



CALIFORNIA PUBLIC UTILITIES COMMISSION

BILL ANALYSIS

LEG-4
388

BILL SUMMARY

AB 2490 (Canciamilla) California Public Utilities Commission: decisions and reporting
As Introduced 2/21/02

Recommendation: Support the Section 2 of the bill (statement of reasons for late report); Oppose the deadline for decision unless amended.

Summary: This bill is addressed to the perception that CPUC (Commission) actions could be more timely in two specific areas: (1) The issuance of Commission orders following submittal and following issuance of a proposed decision (PD);(2) Transmittal of reports required by the Legislature.

With respect to (1), the bill proposes that the Commission issue a written order extending the time for decision and a reason for delay if a decision is not forthcoming more than 180 days after submission or more than 90 days after issuance of a PD, and in no case can the extension for the time of decision exceed 60 days. With respect to (2), the bill proposes that the Commission give a written statement of reasons if a report due date is missed within ten days after the report submission date.

Analysis: Section 1 of the bill amends PU Code 311 by adding language to Section 311(d) and (g)(2) that provides:

“ In no event shall the Commission issue a decision in any matter before it more than 180 days after submission for decision or more than 90 days after issuance of a proposed decision in any matter unless the Commission first issue a written order extending the time for a final decision, not to exceed 60 additional days and indicates in that written order the stated cause for delay.”

This language has the effect of requiring a Commission decision within 240 days after submission and 150 days after issuance of a proposed decision in all cases.

Section 311(d) requires that a proposed decision of an administrative law judge be filed with the Commission not later than 90 days after submission, followed by a 30-day comment period. The effect of the “180-day after submission” requirement is to give the Commission 60 days for a decision and an additional 60 days after a statement of reasons for delay.

PU Code 311(e) requires notice and opportunity for comment on “alternate” decisions and a delay in a vote on an alternate of not less than 10 days after service on the alternate on parties. Section 311(e) was drafted in its current form by the Calderon-Peace-McBride Judicial Review Act of 1998, SB 779, Stats. 1998, Chapter 886 which added the 10-day minimum comment period.

Comments: Section 1 of the bill amends PU Code 311 by adding language to Section 311(d) and (g)(2) that provides:

“ *In no event shall the Commission issue a decision in any matter before it more than 180 days after submission for decision or more than 90 days after issuance of a proposed decision in any matter unless the Commission first issue a written order extending the time for a final decision, not to exceed 60 additional days and indicates in that written order the stated cause for delay.*”

This language has the effect of requiring a Commission decision within 240 days after submission and 150 days after issuance of a proposed decision in all cases.

Establishing a hard deadline for decision of not more than 120 days the close of the comment period on the PD risks truncating the iterative decision process envisioned by SB 779. It will strain the resources of both parties and the Commission. However, it may make sense to provide a procedure for extending the time for decision by order periodically, so that the perception that cases languish at the Commission without attention can be dispelled. This can be accomplished by Commission order, and does not require a statute.

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commission. The bill would require the report to be submitted to the Governor and the Legislature within 10 days of the missed deadline.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 311 of the Public Utilities Code is amended to read:

311. (a) The commission, each commissioner, the executive director, and the assistant executive directors may administer oaths, certify to all official acts, and issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state.

(b) The administrative law judges may administer oaths, examine witnesses, issue subpoenas, and receive evidence, under rules that the commission adopts.

(c) The evidence in any hearing shall be taken by the commissioner or the administrative law judge designated for that purpose. The commissioner or the administrative law judge may receive and exclude evidence offered in the hearing in accordance with the rules of practice and procedure of the commission.

(d) Consistent with the procedures contained in Sections 1701.1, 1701.2, 1701.3, and 1701.4, the assigned commissioner or the administrative law judge shall prepare and file an opinion setting forth recommendations, findings, and conclusions. The opinion of the assigned commissioner or the administrative law judge is the proposed decision and a part of the public record in the proceeding. The proposed decision of the assigned commissioner or the administrative law judge shall be filed with the commission and served upon all parties to the action or proceeding without undue delay, not later than 90 days after the matter has been submitted for decision. The commission shall issue its decision not sooner than 30 days following filing and service of the proposed decision by the assigned commissioner or the administrative law judge, except that the 30-day period may be reduced or waived by the commission in an unforeseen emergency situation or upon the stipulation of all parties to the proceeding or as otherwise provided by law. *In no event shall the commission issue a decision in any matter before it more than 180 days after submission for decision or more than 90 days after issuance of a proposed decision in any matter unless the commission first issues a written order extending the time for a final decision, not to exceed 60 additional days, and indicates in that written order the stated cause for the delay.* The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision. Where the modification is of a decision in an adjudicatory hearing it shall be based upon the evidence in the record. Every finding, opinion, and order made in the proposed decision and approved or confirmed by the commission shall, upon that approval or confirmation, be the finding, opinion, and order of the commission.

(e) Any item appearing on the commission's public agenda as an alternate item to a proposed decision or to a decision subject to subdivision (g) shall be served upon all parties to the proceeding without undue delay and shall be subject to public review and comment before it may be voted upon. For purposes of this subdivision "alternate" means either a substantive revision to a proposed

decision that materially changes the resolution of a contested issue or any substantive addition to the findings of fact, conclusions of law, or ordering paragraphs. The commission shall adopt rules that provide for the time and manner of review and comment and the rescheduling of the item on a subsequent public agenda, except that the item may not be rescheduled for consideration sooner than 10 days following service of the alternative item upon all parties. The commission's rules may provide that the time and manner of review and comment on an alternate item may be reduced or waived by the commission in an unforeseen emergency situation.

(f) The commission may specify that the administrative law judge assigned to a proceeding involving an electrical, gas, telephone, railroad, or water corporation, or a highway carrier, initiated by customer or subscriber complaint need not prepare, file, and serve an opinion, unless the commission finds that to do so is required in the public interest in a particular case.

(g) (1) Prior to voting on any commission decision not subject to subdivision (d), the decision shall be served on parties and subject to at least 30 days public review and comment. Any alternate to any commission decision shall be subject to the same requirements as provided for alternate decisions under subdivision (e). For purposes of this subdivision, "decision" also includes resolutions, including resolutions on advice letter filings.

(2) The 30-day period may be reduced or waived in an unforeseen emergency situation, upon the stipulation of all parties in the proceeding, for an uncontested matter in which the decision grants the relief requested, or for an order seeking temporary injunctive relief. *In no event shall the commission issue a decision in any matter before it more than 180 days after submission for decision or more than 90 days after issuance of a proposed decision in any matter unless the commission first issues a written order extending the time for a final decision, not to exceed 60 additional days, and indicates in that written order the stated cause for the delay.*

(3) This subdivision does not apply to uncontested matters that pertain solely to water corporations, or to orders instituting investigations or rulemakings, categorization resolutions under Sections 1701.1 to 1701.4, inclusive, or orders authorized by law to be considered in executive session. Consistent with regulatory efficiency and the need for adequate prior notice and comment on commission decisions, the commission may adopt rules, after notice and comment, establishing additional categories of decisions subject to waiver or reduction of the time period in this section.

(h) Notwithstanding any other provision of law, amendments, revisions, or modifications by the commission of its Rules of Practice and Procedure after January 1, 1999, shall be submitted to the Office of Administrative Law for prior review in accordance with Sections 11349, 11349.3, 11349.4, 11349.5, 11349.6, and 11350.3 of, and subdivisions (a) and (b) of Section 11349.1 of, the Government Code. If the commission adopts an emergency revision to its Rules of Practice and Procedure based upon a finding that the revision is necessary for the preservation of the public peace, health and safety, or general welfare, this emergency revision shall only be reviewed by the Office of Administrative Law in accordance with subdivisions (b) to (d), inclusive, of Section 11349.6 of the Government Code. The emergency revision shall become effective upon filing with the Secretary of State and shall remain in effect for no more than 120 days. A petition for writ of review pursuant to Section 1756 of a commission decision amending, revising, or modifying its Rules of Practice and Procedure shall not be filed until the regulation has been approved by the Office of

Administrative Law, the Governor, or a court pursuant to Section 11350.3 of the Government Code. If the period for filing the petition for writ of review would otherwise have already commenced under Section 1733 or 1756 at the time of that approval, then the period for filing the petition for writ of review shall continue until 30 days after the date of that approval. Nothing in this subdivision shall require the commission to comply with Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. This subdivision is only intended to provide for the Office of Administrative Law review of procedural commission decisions relating to Commission Rules of Practice and Procedure, and not General Orders, resolutions, or other substantive regulations.

SEC. 2. Section 316.7 is added to the Public Utilities Code, to read:

316.7. (a) The commission shall submit a report to the Legislature whenever the commission, or the commission's staff, misses a statutory deadline to meet or act on a matter before the commission. The report shall be submitted within 10 days of the missed deadline.

(b) The report shall state the nature of the deadline that was missed and the reasons for missing that deadline.

(c) The commission shall submit copies of the report to the Governor, the chairs of the Assembly and Senate policy committees with jurisdiction over utility issues, the Chair of the Assembly Budget Committee, and the Chair of the Senate Budget and Fiscal Review Committee.