

AMENDED IN ASSEMBLY JUNE 20, 2016

AMENDED IN ASSEMBLY MAY 23, 2016

AMENDED IN SENATE JANUARY 4, 2016

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 215

Introduced by Senators Leno and Hueso

February 12, 2015

An act to amend Sections 309.6, 1701.1, 1701.2, 1701.3, 1701.4, and 1701.5 of, and to add Sections ~~1701.6, 1701.7, and 1701.8~~ *1701.6 and 1701.7* to, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 215, as amended, Leno. Public Utilities Commission.

(1) The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities. The California Constitution grants the commission certain general powers over all public utilities, subject to control by the Legislature, and authorizes the Legislature, unlimited by the other provisions of the California Constitution, to confer additional authority and jurisdiction upon the commission that is cognate and germane to the regulation of public utilities. Existing law requires the commission, upon initiating a hearing, to assign one or more commissioners to oversee the case and an administrative law judge, where appropriate. Existing law requires the assigned commissioner to prepare and issue, by order or ruling, a scoping memo that describes the issues to be considered and the applicable timetable for resolution. Existing law requires the commission to adopt procedures on the disqualification of administrative law judges

due to bias or prejudice similar to those of other state agencies and superior courts.

This bill would require the commission to additionally adopt procedures on *the* disqualification of commissioners due to bias or prejudice similar to those of other state agencies and superior courts. For ratesetting or adjudicatory proceedings, the bill would require a commissioner or an administrative law judge to be disqualified ~~if there is an appearance of~~ *for* bias or prejudice based on specified criteria. The bill would prohibit commission procedures from authorizing a commissioner or administrative law judge from ruling on a motion made by a party to a proceeding to disqualify the commissioner or administrative law judge due to bias or prejudice.

(2) The Public Utilities Act requires the commission to determine whether a proceeding requires a hearing and, if so, to determine whether the matter requires a quasi-legislative, an adjudication, or a ratesetting hearing. For these purposes, quasi-legislative cases are cases that establish policy rulemakings and investigations, which may establish rules affecting an entire industry, adjudication cases are enforcement cases and complaints, except those challenging the reasonableness of any rates or charges, and ratesetting cases are cases in which rates are established for a specific company, including general rate cases, performance-based ratemaking, and other ratesetting mechanisms. The act regulates communications in hearings before the commission and defines “ex parte communication” to mean 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. Existing law defines “person with an interest” to mean, among other things, a person with a financial interest in a matter before the commission, or an agent or employee of the person with a financial interest, or a person receiving consideration for representing the person with a financial interest. Existing law requires the commission, by regulation, to adopt and publish a definition of the terms “decisionmaker” and “persons” for those purposes, along with any requirements for written reporting of ex parte communications and appropriate sanctions for noncompliance with any rule proscribing ex parte communications. The act provides that ex parte communications are prohibited in adjudication cases and are prohibited in ratesetting cases, with certain exceptions. The act requires that ex parte

communications be permitted in quasi-legislative cases, without any restrictions. The commission's Rules of Practice and Procedure define a "decisionmaker" as any commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the assigned administrative law judge, or the Law and Motion Administrative Law Judge. The Rules of Practice and Procedure provide that communications with a commissioner's personal advisors are subject to all of the restrictions on, and reporting requirements applicable to, ex parte communications, except that oral communications with an advisor in ratesetting proceedings are permitted without the *specified* restrictions.

This bill would require that the commission determine whether every proceeding, not just those requiring a hearing, is a quasi-legislative, adjudication, or ratesetting proceeding. The bill would delete the provision that an ex parte communication concerns a substantive, but not a procedural matter, and instead would provide that an ex parte communication concerns any matter that the commission has not specified in its Rules of Practice and Procedure as being a procedural matter and that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter. The bill would prohibit the commission from considering as a procedural matter communications between an interested person and a decisionmaker regarding which commissioner or administrative law judge may be assigned to a matter before the commission. The bill would define *an interested person to include* a person involved in issuing credit ratings or advising entities or persons who ~~may~~ invest in the shares or operations of any party to a ~~proceeding as a person with a financial interest.~~ *proceeding*. The bill would require that the commission, ~~by rule, which is already required to~~ adopt and publish a definition of ~~decisionmakers, that would be required to~~ *decisionmakers for ex parte purposes, include the commissioners and certain other individuals in the commission. The bill would require the commission to establish and maintain a communications log summarizing all oral or written ex parte communications that occur between an interested person and any decisionmaker. The bill would require the commission to post the communications log on its Internet Web site. commission as "decisionmakers."*

This bill would require ~~that~~ a decisionmaker, in an adjudication or ratesetting case, who ~~makes or receives a prohibited~~ *participates in an ex parte communication, or who receives an ex parte communication that was not timely reported,* *communication* to disclose certain

information regarding the communication in the record of the proceeding before the commission takes a vote on the matter. *communication*. If a prohibited *an* ex parte communication is not disclosed until after the commission has issued a decision on the matter to which the communication pertained, a party not participating in the communication would be authorized to file a petition to rescind or modify the decision. The bill would require the commission to render decisions based upon the record in a case and would provide that an ex parte communication not be part of the record of the proceeding.

This bill would provide that ex parte communications ~~may be~~ *are* permitted in quasi-legislative proceedings, but would require that they ~~be reported within 3 working days in the communications log maintained by the commission.~~ *proceedings and not subject to the above disclosure requirements, unless the commission makes a formal determination that the communications are subject to the disclosure requirements or prohibited.*

This bill would ~~require the commission to additionally~~ prohibit communications concerning procedural issues *matters* in adjudication cases between ~~parties or interested persons with an interest~~ and decisionmakers, except for the assigned administrative law judge.

Under existing law, the exceptions to the prohibition upon ex parte communications in ratesetting proceedings authorize a commissioner to permit oral ex parte communications if all interested parties are invited and given not less than 3 days' notice. If an ex parte communication meeting is granted to any party, it is required that all other parties also be granted individual ex parte meetings of a substantially equal period of time and that all parties be sent a notice of that authorization at the time the request is granted, at least 3 days prior to the meeting. The exceptions authorize a commissioner to permit written ex parte communications by any party if copies of the communication are transmitted to all parties.

This bill would ~~delete the requirement that if an ex parte communication meeting is granted to any party in a ratesetting proceeding, that all other parties also be granted individual ex parte meetings of a substantially equal period of time and that all parties be sent a notice of that authorization at the time the request is granted, at least 3 days prior to the meeting.~~ The bill would prohibit oral communications concerning procedural matters in ratesetting cases between parties or persons with an interest and decisionmakers other than the assigned administrative law judge, except that a commissioner

~~would be authorized to~~ *instead subject ex parte communications in ratesetting cases to specified disclosure requirements. The bill would authorize a commissioner to permit an oral communication relative to procedural matters if all interested parties are invited and given not less than 3 days' notice. The bill would prohibit written ex parte communications concerning procedural matters in ratesetting cases between parties or persons with an interest and decisionmakers other than the assigned administrative law judge, except that a commissioner would be authorized to permit a written communication relative to procedural issues by any party if copies of the communication are transmitted to all parties on the same day.*

This bill would expressly make the ~~prohibitions upon~~ *ex parte communications that relate* *relating to adjudicatory or ratesetting proceedings applicable to ex parte communications that occur at conferences, as defined. conferences subject to the disclosure requirements.* The bill would also make ~~the disclosure requirements that pertain~~ *developed by the commission applicable to ex parte communications that relate* *relating to quasi-legislative proceedings applicable to ex parte communications that occur at conferences.*

This bill would authorize the commission to impose civil sanctions, including civil penalties, on any entity or person, other than a decisionmaker or employee of the commission, that violates ex parte communication requirements. The bill would authorize the Attorney General to bring an enforcement action in superior court against a decisionmaker or employee of the commission who violates the ex parte communication requirements.

(3) The Political Reform Act of 1974 (PRA) provides for the regulation of the lobbying industry, including defining the term "lobbyist" and regulating the conduct of lobbyists.

This bill would state that it is the intent of the Legislature that the commission, and any entity or person seeking to influence actions taken by the commission, be subject to all applicable ethical standards, including any applicable obligations under the PRA, including applicable lobbying obligations.

~~(3)~~

(4) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission

implementing its requirements would be a crime, the bill would impose a state-mandated local program by expanding the application of a crime.

(4)

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 309.6 of the Public Utilities Code is
2 amended to read:

3 309.6. (a) The commission shall adopt procedures on the
4 disqualification of commissioners and administrative law judges
5 due to bias or prejudice similar to those of other state agencies and
6 superior courts.

7 (b) (1) For ratesetting and adjudicatory proceedings, a
8 commissioner or administrative law judge shall be disqualified-if
9 there is an appearance of for bias or prejudice based on-any either
10 of the following:

11 (A) Actions taken during the proceeding that demonstrate bias
12 or prejudice.

13 ~~(B) Private communications before the commencement of the~~
14 ~~proceeding to influence the request for relief sought by any party~~
15 ~~to the proceeding.~~

16 ~~(C)~~

17 (B) Actions demonstrating any commitment to provide relief
18 to a party.

19 (2) Past work experience by the commissioner or administrative
20 law judge shall not be a sufficient basis for demonstrating-an
21 appearance of bias or prejudice pursuant to paragraph (1).

22 (c) The commission procedures shall not authorize a
23 commissioner or administrative law judge to rule on a motion
24 made by a party to a proceeding to disqualify the commissioner
25 or administrative law judge due to bias or prejudice.

26 (d) The commission shall develop the procedures with the
27 opportunity for public review and comment.

1 SEC. 2. Section 1701.1 of the Public Utilities Code is amended
2 to read:

3 1701.1. (a) The commission shall determine whether each
4 proceeding is a quasi-legislative, an adjudication, or a ratesetting
5 proceeding and, consistent with due process, public policy, and
6 statutory requirements, determine whether the proceeding requires
7 a hearing. The commission's decision as to the nature of the
8 proceeding shall be subject to a request for rehearing within 10
9 days of the date of that decision or *of* any subsequent ruling that
10 expands the scope of the proceeding. Only those parties who have
11 requested a rehearing within that time period shall subsequently
12 have standing for judicial review and that review shall only be
13 available at the conclusion of the proceeding. The commission
14 shall render its decision regarding the rehearing within 30 days.
15 The commission shall establish rules regarding *ex parte*
16 communication on case categorization issues.

17 (b) The commission, upon initiating an adjudication proceeding
18 or ratesetting proceeding, shall assign one or more commissioners
19 to oversee the case and an administrative law judge where
20 appropriate. The assigned commissioner shall schedule a prehearing
21 conference. The assigned commissioner shall prepare and issue
22 by order or ruling a scoping memo that describes the issues to be
23 considered and the applicable timetable for resolution. The
24 administrative law judge shall either preside and conduct, or assist
25 the assigned commissioner or commissioners in presiding and
26 conducting, any evidentiary or adjudication hearing that may be
27 required.

28 (c) The commission, upon initiating a quasi-legislative
29 proceeding, shall assign one or more commissioners to oversee
30 the case and an administrative law judge, where appropriate, who
31 may be assisted by a technical advisory staff member in conducting
32 the proceeding. The assigned commissioner shall prepare and issue
33 by order or ruling a scoping memo that describes the issues to be
34 considered and the applicable timetable for resolution.

35 (d) (1) Quasi-legislative cases, for purposes of this article, are
36 cases that establish policy, including, but not limited to,
37 rulemakings and investigations which may establish rules affecting
38 an entire industry.

1 (2) Adjudication cases, for purposes of this article, are
2 enforcement cases and complaints except those challenging the
3 reasonableness of any rates or charges as specified in Section 1702.

4 (3) Ratesetting cases, for purposes of this article, are cases in
5 which rates are established for a specific company, including, but
6 not limited to, general rate cases, performance-based ratemaking,
7 and other ratesetting mechanisms.

8 (4) “All-party conference,” for purposes of this article, is a
9 public hearing held on the record before a quorum of
10 commissioners at which parties to a proceeding shall have the right
11 to participate and communicate their views regarding any factual,
12 legal, or policy issue in the proceeding.

13 (e) (1) (A) “Ex parte communication,” for purposes of this
14 article, means any oral or written communication between a
15 decisionmaker and an interested person concerning any matter
16 before the commission that the commission has not specified in
17 its Rules of Practice and Procedure as being a procedural matter
18 and that does not occur in a public hearing, workshop, or other
19 public proceeding, or on the official record of the proceeding on
20 the matter. The commission shall specify in its Rules of Practice
21 and Procedure, enacted by rulemaking, the types of issues
22 considered procedural matters under this article. Any
23 communication between an interested person and a decisionmaker
24 regarding which commissioner or administrative law judge may
25 be assigned to a matter before the commission shall not be deemed
26 to be a procedural matter and shall be an ex parte communication
27 subject to this article.

28 (B) “Interested person,” for purposes of this article, means any
29 of the following:

30 (i) Any applicant, an agent or an employee of the applicant, or
31 a person receiving consideration for representing the applicant, or
32 a participant in the proceeding on any matter before the
33 commission.

34 (ii) Any person with a financial interest, as described in Article
35 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the
36 Government Code, in a matter before the commission, or an agent
37 or employee of the person with a financial interest, or a person
38 receiving consideration for representing the person with a financial
39 interest. A person involved in issuing credit ratings or advising

1 entities or persons who ~~may~~ invest in the shares or operations of
2 any party to a proceeding is a person with a financial interest.

3 (iii) A representative acting on behalf of any civic,
4 environmental, neighborhood, business, labor, trade, or similar
5 organization who intends to influence the decision of a commission
6 member on a matter before the commission.

7 (iv) Other categories of individuals deemed by the commission,
8 by rule, to be an interested person.

9 (2) The commission shall by rule adopt and publish a definition
10 of decisionmakers and interested persons for purposes of this
11 article, along with any requirements for written reporting of ex
12 parte communications and appropriate sanctions for noncompliance
13 with any rule proscribing ex parte communications. The definition
14 of decisionmakers shall include, but is not limited to, each
15 commissioner; the attorney for the commission; the executive
16 director of the commission; the personal staff of a commissioner
17 if the staff is acting in a policy or legal advisory capacity; the chief
18 administrative law judge of the commission; and the administrative
19 law judge assigned to the proceeding.

20 (3) For adjudication ~~and ratesetting~~ cases, the rules shall provide
21 that ex parte communications shall be prohibited, as required by
22 this article. The rules shall provide that if an ex parte
23 communication occurs that is prohibited by this article, *or if an ex*
24 *parte communication occurs in a ratesetting case*, whether initiated
25 by a decisionmaker or an interested person, all of the following
26 shall be required:

27 (A) The interested person shall report the communication within
28 ~~one working day~~ *three working days* of the communication by
29 filing a notice with the commission that includes all the following:

30 (i) The date, time, and location of the communication, whether
31 the communication was ~~oral~~, *oral* or written, or a combination of
32 both, and the communication medium utilized.

33 (ii) The identity of the decisionmaker, the identity of the person
34 initiating the communication, and any other persons present.

35 (iii) A complete ~~and comprehensive~~ description of the interested
36 person's ~~and the decisionmaker's~~ communication and its content.

37 (iv) A copy of any written material or text used during the
38 communication.

39 (B) Any decisionmaker who participated in the communication
40 shall comply with both of the following:

1 (i) If the interested person who participated in the
2 communication has not timely submitted the notice required by
3 subparagraph (A), the decisionmaker shall *refer the matter to a*
4 *commission attorney and promptly prepare and file a notice that*
5 *includes the information required by subparagraph (A): (A) and a*
6 *complete description of the decisionmaker's communication and*
7 *its content.*

8 (ii) If the interested person has timely submitted the notice
9 required by subparagraph (A), the decisionmaker shall ~~either~~
10 promptly file a notice ~~affirming the factual representations made~~
11 ~~by the interested person in the notice or promptly file a notice~~
12 ~~correcting or supplementing that includes a complete description~~
13 *of the decisionmaker's communication and its content and, if*
14 *appropriate, that corrects or supplements, as applicable, the factual*
15 *representations made by the interested person.*

16 (4) The commission shall not take any vote on a matter ~~where~~
17 *in which* a notice has been filed pursuant to subparagraph (A) or
18 (B) of paragraph (3) until all parties to the proceeding have been
19 provided a reasonable opportunity to respond to the
20 communication.

21 (5) ~~If a prohibited~~ *an ex parte* communication is not disclosed
22 as required by this subdivision until after the commission has
23 issued a decision on the matter to which the prohibited
24 communication pertained, a party not participating in the
25 communication may file a petition to rescind or modify the
26 decision. The party may seek a finding that the ex parte
27 communication was prohibited and significantly influenced the
28 decision's process or outcome as part of any petition to rescind or
29 modify the decision. The commission shall process the petition in
30 accordance with the commission's procedures for petitions for
31 modification and shall issue a decision on the petition no later than
32 180 days after the filing of the petition.

33 (6) (A) Ex parte communications that occur at conferences that
34 are related to an adjudication or ratesetting proceeding shall be
35 ~~prohibited consistent with the ex parte communications and subject~~
36 *to the disclosure* requirements of this article.

37 (B) Ex parte communications that occur at conferences and that
38 are related to a quasi-legislative proceeding shall be governed by
39 the ex parte communication disclosure requirements developed
40 by the commission.

1 (C) For purposes of this section, “ex parte communications that
2 occur at conferences” includes, but is not limited to,
3 communications in a private setting or during meals, entertainment
4 events, and tours, and informal discussions among conference
5 attendees.

6 (7) The commission shall render its decisions based on the
7 evidence in the record. Ex parte communications shall not be a
8 part of the record of the proceedings.

9 (f) The commission may meet in a closed session to discuss
10 administrative matters so long as no collective consensus is reached
11 or vote taken on any matter requiring a vote of the commissioners.
12 The commission shall, by rule, adopt and publish a definition of
13 “administrative matters” for purposes of this section.

14 (g) The commission shall permit written comments received
15 from the public to be included in the record of its proceedings.
16 The commission shall provide parties to the proceeding a
17 reasonable opportunity to respond to any public comments included
18 in the record of proceedings.

19 (h) *It is the intent of the Legislature that the commission, and*
20 *any entity or person seeking to influence actions taken by the*
21 *commission, shall be subject to all applicable ethical standards,*
22 *including any applicable obligations under the Political Reform*
23 *Act of 1974 (Title 9 (commencing with Section 81000) of the*
24 *Government Code), including, but not limited to, any applicable*
25 *lobbying obligations.*

26 SEC. 3. Section 1701.2 of the Public Utilities Code is amended
27 to read:

28 1701.2. (a) If the commission pursuant to Section 1701.1 has
29 determined that an adjudication case requires a hearing, *the*
30 assigned commissioner or the assigned administrative law judge
31 shall hear the case in the manner described in the scoping memo.
32 The scoping memo shall designate whether the assigned
33 commissioner or the assigned administrative law judge shall preside
34 in the case.

35 (b) The commission shall provide by rule for preemptory
36 challenges and challenges for cause of the administrative law judge.
37 Challenges for cause shall include, but not be limited to, financial
38 interests and prejudice. The rule shall provide that all parties are
39 entitled to one preemptory challenge of the assignment of the
40 administrative law judge in all cases. All parties are entitled to

1 unlimited peremptory challenges in any case in which the
2 administrative law judge has within the previous 12 months served
3 in any capacity in an advocacy position at the commission, been
4 employed by a regulated public utility, or has represented a party
5 or has been an interested person in the case.

6 (c) The assigned commissioner or the administrative law judge
7 shall prepare and file a decision setting forth recommendations,
8 findings, and conclusions. The decision shall be filed with the
9 commission and served upon all parties to the action or proceeding
10 without undue delay, not later than 60 days after the matter has
11 been submitted for decision. The decision of the assigned
12 commissioner or the administrative law judge shall become the
13 decision of the commission if no further action is taken within 30
14 days. Any party may appeal the decision to the commission,
15 provided that the appeal is made within 30 days of the issuance of
16 the decision. The commission may itself initiate a review of the
17 proposed decision on any grounds.

18 (d) The commission may hold an all-party conference before a
19 quorum of commissioners at which all parties have an opportunity
20 to be heard. The commission shall adopt rules for implementation
21 of all-party conferences that ensure the broadest participation by
22 parties to the proceeding that the commission can reasonably
23 accommodate consistent with the commissioners' other duties and
24 responsibilities.

25 (e) The commission's decision shall be supported by findings
26 of fact on all issues material to the decision, and the findings of
27 fact shall be based on the record developed by the assigned
28 commissioner or the administrative law judge. A decision different
29 from that of the assigned commissioner or the administrative law
30 judge shall be accompanied by a written explanation of each of
31 the changes made to the decision.

32 (f) Notwithstanding Section 307, an officer, employee, or agent
33 of the commission that is personally involved in the prosecution
34 or in the supervision of the prosecution of an adjudication case
35 before the commission shall not participate in the decision of the
36 case, or in the decision of any factually related adjudicatory
37 proceeding, including participation in or advising the commission
38 as to findings of fact, conclusions of law, or orders. An officer,
39 employee, or agent of the commission that is personally involved
40 in the prosecution or in the supervision of the prosecution of an

1 adjudication case may participate in reaching a settlement of the
2 case, but shall not participate in the decision of the commission to
3 accept or reject the settlement, except as a witness or counsel in
4 an open hearing or a hearing closed pursuant to subdivision (h).
5 The Legislature finds that the commission performs both
6 prosecutorial and adjudicatory functions in an adjudication case
7 and declares its intent that an officer, employee, or agent of the
8 commission, including its attorneys, may perform only one of
9 those functions in any adjudication case or factually related
10 adjudicatory proceeding.

11 (g) (1) Ex parte communications shall be prohibited in
12 adjudication cases.

13 (2) Any oral or written communications concerning procedural
14 matters in adjudication cases between interested persons and
15 decisionmakers, except the assigned administrative law judge,
16 shall be prohibited.

17 (h) Notwithstanding any other law, the commission may meet
18 in a closed hearing to consider the decision that is being appealed.
19 The vote on the appeal shall be in a public meeting and shall be
20 accompanied with an explanation of the appeal decision.

21 (i) Adjudication cases shall be resolved within 12 months of
22 initiation unless the commission makes findings why that deadline
23 cannot be met and issues an order extending that deadline. In the
24 event that a rehearing of an adjudication case is granted, the parties
25 shall have an opportunity for final oral argument.

26 (j) (1) The commission may determine that the respondent
27 lacks, or may lack, the ability to pay potential penalties or fines
28 or to pay restitution that may be ordered by the commission.

29 (2) If the commission determines that a respondent lacks, or
30 may lack, the ability to pay, the commission may order the
31 respondent to demonstrate, to the satisfaction of the commission,
32 sufficient ability to pay potential penalties, fines, or restitution that
33 may be ordered by the commission. The respondent shall
34 demonstrate the ability to pay, or make other financial
35 arrangements satisfactory to the commission, within seven days
36 of the commission commencing an adjudication case. The
37 commission may delegate to the attorney to the commission the
38 determination of whether a sufficient showing has been made by
39 the respondent of an ability to pay.

1 (3) Within seven days of the commission's determination of the
2 respondent's ability to pay potential penalties, fines, or restitution,
3 the respondent shall be entitled to an impartial review by an
4 administrative law judge of the sufficiency of the showing made
5 by the respondent of the respondent's ability to pay. The review
6 by an administrative law judge of the ability of the respondent to
7 pay shall become part of the record of the adjudication and is
8 subject to the commission's consideration in its order resolving
9 the adjudication case. The administrative law judge may enter
10 temporary orders modifying any financial requirement made of
11 the respondent pending the review by the administrative law judge.

12 (4) A respondent that is a public utility regulated under a rate
13 of return or rate of margin regulatory structure or that has gross
14 annual revenues of more than one hundred million dollars
15 (\$100,000,000) generated within California is presumed to be able
16 to pay potential penalties or fines or to pay restitution that may be
17 ordered by the commission, and, therefore, paragraphs (1) to (3),
18 inclusive, do not apply to that respondent.

19 SEC. 4. Section 1701.3 of the Public Utilities Code is amended
20 to read:

21 1701.3. (a) If the commission pursuant to Section 1701.1 has
22 determined that a ratesetting case requires a hearing, the procedures
23 prescribed by subdivisions (b), (d), (f), and (i) shall be applicable.

24 (b) The assigned commissioner shall determine prior to the first
25 hearing whether the commissioner or the assigned administrative
26 law judge shall be designated as the principal hearing officer. The
27 principal hearing officer shall be present for more than one-half
28 of the hearing days. The decision of the principal hearing officer
29 shall be the proposed decision.

30 (c) An alternate decision may be issued by the assigned
31 commissioner or the assigned administrative law judge who is not
32 the principal hearing officer. Any alternate decision may be filed
33 with the commission and served upon all parties to the proceeding
34 any time prior to issuance of a final decision by the commission,
35 consistent with the requirements of Section 311.

36 (d) The commission shall establish a procedure for any party
37 to request the presence of a commissioner at a hearing. The
38 assigned commissioner shall be present at any closing arguments
39 in the case.

1 (e) The principal hearing officer shall present the proposed
2 decision to the full commission in a public meeting. The alternate
3 decision, if any, shall also be presented to the full commission at
4 that public meeting.

5 (f) The presentation to the full commission shall contain a record
6 of the number of days of the hearing, the number of days that each
7 commissioner was present, and whether the decision was completed
8 on time.

9 (g) The commission shall provide by rule for peremptory
10 challenges and challenges for cause of the administrative law judge.
11 Challenges for cause shall include, but not be limited to, financial
12 interests and prejudice. All parties shall be entitled to unlimited
13 peremptory challenges in any case in which the administrative law
14 judge has within the previous 12 months served in any capacity
15 in an advocacy position at the commission, been employed by a
16 regulated public utility, or has represented a party or has been an
17 interested person in the case.

18 (h) (1) ~~Ex parte communications are prohibited in ratesetting~~
19 ~~cases.~~ *cases are subject to the disclosure requirements of this*
20 *article. The commission may make a formal determination*
21 *prohibiting ex parte communications in a ratesetting case within*
22 *90 days of the commencement of the proceeding.*

23 (A) Oral communications may be permitted by a decisionmaker
24 if all parties are invited to the meeting and given not less than three
25 working days' notice.

26 (B) Written ex parte communications by any interested person
27 may be permitted if copies of the communication are transmitted
28 to all parties on the same day as the original communication.
29 Written ex parte communications shall not be part of the record
30 of the proceeding.

31 (C) The commission may establish a period during which no
32 oral or written all-party communications may be permitted and
33 the commission may meet in closed session during that period,
34 which shall not in any circumstance exceed 14 days. If the
35 commission holds the decision, it may permit all-party
36 communications during the first half of the interval between the
37 hold date and the date that the decision is calendared for final
38 decision. The commission may meet in closed session for the
39 second half of that interval.

1 (2) Oral communications concerning a procedural matter in
2 ratesetting cases between interested persons and decisionmakers,
3 except the assigned administrative law judge, are prohibited, except
4 that an oral communication may be permitted at any time by any
5 decisionmaker if all parties are invited and given not less than
6 three working days' notice.

7 (3) Written communications concerning a procedural matter in
8 ratesetting cases between interested persons and decisionmakers,
9 except the assigned administrative law judge, are prohibited, except
10 that a decisionmaker may permit a written communication by any
11 party if copies of the communication are transmitted to all parties
12 on the same day.

13 (i) Any party has the right to present a final oral argument of
14 its case before the commission. Those requests shall be scheduled
15 in a timely manner. A quorum of the commission shall be present
16 for the final oral arguments.

17 (j) After the issuance of a proposed decision in a ratesetting
18 case, the commission may hold an all-party conference before a
19 quorum of commissioners at which all parties have an opportunity
20 to be heard. The commission shall adopt rules for implementation
21 of all-party conferences that ensure the broadest participation by
22 parties to the proceeding that the commission can reasonably
23 accommodate consistent with the commissioners' other duties and
24 responsibilities.

25 (k) The commission may, in issuing its decision, adopt, modify,
26 or set aside the proposed decision or any part of the decision based
27 on evidence in the record. The final decision of the commission
28 shall be issued not later than 60 days after the issuance of the
29 proposed decision. Under extraordinary circumstances the
30 commission may extend this date for a reasonable period. The
31 60-day period shall be extended for 30 days if any alternate
32 decision is proposed pursuant to Section 311.

33 SEC. 5. Section 1701.4 of the Public Utilities Code is amended
34 to read:

35 1701.4. (a) If the commission pursuant to Section 1701.1 has
36 determined that a quasi-legislative case requires a hearing, the
37 procedures prescribed by subdivisions (b) and (d) to (f), inclusive,
38 shall be applicable.

39 (b) The assigned administrative law judge and any assigned
40 technical advisory staff shall act as an assistant to the assigned

1 commissioner in quasi-legislative cases. The assigned
2 commissioner shall prepare the proposed rule or order with the
3 assistance of the administrative law judge and any assigned
4 technical advisory staff. The assigned commissioner shall present
5 the proposed rule or order to the full commission in a public
6 meeting. The report shall include the number of days of hearing
7 and the number of days that the commissioner was present.

8 ~~(e) Ex parte communications may be permitted. Any ex parte~~
9 ~~communication shall be reported in compliance with Section~~
10 ~~1701.6. No reporting shall be required for written ex parte~~
11 ~~communications that are transmitted to all parties on the same day~~
12 ~~as the original communication.~~

13 *(c) Ex parte communications in quasi-legislative proceedings*
14 *are permitted and not subject to the disclosure requirements of*
15 *this article, except when the commission, within 90 days of the*
16 *commencement of a quasi-legislative proceeding, makes a formal*
17 *determination of either of the following.*

18 *(1) That ex parte communications are subject to the disclosure*
19 *requirements of this article.*

20 *(2) That ex parte communications are prohibited and subject*
21 *to the disclosure requirements of this article.*

22 (d) Any party has the right to present a final oral argument of
23 its case before the commission. Those requests shall be scheduled
24 in a timely manner. A quorum of the commission shall be present
25 for the final oral arguments.

26 (e) After the issuance of a proposed decision in a
27 quasi-legislative case, the commission may hold an all-party
28 conference before a quorum of commissioners at which all parties
29 have an opportunity to be heard. The commission shall adopt rules
30 for implementation of all-party conferences that ensure the broadest
31 participation by parties to the proceeding that the commission can
32 reasonably accommodate consistent with the commissioners' other
33 duties and responsibilities.

34 (f) The commission may, in issuing its rule or order, adopt,
35 modify, or set aside the proposed decision or any part of the rule
36 or order. The final rule or order of the commission shall be issued
37 not later than 60 days after the issuance of the proposed rule or
38 order. Under extraordinary circumstances the commission may
39 extend this date for a reasonable period. The 60-day period shall

1 be extended for 30 days if any alternate rule or order is proposed
2 pursuant to Section 311.

3 SEC. 6. Section 1701.5 of the Public Utilities Code is amended
4 to read:

5 1701.5. (a) Except as specified in subdivision (b), in a
6 ratesetting or quasi-legislative case, the commission shall resolve
7 the issues raised in the scoping memo within 18 months of the date
8 the proceeding is initiated, unless the commission makes a written
9 determination that the deadline cannot be met, including findings
10 as to the reason, and issues an order extending the deadline.

11 (b) Notwithstanding subdivision (a), the commission may
12 specify in a scoping memo a resolution date later than 18 months
13 from the date the proceeding is initiated, if that scoping memo
14 includes specific reasons for the necessity of a later date and the
15 commissioner assigned to the case approves the date.

16 ~~SEC. 7. Section 1701.6 is added to the Public Utilities Code,~~
17 ~~to read:~~

18 ~~1701.6. (a) The commission shall establish and maintain a~~
19 ~~communications log summarizing all oral and written ex parte~~
20 ~~communications, as defined in Section 1701.1.~~

21 ~~(b) The communications log shall include a summary of all oral~~
22 ~~and written communications that meet the definition of an ex parte~~
23 ~~communication that occur between an interested person and any~~
24 ~~decisionmaker.~~

25 ~~(c) Each record of a communication in the communication log~~
26 ~~shall include the date of each communication, the persons involved~~
27 ~~in the communication, and, to the extent known, any proceedings~~
28 ~~that were the subject of each communication. Ex parte~~
29 ~~communications in the summary log shall be reported no later than~~
30 ~~three working days after the communication.~~

31 ~~(d) The communication log shall be made available to the public~~
32 ~~on the commission's Internet Web site not later than July 1, 2017.~~

33 ~~SEC. 8.~~

34 ~~SEC. 7. Section 1701.7/1701.6 is added to the Public Utilities~~
35 ~~Code, to read:~~

36 ~~1701.7.~~

37 ~~1701.6. (a) In addition to any penalty, fine, or other punishment~~
38 ~~applicable pursuant to Article 11 (commencing with Section 2100),~~
39 ~~the commission may assess civil sanctions upon any entity or~~
40 ~~person, other than a decisionmaker or employee of the commission,~~

1 who violates, fails to comply with, or procures, aids, or abets any
2 violation of, the ex parte communication requirements of this
3 article or those adopted by the commission pursuant to this article.
4 The civil sanctions may include civil penalties, adverse
5 consequences in commission proceedings, or other appropriate
6 commission orders directed at the entity, person, or both the entity
7 and person, committing the violation.

8 (b) (1) Except as provided in paragraph (2), a civil penalty
9 assessed shall not exceed fifty thousand dollars (\$50,000) per
10 violation. Each day of a continuing violation is a separate violation.
11 If the violation consists of engaging in a communication that is
12 prohibited by the ex parte communication requirements, each day
13 that the violation is not disclosed to the commission and to parties
14 of record in the formal proceeding in which the communication
15 occurred shall constitute a separate violation.

16 (2) If the entity or person may obtain, by violating the ex parte
17 communication requirements, financial benefits that exceed the
18 maximum amount of civil penalty allowable pursuant to paragraph
19 (1), the commission may impose a civil penalty up to the amount
20 of those financial benefits.

21 (c) Civil penalties assessed pursuant to subdivision (b) upon
22 entities whose rates are determined by the commission shall be in
23 the form of credits to the customers of that entity. Civil penalties
24 collected from other entities shall be deposited in the General Fund.

25 (d) In determining the appropriate civil sanctions, the
26 commission shall consider the following factors:

- 27 (1) The severity of the violation.
- 28 (2) The conduct of the entity or person, including the level of
29 experience of the entity or person in participating in commission
30 proceedings and whether the entity or person knowingly violated
31 the ex parte communication requirements.
- 32 (3) The financial resources of the entity or person.
- 33 (4) The totality of the circumstances in furtherance of the public
34 interest.

35 ~~SEC. 9.~~

36 ~~SEC. 8.~~ Section ~~1701.8~~1701.7 is added to the Public Utilities
37 Code, to read:

38 ~~1701.8.~~

39 1701.7. (a) The Attorney General may bring an enforcement
40 action in superior court against a decisionmaker or employee of

1 the commission who violates, fails to comply with, or procures,
2 aids, or abets any violation of, the ex parte communication
3 requirements in this article or those adopted by the commission
4 pursuant to this article.

5 (b) Notwithstanding Section 1759, in an enforcement action
6 brought pursuant to this section, the court may grant appropriate
7 relief, including disqualification of the decisionmaker from one
8 or more proceedings and civil penalties as provided in Section
9 2111.

10 (c) In determining the appropriate relief, the court may consider
11 the following factors:

- 12 (1) The severity of the violation.
- 13 (2) The conduct of the decisionmaker or employee, including
14 whether the decisionmaker or employee knowingly violated the
15 ex parte communication requirements.
- 16 (3) The financial resources of the decisionmaker or employee.
- 17 (4) The totality of the circumstances in furtherance of the public
18 interest.

19 (d) The Attorney General may compromise the enforcement
20 action subject to approval by the court.

21 (e) Civil penalties collected pursuant to this section shall be
22 deposited into the Litigation Deposits Fund established pursuant
23 to Article 9 (commencing with Section 16425) of Chapter 2 of
24 Part 2 of Division 4 of Title 2 of the Government Code.

25 ~~SEC. 10.~~

26 *SEC. 9.* No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.