

REPORT ON KEY FINDINGS FROM
CPUC MODERNIZATION & REFORM PROJECT

to

ASSEMBLY UTILITIES AND COMMERCE COMMITTEE

Sacramento, California

July 13, 2015

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DIFFERENCES BETWEEN CPUC MOD & REFORM INITIATIVE AND OTHER INITIATIVES

- CPUC Mod & Reform Project Seeks Answers to Different Questions
- CPUC Mod. & Reform Project:
 - How to Increase Efficiency; Effectiveness; Transparency; Accountability & Equity?
(More timely decisions, with less wasted motion, that better serve the public interest)
- Strumwasser & Woocher Assessment:
 - How to Increase Transparency & Procedural Equity?
(Expand Ex Parte Ban & Reporting)

KEY FINDINGS OF CPUC MOD & REFORM PROJECT

- Two Factors Contribute Most Significantly to Systemic Problems within the CPUC:
 1. Impaired Communication; &
 2. Inadequate Governance & Enterprise Management
- These Factors Permeate Nearly Every Aspect of the Agency
- The Agency Will Never Achieve Its Potential Unless & Until These Two Critical Deficiencies Are Remedied

IMPAIRED INTERNAL COMMUNICATION

- One of Most Frequently Cited Causes of Organizational Failures in Academic Literature
- Typified by Poor Internal Communication Within Executive Level and Between Executive & Working Level
- “Siloing”
- Channels for Information Flow That Do Not Match Channels for Decision-Making
- “Information Dissonance”
- Dramatically Different Assumptions & Understandings Between Management & Working Level

IMPAIRED INTERNAL COMMUNICATION

- Leads to Flawed & Sometimes Catastrophic Decision-making
- Example – Prof. Feynman’s Investigation of Root Cause of Challenger Space Shuttle Explosion
 - Immediate Precipitating Cause – Failure of “O” Rings on SRB joints
 - Root Cause – Less Obvious Systemic NASA Communications Issues Pertaining to Launch Decision

IMPAIRED INTERNAL COMMUNICATION

- CPUC Has Similar Communications Deficiencies
- Communications Between Commissioners are Impaired
 - Bagley-Keene Act Prohibits “Discussions” Among Commissioners outside Public Meetings
 - And is Little Discussion & Debate in Public Meetings
- Communications Barriers Exist Between Executive level Management & Working Level Staff
 - View Among Staff - Commissioners are More Interested in Hearing From Utility Lobbyists than Analysis & Recommendations From Staff
- Communications Impaired Between Divisions
 - Staff often Feels More Loyalty to its Working Group & Goals Than to the Agency & Agency-Wide Goals

IMPAIRED INTERNAL COMMUNICATION

- CPUC Communications Deficiencies Have Had Significant Impacts on Agency's Effectiveness
- Example - CPUC Natural Gas Safety Program
 - Key Factors that Gave Rise to the Deficiencies in Program Were Well-Known to SED
 - Knew Inspector Staffing Levels Were Insufficient
 - Knew New Federal Regs Required Additional Training
 - Knew Necessary Training was Only Available Out-Of-State
 - Knew CPUC Did Not Have \$ for Necessary Training or Travel
 - Knew Resources Misallocated to Small Mobile Home Park & Propane Systems

IMPAIRED INTERNAL COMMUNICATION

- Commissioners & Senior CPUC Management Failed to Adequately Address These Problems
 - BCPs submitted but Disapproved by Dept. of Finance
 - Process Accepted as “State Government”
- Different Perspectives on Same Experience
 - SED – Viewed as a “Safety Issue”
 - Executive Management – As an “Administrative” Issue
- Result – SED was Unable to Adequately Oversee & Inspect PG&E Gas Pipeline & It Exploded

GOVERNANCE & ENTERPRISE MANAGEMENT

- CPUC Lacks a Process for Executive level Enterprise Management - Manifestations:
 - No Integrated Strategic Plan
 - No Effective Metrics - No Means of Evaluating Agency's Success or Lack Thereof
 - CPUC Staff Has No Common Sense of Mission
- Problem at CPUC Has Long Been Recognized
 - "Vision 2000" Reform Effort 1006
 - CPUC Commissioner Ferron's Parting Remarks

Remedies for CPUC

- Some Can And Are Being Implemented By CPUC
 1. Expanding Public Business Meetings to Include Discussion of Policies, Programs & Priorities
 2. Allocating Executive Level Management Responsibilities Among All Commissioners
 3. Increasing Commissioner Outreach to Staff
 4. Facilitating “constructive dialogue” across organizational boundaries & upward from working to management level
- Others Key Barriers Require Legislation
 1. Bagley-Keene Act Reform
 2. Ex Parte & Related Reforms

Effect of CPUC Ex Parte Policy & Practice

- Commissioners Entertain & Rely on Ex Parte Communications
 - In Ratesetting & Quasi-Legislative Proceedings
 - At the Most Critical Stage of Proceedings
- Commissioners' Reliance on Ex Partes With Utilities & Outside Stakeholders Has Driven A Wedge Between Commissioners & Staff
 - Staff Perception – Commissioners Are Not Interested In Staff's Analysis & Views
 - More Staff Loyalty to Working Group Than to Agency
- This Dynamic Contributes Significantly to Internal Communications Deficiencies

Proposed Ex Parte Reform

1) Simplify - Base Rules on 2 Rather than 3 “Categories”:

a) Quasi-Judicial “Adjudication” Proceedings

Enforcement, Licensing & Rate Proceedings Affecting Individual Rights & Obligations

b) “Quasi-Legislative” Policy Proceedings

Policy Proceedings Affecting Broad Classes of Utilities and Customer Groups

- No Other State or Federal Agency Uses a 3 Category Scheme Quite Like the CPUC
- Neither do California Courts for Judicial Review

Proposed Ex Parte Reform

- 2) Adopt Clear & Unconditional Ban on Ex Partes in contested Quasi-Judicial “Adjudication” Proceedings
- 3) Permit Ex Parte Communications in “Quasi-Legislative” Policy Proceedings, Without Restriction
- 4) Require Final On-the-Record En Banc Hearings Before Commissioners in Contested Quasi-Judicial Adjudication Proceedings
- 5) Establish a Clear Duty on CPUC Decision-Makers, As Well as Interested Parties, to Disclose Any Improper Ex Parte Communications
- 6) Adopt Meaningful Sanctions For Violations

CONCLUSION

- Is Critical to Address Both the Communications and Governance Issues at the CPUC
- The CPUC Will Not Have a Prayer of a Chance of Achieving Its Potential if These Problems Are Not Effectively Remedied
- The Two Most Important Reforms For Doing So Are:
 1. Bagley-Keene Reform &
 2. Ex Parte Reform
- These Reforms Will Provide a Path Forward Only,
- Much More Hard Work Will Remain, But Can Be Done