

Presentation to the

**ASSEMBLY COMMITTEE ON
UTILITIES AND COMMERCE**

on

**EX PARTE COMMUNICATIONS
AND RELATED PRACTICES BEFORE THE
CALIFORNIA PUBLIC UTILITIES COMMISSION**

July 13, 2015

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July 13, 2015

Report to the
California Public Utilities Commission
Regarding Ex Parte Communications
and Related Practices

June 22, 2015

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CPUC PROCEEDINGS AND EX PARTE PRACTICES

- **Basic process**
 - Hearings before ALJ
 - Proposed decision recommended to the five-member Commission for adoption
- **“Ex parte communication”**
 - Any communication by one party, without notice to, or argument by, anyone having an adverse interest.

CPUC RULES BY TYPE OF PROCEEDING

Proceeding Type

Rule

Adjudicatory

Ex parte communications
are prohibited

Quasi-legislative

No restrictions

Ratesetting

It's complicated

RULES FOR RATESETTING CASES

Public Utilities Code § 1701.3(c): Ex parte communications are prohibited in ratesetting cases.

RULES FOR RATESETTING CASES


Public Utilities Code § 1701.3(c): Ex parte communications are prohibited in ratesetting cases. However, oral ex parte communications may be permitted at any time by any commissioner if all interested parties are invited and given not less than three days' notice. Written ex parte communications may be permitted by any party provided that copies of the communication are transmitted to all parties on the same day. If an ex parte communication meeting is granted to any party, all other parties shall also be granted individual ex parte meetings of a substantially equal period of time and shall be sent a notice of that authorization at the time that the request is granted. In no event shall that notice be less than three days. The commission may establish a period during which no oral or written ex parte communications shall be permitted and may meet in closed session during that period, which shall not in any circumstance exceed 14 days. If the commission holds the decision, it may permit ex parte communications during the first half of the interval between the hold date and the date that the decision is calendared for final decision. The commission may meet in closed session for the second half of that interval.

EX PARTE COMMUNICATIONS ARE PERVASIVE

- **21,389** total reported ex parte contacts (since March 1992)
- Average of **14.3** contacts per proceeding
- One proceeding had **1,285** reported ex parte communications

UTILITIES ARE THE MOST FREQUENT EX PARTE COMMUNICTORS

(MAR 1992 - OCT 2014)



| Filer | No. of Ex Parte Contacts | No. of Proceedings | Avg. Contacts / Proceeding |
|--|--------------------------|--------------------|----------------------------|
| Pacific Bell Telephone Company | 1,281 | 105 | 12.20 |
| GTE California, Inc. | 263 | 30 | 8.77 |
| CA Cable Television Association | 223 | 31 | 7.19 |
| Verizon California Inc. | 188 | 27 | 6.96 |
| AT&T Communications of California | 351 | 51 | 6.88 |
| Southern California Gas Company | 955 | 139 | 6.87 |
| California-American Water Co. | 192 | 29 | 6.62 |
| MCI Telecommunications Corp. | 178 | 27 | 6.59 |
| Southern California Edison Company | 1,863 | 283 | 6.58 |
| Pacific Gas & Electric Company | 2,272 | 378 | 6.01 |
| Independent Energy Producers Association | 236 | 47 | 5.02 |
| San Diego Gas & Electric Company | 833 | 180 | 4.63 |
| Natural Resources Defense Council | 187 | 41 | 4.56 |
| CPUC/ORA | 2,325 | 529 | 4.40 |
| Sempra Energy | 206 | 54 | 3.81 |
| Greenlining Institute, The | 136 | 37 | 3.68 |
| TURN | 699 | 203 | 3.44 |
| CA Water Service Company | 98 | 30 | 3.27 |
| Alliance For Retail Energy Markets | 111 | 34 | 3.26 |
| CA Large Energy Consumers Association | 106 | 38 | 2.79 |

CPUC BUSINESS MEETINGS

- Meets **1.7 times/month** in public business meetings
- Public portion of meeting lasts average of **2.5 hours**

OTHER AGENCIES WE CONSIDERED

California

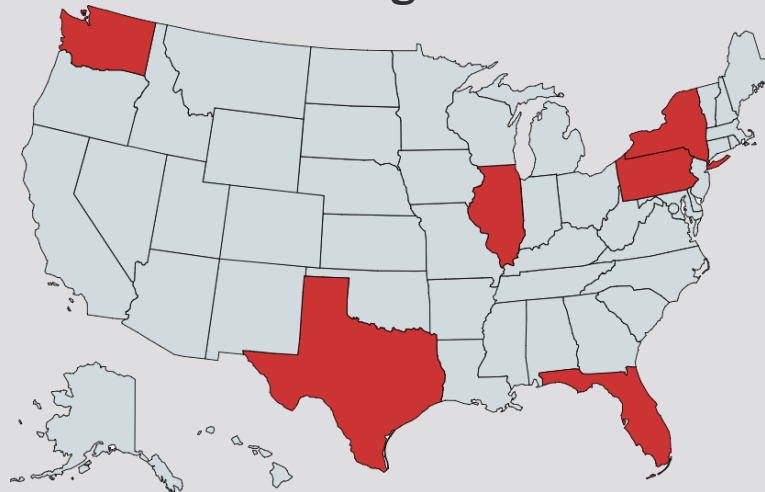
- Administrative Procedure Act
- California Coastal Commission
- California Energy Commission

Federal Agencies

- Federal Administrative Procedure Act
- Federal Communications Commission
- Federal Energy Regulatory Commission

Other State Utility Commissions

- Florida
- Illinois
- New York
- Pennsylvania
- Texas
- Washington



MAIN DISTINCTIONS

Formal Hearings

Ex parte communications banned

VS.

Informal Proceedings

Ex parte communications either
permitted or
permitted w/ disclosure requirements

FINDINGS

FINDING:

Ex parte communications . . .

. . . are a **frequent, pervasive part of CPUC practice** that **sometimes determine the outcome** of proceedings.

FINDING:

Ex parte communications . . .

. . . are **unfair to parties.**

FINDING:

Ex parte communications . . .

. . . **undermine and deprecate**
the record-based decision-
making process.

FINDING:

Ex parte communications . . .

. . . transform a legal quest for evidence-based truth into a **negotiation with utilities.**

“WHAT DO YOU REALLY NEED?”

“YOU KNOW ME.”

FINDING:

Ex parte communications . . .

. . . render governmental
decision-making **invisible to
the public.**

FINDING:

Ex parte communications . . .

. . . make commission
meetings **merely ceremonial.**

FINDING:

Ex parte communications . . .

. . . corrode government
ethics.

“DON'T SAY A WORD.”

RECOMMENDATIONS

RECOMMENDATION: BASIC POLICY

| | |
|-----------|--|
| #1 | Prohibit substantive ex parte communications in adjudication and in ratesetting |
| #2 | Permit ex parte communications in quasi-legislative proceedings with full disclosure by decision-maker of substance of communications |

RECOMMENDATION: DISCLOSURES

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|-----------|--|
| #7 | Disclosures should be the responsibility of the decision-maker, not the party (but with the party's assistance permissible) |
| #6 | Every disclosure of an ex parte communication must include full disclosure of what the decision-maker said |

RECOMMENDATION: ENFORCEMENT

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|------------|--|
| #12 | Legislation should make decision-makers personally liable for sanctions for knowingly violating ex parte laws |
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RECOMMENDATION: DECISION-MAKING MECHANICS

| | |
|------------|---|
| #23 | In ratesetting and adjudicatory cases, retain closed sessions for Commissioner to deliberate |
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RECOMMENDATION: CULTURE OF COMPLIANCE

| | |
|------------|---|
| #14 | Require the Commission to adopt codes of conduct for decision-makers and for advocates |
| #16 | Establish an Ethics Officer to monitor and report on ex parte practices, administer the codes of conduct, develop training tools, and recommend changes in rules |