
UNFINISHED BUSINESS

Bill No: SB 599
Author: Hueso (D)
Amended: 6/13/22
Vote: 21

SENATE ENERGY, U. & C. COMMITTEE: 14-0, 4/19/21
AYES: Hueso, Dahle, Becker, Borgeas, Bradford, Dodd, Eggman, Gonzalez,
Grove, Hertzberg, McGuire, Min, Rubio, Stern

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 37-0, 5/10/21 (Consent)
AYES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Cortese,
Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso,
Hurtado, Jones, Kamlager, Laird, Leyva, McGuire, Melendez, Min, Newman,
Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg,
Wieckowski, Wiener, Wilk
NO VOTE RECORDED: Caballero, Limón, Stern

ASSEMBLY FLOOR: Not available

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

SOURCE: California Public Utilities Commission

DIGEST: This bill revises and recasts provisions relating to “quiet periods” and the authority for closed session meetings during ratesetting cases and catastrophic wildfire proceedings at the California Public Utilities Commission (CPUC).

Assembly Amendments add provisions related to clean-up and conforming statutes regarding changes made to the CPUC Supplier Diversity program by SB 255 (Bradford, Chapter 407, Statutes of 2019) and delete a reporting requirement that is no longer needed related to the California Solar Initiative (CSI).

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)
- 6) Establishes the CSI, a program providing ratepayer funded incentives for eligible solar energy systems adopted by the CPUC, as provided. Requires, on or before June 30 of each year, the CPUC to submit to the Legislature an assessment of the success of the program. (Public Resources Code §25781 and Public Utilities Code §§2851 and 913.7)
- 7) Requires the CPUC to provide a report to the Legislature on the progress made in procuring from women, minority, disabled veteran, 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)
- 8) 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)

- 9) 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)
- 10) 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)

This bill:

- 1) Revises and recasts provisions relating to “quiet periods” and the authority for closed session CPUC meetings and applicable ex parte communications during ratesetting cases and catastrophic wildfire proceedings.
- 2) Repeals a report requirement on January 1, 2024, for the CSI program, which ended December 2021.
- 3) Requires the CPUC to include in a report regarding the Supplier Diversity program the progress of activities undertaken by electric service providers with gross annual California revenues exceeding \$25 million, by community choice aggregators (CCAs) with gross annual revenues exceeding \$15 million , and by electrical corporations, gas corporations, water corporations, wireless telecommunications service providers, electric service providers, and telephone corporations with gross annual California revenues exceeding \$15 million.
- 4) Requires the CPUC to require every electric service provider with gross annual California revenues exceeding \$25 million, and their CPUC-regulated subsidiaries and affiliates, to implement an outreach program for that recruitment. Additionally, 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, or from an electrical corporation, gas corporation, water corporation, wireless telecommunications service provider, electric service provider, and telephone

corporation with gross annual California revenues exceeding \$15 million, as provided.

- 5) 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.

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, including investor-owned gas, electric, telephone, and water utilities, as well as, providers of transportation for-hire, broadband, and communications services. 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 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 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 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 representation in 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 million to those with gross annual California revenues over \$15 million 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 electric 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.

SB 599. This bill contains language, which has been maintained since this bill was introduced in February 2021 that recasts and clarifies language concerning the application of quiet periods, closed sessions, and associated ex parte rules. The CPUC initiated this proposed language to make it more clear to all parties that the quiet period, related closed sessions, and associated ex parte prohibitions will happen three days prior to a CPUC voting meeting on the item. The Utility Reform Network (TURN), the sponsor of SB 215 (Leno & Hueso, Chapter 807, Statutes of 2016) 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 of CPUC decisions, which they value. They note that this bill provides more flexibility in implementing a quiet period, but will continue to require the three days' advance public notice should any closed session occur. However, in June of 2022, San Diego Gas & Electric (SDG&E) and Southern California Gas Company (SoCalGas) raised concerns that the recasting of the language would preclude current CPUC practices that authorize written ex parte communications during the quiet period in some proceedings. They argue that prohibiting any written ex parte communication during the quiet period unduly limits the ability for parties to a proceeding to express concerns when proposed decisions are revised and issued by the CPUC during quiet periods. They note that there are some instances where revised proposed decisions can have surprising and unexpected changes. The CPUC notes that revised proposed decisions, as a general rule, are tweaks and minor adjustments to proposed decisions. Nonetheless, the need to further address the timing of the release of revised proposed decisions seems like a valid issue that may be best addressed in future adjustments to CPUC rules, or additional legislative direction, if needed.

Related/Prior Legislation

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

SB 255 (Bradford, Chapter 407, Statutes of 2019) expanded 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.

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

According to the Assembly Appropriations Committee, this bill will result in no direct costs to the CPUC.

SUPPORT: (Verified 8/29/22)

California Public Utilities Commission (source)
The Utility Reform Network

OPPOSITION: (Verified 8/29/22)

San Diego Gas & Electric
Southern California Gas Company

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 this 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.”

ARGUMENTS IN OPPOSITION: In opposition to this bill, SDG&E and SoCalGas argue that “fewer opportunities for the public discourse would deny CPUC and stakeholders valuable and transparent input on decisions that impact all Californians. At the very least, SB 599 should be amended to ensure that the

current process is maintained and no additional restrictions are implemented.”

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8/31/22 13:52:35

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