



ALJ DIVISION REQUEST FOR SPECIAL SALARY ADJUSTMENT FOR ALJ I AND ALJ II POSITIONS: UPDATE



FINANCE & ADMINISTRATION COMMITTEE

April 7, 2021

OVERVIEW OF PRESENTATION

- The presentation will be made in four parts:
- ALJ Robert Mason will address the updated special salary adjustment request and the justification.
- ALJ Jeanne McKinney will address the history of the pay disparities between ALJ salaries and the salaries for Legal Division and Program Managers.
- ALJ John Larsen will talk about differences between CPUC ALJs and other agency ALJs.
- ALJ Colin Rizzo will address the ALJ Division's updated bargaining efforts with its union, CASE (California Attorneys, Administrative Law Judges, and Hearing Officers in Statement Employment), and how CPUC management can assist ALJ Division.

PART ONE: THE SPECIAL SALARY ADJUSTMENT REQUEST

ALJ MASON

THE REQUEST: CPUC MANAGEMENT SUPPORT FOR AN ALJ I AND ALJ II SPECIAL SALARY ADJUSTMENT OF BETWEEN 10 AND 17%

- How was this range determined?
- 10% SSA makes the top ALJ II salary equal to the top Legal Division Attorney V salary.
- 17% SSA makes the top ALJ II salary equal to the top Program Manager salary.

	ALJ II	CPUC Program Manager	CPUC Attorney V	CPUC Program Supervisor
Annual Salary	\$153,481	\$180,636	\$169,116	\$164,136
Difference		\$27,155 (17%)	\$15,636 (10%)	\$10,656 (7%)

WHY THE SPECIAL SALARY ADJUSTMENT IS NEEDED: TO RECRUIT *AND* RETAIN EXPERIENCED ALJS

- From the CPUC's 2015 Audit Report:
 - "ALJs need to be among the agency's most capable and experienced staff, and the pay and status of those positions should be consistent with that expectation."
 - 5 years of experience as an ALJ is needed to be able to handle the most complex cases.
 - The compensation disparity between ALJs and the manager and supervisor positions makes the ALJ positions unattractive to some well qualified candidates *and* gives an incentive to experienced ALJs to leave the ALJ Division.

EXPERIENCED ALJS CONTINUE TO LEAVE FOR HIGHER PAYING POSITIONS AT THE CPUC

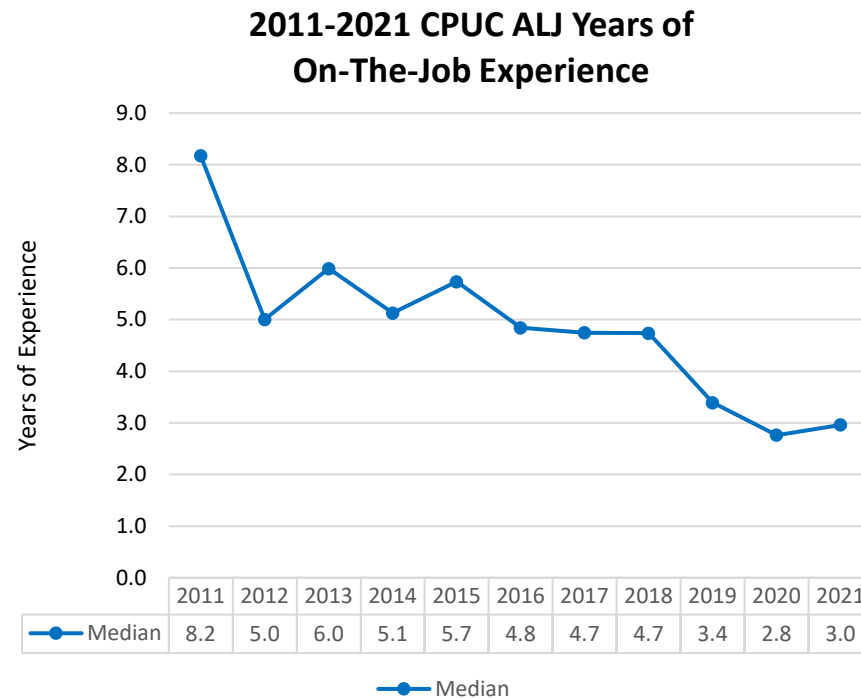
- What the CPUC's Audit Report warned about has been happening for the past 11 years as salary disparities between ALJs, Program Managers, Supervisors, and attorney positions continued to grow.
 - 7 ALJs left to become Program Managers
 - 1 ALJ left to become a Deputy Executive Director
 - 1 ALJ left to become an Executive Director
 - 5 ALJs left for attorney positions at the CPUC (Assistant Chief Counsel, Attorney IV and V, and General Counsel)
- These 14 ALJs have a combined CPUC work experience of over 230 years.

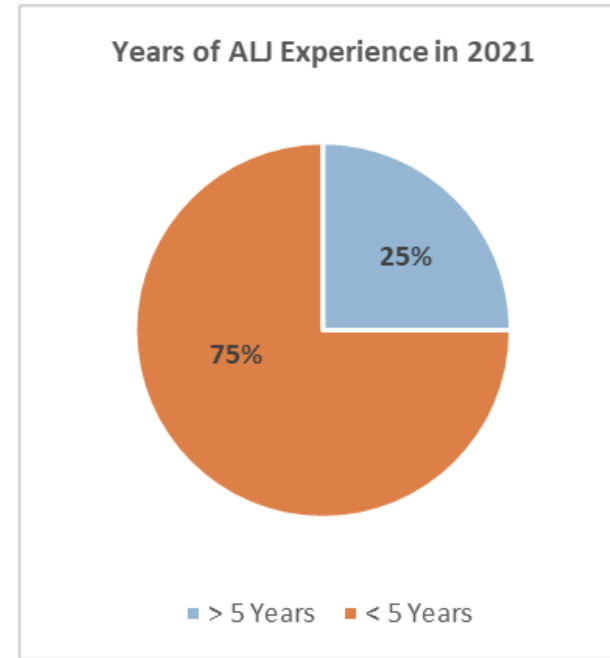
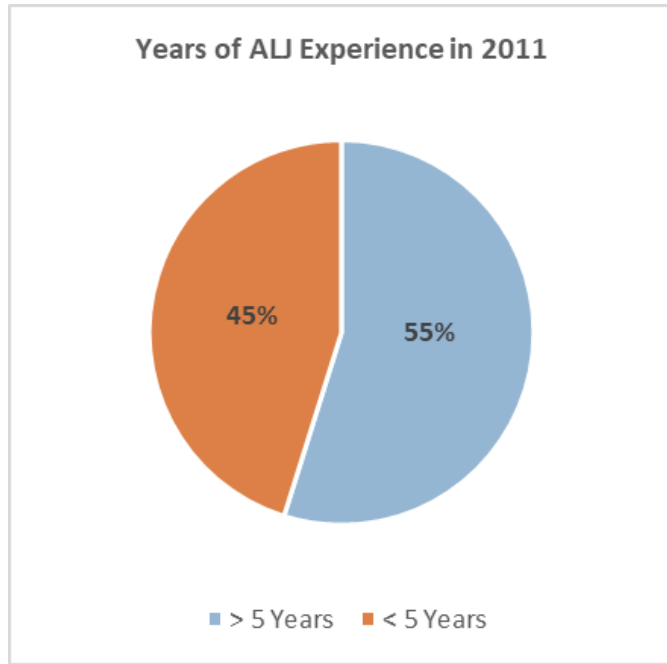
ALJ TURNOVER CONTINUES AFTER SALARY NEGOTIATIONS STALLED

- In 2018/early 2019, there weren't many departures (other than from ALJ to ACALJ) because there was hope that the next contract would rectify the salary disparity.
- At the end of summer 2019, ALJs I and II didn't get the salary increase that was hoped for. Four (4) ALJs left right after salary negotiations stalled, and even more ALJs (10) departed in 2020.
- **So, the effect of not having a Memorandum Of Understanding with the requested salary increase in 2019 and 2020 has had a significant impact on ALJ I and ALJ II departures.**

CONSTANT ALJ TURNOVER IMPACTS OVERALL EXPERIENCE LEVEL

- Since 2020, 26% of the ALJs have left ALJ Division.
- The following chart shows the declining overall experience level of ALJs.





- Ten years ago, 45% of ALJs had less than 5 years experience. Today, 75% of ALJs have less than 5 years experience.
- Impacts:
 - More time is needed to train each new crop of ALJs, which is time taken away from working on assigned proceedings.
 - 300% increase in extension orders.

THE BENEFIT OF A SPECIAL SALARY ADJUSTMENT: RETAIN EXPERIENCED ALJS TO IMPLEMENT GOVERNOR'S AGENDA, NEW STATE LAWS, AND PROTECT PUBLIC INTEREST

- 43 active ALJs are assigned to the following proceedings that promote the state's mandates and the public interest.
- **Governor's Executive Orders:**
 - N-79-20 *Zero Emissions by 2035*
 - N-82-20 *Strategies to Fight Climate Change*
 - N-74-20 *Free Up Additional Energy Capacity Amid West Coast Heat Wave*
- **2019-2020 Legislative Session:**
 - AB 1720 (Carrillo): Energy: Long-Duration Energy Storage: Environmental Review and Procurement
 - AB 1366 (Gonzalez): Voice Over Internet Protocol and Internet Protocol Enabled Communications Services
 - SB 520 (Hertzberg): electricity provider of last resort.
- **2017-2018 Legislative Session: 37 Legislative Mandates (see larger document for list)**
- **2015-2016 Legislative Session: 31 Legislative Mandates (see larger document for list)**

PART TWO: PAY DISPARITY HISTORY

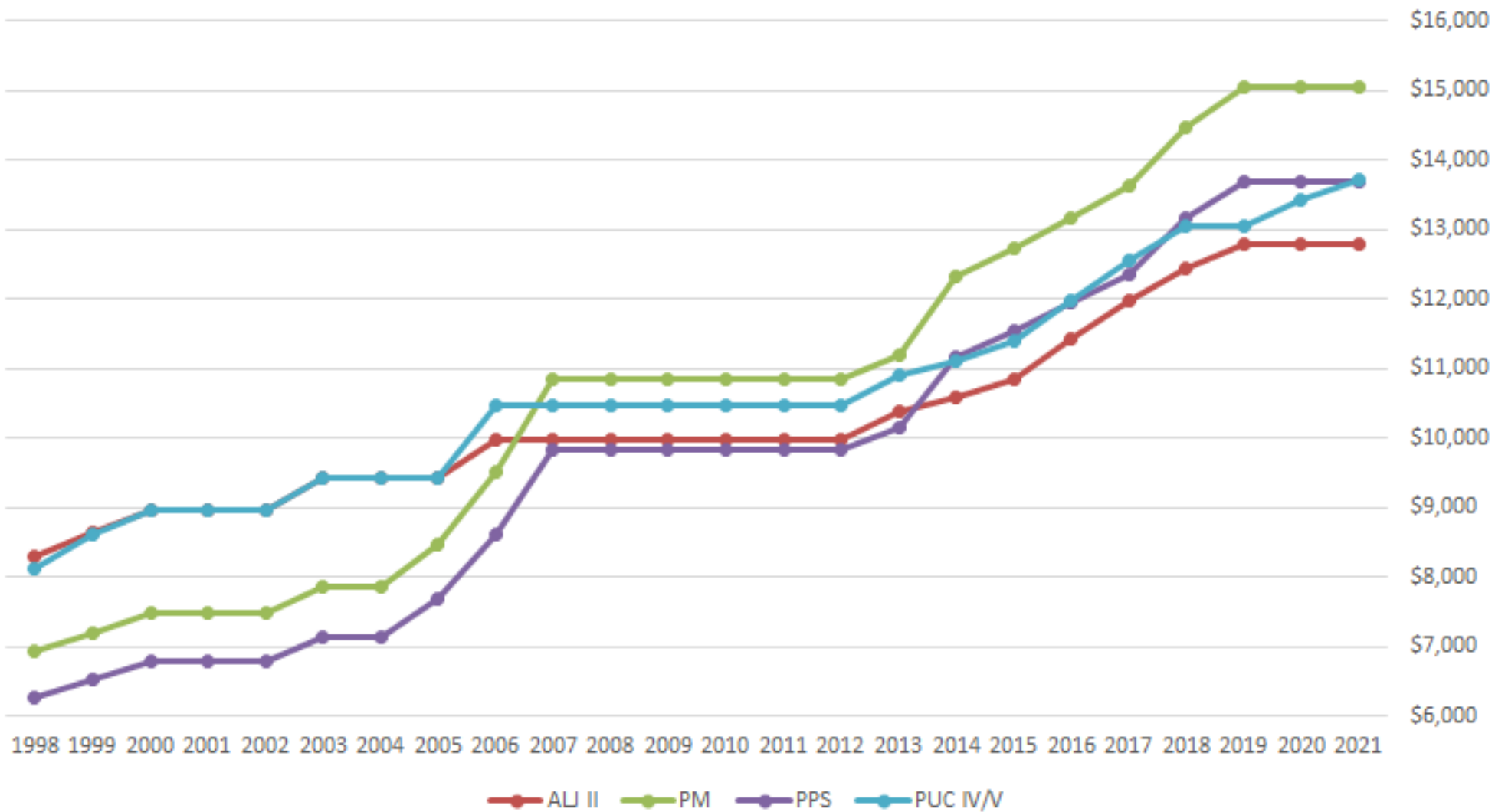
ALJ McKinney

Audit Recommendations

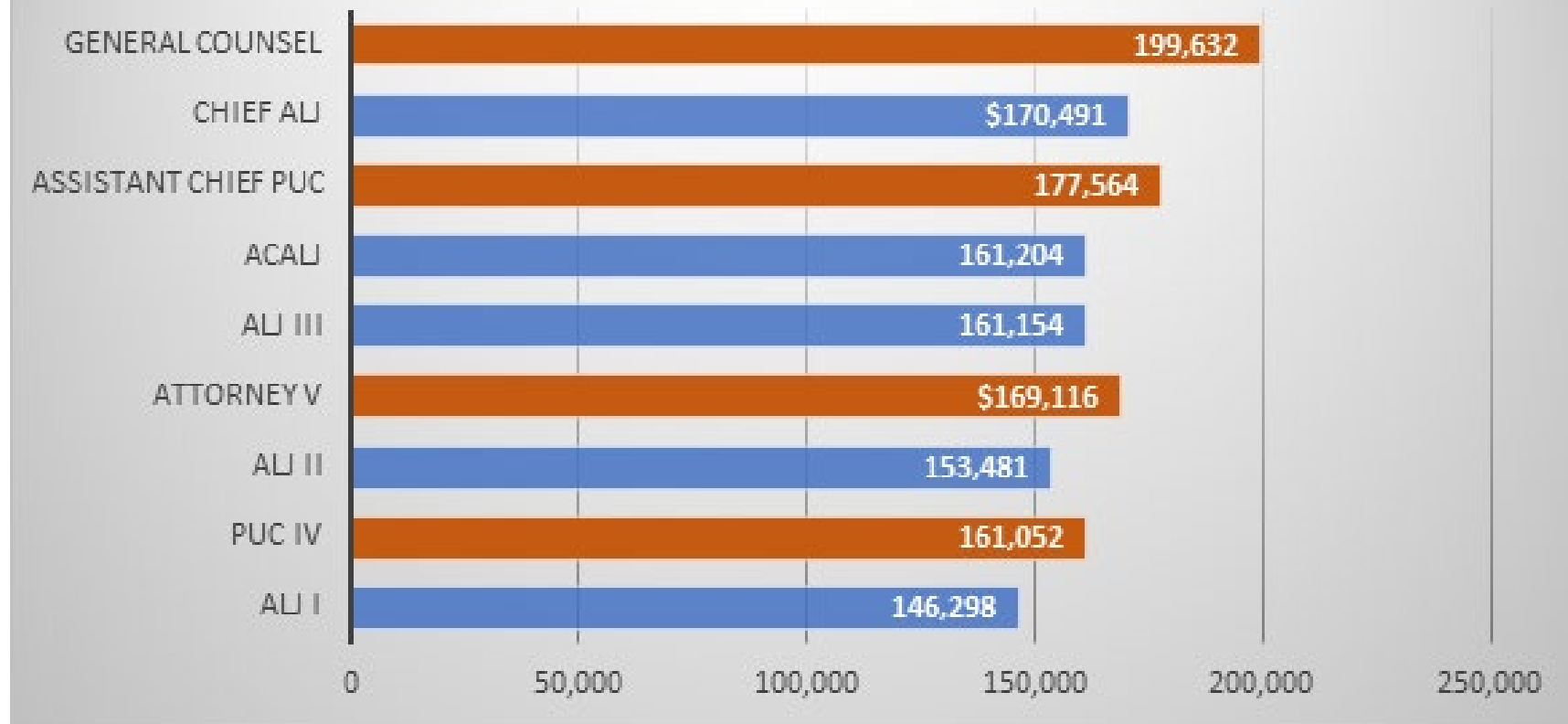
- **November 18, 2015**
 - CPUC Internal Auditor presentation
 - to F&A Committee (final slide)
- The competing visions of ALJs raise some key issues for the Commission's work:
 - One way or another, considerable expertise needs to be applied to the CPUC's formal decision process – whether in the person of the drafters, through collegial or staff support and collaboration, or from decision maker involvement or intervention.
 - Given the role of ALJs, agency leadership should be comfortable with who they will tend to be, and what knowledge and skills they will tend to have.
 - As well: ALJs should be among the agency's most capable and experienced staff, and should be paid accordingly.



1998 - 2021: Change in Monthly Salaries for CPUC ALJs, Program Managers, Program & Project Supervisors, and Public Utilities Counsel IV/V



ALJ / ATTORNEY SALARY COMPARISON



*ALJ Division salaries include the 5% NJC pay differential. The pay differential does NOT count toward retirement.

PART THREE: DIFFERENCES BETWEEN CPUC ALJS AND OTHER AGENCY ALJS

ALJ Larsen

Agency (#ALJs)	Typical Decision Length	Types of Proceedings	Public Comment	Ex Parte	Staff Support (Staff ALJ)	Typing and scheduling
Office of Administrative Hearings	10 – 20 pages	Adjudicatory No rulemaking or ratesetting	None	Prohibited		
Insurance (4)	10-100 pages	Adjudicatory No rulemaking, infrequent Prop. 103 ratesetting or prior approval hearings	None except in infrequent prior approval rate hearings	Prohibited	1:1 ratio	Scheduling done by staff
Unemployment Insurance Appeals (120)	Avg. 2-4 pages	Adjudicatory No rulemaking or ratesetting	None	Prohibited	1:1 ratio	Staff does all scheduling, sending out notices file preparation and typing if ALJ dictates
CPUC (45)	5- 250 pages	Adjudicatory (complaint, citation appeal, ECP, investigation) Ratesetting Rulemaking (QL, investigation)	Permitted (adjudicatory) Separate hearing and summary in decisions (Ratesetting, Rulemaking)	Prohibited (Adjudicatory) Reported (Ratemaking) Permitted (Rulemaking)	1:10 ratio	Staff finalizes and publishes decisions, Assignment Notice, Daily Calendar ALJ responsible for typing, revisions, scheduling
CEC	10 – 20	Adjudicatory No rulemaking or ratesetting	?			
CARB	10 – 20	Adjudicatory No ratesetting Rulemakings require OAL action	?			
Social Services	Short	Adjudicatory No rulemaking or ratesetting	None	Prohibited		
DHCS & DPH (QAHA)	10-20	Adjudicatory	None	Prohibited	1:1 ratio	ALJ and Staff schedule and send out notices. ALJs type

Comparison of CPUC ALJ Work with Other Agencies (draft)

PART FOUR: UPDATE ON BARGAINING EFFORTS

ALJ Rizzo

- Preliminary Projection on Multi-Year Revenue and Expenditures.
- Calls for lifting employee compensation reduction during the upcoming fiscal year.
- Call for continuing collective bargaining negotiations with Unit 2.

Governor's Budget: January



- Update on Multi-Year Projection on Multi-Year Revenue and Expenditures.
- Collective Bargaining Period for Unit 2 commences.

Governor's Budget: May Revise



- June 15: deadline for Legislature to pass the State's budget.
- June 15-June 30: Budget Bill authorized by the Governor.

Budget Enactment: Late June

2021 Update on October 2015 Audit

- ❖ Rate Case Plan has a 4 -year GRC cycle for electric utilities.
- ❖ Majority of current ALJs have less than 4 years on the job.
- ❖ At current rate, majority of ALJs will leave before reaching 5 years.
- ❖ 14 ALJs left following 2019 bargaining.
- ❖ 2019 started with 39 ALJs. Since then, 17 (40%) left or are not currently handling cases.
- ❖ Only 10 of the 40+ ALJs from October 2015 are still handling cases today.

Audit Recommendations

- The competing visions of ALJs raise some key issues for the Commission's work:
 - One way or another, considerable expertise needs to be applied to the CPUC's formal decision process – whether in the person of the drafters, through collegial or staff support and collaboration, or from decision maker involvement or intervention.
 - Given the role of ALJs, agency leadership should be comfortable with who they will tend to be, and what knowledge and skills they will tend to have.
- As well: ALJs should be among the agency's most capable and experienced staff, and should be paid accordingly.



Resources

Internal Audit

- Workforce Planning, Career Development and Succession Planning (October 21, 2015)

https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/About_Us/Organization/Divisions/Internal_Audit_Unit/AuditReportWorkforcePlanningFINAL20151021.pdf

- November 2015 Internal Audit Presentation on ALJ Compensation

https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Transparency/Commissioner_Meetings/151115_WPBriefingALJsv220151118.pdf

- Excerpt From 1995 Report:

41. MSAPA § 4-209 comment.

42. MSAPA § 4-209(c). The Advisory Committee's notes to Federal Rules of Civil Procedure 24 also authorizes a court to condition intervention rights. It seems better to place the authority in the statute itself rather than in the comment. On conditional intervention, see Shapiro, *Some Thoughts on Intervention Before Courts, Agencies, and Arbitrators*, 81 Harv. L. Rev. 721, 752-56 (1968). The Public Utilities Commission, which allows virtually unlimited intervention and apparently unconditional rights for interveners to participate might consider the imposition of conditions on intervention to limit the complexity of its proceedings.

Administrative Procedure

Asimow, Michael (1995, Report for California Law Revision Commission) *The Adjudication Process*
<http://clrc.ca.gov/pub//BKST/BKST-Asimow4.pdf>

Asimow, Michael (1996 *Tulsa Law Review*) *The Influence of the Federal Administrative Procedure Act on California's New Administrative Act*
<https://core.ac.uk/download/pdf/232680117.pdf>

Strumwasser, Michael (2015 *Pepperdine Journal of Administrative Law Judiciary*) *Report to the California Public Utilities Commission Regarding Ex Parte Communications and Related Practices*
<https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1602&context=naalj>

Weissman, Steven and Behls, Deborah (2015) *Ex Parte Requirements at the CPUC: A Comparative Analysis and Recommended Changes*
https://www.law.berkeley.edu/files/CLEE/Analysis_and_Recommendations_Related_to_CPUC_Ex_Parte_Practice_1.16.15.pdf

QUESTIONS FROM THE COMMISSIONERS ?