

**CONCEPTS FOR PROMOTING TRANSPARENCY AND ACCOUNTABILITY  
IN THE ACTIVITIES OF THE CPUC  
REGULATING PROVIDERS OF ESSENTIAL SERVICES (PUBLIC UTILITIES)**

- (1) REDUCE SECRECY/INCREASE TRANSPARENCY CONCERNING UTILITIES' COSTS OF SERVICE, QUALITY OF SERVICE, OPERATIONAL STANDARDS AND CHALLENGES, SAFETY RISKS, AND EVOLVING TRENDS IN EACH OF THESE AREAS.
- (2) REDUCE SECRECY/IMPROVE TRANSPARENCY CONCERNING COMMUNICATIONS AND INTERACTIONS BETWEEN THE COMMISSION AND UTILITIES.
- (3) FULLY DEVELOP SKILL SETS AND PROFESSIONALISM OF THE COMMISSION STAFF.
- (4) INCREASE AVAILABILITY OF INFORMATION TO THE PUBLIC.
- (5) IMPROVE OPPORTUNITIES FOR THE PUBLIC TO PARTICIPATE IN CPUC PROCEEDINGS.
- (6) ASSURE FAITHFUL EXECUTION OF THE STATUTES THAT GUIDE THE CPUC AND PROMOTE REASONED DECISION-MAKING WHERE THE STATUTES GIVE THE CPUC DISCRETION.

AB 825 begins to address several of these issues in an insightful and progressive manner. The suggestions offered below are intended to improve the practical effectiveness of the bill's initiatives.

**SECRECY AND TRANSPARENCY**

AB 825 makes a significant statement in addressing PU Code 583, which creates a presumption of confidentiality for information provided by utilities to the CPUC. In proposed subdivisions 583(c) and (d) the bill codifies current practice in some respects, allowing administrative law judges to establish the parameters for confidentiality in CPUC proceedings where utility information may be the basis for a commission decision. In proposed subdivision (b), requiring a public summary of information for which a claim of confidentiality is made and sustained, the bill attempts to mitigate the blackout effect of a claim of confidentiality.

An important limitation of the bill's approach is that it applies only to formal proceedings, while much of what the CPUC does is outside the formal hearing room where ALJs may prevail. The Commission's operating divisions obtain information and act on it outside of formal proceedings. This is often where issues related to tariffs, service quality, operational standards, customer relations and safety are addressed. The current language of PU Code section 583 specifically authorizes the Commission to limit or reverse the presumption of the confidentiality. AB 825 should declare the public's interest in transparency of utility information and direct the Commission to promulgate its order concerning those matters which ought presumptively to be withheld, all other information to be posted on the Commission's and utility's website consistent with new sections 468 and 717.

The periodic audits of utility activities, finances and taxes are very important in this regard. AB 825 provides for their publication; it should also assure that there are adequate resources – personnel and skills – to accomplish these audits on time and in depth. AB 825 should include specific language in the user fee statute to support the audit function, including personnel in the professional disciplines.

Excessive secrecy can undermine the public's confidence. By affording the public a more expeditious judicial remedy for issues under Bagley-Keene and the Public Records Act, AB 825 speeds judicial resolution of disputes over withholding information and decisional processes (amended section 1759). This is an appropriate back-up for the direct approach suggested above.

AB 825 does not currently address settlements and negotiations. These are important processes for simplifying issues and disputes, and getting good outcomes for the public, but they are inherently secret and exclusive. AB 825 should address the settlement process by setting out standards for approval of settlements that describe generally the basis for the outcomes and the effect on the public both in terms of rates and costs and impacts on quality of service and safety. This could entail codifying the CPUC's current procedural rules and substantive standards, with a public interest gloss since what the CPUC does affects the public as a whole, not just the parties before it. A new section 1706.5 might be a vehicle for such a proposal.

AB 825 should address non-public procedures for formulating and reviewing energy contract terms as a device for avoiding public airing of the contracts when up for approval.

#### ACCOUNTABILITY AND INTERNAL ORGANIZATION/CONTROLS

New sections PU Code 309.1 and 309.2 appear to be focused on improving the internal administration of the CPUC to achieve better accountability for performance of the CPUC's statutory responsibilities. AB 309.1 appears intended to assure that staff resources are primarily devoted to statutory duties laid out by the Legislature. AB 309.2 appears intended to assure that the workings of internal administrative controls are communicated to and are under the direct control of the relevant decision-makers. These are useful innovations.

Improved performance includes both meaningful accountability and adequate resources. Improved safety oversight, for example, requires sufficient engineering, accounting and investigative expertise and familiarity with the affected industries and technologies. AB 825 should ALSO include amendments to the CPUC's user fee funding scheme, PU Code sections 401 ff., to assure that the CPUC has sufficient resources to accomplish its duties, including the expanded communications responsibilities under PU Code 314.5, 468 and 717 proposed by the bill, and as proposed below for the Public Advisor. PU Code section 421(d) (dealing with railroad user fees) provides a potential model for accountability for user fee funds that assigns a role for the State Auditor.

#### EXPANDED PUBLICATION

Proposed new section 717, amended section 314.5 and new section 468 propose publication of additional information on the Commission's website. The new publications include Commission audits of utilities (314.5), plain language descriptions of rate changes

and the basis for the rate changes (468), and the terms of electricity contracts, an important driver of electric rates (717). More information about utility costs and their determinants in an accessible format and intelligible language can empower the public, and is a good in itself. This is not a significant departure from current practice.

Rather than a piecemeal approach to on-line publication, the bill might take a comprehensive approach to on-line publication, assuring that in addition to the matters specifically covered in section 314.5, 468 and 717, matters are covered relating to formal testimony in cases; safety reports and investigations and related correspondence; gas procurement contracts; service complaints and their resolution; the determinants for user fees; etc.

Specifically with respect to publishing the section 314.5 audits, the legislation should assure that the Commission is fully resourced pursuant to section 431 to accomplish both the audits and their timely publication.

In any case section 717 should be amended to cover publication of gas procurement contracts, with corresponding detail.

#### EXPANDED OPPORTUNITIES FOR PUBLIC PARTICIPATION

Greater transparency and expanded publication of information for the benefit of the public are empowering approaches, but they do not by themselves bring full public engagement into the regulatory process. Existing law has several provisions intended to engage the public, including the office of public advisor and the intervenor compensation program. They should be updated and strengthened by AB 825.

The Public Advisor (PA), established by PU Code section 321, should be fully staffed to carry out its existing duties, including making the public aware of CPUC proceedings and services. In addition the PA should be encouraged to utilize the Commission's website to promote interactive participation in CPUC proceedings and activities, and to utilize public and social media to facilitate interactions between the public and the CPUC. User fee funding is an appropriate resource for this activity.

The statutes establishing the intervenor compensation program, PU Code section 1801 et seq., should be updated to carry out the intent of existing law to "...encourage the effective and efficient participation of all groups that have a stake in the public utility regulation process" and that "intervenor compensation be awarded to eligible intervenors in a timely manner." PU Code 1801.3. As the CPUC's ratemaking and service quality proceedings become a continuous process for adapting to the changing needs of the public, complex and delayed administration of the scheme for facilitating and supporting public engagement no longer serves the public interest.

#### THE APPEARANCE OF IMPROPRIETY

AB 825 does not address ex parte communications, which is addressed in SB 215 (Leno). This is appropriate for a bill that seeks to facilitate transparency and communication of information.

**2015 CPUC REFORM LEGISLATION -- SECTIONS AFFECTED**

<b><u>PU Code sec.</u></b>	<b><u>Hill</u></b>	<b><u>Leno</u></b>	<b><u>Rendon</u></b>
305	X	X	
<b><u>NEW 305.5</u></b>		X	<b><i>X (RENUMBERED 309.1)</i></b>
306	X		
307	X	X	
308	X	X	
<b><u>NEW 309.1</u></b>			<b><i>X</i></b>
<b><u>NEW 309.2</u></b>			<b><i>X</i></b>
309.6	X	X	
314.5			<b><i>X</i></b>
321.6	X		
<b><u>NEW 468</u></b>			<b><i>X</i></b>
583			<b><i>X</i></b>
<b><u>NEW 717</u></b>			<b><i>X</i></b>
1701	X		
1701.1	X	X	
1701.2		X	
1701.3		X	
1701.4	X	X	
<b><u>NEW 1701.6</u></b>	X		
1759	X		<b><i>X</i></b>