

**EX PARTE RULES:
SENATE HEARING
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WHAT IS AN EX PARTE CONTACT?

“Any oral or written communication between a decision-maker and a person with an interest in a matter before the Commission concerning substantive, but not procedural issues, that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter.”

-- Pub. Util. Code Section 1701.1

STATUTORY BASIS OF EX PARTE RULES

- Current rules stem from SB 960 (Ch. 856, Stats. 1996)
see: Pub Util Code § 1701.1-1701.3)
- Article 8 of CPUC Rules of Practice and Procedure implements statutory requirements

RULES THAT APPLY TO ALL PROCEEDINGS

- **No Judge Shopping**: Ex parte communications regarding the assignment of an ALJ are prohibited
 - Rule 8.3(f)
- Ex parte rules apply until **final resolution of a proceeding**, including rehearing
 - Rule 8.3(g)
- Decisions must be based on the record in a proceeding; **ex parte contacts are NOT on the record.**
 - Rule 8.3(k)

EX PARTE RULES BY PROCEEDING CATEGORY

- Quasi-legislative (industry-wide policy Rulemakings)
 - no ex parte restrictions or reporting
Sec. 1701.4(b)/Rule 8.3(a)
- Adjudicatory (Complaints and Enforcement)
 - absolute ban on ex parte contacts
Sec. 1701.2(b)/Rule 8.3(b)
- Ratesetting (everything else)
 - ex parte contacts allowed with restrictions and reporting
Sec. 1701.3(c)/Rule 8.3(c)

WHAT ARE RATESSETTING PROCEEDINGS?

“Ratesetting cases...are cases in which rates are established for a specific company”

-- Sec. 1701(c)(3)

- **These include general rate cases, distribution of GHG revenues, power plant contracts, proposed service changes, public purpose programs, etc.**

- **Much of what the CPUC does is ratesetting**

-- Rule 7.1(e)(2)

EX PARTE RULES IN RATESSETTING PROCEEDINGS

- All-party meetings with Commissioners are permitted with 3 days advance notice to parties
 - Sec 1701.3(c)/Rule 8.3(c)(1)
- Individual oral communications with Commissioners are permitted if:
 - 3 days advance notice given to parties and
 - all other parties get equal time opportunity.
 - Sec 1701.3(c)/Rule 8.3(c)(2)
- Ex parte communications are permitted with “personal advisors” with no advance notice or equal time requirements (but must be reported).
 - Rule 8.2



NOTE: ALJs are defined as “decision-makers” by Rule 8.2 and are also subject to these rules, but do not participate in ex parte communications.

EX PARTE REPORTING REQUIREMENTS

- All oral and written communications must be filed within 3 days.
-- Sec 1701.3(c)/Rule 8.4
- Written communications must be served on the same day
-- Sec 1701.3(c)/Rule 8.3(c)(3)
- Obligation to report is on the “interested person” regardless of who initiated the contact.
-- Sec 1701.1(c)/Rule 8.4
- Reporting shall not include statements of Commissioner or Advisor
-- Sec 1701.1(c)/Rule 8.4(c)

RECENT CPUC EX PARTE REFORMS

- Contact Log - Commissioners, advisors and upper management now report all substantive communications with regulated entities in ratesetting or adjudicatory proceedings. (10/8/14 Ex Dir memo)
- More contacts reported - PG&E must report contacts with all high-level Commission staff. (D.14-11-041)
- Strumwasser Report -- forthcoming