

DOCKETED

Docket Number:	19-RPS-01
Project Title:	Petition for Rulemaking re: Public Utilities Code, section 399.30(c)(4)
TN #:	228371
Document Title:	PAO Response to Uhler 5-22-19
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From: Martin-Gallardo, Jennifer@Energy
Sent: Wednesday, May 22, 2019 1:12 PM
To: sau@wwmpd.com
Cc: Energy - Public Adviser's Office
Subject: Petition for Rulemaking

Dear Mr. Uhler,

This email is in follow up to your May 20, 2019 telephone conversation with Energy Commission Chief Counsel Kourtney Vaccaro and prior contacts with the Energy Commission's Public Adviser's Office, Secretariat, and Docket Unit about the petition to request a rulemaking submitted by you on April 13, 2019 (hereafter, "Petition").

I understand that Ms. Vaccaro advised you she would confer with me about your request for (1) the opening of a docket specific to your Petition and (2) information about your rights in presenting the Petition to the Commissioners at a business meeting. According to Ms. Vaccaro, you apprised her of docket 2014-BSTD-02, which was opened in 2014 at the request of Energy Commission attorney Kristen Driskell in response to a petition for rulemaking and asked that it be treated a precedent for your request for a docket specific to the Petition. She stated that you wanted clarity on whether your Petition triggered an adjudicative proceeding.

Ms. Vaccaro and I conferred and the discussion below addresses the matters you presented.

Docket for Your Petition to Request a Rulemaking

I previously advised you that the Petition was appropriately docketed in 19-BUSMTG-02 on April 13, 2019. To ensure clarity and efficiency, it is equally appropriate for there to be a docket exclusively for the Petition and related submissions. The Commission's Docket Unit has created docket 19-RPS-01 and populated it with the Petition, the Executive Director's April 23, 2019 certification of the Petition as complete, and related correspondence. If you would like additional material included in this docket, please submit it to the Docketed Unit for filing. All information filed under this docket will be sent to the rulemaking and renewable listservs.

Petition to Request a Rulemaking

As you are aware, the Commission's regulations allow any person to petition the Commission to request rulemaking hearings. (Cal. Code Regs., tit. 20, §1221(a).) Rulemaking hearings are "rulemaking proceedings," which are defined to include "any hearings designed for the adoption, amendment, or repeal of any rule, regulation, or standard of general application, which implements, interprets or makes specific any provision of Division 15 of the Public Resources Code or any other statute enforced or administered by the commission." (§1220(a).)

Rulemaking proceedings are legislative proceedings (i.e., proceedings to make laws) that are separate and distinct from "adjudicative proceedings." An "adjudicative proceeding" is an "evidentiary process for determination of facts pursuant to which the commission must make findings and issue a decision." (§1201(b).) Adjudicative proceedings must be conducted in a manner that complies with the Administrative Adjudication Bill of Rights and parties to these proceedings have the right to call and examine witnesses, offer oral and written testimony under oath, introduce exhibits, cross-examine witnesses, and rebut evidence. (§§ 1210, 1212(a).) These requirements do not apply to the Commission's legislative proceedings, including rulemaking proceedings.

Rulemaking proceedings are governed primarily by Chapter 2, Articles 2 and 4 of the Commission's regulations. These regulations give any person the right to submit a petition to request a rulemaking and the right to have the Commission, generally within 30 days from the filing of the petition, to determine whether to grant or deny the petition. (§1221 (a),(c).) Should the Commission grant such a petition, it may adopt an order to institute a rulemaking proceeding.

(§1222(a).) Any such order must include the date of the first hearing. (§1222(b).) The procedural rules for the hearing are set forth in Commission regulation sections 1223 through 1225. These procedural rules are applicable only when the Commission on its own motion or upon granting a petition for rulemaking, adopts an order to institute a rulemaking. Thus, they do not apply to your Petition.

Instead, the Commission regulation sections 1202 and 1203 will primarily govern the business meeting process for considering your Petition. Section 1202 allows you to make oral comments on the Petition during the business meeting and submit written comments to the in the manner specified by Commission regulation section 1208. (§1202(a), (b).) Section 1203 allows the Chair (or Vice Chair in the Chair's absence) may set additional requirements before or during the business meeting to manage the business meeting and consideration of your Petition. (§§1203, 1104(a).)

Informing Stakeholders of your Petition

As stated previously, all information filed under this docket will be distributed to the rulemaking and renewable listservs. Additionally, members of the public are free to docket information the individual deems relevant to any proceeding's docket. (§§1208 and 1208.1.) In previous comments, you mentioned 18-RPS-02 and 16-OIR-05 as proceedings you deemed relevant.

We appreciate your participation in Energy Commission proceedings. Please contact me should you have additional questions.

Sincerely,

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