

**CALIFORNIA PUBLIC UTILITIES COMMISSION  
WATER DIVISION**

**PLANNING AND CONDUCTING WORKSHOPS**

**STANDARD PRACTICE U-31-W**

**SAN FRANCISCO, CALIFORNIA**

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# STANDARD PRACTICE U-31-W

## PLANNING AND CONDUCTING WORKSHOPS

### A. INTRODUCTION

1. The California Public Utilities Commission (CPUC, or Commission) is increasingly looking to alternatives to litigation as a means of carrying out its mandate. One of the primary tools used by the CPUC is the workshop, an informal meeting at which parties can exchange views and opinions. Workshops can have different goals, and can help regulators in various ways.
2. There are two different types of workshops conducted by the CPUC: a scooping workshop and a negotiation/settlement workshop. A six-month scooping workshop was used as part of the CPUC's investigation into what action, if any, it should take about electric and magnetic fields (EMFs) from electric utility facilities. This paper will look at how the workshop process narrowed the range of issues and focused the proceeding.
3. The paper will examine the interplay between the negotiation workshop process and formal Commission action.

#### A. Traditional Process

4. The traditional regulatory process at the CPUC is one with which most readers are probably familiar. The process can be triggered by a utility application or by the Commission's order. The Commission then schedules a prehearing conference at which parties identify issues in the case and discuss timing of discovery, testimony, hearings, and briefs. The next milestone is the filing of written testimony. This is followed by hearings before an Administrative Law Judge. After the hearings conclude, parties file briefs and reply briefs. At the CPUC, the Administrative Law Judge then prepares a draft decision, which is circulated to the parties for comment. Usually during this period, parties discuss their positions with the Commissioners. CPUC rules require that parties file notices of ex parte communications; while these communications are noted in the record, they cannot be considered formal evidence upon which a decision can be based. At this point the Commission either issues a final version of the draft decision, or an alternate which is based on information presented during the course of the proceeding.
5. The traditional process is useful in developing a clear record and ensuring parties of opportunities to be heard. It also is a litigious process that can be lengthy and does not always leave a lot of room for compromise. The testimony/briefing cycle requires parties to stake out positions which they defend vigorously. The CPUC has found that in certain situations providing parties with opportunities to discuss issues informally, off the record and in a situation where the decision maker (i.e., Commissioner or Administrative Law

Judge) is not present, can further the formal hearing process more expeditiously than trying to resolve the issues in the hearing room.

## B. Workshops

6. Workshops are used by the CPUC in many situations. While there is no steadfast rule for when a workshop is a suitable alternative to formal litigation, workshops generally are used when a less formal setting seems likely to bring parties into agreement. Sometimes “agreement” is very broad, and means that parties simply identify those areas where they agree and those where they cannot agree. Other times “agreement” is very focused, and parties work out operational details of a proposal or previously ordered program.

7. Workshops are an enhancement to the traditional regulatory process, not a substitute for it. Usually when the CPUC orders a workshop, the staff is directed to report the outcome to the Commission. Sometimes the outcome is reported by the parties in the form of a joint motion or joint testimony. Workshops are often ordered at the prehearing conference, when parties are identifying issues. They also are often ordered in Commission decisions as a way to implement policies or programs mandated in the decisions. See Attachment A for a diagram of the standard CPUC decision-making process using workshops.

8. There are several types of workshops used at the CPUC. Table 1 lists the types of workshops and their expected outcomes. In many situations workshops have similar goals and deliverables. For example, a “Quick Hearing” workshop used to accelerate the process of gathering information and narrowing issues has similar expectations to a “Scoping/Clarifying” workshop. The scoping/clarifying workshop, however, can be conducted over a longer period of time and is usually a precursor to litigation, while a quick hearing workshop may be called in the middle of a hearing process.

9. Similarly, “Implementation” and “Modeling/How-to” workshops usually are both ordered in a Commission decision, after the litigation process has occurred. In both situations, parties are expected to agree on basic parameters for whatever was ordered by the Commission. The modeling workshop, however, is expected to produce a model, while the implementation workshop may have a broader mandate and purpose. For example, the Commission might order a modeling workshop when it adopts a new marginal cost methodology, while it might order an implementation workshop when it adopts a new rule for transmission line construction.

10. The success of any workshop is dependent in large part on the amount of direction given by the Commission. If parties are unclear about the workshop’s goals or how the workshop product will fit into the traditional regulatory process, the group will lose time as parties argue about how best to proceed or seek clarification from the Commission. This point will be further illustrated in the case studies below. Additionally, and perhaps more importantly for the decision maker, sending parties off to an informal setting to resolve issues leaves the parties a lot of latitude to define problems and identify solutions. A classic problem decision makers can face with workshops or with settlements, for that

matter, is that the parties bring in a solution that does not reflect the decision maker's goals or interests. If decision makers have specific issues they would like to see resolved or considered, they need to communicate that to the parties before the workshop starts.

**Table 1: Types of Workshops**

<u>Type of Workshop</u>	<u>Goal</u>	<u>Expectations/Deliverables</u>
Quick Hearing	<ul style="list-style-type: none"> <li>• Add information to record</li> <li>• Accelerate process</li> <li>• Narrow scope</li> <li>• Gather information</li> </ul>	<ul style="list-style-type: none"> <li>• Proposed Decision or resolution of issues</li> <li>• Report</li> </ul>
Scoping/Clarifying	<ul style="list-style-type: none"> <li>• Narrow scope</li> <li>• Identify issues</li> <li>• Identify areas of agreement/disagreement</li> </ul>	<ul style="list-style-type: none"> <li>• Issues for litigation</li> <li>• Report or joint testimony</li> <li>• Failure shows insufficient Commission guidance</li> </ul>
Informational/Educational	<ul style="list-style-type: none"> <li>• Communicate Commission policy or decision</li> <li>• Get information about an issue</li> <li>• Hear stakeholders</li> <li>• Allow parties to meet</li> <li>• Discovery</li> </ul>	<ul style="list-style-type: none"> <li>• Textbook or manual</li> <li>• Information exchange</li> </ul>
Negotiation/Settlement	<ul style="list-style-type: none"> <li>• Settlement</li> <li>• Agreement on what the issues are</li> </ul>	<ul style="list-style-type: none"> <li>• Consensus</li> <li>• Joint testimony</li> <li>• Failure proves need for Commission action</li> </ul>
Implementation	<ul style="list-style-type: none"> <li>• Develop details/fill in blanks</li> <li>• Disseminate information</li> <li>• Develop operating rules</li> </ul>	<ul style="list-style-type: none"> <li>• Consensus</li> <li>• Clarification</li> </ul>
Consolation Prize	<ul style="list-style-type: none"> <li>• Signal continuing interest</li> <li>• Placate/stall/deflect/vent</li> </ul>	<ul style="list-style-type: none"> <li>• Appeasement</li> <li>• Giving party something to take home</li> </ul>
Modeling/How-To	<ul style="list-style-type: none"> <li>• Create model</li> <li>• Develop basis for projections</li> </ul>	<ul style="list-style-type: none"> <li>• New procedure/rule/practice</li> </ul>

### III. SCOPING WORKSHOP CASE STUDY: THE EMF CONSENSUS GROUP

#### A. Context

11. In January 1991, the CPUC instituted its EMF investigation. The Commission required that electric and telephone utilities, including cellular companies, comment on what policies and actions were appropriate for the Commission to adopt given the current scientific understanding of the problem. Other interested parties were invited to participate as well. The comments filed in the spring of 1991 revealed that there was no consensus on whether EMFs pose a problem, let alone what the Commission could do. Some parties suggested that the Commission should convene an advisory group comprised of “stakeholders”<sup>1</sup> to give the Commission direction on policy options.

12. During the summer of 1991, the Commission held two prehearing conferences to discuss several issues: the usefulness of an advisory group in the power frequency phase of its investigation; the composition of an advisory group; and how an advisory group would operate. In October 1991, the CPUC convened a seventeen-member advisory group to provide recommendations on interim actions the CPUC could take until scientific evidence provides better direction for public policy. The group was asked to focus on EMFs in the electric power frequency range. Group members included representatives from citizens’ groups, government agencies, labor unions, and investor-owned and municipal utilities. The group was directed to reach its decisions by consensus, and so was dubbed the California EMF Consensus Group. In March 1992, the Consensus Group presented its report to the CPUC.<sup>2</sup> The report was filed as part of the record in the proceeding.

13. While the Consensus Group report contained a comprehensive set of recommendations, it was not a document that the Commission could adopt without a formal record. In June 1992, the Commission held another prehearing conference to determine a schedule for filing testimony and conducting hearings. Those activities happened in September and December, 1992, respectively, after which parties filed briefs and reply briefs. In July 1993, the Administrative Law Judge’s draft decision was circulated for comment. A final decision was issued in November 1993.

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<sup>1</sup> A stakeholder in this context is any person or party that has an interest in the Commission’s deliberations on EMFs.

<sup>2</sup> California EMF Consensus Group, Issues and Recommendations for Interim Response and Policy Addressing Power Frequency Electric and Magnetic Fields (EMFs), March 20, 1992. Report to the California Public Utilities Commission.

## B. Operation

14. The Consensus Group's task was monumental. The group met almost weekly for five months.<sup>3</sup> Frequently, meetings occurred over a two-day period. They were alternately held in northern and southern California. All meetings were open to the public, and the group reserved fifteen minutes at the end of each day for public comment. The group never agreed on whether meetings could be tape recorded, so they were not. Commission staff prepared summaries of each meeting that reported major decisions made by the group. These summaries were distributed to the group and to observers.

15. The group spent its first couple of meetings agreeing on operating principles and protocols. The group decided that it would make its recommendations by agreement of all seventeen members. In similar situations, other groups have chosen to define consensus as agreement of a majority or some other fraction of the group. The fact that the EMF Consensus Group chose total agreement meant that any one person could block a decision. While this was frustrating at times, it is the author's opinion that it ultimately resulted in a stronger set of recommendations. The group's recommendations represent a minimum level of agreement on the EMF issue, something that the Commission had not seen before.

16. One operating principle was particularly helpful in allowing the group to reach consensus at times when it seemed discussions were fruitless. The group adopted a system suggested by the facilitator where members could express not only whether they agreed, but the strength of their support. The "levels of consensus" were numbered as follows:

1. I can say an unqualified "yes" to the decision.
2. I find the decision perfectly acceptable.
3. I can live with the decision; I'm not especially enthusiastic about it.
4. I do not fully agree with the decision and need to register my view about it.  
However, I do not choose to block the decision, and will stand aside.
5. I do not agree with the decision and feel the need to stand in the way of this decision being accepted.
6. I feel that we have no clear sense of unity, and need to do more work if consensus is to be reached.

17. This system allowed the group to quickly assess how much support a given proposal had. It also provided an impetus to look for alternatives that would allow people to move from a "5" to a "4" position. In many situations, this distinction was very important and meant the difference between a consensus recommendation from the entire group and a non-consensus proposal from some portion of the group.

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<sup>3</sup> The Commission originally gave the Consensus Group 120 days in which to conduct its deliberations. However, the group found that it needed a few extra weeks to put its report into a format agreeable to all.

18. The group had the option of letting Commission staff facilitate its meetings or employing a professional facilitator; it chose the latter. This was a wise decision, particularly for an issue as emotionally charged as EMFs. The author and a colleague took turns chairing the meetings (reminding the group of deadlines and time commitments, and calling on group members), when the facilitator focused on process and group dynamics. The group also had a full-time administrative assistant who attended all meetings and coordinated administrative issues and mailings between meetings. For the last six weeks of the process, the group also hired an editor for its report. Costs for these additional staff, as well as the meeting rooms at hotels near airports, were paid by the utilities, with Commission authorization.<sup>4</sup>

19. In the first half of its deliberations, the group outlined the issues members believed needed to be addressed and examined the range of opinions within the group on those issues. This was the primary scooping exercise. In the second half of its deliberations, the group developed its recommendations and report. Throughout the process, but particularly at the end, group members had a lot of work to do between meetings. The group formed subcommittees to work on specific topics. These subcommittees sometimes met between meetings.

20. In the second half of its deliberations, the group brought in outside experts for consultation on specific topics, such as mitigation measures, research programs, and policy implications of different options. The cost of bringing in outside experts also was covered by the utilities. Commission staff arranged for the experts' visits.

### C. Influence On Outcomes

21. The Consensus Group's report to the CPUC provided in a single document the baseline issues upon which a representative range of interested parties could all agree. It is unlikely that this kind of product would have been achieved if the Commission had moved immediately into evidentiary hearings. The give and take in the consensus process, where parties had an opportunity to discuss other viewpoints openly and in-depth, allowed the group to come up with innovative solutions to some of the issues addressed by the group. For example, the group recommended that the Commission allow California investor-owned utilities to fund a research program within California. At the start of the group's deliberations, not all members were convinced that California needed a program of its own. However, by the end, all members recognized that California is unique in many respects, and that a research program tailored for California is appropriate.

22. Similarly, the group recommended that the Commission adopt an interim policy that authorizes utilities to implement no-cost or low-cost steps to reduce EMFs. This is different from the "prudent avoidance" policy frequently advocated in EMF policy debates. Some members felt that prudent avoidance was not well-defined and had acquired disparate meanings, depending on the speaker. The position adopted by the

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<sup>4</sup> The municipal utilities also helped pay for these costs, but their expenditures are not subject to CPUC regulation.

group represents an innovation on several concepts that stemmed from initial discussions of prudent avoidance.

23. The Consensus Group’s recommendations to the CPUC formed the basis of California policy, as is outlined in Table 2.

24. Had the CPUC entered into the formal hearing process right away, it is not likely that it would have received a fully developed set of proposals on which parties already agreed. The proposals were innovative in their use of resources, particularly in recommending that the CPUC direct investor-owned utilities to contribute to education and research programs directed by a sister state agency, the DHS. The recommendations were stronger because they were unanimous proposals from such a diverse group. I do not believe the Commission would have achieved the same outcome through the traditional process.

Table 2: Consensus Group Influence on California EMF Policy

<u>Consensus Group Recommendation</u>	<u>CPUC Order (D.93-11-013)</u>
<ul style="list-style-type: none"> <li>No-cost and low-cost steps to reduce fields in response to public concern and scientific uncertainty. No agreement on how to define “low-cost”</li> </ul>	<ul style="list-style-type: none"> <li>No-cost and low-cost steps (in the range of 4% of total project cost) to reduce EMF levels at new and upgraded facilities.</li> </ul>
<ul style="list-style-type: none"> <li>No agreement on what, if anything, to do about existing facilities.</li> </ul>	<ul style="list-style-type: none"> <li>Additional testimony on policy options for existing facilities.</li> </ul>
<ul style="list-style-type: none"> <li>Utilities should take public concern about EMFs in to account when siting new facilities.</li> </ul>	<ul style="list-style-type: none"> <li>Workshops to develop EMF design guidelines for new and upgraded facilities.</li> </ul>
<ul style="list-style-type: none"> <li>Utilities should conduct EMF measurements in the home and workplace.</li> </ul>	<ul style="list-style-type: none"> <li>Uniform residential and workplace EMF measurement program.</li> </ul>
<ul style="list-style-type: none"> <li>The CPUC should appoint an EMF Stakeholder Advisory Committee.</li> </ul>	<ul style="list-style-type: none"> <li>Stakeholder and public involvement to be determined by Department of Health Services (DHS).</li> </ul>
<ul style="list-style-type: none"> <li>EMF Education Program with DHS involvement; no agreement on funding level.</li> </ul>	<ul style="list-style-type: none"> <li>A \$1,489,000 four-year education program to be managed by DHS.</li> </ul>
<ul style="list-style-type: none"> <li>Coordinated statewide research program with DHS involvement. No agreement on funding level.</li> </ul>	<ul style="list-style-type: none"> <li>A \$5,600,000 four-year non-experimental and administrative research program to be managed by DHS.</li> </ul>
<ul style="list-style-type: none"> <li>California should work to facilitate establishment of a national EMF research program.</li> </ul>	<ul style="list-style-type: none"> <li>Authorization for investor-owned utilities to participate in federal experimental research to be conducted under the National Energy Policy Act of 1992.</li> </ul>

25. The consensus process allowed parties to build working relationships. It allowed parties to become very familiar with views besides their own, and to recognize more clearly why others take certain positions. The evidentiary hearings were more comprehensive and concluded more quickly because of the relationships and understandings the parties developed. After the Consensus Group had disbanded, parties met on their own to develop areas of agreement into joint testimony.

26. The working relationships developed during the Consensus Group process have allowed stakeholders to come together subsequently on quick notice to discuss issues of immediate interest. For example, in early 1993, before the draft decision had been released, the California Department of Education became concerned about perceived “EMF Disease Clusters” at schools throughout the state. The Department of Education was able to quickly convene many of the same groups that had participated in the Consensus Group – the investor-owned and municipal utilities, the DHS, citizens groups, CPUC staff – as well as groups specific to education issues like the PTA, to develop methods to address these concerns.

27. The members of the Consensus Group were not, for the most part, people who usually are involved in CPUC proceedings. Even the utility representatives were scientists and engineers who typically do not appear as witnesses at the CPUC. Very few members were familiar with how the CPUC operates and what type of product has the greatest success in front of the Commission. Prior to instituting its investigation, the Commission had not been a major player in the EMF debate; it had not, for example, been involved in biological or engineering research concerning EMF. Many Consensus Group members were actively involved with the organizations that conduct this type of research, and understood how to influence them. Only one or two members were familiar with how a regulatory body like the CPUC operates.

28. The author believes that the Consensus Group lost valuable time because it was not more familiar with, and did not avail itself of, opportunities to learn more about how policy is formulated at the CPUC. For example, two months elapsed between the time the Group submitted its report and the Commission called a prehearing conference to find out when parties were ready to go into the hearing room. Typically, two months is enough time for parties to work out their tentative testimony positions and determine how much time will be needed for hearings. As it was, parties were not prepared by the time of the prehearing conference; as a result, hearings did not start until December, nearly nine months after the report was submitted. A group more knowledgeable about the CPUC might have concluded hearings within six months of the report’s submission, and the Commission could have issued a draft decision earlier. It is the author’s opinion that the Group’s effectiveness was hampered by its lack of understanding of the institution setting in which it was operating.

#### **IV. SETTLEMENT/NEGOTIATION WORKSHOP CASE STUDY: DEVELOPMENT OF FINAL STANDARD OFFER 4**

##### **A. Context**

29. In 1986, the CPUC began development of Final Standard Offer 4 (FSO4), a long-term power purchase agreement between investor-owned utilities and qualifying facilities (QFs). The CPUC had authorized power purchases under Standard Offer contracts since the early 1980s; these contracts were California's way of implementing the Public Utilities Regulatory Policies Act of 1978, which entitles QFs to sell their output to utilities at the utilities' avoided costs. Key players in the formal proceeding process and the workshops included the investor-owned utilities, QFs and their trade organizations, and the CPUC's Division of Ratepayer Advocates. Other parties monitored the workshops and participated on a less regular basis.<sup>5</sup>

30. Final Standard Offer 4 was designed to replace interim Standard Offer 4, which had been suspended in 1986 due to over subscription. In developing Final Standard Offer 4, the CPUC sought to avoid the problem of over subscription by basing utility purchases on actual need, as determined by the CPUC's sister agency, the California Energy Commission. The CPUC also used Final Standard Offer 4 as an opportunity to test the competitiveness of California's independent energy markets. It did this by ordering the utilities to conduct auctions for the determined amount of need.

31. The fact that FSO4 was to be awarded through a competitive auction meant that the CPUC had to develop a format for conducting the auction. The Commission did this through the traditional regulatory framework. One of the tenets of the auction process was that it be "transparent." Bids were to be evaluated solely on the basis of price: could they meet or beat the utility benchmark resource against which they were bidding? The CPUC intended that the bid evaluation process would be purely mechanical. This meant that parties needed to understand upfront every calculation involved in bid evaluation. The Commission found that the complexity of this task did not lend itself well to the traditional regulatory process.

32. The process that evolved for developing Final Standard Offer 4 combined workshops and negotiating sessions with hearings. While a workshop is a publicly noticed gathering facilitated by Commission staff, negotiating sessions are private and are held as parties desire, without staff attendance. Items such as contract language or bid evaluation protocol were developed through a combination of workshops and negotiating sessions. Proposals were when submitted to the Commission as joint testimony, although not every party that participated in the workshops and negotiating sessions was a party to the joint testimony. After development of a formal record, the Commission would issue a

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<sup>5</sup> Because of the implications of workshop agreements for formal filings and litigated processes, most parties brought along technical experts and attorneys. The EMF Consensus Group was comprised entirely of technical experts. Attorneys became actively involved in the process when the hearings were held.

decision, frequently using the joint testimony as the basis for whatever it ordered. Operational details were often left open, and parties were directed to figure them out in further workshops. While on the surface these would seem to be implementation workshops, the implications of the issues being discussed were major enough that the workshops really were negotiating/settlement workshops.

33. As stated above, the development of FSO4 took many years. While there was no set formula for when workshops occurred, they usually were ordered in a major decision. For example, in June 1991 the CPUC reaffirmed its commitment to the auction process and outlined policies dealing with values for environmental externalities and creation of a “level playing field” both between technology types and between utilities and QFs. The version of FSO4 in circulation at the time needed to be modified to reflect these policies, so the Commission ordered workshops. Out of those workshops parties submitted a revised FSO4, which then became the subject of hearings. When the CPUC adopted the revised FSO4 in December 1993, it ordered further workshops to iron out inconsistencies and other issues that the Commission believed would be more expeditiously settled in an informal setting.

34. This cycle of hearings, workshops, and workshop reports by staff and/or joint filings by parties, continued for several years. Sometimes staff were ordered to prepare a report on the issues resolved in the workshop. Sometimes parties requested that staff file a report, and that the parties be able to review the report before it was filed. This is not something that the author advocates, as parties may try to use the staff report as a vehicle for advocating their positions. A more effective way of introducing a report into the record, in the author’s opinion, is to allow parties the opportunity to file comments on the report, another device the CPUC used during this proceeding.

#### B. Operation

35. Commission staff facilitate the FSO4 workshops, and were responsible for setting the date and time and ensuring that the workshops were properly noticed. Because the workshops were meetings sponsored by the CPUC, a government agency, they were open to anyone who cared to attend. Staff kept track of who attended each workshop, although these lists were not required and mainly were used so parties could send items to each other after the workshop and staff could keep a current list of who needed to be notified in the future.<sup>6</sup>

36. Sometimes a workshop was one day, other times workshops were held over several weeks. Almost always they were held at CPUC headquarters in San Francisco. While parties were given issues to resolve in each set of workshops, they were not given a task quite as overarching as that of the EMF Consensus Group. The CPUC was not expecting a report with recommendations, but it was expecting progress of some sort, even it was only to say “this is where the parties stand on these issues, these are the solutions parties favor, and this is why.” The workshops did not operate under formal protocols, although

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<sup>6</sup> Although the CPUC keeps a formal record of parties to a proceeding, many people attended the workshops who were not directly involved in the litigation aspects of the proceeding.

staff facilitators usually posted a basic set of ground rules to keep parties focused and courteous of one another. At the FSO4 workshops facilitated by the author, the ground rules included:

- Identify yourself.
- Be brief and take time to be clear.
- Listen to each other without interrupting; listen fully before responding.
- Search for “interests” (the reason) in the back of “positions” (what people are explicitly asking for).
- Help the facilitators help group stay on focus.
- Develop list of additional issues as we go along.

37. Staff also served as an “institutional memory,” reminding parties of prior Commission decisions and preventing them from revisiting issues the Commission had already resolved. Staff facilitators viewed themselves as neutral third parties, who were there to provide a forum in which parties can discuss and hopefully resolve issues. Naturally, staff might develop opinions about various issues in the course of discussion. However, the role of the facilitator is not to dictate outcomes, but to help parties identify solutions or areas of agreement.

38. The tension between an open forum and the desire of the primary participants (utilities, QFs, ratepayer advocates) to reach closure was tricky. Staff facilitators found that breaks and time between meetings were key to progress in the workshops. The dynamic was such that during the workshop, parties would discuss ideas and interests. During the breaks and between meetings, parties often figured out where they could come to agreement. And of course, breaks were instrumental in preventing parties from verbally abusing each other when situations became heated.

### C. Influence on Outcomes

39. Given the breadth of issues covered and the amount of time over which the FSO4 workshops occurred, it is not easy to point directly to areas where the workshops influenced policy. It is fair to say that the workshop products, be they staff reports on which parties filed comments, or joint testimony, narrowed the discussion on the record and provided the CPUC with a more focused set of options. Parties were familiar with the items under discussion, and could focus their testimony directly on ways to resolve the issues. As with the Consensus Group, the agreements that parties reached in the workshop setting were in some cases more innovative than options that would have been presented had the Commission resolved everything without workshops.

40. Unlike the EMF Consensus Group, the parties involved in the development of Final Standard Offer 4 knew each other well and were very familiar with the CPUC decision making process. This was both an advantage and a disadvantage. It was useful because parties understood that whatever they worked out in workshops would be subject to the formal hearing process; the workshop agreements were not the final word and parties understood this. Parties also understood that workshop agreements are frequently

adopted by the Commission because the agreements represent outcomes with which desperate interests were satisfied.

41. Familiarity with the system was a disadvantage because parties used the system to stall if they were unhappy with the progress in the workshops. Frequently a disgruntled party would go outside the workshop process to air complaints with the Administrative Law Judge or, more frequently, Commissioners. This derailed the process in several ways. First, the workshop setting is one in which parties are not necessarily bound to any particular position. The opportunity for parties to explore why others advocate a certain position often allows parties to develop a different understanding of something they might have thought was unreasonable. This deeper level of understanding – not just the position being taken, but the rationale for the position – allowed parties at the FSO4 workshops to develop contract provisions that met the needs of all involved. When a party spoke with a decision maker about topics still being debated in workshops, it slowed the group's momentum and threatened the integrity of agreements that might be in progress. This in turn created an atmosphere of distrust. Needless to say, if parties do not trust each other they are not likely to want to agree with each other. Finally, if one party spoke with a decision maker, other parties felt compelled to follow up and present their side of the story. This took parties away from the workshops both physically and mentally.

## **V. Conclusions**

42. Workshops can be a highly effective way of focusing proceedings and developing solutions with which most parties are satisfied without using a great deal of formal proceeding time. At the same time, workshops can be resource intensive, and frustrating for participants. Also, unless decision makers give clear direction about issues to be addressed and, in some cases, the institutional setting into which the workshop product will fit, the workshop may not be of maximum use to the decision makers. However, the working relationships that develop in workshops are invaluable, and can assist decision makers well into the future because parties know the key players and interests of all involved.