

AMENDED IN SENATE JANUARY 15, 2014

AMENDED IN SENATE JANUARY 6, 2014

SENATE BILL

No. 636

Introduced by Senator Hill

February 22, 2013

An act to amend Section 1701.2 of the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 636, as amended, Hill. Public Utilities Commission: proceedings.

(1) Existing law establishes certain procedures that are applicable to adjudication, rulemaking, and ratesetting cases of the Public Utilities Commission.

This bill would prohibit an officer, employee, or agent of the commission that is ~~assigned to assist in the prosecution of, to testify in, or to supervise personally involved in the prosecution or in the supervision of~~ the prosecution of an adjudication case from participating in the decision of the case or in the decision of any factually related proceeding. The bill would permit an officer, employee, or agent of the commission that is ~~assigned to assist in personally involved in the prosecution or in the supervision of~~ the prosecution of, of an adjudication case to participate in reaching a settlement of the case, but would prohibit the officer, employee, or agent from participating in the decision of the commission to accept or reject the settlement, except as a witness or counsel in an open hearing or a specified closed hearing.

(2) The California Constitution authorizes the commission to establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process, and to establish rules for all public utilities.

This bill would correct certain statutory references from the commission adopting regulations to the commission adopting rules.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1701.2 of the Public Utilities Code is
2 amended to read:
3 1701.2. (a) If the commission pursuant to Section 1701.1 has
4 determined that an adjudication case requires a hearing, the
5 procedures prescribed by this section shall be applicable. The
6 assigned commissioner or the assigned administrative law judge
7 shall hear the case in the manner described in the scoping memo.
8 The scoping memo shall designate whether the assigned
9 commissioner or the assigned administrative law judge shall preside
10 in the case. The commission shall provide by rule for preemptory
11 challenges and challenges for cause of the administrative law judge.
12 Challenges for cause shall include, but not be limited to, financial
13 interests and prejudice. The rule shall provide that all parties are
14 entitled to one preemptory challenge of the assignment of the
15 administrative law judge in all cases. All parties are entitled to
16 unlimited preemptory challenges in any case in which the
17 administrative law judge has within the previous 12 months served
18 in any capacity in an advocacy position at the commission, been
19 employed by a regulated public utility, or has represented a party
20 or has been a party of interest in the case. The assigned
21 commissioner or the administrative law judge shall prepare and
22 file a decision setting forth recommendations, findings, and
23 conclusions. The decision shall be filed with the commission and
24 served upon all parties to the action or proceeding without undue
25 delay, not later than 60 days after the matter has been submitted
26 for decision. The decision of the assigned commissioner or the
27 administrative law judge shall become the decision of the
28 commission if no further action is taken within 30 days. Any
29 interested party may appeal the decision to the commission,
30 provided that the appeal is made within 30 days of the issuance of
31 the decision. The commission may itself initiate a review of the
32 proposed decision on any grounds. The commission decision shall
33 be based on the record developed by the assigned commissioner

1 or the administrative law judge. A decision different from that of
2 the assigned commissioner or the administrative law judge shall
3 be accompanied by a written explanation of each of the changes
4 made to the decision.

5 (b) ~~An~~ *Notwithstanding Section 307, an officer, employee, or*
6 *agent of the commission that is assigned to assist in the prosecution*
7 *of, to testify in, or to supervise personally involved in the*
8 *prosecution or in the supervision of* the prosecution of an
9 adjudication case before the commission shall not participate in
10 the decision of the case, or in the decision of any factually related
11 proceeding, including participation in or advising the commission
12 as to findings of fact, conclusions of law, or orders. An officer,
13 employee, or agent of the commission that ~~is assigned to assist in~~
14 *is personally involved in the prosecution or in the supervision of*
15 the prosecution of an adjudication case may participate in reaching
16 a settlement of the case, but shall not participate in the decision of
17 the commission to accept or reject the settlement, except as a
18 witness or counsel in an open hearing or a hearing closed pursuant
19 to subdivision (d). The Legislature finds that the commission
20 performs both prosecutorial and adjudicatory functions in an
21 adjudication case and declares its intent that an officer, employee,
22 or agent of the commission, including its attorneys, may perform
23 only one of those functions in any adjudication case or factually
24 related proceeding.

25 (c) Ex parte communications shall be prohibited in adjudication
26 cases.

27 (d) Notwithstanding any other law, the commission may meet
28 in a closed hearing to consider the decision that is being appealed.
29 The vote on the appeal shall be in a public meeting and shall be
30 accompanied with an explanation of the appeal decision.

31 (e) Adjudication cases shall be resolved within 12 months of
32 initiation unless the commission makes findings why that deadline
33 cannot be met and issues an order extending that deadline. In the
34 event that a rehearing of an adjudication case is ~~granted~~ *granted*,
35 the parties shall have an opportunity for final oral argument.

36 (f) (1) The commission may determine that the respondent
37 lacks, or may lack, the ability to pay potential penalties or fines
38 or to pay restitution that may be ordered by the commission.

39 (2) If the commission determines that a respondent lacks, or
40 may lack, the ability to pay, the commission may order the

1 respondent to demonstrate, to the satisfaction of the commission,
2 sufficient ability to pay potential penalties, fines, or restitution that
3 may be ordered by the commission. The respondent shall
4 demonstrate the ability to pay, or make other financial
5 arrangements satisfactory to the commission, within seven days
6 of the commission commencing an adjudication case. The
7 commission may delegate to the attorney to the commission the
8 determination of whether a sufficient showing has been made by
9 the respondent of an ability to pay.

10 (3) Within seven days of the commission’s determination of the
11 respondent’s ability to pay potential penalties, fines, or restitution,
12 the respondent shall be entitled to an impartial review by an
13 administrative law ~~judge~~, *judge* of the sufficiency of the showing
14 made by the respondent of the respondent’s ability to pay. The
15 review by an administrative law judge of the ability of the
16 respondent to pay shall become part of the record of the
17 adjudication and is subject to the commission’s consideration in
18 its order resolving the adjudication case. The administrative law
19 judge may enter temporary orders modifying any financial
20 requirement made of the respondent pending the review by the
21 administrative law judge.

22 (4) A respondent that is a public utility regulated under a rate
23 of return or rate of margin regulatory structure or that has gross
24 annual revenues of more than one hundred million dollars
25 (\$100,000,000) generated within California is presumed to be able
26 to pay potential penalties or fines or to pay restitution that may be
27 ordered by the commission, and, therefore, paragraphs (1) to (3),
28 inclusive, do not apply to that respondent.