

From: Warner, Christopher (Law)
Sent: 6/25/2010 6:52:04 PM
To: [Redacted] 'Yee, Helen W.'
(helen.yee@cpuc.ca.gov)
Cc: Kauss, Kent (/O=PG&E/OU=CORPORATE/CN=RECIPIENTS/CN=KWK3);
Lindh, Frank (frank.lindh@cpuc.ca.gov); Randolph, Edward F.
(edward.randolph@cpuc.ca.gov); Holzschuh, Dale A.
(dale.holzschuh@cpuc.ca.gov); Cherry, Brian K
(/O=PG&E/OU=CORPORATE/CN=RECIPIENTS/CN=BKC7)
Bcc:
Subject: RE: FW: SB 1414

Thx Helen, we are still quite skeptical of the need or purpose for this bill. Our State Gov Rels team (Kent Kauss) will represent us on Monday; I am out of town but please keep me on the email list. Thx!

Chris Warner

From: Yee, Helen W. [mailto:helen.yee@cpuc.ca.gov]
Sent: Friday, June 25, 2010 6:30 PM
To: [Redacted] Warner, Christopher (Law)
Cc: Lindh, Frank; Holzschuh, Dale A.; Yee, Helen W.; Randolph, Edward F.
Subject: FW: FW: SB 1414

Hi, Dave and Chris -- Per Frank -- Legal Division is forwarding you this chain of emails exchanges between some of the stakeholders which suggest additional suggested edits to SB 1414. These proposed edits mostly add more "cluttering" to SB 1414. We noticed that your names (email addresses) were not specifically in the emails below, despite the fact you were in the recent discussion with the Kehoe's office. So fyi.

Also, we also wanted to alert you of the legislative hearing of SB 1414 on Monday, June 28, 2010, although your legislative folks might have already. We just wanted to make sure you were aware of the hearing. Ed and Dale will be attending the hearing for the Commission. Should you have any questions, please call Helen (415) 703-2474.

Thanks,

Helen

From: Mike Florio [mailto:mflorio@turn.org]
Sent: Friday, June 25, 2010 1:00 PM
To: Lindh, Frank
Cc: Yee, Helen W.; Holzschuh, Dale A.; Randolph, Edward F.
Subject: Re: FW: SB 1414

Frank -- I'm terribly sorry, I had assumed that the PUC representatives were included on the email list that Gil has been using, and have just been hitting "reply all" without reviewing it. But now that I look, I don't see any PUC names on there. I really do not know how that happened, and it was certainly not *my* intent!! I will forward separately all of the emails that I have sent over the last day or so, and will double check the list on any future emails.

I think we ARE still in negotiations, but I don't think they are limited to TURN and PUC at this point, given the number of other parties that are now actively following this bill and the reality that the Assembly Committee hearing is set for Monday afternoon. This latest flurry of activity was the result of a concern raised by CITC, and I have simply been reacting to what was thrown my way.

Once again, my apologies!! Mike

At 06:59 AM 6/25/2010, Lindh, Frank wrote:

Mike -

What's going on? I honestly thought we (TURN and CPUC) were still in negotiations over this.

I am concerned that this e-mail chain -- which excludes me and others from the CPUC -- makes it appear you are negotiating with the private sector parties (and perhaps Gil Topete), and deliberately keeping the CPUC out of the loop.

This may well be an incorrect impression on my part, but can we please touch base about this today?

Thanks.

Frank

From: TMacBride [mailto:TMacBride@goodinmacbride.com]
Sent: Friday, June 25, 2010 5:08 AM
To: Lindh, Frank
Subject: FW: SB 1414

Frank,

Are you guys still in this conversation? Don't see anyone from the CPUC in this email chain.

Tom

From: TMacBride
Sent: Friday, June 25, 2010 5:06 AM
To: 'Mike Florio'; Topete, Gil
Cc: lga@cal.net; Loomis, Pamela C; Mark Schreiber; Nick.Selby; HERNANDEZ, PETE J. (ATTSI); KWK3@pge.com; CRHowell@semprautilities.com; Randy.Chinn@sce.com; rventurini@teamgsi.net; [Redacted] James Jack; BAUMER, VALERIE (Legal); Patrick Rosvall
Subject: RE: SB 1414

Mike,

What is to be consequence of the Commission not acting within either the 60 day deadline (if no extension order is issued) or the date set in an extension order? Is it to have the same consequence as if the Commission did not act within one year?

In other words, would the Commission lose jurisdiction to act (which seems to be the outcome for exceeding one year) or would it simply be something akin to exceeding the 12 and 18 month time limits set forth in 1701.1 *et seq* (SB 960)?

I remain of the view that is it a mistake to permit, as this bill does, judicial review of an order which (1) has been stayed and (2) is not "final" under California law. The present "deemed denied" provision in 1733(b) makes where an order not technically "final" is nonetheless in effect and binding on the parties. But, if the order has been stayed while the application for rehearing is pending, why permit a fairly complex review process (one in which a court is asked to review a decision that is not in effect and still under review by the Commission) to ensue?

Tom.

Thomas J. MacBride, Jr
Goodin, MacBride, Squeri, Day & Lamprey
505 Sansome Street, Suite 900
San Francisco, CA 94111
415-765-8444

From: Mike Florio [<mailto:mflorio@turn.org>]
Sent: Thursday, June 24, 2010 11:20 PM
To: Topete, Gil
Cc: lga@cal.net; TMacBride; Loomis, Pamela C; Mark Schreiber; Nick.Selby; HERNANDEZ, PETE J. (ATTSI); KWK3@pge.com; CRHowell@semprautilities.com; Randy.Chinn@sce.com; rventurini@teamgsi.net; [Redacted]
[Redacted] James Jack; BAUMER, VALERIE (Legal); Patrick Rosvall
Subject: RE: Continuing CITC concern re SB 1414

Gil -- I think the attached simple amendment to Section 3 of the bill should take care of the concern that CITC has raised, and perhaps others as well.

THANKS, Mike

At 05:46 PM 6/24/2010, Topete, Gil wrote:

We can draft this solution and rush it in time for an author's amendment I think –

Mike could you draft the change being considered with the appropriate citations and Strikeout/insertions please – I'll send them to counsel and raise them with Davina if they are acceptable to everyone.

Gil

-----Original Message-----

From: TMacBride [<mailto:TMacBride@goodinmacbride.com>]

Sent: Thursday, June 24, 2010 5:31 PM

To: 'Loomis, Pamela C'; Mark Schreiber; Mike Florio; Topete, Gil; Nick.Selby; HERNANDEZ, PETE J. (ATTSI); KWK3@pge.com; CRHowell@semprautilities.com; Randy.Chinn@sce.com; rventurini@teamgsi.net; [Redacted]

[Redacted] James Jack; BAUMER, VALERIE (Legal); Patrick Rosvall

Cc: lga@cal.net

Subject: RE: Continuing CITC concern re SB 1414

Is the suggestion that a party be permitted to seek review of an order that has been stayed while the Commission considers the application for rehearing. That seems antithetical to the notion that only a "final" order is subject to court review. Today, only "non-final" orders (within the meaning of City of LA) that are actually in effect can be reviewed under the "deemed denied" provision of 1733(b).

Thomas J. MacBride, Jr.
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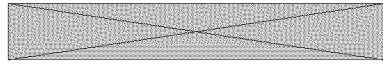
From: Loomis, Pamela C [<mailto:ploomis@nossaman.com>]

Sent: Thursday, June 24, 2010 4:37 PM

To: Mark Schreiber; Mike Florio; Topete, Gil; TMacBride; Nick.Selby; HERNANDEZ, PETE J. (ATTSI); KWK3@pge.com; CRHowell@semprautilities.com; Randy.Chinn@sce.com; rventurini@teamgsi.net; [Redacted]
[Redacted] James Jack; BAUMER, VALERIE (Legal); Patrick Rosvall
Cc: lga@cal.net
Subject: RE: Continuing CITC concern re SB 1414
Gil and Mike,

Please let me know if the amendment suggestion in Mark's email is acceptable.

Thanks,
Pamela C. Loomis
Senior Policy Advisor
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From: Mark Schreiber [<mailto:MSchreiber@cwclaw.com>]
Sent: Thursday, June 24, 2010 3:00 PM
To: Mike Florio; Loomis, Pamela C; Topete, Gil; TMacBride; Nick.Selby; HERNANDEZ, PETE J. (ATTSI); KWK3@pge.com; CRHowell@semprautilities.com; Randy.Chinn@sce.com; rventurini@teamgsi.net; [Redacted]
[Redacted] James Jack; BAUMER, VALERIE (Legal); Patrick Rosvall
Cc: lga@cal.net
Subject: RE: Continuing CITC concern re SB 1414

The situation in which a utility is required to implement a CPUC decision immediately (while an application for rehearing is pending) followed by a later CPUC order extending the effective date is of significant concern to the CITCs as it seems to provide the opportunity for a one-sided stay only their

appellate rights if it is impractical or impossible to unwind whatever was implemented pursuant to the original decision before the change in effective date.

Mike Florio's suggestion seems a good and fair way to avoid this procedural due process dilemma, while keeping us moving in the direction we had been going. Specifically, we support Mike's suggestion that, "**we could just say 'Regardless of any order of extension, beginning 61 days following the filing of the application, the applicant may treat the application as having been denied.'**"

Thanks,
Mark for the CITCs

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From: Mike Florio [<mailto:mflorio@turn.org>]
Sent: Thursday, June 24, 2010 1:30 PM
To: Loomis, Pamela C; Topete, Gil; TMacBride; Nick.Selby;
HERNANDEZ, PETE J. (ATTSI); KWK3@pge.com;
CRHowell@semprautilities.com; Randy.Chinn@sce.com;

rventurini@teamgsi.net; [Redacted] Mark Schreiber;
[Redacted] James Jack; BAUMER, VALERIE (Legal); Patrick
Rosvall

Cc: lga@cal.net

Subject: Re: Continuing CITC concern re SB 1414

Pam -- I don't really see the Commission routinely suspending the effectiveness of an already-issued decision absent extraordinary circumstances, but I'm happy to try to address CITC's concern. Would it work for you if we took out "*Unless the order of extension provides that the effective date of the order for which rehearing is sought is extended until the commission acts to grant or deny the application . . .*" and replaced it with "*Unless the decision is stayed by the Commission . . .*"? Stays are rarely granted, and I don't see the Commission suddenly starting to issue a lot of them. You are correct that we were just trying to incorporate the existing language from 1733(b), but it's not something that TURN has strong feelings about, particularly because it so rarely happens. Alternatively, we could just say "*Regardless of any order of extension, beginning 61 days following the filing of the application, the applicant may treat the application as having been denied.*" But that would allow parties to go to court with respect to a decision that has been stayed, which I'm not sure really makes sense. If neither of these changes is satisfactory, could you suggest alternative language? THANKS, Mike

At 12:03 PM 6/24/2010, Loomis, Pamela C wrote:

Hi, Gil!

CITC truly appreciates your efforts to reinsert a party's right to go to court after 60 days. But the most recent version of the bill on Page 5, line 7, starting with "Unless" actually undercuts this right and gives the CPUC the opportunity to bar a party from going to court for one year. Here's the sentence:

Unless the order of extension provides that the effective date of the order for which rehearing is sought is extended until the commission acts to grant or deny the application, beginning 61 days following the filing of the application, the applicant may treat the application as having been denied.

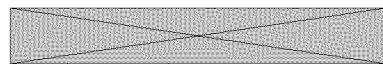
We recognize that this amendment is trying to incorporate the last clause in 1733(b) in existing code, but it in fact grants the CPUC a new power that it has not had. At its worst, it would allow the CPUC to bar a party from going to court for one year by extending the effective date of the order in dispute until the CPUC disposes of the application. Since the CPUC will be required to issue an order to extend the 60 day deadline for acting on the application, it will be procedurally tempting for them to suspend the effective date of the underlying order so they guarantee themselves a year before the party can go to court. For this reason alone, this amendment runs contrary to the stakeholder discussion and agreement that the bill should not deteriorate a party's current rights.

We are also concerned about what can happen between the CPUC's issuance of an original decision and the suspension of the effective date of that decision. The law requires utilities to comply with Commission orders even if they are appealing them. Under this bill, an order could be in effect for 90 days before the CPUC suspends the effective date in its order to extend the deadline for disposition of the application for rehearing. For example, the CPUC votes out an order. Thirty days later, a party files an application for rehearing. Sixty days later, the CPUC orders an extension of their deadline and simultaneously suspends the effective date of that decision. However, during the intervening three months, CPUC staff or the utilities have already implemented the order.

It took me several go arounds with CITC's attorney, Patrick Rosvall, to understand the full implications of this amendment. You may need to do the same. But ultimately CITC arrived at the conclusion that it cannot live with SB 1414 as currently drafted. We would like to work with you and the other stakeholders to fix this problem as soon as possible.

Thank you again for your willingness to work with us on a solution.

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