

ASSEMBLY BILL

No. 2490

Introduced by Assembly Member Canciamilla

February 21, 2002

An act to amend Section 311 of, and to add Section 316.7 to, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

AB 2490, as introduced, Canciamilla. Public Utilities Commission: decisions and reporting.

(1) Existing law requires decisions of the Public Utilities Commission to be issued, at a minimum, following a 30-day period, subject to a reduction or waiver procedure. Existing law does not set forth a maximum period for the issuance of a decision by the commission.

This bill would require the commission to issue a decision in any matter before it not more than 180 days after submission for decision or not more than 90 days after issuance of a proposed decision in any matter unless the commission first issues a written order extending the time for a final decision, not to exceed 60 additional days, and indicates in that written order the stated cause for the delay.

(2) Existing law requires the Public Utilities Commission to submit to the Governor an annual report containing a complete account of its transactions and proceedings for the preceding fiscal year, along with any other facts, suggestions, and recommendations the commission deems of public value.

This bill would also require the commission to submit a report to the Legislature whenever the commission or the commission's staff, misses a statutory deadline to meet or act on a matter before the commission.

The bill would require the report to be submitted to the Governor and the Legislature within 10 days of the missed deadline.

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

The people of the State of California do enact as follows:

1 SECTION 1. Section 311 of the Public Utilities Code is
2 amended to read:
3 311. (a) The commission, each commissioner, the executive
4 director, and the assistant executive directors may administer
5 oaths, certify to all official acts, and issue subpoenas for the
6 attendance of witnesses and the production of papers, waybills,
7 books, accounts, documents, and testimony in any inquiry,
8 investigation, hearing, or proceeding in any part of the state.
9 (b) The administrative law judges may administer oaths,
10 examine witnesses, issue subpoenas, and receive evidence, under
11 rules that the commission adopts.
12 (c) The evidence in any hearing shall be taken by the
13 commissioner or the administrative law judge designated for that
14 purpose. The commissioner or the administrative law judge may
15 receive and exclude evidence offered in the hearing in accordance
16 with the rules of practice and procedure of the commission.
17 (d) Consistent with the procedures contained in Sections
18 1701.1, 1701.2, 1701.3, and 1701.4, the assigned commissioner or
19 the administrative law judge shall prepare and file an opinion
20 setting forth recommendations, findings, and conclusions. The
21 opinion of the assigned commissioner or the administrative law
22 judge is the proposed decision and a part of the public record in the
23 proceeding. The proposed decision of the assigned commissioner
24 or the administrative law judge shall be filed with the commission
25 and served upon all parties to the action or proceeding without
26 undue delay, not later than 90 days after the matter has been
27 submitted for decision. The commission shall issue its decision not
28 sooner than 30 days following filing and service of the proposed
29 decision by the assigned commissioner or the administrative law
30 judge, except that the 30-day period may be reduced or waived by
31 the commission in an unforeseen emergency situation or upon the
32 stipulation of all parties to the proceeding or as otherwise provided
33 by law. *In no event shall the commission issue a decision in any*



1 *matter before it more than 180 days after submission for decision*
2 *or more than 90 days after issuance of a proposed decision in any*
3 *matter unless the commission first issues a written order extending*
4 *the time for a final decision, not to exceed 60 additional days, and*
5 *indicates in that written order the stated cause for the delay.* The
6 commission may, in issuing its decision, adopt, modify, or set aside
7 the proposed decision or any part of the decision. Where the
8 modification is of a decision in an adjudicatory hearing it shall be
9 based upon the evidence in the record. Every finding, opinion, and
10 order made in the proposed decision and approved or confirmed
11 by the commission shall, upon that approval or confirmation, be
12 the finding, opinion, and order of the commission.

13 (e) Any item appearing on the commission's public agenda as
14 an alternate item to a proposed decision or to a decision subject to
15 subdivision (g) shall be served upon all parties to the proceeding
16 without undue delay and shall be subject to public review and
17 comment before it may be voted upon. For purposes of this
18 subdivision "alternate" means either a substantive revision to a
19 proposed decision that materially changes the resolution of a
20 contested issue or any substantive addition to the findings of fact,
21 conclusions of law, or ordering paragraphs. The commission shall
22 adopt rules that provide for the time and manner of review and
23 comment and the rescheduling of the item on a subsequent public
24 agenda, except that the item may not be rescheduled for
25 consideration sooner than 10 days following service of the
26 alternate item upon all parties. The commission's rules may
27 provide that the time and manner of review and comment on an
28 alternate item may be reduced or waived by the commission in an
29 unforeseen emergency situation.

30 (f) The commission may specify that the administrative law
31 judge assigned to a proceeding involving an electrical, gas,
32 telephone, railroad, or water corporation, or a highway carrier,
33 initiated by customer or subscriber complaint need not prepare,
34 file, and serve an opinion, unless the commission finds that to do
35 so is required in the public interest in a particular case.

36 (g) (1) Prior to voting on any commission decision not subject
37 to subdivision (d), the decision shall be served on parties and
38 subject to at least 30 days public review and comment. Any
39 alternate to any commission decision shall be subject to the same
40 requirements as provided for alternate decisions under subdivision

(e). For purposes of this subdivision, “decision” also includes resolutions, including resolutions on advice letter filings.

(2) The 30-day period may be reduced or waived in an unforeseen emergency situation, upon the stipulation of all parties in the proceeding, for an uncontested matter in which the decision grants the relief requested, or for an order seeking temporary injunctive relief. *In no event shall the commission issue a decision in any matter before it more than 180 days after submission for decision or more than 90 days after issuance of a proposed decision in any matter unless the commission first issues a written order extending the time for a final decision, not to exceed 60 additional days, and indicates in that written order the stated cause for the delay.*

(3) This subdivision does not apply to uncontested matters that pertain solely to water corporations, or to orders instituting investigations or rulemakings, categorization resolutions under Sections 1701.1 to 1701.4, inclusive, or orders authorized by law to be considered in executive session. Consistent with regulatory efficiency and the need for adequate prior notice and comment on commission decisions, the commission may adopt rules, after notice and comment, establishing additional categories of decisions subject to waiver or reduction of the time period in this section.

(h) Notwithstanding any other provision of law, amendments, revisions, or modifications by the commission of its Rules of Practice and Procedure after January 1, 1999, shall be submitted to the Office of Administrative Law for prior review in accordance with Sections 11349, 11349.3, 11349.4, 11349.5, 11349.6, and 11350.3 of, and subdivisions (a) and (b) of Section 11349.1 of, the Government Code. If the commission adopts an emergency revision to its Rules of Practice and Procedure based upon a finding that the revision is necessary for the preservation of the public peace, health and safety, or general welfare, this emergency revision shall only be reviewed by the Office of Administrative Law in accordance with subdivisions (b) to (d), inclusive, of Section 11349.6 of the Government Code. The emergency revision shall become effective upon filing with the Secretary of State and shall remain in effect for no more than 120 days. A petition for writ of review pursuant to Section 1756 of a commission decision amending, revising, or modifying its Rules

1 of Practice and Procedure shall not be filed until the regulation has
2 been approved by the Office of Administrative Law, the Governor,
3 or a court pursuant to Section 11350.3 of the Government Code.
4 If the period for filing the petition for writ of review would
5 otherwise have already commenced under Section 1733 or 1756
6 at the time of that approval, then the period for filing the petition
7 for writ of review shall continue until 30 days after the date of that
8 approval. Nothing in this subdivision shall require the commission
9 to comply with Article 5 (commencing with Section 11346) of
10 Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government
11 Code. This subdivision is only intended to provide for the Office
12 of Administrative Law review of procedural commission
13 decisions relating to Commission Rules of Practice and Procedure,
14 and not General Orders, resolutions, or other substantive
15 regulations.

16 SEC. 2. Section 316.7 is added to the Public Utilities Code, to
17 read:

18 316.7. (a) The commission shall submit a report to the
19 Legislature whenever the commission, or the commission's staff,
20 misses a statutory deadline to meet or act on a matter before the
21 commission. The report shall be submitted within 10 days of the
22 missed deadline.

23 (b) The report shall state the nature of the deadline that was
24 missed and the reasons for missing that deadline.

25 (c) The commission shall submit copies of the report to the
26 Governor, the chairs of the Assembly and Senate policy
27 committees with jurisdiction over utility issues, the Chair of the
28 Assembly Budget Committee, and the Chair of the Senate Budget
29 and Fiscal Review Committee.
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