

**Report from Policy and Governance Committee
Review of the CPUC's Rules of Practice and Procedure**

This report summarizes the steps we have taken to examine the California Public Utilities Commission's (CPUC) Rules of Practice and Procedure to achieve greater transparency, accessibility, and efficiency in CPUC proceedings and our recommendations for modifying the Rules in 2020. This work has been a central focus of the Policy and Governance Committee and the proposed modifications are based on feedback received from a diverse group of stakeholders during workshops in 2018 and 2019 and staff working groups. Our public process surfaced many recommendations that do not require changes to our Rules and therefore are not included in today's meeting. These issues have either been implemented, are being implemented, or are under consideration, and will be addressed at future Committee meetings.

The 24 recommended changes are listed in the following pages in the same format as the December 6, 2019 workshop materials. We anticipate returning with draft language for specific issues that received the most attention during our workshops and in comments, and that would benefit from focused discussion here. Examples include the criteria and process for expedited proceedings and options for reflecting public comment in our decision-making process. At a future Policy and Governance Committee we will share our 2020 workplan with a schedule for when specific recommendations will be discussed here prior to issuing the draft resolution.

All proposed modifications will be included in a draft Resolution being prepared by ALJ Division in coordination with Legal Division. The draft Resolution will be mailed for public comment, and then revised taking into consideration input from stakeholders. The draft Resolution will be voted on by the Commission. Once adopted, the Resolution will be filed with the Office of Administrative Law (OAL) for their review and approval.

Introduction

The recommendations presented here for reforms to the California Public Utilities Commission’s (CPUC’s) Rules of Practice and Procedure (Rules) aim to achieve greater transparency, accessibility, and efficiency in CPUC proceedings.

The proposals related to accessibility and transparency are selected from workshops on the accessibility of CPUC proceedings held on August 30, 2018 (Fresno) and November 7, 2018 (San Francisco), the CPUC’s report from those written workshops, and written comments submitted on August 30, 2018. All materials and stakeholder comments about the transparency and accessibility initiative are posted here:

<https://www.cpuc.ca.gov/general.aspx?id=6442460773>.

The proposals for efficiency and expedited treatment are selected from stakeholder discussion and comments at the CPUC Policy and Governance Committee meeting on March 27, 2019 (San Francisco). All materials and stakeholder comments about expediting CPUC proceedings are posted here: <https://www.cpuc.ca.gov/calEvent.aspx?id=6442460737>.

Proposed revisions based on recently enacted legislation and clarification and cleanup of the Rules are also included in the chart below.

Key:

[] Statutory

[] Clarification

[] Expediting

[] Accessibility

	Topic	Rule(s) affected	Statement of Reasons
1.	Section 1701(b)(1) (eliminating requirement for Commission ratification of assigned Commissioner’s change in initial hearing/ no hearing designation)	Rule 7.5 Changes to Preliminary Determinations. Rule 4.3 Service of Complaints and Instructions to Answer. Rule 5.2 Responses to Investigations. Rule 6.2 Comments. Rule 7.1 Categorization, Need for Hearing. Rule 7.3 Scoping Memos. Delete Rule 7.5 Changes to Preliminary Determinations. Renumber Rule 7.6. as 7.5 Appeals of Categorization.	Revise Rules for consistency with SB 1358 (Hueso, 2018).
2.	Section 1701.3(h)(6) (quiet time following ratesetting deliberative meeting)	Rule 8.2 Ex Parte Requirements.	SB 1358 (Hueso, 2018) AB 1054 (Holden, 2019)
3.	Settlements outside a CPUC proceeding relevant to the proceeding	Rule 12.1(a), (d) Proposal of Settlements. Rule 12.4 Rejection of Settlements.	Settlements that are outside a CPUC proceeding may be relevant to a proposed settlement within a CPUC proceeding. The outside settlement may thus be material to the CPUC’s evaluation of a proposed settlement, and disclosure by party motion will aid that evaluation.

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4.	<p>Section 1701.1(a) and (d)(4) (add catastrophic wildfire as a proceeding category with specific rules, procedures)</p> <p>Section 1701.1(e)(3) (catastrophic wildfire – add to ex parte construct)</p> <p>Section 1701.8 (b)(3) (catastrophic wildfire – PHC noticed w/in 15 days of filing; held within 25 days of filing)</p> <p>Section 1701.8 (b)(4) (catastrophic wildfire – scoping memo within 30 days of filing; PD within 12 months)</p> <p>Section 1701.8 (b)(4) (catastrophic wildfire – closed session and quiet time)</p> <p>Section 311(g)(2) (30 day proposed decision comment period may be reduced to 15 days in case of catastrophic wildfire proceeding at discretion of assigned Commissioner)</p>	<p>Rule 1.3 Definitions.</p> <p>Rule 2.1 Contents.</p> <p>Rule 2.6 Protests, Responses, and Replies.</p> <p>Rule 7.2 Prehearing Conference.</p> <p>Rule 7.3 Scoping Memos.</p> <p>Rule 8.2 Ex Parte Requirements.</p> <p>Rule 8.3 Communications at Conferences.</p> <p>Rule 13.2 Presiding Officer.</p>	<p>AB 1054 (Holden, 2019)</p>

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5.	Clarification: Quasi-legislative categorization permits: a) informality in evidence to build the record, b) flexibility in procedural schedule to accomplish objectives	Rule 1.3(e) - definition of QL categorization Rule 13.6 evidence Rule 2.1 (c) – 18-month deadline for QL proceedings Rule 7.2(b)- Assigned Commissioner has discretion to not hold a PHC in QL proceedings Rule 13.3 (e) Presence of Commissioner in QL proceedings required for “legislative facts” (general facts re: questions of law and policy and discretion), but need not be present for hearing on adjudicative facts (facts that answer questions such as who did what, where, when, how, why...)	Adding detail to the Rules about evidence-taking and procedural flexibility for quasi-legislative proceedings would improve transparency and accessibility in the manner contemplated by PUC 1701.1(f): “No informality in the manner of taking testimony or evidence shall invalidate any order, decision, or rule made, approved, or confirmed by the commission in quasi-legislative cases.” Guidance will aid intervenors new to the CPUC’s process.
6.	Clarification: Guidance on the CPUC’s application of the rules of evidence and evidentiary standards.	Rule 13.6 Evidence.	Clarification and guidance on the CPUC’s application of the rules of evidence will improve transparency about the treatment of evidence and the CPUC’s consistency in applying evidentiary standards. Sample guidance may include: Distinctions between CPUC hearings and civil/criminal courts in that the ALJ is the trier of fact and there is no direct examination of witnesses; evidence should be liberally admitted to the record; objections to evidence

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			(e.g., hearsay) go to weight rather than to admissibility.
7.	Clarification: Certificates of service – Remove requirement that certificate of service be served when document served by e-mail.	Rule 1.10 Electronic Mail Service.	Serving the certificate of service as part of e-mail service is an unnecessary step for intervenors; including the certificate of service in the filing is sufficient.
8.	Clarification: Executive Director Order Dismissing Application - Similar to Rule 4.5 for complaints, promulgate Resolution A-4638 as a rule for applications.	Rule 2.8 Voluntary Dismissal of Application.	Allowing for voluntary dismissal of applications by stipulation of all parties benefits efficiency.
9.	Clarification: Mobilehome park tenants may file complaints against a mobilehome park that is not a water corporation but offers water service.	Rule 4.1 Who May Complain.	Revise for consistency with Pub. Util. Code § 2705.6.
10.	Clarification: Rename Office of Ratepayer Advocates.	Rule 8.1 Definitions.	Change to Public Advocates Office.
11.	Clarification: Only permissible written ex parte communications do not need to be reported.	Rule 8.2(c)(3)(B) Ex Parte Requirements.	Clarify that this Rule applies only to permissible written ex parte communications.

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12.	Clarification: Notices of ex parte communications can be served electronically on decisionmakers.	Rule 8.4(a) Reporting Ex Parte Communications.	Electronic service of ex parte communication notices on decisionmakers will save paper and time.
13.	Clarification: A party has a right to oral argument in ratesetting or QL proceeding only where commissioner has determined a hearing is needed.	Rule 13.13 Oral Argument Before Commission.	Revise for consistency with Public Utilities Code §§ 1701.3, 1701.4.
14.	Clarification: Update locations where Commission agenda item documents are available; agenda item documents not available in LA and there is no San Diego Office.	Rule 15.3 Agenda Item Documents.	Update to reflect actual document availability.
15.	Clarification: Page limits for rehearing applications.	Rule 15.3 Agenda Item Documents.	Setting a 50-page limit for applications for rehearing will be consistent with the Court of Appeals.
16.	Clarification: Notices by a party and a decision-maker related to a reportable ex parte communication that addresses more than one proceeding.	Rule 8.4 Reporting Ex Parte Communications.	Clarify that reporting by an interested person and a decision-maker may address more than one proceeding in a single notice, if the communication addressed more than one proceeding.
17.	Clarification: Update titles, fix typos, make wording consistent.	Rule 1.9 Service Generally. Rule 1.13 Tendering of a Document for Filing.	Cleanup.

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		Rule 8.2 Ex Parte Requirements. Rule 11.5 Motion to Seal the Evidentiary Record. Rule 14.3(b) Comments on Proposed or Alternate Decision. Rule 14.1 Review and Appeal of Presiding Officer’s Decision.	
18.	Expediting: Expedited timeline dockets	Rule 7.2 Prehearing Conferences. Rule 7.3 Scoping Memo. Rule 14.2 Issuance of a Recommended Decision. Rule 14.3 Comments on Proposed or Alternate Decision.	Establishing a standardized timeline in which cases would be treated in an expedited manner would have transparency and accessibility benefits. It will help certain proceedings move at a predictable pace and schedule. A potential expedited timeline drawn from recent revisions to the Public Utilities Code for the new category of catastrophic wildfire proceedings could be contemplated as follows: <ul style="list-style-type: none"> • PHC noticed within 15 days of filing • PHC held within 25 days of filing • Scoping memo issued within 30 days of filing • Proposed Decision issued within 12 months of filing • 30 day Proposed Decision comment period may be reduced to 15 days

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			A question remains as to how the CPUC should determine which proceedings qualify for expedited treatment.
19.	Expediting: Set firm/standardized dates for a prehearing conference (PHC).	Rule 7.2 Prehearing Conference.	Standardized PHC dates would aid transparency and predictability. A standard PHC date can be set during the protest period, or for a certain number of days following the protest deadline, with modification permitted by the Assigned Commissioner or Assigned ALJ or upon party motion for good cause.
20.	Expediting: Use telephone PHCs for all routine, uncontested cases, and allow parties to appear by telephone at all PHCs.	Rule 7.2 Prehearing Conference.	Holding PHCs by telephone saves resources by not requiring reservation of a hearing room and travel by the applicant. Allowing parties to appear by telephone at all PHCs saves time and travel, provided that a system (such as CourtCall) can be used to aid the court reporters' transcription of appearances.
21.	Expediting: Require all discovery requests and responses to be served on all parties.	Rule 10.1 Discovery.	Requiring all discovery requests and responses to be served on all parties is already in practice in some large cases, such as general rate cases. Public Advocates Office has earlier discovery rights than other parties; serving their discovery requests and responses on all parties will aid efficiency and transparency. This will require considering the timelines and logistics of a case, such as when party status is obtained before

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			and during discovery, and executing non-disclosure agreements in order to receive confidential discovery requests and responses.
22.	Expediting: Establish duty to meet and confer after testimony is served and before evidentiary hearings begin.	New Rule.	Requiring parties to meet and confer after testimony is served and before evidentiary hearings begin can have efficiency benefits: stipulated facts, narrowed issues for cross examination at hearing, partial or full settlement. California civil courts and FERC have meet and confer requirements.
23.	Expediting: Use scoping memo to set out approach to evidentiary hearings in the proceeding.	Rule 1.3(g) Definitions. Rule 7.3 Scoping Memos.	Using the scoping memo to set out the Assigned Commissioner's approach to evidentiary hearings in the case will aid transparency and efficiency. The scoping memo can include: a deadline for parties to make a showing that evidentiary hearings are needed in order to reach a decision; evidentiary standards that allow declarations to be submitted under oath; when declarations may be received without cross examination.
24.	Accessibility: Standards and guidance for public participation hearings, making public comment during a proceeding, how public comment is treated in the record that forms the basis for CPUC	New Rule.	The CPUC holds numerous public participation hearings and solicits and uses public comment in its decision-making. Articulating standards for PPHs, such as a presentation and a Q&A session by the applicant utility with the attendees, will aid the public's understanding of what occurs at

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	<p>decision-making, how parties to a proceeding may respond to comments, and addressing public comments in the text of a proposed decision.</p>		<p>PPHs, and ensure that the applicant utility is prepared to speak to and answer questions from the public in communities affected by its application.</p> <p>Setting out guidance for how public comment can be submitted in a proceeding and how public comments are used as part of the record during the decision-making process will help the public understand how their comments are included in the record, heard or read by decision-makers, and weighed during the drafting of a proposed decision.</p> <p>Addressing the public comment in the final text of a proposed decision will enable the members of the public who provided comment to confirm that their comments were considered and understand how that consideration formed part of the CPUC’s proposed decision.</p>
25.	<p>Accessibility: Automatically serve Revised Proposed Decisions on service list.</p>	<p>Rule 14 – Recommended Decisions</p>	<p>Automatically serving Revised Proposed Decisions on the service list for a proceeding will enable all parties to have more direct access to the proposed revisions before the voting meeting at which the item is on the agenda.</p>