

AMENDED IN SENATE MAY 8, 2013
AMENDED IN SENATE APRIL 15, 2013

SENATE BILL

No. 611

Introduced by Senator Hill

February 22, 2013

An act to amend Sections ~~305, 307, 308, 309.5, 309.7, 321.6, 958.5, 1701.1, 1701.2, 1701.3, 1731, 1756, 5900, and 7661~~ of, and to add Section 854.5 to, and 5900 of the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 611, as amended, Hill. Public Utilities Commission: ~~organization: proceedings:~~ *Division of Ratepayer Advocates.*

(1) ~~The~~

The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities, as defined. ~~The California Constitution grants the commission certain general powers over all public utilities, subject to control by the Legislature, and authorizes the Legislature, unlimited by the other provisions of the California Constitution, to confer additional authority and jurisdiction upon the commission, that is cognate and germane to the regulation of public utilities.~~ Existing law establishes the Division of Ratepayer Advocates within the commission to represent the interests of public utility customers and subscribers, with the goal of obtaining the lowest possible rate for service consistent with reliable and safe service levels. Existing law requires the Director of the Division of Ratepayer Advocates to submit an annual budget to the commission for final approval. ~~Existing law requires the Governor to designate the president of the commission from among its members and requires the president~~

~~to direct the executive director, the attorney, and other staff of the commission, except for the Division of Ratepayer Advocates, in accordance with commission policies and guidelines. Existing law directs the consumer protection and safety division of the commission to undertake certain railroad safety and gas pipeline safety functions.~~

~~The bill would repeal the requirement that the president direct the executive director, attorney, and other staff of the commission. The~~ *This* bill would rename the Division of Ratepayer Advocates the Office of Ratepayer Advocates, would authorize the office to seek rehearings and judicial review of commission decisions, and would require that the director of the office develop a budget for the office that would be submitted to the Department of Finance for final approval. ~~The bill would change current statutory references from the division of consumer protection and safety to the division of safety and enforcement.~~

~~(2) Existing law authorizes the attorney for the commission, if directed to do so by the president, except as otherwise directed by vote of the commission, to intervene, if possible, in any action or proceeding involving any question arising pursuant to the Public Utilities Act. Existing law requires the attorney for the commission to commence, prosecute, and expedite the final determination of all actions and proceedings, and to generally perform all duties and services as attorney to the commission, as directed or authorized by the president, except as otherwise directed or authorized by vote of the commission.~~

~~This bill would authorize the attorney for the commission, if directed to do so by the commission, to intervene, if possible, in any action or proceeding involving any question arising pursuant to the Public Utilities Act. This bill would require the attorney for the commission to commence, prosecute, and expedite the final determination of all actions and proceedings, and to generally perform all duties and services as attorney to the commission, as directed or authorized by the commission. The bill would provide that in carrying out his or her functions and duties, the attorney is subject to the State Bar Act and the Rules of Professional Conduct of the State Bar of California.~~

~~(3) Existing law requires the executive director for the commission to keep a full and true record of all proceedings of the commission, issue all necessary process, writs, warrants, and notices, and perform such other duties as the president, or vote of the commission, prescribes. Existing law provides that the president may authorize the executive director to dismiss complaints or applications when all parties are in~~

~~agreement thereto, in accordance with rules that the commission may prescribe.~~

~~This bill would require the executive director to keep a full and true record of all proceedings of the commission, issue all necessary process, writs, warrants, and notices, and perform the other duties the commission prescribes. The bill would provide that the commission may authorize the executive director to dismiss complaints or applications when all parties are in agreement thereto, in accordance with rules that the commission may prescribe.~~

~~(4) The California Constitution authorizes the commission to establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process, and to establish rules for all public utilities.~~

~~This bill would correct certain statutory references from the commission adopting regulations to the commission adopting rules.~~

~~(5) Existing law requires the commission, by January 10 of each year, to report to the Joint Legislative Budget Committee and appropriate fiscal and policy committees of the Legislature on all sources and amounts of funding and actual and proposed expenditures, including any costs to ratepayers, related to specified entities or programs established by the commission by order, decision, motion, settlement, or other action, including, but not limited to, the California Clean Energy Fund, the California Emerging Technology Fund, and the Pacific Forest and Watershed Lands Stewardship Council, and any entities or programs, other than those expressly authorized by statute, that are established by the commission under specified statutes.~~

~~This bill would prohibit the Public Utilities Commission, by order, decision, motion, settlement, or other action from establishing a nonstate entity, as defined. The bill would prohibit the commission from entering into a contract with any nonstate entity in which a person serves as an owner, director, or officer while serving as a commissioner. The bill would provide that any contract between the commission and a nonstate entity is void and ceases to exist by operation of law, if a person who was a commissioner at the time the contract was awarded, entered into, or extended, on or after January 1, 2014, becomes an owner, director, or officer of the nonstate entity while serving as a commissioner.~~

~~The California Constitution provides that the Legislature may remove a commissioner of the Public Utilities Commission for incompetence, neglect of duty, or corruption, $\frac{2}{3}$ of the membership of each house concurring.~~

~~This bill would provide that a commissioner who acts as an owner, director, or officer of a nonstate entity that was established prior to January 1, 2014, as a result of an order, decision, motion, settlement, or other action by the commission in which the commissioner participated, is negligent of his or her duty and may be removed pursuant to the California Constitution.~~

~~(6) Existing law establishes certain procedures that are applicable to adjudication, rulemaking and ratesetting cases:~~

~~This bill would prohibit an officer, employee, or agent of the commission that is assigned to assist in the prosecution of, or to testify in, an adjudication case, from participating in the decision of the case, or in the decision of any factually related proceeding. The bill would permit an officer, employee, or agent of the commission that is assigned to assist in the prosecution of an adjudication case to participate in reaching a settlement of the case, but would prohibit the officer, employee, or agent from participating in the decision of the commission to accept or reject the settlement, except as a witness or counsel in an open hearing or a specified closed hearing.~~

~~(7) Existing law requires the commission to submit an annual report on the number of cases where resolution exceeded the time periods prescribed in scoping memos and the days that commissioners presided in hearings:~~

~~This bill would additionally require the commission to include data on the disposition of applications for rehearing in that report.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1.—Section 305 of the Public Utilities Code is~~
2 ~~amended to read:~~
3 ~~305.—The Governor shall designate a president of the~~
4 ~~commission from among the members of the commission. The~~
5 ~~president shall preside at all meetings and sessions of the~~
6 ~~commission.~~
7 ~~SEC. 2.—Section 307 of the Public Utilities Code is amended~~
8 ~~to read:~~
9 ~~307.—(a) The commission may appoint as attorney to the~~
10 ~~commission an attorney at law of this state, who shall hold office~~
11 ~~during the pleasure of the commission. In carrying out his or her~~

1 functions and duties, the attorney shall be subject to the State Bar
2 Act and the Rules of Professional Conduct of the State Bar of
3 California.

4 (b) The attorney shall represent and appear for the people of the
5 State of California and the commission in all actions and
6 proceedings involving any question under this part or under any
7 order or act of the commission. If directed to do so by the
8 commission, the attorney shall intervene, if possible, in any action
9 or proceeding in which any such question is involved.

10 (e) Except as provided in Section 1701.2, the attorney shall
11 commence, prosecute, and expedite the final determination of all
12 actions and proceedings directed or authorized by the commission,
13 advise the commission and each commissioner, when so requested,
14 in regard to all matters in connection with the powers and duties
15 of the commission and the members thereof, and generally perform
16 all duties and services as attorney to the commission that the
17 commission may require of him or her.

18 ~~SEC. 3.~~ Section 308 of the Public Utilities Code is amended
19 to read:

20 308. (a) The commission shall appoint an executive director,
21 who shall hold office during its pleasure. The executive director
22 shall be responsible for the commission's executive and
23 administrative duties and shall organize, coordinate, supervise,
24 and direct the operations and affairs of the commission and
25 expedite all matters within the commission's jurisdiction.

26 (b) The executive director shall keep a full and true record of
27 all proceedings of the commission, issue all necessary process,
28 writs, warrants, and notices, and perform such other duties as the
29 commission, prescribes. The commission may authorize the
30 executive director to dismiss complaints or applications when all
31 parties are in agreement thereto, in accordance with rules that the
32 commission may prescribe.

33 (c) The commission may appoint assistant executive directors
34 who may serve warrants and other process in any county or city
35 and county of this state.

36 ~~SEC. 4.~~

37 *SECTION 1.* Section 309.5 of the Public Utilities Code is
38 amended to read:

39 309.5. (a) There is ~~within the commission~~ an Office of
40 Ratepayer Advocates to represent and advocate on behalf of the

1 interests of public utility customers and subscribers within the
2 jurisdiction of the commission. The goal of the office shall be to
3 obtain the lowest possible rate for service consistent with reliable
4 and safe service levels. For revenue allocation and rate design
5 matters, the office shall primarily consider the interests of
6 residential and small commercial customers. The office may seek
7 rehearing and judicial review of commission decisions pursuant
8 to Article 2 (commencing with Section 1731) and Article 3
9 (commencing with Section 1756) of Chapter 9.

10 (b) The director of the office shall be appointed by, and serve
11 at the pleasure of, the Governor, subject to confirmation by the
12 Senate.

13 The director shall annually appear before the appropriate policy
14 committees of the Assembly and the Senate to report on the
15 activities of the division.

16 (c) The director shall develop a budget for the office which shall
17 be subject to final approval of the Department of Finance. As
18 authorized in the approved budget, the office shall employ
19 personnel and resources, including attorneys and other legal support
20 staff at a level sufficient to ensure that customer and subscriber
21 interests are effectively represented in all significant proceedings.
22 The office may employ experts necessary to carry out its functions.
23 The director may appoint a lead attorney who shall represent the
24 office, and shall report to and serve at the pleasure of the director.
25 All attorneys performing services for the office shall report to and
26 be directed by the lead attorney appointed by the director.

27 (d) The commission shall develop appropriate procedures to
28 ensure that the existence of the office does not create a conflict of
29 roles for any employee. The procedures shall include, but shall
30 not be limited to, the development of a code of conduct and
31 procedures for ensuring that advocates and their representatives
32 on a particular case or proceeding are not advising decisionmakers
33 on the same case or proceeding.

34 (e) The office may compel the production or disclosure of any
35 information it deems necessary to perform its duties from any
36 entity regulated by the commission, provided that any objections
37 to any request for information shall be decided in writing by the
38 assigned commissioner or by the commission, if there is no
39 assigned commissioner. The office shall have access, upon request,
40 to all information provided to the commission, a commissioner,

1 or an officer or person employed by the commission pursuant to
2 Section 314.

3 (f) There is hereby created the Public Utilities Commission
4 Ratepayer Advocate Account in the General Fund. Moneys from
5 the Public Utilities Commission Utilities Reimbursement Account
6 in the General Fund shall be transferred in the annual Budget Act
7 to the Public Utilities Commission Ratepayer Advocate Account.
8 The funds in the Public Utilities Commission Ratepayer Advocate
9 Account shall be utilized exclusively by the office in the
10 performance of its duties as determined by the director. The director
11 shall annually submit a staffing report containing a comparison of
12 the staffing levels for each five-year period.

13 (g) On or before January 10 of each year, the office shall provide
14 to the chairperson of the fiscal committee of each house of the
15 Legislature and to the Joint Legislative Budget Committee all of
16 the following information:

17 (1) The number of personnel years utilized during the prior year
18 by the Office of Ratepayer Advocates.

19 (2) The total dollars expended by the Office of Ratepayer
20 Advocates in the prior year, the estimated total dollars expended
21 in the current year, and the total dollars proposed for appropriation
22 in the following budget year.

23 (3) Workload standards and measures for the Office of
24 Ratepayer Advocates.

25 (h) The office shall meet and confer in an informal setting with
26 a regulated entity prior to issuing a report or pleading to the
27 commission regarding alleged misconduct, or a violation of a law
28 or a commission rule or order, raised by the office in a complaint.
29 The meet and confer process shall be utilized in good faith to reach
30 agreement on issues raised by the office regarding any regulated
31 entity in the complaint proceeding.

32 ~~SEC. 5. Section 309.7 of the Public Utilities Code is amended~~
33 ~~to read:~~

34 ~~309.7. (a) The division of the commission responsible for~~
35 ~~safety and enforcement shall be responsible for inspection,~~
36 ~~surveillance, and investigation of the rights-of-way, facilities,~~
37 ~~equipment, and operations of railroads and public mass transit~~
38 ~~guideways, and for enforcing state and federal laws, regulations,~~
39 ~~orders, and directives relating to transportation of persons or~~
40 ~~commodities, or both, of any nature or description by rail. The~~

1 safety and enforcement division shall advise the commission on
2 all matters relating to rail safety, and shall propose to the
3 commission rules, orders, and other measures necessary to reduce
4 the dangers caused by unsafe conditions on the railroads of the
5 state. The delegation of enforcement responsibility to the safety
6 and enforcement division shall not diminish the power of other
7 agencies of state government to enforce laws relating to employee
8 or environmental safety, pollution prevention, or public health and
9 safety.

10 (b) In performing its duties, the safety and enforcement division
11 shall exercise all powers of investigation granted to the
12 commission, including rights to enter upon land or facilities, inspect
13 books and records, and compel testimony. The commission shall
14 employ sufficient federally certified inspectors to ensure at the
15 time of inspection that railroad locomotives and equipment and
16 facilities located in class I railroad yards in California are inspected
17 not less frequently than every 180 days, and all main and branch
18 line tracks are inspected not less frequently than every 12 months.
19 In performing its duties, the safety and enforcement division shall
20 consult with representatives of railroad corporations, labor
21 organizations representing railroad employees, and the Federal
22 Railroad Administration.

23 (c) The general counsel shall assign to the safety and
24 enforcement division the personnel and attorneys necessary to
25 fully utilize the powers granted to the commission by any state
26 law, and by any federal law relating to rail transportation,
27 including, but not limited to, the Federal Rail Safety Act (45 U.S.C.
28 Sec. 421m, et seq.), to enforce safety laws, rules, regulations, and
29 orders, and to collect fines and penalties resulting from the
30 violation of any safety rule or regulation.

31 (d) The activities of the safety and enforcement division that
32 relate to safe operation of common carriers by rail, other than those
33 relating to grade crossing protection, shall also be supported by
34 the fees paid by railroad corporations, if any, pursuant to Sections
35 421 to 424, inclusive. The activities of the safety and enforcement
36 division that relate to grade crossing protection shall be supported
37 by funds appropriated therefor from the State Highway Account
38 in the State Transportation Fund. On or before November 30 of
39 each year, the commission shall report to the Legislature on the
40 activities of the safety and enforcement division, and shall fully

1 document in the report all expenditures of those funds in the audit
2 report provided in subdivision (f) of Section 421.

3 ~~SEC. 6. Section 321.6 of the Public Utilities Code is amended~~
4 ~~to read:~~

5 ~~321.6. (a) The commission shall do all of the following:~~

6 ~~(1) Develop, publish, and annually update an annual workplan~~
7 ~~that describes in clear detail the scheduled ratemaking proceedings~~
8 ~~and other decisions that may be considered by the commission~~
9 ~~during the calendar year. The plan shall include, but is not limited~~
10 ~~to, information on how members of the public and ratepayers can~~
11 ~~gain access to the commission's ratemaking process and~~
12 ~~information regarding the specific matters to be decided. The plan~~
13 ~~shall also include information on the operation of the office of the~~
14 ~~public adviser and identify the names and telephone numbers of~~
15 ~~those contact persons responsible for specific cases and matters~~
16 ~~to be decided. The plan shall also include a statement that specifies~~
17 ~~activities that the commission proposes to reduce the costs of, and~~
18 ~~rates for, energy, including electricity, and for improving the~~
19 ~~competitive opportunities for state agriculture and other rural~~
20 ~~energy consumers. The commission shall post the plan under the~~
21 ~~Official Documents area of its Internet Web site and shall develop~~
22 ~~a program to disseminate the information in the plan utilizing~~
23 ~~computer mailing lists to provide regular updates on the~~
24 ~~information to those members of the public and organizations~~
25 ~~which request that information.~~

26 ~~(2) Produce a complete accounting of its transactions and~~
27 ~~proceedings for the preceding year, together with other facts,~~
28 ~~suggestions, and recommendations that it deems of value to the~~
29 ~~people of the state and a statement that specifies the activities and~~
30 ~~achievements of the commission in reducing the costs of, and rates~~
31 ~~for, energy, including electricity, for state agriculture and other~~
32 ~~rural energy consumers.~~

33 ~~(3) Create a report on the number of cases where resolution~~
34 ~~exceeded the time periods prescribed in scoping memos,~~
35 ~~information on the disposition of applications for rehearings, and~~
36 ~~the days that commissioners presided in hearings.~~

37 ~~(4) Submit annually the plan, accounting, and report required~~
38 ~~by paragraphs (1), (2), and (3) to the Governor and Legislature no~~
39 ~~later than February 1 of each year.~~

1 ~~(b) The president of the commission shall annually appear before~~
2 ~~the appropriate policy committees of the Senate and Assembly to~~
3 ~~report on the annual workplan access guide of the commission~~
4 ~~required pursuant to this section.~~

5 ~~(c) The president of the commission shall annually appear before~~
6 ~~the appropriate policy committees of the Senate and Assembly to~~
7 ~~report on the annual report of the commission on the number of~~
8 ~~cases where resolution exceeded the time periods prescribed in~~
9 ~~scoping memos and the days that commissioners presided in~~
10 ~~hearings, pursuant to Section 13 of Chapter 856 of the Statutes of~~
11 ~~1996.~~

12 ~~SEC. 7. Section 854.5 is added to the Public Utilities Code, to~~
13 ~~read:~~

14 ~~854.5. (a) For purposes of this section, a “nonstate entity”~~
15 ~~means a company, corporation, partnership, firm, or other entity~~
16 ~~or group of entities, whether organized for profit or not for profit.~~

17 ~~(b) The commission, by order, decision, motion, settlement, or~~
18 ~~other action shall not establish a nonstate entity. This subdivision~~
19 ~~does not limit the authority of the commission to form an advisory~~
20 ~~committee or other body whose budget is subject to oversight by~~
21 ~~the commission and the Department of Finance.~~

22 ~~(c) The commission shall not enter into a contract with a~~
23 ~~nonstate entity in which a person serves as an owner, director, or~~
24 ~~officer while serving as a commissioner. Any contract between~~
25 ~~the commission and a nonstate entity shall be void and cease to~~
26 ~~exist by operation of law, if a commissioner, who was a~~
27 ~~commissioner at the time the contract was awarded, entered into,~~
28 ~~or extended, becomes, on or after January 1, 2014, an owner,~~
29 ~~director, or officer of the nonstate entity while serving as a~~
30 ~~commissioner.~~

31 ~~(d) A commissioner who acts as an owner, director, or officer~~
32 ~~of a nonstate entity that was established prior to January 1, 2014,~~
33 ~~as a result of an order, decision, motion, settlement, or other action~~
34 ~~by the commission in which the commissioner participated, is~~
35 ~~negligent of his or her duty pursuant to Section 1 of Article XII of~~
36 ~~the California Constitution, for which the commissioner may be~~
37 ~~removed pursuant to that section.~~

38 ~~SEC. 8. Section 958.5 of the Public Utilities Code is amended~~
39 ~~to read:~~

1 958.5. (a) Twice a year, or as determined by the commission,
2 each gas corporation shall file with the commission's safety and
3 enforcement division a gas transmission and storage safety report.
4 The safety and enforcement division shall review the reports to
5 monitor each gas corporation's storage and pipeline-related
6 activities to assess whether the projects that have been identified
7 as high risk are being carried out, and to track whether the gas
8 corporation is spending its allocated funds on these storage and
9 pipeline-related safety, reliability, and integrity activities for which
10 they have received approval from the commission.

11 (b) The gas transmission and storage safety report shall include
12 a thorough description and explanation of the strategic planning
13 and decisionmaking approach used to determine and rank the gas
14 storage projects, intrastate transmission line safety, integrity, and
15 reliability, operation and maintenance activities, and inspections
16 of its intrastate transmission lines. If there has been no change in
17 the gas corporation's approach for determining and ranking which
18 projects and activities are prioritized since the previous gas
19 transmission and storage safety report, the subsequent report may
20 reference the immediately preceding report.

21 (c) If the commission's safety and enforcement division
22 determines that there is a deficiency in a gas corporation's
23 prioritization or administration of the storage or pipeline capital
24 projects or operation and maintenance activities, the division shall
25 bring the problems to the commission's immediate attention.

26 SEC. 9. Section 1701.1 of the Public Utilities Code is amended
27 to read:

28 1701.1. (a) The commission, consistent with due process,
29 public policy, and statutory requirements, shall determine whether
30 a proceeding requires a hearing. The commission shall determine
31 whether the matter requires a quasi-legislative, an adjudication,
32 or a ratesetting hearing. The commission's decision as to the nature
33 of the proceeding shall be subject to a request for rehearing within
34 10 days of the date of that decision. If that decision is not appealed
35 to the commission within that time period it shall not be
36 subsequently subject to judicial review. Only those parties who
37 have requested a rehearing within that time period shall
38 subsequently have standing for judicial review and that review
39 shall only be available at the conclusion of the proceeding. The
40 commission shall render its decision regarding the rehearing within

1 30 days. The commission shall establish rules regarding ex parte
2 communication on case categorization issues.

3 (b) The commission upon initiating a hearing shall assign one
4 or more commissioners to oversee the case and an administrative
5 law judge where appropriate. The assigned commissioner shall
6 schedule a prehearing conference. The assigned commissioner
7 shall prepare and issue by order or ruling a scoping memo that
8 describes the issues to be considered and the applicable timetable
9 for resolution.

10 (c) (1) Quasi-legislative cases, for purposes of this article, are
11 cases that establish policy, including, but not limited to,
12 rulemakings and investigations which may establish rules affecting
13 an entire industry.

14 (2) Adjudication cases, for purposes of this article, are
15 enforcement cases and complaints except those challenging the
16 reasonableness of any rates or charges as specified in Section 1702.

17 (3) Ratesetting cases, for purposes of this article, are cases in
18 which rates are established for a specific company, including, but
19 not limited to, general rate cases, performance-based ratemaking,
20 and other ratesetting mechanisms.

21 (4) “Ex parte communication,” for purposes of this article,
22 means any oral or written communication between a decisionmaker
23 and a person with an interest in a matter before the commission
24 concerning substantive, but not procedural issues, that does not
25 occur in a public hearing, workshop, or other public proceeding,
26 or on the official record of the proceeding on the matter. “Person
27 with an interest,” for purposes of this article, means any of the
28 following:

29 (A) Any applicant, an agent or an employee of the applicant,
30 or a person receiving consideration for representing the applicant,
31 or a participant in the proceeding on any matter before the
32 commission.

33 (B) Any person with a financial interest, as described in Article
34 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the
35 Government Code, in a matter before the commission, or an agent
36 or employee of the person with a financial interest, or a person
37 receiving consideration for representing the person with a financial
38 interest.

39 (C) A representative acting on behalf of any civic,
40 environmental, neighborhood, business, labor, trade, or similar

1 organization who intends to influence the decision of a commission
2 member on a matter before the commission.

3 The commission shall by rule adopt and publish a definition of
4 decisionmakers and persons for purposes of this section, along
5 with any requirements for written reporting of ex parte
6 communications and appropriate sanctions for noncompliance with
7 any rule proscribing ex parte communications. The rule shall
8 provide that reportable communications shall be reported by the
9 party, whether the communication was initiated by the party or
10 the decisionmaker. Communications shall be reported within three
11 working days of the communication by filing a “Notice of Ex Parte
12 Communication” with the commission in accordance with the
13 procedures established by the commission for the service of that
14 notice. The notice shall include the following information:

15 (i) The date, time, and location of the communication, and
16 whether it was oral, written, or a combination.

17 (ii) The identity of the recipient and the person initiating the
18 communication, as well as the identity of any persons present
19 during the communication.

20 (iii) A description of the party’s, but not the decisionmaker’s,
21 communication and its content, to which shall be attached a copy
22 of any written material or text used during the communication.

23 SEC. 10. Section 1701.2 of the Public Utilities Code is
24 amended to read:

25 1701.2. (a) If the commission pursuant to Section 1701.1 has
26 determined that an adjudication case requires a hearing, the
27 procedures prescribed by this section shall be applicable. The
28 assigned commissioner or the assigned administrative law judge
29 shall hear the case in the manner described in the scoping memo.
30 The scoping memo shall designate whether the assigned
31 commissioner or the assigned administrative law judge shall preside
32 in the case. The commission shall provide by rule for peremptory
33 challenges and challenges for cause of the administrative law judge.
34 Challenges for cause shall include, but not be limited to, financial
35 interests and prejudice. The rule shall provide that all parties are
36 entitled to one peremptory challenge of the assignment of the
37 administrative law judge in all cases. All parties are entitled to
38 unlimited peremptory challenges in any case in which the
39 administrative law judge has within the previous 12 months served
40 in any capacity in an advocacy position at the commission, been

1 employed by a regulated public utility, or has represented a party
2 or has been a party of interest in the case. The assigned
3 commissioner or the administrative law judge shall prepare and
4 file a decision setting forth recommendations, findings, and
5 conclusions. The decision shall be filed with the commission and
6 served upon all parties to the action or proceeding without undue
7 delay, not later than 60 days after the matter has been submitted
8 for decision. The decision of the assigned commissioner or the
9 administrative law judge shall become the decision of the
10 commission if no further action is taken within 30 days. Any
11 interested party may appeal the decision to the commission,
12 provided that the appeal is made within 30 days of the issuance of
13 the decision. The commission may itself initiate a review of the
14 proposed decision on any grounds. The commission decision shall
15 be based on the record developed by the assigned commissioner
16 or the administrative law judge. A decision different from that of
17 the assigned commissioner or the administrative law judge shall
18 be accompanied by a written explanation of each of the changes
19 made to the decision.

20 (b) No officer, employee, or agent of the commission that is
21 assigned to assist in the prosecution of, to testify in, or to supervise
22 the prosecution of an adjudication case before the commission,
23 shall participate in the decision of the case, or in the decision of
24 any factually related proceeding, including participation in or
25 advising the commission as to findings of fact, conclusions of law,
26 or orders. An officer, employee, or agent of the commission that
27 is assigned to assist in the prosecution of an adjudication case may
28 participate in reaching a settlement of the case, but shall not
29 participate in the decision of the commission to accept or reject
30 the settlement, except as a witness or counsel in an open hearing
31 or a hearing closed pursuant to subdivision (d). The Legislature
32 finds that the commission performs both prosecutorial and
33 adjudicatory functions in an adjudication case and declares its
34 intent that an officer, employee, or agent of the commission,
35 including its attorneys, may perform only one of those functions
36 in any adjudication case, or factually related proceeding.

37 (c) Ex parte communications shall be prohibited in adjudication
38 cases.

39 (d) Notwithstanding any other provision of law, the commission
40 may meet in a closed hearing to consider the decision that is being

1 appealed. The vote on the appeal shall be in a public meeting and
2 shall be accompanied with an explanation of the appeal decision.

3 ~~(e) Adjudication cases shall be resolved within 12 months of~~
4 ~~initiation unless the commission makes findings why that deadline~~
5 ~~cannot be met and issues an order extending that deadline. In the~~
6 ~~event that a rehearing of an adjudication case is granted the parties~~
7 ~~shall have an opportunity for final oral argument.~~

8 ~~(f) (1) The commission may determine that the respondent~~
9 ~~lacks, or may lack, the ability to pay potential penalties or fines~~
10 ~~or to pay restitution that may be ordered by the commission.~~

11 ~~(2) If the commission determines that a respondent lacks, or~~
12 ~~may lack, the ability to pay, the commission may order the~~
13 ~~respondent to demonstrate, to the satisfaction of the commission,~~
14 ~~sufficient ability to pay potential penalties, fines, or restitution that~~
15 ~~may be ordered by the commission. The respondent shall~~
16 ~~demonstrate the ability to pay, or make other financial~~
17 ~~arrangements satisfactory to the commission, within seven days~~
18 ~~of the commission commencing an adjudication case. The~~
19 ~~commission may delegate to the attorney to the commission the~~
20 ~~determination of whether a sufficient showing has been made by~~
21 ~~the respondent of an ability to pay.~~

22 ~~(3) Within seven days of the commission's determination of the~~
23 ~~respondent's ability to pay potential penalties, fines, or restitution,~~
24 ~~the respondent shall be entitled to an impartial review by an~~
25 ~~administrative law judge, of the sufficiency of the showing made~~
26 ~~by the respondent of the respondent's ability to pay. The review~~
27 ~~by an administrative law judge of the ability of the respondent to~~
28 ~~pay shall become part of the record of the adjudication and is~~
29 ~~subject to the commission's consideration in its order resolving~~
30 ~~the adjudication case. The administrative law judge may enter~~
31 ~~temporary orders modifying any financial requirement made of~~
32 ~~the respondent pending the review by the administrative law judge.~~

33 ~~(4) A respondent that is a public utility regulated under a rate~~
34 ~~of return or rate of margin regulatory structure or that has gross~~
35 ~~annual revenues of more than one hundred million dollars~~
36 ~~(\$100,000,000) generated within California is presumed to be able~~
37 ~~to pay potential penalties or fines or to pay restitution that may be~~
38 ~~ordered by the commission, and, therefore, paragraphs (1) to (3),~~
39 ~~inclusive, do not apply to that respondent.~~

1 SEC. 11.— Section 1701.3 of the Public Utilities Code is amended
2 to read:

3 1701.3.— (a) If the commission pursuant to Section 1701.1 has
4 determined that a ratesetting case requires a hearing, the procedures
5 prescribed by this section shall be applicable. The assigned
6 commissioner shall determine prior to the first hearing whether
7 the commissioner or the assigned administrative law judge shall
8 be designated as the principal hearing officer. The principal hearing
9 officer shall be present for more than one-half of the hearing days.
10 The decision of the principal hearing officer shall be the proposed
11 decision. An alternate decision may be issued by the assigned
12 commissioner or the assigned administrative law judge who is not
13 the principal hearing officer. The commission shall establish a
14 procedure for any party to request the presence of a commissioner
15 at a hearing. The assigned commissioner shall be present at the
16 closing arguments of the case. The principal hearing officer shall
17 present the proposed decision to the full commission in a public
18 meeting. The alternate decision, if any, shall also be presented to
19 the full commission at that public meeting. The alternate decision
20 shall be filed with the commission and shall be served on all parties
21 simultaneously with the proposed decision.

22 The presentation to the full commission shall contain a record
23 of the number of days of the hearing, the number of days that each
24 commissioner was present, and whether the decision was completed
25 on time.

26 (b) The commission shall provide by rule for peremptory
27 challenges and challenges for cause of the administrative law judge.
28 Challenges for cause shall include, but not be limited to, financial
29 interests and prejudice. All parties shall be entitled to unlimited
30 peremptory challenges in any case in which the administrative law
31 judge has, within the previous 12 months, served in any capacity
32 in an advocacy position at the commission, been employed by a
33 regulated public utility, or has represented a party or has been a
34 party of interest in the case.

35 (c) Ex parte communications are prohibited in ratesetting cases.
36 However, oral ex parte communications may be permitted at any
37 time by any commissioner if all interested parties are invited and
38 given not less than three days' notice. Written ex parte
39 communications may be permitted by any party provided that
40 copies of the communication are transmitted to all parties on the

1 same day. If an ex parte communication meeting is granted to any
2 party, all other parties shall also be granted individual ex parte
3 meetings of a substantially equal period of time and shall be sent
4 a notice of that authorization at the time that the request is granted.
5 In no event shall that notice be less than three days. The
6 commission may establish a period during which no oral or written
7 ex parte communications shall be permitted and may meet in closed
8 session during that period, which shall not in any circumstance
9 exceed 14 days. If the commission holds the decision, it may permit
10 ex parte communications during the first half of the interval
11 between the hold date and the date that the decision is calendared
12 for final decision. The commission may meet in closed session for
13 the second half of that interval.

14 (d) Any party has the right to present a final oral argument of
15 its case before the commission. Those requests shall be scheduled
16 in a timely manner. A quorum of the commission shall be present
17 for the final oral arguments.

18 (e) The commission may, in issuing its decision, adopt, modify,
19 or set aside the proposed decision or any part of the decision based
20 on evidence in the record. The final decision of the commission
21 shall be issued not later than 60 days after the issuance of the
22 proposed decision. Under extraordinary circumstances the
23 commission may extend this date for a reasonable period. The
24 60-day period shall be extended for 30 days if any alternate
25 decision is proposed pursuant to Section 311.

26 ~~SEC. 12.~~

27 *SEC. 2.* Section 1731 of the Public Utilities Code is amended
28 to read:

29 1731. (a) The commission shall set an effective date when
30 issuing an order or decision. The commission may set the effective
31 date of an order or decision prior to the date of issuance of the
32 order or decision.

33 (b) (1) After any order or decision has been made by the
34 commission, any party to the action or proceeding, including the
35 Office of Ratepayer Advocates, or any stockholder or bondholder
36 or other party pecuniarily interested in the public utility affected,
37 may apply for a rehearing in respect to any matters determined in
38 the action or proceeding and specified in the application for
39 rehearing. The commission may grant and hold a rehearing on
40 those matters, if in its judgment sufficient reason is made to appear.

1 No cause of action arising out of any order or decision of the
2 commission shall accrue in any court to any corporation or person
3 unless the corporation or person has filed an application to the
4 commission for a rehearing within 30 days after the date of
5 issuance or within 10 days after the date of issuance in the case of
6 an order issued pursuant to either Article 5 (commencing with
7 Section 816) or Article 6 (commencing with Section 851) of
8 Chapter 4 relating to security transactions and the transfer or
9 encumbrance of utility property.

10 (2) The commission shall notify the parties of the issuance of
11 an order or decision by either mail or electronic transmission.
12 Notification of the parties may be accomplished by one of the
13 following methods:

14 (A) Mailing the order or decision to the parties to the action or
15 proceeding.

16 (B) If a party to an action or proceeding consents in advance to
17 receive notice of any order or decision related to the action or
18 proceeding by electronic mail address, notification of the party
19 may be accomplished by transmitting an electronic copy of the
20 official version of the order or decision to the party if the party
21 has provided an electronic mail address to the commission.

22 (C) If a party to an action or proceeding consents in advance to
23 receive notice of any order or decision related to the action or
24 proceeding by electronic mail address, notification of the party
25 may be accomplished by transmitting a link to an Internet Web
26 site where the official version of the order or decision is readily
27 available to the party if the party has provided an electronic mail
28 address to the commission.

29 (3) For the purposes of this article, “date of issuance” means
30 the mailing or electronic transmission date that is stamped on the
31 official version of the order or decision

32 (c) No cause of action arising out of any order or decision of
33 the commission construing, applying, or implementing the
34 provisions of Chapter 4 of the Statutes of the 2001–02 First
35 Extraordinary Session that (1) relates to the determination or
36 implementation of the department’s revenue requirements, or the
37 establishment or implementation of bond or power charges
38 necessary to recover those revenue requirements, or (2) in the sole
39 determination of the Department of Water Resources, the expedited
40 review of order or decision of the commission is necessary or

1 desirable, for the maintenance of any credit ratings on any bonds
2 or notes of the department issued pursuant to Division 27
3 (commencing with Section 80000) of the Water Code or for the
4 department to meet its obligations with respect to any bonds or
5 notes pursuant to that division, shall accrue in any court to any
6 corporation or person unless the corporation or person has filed
7 an application with the commission for a rehearing within 10 days
8 after the date of issuance of the order or decision. The Department
9 of Water Resources shall notify the commission of any
10 determination pursuant to paragraph (2) of this subdivision prior
11 to the issuance by the commission of any order or decision
12 construing, applying, or implementing the provisions of Chapter
13 4 of the Statutes of the 2001–02 First Extraordinary Session. The
14 commission shall issue its decision and order on rehearing within
15 20 days after the filing of the application.

16 ~~SEC. 13.~~

17 *SEC. 3.* Section 1756 of the Public Utilities Code is amended
18 to read:

19 1756. (a) Within 30 days after the commission issues its
20 decision denying the application for a rehearing, or, if the
21 application was granted, then within 30 days after the commission
22 issues its decision on rehearing, or at least 120 days after the
23 application is granted if no decision on rehearing has been issued,
24 any aggrieved party, including the Office of Ratepayer Advocates,
25 may petition for a writ of review in the court of appeal or the
26 Supreme Court for the purpose of having the lawfulness of the
27 original order or decision or of the order or decision on rehearing
28 inquired into and determined. If the writ issues, it shall be made
29 returnable at a time and place specified by court order and shall
30 direct the commission to certify its record in the case to the court
31 within the time specified.

32 (b) The petition for review shall be served upon the executive
33 director and the general counsel of the commission either
34 personally or by service at the office of the commission.

35 (c) For purposes of this section, the issuance of a decision or
36 the granting of an application shall be construed to have occurred
37 on the date of issuance, as defined in paragraph (3) of subdivision
38 (b) of Section 1731.

39 (d) The venue of a petition filed in the court of appeal pursuant
40 to this section shall be in the judicial district in which the petitioner

1 resides. If the petitioner is a business, venue shall be in the judicial
2 district in which the petitioner has its principal place of business
3 in California.

4 (e) Any party may seek from the Supreme Court, pursuant to
5 California Rules of Court, an order transferring related actions to
6 a single appellate district.

7 (f) For purposes of this section, review of decisions pertaining
8 solely to water corporations shall only be by petition for writ of
9 review in the Supreme Court, except that review of complaint or
10 enforcement proceedings may be in the court of appeal or the
11 Supreme Court.

12 (g) No order or decision arising out of a commission proceeding
13 under Section 854 shall be reviewable in the court of appeal
14 pursuant to subdivision (a) if the application for commission
15 authority to complete the merger or acquisition was filed on or
16 before December 31, 1998, by two telecommunications-related
17 corporations including at least one which provides local
18 telecommunications service to over one million California
19 customers. These orders or decisions shall be reviewed pursuant
20 to the Public Utilities Code in existence on December 31, 1998.

21 ~~SEC. 14.~~

22 *SEC. 4.* Section 5900 of the Public Utilities Code is amended
23 to read:

24 5900. (a) The holder of a state franchise shall comply with
25 the provisions of Sections 53055, 53055.1, 53055.2, and 53088.2
26 of the Government Code, and any other customer service standards
27 pertaining to the provision of video service established by federal
28 law or regulation or adopted by subsequent enactment of the
29 Legislature. All customer service and consumer protection
30 standards under this section shall be interpreted and applied to
31 accommodate newer or different technologies while meeting or
32 exceeding the goals of the standards.

33 (b) The holder of a state franchise shall comply with provisions
34 of Section 637.5 of the Penal Code and the privacy standards
35 contained in Section 551 et seq. of Title 47 of the United States
36 Code.

37 (c) The local entity shall enforce all of the customer service and
38 protection standards of this section with respect to complaints
39 received from residents within the local entity's jurisdiction, but
40 it may not adopt or seek to enforce any additional or different

1 customer service or other performance standards under Section
2 53055.3 or subdivision (q), (r), or (s) of Section 53088.2 of the
3 Government Code, or any other authority or provision of law.

4 (d) The local entity shall, by ordinance or resolution, provide a
5 schedule of penalties for any material breach by a holder of a state
6 franchise of this section. No monetary penalties shall be assessed
7 for a material breach if it is out of the reasonable control of the
8 holder. Further, no monetary penalties may be imposed prior to
9 January 1, 2007. Any schedule of monetary penalties adopted
10 pursuant to this section shall in no event exceed five hundred
11 dollars (\$500) for each day of each material breach, not to exceed
12 one thousand five hundred dollars (\$1,500) for each occurrence
13 of a material breach. However, if a material breach of this section
14 has occurred, and the local entity has provided notice and a fine
15 or penalty has been assessed, and if a subsequent material breach
16 of the same nature occurs within 12 months, the penalties may be
17 increased by the local entity to a maximum of one thousand dollars
18 (\$1,000) for each day of each material breach, not to exceed three
19 thousand dollars (\$3,000) for each occurrence of the material
20 breach. If a third or further material breach of the same nature
21 occurs within those same 12 months, and the local entity has
22 provided notice and a fine or penalty has been assessed, the
23 penalties may be increased to a maximum of two thousand five
24 hundred dollars (\$2,500) for each day of each material breach, not
25 to exceed seven thousand five hundred dollars (\$7,500) for each
26 occurrence of the material breach. With respect to video providers
27 subject to a franchise or license, any monetary penalties assessed
28 under this section shall be reduced dollar-for-dollar to the extent
29 any liquidated damage or penalty provision of a current cable
30 television ordinance, franchise contract, or license agreement
31 imposes a monetary obligation upon a video provider for the same
32 customer service failures, and no other monetary damages may be
33 assessed.

34 (e) The local entity shall give the video service provider written
35 notice of any alleged material breach of the customer service
36 standards of this division and allow the video provider at least 30
37 days from receipt of the notice to remedy the specified material
38 breach.

39 (f) A material breach for the purposes of assessing penalties
40 shall be deemed to have occurred for each day within the

1 jurisdiction of each local entity, following the expiration of the
2 period specified in subdivision (e), that any material breach has
3 not been remedied by the video service provider, irrespective of
4 the number of customers or subscribers affected.

5 (g) Any penalty assessed pursuant to this section shall be
6 remitted to the local entity, which shall submit one-half of the
7 penalty to the Digital Divide Account established in Section 280.5.

8 (h) Any interested person may seek judicial review of a decision
9 of the local entity in a court of appropriate jurisdiction. For this
10 purpose, a court of law shall conduct a de novo review of any
11 issues presented.

12 (i) This section shall not preclude a party affected by this section
13 from utilizing any judicial remedy available to that party without
14 regard to this section. Actions taken by a local legislative body,
15 including a local franchising entity, pursuant to this section shall
16 not be binding upon a court of law. For this purpose, a court of
17 law shall conduct de novo review of any issues presented.

18 (j) For purposes of this section, “material breach” means any
19 substantial and repeated failure of a video service provider to
20 comply with service quality and other standards specified in
21 subdivision (a).

22 (k) The Office of Ratepayer Advocates shall have authority to
23 advocate on behalf of video subscribers regarding renewal of a
24 state-issued franchise and enforcement of this section, and Sections
25 5890 and 5950. For this purpose, the office shall have access to
26 any information in the possession of the commission subject to all
27 restrictions on disclosure of that information that are applicable
28 to the commission.

29 ~~SEC. 15. Section 7661 of the Public Utilities Code is amended~~
30 ~~to read:~~

31 ~~7661. (a) The commission shall require every railroad~~
32 ~~corporation operating in this state to develop, within 90 days of~~
33 ~~the effective date of the act adding this section, in consultation~~
34 ~~with, and with the approval of, the Office of Emergency Services,~~
35 ~~a protocol for rapid communications with the agency, the~~
36 ~~Department of the California Highway Patrol, and designated~~
37 ~~county public safety agencies in an endangered area if there is a~~
38 ~~runaway train or any other uncontrolled train movement that~~
39 ~~threatens public health and safety.~~

1 ~~(b) A railroad corporation shall promptly notify the Office of~~
2 ~~Emergency Services, the Department of the California Highway~~
3 ~~Patrol, and designated county public safety agencies, through a~~
4 ~~communication to the Warning Center of the Office of Emergency~~
5 ~~Services, if there is a runaway train or any other uncontrolled train~~
6 ~~movement that threatens public health and safety, in accordance~~
7 ~~with the railroad corporation's communications protocol developed~~
8 ~~pursuant to subdivision (a):~~

9 ~~(e) The notification required pursuant to subdivision (b) shall~~
10 ~~include the following information, whether or not an accident or~~
11 ~~spill occurs:~~

12 ~~(1) The information required by subdivision (e) of Section 7673.~~

13 ~~(2) In the event of a runaway train, a train list.~~

14 ~~(3) In the event of an uncontrolled train movement or~~
15 ~~uncontrolled movement of railcars, a track list or other inventory~~
16 ~~document if available.~~

17 ~~(d) The safety and enforcement division shall investigate any~~
18 ~~incident that results in a notification required pursuant to~~
19 ~~subdivision (b), and shall report its findings concerning the cause~~
20 ~~or causes to the commission. The commission shall include the~~
21 ~~division's report in its report to the Legislature pursuant to Section~~
22 ~~7711.~~