

DOCKETED

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CALIFORNIA ENERGY COMMISSION

In the matter of:

Proposed Amendments to Regulations)
Related to Business Meetings) Docket No. 23-OIR-02
and Requests for Rulemakings)
_____)

PUBLIC HEARING

ONLINE BY PHONE AND VIA ZOOM

TUESDAY, NOVEMBER 7, 2023

10:00 A.M.

Reported by:

Elise Hicks

APPEARANCESCEC STAFF

Mariah Ponce, Attorney
Jared Babula, Senior Attorney

PUBLIC COMMENT

Steve Uhler

P R O C E E D I N G S

10:00 a.m.

TUESDAY, NOVEMBER 7, 2023

MS. PONCE: Good morning. My name is Mariah Ponce. I'm an attorney here at the California Energy Commission's Chief Counsel's Office. I'm here with Senior Attorney Jared Babula.

Today the CEC is holding this public hearing on proposed amendments to the CEC's procedures related to Business Meetings and requests for rulemakings as contained in the California Code of Regulations CCR Title 20 Sections 1102, 1105 and 1221. I'll provide a brief presentation on the proposed rulemaking changes, and we will subsequently seek public comments. Interested persons or their authorized representative may present comments relevant to the proposed regulations at that time. Comments will be limited to three minutes or less per person or organization. Thank you.

The purpose of this rulemaking is to, one, allow the CEC to conduct Business Meetings as necessary. Two, remove the requirement for the CEC to take minutes and clarify that the transcript and decisions, orders and resolutions approved in Meetings shall be the original evidence of actions taken at the Business Meeting. Three, ensure that the CEC has sufficient information to evaluate

1 petitions for rulemakings. And four, to increase the time
2 for the Executive Director to respond to a petition for
3 rulemaking from seven to fourteen days. These changes align
4 with the rules of practice and procedure for other public
5 agencies, including the California Public Utilities
6 Commission, the California Air Resources Board, and the
7 California Coastal Commission.

8 As the state's primary energy policy and planning
9 agency, the CEC's responsibilities have increased relative
10 to helping the state reach its climate and energy goals.
11 With the increase in responsibilities, the CEC's workload
12 has also increased. As such, there is an urgent need for
13 the CEC to have more flexibility in determining when and
14 how often to conduct business meetings. Additionally, it is
15 vital that the CEC's regulations be amended to address
16 reoccurring issues in the implementation of the regulations
17 to make the process more efficient and effective and save
18 staff time and resources. The regulations currently
19 designate minutes as the original evidence of actions taken
20 at CEC meetings. The CEC expends extensive staff resources
21 to produce the minutes for Business Meetings. These minutes
22 are based on the perception and awareness of one person and
23 are not the best evidence of the official record. The CEC
24 also utilizes court reporters to create an accurate record
25 of Business Meeting proceedings. Such transcripts are the

1 more accurate record of proceedings.

2 With respect to petitions for rulemakings. The
3 CEC frequently receives requests for rulemakings that are
4 vague and or difficult to understand. The CEC spends a
5 considerable amount of time interpreting these requests. In
6 addition, the short timeframe within which the CEC must
7 respond to requests for rulemakings does not permit the CEC
8 to thoroughly evaluate the petitions. These proposed
9 amendments would address reoccurring issues in the
10 implementation of unnecessary or obsolete regulations,
11 align with available recording technologies and current
12 practices and save CEC staff time and resources. These
13 changes will allow the CEC to effectively conduct its
14 business while minimizing delays in responding to requests
15 for rulemakings.

16 On September 22, 2023, the Notice of Proposed
17 Action was published in the California Regulatory Notice
18 Register and the CEC posted the NOPA on its website,
19 formally notifying the public of the CEC'S intent to adopt
20 the proposed regulations. The rulemaking documents and
21 notices were provided to every person on the CEC's
22 "rulemaking on procedural changes" subscription list. On
23 October 26, 2023, the CEC provided notice of public hearing
24 to receive comments on the proposed rulemaking. On November
25 6, 2023, the 45-day written comment period established by

1 the NOPA closed. Today, November 7, 2023, the CEC is
2 holding a public hearing to receive comments on the
3 proposed regulations. On November 8th, 2023, the CEC will
4 hold a Business Meeting and will vote to adopt the proposed
5 amendments to the CEC's regulations.

6 We will now begin the public comment period.
7 Please note comments are limited to three minutes or less
8 per speaker and one person per organization. To comment via
9 Zoom, use the raise hand feature so the administrator can
10 announce your name and unmute you. To comment via
11 telephone, press star nine to raise your hand and star six
12 to mute slash unmute. We'll make an effort to respond to
13 comments today, but formal responses will be given in the
14 final statement of reasons. Thank you.

15 MR. BABULA: So caller - call in user one. I see
16 you have your hand up. You can unmute yourself.

17 MR. UHLER: Good morning. This is Steve Uhler
18 calling. That's U-H-L-E-R. You didn't post your
19 presentation in the docket. I have a pretty good idea of
20 what you were talking about. I'm not exactly sure where you
21 are in the process for adoption. Will I hear responses to
22 my written comments today? In the rulemaking file, I see no
23 record of compliance with - these are all Title one, CCRs,
24 Section 5, Section 8, Section 46 and Section 86. Will the
25 final statement or reason be filed in the docket before

1 adoption of the regulations? Don't know what five is.
2 That's the one where you gave Notice. But I don't see any
3 confirmation from the OAL that you actually did that in the
4 record. Number eight would be the final text, the certified
5 final text. I'd like to see that in the rulemaking file,
6 not to be confused with the express terms, unless you are
7 declaring that the express terms are the final text and
8 somebody has certified those. And then above all, because I
9 didn't receive email Notice of today's meeting, the
10 statement of mailing, that's Section 86. Now on to the
11 substance of the regulations. I see no need to change any
12 of these rules that have been used for 40 years.

13 I've given an example of how to make a more
14 efficient minutes that could be available to be acted upon
15 at the Meeting. The transcript is not finalized for at
16 least 60 days after the meeting, so that's not very
17 effective. It can be changed anytime in that 60 days.
18 That's after the public actually has access to it. So you
19 have the overhead of producing that. What else?

20 As far as the petition, 1221, there has been a
21 change that appears to be beyond regulatory significance
22 and that's the adding of 25 to 18E, which covers all the
23 rules that - any rule that the Commission makes. So that
24 opens up the petitioning for your guidelines and
25 publishing. And also the order now allows any part of the

1 APA to be considered. As far as a rulemaking petition, you
2 don't really have any process for how you run a rulemaking,
3 so it's hard for the public to write a petition and what
4 limits it. I've given an example petition, which I haven't
5 heard back on yet for publishing by the Secretary of State.

6 MS. PONCE: I'm so sorry to interrupt you. That
7 is the end of your three minutes. Do you just have one
8 final statement? If not, that'll be the end of your time,
9 unfortunately.

10 MR. UHLER: My final statement, I want to hear my
11 responses to written comment today. Because if you're going
12 to vote on it tomorrow and how are you going to have
13 response to comments available for the Commission to view
14 before they try to adopt this so it's duly adopted? Can you
15 answer that question for me?

16 MR. BABULA: Okay. Yeah, I can answer that. This
17 is Jared Babula. And you brought up a number of points and
18 so again - points for purposes of understanding the
19 process, the adoption happens tomorrow or at least the
20 rulemaking will be up for consideration for adoption. So
21 where we are in the process is we are taking in additional
22 opportunity for public comment. Your written comments that
23 you provided are also - we note those. And so all responses
24 to comments will be after adoption. That's the process.
25 That's the way it's set up in the Government Code is that

1 after adoption then staff works on the final statement of
2 reasons, which includes all the response to written
3 comments and comments received today at this proceeding.
4 And those will be posted in the Docket. And then the
5 package with the other records you've identified like a
6 statement of mailing and those other enclosure statements,
7 those will be produced and submitted to OAL.

8 And then the final package, when it gets approved
9 by OAL, there will be a transmission - transmittal letter
10 that will indicate that your rulemaking has been approved
11 and that will include the final official language. And
12 that's what you also mentioned, where will that be? That
13 will all be put in the Docket once OAL submits it back to
14 us with their stamp and their signature that this has been
15 approved and this is the final text and so it'll be posted
16 in the Docket. So that's the process and that's consistent
17 with how the Government Code is set up. And that's the way
18 we've been following that.

19 So hopefully that answers your question on
20 process. And then for more detailed responses we will have
21 that in the final statement of reasons.

22 So Mariah, I don't see anybody else's hands up
23 now.

24 MS. PONCE: Okay. So should we give it a few
25 minutes or, yeah.

1 MR. BABULA: I mean, Mr. Uhler, are you raising
2 your hand again or did you just not take it down?

3 MR. UHLER: This is Steve Uhler. Can you hear me?

4 MR. BABULA: Yes.

5 MR. UHLER: Okay. No, you didn't answer all my
6 questions. Supposedly you've published this in the notice
7 registry at the OAL.

8 MR. BABULA: Correct.

9 MR. UHLER: You have no record of that. You have
10 no record of that. In the past, they have shown - you don't
11 have no record of you posting section A of Form 400. You
12 have no record of it. No record.

13 (CROSS TALK)

14 I have no idea From your records of what unique
15 number pursuant to the APA statutes that the OAL knows it
16 by. I have seen a Form 400, not posted in the Docket. It
17 doesn't tell me what rulemaking Docket. So - you don't seem
18 to be complete. You state that you're following statute,
19 but there are also regulations. Title one, Section five.
20 According to your rulemaking, you have not completed a
21 section A of Form 400 because there is no section A of 400
22 in the record. And that's a critical record because if I
23 want to talk to the APA about this efficiently, I need to
24 talk to them in their terms of that unique number.

25 And I have no ability to do that from your

1 record. I can't connect this rulemaking to the notice
2 registry because I don't know what their notice registry
3 number is. So do you understand that now you say you're
4 following that now?

5 (CROSS TALK)

6 MR. UHLER: Now statements of mailing, the public
7 should be able to comment on who you mailed to, or whether
8 or not, and I've stated I'm stating absolutely, positively.
9 I did not receive a mailing for today's hearing. Yet I
10 commented. I commented on the rulemaking. So any statement
11 of mailing saying that you mailed out is going to be false.
12 I am stating this as testimony. I did not receive an email
13 saying there's a hearing today. So you follow that.

14 So you believe that you were following all these
15 rules and you believe that you followed them maybe for the
16 last 40 years, years. But your Docket will show that
17 there's a lot of times where the Form 400 doesn't show up
18 even after completion.

19 You don't close rulemakings when the title one
20 says you should. There's a number of things that are not
21 being followed and yet you expect to be able to improve the
22 situation of acting on a petition when you don't really let
23 the public know what that petition could contain. I made a
24 petition and the other reason, big reason, for me
25 commenting today is that each of these sections were

1 recently amended. One of them was amended after you telling
2 me that I sent in a position that didn't tell you what to
3 amend, even though that you lead all rulemakings with what
4 Bill - Legislative Bill and I gave you a whole bunch of
5 legislative bills over the last four years that you've
6 overlooked. So you're following some set of rules that are
7 not written, which is known as underground regulations. The
8 public doesn't really know what to do to fulfill.

9 I have given a 1221 regulation that gives you 30
10 days. And by the way, there is no requirement for the
11 Commission to adopt or deny or grant petition the Agency.
12 It says Agency. It doesn't say Commission or legislative
13 state body. So please look at that situation and act
14 accordingly. The Executive Director should be able to grant
15 or not. How do I know this? Well, I petitioned the OAL for
16 rulemaking and I just got a reply back from a lawyer saying
17 that no, they were going to wait until the problem became
18 worse and they put my denied petition on their site. I have
19 not seen my denied petition for 1221 on their site. So you
20 folks really need to look at this process carefully as to
21 the meetings as necessary. There should be a meeting once a
22 week until you get the RPS stuff done. The public has no
23 idea of compliance of publicly owned utilities.

24 This is a significant environmental hazard
25 because people may be thinking that when they're buying

1 electric car, they're actually running off carbon-free
2 electricity. So yeah, that's a significant, and this is a
3 significant project. This is a significant environmental
4 hazard - the way this rulemaking is being run and how you
5 handle rulemakings.

6 So I thank you for this additional time. I'll be
7 filing additional items and you guys really need some
8 systems to really track what's in your Docket. I'll do some
9 reports here. I don't know if I'll be able to have 'em by
10 tomorrow. That's why I say I'm requesting a workshop
11 because this thing needs a lot of work. We need to get the
12 hammers and saws out and really rework this whole system.
13 And I've been working on this for - as you know Mr. Babula
14 for a number of years. Just the fact that some of these
15 items are being amended for a second time in a little over
16 a year is a problem when you say that you're so busy. So I
17 hope this is all going into the record and you're
18 understanding why I'm passionate about this because - okay,
19 thank you. Okay.

20 MR. BABULA: We've given you extra time. Thank
21 you for your comments. Again, we will be responding to
22 those comments and your passion for following our process.

23 So Mariah, I don't see any other hands up.

24 MS. PONCE: Okay. Well thank you everyone for
25 your participation. Since we don't have any other

1 attendance, anyone wanting to give a public comment, this
2 is going to conclude the public comment period and the end
3 of the public hearing.

4 Again, thank you for your participation. We
5 appreciate it.

6 (MEETING ADJOURNED AT 10:21 A.M.)
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CERTIFICATE OF REPORTER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of November, 2023.



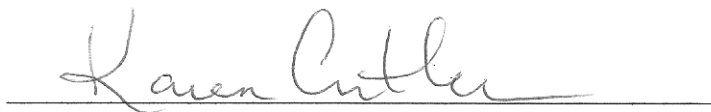
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TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of November, 2023.

A handwritten signature in cursive script, reading "Karen Cutler", is written over a horizontal line.

Karen Cutler
Certified Transcriber
AAERT No. CET**D-1424