ENVIRONMENTAL LAW

CALIFORNIA LAWYERS ASSOCIATION

Environmental Law Section 101 Series:
Navigating Proceedings Before the CPUC

Peter Allen

NEW LAWYERS

CALIFORNIA LAWYERS ASSOCIATION

ENVIRONMENTAL LAW

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California Lawyers Association (CLA)

- Nonprofit, voluntary organization dedicated to the professional advancement of attorneys practicing in the state of California

California New Lawyers Section (NLS)

- Represents all lawyers in California in their first 8 years of practice
- Mission is to advance practical skills, leadership and pro bono opportunities, networking, and support to meet the unique needs of California's diverse community of new lawyers

Environmental Law Section (ELS)

- Mission is to advance the quality, breadth, and availability of information and services related to environmental, natural resources, land use, and energy law, and to enhance the profession by cultivating a well-informed, collegial, and diverse group of lawyers and law students throughout the state

Any additional CLA intro slides

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Audience Questions & Discussion

Please submit questions via the Q&A feature.

Peter Allen

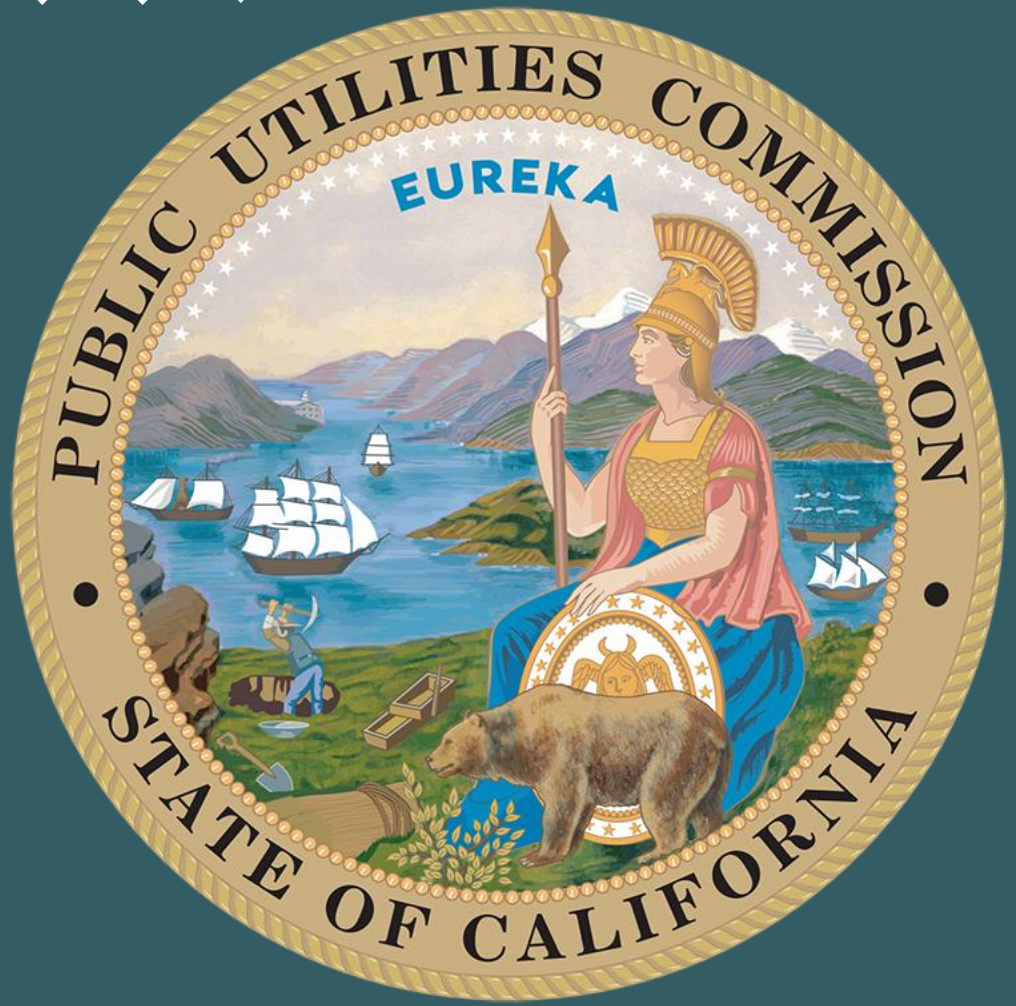
Retired CPUC Attorney and Administrative Law Judge

Material in this presentation was previously presented at a program of the Conference of California Public Utility Counsel (CCPUC), the specialty bar association of attorneys and regulatory personnel who practice in the areas of energy, telecommunications, transportation, and water regulation before the California Public Utilities Commission (CPUC).

TRIBAL ENERGY & CLIMATE COLLABORATIVE

The Tribal Energy & Climate Collaborative (TECC) identifies and advances the clean energy, climate change, and related economic and workforce development goals of the Member Tribes of the Southern California Tribal Chairmen's Association (SCTCA).

TECC also offers trainings, forums, and resources for California Native American Tribes across the State.



TECC Program Funding

- This work was supported with grants from the California Public Utilities Commission's (CPUC) **Equity and Access grant program.**
- The California Legislature recognizes that some California communities face systematic underinvestment, higher pollution burdens, and higher barriers to clean, safe, and affordable utility and transportation services. To address these challenges, it allocated $30 million dollars to the CPUC to establish the E&A Grant Program that empowers members of Environmental and Social Justice communities to participate in CPUC proceedings and decision-making processes.
- The Equity, Engagement, and Education (EEE) Grant Account awards grants up to $200,000 for the purposes of building CBO, Tribal, and community capacity to understand and engage with CPUC decision- making processes. The EEE Grant Account will increase participation within CPUC decision-making and build the long-term capacity of Tribes and CBOs to make participation in the Intervenor Compensation program and other funding sources more accessible. This will enable CBOs and Tribes to have more influence over clean energy programs and support making these programs more accessible to their served communities.

CPUC: California Public Utilities Commission

Regulates: Investor-Owned Utilities

Does NOT Regulate: Publicly Owned Utilities or Utility Districts

The CPUC Regulates Multiple Industries

Including energy, telecommunications, water, transportation, and rail safety.

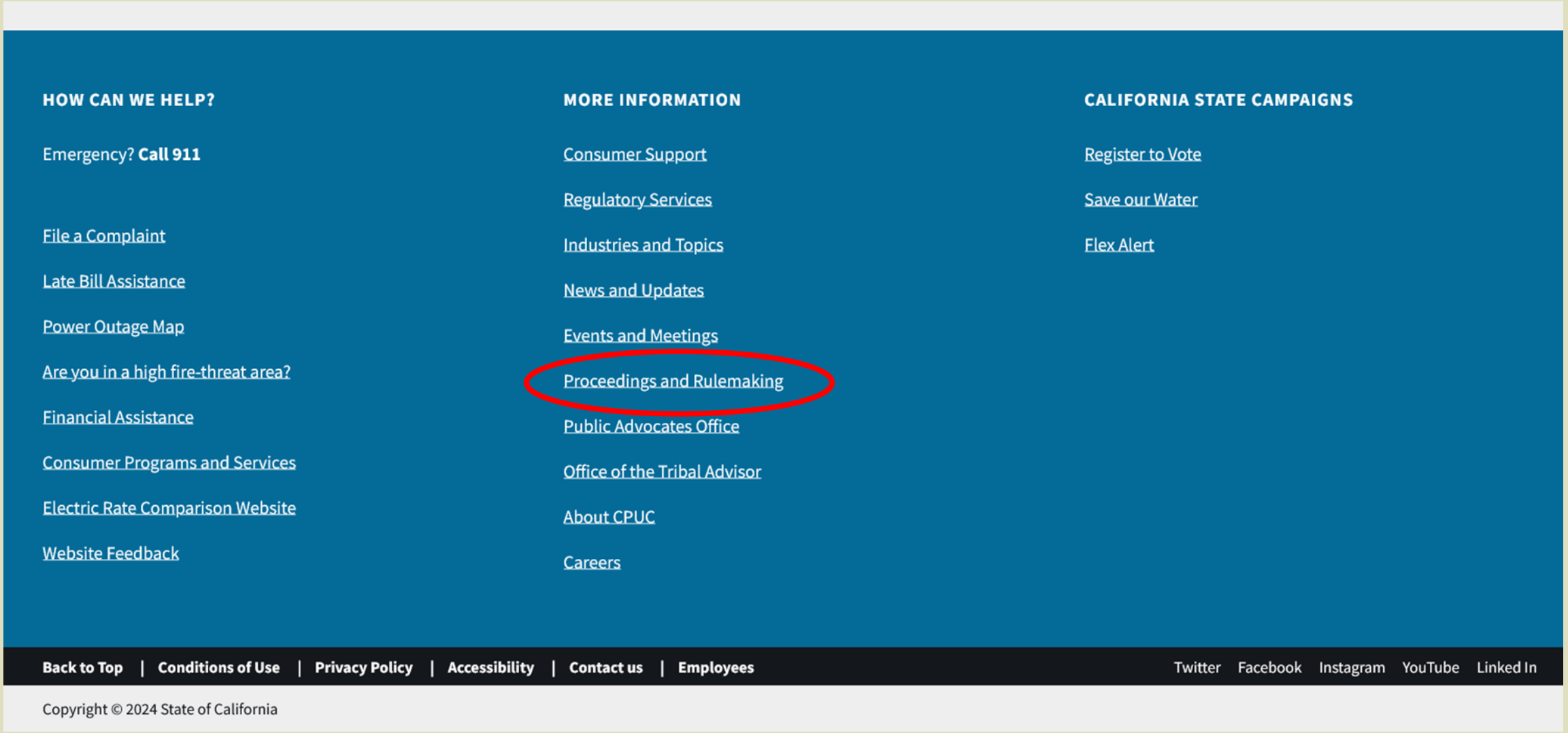
Not all are regulated the same way, so while most of what will be discussed today applies across industries, not all of it does.

Your primary resource will be the CPUC website.

www.cpuc.ca.gov

It has a lot of information, but finding what you need can be hard.

Scroll to bottom of home page:



Home › Proceedings and Rulemaking

Proceedings and Rulemaking

We regulate utility companies and infrastructure in California.

FEATURED LINKS

Docket Card ↗

Find information and documents for a specific proceeding.

Follow a Proceeding ↗

Subscribe to documents published for formal proceedings, resolutions, agenda related materials, and press releases. Follow a particular proceeding, industry, or type of document.

Participate in a Proceeding

Learn how you can become a party to a proceeding, which depends on what stage the proceeding is in.

E-File a Document

Electronic filing lets you send documents to the CPUC to be processed and included with other pleadings in formal proceedings.

Locate documents

Including Decisions and Proposed Decision (as well as red-lined revisions) Official CPUC-generated proceeding documents, Advice Letters, electronically filed documents, staff reports, press releases, environmental impact reports and more.

Intervenor Compensation

Providing financial resources to individuals and groups representing residential or small commercial electric utility customers to bring their concerns and interests during formal proceedings.

Daily Calendar

Daily calendar includes today's events.

Alternative Dispute Resolution (ADR)

Processes, such as facilitation, negotiation, mediation, and/or early neutral evaluation, help customers resolve a conflict without a court or agency's formal decision.

Practitioner's Page

Find all the information you need for both new and veteran practitioners in one place.

Appealing Citations

General information and instruction on how to appeal citations.

Decisions & Resolutions re: CPUC Practice

Documents creating other requirements as they relate to practice and procedure at CPUC that are not part of the Rules of Practice and Procedure or General Orders.

Get Involved

Learn about hearings, events, webcasts, ordering documents, and other ways you can participate in the processes of CPUC.

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Looking for a Specific Type of Document?

Different types of documents and files require a special type of search functionality. Explore advanced search options to retrieve a specific document.

- Advanced Search
- Advice Letters Search
- Advice Letters Statistics
- Agenda Decisions
- Agenda Search
- Agenda- Current Voting Meeting
- Daily Calendar (PDF versions)
- Decisions and Resolutions for Public Comment
- Docket Card / Proceeding Information
- E-filed Documents
- Final Decisions
- Final Resolutions
- General Orders
- News Releases
- Rules of Practice and Procedure
- Rulings

USEFUL LINKS

California Constitution Article XII ↗

Public Utilities Code ↗

Rules of Practice & Procedure

CPUC Rules of Practice and Procedure

Read them. (They are not that long.)

Structure of the CPUC

Commissioners

Divisions

Executive Director

CPUC Divisions

As an intervenor in energy proceedings you will interact most with:

ALJ (Administrative Law Judge)

Public Advocates Office

Legal

Energy

Other Characters

As an intervenor in energy proceedings you will interact most with:

Utilities

Other Intervenors

And maybe:

Outside Entities (FERC, CAISO, CEC, etc.)

Other Characters

As an intervenor in energy proceedings some others may interact with the Commission (but not with you):

Governor

Legislators

Wall Street/Rating Agencies

Formal Proceedings

Formal Proceedings

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APPLICATION (A.)
RULEMAKING (R.)
INVESTIGATION (I.)
COMPLAINT (C.)

Formal Proceedings

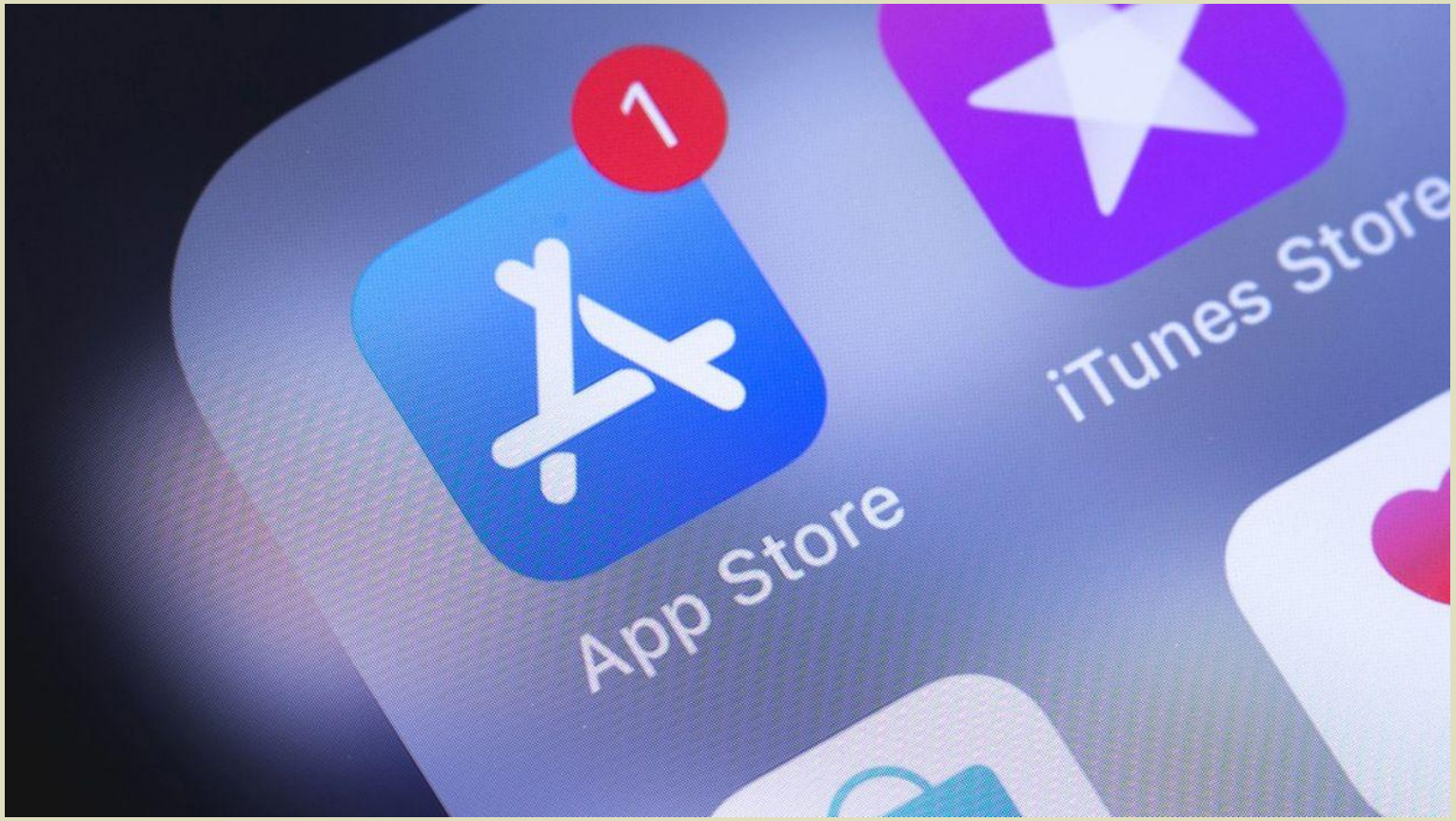
Numbering System:

Type.Year-Month-Number

Example:

A.16-08-006 is an Application, filed in August, 2016.

Formal Proceedings
APPLICATION



Formal Proceedings

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APPLICATION

How does it start

What is it used for

Why get involved

Formal Proceedings

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Typical Application Process:

Application, protests/responses, pre-hearing conference, written testimony, evidentiary hearings, briefing, proposed decision, final decision.

Formal Proceedings

Application Process

Early Parts:

- Application
- Protests/responses
- Pre-hearing conference (PHC)

Formal Proceedings

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Application Process Middle Parts:

- Written testimony
- Evidentiary hearings
- Briefing

Formal Proceedings

More detail on

Evidentiary Hearings:

- Multiple parties
- Written direct testimony
- Cross examination

Formal Proceedings

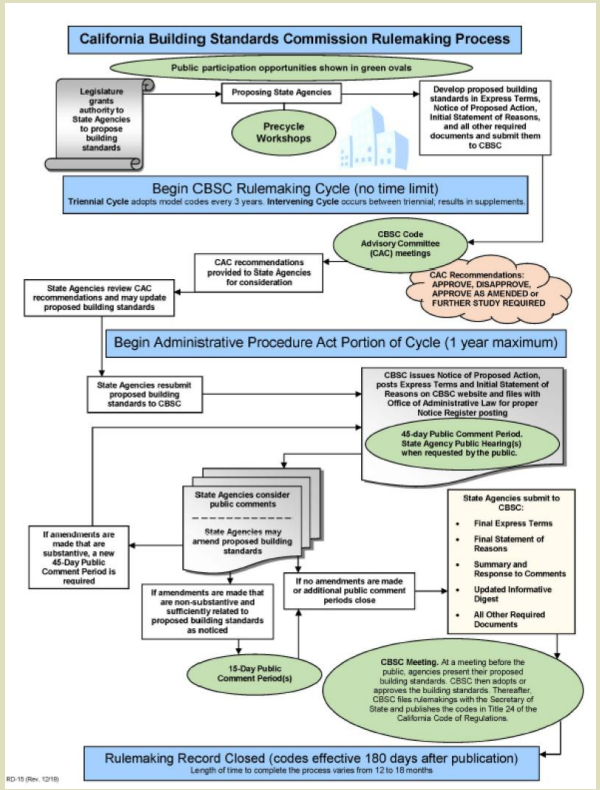
Application Process

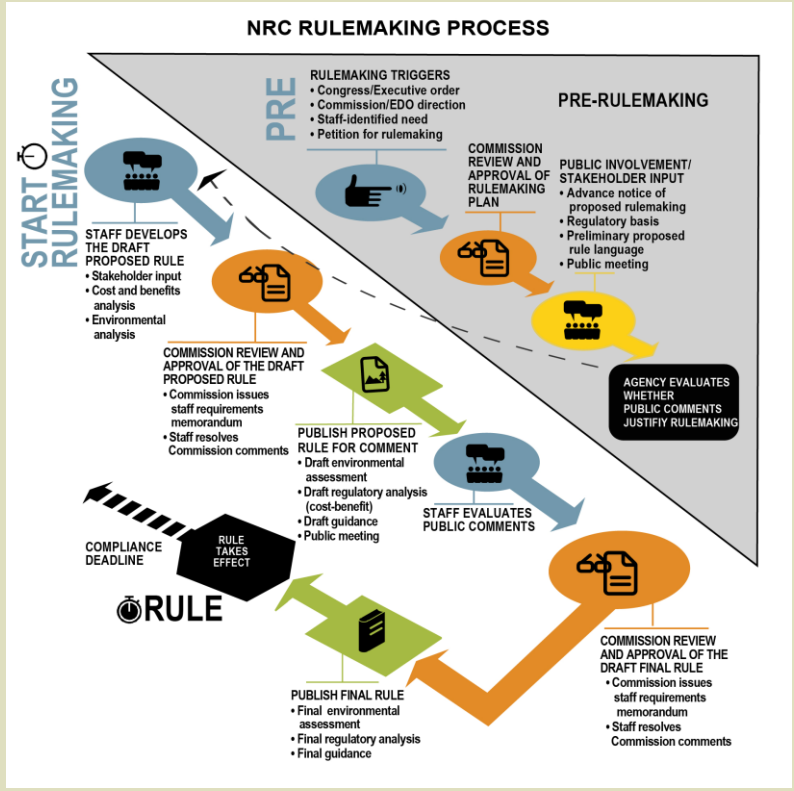
Late Parts:

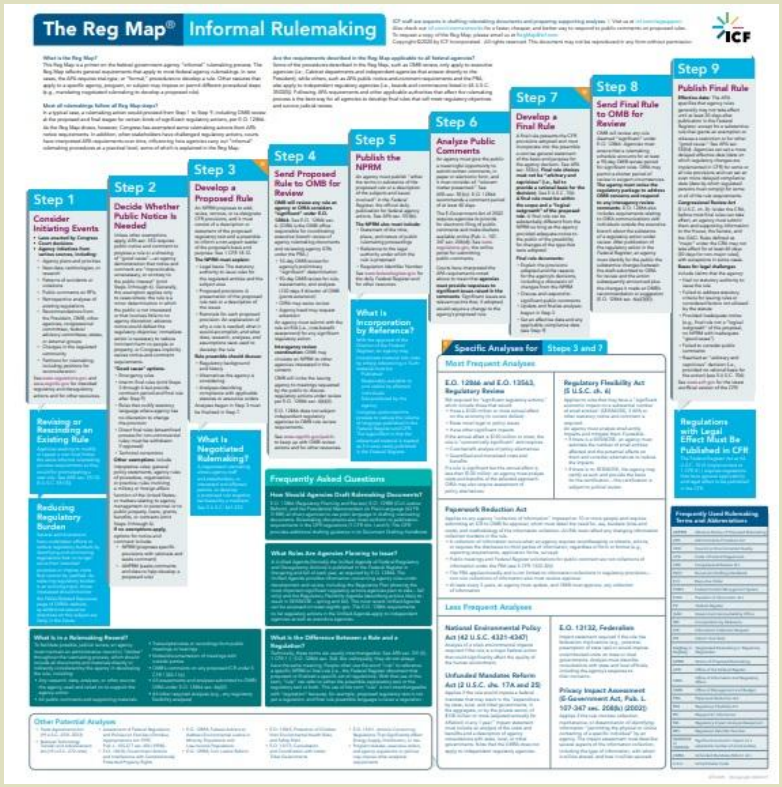
- Proposed decision
- Comments on proposed decision
- Final decision

Formal Proceedings

RULEMAKING







Formal Proceedings

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RULEMAKING

How does it start

What is it used for

Why get involved

Formal Proceedings

Typical Rulemaking Process:

Order instituting rulemaking, comments, staff report, workshops, comments, reply comments, proposed decision, final decision.

Formal Proceedings

Rulemaking Process:

Process in Rulemakings is more likely to vary from typical than in an Application. May have evidentiary hearings, may not have staff report or workshops, etc.

Formal Proceedings

More detail on the

Rulemaking Process:

- Comments (multiple rounds)
- Staff report
- Workshops

Formal Proceedings
INVESTIGATION

Formal Proceedings

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INVESTIGATION

How does it start

What is it used for

Why get involved

Formal Proceedings

Typical Investigation Process:

Investigation report, order instituting investigation, pre-hearing conference, written testimony, evidentiary hearings, briefing, presiding officer's decision, final decision.

Formal Proceedings
COMPLAINT

Formal Proceedings

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COMPLAINT

How does it start

What is it used for

Why get involved

Categories of Formal Proceedings

Ratesetting

Quasi-Legislative

Adjudicatory

Categories of Formal Proceedings

Why do care what category it is?

Ex Parte Rules

Who Controls 1st Decision

Categories of Formal Proceedings

Ratesetting applies to:

Almost all applications,
Some rulemakings,
Occasional investigations.
Default category.

Categories of Formal Proceedings

Quasi-legislative applies to:

Most rulemakings.
Unusual for any others.

Categories of Formal Proceedings

Adjudicatory applies to:

Most investigations,
Most complaints.
Unusual for any others.

Ex Parte

Ex Parte Rules

Are ex parte communications allowed?

Ratesetting – yes, with notice

Quasi-Legislative - yes

Adjudicatory – no

(See Rule 8)

Ex Parte Meetings

Can occur during course of proceeding, but most common immediately after Proposed Decision is issued.

Not-Yet Final Decisions

Proposed Decision

Alternate Decision

“POD” (Presiding Officer’s Decision)

“Decision Different”

Final Decision

"Because we said so."

Final Decision

Decision becomes final when not-yet final decision is voted out by Commission, or if POD is not appealed or review requested.

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After the Decision

- Application for Rehearing
- Court of Appeals/Supreme Court
- Petition for Modification

(See Rule 16)

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Intervenor Compensation

Yes, you can get paid!

Maybe.

Eventually.

How to Become a Party

(Formal Proceeding)

How and how much do you want to participate?

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How to Become a Party

(Formal Proceeding)

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How to Become a Party

(Formal Proceeding)

How to Become a Party

(Formal Proceeding)

- Protest or Response to Application
- Comments in response to OIR
- Appearance at PHC
- Written Motion

(See Rule 1.4)

Ways to Participate

(Formal Proceeding)

- Protest/Response
- Testimony
- Comments
- Cross examination
- Briefing

More Ways to Participate

(Formal Proceeding)

- Settlements (See Rule 12)
- Alternative Dispute Resolution (ADR – usually mediation)
- Motions (See Rule 11)

Other Proceedings

Advice Letters

Citations

Administrative Enforcement Orders

Administrative Consent Orders

Resolutions

(Other Proceedings)

From various sources/processes with wide variation in public participation.

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Questions?

Online Resources

Most of the information you need to litigate before the California Public Utilities Commission (CPUC) can be found on the CPUC's website: https://www.cpuc.ca.gov/ The CPUC website contains a large amount of information, which is helpful, but finding what you need can be difficult. There is a "Search" function button towards the upper right corner of the home page and most other pages. It works reasonably well, but unless your search is narrowly tailored, it will often pull up a lot of extraneous items. As a practitioner before the CPUC, probably 90% of the information you will need can be found under the link titled "Proceedings and Rulemaking" located near the bottom of the CPUC home page under the heading "More Information:" https://www.cpuc.ca.gov/proceedings-and-rulemaking

Once there, you will find many useful links, including:

"Locate Documents" (https://www.cpuc.ca.gov/proceedings-and-rulemaking/locate-documents) This provides narrower search categories, making it much easier to find specific documents, such as Final Decisions, Final Resolutions and General Orders.

"Docket Card" (https://apps.cpuc.ca.gov/apex/f?p=401:1:0) This will provide access to all documents filed in a formal proceeding. (Sometimes there can be a few days lag in filed documents showing up here.)

"Daily Calendar" (sends you to a page called "Upcoming Events" or "Events and Meetings," where there is another link button "Visit Daily Calendar.") The Daily Calendar shows new filings (such as Applications), plus events such as hearings or workshops occurring at the CPUC.

"Rules of Practice and Procedure" (https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/administrative-law-judge-division/documents/rules-of-practice-and-procedure-may-2021.pdf) Clicking on this link will launch a download of the Rules in pdf form. The Rules are important. Download and save a set. They do get updated occasionally, so make sure you are referring to the current ones.

"Public Utilities Code" (https://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=PUC&tocTitle=+Public+Utilities+Code+-+PUC) California utilities law. Also important. This link sends you to the CA legislature's website, so the laws should all be current.

All references/links to the CPUC website are current as of June, 2024. The website occasionally gets redesigned; prior redesigns retained most pages, but their locations may change.

A standard Google internet search will often pull up CPUC and CPUC-related documents; if you have access to and Lexis and Westlaw, they have CPUC decisions.

Other industry-specific government and non-government entities' websites also have useful information, such as the websites of the California Independent System Operation (CAISO) (https://www.caiso.com/), the California Energy Commission (https://www.energy.ca.gov/), the California Office of Energy Infrastructure Safety (https://energysafety.ca.gov/) the Federal Energy Regulatory Commission (FERC) (https://ferc.gov/), and the National Renewable Energy Laboratory (NREL) (https://www.nrel.gov/).

Major media coverage of the CPUC is generally poor, either superficial or inaccurate or just absent. The main exceptions are Katherine Blunt of the Wall Street Journal and Sammy Roth of the Los Angeles Times, who typically do a good job with their coverage of the CPUC. There are quite a few industry/trade specific newsletters and websites out there, such as Canary Media (https://www.canarymedia.com/), California Energy Markets (https://www.newsdata.com/california_energy_markets/), Energy Central (https://energycentral.com/), EPRI (https://www.epri.com/), and others, including the utilities' websites. Many have useful information and/or analysis, but note that they may be run by entities with a specific perspective or interest that should be taken into consideration.

Good luck!

Peter V. Allen 2024

The Small Print

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