

**From:** Elizabeth Kelly <ekelly@mcecleanenergy.org>  
**Sent:** Thursday, August 20, 2015 4:28 PM  
**To:** Policy & Governance Committee  
**Subject:** MCE Comments on CPUC Ex Parte Proposal

To the Policy and Governance Committee:

Marin Clean Energy (MCE) is grateful that the CPUC is being proactive at addressing *ex parte* issues at the Commission. While MCE is in general supportive of the proposal of Messrs. Strumwasser and O'Neill, MCE provides the following comments.

### **Impact on Small Parties**

Practicing before the Commission as a small party is challenging. This is important to note when discussing *ex parte* rules since the result should – hopefully – encourage fairness and transparency for parties of all sizes.

A few examples of challenges to consider are:

- The terms of the discourse are in many cases set by utilities, such as in the case of utility applications. Applications set the baseline for the proceeding and intervening, by its nature, means attempting to change the baseline. How will voices that support changing the baseline be heard?
- Utility applications which will result in funding are not necessarily categorized as Ratesetting (e.g. Distribution Resources Plans). This means that the utilities not only set the terms of the proceeding, there is no disclosure under current rules for proposed pilots, programs, data or infrastructure build-outs or other components that will cost ratepayers money.
- In the worst cases small parties are excluded from the process entirely (e.g. CHP Settlement). How do we ensure that parties are properly noticed and not excluded?
- Small parties also do not have anywhere near the same volume of resources as large parties. For example, PG&E has 499 full-time equivalent positions working in PG&E legal and regulatory positions. So, while a large utility may be able to devote a team to a working group or other time intensive endeavors, it is often a challenge to staff a single person from a small entity on those undertakings.

As these *ex parte* rules are further developed, please consider the impact of the proposed rules on small parties.

### **Compliance**

Of primary concern to MCE is that the proposal does not address compliance. Many of the concerns raised in the most recent scandals did not relate to the sufficiency of the *ex parte* rules as drafted, but rather were a result of: (1) non-compliance with the rules, and (2) inappropriately close relationships between certain Commissioners and staff and certain regulated entities.

There is little point in strengthening *ex parte* rules unless there is improved compliance with the rules and a change in culture with regards to inappropriate relationships between the Commission and regulated entities. Other parties have proposed having the Commission review *ex parte* notices before they are issued. MCE opposes this approach. MCE does not wish to see further delay in receiving *ex parte* notices.

MCE supports dual reporting – from the Commissioners and Advisors on one hand and the reporting entity on the other. The reporting from the Commission could be as simple as a log posted on the website of: date, attendees, location, duration, proceeding (if any), brief summary of topics addressed.

### **Banned, Reported and Non-Reported Communications**

While in theory MCE supports a total ban on *ex parte* communications in Ratesetting proceedings and reporting of all communications in Quasi-legislative proceedings, the new regime must ensure that small parties still have a fair voice. *Ex partes* are one of the few manners in which small parties can be heard by Commissioners (rarely) or their Advisors (more likely). In many proceedings, small party concerns may not receive sufficient attention or may be overshadowed by large (or large party) concerns, particularly in behemoth proceedings, such as the Long Term Procurement Plan proceedings.

Provided that the rules are complied with and there are ample opportunities for small party voices to be heard by Commissioners and Advisors (whether through workshops, en bancs, etc.), MCE supports a blanket ban on *ex parte* communications in Ratesetting proceedings. In this regard, the proposed rules of Messrs. Strumwasser and O'Neill should be strengthened.

MCE recommends requiring reporting in Quasi-legislative proceedings. Policy arguments brought to the Commission should be brought before all parties to have an open dialogue. Furthermore, such communications may influence other proceedings inappropriately. MCE recommends that the proposed rules of Messrs. Strumwasser and O'Neill should be strengthened to require reporting in Quasi-legislative proceedings.

MCE thanks the Committee for their diligent work on improving *ex parte* rules.

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