

DOCKETED

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*Comment Received From: Steve Uhler
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BUSMTG-2023-01 Rebuttal to Backup Materials for Agenda Item No 05- Consent Calendar, Petition to Request a Rulemaking Hearing

BUSMTG-2023-01 Rebuttal to Backup Materials for Agenda Item No 05: Consent Calendar, Petition to Request a Rulemaking Hearing

Dear Energy Commission Commissioners,

The law requires the commission to ensure that full and adequate participation by members of the public is secured in the commission's proceedings. The law also prohibits the utilization of rules not adopted pursuant to the Administrative Procedures Act (APA) if not expressly allowed to do otherwise.

Below are some points to consider for the memo and order 23-0228-05 in "Backup Materials for Agenda Item No 05: Consent Calendar, Petition to Request a Rulemaking Hearing".

Please reject the Chief Counsel's Office's proposed order 23-0228-05, and approve my petition and start rulemaking proceedings.

Steve Uhler
sau@wwmpd.com

Additional submitted attachment is included below.

BUSMTG-2023-01 Rebuttal to Backup Materials for Agenda Item No 05:
Consent Calendar, Petition to Request a Rulemaking Hearing

Dear Energy Commission Commissioners,

The law requires the commission to ensure that full and adequate participation by members of the public is secured in the commission's proceedings. The law also prohibits the utilization of rules not adopted pursuant to the Administrative Procedures Act (APA) if not expressly allowed to do otherwise.

Below are some points to consider for the memo and order 23-0228-05 in "**Backup Materials for Agenda Item No 05: Consent Calendar, Petition to Request a Rulemaking Hearing**".

The Chief Counsel's Office staff claims there is no need and no law requiring my proposed amendments to 20 CCR subsection 1104(e). Perhaps staff have overlooked the laws I am referencing in my rebuttal?

The Chief Counsel's Office claims the CEC has always provided notice of a business meeting at least 10 days in advance of the meeting. When was the last time Section 14911. GOV-ARTICLE 6. Distribution of State Publications 14900-14912 complied with? The CEC does not ensure compliance with the first sentence requirements of 11125(d) GOV-ARTICLE 9. Meetings 11120-11133, that states, a person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings.

I once received a phone call notifying me of a specific meeting from the public adviser's office. The call happened after CEC business hours and was not followed up in writing. Perhaps my other specific meeting notice requests have been overlooked?

The Chief Counsel's Office claims the CEC has already made changes to the conduct of its business meeting to provide the public opportunity to comment before discussion of information items (non-voting items).

Changes that result in a separate agenda item for comment on other agenda items requires amendment to 20 CCR subsection 1104(e), to continually utilize the changes to the conduct of its business meeting. Because 20 CCR subsection 1104(e) says, any person present shall be given an opportunity to make oral comments on any agenda item; provided however, that the presiding member may limit or preclude such comments as necessary for the orderly conduct of business, a case by case justification for utilizing a limitation or preclusion such as separate agenda item for comment on other agenda items has to be made, and if it becomes a standard, the regulation in 20 CCR sub section 1104(e) must be amended to be a lawful utilization

of such a rule, to prevent the use of "underground regulations" that are prohibited by law under 11340.5.(a) GOV-ARTICLE 1. General 11340-11342.4.

The Chief Counsel's Office claims CEC staff makes documents available to the public in a timely manner before business meeting as required by law. Perhaps 20 CCR section 2553, and 20 CCR subsection 1201(f) have been overlooked.

Section 2553 implements the requirements for the commission to ensure that full and adequate participation by members of the public is secured in the commission's proceedings. When commission staff do not file documents for agenda items in a timely manner, to allow the public time to read the documents, write comments, and file comments, full and adequate participation by members of the public in the commission's proceedings is not ensured.

If the commission's legislative body did not wish to restrict who may distribute documents to only the Docket Unit, 20 CCR Section 1201(f), would either not exist, or it would include the use of a website with documents not filed per 20 CCR section 1208 to distribute documents for the commission proceedings. Expressio unius est exclusio alterus, Expressly including only one, excludes all others. The utilization of the business meeting website as the sole means of distributing a document is unlawful pursuant to subsection 11340.5(a) of GOV-ARTICLE 1. General 11340-11342.4. These type of rules are referred to as "underground regulations" and are prohibited by law under 11340.5.(a) GOV-ARTICLE 1. General 11340-11342.4.

My petition does not request a rulemaking hearing, only a rulemaking pursuant to the Administrative Procedures Act (APA) GOV section 11340.6. The right to request a rulemaking hearing does not require a petition pursuant to 11346.5(a)(17) of GOV-ARTICLE 5. Public Participation- Procedure for Adoption of Regulations 11346-11348.

At the time of my writing this rebuttal, the document I am rebutting is not filed in the docket 23-BUSMTG-01 or any other docket for distribution by the Docket Unit pursuant to 20 CCR subsection 1201(f).

There are no hidden files in my petition request letter. Adobe Acrobat has had the ability to display the fact that a file is attached to a PDF file for more than five (5) years. I am using the version of Acrobat to write my comments that the e-FILING and e-Commenting System USER'S TRAINING GUIDE (Revised February 2020) speaks of.

Chief Counsel's Office staff claim CEC's Docket System did not detect an attachment embedded in the letter, and staff have identified the

hidden attachment by using a different version of Adobe Acrobat to access the petition. Perhaps the docket system was not designed to identify attachments in PDF files? Perhaps the commissioner's should request an audit of current software use at the CEC to make sure only the most current or appropriate versions are used?

My petition is not on the 02-28-2023 Business Meeting Consent Calendar, as "Backup Materials for Agenda Item No 05: Consent Calendar, Petition to Request a Rulemaking Hearing" states.

Points of law to consider:

20 CCR Section 2553. Overall Duty of the Public Adviser, The public adviser serves as adviser to the public and to the commission to ensure that full and adequate participation by members of the public is secured in the commission's proceedings. The adviser serves the public and the commission by (1) advising the public how to participate fully in the commission's proceedings, thereby providing the commission with the most comprehensive record feasible in those proceedings; (2) advising the commission on the measures it should employ to assure open consideration and public participation in its proceedings; and (3) taking other measures to comply with sections 25222 and 25519(g) of the Public Resources Code.

25222. PRC-CHAPTER 3. State Energy Resources Conservation and Development Commission 25200-25235, The adviser shall insure that full and adequate participation by all interested groups and the public at large is secured in the planning, site and facility certification, energy conservation, and emergency allocation procedures provided in this division. The adviser shall insure that timely and complete notice of commission meetings and public hearings is disseminated to all interested groups and to the public at large. The adviser shall also advise such groups and the public as to effective ways of participating in the commission's proceedings. The adviser shall recommend to the commission additional measures to assure open consideration and public participation in energy planning, site and facility certification, energy conservation, and emergency allocation proceedings. 25222. (Added by Stats. 1974, Ch. 276.)

25213. (a) PRC-CHAPTER 3. State Energy Resources Conservation and Development Commission 25200-25235, The commission shall adopt rules and regulations, as necessary, to carry out the provisions of this division in conformity with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The commission shall make available to a person upon request copies of proposed regulations, together with summaries of reasons supporting their adoption.

25218. (e) PRC-CHAPTER 3. State Energy Resources Conservation and Development Commission 25200-25235, Adopt any rule or regulation, or take any action, it deems reasonable and necessary to carry out this division.

11125.7. (b) GOV-ARTICLE 9. Meetings 11120-11133, The state body may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.

20 CCR Section 1201. Definitions. (f) "Docket Unit" means the office of the commission that receives, distributes, serves and stores all filed documents.

11125. (d) GOV-ARTICLE 9. Meetings 11120-11133, A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

11125. (e) GOV-ARTICLE 9. Meetings 11120-11133, A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

14911. GOV-ARTICLE 6. Distribution of State Publications 14900-14912 If any state agency maintains a mailing list of public officials or other persons to whom publications or other printed matter is sent without charge, the state agency shall correct its mailing list and verify its accuracy at least once each year. 14911. (Amended by Stats. 2020, Ch. 110, Sec. 43. (SB 820) Effective September 18, 2020.)

20 CCR section 1208(a). Filing of Documents, All documents submitted in any proceeding, whether by a party, committee, the commission, or any other individual or entity, shall be filed with the Docket Unit. Filing is complete when a document has been accepted by docket staff or by the commission's automated electronic filing or commenting system. Documents that are not filed will not be deemed part of a proceeding's record.

811. GOV-PART 1. DEFINITIONS 810-811.9, "Law" includes not only enactments but also the decisional law applicable within this State as determined and declared from time to time by the courts of this State and of the United States. 811. (Added by Stats. 1963, Ch. 1681.)

810.6. GOV-PART 1. DEFINITIONS 810-811.9, "Enactment" means a constitutional provision, statute, charter provision, ordinance or regulation. 810.6. (Added by Stats. 1963, Ch. 1681.)

811.6. GOV-PART 1. DEFINITIONS 810-811.9, "Regulation" means a rule, regulation, order or standard, having the force of law, adopted by an employee or agency of the United States pursuant to the federal Administrative Procedure Act (Chapter 5 (commencing with Section 500) of Title 5 of the United States Code) or as a regulation by an agency of the state pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2). 811.6. (Amended by Stats. 1988, Ch. 160, Sec. 50.)

11340.5. (a) GOV-ARTICLE 1. General 11340-11342.4, No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

11346.5. (a) (17) GOV-ARTICLE 5. Public Participation- Procedure for Adoption of Regulations 11346-11348, the notice of proposed adoption, amendment, or repeal of a regulation shall include a statement that if a public hearing is not scheduled, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Section 11346.8.

Concluding:

Please reject the Chief Counsel's Office's proposed order 23-0228-05, and approve my petition and start rulemaking proceedings.

Steve Uhler
sau@wwmpd.com