

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 11, 2012

To: The Commission
(Meeting of April 19, 2012)

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

**Subject: SB 1403 (Yee) – Public Utilities Commission
As introduced: February 24, 2012**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION:

SUMMARY OF BILL:

This bill would amend Sections 305, 307, and 308 of the Public Utilities (Pub. Util.) Code and add Section 305.5 to Pub. Util Code, relating to the California Public Utilities Commission (Commission). This bill would remove the authority given to the President of the Commission with respect to directing staff's work, and would give that authority to the entire Commission by a majority vote of the full Commission. This bill would also require the full Commission to assign cases.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The Commission should oppose this bill because the proposed framework would require a majority vote by the Commission before the Commission could direct the executive director and general counsel on routine matters, thereby compromising the Commission's ability to operate efficiently and perform its duties. It would also reduce the Commissions' ability to act quickly to respond to immediate demands of the Commission. 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 or the attorney for the Commission to take specific action on a matter. This bill should also be opposed because in addition to being administratively burdensome, it would delay the processing of assigning proceedings and could jeopardize the ability of the Commission to meet its statutory deadlines in resolving proceedings. A delay in adjudicatory proceedings that resolve billing disputes would be detrimental to the ratepayers economically. There is also a concern that the delay in case assignments would lead to a time lag in resolving issues related to safety, service disconnections, and service quality matters. The delay in resolving cases would

disproportionally affect the low-income customers who have limited resources to resolve their conflicts.

In addition, this bill would require amendment to the Commission's Rules of Practice and Procedure and Resolution (Res.) ALJ-163 and Res. ALJ-176. These amendments would add to Commissioners' and staff time when processing the assignment of cases. This is an unnecessary change when the Commissioners currently have the opportunity to be actively involved in all Commission proceedings. For example, Commissioners may vote on the proposed decision (PD), present their own Alternate in ratesetting and quasi-legislative matters or Request for Review of Presiding Officer's Decisions, even if they are not the assigned Commissioner.

Finally, this bill seems aimed more at the current CPUC President than at affecting public policy.

DIVISION ANALYSIS (ALJ Division):

- This bill would impact the process in which assignments of formal proceedings are made. Currently, a weekly report is sent to Commission staff which includes all new filings processed within the week. Commissioners, if they so desire, make a request to the President for the assignment of a formal proceeding at the time of the initial filing. The President and the Chief Administrative Law Judge make the assignment of proceedings considering Commissioners' request, case load, interest, subject matter proceeding continuity, individual ALJ professional development, training, and schedules.
- If this bill is enacted, the President and Chief ALJ would no longer be able to make the speedy assignment of formal proceedings jeopardizing in many instances resolving proceedings by the statutory deadline.
- This bill is a detriment to the work load of the ALJ Division. If this bill is enacted, there would be a need to amend Rule 4.3 and Rule 7.1 of the Commission's Rules of Practice and Procedure. Rule 4.3 addresses the Service of Complaints and Instruction to Answer and Rule 7.1 addresses the Category and the Need for Hearing of proceedings which are included in Res. ALJ-176 as Item 1 on each Commission Meeting. This amendment would require the lengthy approval of the Office of Administrative Law. It would also require the amendment of Res. ALJ-163 and Res. ALJ-176. Res. ALJ-163 was design to streamline the processing of complaints under the Commission's Expedited Complaint Procedure. Res. ALJ-176 ratifies the preliminary determinations of category and need for hearing for proceedings initiated by application. Res. ALJ-176 would need amendment to include not only ratesetting applications but all formal proceedings.
- If this bill is enacted, the president's ability to direct the executive director and general counsel on routine matters would be changed.

PROGRAM BACKGROUND:

Before the late 1980s, the Chief ALJ was responsible for assigning all formal proceedings. The information was entered into our Case Information System (CIS) and the assigned Commissioner, the assigned ALJ or the assigned Examiner received copies of the file to work on the proceeding. An internal Assignments List was prepared for the file. In complaint cases, the Instruction to Answer noted the assigned staff as it is currently done. Notices of Assignments were not sent out to the parties.

After the late 1980s, all assignments of proceedings needed the Commission President's Office approval, no Notices of Assignments were sent out to the parties, and the Instructions to Answer noted the assigned staff as it is currently done.

Effective January 1, 1998, the Commission implemented Senate Bill (SB) 960 (Leonard, ch. 96-0856), which authorized the Commission to determine whether a proceeding requires a hearing and to classify proceedings as quasi-legislative, adjudicatory, or ratesetting. On the Commission Meeting Agenda, the current 'Item 1' was developed to make the preliminary determination as to category and the need for hearing of ratesetting proceedings. The Instruction to Answer was modified to note the categorization and the preliminary determination of need for hearing for complaint cases. The scoping memo section was added to new Order Instituting Investigations (OIs) and new Order Instituting Rulemakings (OIR) to include the preliminary categorization and need for hearing. Expedited Complaint Procedure, Arbitration Applications, and Petitions were exempted from the categorization and need for hearing requirement.

Since the President's Office makes the assignment of proceedings, Item 1 on the Commission's Agenda does not include the assignment. The information about the Commissioner and the ALJ assignment is provided in the official notice of assignment for ratesetting applications for the purpose of Article 9 of the Rules of Practice and Procedure – Motion for Reassignment.

For new OIRs and new OIs, parties were notified of the assignment by the Notice of Assignment filed and mailed together with the new OIR or OI document. If the assignment of the Commissioner or ALJ was not known at the time of mailing the original OIR or OI, the Notice of Assignment was subsequently filed and mailed. For complaints, the Instruction to Answer was the document used to notify parties of the assignment. These practices are still in force.

SB 33 (Peace, ch. 509), effective January 1, 2000, authorized the Governor to designate a president of the commission from among the members of the commission and gave the president authority to direct the executive director, the attorney, and other staff of the commission, except for the staff of the division described in Section

309.5.

LEGISLATIVE HISTORY:

None.

FISCAL IMPACT:

This bill would create 10 permanent positions with an expense of \$ 1,101,536. This bill would also create other expenses with an amount of \$ 49,509.

This bill would require the Commission to incur an additional 1.2 million for the salary of 10 Commission staff members, California Highway Patrol officers and interpreters to handle the increase of Commission Meetings to fulfill the requirements in this bill. This bill would require additional work in Commissioners' offices. Presently, the President's office has an extra Advisor. An additional Advisor needs to be added to the other four Commissioners' offices to assist Commissioners with the added tasks and to prepare for the additional Commission Meetings. Public Advisor's office, Information Technology (IT) department, Legal Division, and the Administrative Law Judges Division would need additional staff to handle the demands of the new Commission Meetings. These tasks include providing public notices and public assistance, document preparation and publication, IT assistance and representation for these additional meetings.

STATUS:

AB 1900 is scheduled to be heard before the Assembly Utilities and Commerce Committee on April 16, 2012.

SUPPORT/OPPOSITION:

None on file.

STAFF CONTACTS:

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BILL LANGUAGE:

BILL NUMBER: SB 1403 INTRODUCED
BILL TEXT

INTRODUCED BY Senator Yee
(Principal coauthor: Assembly Member Hill)

FEBRUARY 24, 2012

An act to amend Sections 305, 307, and 308 of, and to add Section 305.5 to, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 1403, as introduced, Yee. Public Utilities Commission.

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 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.

This bill would instead require the commission to direct the executive director, the attorney, and other staff of the commission, except for the Division of Ratepayer Advocates. This bill would also require the commission to assign cases by majority vote of the full commission.

The Public Utilities Act 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, as directed or authorized by the commission, and to generally perform all duties and services, as specified.

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.

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 305.5 is added to the Public Utilities Code, to read:

305.5. The commission 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 commission shall assign cases by majority vote of the full commission.

SEC. 3. 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 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 relevant matters, including settlements and investigations, 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,~~ *commission* may require of him or her .

SEC. 4. 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~~ *the other duties as the president, or vote of the commission,* *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.