

Date of Hearing: June 27, 2018

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY

Chris Holden, Chair

SB 1358 (Hueso) – As Amended June 13, 2018

**SENATE VOTE:** 37-0

**SUBJECT:** Public Utilities Commission: proceedings: hearings

**SUMMARY:** This bill requires the assigned commissioner to determine whether the proceeding requires a hearing. Additionally, this bill clarifies that the California Public Utilities Commission (CPUC) has the discretion, in a ratesetting case, to establish a quiet period if the CPUC holds a decision and, in which case, would require the quiet period begin on the seventh day before the item is to be voted on.

**EXISTING LAW:**

- 1) Requires the CPUC to determine whether each proceeding is a quasi-legislative, an adjudication, or a ratesetting proceeding. (Public Utilities Code §1701.1)
- 2) Requires the CPUC to determine whether a proceeding, or category of proceeding, requires a hearing. (Public Utilities Code §1701.1)
- 3) Defines ex parte communications as any oral or written communication between a decisionmaker and an interested person that does not occur in a public hearing, workshop or other public proceeding. (Public Utilities Code §1701.1)
- 4) Establishes a quiet period during which no oral or written ex parte communication may be permitted and the commission may meet in closed session.( Public Utilities Code § 1701.3)
- 5) Establishes a closed session meeting of the CPUC commissioners requires a minimum of three days' advance public notice. (Public Utilities Code § 1701.3)

**FISCAL EFFECT:** Under Senate Rule 28.8 the bill is found to cause no significant reduction in revenues or additional state costs are not significant and do not require the appropriation of additional state funds.

**BACKGROUND:**

*CPUC proceedings* – Proceedings are a formal judicial process used to evaluate a variety of requests related to the industries that the CPUC regulates. A proceeding can be a request, complaint, or application, or it can be a CPUC initiated investigation or rulemaking, etc. The purpose of proceedings is to establish an evidentiary record on which CPUC decisions will be based. Statute directs the CPUC to identify each of its proceedings according to one of three categories:

- Adjudication – enforcement cases and complaints, except those challenging the reasonableness of rates or charges.
- Quasi-legislative – those that establish policy, including, but not limited to, rulemakings and investigations which may establish rules affecting an entire industry.
- Ratesetting – cases in which rates are established for a specific company.

The general progression of the beginning of a proceeding is, as follows:

- An application is filed with the CPUC.
- The application is categorized and a commissioner and an administrative law judge, when appropriate, are assigned to the proceeding.
- A Prehearing Conference (PHC) is scheduled.
- At or after the PHC, a scoping memo is issued, which outlines the schedule and the issues to be addressed, including whether a hearing will be needed.

*SB 215* – Prior to SB 215 (Leno-Hueso, Chapter 807, Statutes of 2016), the assigned commissioner and judge were not required to hold a PHC and issue a scoping memo in all proceedings. A standing resolution on every CPUC Business Meeting consent agenda served the purpose of determining the need for hearings in routine cases where no scoping memo was issued. However, SB 215 now requires a PHC and scoping memo in every proceeding. The scoping memo is used as the vehicle to determine whether a hearing is required.

*Bagley-Keene Open Meeting Act* – The purpose of the Bagley Keene Open Meeting Act is to ensure that public agencies conduct the people’s business openly so that the public may observe and be informed. Under Bagley-Keene all meetings require notice to the public. Certain statutes authorize the CPUC to hold closed sessions in specific circumstances. The CPUC most frequently holds closed sessions in three of these circumstances: pending litigation, personnel issues, and for purposes of a ratesetting deliberative meeting.

*Ex parte communication* – Ex parte communications are oral or written communication, about an issue before the CPUC, that is stated or provided outside the formal proceeding process. There are many rules and restrictions governing ex parte communications. One of the primary purposes of restrictions on ex parte contacts with decision-makers is to prevent a party from gaining an unfair advantage in a contested matter. This bill would clarify the period in which ex parte communications can and cannot occur during ratesetting case if the CPUC holds a decision.

*Quiet Period* – A “quiet period” is a period, in a ratesetting proceeding, during which no oral or written ex parte communications may be permitted and the CPUC may meet in closed session during that period. That quiet period expires at the end of the CPUC meeting for which the matter was scheduled to be voted upon and shall not in any circumstance exceed 14 days. If the CPUC holds the decision, it may establish a subsequent quiet period which under current law is defined as a period during the second half of the hold period, which is the interval between the hold date and the date that the decision is calendared for final decision. If the subsequent quiet period is established, ex parte communications are allowed only during the first half of the hold period. The commission may meet in closed session for the second half of that period. This bill strikes that language and says the CPUC may establish a quiet period, beginning on the seventh day before the day the item is scheduled to be voted on and terminates at the end of the voting meeting.

**COMMENTS:**

- 1) Author's Statement: According to the author, "SB 1358 is an effort to clarify the role of the assigned commissioner to determine whether the proceeding merits a hearing. The bill conforms to the changes adopted in SB 215 by ensuring continued due process and transparency for all parties."
- 2) Post SB 215 Implementation. SB 215 (Leno-Hueso, Chapter 807, Statutes of 2016) proposed a suite of reforms of the rules, operations and procedures of the CPUC pertaining to the laws and rules related to ex parte communications and criteria and process for disqualification of commissioners to a proceeding. It also included provisions requiring a PHC and scoping memo for every proceeding. The scoping memo is used as the vehicle to determine whether a hearing is required. As such, it is appropriate that the decision as to whether a hearing would be necessary would be managed by the assigned commissioner, as opposed to a full vote of the CPUC. The decision on whether to have a hearing may change as the proceeding evolves. Allowing the assigned commissioner to manage the determination of whether or not a hearing is necessary would improve the efficiency of the proceeding since it would not be subject to delays by requiring a vote of the full CPUC commissioners for a largely procedural matter. Furthermore, the parties would continue to be afforded the opportunity to weigh in on the decision of whether or not to have a hearing.
- 3) Suggested Amendment. According to the author's office it was their intent that the subsequent quiet period was up to the discretion of the CPUC to establish and if they do choose to establish that quiet period then it shall begin on the seventh day before the voting meeting which the item is to be voted on. *The committee may wish to consider amending the bill to strike "at the latest" adds that desired clarity.*

"After a proposed decision or order is issued, the commission may establish a "quiet period" during which no oral or written ex parte communications may be permitted and the commission may meet in closed session during that period. That quiet period shall expire at the end of the commission meeting for which the matter was scheduled to be voted upon and shall not in any circumstance exceed 14 days. If the commission holds the decision, it may establish a subsequent quiet period, which, if established, shall begin, **at the latest**, on the seventh day preceding the day of the voting meeting at which the item is scheduled to be voted upon and terminate at the end of the voting meeting. Any meeting of the commission pursuant to this paragraph shall require a minimum of three days' advance public notice."

**REGISTERED SUPPORT / OPPOSITION:****Support**

California Public Utilities Commission (Sponsor)

**Opposition**

None on file.

**Analysis Prepared by:** Elle Hoxworth / U. & E. /