

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 23, 2005

To: The Commission
(Meeting of May 26, 2005)

From: Delaney Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **Senate Bill 608 (Escutia)** Public Utilities Commission:
Division of Ratepayer Advocates: office of the public advisor
As amended April 18, 2005

Legislative Subcommittee Recommendation: Oppose unless amended

Summary: SB 608 would change the name of the Office of Ratepayer Advocates to the Division of Ratepayer Advocates; authorize the director to appoint an attorney to represent the division, who reports to and serves at the pleasure of the director; requires the director to develop a budget for the division, subject to final approval by the commission; states the purpose of the public advisor is to assist ratepayers in participating in commission hearings and proceedings; and deletes the requirement for the public advisor's office to have 3 employees in the Los Angeles office.

Digest: Existing law, grants the Public Utilities Commission has regulatory authority over public utilities and can establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. Existing law (PU Code Section 309.5(a)) establishes a division, known as the Office of Ratepayer Advocates, within the commission to represent the interests of public utility customers and subscribers within the jurisdiction of the commission. Existing law (PU Code Section 309.5 (c)) requires the commission to provide personnel and resources to the division sufficient to ensure that customer and subscriber interests are fairly represented in all significant commission proceedings.

This bill would rename the Office of Ratepayer Advocates (ORA) as the Division of Ratepayer Advocates and would provide that the purpose of the division is to represent and advocate on behalf of the interests of public utility customers and subscribers in the state. The bill would require the commission to provide personnel and resources to the division sufficient to ensure that customer and subscriber interests are effectively represented in all significant proceedings and forums.

Existing law (PU Code Section 321) requires the commission to establish an office of the public advisor to assist members of the public and ratepayers who desire to testify before or present information to the commission in any hearing or proceeding of the commission open to the public. Existing law (PU Code Section 321.5) requires a separate office of the public advisor in the Los Angeles office of the commission, staffed by a minimum of 3 employees.

This bill would delete the requirement that the office of the public advisor in the Los Angeles office of the commission have a minimum of 3 employees. The bill would state that the purpose of the office of the public advisor is to assist members of the public and ratepayers who desire to testify before or present information to the commission in any hearing or proceeding of the commission. The bill would require the public advisor to publicize the commission's programs for encouraging and supporting participation in the commission's proceedings.

Division Analysis (Legal):

The amendments to 309.5(a) and (c) as proposed by SB 608 would expand ORA's standing. Existing law allows ORA to participate in all significant Commission proceedings. Deletion of the phrase "within the jurisdiction of the commission" from section (a) and insertion of ". . . and forums" in (c) would allow ORA to formally intervene in other non-Commission proceedings in which the Commission itself has represented the interests of California.

SB 608 also would require complete separation of legal and other personnel between ORA and the rest of the Commission staff to ensure that confidential information is not disclosed to ORA if it appears as an adverse party in a proceeding in which the Commission itself also has appeared.

Recommended Amendments

The recommended amendments were developed jointly by Legal Division and the Director of ORA and are supported by both entities.

1. Restore "within the jurisdiction of the commission" to the first sentence of 309.5(a)
2. In 309.5(c) delete "and forums."

LEGISLATIVE HISTORY

SB 960 (Leonard) Chapter 856, Statutes of 1996 – Created the Office of Ratepayer Advocates, made the director an appointee of the Governor and made other technical changes to the code governing ORA.

STATUS:

SB 608 was voted out of the Senate Energy, Utilities & Communications Committee on April 14, 2005 by a vote of 8-2 and out of the Senate Appropriations Committee on May 2, 2005 by a vote of 8-4. SB 608 is currently pending action on the Senate Floor.

SUPPORT/OPPOSITION (as of May 12, 2005)

Support: Office of Ratepayer Advocates

Opposition: Pacific Gas & Electric

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Date: May 23, 2005

BILL NUMBER: SB 608 AMENDED
BILL TEXT

AMENDED IN SENATE APRIL 18, 2005

AMENDED IN SENATE MARCH 31, 2005

INTRODUCED BY Senator Escutia

FEBRUARY 22, 2005

An act to amend Sections 309.5 and 321 of, and to repeal Section 321.5 of, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 608, as amended, Escutia. Public Utilities Commission:
Division of Ratepayer Advocates: office of the public advisor.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities and can establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. Existing law establishes a division, known as the Office of Ratepayer Advocates, within the commission to represent the interests of public utility customers and subscribers within the jurisdiction of the commission. Existing law requires the commission to provide personnel and resources to the division sufficient to ensure that customer and subscriber interests are fairly represented in all significant commission proceedings.

This bill would rename the Office of Ratepayer Advocates as the Division of Ratepayer Advocates and would provide that the purpose of the division is to represent and advocate on behalf of the interests of public utility customers and subscribers in the state. The bill would require the commission to provide personnel and resources to the division , *including attorneys and other legal support*,

sufficient to ensure that customer and subscriber interests are effectively represented in all significant proceedings and forums.

The bill would authorize the director of the division to appoint a lead attorney to represent the division.

(2) Existing law requires the commission to establish an office of the public advisor to assist members of the public and ratepayers who desire to testify before or present information to the commission in any hearing or proceeding of the commission open to the public. Existing law requires a separate office of the public advisor in the Los Angeles office of the commission, staffed by a minimum of 3 employees.

This bill would delete the requirement that the office of the public advisor in the Los Angeles office of the commission have a minimum of 3 employees. The bill would state that the purpose of the office of the public advisor is to assist members of the public and ratepayers who desire to testify before or present information to the commission in any hearing or proceeding of the commission. The bill

would require the public advisor to publicize the commission's programs for encouraging and supporting participation in the commission's proceedings.

(3) Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime.

Because the bill would expand the entities from which the Division of Ratepayer Advocates can request information, including unregulated affiliates of public utilities and exempt wholesale generators, this bill would impose a state-mandated local program by expanding the definition of a crime.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

SECTION 1.

The Legislature finds and declares all of the following:

(a) It is the intent of the Legislature to ensure the protection and advancement of ratepayer interests with respect to public utility matters.

(b) The Office of Ratepayer Advocates is an independent division of the Public Utilities Commission that advocates solely on behalf of public utility ratepayers.

(c) The goal of the Office of Ratepayer Advocates is to advocate on behalf of ratepayers to obtain the lowest possible rates for public utility service consistent with safe and reliable service levels, and to ensure that utility customers have access to the best possible information about their options and choices.

(d) In order to support this goal, it is necessary to clarify the role of the Office of Ratepayer Advocates and to provide it with the necessary tools to accomplish its goal.

SEC. 2. Section 309.5 of the Public Utilities Code is amended to read:

309.5.

(a) There is within the commission a Division of Ratepayer Advocates to represent and advocate on behalf of the interests of California public utility customers and subscribers. The goal of the division shall be to obtain the lowest possible rate for service consistent with reliable and safe service levels. For revenue allocation and rate design matters, the division shall primarily consider the interests of residential and small commercial customers.

(b) The director of the division 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 division.

(c) The director shall develop a budget for the division which

shall be subject to final approval of the commission. In accordance with the approved budget, the commission shall, by rule or order, provide for the assignment of personnel to, and the functioning of, the division. The division may employ experts necessary to carry out its functions. Personnel and resources ~~shall be provided~~, including attorneys and other legal support, shall be provided by the commission to the division at a level sufficient to ensure that customer and subscriber interests are effectively represented in all significant proceedings and forums. The director may appoint ~~an~~ a lead attorney who shall represent the division, and shall report to and serve at the pleasure of the director. All attorneys assigned by the commission to perform services for the division shall report to and be directed by the lead attorney appointed by the director.

(d) The commission shall develop appropriate procedures to ensure that the existence of the division does not create a conflict of roles for any employee. 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 on the same case or proceeding.

(e) The division may compel the production or disclosure of any information it deems necessary to perform its duties from any entity 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 division in the performance of its duties as determined by the director. The director 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 Division of Ratepayer Advocates.

(2) The total dollars expended by the Division 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 Division of Ratepayer Advocates.

(h) The division shall 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 division in a complaint. The meet and confer process shall be utilized in good faith to reach agreement on issues raised by the division regarding any regulated

entity in the complaint proceeding.

SEC. 3. Section 321 of the Public Utilities Code is amended to read:

321.

(a) The commission shall establish an office of the public advisor and shall appoint a public advisor, including a separate office in the Los Angeles office of the commission. The commission may employ staff as necessary to carry out the duties of the office of the public advisor. The office of the public advisor shall assist members of the public and ratepayers who desire to testify before or present information to the commission in any hearing or proceeding of the commission. The public advisor shall advise the commission on procedural matters relating to public participation in proceedings of the commission.

(b) The public advisor and executive director shall publicize the commission's programs for encouraging and supporting participation in the commission's proceedings.

SEC. 4. Section 321.5 of the Public Utilities Code is repealed.

SEC. 5.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.