

Date of Hearing: June 29, 2022

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY

Eduardo Garcia, Chair

SB 599 (Hueso) – As Amended June 13, 2022

SENATE VOTE: 37-0

SUBJECT: Public Utilities Commission: proceedings, reports, and public utility procurement

SUMMARY: This bill revises and recasts provisions relating to activities of the California Public Utilities Commission (CPUC) including quiet periods and the authority for closed session meetings during certain proceedings as well as development programs and procurement contracts with women, minority, disabled veteran, and lesbian, gay, bisexual, and transgender (LGBT) business enterprises. Specifically, **this bill:**

- 1) Authorizes the CPUC to meet in closed session to deliberate on a Proposed Decision, Order, or Resolution¹ after providing three-day advanced notice to the public, except in an adjudicatory or quasi-legislative proceeding.
- 2) Requires the CPUC to establish a quiet period during the three business days before the scheduled vote on a Decision, during which oral or written communications shall not be permitted, except in an adjudicatory or quasi-legislative proceeding.
- 3) Updates several Public Utilities Code sections for consistency with statutory changes made by SB 255 (Bradford, Chapter 407, Statutes of 2019) related to the CPUC's Supplier Diversity Program. Specifically,
 - a. Requires the CPUC to include in its annual Supplier Diversity program report the progress of activities undertaken by electrical, gas, water, and telephone corporations as well as wireless telecommunications, electric service providers and community choice aggregators with gross annual California revenues between \$15 million and \$25 million to support increased procurement from women, minority, disabled veteran, and LGBT business enterprises.
 - b. Directs the CPUC to require every electrical, gas, water, and telephone corporation as well as wireless telecommunications, and electric service providers with gross annual California revenues exceeding \$25 million, and their CPUC-regulated subsidiaries and affiliates, to implement an outreach program for diverse supplier recruitment.
 - c. Would make it a crime for any person or corporation to falsely represent a business as a women, minority, disabled veteran, or LGBT business enterprise in the procurement, or attempted procurement, of contracts from an electric service provider with gross annual California revenues exceeding \$25 million or a CPUC-regulated subsidiary or affiliate, or from electrical, gas, water, and telephone

¹ A Decision decides the resolution of a proceeding, a General Order sets standards applicable to a class of utilities, and a Resolution is an official ruling on matters handled through informal practices. Decisions, General Orders, and Resolutions also differ in the processes required for the CPUC to adopt them.

corporations as well as wireless telecommunications, and electric service providers with gross annual California revenues exceeding \$15 million.

- d. Updates terminology that authorizes eligible corporations to consider certain measures to include women, minority, disabled veteran, and LGBT business enterprises and small businesses in all phases of contracting in contract procurement.
- 4) Places a January 1, 2024 sunset on a requirement for the CPUC to submit annually to the Legislature an assessment of the success of the California Solar Initiative (CSI) program, as specified.

EXISTING LAW:

- 1) Establishes the CPUC with five members appointed by the governor and confirmed by the Senate and authorizes the CPUC to exercise ratemaking and rulemaking authority over all public utilities, as defined, subject to control by the Legislature. (Article XII of the California Constitution; Public Utilities Code §301 et seq.)
- 2) Requires the CPUC to determine whether each proceeding is a quasi-legislative, an adjudication, a ratesetting or a catastrophic wildfire proceeding. (Public Utilities Code §1701.1)
- 3) Authorizes the CPUC during certain periods of a ratesetting or catastrophic wildfire proceeding, to establish a “quiet period” during which no oral or written ex parte communications, as defined, are permitted and during which the CPUC is authorized to meet in closed session. (Public Utilities Code §1701.3)
- 4) Authorizes the CPUC to meet in closed session during the quiet period of a ratesetting case and at any point during the pendency of the catastrophic wildfire proceeding, as specified. (Public Utilities Code §1701.8)
- 5) 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)
- 6) Requires the CPUC to provide a report to the Legislature on the progress made in procuring from women, minority, disabled verteran, and LGBT business enterprises by electrical, gas, water, wireless telecommunications service provider, and telephone corporation, with gross annual revenues exceeding \$25 million. (Public Utilities Code §910.3)
- 7) Directs the CPUC to require every electrical, gas, water, and telephone corporation as well as wireless telecommunications, and electric service providers with gross annual revenues exceeding \$25 million, and their CPUC-regulated subsidiaries and affiliates, to implement an outreach program for diverse supplier recruitment. (Public Utilities Code §8284)
- 8) Makes it a crime for any person or corporation to falsely represent a business as a women, minority, disabled veteran, or LGBT business enterprise in the procurement, or

attempted procurement, of contracts from an electric service provider with gross annual California revenues exceeding \$25 million or a CPUC-regulated subsidiary or affiliate. (Public Utilities Code §8285)

9) Authorizes eligible corporations to consider certain measures to include women-owned business, minority-owned business, disabled veteran-owned businesses, and LGBT-owned businesses and small businesses in all phases of contracting in contract procurement. (Public Utilities Code §8286)

10) Requires the CPUC to submit an assessment on the impact and success of the CSI program by June 30 of each year. This report has come to be known as the CSI Annual Program Assessment. (Public Utilities Code §913.7)

FISCAL EFFECT: The Senate Appropriations Committee determined that the state costs of this bill are not significant and sent the bill to the Senate Floor without a hearing in the Committee pursuant to Senate Rule 28.8.

BACKGROUND:

CPUC proceedings – CPUC proceedings are formal judicial processes 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. The purpose of a proceeding is to establish an evidentiary record on which to base CPUC decisions. Statute directs the CPUC to identify each of its proceedings according to the following 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 that establish rules affecting an entire industry.
- Ratesetting – cases in which rates are established for a specific company.
- Catastrophic Wildfire – those involving recovery of costs related to damages associated with a wildfire caused by electric investor-owned utility (IOU), as added and defined by AB 1054 (Holden, Chapter 79, Statutes of 2019).

Ex parte communications – 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 statutory and CPUC rules and restrictions governing ex parte communications within proceedings. One of the primary purposes of placing restrictions on ex parte contacts with decision-makers by parties is to prevent a party from gaining an unfair advantage in a contested matter.

Quiet period – A “quiet period” is a period, in a ratesetting or catastrophic wildfire proceeding, during which no oral or written ex parte communications is permitted and the CPUC is authorized to meet in closed session during that period. The quiet period expires at the end of the CPUC meeting for which the matter was scheduled to be voted upon. If the CPUC holds the decision to a future voting meeting, it may establish a subsequent quiet period in advance of the next voting meeting. Statute also requires that if the CPUC holds a closed session meeting during the quiet period it must provide a three days advance public notice, including notification to all the proceeding’s parties.

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 (as noted above). The CPUC most frequently holds closed sessions in circumstances where there is pending litigation, personnel issues, or for purposes of a ratesetting deliberative meeting, and as authorized in catastrophic wildfire proceedings.

Utility Supplier Diversity Program and General Order (GO) 156 – In 1988, the CPUC adopted GO 156 (D. 88-04-057) to implement AB 3678 (Moore, Chapter 1259, Statutes of 1986), which required the CPUC to direct certain utilities to submit plans for increasing diverse business procurement. Under GO 156, the CPUC monitors utilities’ procurement from women, minority, disabled veteran, and LGBT business enterprises. The CPUC also administers a certification clearinghouse, which is a database that identifies firms that have voluntarily obtained certification as these eligible business enterprises. The Supplier Diversity Program is a tool through which the state can leverage the economic power of the utility sector to address historic structural inequities for economic opportunity and ensure that diverse suppliers are included in contracting opportunities, including renewable energy contracts. In 2019, SB 255 (Bradford, Chapter 407, Statutes of 2019) expanded the reporting threshold from utilities with gross annual California revenues over \$25,000,000 to those with gross annual California revenues over \$15,000,000 and expanded the list of entities that are required to comply to include CCAs. However, SB 255 did not make these updates to every Public Utilities Code section related to the utility supplier diversity program.

CSI Annual Program Assessment – In 2006 the CPUC adopted Decision 06-01-024, creating the ratepayer-funded CSI which provided incentives for eligible solar energy systems. SB 1 (Murray, Chapter 132, Statutes of 2006) imposed a reporting requirement on the CSI program. After 10 years of market transformation marked by significant drops in equipment prices, the CPUC concluded that direct incentives were no longer necessary and the CSI General Market program was closed in 2016. Some sub-programs of the CSI remained until recently. The thermal sub-program which provided rebates for solar thermal systems was closed in 2020, and the single-family affordable solar homes and multi-family affordable solar homes sub-programs also ended in 2021. However, the statutory reporting requirement remains even though the CSI program has closed.

COMMENTS:

- 1) *Author’s Statement.* According to the author, “This bill addresses clarifying and clean up amendments related to CPUC statutes.”
- 2) *Code Clean-Up.* This bill updates language related to the CPUC Supplier Diversity Program to be consistent with changes made to other sections related to the same program. The bill also retires a reporting requirement for the CSI program that ended in December 2021.
- 3) *May or Shall the Force be with you?* In clarifying and recasting provisions related to closed sessions of the CPUC and quiet periods, during which *ex parte* communication is forbidden, this bill makes two changes. First, it authorizes the CPUC to meet in closed session at any point during the pendency of a ratesetting proceeding or catastrophic wildfire proceeding to deliberate on a proposed decision, order, or *resolution* (after

providing three-day advance notice). For clarity, this authorization previously existed and this bill is adding resolutions to that list. Second, it clarifies that the CPUC *shall* establish a quiet period during the three business days before the scheduled vote on a decision. Opponents to the bill take issue with the second change, arguing that the current language in the Public Utilities Code is permissive to the CPUC to establish this quiet period but does not require the CPUC to do so. They argue that “fewer opportunities for public discourse would deny the CPUC and stakeholders valuable and transparent input on decisions that impact all Californians.” For context, the CPUC may not vote on any proposed decision or resolution until a public review and comment period of at least 30 days has passed. In the case of a catastrophic wildfire proceeding, this period may be reduced to no less than 15 days at the discretion of the assigned commissioner. Proponents of the bill argue that it replaces unduly complicated provisions, making it easier for stakeholders to understand and comply with them, in a manner consistent with the principles of due process and transparency.

4) *Prior Legislation.*

SB 605 (Hueso, 2020) contained, among other provisions, similar provisions as this bill related to quiet periods and closed sessions for CPUC ratesetting and catastrophic wildfire proceedings. Status – Died, Assembly Utilities and Energy Committee.

SB 255 (Bradford) Expands the CPUC supplier diversity program by lowering the annual revenue threshold for participation from \$25 million to \$15 million, including electric service providers in the program, and requiring CCAs to report specified information. Status – Chapter 407, Statutes of 2019

SB 1358 (Hueso) required the assigned commissioner, rather than the full CPUC commission, to determine whether a proceeding requires a hearing. Status – Chapter 519, Statutes of 2018.

SB 215 (Leno & Hueso) 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. Status – Chapter 807, Statutes of 2016.

SB 660 (Leno & Hueso, 2015) would have proposed a suite of reforms of the governance, rules, operations and procedures of the CPUC, including reforming laws and rules related to ex parte communications, criteria and process for disqualification of commissions to a proceeding, and authorizing the CPUC to appoint the chief administrative law judge. Status – Vetoed.

REGISTERED SUPPORT / OPPOSITION:

Support

The Utility Reform Network (TURN)

Opposition

None on file.

Oppose Unless Amended

San Diego Gas & Electric
Southern California Gas Company

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