (1) The commission may determine that the respondent lacks, or may lack, the ability to pay potential penalties or fines or to pay restitution that may be ordered by the commission.

(2) If the commission determines that a respondent lacks, or may lack, the ability to pay, the commission may order the respondent to demonstrate, to the satisfaction of the commission, sufficient ability to pay potential penalties, fines, or restitution that may be ordered by the commission. The respondent shall demonstrate the ability to pay, or make other financial arrangements satisfactory to the commission, within seven days of the commission commencing an adjudication case. The commission may delegate to the attorney to the commission the determination of whether a sufficient showing has been made by the respondent of an ability to pay.

(3) Within seven days of the commission's determination of the respondent's ability to pay potential penalties, fines, or restitution, the respondent shall be entitled to an impartial review by an administrative law judge, of the sufficiency of the showing made by the respondent of the respondent's ability to pay. The review by an administrative law judge of the ability of the respondent to pay shall become part of the record of the adjudication and is subject to the commission's consideration in its order resolving the adjudication case. The administrative law judge may enter temporary orders modifying any financial requirement made of the respondent pending the review by the administrative law judge.

(4) A respondent that is a public utility regulated under a rate-of-return or rate-of-margin regulatory structure or that has gross annual revenues of more than one hundred million dollars (\$100,000,000) generated within California is presumed to be able to pay potential penalties or fines or to pay restitution that may be ordered by the commission, and, therefore, paragraphs (1) to (3), inclusive, do not apply to that respondent.

SEC. 6. Section 1701.3 of the Public Utilities Code is amended to read:

1701.3. (a) If the commission pursuant to Section 1701.1 has determined that a ratesetting case requires a hearing, the procedures prescribed by this section shall be applicable. The assigned commissioner shall determine prior to the first hearing whether the commissioner or the assigned administrative law judge shall be designated as the principal hearing officer. The principal hearing officer shall be present for more than one-half of the hearing days. The decision of the principal hearing officer shall be the proposed decision. An alternate decision may be issued by the assigned commissioner or the assigned administrative law judge who is not the principal hearing officer. The commission shall establish a procedure for any party to request the presence of a commissioner at a hearing. The assigned commissioner shall be present at the closing arguments of the case. The principal hearing officer shall present the proposed decision to the full commission in a public meeting. The alternate decision, if any, shall also be presented to the full commission at that public meeting. The alternate decision shall be filed with the commission and shall be served on all parties simultaneously with the proposed decision.

The presentation to the full commission shall contain a record of the number of days of the hearing, the number of days that each commissioner was present, and whether the decision was completed on time.

(b) The commission shall provide by ~~regulation~~ *rule* for peremptory challenges and challenges for cause of the administrative law judge *or the assigned commissioner*. Challenges for cause shall include, but not be limited to, financial interests and prejudice. All parties shall be entitled to unlimited peremptory challenges in any case in which the administrative law judge *or assigned commissioner* has, within the previous 12 months, served in any capacity in an advocacy position at the commission, been employed by a regulated public utility, or has represented a party or has been a party of interest in the case.

(c) Ex parte communications are prohibited in ratesetting cases. However, oral ex parte communications may be permitted at any time by any commissioner if all interested parties are invited and given not less than three days' notice. Written ex parte communications may be permitted by any party provided that copies of the communication are transmitted to all parties on the same day. If an ex parte communication meeting is granted to any party, all other parties shall also be granted individual ex parte meetings of a substantially equal period of time and shall be sent a notice of that authorization at the time that the request is granted. In no event shall that notice be less than three days. The commission may establish a period during which no oral or written ex parte communications shall be permitted and may meet in closed session during that period, which shall not in any circumstance exceed 14 days. If the commission holds the decision, it may permit ex parte communications during the first half of the interval between the hold date and the date that the decision is calendared for final decision. The commission may meet in closed session for the second half of that interval.

(d) Any party has the right to present a final oral argument of its case before the commission. Those requests shall be scheduled in a timely manner. A quorum of the commission shall be present for the

final oral arguments.

(e) The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision based on evidence in the record. The final decision of the commission shall be issued not later than 60 days after the issuance of the proposed decision. Under extraordinary circumstances the commission may extend this date for a reasonable period. The 60-day period shall be extended for 30 days if any alternate decision is proposed pursuant to Section 311.