

CPUC PROCEDURES

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California Public
Utilities Commission

Who may bring formal matters before the CPUC?

- The Commission/Commissioners
- Regulated Entities or Prospective Regulated Entities
- Complainants – individual consumers, groups, governmental bodies, utilities
- Members of the Public

Formal v. Informal Decision-making

Administrative Law Judge Division oversees most of the formal process, including several hundred active applications, complaints, rulemakings, investigations and petitions.

The Legal Division oversees the appellate process, commencing with applications for rehearing, since this is considered a shift to a litigation mode with the Commission as a client.

There is a large “informal process” (although its steps have complex attendant formalities) involving “advice letters” which are generally specific implementation of utility programs, rates or services previously authorized by Commission decision. These are processed pursuant to General Order 96, usually by the appropriate industry division. Some are handled ministerially by staff and some are on the Commission meeting agenda as resolutions.

The Executive Director is also authorized to issue certain types of ministerial decisions or rulings including unopposed requests of parties to dismiss proceedings and granting extensions of time for parties to comply with Commission decisions.

What types of matters? For formal matters, two different labeling schemes:

Statutory categorization (§§1701-1701.5)	Docket Identification
Adjudicatory	<p>C – Complaint (filed by consumer or competitor against utility)</p> <p>I – Order Instituting Investigation – initiated by Commission – enforcement/fact finding</p>
Ratesetting	<p>A – Application (filed by regulated entity or wanabe)</p> <p>C- Rate challenges by city, county or 25 or more customers</p> <p>I – When companion to application, usually for greater decision-making flexibility</p>
Quasi-legislative	<p>R – Rulemaking (initiated by Commission)</p> <p>I – when fact gathering is primary goal</p> <p>P – Petition (request by anyone to initiate rulemaking) (§1708.5)</p>

Assignment Process

- Every formal matter assigned to ALJ and Commissioner
- Some applications of a purely technical nature that are unopposed will be assigned to an “examiner” – staff of the line division with expertise in that area; examples include some railroad safety improvements and financing for smaller utilities
- Chief ALJ designates ALJ and recommends Commissioner, subject to approval by President
- Assignment recommendations are based on interests, subject matter continuity, workload balance and other factors
- Assignment and preliminary categorization determinations are approved at Commission meeting (Res. ALJ 176)

Relative role of ALJ/Commissioner varies depending on category:

- **Adjudicatory** – most complaints/investigations – responsibility shift from Commissioner to ALJ – generally policy enforcement; concept of presiding officer
- **Ratesetting** – most applications – Assigned ALJ and Commissioner have mixed responsibilities – generally policy interpretation; concept of principal hearing officer
- **Quasi-legislative** – most rulemakings – responsibility shifts to Commissioner with ALJ assisting – generally policy development

ALJs (and advisory staff) work for all five commissioners

- Assigned commissioner generally has active role in direction/management of proceeding
- ALJ available to provide any commissioner with information

Ex Parte Rules

Current rules created by Legislature (SB 960, Ch. 866, Stats. 1995, PU Code §§ 1701.1-1701.3)

Ex parte communications are “any oral or written communication between a *decisionmaker* and a *person with an interest in a matter before the commission* concerning *substantive*, but not procedural issues, that does not occur in a public hearing, workshop or other public proceeding, or on the official record of the proceeding on the matter.”

Person with an interest in a matter before the commission: Much broader than party. Includes parties, agents or employees of parties, participants in hearings (e.g., a witness), persons with financial interests in the proceeding (using Political Reform Act tests to determine financial interest), any representative of any organization (e.g., business, labor, civic, environmental) who intends to influence the decision of a Commission member on a matter before the Commission.

Decisionmaker: Chief ALJ, Assistant Chief ALJ, assigned ALJ, Commissioner and (in the case of adjudicatory proceedings), Commissioner’s advisors. Commissioner’s advisors, are also covered under the ratesetting category, in terms of being a covered communication, but the advance notice requirements do not apply. The “person with an interest” however, must still report the communication.

Ex parte rules (continued)

Rules are easy for two categories:

- Adjudicatory – prohibited
- Quasi-legislative – unrestricted, no reporting required

Ratesetting rules are dependent on: protests being filed, hearings being anticipated or held

Ratesetting – if protested and/or hearings, three options:

- Equal time with reporting
- All-party meetings
- Written communications

Key concern for commissioner's offices (and parties) – adequate notice of “all-party” or opportunity for “equal time”

Proceeding Flow – prior to decision preparation

Initiation

Protests/answers

Prehearing conference

ADR options

Ruling on the scoping memo

Discovery

Testimony

Hearings

 Public Participation

 Evidentiary

Briefs

Oral arguments

Alternative Dispute Resolution Pilot Program

- Available at virtually any stage, including prior to formal filing
- Offerings include mediation, early neutral evaluation, facilitations
- Offer mediation in many cases and for virtually all complaint matters
- More than half of our ALJs are ADR trained.
- Response of parties was timid, grew in interest and is now enthusiastic
- Numerous benefits for parties – better outcomes, larger range of options available

Scoping Memo

A critical milestone in time of proceeding

Prepared as a ruling following prehearing conference or after responsive pleadings if there is no prehearing conference

Establishes:

- Affirms or advises of changes in categorization and need for hearing
- Schedule for proceeding, including projected submission date
- Issues to be addressed
- Designates the Presiding Officer (in an adjudicatory proceeding) or the Principal Hearing Officer (in a ratesetting proceeding)

Hearing and other information gathering approaches

- Prehearing Conference (PHC)
- Evidentiary Hearings
- Public Participation Hearings
- Oral Arguments/Full Panel Hearings
- Workshops
- Round Tables

When are hearings held

PHC – to take appearances, discuss scope, schedule, category and other procedural matters

Evidentiary – when there are disputed material issues of fact; when cross examination would otherwise be helpful to sort out facts

Public Participation – when matters are not only of interested to the public, but their input is desirable and useful

Oral Argument – at conclusion of matters, before the Commissioners

Adjudicatory Decisionmaking

- Presiding Officer Decision (POD) (§§ 311(d), 1701.2)
- Proceeding to be resolved within 12 months of filing date
- POD filed and served not later than 60 days from submission.
- Becomes decision of Commission if no appeal by party or request for review by Commissioner within 30 days of issuance of POD
- If appeal or request for review filed, placed on agenda for Commission consideration (mod-POD)
- No ex parte communications allowed.

Ratesetting Decisionmaking

- Proposed decision issued after hearings (§§ 311(d), 1701.3)
- Proceeding must be resolved within 18 months of issuance of scoping memo, with certain exceptions
- PD filed and served no later than 90 days from submission
- If assigned commissioner wants to issue an alternate, it must be done simultaneously with the PD; for other commissioners it can be issued after the PD
- Commission decision to be issued not later than 60 days after PD filed; a non-simultaneous alternate extends this by 30 days.
- Ex parte contacts allowed but rules must be followed
- “Ratesetting deliberative meeting” permitted – commissioners can discuss as group in closed session but ex parte ban in effect (Bagley Keene exception)

Quasi-legislative (Q/L) Decisionmaking

- Proposed decision issued after hearings and/or comment process (§§ 311(d), 1701.4)
- Prepared by assigned commissioner with ALJ assisting
- No requirement that alternate be filed and served simultaneously
- Timing is otherwise the same as ratesetting
- No ex parte restrictions

Sunshine Provisions

All PDs are subject to a 30-day comment and review period, with limited exceptions

Alternate decisions are subject to a 30-day comment and review period, and a digest must accompany the alternate, identifying differences from the PD

Commission meeting

- Agenda published at least 10 days prior to meeting
- Emergency additions possible, but subject restrictions exist and require press release and vote to add prior to considering
- Agenda placement affecting activity and public access
 - Consent
 - Regular by utility topic
 - Reports – Staff and Commissioners
 - Closed – restricted topics:
 - Litigation, including applications for rehearing of Commission decisions
 - Personnel matters

Timing Issues - summary

Activity	Duration/limit
Time to complete adjudicatory proceedings POD filed and served POD becomes decision of commission	12 months, unless extended by vote of the Commission No more than 60 days after submission If no appeal by party or request for review by Commissioner within 30 days of POD issuance
Time to complete all other matters Specific ratesetting time limits <ul style="list-style-type: none"> • Proposed decision filed and served • Alternate to proposed decision by assigned commissioner • Alternate by non-assigned commissioner Specific quasi-legislative time limits Generally same as ratesetting, but no requirement on simultaneous alternates	18 months <u>from issuance of the scoping memo</u> unless extended by vote of the Commission; limitation of length of extension No later than 90 days after submission Simultaneous with proposed decision Can be issued after the proposed decision
Minimum interval between release of a draft or proposed decision and when the Commission can act	30 days, but exceptions exist for: <ul style="list-style-type: none"> • unforeseen emergency situation • all parties have waived the 30-day period • all parties have stipulated to reduce the 30 day period • it is an uncontested matter in which the decision grants the relief requested • it is an order relating to temporary injunctive relief
Comment intervals – normal	20 days opening; 5 days reply

E-Filing Project and Related Technology Initiatives

All Commission generated formal documents are web published and accessible through the Commission's web site (www.cpuc.ca.gov)

For some time most document exchanges between the Commission and parties and among parties have been electronic – a tremendous savings in paper and postage

E-Filing project allowed formal filings with the Commission to be done electronically – there is NO FORMAL PAPER counterpart to an e-filed document. The Commission's formal record is electronic.

Nearly 90 percent of all formal filings are electronic these days and the number continues to grow.