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AMENDED IN ASSEMBLY MAY 23, 2016  
AMENDED IN SENATE JANUARY 4, 2016  
AMENDED IN SENATE APRIL 15, 2015

**SENATE BILL**

**No. 215**

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**Introduced by Senators Leno and Hueso**

February 12, 2015

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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 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. Existing law requires the commission, upon initiating a hearing, to assign one or more commissioners to oversee the case and an administrative law judge, when appropriate. 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 for bias or prejudice based on specified criteria. The bill would prohibit commission procedures from authorizing a commissioner or administrative law judge to rule 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, adjudication, or 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~~ *Existing law regulates communications in matters before the commission and defines an “ex parte communication” as 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, 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 and ratesetting cases, with certain exceptions. The act requires that ex parte communications be permitted in quasi-legislative cases, without any restrictions.

~~This bill would require that the commission determine whether each 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. The bill would define an interested person to also include a person involved in issuing credit ratings or advising entities or persons who invest in the shares or operations of any party to a proceeding. The bill would require that the commission include in its definition of “decisionmaker” the commissioners and certain other individuals in the commission.~~

~~This bill would require a decisionmaker, in an adjudication or ratesetting case, who participates in an ex parte communication to disclose certain information regarding the communication. If 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 evidentiary record of the proceeding.~~

~~This bill would authorize the commission to determine whether an ex parte communication in a quasi-legislative proceeding is subject to the disclosure requirements or prohibited.~~

~~This bill would prohibit communications concerning procedural matters in adjudication cases between interested persons 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 instead subject ex parte communications in ratesetting cases to specified disclosure requirements and would authorize the commission to prohibit ex parte communications in a ratesetting case. The bill would authorize a decisionmaker to permit an oral ex parte communication if all parties are given not less than 3 days' notice and, upon request, individual ex parte communication meetings are granted to those other parties. The bill would authorize a commissioner to permit a written communication by any interested person if copies of the communication are transmitted to all parties on the same day, but the written communication would not be a part of the record of the proceeding.~~

~~This bill would make disclosure requirements developed by the commission applicable to ex parte communications within the scope of quasi-legislative proceedings 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. *recast the laws relating to ex parte communications in regard to commission proceedings.*~~

(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.

(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.

(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 for  
9 bias or prejudice based on either of the following:

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

12 (B) Actions *taken outside the public record of a proceeding*  
13 demonstrating any commitment to provide relief to a party.

14 (2) Past work experience by the commissioner or administrative  
15 law judge shall not be a sufficient basis for demonstrating bias or  
16 prejudice pursuant to paragraph (1).

17 (c) The commission procedures shall not authorize a  
18 commissioner or administrative law judge to rule on a motion  
19 made by a party to a proceeding to disqualify the commissioner  
20 or administrative law judge due to bias or prejudice.

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

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

25 1701.1. (a) The commission shall determine whether each  
26 proceeding is a quasi-legislative, an adjudication, or a ratesetting  
27 proceeding and, consistent with due process, public policy, and  
28 statutory requirements, determine whether the proceeding requires  
29 a hearing. The commission's decision as to the nature of the  
30 proceeding shall be subject to a request for rehearing within 10  
31 days of the date of that decision or of any subsequent ruling that  
32 expands the scope of the proceeding. Only those parties who have  
33 requested a rehearing within that time period shall subsequently

1 have standing for judicial review and that review shall only be  
2 available at the conclusion of the proceeding. The commission  
3 shall render its decision regarding the rehearing within 30 days.  
4 The commission shall establish rules regarding *ex parte*  
5 communication on case categorization issues.

6 (b) The commission, upon initiating an adjudication proceeding  
7 or ratesetting proceeding, shall assign one or more commissioners  
8 to oversee the case and an administrative law judge when  
9 appropriate. The assigned commissioner shall schedule a prehearing  
10 conference. The assigned commissioner shall prepare and issue  
11 by order or ruling a scoping memo that describes the issues to be  
12 considered and the applicable timetable for resolution. The  
13 administrative law judge shall either preside *over* and conduct, or  
14 assist the assigned commissioner or commissioners in presiding  
15 *over* and conducting, any evidentiary or adjudication hearing that  
16 may be required.

17 (c) The commission, upon initiating a quasi-legislative  
18 proceeding, shall assign one or more commissioners to oversee  
19 the case and an administrative law judge, ~~where~~ *when* appropriate,  
20 who may be assisted by a technical advisory staff member in  
21 conducting the proceeding. The assigned commissioner shall  
22 prepare and issue by order or ruling a scoping memo that describes  
23 the issues to be considered and the applicable timetable for  
24 resolution.

25 (d) (1) Quasi-legislative cases, for purposes of this article, are  
26 cases that establish policy, including, but not limited to,  
27 rulemakings and investigations ~~which~~ *that* may establish rules  
28 affecting an entire industry.

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

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

36 ~~(4) "All-party conference," for purposes of this article, is a~~  
37 ~~public hearing held on the record before a quorum of~~  
38 ~~commissioners at which all parties to a proceeding shall have the~~  
39 ~~right to participate and communicate their views regarding any~~  
40 ~~factual, legal, or policy issue in the proceeding.~~

1 (e) (1) (A) “Ex parte communication,” for purposes of this  
2 article, means any oral or written communication between a  
3 decisionmaker and an interested person concerning any matter  
4 before the commission that the commission has not specified in  
5 its Rules of Practice and Procedure as being a procedural matter  
6 and that does not occur in a public hearing, workshop, or other  
7 public proceeding, or on the official record of the proceeding on  
8 the matter. The commission shall specify in its Rules of Practice  
9 and Procedure, enacted by rulemaking, the types of issues  
10 considered procedural matters under this article.

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

13 (i) Any applicant, an agent or an employee of the applicant, or  
14 a person receiving consideration for representing the applicant, or  
15 a participant in the proceeding on any matter before the  
16 commission.

17 (ii) Any person with a financial interest, as described in Article  
18 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the  
19 Government Code, in a matter before the commission, an agent  
20 or employee of the person with a financial interest, or a person  
21 receiving consideration for representing the person with a financial  
22 interest. A person involved in issuing credit ratings or advising  
23 entities or persons who invest in the shares or operations of any  
24 party to a proceeding is a person with a financial interest.

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

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

31 (2) The commission shall by rule adopt and publish a definition  
32 of decisionmakers and interested persons for purposes of this  
33 article, along with any requirements for written reporting of ex  
34 parte communications and appropriate sanctions for noncompliance  
35 with any rule proscribing ex parte communications. The definition  
36 of decisionmakers shall include, but is not limited to: each  
37 commissioner; ~~the attorney for the commission; the executive~~  
38 ~~director of the commission;~~ the personal staff of a commissioner  
39 if the staff is acting in a policy or legal advisory capacity; the chief  
40 administrative law judge of the commission; and the administrative

1 law judge assigned to the proceeding. The commission shall, by  
2 rule, explicitly ban ~~any~~ *both of the following*:

3 (A) *The practice of one-way ex parte communications from a*  
4 *decisionmaker to an interested person.*

5 (B) *Any communication between an interested person and a*  
6 *decisionmaker regarding which commissioner or administrative*  
7 *law judge may be assigned to a matter before the commission.*

8 (3) For adjudication cases, the rules shall provide that ex parte  
9 communications shall be prohibited, as required by this article.  
10 The rules shall provide that if an ex parte communication occurs  
11 that is prohibited by this article, or if an ex parte communication  
12 occurs in a ratesetting case, whether initiated by a decisionmaker  
13 or an interested person, all of the following shall be required:

14 (A) The interested person shall report the communication within  
15 three working days of the communication by filing a notice with  
16 the commission that includes all the following:

17 (i) The date, time, and location of the communication, whether  
18 the communication was oral or written, or a combination of both,  
19 and the communication medium ~~utilized~~ *used*.

20 (ii) The identity of the decisionmaker, the identity of the person  
21 initiating the communication, and *the identities of* any other persons  
22 present.

23 (iii) ~~Topics~~ *The topic* of the communication, including applicable  
24 proceeding numbers.

25 (iv) A complete description of the interested person's  
26 communication and its content.

27 (v) A copy of any written material or text used during the  
28 communication.

29 ~~(B) Any decisionmaker who participated in the communication~~  
30 ~~shall comply with both of the following:~~

31 ~~(i) If the interested person who participated in the~~  
32 ~~communication has not timely submitted the notice required by~~  
33 ~~subparagraph (A), the decisionmaker shall refer the matter to a~~  
34 ~~commission attorney and promptly prepare and file a notice that~~  
35 ~~includes the information required by subparagraph (A) and a~~  
36 ~~complete description of the decisionmaker's communication and~~  
37 ~~its content.~~

38 ~~(ii) If the interested person has timely submitted the notice~~  
39 ~~required by subparagraph (A), the decisionmaker shall promptly~~  
40 ~~file a notice that includes a complete description of the~~

1 decisionmaker's communication and its content and, if appropriate,  
2 that corrects or supplements, as applicable, the factual  
3 representations made by the interested person.

4 (B) Any decisionmaker who participated in the communication  
5 shall promptly log the ex parte communication by filing a notice  
6 that includes all the following:

7 (i) The date, time, and location of the communication, whether  
8 the communication was oral or written, or a combination of both,  
9 and the communication medium used.

10 (ii) The identity of the interested person, the identity of the  
11 person initiating the communication, and the identities of any other  
12 persons present.

13 (iii) The topic of the communication, including any applicable  
14 proceeding numbers.

15 (iv) A brief description of the communication.

16 (C) If the interested person who participated in the  
17 communication has not timely submitted the notice required by  
18 subparagraph (A), the decisionmaker shall refer the matter to the  
19 attorney for the commission, and an assigned commissioner, by  
20 ruling, shall order the interested person to submit the required  
21 notice. The interested person shall be subject to any applicable  
22 penalties for the initial violation and, if the interested person does  
23 not submit the required notice within the time period specified in  
24 the assigned commissioner's ruling, the interested person shall be  
25 subject to continuing violations pursuant to section 2108.

26 (4) The requirements of paragraph (3) shall not apply to any  
27 oral ex parte communication occurring at a meeting if all parties  
28 are invited to participate and given not less than three working  
29 days' notice.

30 ~~(4)~~

31 (5) The commission shall not take any vote on a matter in which  
32 a notice of a prohibited ex parte communication has been filed  
33 pursuant to subparagraph (A) or (B) of paragraph (3) until all  
34 parties to the proceeding have been provided a reasonable  
35 opportunity to respond to the communication.

36 ~~(5)~~

37 (6) If an ex parte communication is not disclosed as required  
38 by this subdivision until after the commission has issued a decision  
39 on the matter to which the communication pertained, a party not  
40 participating in the communication may file a petition to rescind

1 or modify the decision. The party may seek a finding that the ex  
2 parte communication significantly influenced the decision's process  
3 or outcome as part of any petition to rescind or modify the decision.  
4 The commission shall process the petition in accordance with the  
5 commission's procedures for petitions for modification and shall  
6 issue a decision on the petition no later than 180 days after the  
7 filing of the petition.

8 ~~(6)~~

9 (7) (A) Ex parte communications that occur at conferences *and*  
10 that are within the scope of an adjudication or ratesetting  
11 proceeding shall be subject to the requirements of this article.

12 (B) Ex parte communications that occur at conferences and that  
13 are within the scope of a quasi-legislative proceeding shall be  
14 governed by the ex parte communication disclosure requirements  
15 developed by the commission.

16 (C) For purposes of this section, "ex parte communications that  
17 occur at conferences" includes, but is not limited to,  
18 communications in a private setting or during meals, entertainment  
19 events, and tours, and informal discussions among conference  
20 attendees.

21 ~~(7)~~

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

25 (f) The commission may meet in a closed session to discuss  
26 administrative matters so long as no collective consensus is reached  
27 or vote taken on any matter requiring a vote of the commissioners.  
28 The commission shall, by rule, adopt and publish a definition of  
29 "administrative matters" for purposes of this section.

30 (g) The commission shall permit written comments received  
31 from the public to be included in the record of its proceedings, but  
32 the comments shall not be treated as evidence. The commission  
33 shall provide parties to the proceeding a reasonable opportunity  
34 to respond to any public comments included in the record of  
35 proceedings.

36 (h) It is the intent of the Legislature that the commission, and  
37 any entity or person seeking to influence actions taken by the  
38 commission, shall be subject to all applicable ethical standards,  
39 including any applicable obligations under the Political Reform  
40 Act of 1974 (Title 9 (commencing with Section 81000) of the

1 Government Code), including, but not limited to, any applicable  
2 lobbying obligations.

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

5 1701.2. (a) If the commission pursuant to subdivision (a) of  
6 Section 1701.1 has determined that an adjudication case requires  
7 a hearing, the assigned commissioner or the assigned administrative  
8 law judge shall hear the case in the manner described in the scoping  
9 memo. The scoping memo shall designate whether the assigned  
10 commissioner or the assigned administrative law judge shall preside  
11 in the case.

12 (b) The commission shall provide by rule for peremptory  
13 challenges and challenges for cause of the administrative law judge.  
14 Challenges for cause shall include, but not be limited to, financial  
15 interests and prejudice. The rule shall provide that all parties are  
16 entitled to one peremptory challenge of the assignment of the  
17 administrative law judge in all cases. All parties are entitled to  
18 unlimited peremptory challenges in any case in which the  
19 administrative law judge has within the previous 12 months served  
20 in any capacity in an advocacy position at the commission, been  
21 employed by a regulated public utility, or has represented a party  
22 or has been an interested person in the case.

23 (c) The assigned commissioner or the administrative law judge  
24 shall prepare and file a decision setting forth recommendations,  
25 findings, and conclusions. The decision shall be filed with the  
26 commission and served upon all parties to the action or proceeding  
27 without undue delay, not later than 60 days after the matter has  
28 been submitted for decision. The decision of the assigned  
29 commissioner or the administrative law judge shall become the  
30 decision of the commission if no further action is taken within 30  
31 days. Any party may appeal the decision to the commission,  
32 provided that the appeal is made within 30 days of the issuance of  
33 the decision. The commission may itself initiate a review of the  
34 proposed decision on any grounds.

35 ~~(d) The commission may hold an all-party conference before a~~  
36 ~~quorum of commissioners at which all parties have an opportunity~~  
37 ~~to be heard. The commission shall adopt rules for implementation~~  
38 ~~of all-party conferences that ensure the broadest participation by~~  
39 ~~parties to the proceeding that the commission can reasonably~~

1 accommodate consistent with the commissioners' other duties and  
2 responsibilities.

3 ~~(e)~~

4 (d) The commission's decision shall be supported by findings  
5 of fact on all issues material to the decision, and the findings of  
6 fact shall be based on the record developed by the assigned  
7 commissioner or the administrative law judge. A decision different  
8 from that of the assigned commissioner or the administrative law  
9 judge shall be accompanied by a written explanation of each of  
10 the changes made to the decision.

11 ~~(f)~~

12 (e) Notwithstanding Section 307, an officer, employee, or agent  
13 of the commission that is personally involved in the prosecution  
14 or in the supervision of the prosecution of an adjudication case  
15 before the commission shall not participate in the decision of the  
16 case or any factually related adjudicatory proceeding, including  
17 participation in or advising the commission as to findings of fact,  
18 conclusions of law, or orders. An officer, employee, or agent of  
19 the commission that is personally involved in the prosecution or  
20 in the supervision of the prosecution of an adjudication case may  
21 participate in reaching a settlement of the case, but shall not  
22 participate in the decision of the commission to accept or reject  
23 the settlement, except as a witness or counsel in an open hearing  
24 or a hearing closed pursuant to subdivision ~~(h)~~ (g). The Legislature  
25 finds that the commission performs both prosecutorial and  
26 adjudicatory functions in an adjudication case and declares its  
27 intent that an officer, employee, or agent of the commission,  
28 including its attorneys, may perform only one of those functions  
29 in any adjudication case or factually related adjudicatory  
30 proceeding.

31 ~~(g)~~

32 (f) (1) Ex parte communications shall be prohibited in  
33 adjudication cases.

34 (2) Any oral or written communications concerning procedural  
35 matters in adjudication cases between interested persons and  
36 decisionmakers, except the assigned administrative law judge,  
37 shall be prohibited.

38 ~~(h)~~

39 (g) Notwithstanding any other law, the commission may meet  
40 in a closed hearing to consider the decision that is being appealed.

1 The vote on the appeal shall be in a public meeting and shall be  
2 accompanied with an explanation of the appeal decision.

3 (i)

4 (h) Adjudication cases shall be resolved within 12 months of  
5 initiation unless the commission makes findings why that deadline  
6 cannot be met and issues an order extending that deadline. In the  
7 event that a rehearing of an adjudication case is granted, the parties  
8 shall have an opportunity for final oral argument.

9 (j)

10 (i) (1) The commission may determine that the respondent  
11 lacks, or may lack, the ability to pay potential penalties, fines, or  
12 restitution that may be ordered by the commission.

13 (2) If the commission determines that a respondent lacks, or  
14 may lack, the ability to pay, the commission may order the  
15 respondent to demonstrate, to the satisfaction of the commission,  
16 sufficient ability to pay potential penalties, fines, or restitution that  
17 may be ordered by the commission. The respondent shall  
18 demonstrate the ability to pay, or make other financial  
19 arrangements satisfactory to the commission, within seven days  
20 of the commission commencing an adjudication case. The  
21 commission may delegate to the attorney to the commission the  
22 determination of whether a sufficient showing has been made by  
23 the respondent of an ability to pay.

24 (3) Within seven days of the commission's determination of the  
25 respondent's ability to pay potential penalties, fines, or restitution,  
26 the respondent shall be entitled to an impartial review by an  
27 administrative law judge of the sufficiency of the showing made  
28 by the respondent of the respondent's ability to pay. The review  
29 by an administrative law judge of the ability of the respondent to  
30 pay shall become part of the record of the adjudication and is  
31 subject to the commission's consideration in its order resolving  
32 the adjudication case. The administrative law judge may enter  
33 temporary orders modifying any financial requirement made of  
34 the respondent pending the review by the administrative law judge.

35 (4) A respondent that is a public utility regulated under a rate  
36 of return or rate of margin regulatory structure or that has gross  
37 annual revenues of more than one hundred million dollars  
38 (\$100,000,000) generated within California is presumed to be able  
39 to pay potential penalties, fines, or restitution that may be ordered

1 by the commission, and, therefore, paragraphs (1) to (3), inclusive,  
2 do not apply to that respondent.

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

5 1701.3. (a) ~~If~~*This section shall apply to all ratesetting cases*  
6 *except, if* the commission pursuant to Section 1701.1 has  
7 determined that a ratesetting case ~~requires~~ *does not require* a  
8 hearing, the procedures prescribed by subdivisions (b), (d), (f),  
9 and (i) ~~shall be applicable.~~ *not apply.*

10 (b) The assigned commissioner shall determine prior to the first  
11 hearing whether the commissioner or the assigned administrative  
12 law judge shall be designated as the principal hearing officer. The  
13 principal hearing officer shall be present for more than one-half  
14 of the hearing days. The decision of the principal hearing officer  
15 shall be the proposed decision.

16 (c) An alternate decision may be issued by the assigned  
17 commissioner or the assigned administrative law judge who is not  
18 the principal hearing officer. Any alternate decision may be filed  
19 with the commission and served upon all parties to the proceeding  
20 any time prior to issuance of a final decision by the commission,  
21 consistent with the requirements of Section 311.

22 (d) The commission shall establish a procedure for any party  
23 to request the presence of a commissioner at a hearing. The  
24 assigned commissioner shall be present at any closing arguments  
25 in the case.

26 (e) The principal hearing officer shall present the proposed  
27 decision to the full commission in a public meeting. The alternate  
28 decision, if any, shall also be presented to the full commission at  
29 that public meeting.

30 (f) The presentation to the full commission shall contain a record  
31 of the number of days of the hearing, the number of days that each  
32 commissioner was present, and whether the decision was completed  
33 on time.

34 (g) The commission shall provide by rule for peremptory  
35 challenges and challenges for cause of the administrative law judge.  
36 Challenges for cause shall include, but not be limited to, financial  
37 interests and prejudice. All parties shall be entitled to unlimited  
38 peremptory challenges in any case in which the administrative law  
39 judge has within the previous 12 months served in any capacity  
40 in an advocacy position at the commission, been employed by a

1 regulated public utility, or has represented a party or has been an  
2 interested person in the case.

3 (h) (1) Ex parte communications in ratesetting cases are subject  
4 to the disclosure requirements of this article. ~~The commission~~  
5 *commission, by order or ruling,* may prohibit ex parte  
6 communications in a ratesetting case.

7 (2) Oral communications may be permitted by a decisionmaker  
8 if all parties are given not less than three working days' notice.  
9 No individual ex parte meetings shall be held during the three  
10 business days before the commission's scheduled vote on the  
11 decision.

12 (3) (A) If an ex parte communication meeting is granted to any  
13 party, all other parties, upon request, shall also be granted  
14 individual ex parte meetings of a substantially equal period of time  
15 and shall be sent a notice of that opportunity at the time the request  
16 is granted.

17 (B) *Subparagraph (A) shall not apply if the decisionmaker*  
18 *participating in the ex parte communication meeting is a member*  
19 *of the personal staff of a commissioner acting in a policy or legal*  
20 *advisory capacity and no other decisionmaker to whom*  
21 *subparagraph (A) applies is a participant.*

22 (4) Written ex parte communications by any interested person  
23 may be permitted if copies of the communication are transmitted  
24 to all parties on the same day as the original communication.

25 (5) Written *and oral* ex parte communications shall not be part  
26 of the *evidentiary* record of the proceeding.

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

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

1     ~~(j) After the issuance of a proposed decision in a ratesetting~~  
 2 ~~case, the commission may hold an all-party conference before a~~  
 3 ~~quorum of commissioners at which all parties have an opportunity~~  
 4 ~~to be heard. The commission shall adopt rules for implementation~~  
 5 ~~of all-party conferences that ensure the broadest participation by~~  
 6 ~~parties to the proceeding that the commission can reasonably~~  
 7 ~~accommodate consistent with the commissioners' other duties and~~  
 8 ~~responsibilities.~~

9     ~~(k)~~

10     (j) The commission may, in issuing its decision, adopt, modify,  
 11 or set aside the proposed decision or any part of the decision based  
 12 on evidence in the record. The final decision of the commission  
 13 shall be issued not later than 60 days after the issuance of the  
 14 proposed decision. Under extraordinary circumstances the  
 15 commission may extend this date for a reasonable period. The  
 16 60-day period shall be extended for 30 days if any alternate  
 17 decision is proposed pursuant to Section 311.

18     SEC. 5. Section 1701.4 of the Public Utilities Code is amended  
 19 to read:

20     1701.4. (a) If the commission pursuant to Section 1701.1 has  
 21 determined that a quasi-legislative case requires a hearing, the  
 22 procedures prescribed by subdivisions ~~(b) and (d) to (f), inclusive,~~  
 23 *(b), (d), and (e)* shall be applicable.

24     (b) The assigned administrative law judge and any assigned  
 25 technical advisory staff shall act as an assistant to the assigned  
 26 commissioner in quasi-legislative cases. The assigned  
 27 commissioner shall prepare the proposed rule or order with the  
 28 assistance of the administrative law judge and any assigned  
 29 technical advisory staff. The assigned commissioner shall present  
 30 the proposed rule or order to the full commission in a public  
 31 meeting. The report shall include the number of days of hearing  
 32 and the number of days that the commissioner was present.

33     (c) Ex parte communications in quasi-legislative proceedings  
 34 are permitted and not subject to the disclosure requirements of this  
 35 article, except when the commission, by order or ruling, determines  
 36 either of the ~~following~~ *following*:

37     (1) That ex parte communications are subject to the disclosure  
 38 requirements of this article.

39     (2) That ex parte communications are prohibited and subject to  
 40 the disclosure requirements of this article.

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

5 ~~(e) After the issuance of a proposed decision in a~~  
6 ~~quasi-legislative case, the commission may hold an all-party~~  
7 ~~conference before a quorum of commissioners at which all parties~~  
8 ~~have an opportunity to be heard. The commission shall adopt rules~~  
9 ~~for implementation of all-party conferences that ensure the broadest~~  
10 ~~participation by parties to the proceeding that the commission can~~  
11 ~~reasonably accommodate consistent with the commissioners' other~~  
12 ~~duties and responsibilities.~~

13 ~~(f)~~

14 (e) The commission may, in issuing its rule or order, adopt,  
15 modify, or set aside the proposed decision or any part of the rule  
16 or order. The final rule or order of the commission shall be issued  
17 not later than 60 days after the issuance of the proposed rule or  
18 order. Under extraordinary circumstances the commission may  
19 extend this date for a reasonable period. The 60-day period shall  
20 be extended for 30 days if any alternate rule or order is proposed  
21 pursuant to Section 311.

22 SEC. 6. Section 1701.5 of the Public Utilities Code is amended  
23 to read:

24 1701.5. (a) Except as specified in subdivision (b), in a  
25 ratesetting or quasi-legislative case, the commission shall resolve  
26 the issues raised in the scoping memo within 18 months of the date  
27 the proceeding is initiated, unless the commission makes a written  
28 determination that the deadline cannot be met, including findings  
29 as to the reason, and issues an order extending the deadline.

30 (b) Notwithstanding subdivision (a), the commission may  
31 specify in a scoping memo a resolution date later than 18 months  
32 from the date the proceeding is initiated, if that scoping memo  
33 includes specific reasons for the necessity of a later date and the  
34 commissioner assigned to the case approves the date.

35 SEC. 7. Section 1701.6 is added to the Public Utilities Code,  
36 to read:

37 1701.6. (a) In addition to any penalty, fine, or other punishment  
38 applicable pursuant to ~~Article~~ *Chapter* 11 (commencing with  
39 Section 2100), the commission may assess civil sanctions upon  
40 any entity or person, other than 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 of this article or those adopted by the commission  
4 pursuant to this article. The civil sanctions may include civil  
5 penalties, adverse consequences in commission proceedings, or  
6 other appropriate commission orders directed at the entity, person,  
7 or both the entity 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 into the General  
25 Fund.

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

28 (1) The severity of the violation.

29 (2) The conduct of the entity or person, including the level of  
30 experience of the entity or person in participating in commission  
31 proceedings and whether the entity or person knowingly violated  
32 the ex parte communication requirements.

33 (3) The financial resources of the entity or person.

34 (4) The totality of the circumstances in furtherance of the public  
35 interest.

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

38 1701.7. (a) The Attorney General may bring an enforcement  
39 action in superior court against a decisionmaker or employee of  
40 the commission who *knowingly and willfully* violates, fails to

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

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

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

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

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

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

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

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