
**SENATE COMMITTEE ON ENERGY, UTILITIES AND
COMMUNICATIONS**
Senator Ben Hueso, Chair
2021 - 2022 Regular

Bill No: SB 599 **Hearing Date:** 4/19/2021
Author: Hueso
Version: 2/18/2021 Introduced
Urgency: No **Fiscal:** Yes
Consultant: Nidia Bautista

SUBJECT: Public Utilities Commission: proceedings

DIGEST: This bill would revise and recast provisions relating to quiet periods and the authority for closed session California Public Utilities Commission (CPUC) meetings during ratesetting cases and catastrophic wildfire proceedings.

ANALYSIS:

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 proceeding, or a catastrophic wildfire proceeding. (Public Utilities Code §1701.1)
- 3) Authorizes the CPUC during certain periods of a ratesetting case 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)

This bill would revise and recast provisions relating to quiet periods and the authority for closed session CPUC meetings during ratesetting cases and catastrophic wildfire proceedings.

Background

CPUC proceedings. CPUC 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 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 – proceedings 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 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. If the CPUC holds the decision, it may establish a subsequent quiet period in advance of the voting meeting when the item was moved. 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.

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 circumstances where there is pending litigation, personnel issues, for purposes of a ratesetting deliberative meeting, and as authorized in catastrophic wildfire proceedings.

SB 599. This bill recasts and clarifies language concerning quiet periods and closed sessions in an effort to simplify the language. The CPUC initiated this proposed language to simplify and clarify the application of quiet periods within CPUC proceedings, and the related closed session meetings. The CPUC notes that the proposed language in this bill would make it more clear to all parties that the quiet period and related closed sessions will happen three days prior to a CPUC voting meeting on the item. Importantly, The Utility Reform Network (TURN), the sponsor of SB 215 (Leno-Hueso, 2015) which encompassed many of the recently adopted ex parte-related reforms of the CPUC, supports the clarification proposed by this bill. TURN acknowledges that the language retains the existing due process and transparency which they value. This bill would afford more flexibility in implementing a quiet period, but would continue to require the three days' advance public notice should any closed session occur.

Prior/Related Legislation

SB 605 (Hueso, 2020) contained identical language as in SB 599. The bill was held in the Assembly Committee on Utilities and Energy.

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

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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT:

California Public Utilities Commission, Sponsor
The Utility Reform Network

OPPOSITION:

None recieved

ARGUMENTS IN SUPPORT: According to the CPUC: “the new quiet period language contained in the bill... is straightforward and will allow the Commission [CPUC] to be more efficient in our efforts.” In support of the bill, TURN states they “strongly support efforts to simplify CPUC procedures, consistent with the principles of due process and transparency.” TURN further states, SB 599 makes “changes while still preserving key requirements that TURN fought for in previous legislation, especially the ban on ex parte communications in rate-setting cases in the three days prior to a voting meeting.”

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