

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 25, 2004

To: The Commission
(Meeting of May 27, 2004)

From: Alan LoFaso, Director
Office of Governmental Affairs (OGA) — Sacramento

**Subject: SB 1624 (Bowen) - Public Utilities Commission: Office of
Ratepayer Advocates.**
As amended April 27, 2004

Legislative Committee Recommendation: Oppose.

Summary: This bill would authorize ORA to be a party in review of Commission decisions in appellate court.

Digest: Existing law, P.U. Code §309.5, establishes the Office of Ratepayer Advocates (ORA) within the Commission and requires ORA to represent utility customer interests.

This bill would provide that ORA may be a party in any judicial proceeding challenging a Commission action.

Analysis: According to the author, this bill is intended “to clarify the right of the Office of Ratepayer Advocates within the State Public Utilities Commission (PUC) to intervene in PUC proceedings and in the judicial review of decisions.”¹

It has been suggested that SB 1624 simply clarifies existing law in permitting the Office of Ratepayer Advocates (ORA) to appear as, and have all the rights of a party in any ...judicial proceeding pursuant to Article 3 (commencing with Section 1756) of Chapter 9 of the Public Utilities Code. It is the view of the Legal Division that this proposed amendment is not a clarification of existing authority but would confer new authority on ORA.

The plain language of the statute makes clear that ORA does not have the ability to represent interests of customers and subscribers by filing a petition for writ of review. Pursuant to section 309.5, ORA is authorized to represent the interests of public utilities

¹ Senate Rules Committee, Floor analysis of SB 1624, at p. 1.

customers and subscribers within the jurisdiction of the Commission. Filing a petition in court is not “within the jurisdiction of the Commission”. There is no need to address the legislative history since the statutory language makes plain that ORA is authorized to represent customers within the jurisdiction of the Commission.

The plain meaning of section 309.5 is clear, and it is not necessary to resort to a review of the legislative history. Nevertheless, review of legislative history for a recent amendment to section 309.5 supports this view. In 2001, Pacific Bell challenged the right of ORA to initiate a complaint proceeding at the Commission. Soon thereafter, the Legislature added subsection (g), which stated, among other things, that ORA must meet and confer with a regulated entity prior to filing a complaint with the Commission concerning the violation of a law or Commission rule or order. It also amended subsection (a) to change the mandate of ORA from representing customers and subscribers in Commission proceedings to “within the jurisdiction of the commission”. According to contemporaneous bill language, the 2001 amendments were intended to clarify “the legislative intent behind [s]ection 309.5 by eliminating language that has been interpreted by some entities to limit ORA’s role to open CPUC proceedings”. This bill was intended to clarify the statute as the CPUC had interpreted it, to uphold ORA’s ability to file complaints and initiate proceedings in various decisions and orders. (SB 201, as amended July 5, 2001, Bill Analysis by Kelly Boyd, Assembly Committee on Utilities and Commerce, July 9, 2001, at 4-5).

The Legislature has intended to limit ORA’s representation of customers to matters within the jurisdiction of the Commission. To take the next step and authorize ORA to pursue judicial review of Commission decisions will confer new authority upon ORA.

Mary McKenzie of the Commission’s Legal Division contributed substantially to this memo.

LEGISLATIVE HISTORY

Senate Floor: 27-9 (Pass to Assembly) (5/25/04)

Senate APPR.: 12-0 (Pass) (5/10/04)

Senate E.U.&C.: 5-0 (Pass) (4/13/04)

SUPPORT/OPPOSITION

Support: California Alliance for Consumer Protection (Verified 4/26/04)

Opposition: None on file.

LEGISLATIVE STAFF CONTACT

Alan LoFaso, Legislative Director
CPUC-OGA

alo@cpuc.ca.gov
(916) 327-7788

Date: May 25, 2004

BILL LANGUAGE:

BILL NUMBER: SB 1624 AMENDED
BILL TEXT

AMENDED IN SENATE APRIL 27, 2004
AMENDED IN SENATE MARCH 22, 2004

INTRODUCED BY Senator Bowen

FEBRUARY 20, 2004

An act to amend Section 309.5 of the Public Utilities Code,
relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 1624, as amended, Bowen. Public Utilities Commission: Office of Ratepayer Advocates.

Existing law establishes a division within the Public Utilities Commission to represent the interests of public utility customers and subscribers. *Existing law requires the commission to develop a code of conduct and procedures for ensuring that advocates and their representatives from the division that are representing the interests of customers and subscribers on a particular case or proceeding are not advising decisionmakers on the same case or proceeding.*

This bill would replace references to the division with the Office of Ratepayer Advocates, and would provide that the office is authorized to appear as a party and have all the rights of a party, in any commission proceeding or in any judicial proceeding challenging a commission decision. *The bill would require the commission to develop a code of conduct and procedures to ensure that advocates and their representatives from the office that are representing the interests of customers and subscribers on a particular case or proceeding, do not advise decisionmakers, or have preferential access to information regarding the commission's deliberative process, on the same case or proceeding.*

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

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

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

309.5. (a) There is within the commission the Office of Ratepayer Advocates, to represent the interests of public utility customers and subscribers within the jurisdiction of the commission. The Office of Ratepayer Advocates may appear as, and have all the rights of, a party in any commission proceeding pursuant to Article 1 (commencing with Section 1701), Article 2 (commencing with Section 1731), Article 4 (commencing with Section 1791), and Article 6 (commencing with Section 1821) of, or in a judicial proceeding pursuant to Article 3 (commencing with Section 1756) of, Chapter 9. The goal of the Office of Ratepayer Advocates is to obtain the lowest possible rate for service consistent with reliable and safe service

levels. For revenue allocation and rate design matters, the Office of Ratepayer Advocates shall primarily consider the interests of residential and small commercial customers. The amendments made to this section by Chapter 440 of the Statutes of 2001 are not intended to expand the representation and responsibilities of the Office of Ratepayer Advocates.

(b) The director of the Office of Ratepayer Advocates shall be appointed by and serve at the pleasure of the Governor, subject to confirmation by the Senate. The director shall annually appear before the appropriate policy committees of the Assembly and the Senate to report on the activities of the Office of Ratepayer Advocates.

(c) The commission shall, by rule or order, provide for the assignment of personnel to, and the functioning of, the Office of Ratepayer Advocates. The Office of Ratepayer Advocates may employ experts necessary to carry out its functions. Personnel and resources shall be provided to the Office of Ratepayer Advocates at a level sufficient to ensure that customer and subscriber interests are fairly represented in all significant proceedings.

(d) The commission shall develop appropriate procedures to ensure that the existence of the Office of Ratepayer Advocates does not create a conflict of roles for any employee or his or her representative or *legal counsel*. The procedures shall include, but shall not be limited to, the development of a code of conduct and procedures for ensuring that advocates and their representatives on a particular case or proceeding are not advising decisionmakers, or have *preferential access to information regarding the commission's deliberative process*, on the same case or proceeding.

(e) The Office of Ratepayer Advocates may compel the production or disclosure of any information it deems necessary to perform its duties from entities regulated by the commission provided that any objections to any request for information shall be decided in writing by the assigned commissioner or by the president of the commission if there is no assigned commissioner.

(f) There is hereby created the Public Utilities Commission Ratepayer Advocate Account in the General Fund. Moneys from the Public Utilities Commission Utilities Reimbursement Account in the General Fund shall be transferred in the annual Budget Act to the Public Utilities Commission Ratepayer Advocate Account. The funds in the Public Utilities Commission Ratepayer Advocate Account shall be utilized exclusively by the Office of Ratepayer Advocates in the performance of its duties. The commission shall annually submit a staffing report containing a comparison of the staffing levels for each five-year period.

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

(1) The number of personnel years assigned to the Office of Ratepayer Advocates.

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

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

(h) The Office of Ratepayer Advocates shall agree to meet and confer in an informal setting with a regulated entity prior to issuing a report or pleading to the commission regarding alleged

misconduct, or a violation of a law or a commission rule or order, raised by the Office of Ratepayer Advocates in a complaint. The meet and confer process shall be utilized as an informal means of attempting to reach resolution or consensus on issues raised by the Office of Ratepayer Advocates regarding any regulated entity in the complaint proceeding.