



- 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:

- 1) Expressly authorizes the CPUC, by order or rule, to prohibit oral ex parte communications, rather than all ex parte communications, in ratesetting cases and catastrophic wildfire proceedings, and would expressly authorize a written ex parte communication to occur at any time without restriction during ratesetting cases and catastrophic wildfire proceedings if copies of the communication are transmitted to all parties on the same day as the original communication.
- 2) Deletes the prohibition on written ex parte communications during the quiet periods of ratesetting cases and catastrophic wildfire proceedings.
- 3) Requires the CPUC, if it modifies a proposed decision in a ratesetting case or catastrophic wildfire proceeding during the three business days before its scheduled vote on the proposed decision, to hold the proposed decision until the next scheduled voting meeting.

## 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.

## Comments

*Need for this bill.* The sponsors of this bill, San Diego Gas & Electric (SDG&E) and Southern California Gas Company (SoCalGas) relay examples of the challenges to provide feedback on proposed decisions that are modified, in some cases significantly, during the quiet period. They contend that such incidents can drastically limit the ability of parties to provide helpful information to inform the CPUC’s decision-making. Specifically, they cite two examples where late modifications drastically altered the proposed decision. From their support letter:

- 1) In 2022, the CPUC issued modifications to the PD [proposed decision] Adopting an Opt-In Tariff to Encourage Residential Electrification (CPUC Decision 22-11-022) the week of the voting meeting, and these modifications adopted a rate higher than an existing rate. Written ex parte communications, which were permitted at the time, explained the duplicative nature of the rate, and how the Demand Flexibility proceeding would provide a more holistic approach that would better benefit customers. The CPUC rescheduled the PD to the following meeting and approved the modifications without addressing the concerns that had been raised. The written ex parte communications were important enough to delay, but did not alter the outcome of the decision.
- 2) In 2020, CPUC Decision 20-02-045 addressing SDG&E and SoCalGas's Triennial Cost Allocation Proceeding (TCAP) application reversed course in the eleventh hour. Among other things, the TCAP PD would have approved a \$5 residential fixed charge, but the day before the voting meeting substantive modifications were issued. The Revised PD denied this charge, adopted a \$1 increase to the minimum bill, and punted statewide policy on gas rate design to the new Gas Planning proceeding. The TCAP proceeding was a 17-month process. In one day, the CPUC made significant policy changes without an opportunity for ex parte communications from the applicant. The decision was made without any feedback from parties before the voting meeting, and without complete consideration of customer impact.

*Concerns about parity and transparency.* In opposition to this bill, The Utility Reform Network (TURN) argues that the proposed changes to the ex parte rules would erode the sunshine and parity afforded to all parties within a proceeding. They argue that the last-minute ex parte communication during the quiet period favors well-resourced organizations, especially the regulated utilities.

*Tradeoffs of each proposal.* As currently drafted this bill authorizes written ex parte during the quiet periods for ratesetting and catastrophic wildfire proceedings and requires the CPUC to delay decisions to the following voting meeting when a proposed decision is modified during the quiet period. Both of the proposed changes to CPUC proceedings in this bill come with tradeoffs. In the case of authorizing written ex parte communication during the quiet period, both TURN and the CPUC have proposed changes to prohibit this communication in order to ensure transparency and parity for parties. There were numerous reforms of ex parte communications adopted in response to the post-San Bruno Pacific Gas & Electric (PG&E) explosion and issues related to the communication between then-CPUC commissioners and PG&E. Additionally, other communications between commissioners and regulated utilities came to light regarding decisions surrounding

the retirement of the San Onofre Nuclear Generating Station. However, requiring the CPUC to postpone a proposed decision to the next voting meeting when a proposed decision is modified (a common occurrence) may lead to further delays in CPUC decision-making. Many parties, including the Legislature, have raised concerns with the slow-pace of decision-making at the CPUC. As such that proposal could lead to additional delays.

*Need for amendments.* Given the two proposals, authorizing written ex parte during quiet periods and postponing modified decisions are not both needed, *the author and committee may wish to amend this bill to remove the language requiring modified decisions to be delayed to the following voting meeting.*

### **Prior/Related Legislation**

SB 599 (Hueso, Chapter 703, Statutes of 2022) revised and recasts provisions relating to “quiet periods” and the authority for closed session meetings during ratesetting cases and catastrophic wildfire proceedings at the CPUC.

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 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: No

### **SUPPORT:**

San Diego Gas & Electric Company, Co-sponsor  
Southern California Gas Company, Co-sponsor  
California African American Chamber of Commerce  
California Asian Pacific Chamber of Commerce  
California Broadband & Video Association  
California Chamber of Commerce  
California Hispanic Chamber of Commerce  
California Water Association  
Pacific Gas and Electric Company

**OPPOSITION:**

The Utility Reform Network

**ARGUMENTS IN SUPPORT:** In support of this bill, SDG&E and SoCalGas urge that changes to the ex parte rules are needed to address last-minute modifications to proposed decisions. They state:

The CPUC must establish a quiet period prohibiting oral and written ex parte communications the Monday-Wednesday before a voting meeting, which occurs on a Thursday. The purpose of the quiet period is for the CPUC to not receive any additional communication from interested parties before they vote. However, the CPUC may issue modifications to a PD [proposed decision] the Monday-Wednesday before a vote. In these instances, it is undemocratic to shut the door on any communication specific to the late modifications. AB 1068 recognizes the importance of ex parte communications and allows only written ex parte to be transmitted to CPUC commissioners, as well as all interested parties on the proceeding service list at the same time. This allows for parties to provide information regarding the late PD modifications, and for all parties to receive those same communications in real time. The bill also requires that late modified PDs be held until the next meeting, which will provide additional time for parties to weigh in on the changes made by the CPUC.

**ARGUMENTS IN OPPOSITION:** The Utility Reform Network (TURN) opposes this bill contending this bill would erode ex parte rules that provide transparency and equal opportunity for parties. TURN states:

The current reporting requirements for oral communications ensure that anything that could influence the final decision is on the record. And the current “quiet period” sets a deadline that prevents last-minute oral and written communications. Without these limits and reporting requirements, heavily resourced parties, typically the Investor-Owned Utilities, would be able to rely on back-channel communications with the Commissioners’ personal advisors to influence Commission decisions up until the last moment before a Commission vote.

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