

**REPORT ON KEY FINDINGS FROM CPUC MODERNIZATION & REFORM
PROJECT**

for

**WORKSHOP ON GOVERNMENT DECISION-MAKING AND OPEN
MEETINGS**

**GOVERNOR'S OFFICE OF PLANNING AND RESEARCH
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by

Edward W. O'Neill

Senior Advisor on CPUC Modernization & Reform

PURPOSE OF CPUC MODERNIZATION & REFORM PROJECT

- Evaluate CPUC's Jurisdiction, organization, management, processes & procedures
- Identify Opportunities to Improve:
 1. Efficiency,
 2. Effectiveness &
 3. Accountability
- Recommend Remedial Reforms

METHODOLOGY

- Reviewed Prior Studies
- Met with CPUC Commissioners & employees
- Met with outside stakeholders
- Reviewed Information & Data re CPUC Programs, Policies, & Proceedings
- Reviewed Studies re Other State & Federal Agencies
- Reviewed Academic Literature

KEY FINDINGS

- Two Factors Contribute Most Significantly to Systemic Problems within the CPUC
 1. Impaired Communication
 2. Inadequate Governance & Enterprise Management
- These Factors Permeate Nearly Every Aspect of the Agency
- The Agency Will Never Achieve Its Potential Unless & Until These Two Critical Deficiencies Are Remedied

IMPAIRED INTERNAL COMMUNICATION

- One of Most Frequently Cited Causes of Organizational Failures in Academic Literature
- Typified by Poor Internal Communication Within Executive Level and Between Executive & Working Level
- “Siloing”
- “Information Dissonance”
- Dramatically Different Assumptions & Understandings Between Management & Working Level

IMPAIRED INTERNAL COMMUNICATION

- Leads to Flawed & Sometimes Catastrophic Decision-making
- Example - Feynman's Investigation of Root Cause of Challenger Explosion
 - Estimates of Probability of Catastrophic Failure:
 - NASA Managers – One-in-100,000
 - NASA Engineers – One-in-200
 - Result, Catastrophic Decision by Management to Proceed with Launch & Shuttle Exploded

IMPAIRED INTERNAL COMMUNICATION

- CPUC Has Similar Communications Deficiencies
- Communications Between Commissioners are Impaired
- Significant Communications Barriers Exist Between Executive level Management & Working Level Staff
- View Among Staff - Commissioners are More Interested in Hearing From Utility Lobbyists than Analysis & Recommendations From Staff

IMPAIRED INTERNAL COMMUNICATION

- CPUC Communications Deficiencies Have Had Significant Impacts on Agency's Effectiveness
- Example - Factors that Gave Rise to Deficiencies in CPUC Gas Safety Program Were Well Known to SED
 - Commissioners Failed to Adequately Address Them
 - Viewed as an Administrative Rather Than Safety Issue
- Result – SED was Unable to Adequately Oversee & Inspect PG&E Pipeline & It Exploded

GOVERNANCE & ENTERPRISE MANAGEMENT

- Another Frequently Cited Cause of Organizational Failures in Academic Literature
- Deficiencies in Executive Level Management of Overall Mission, Goals & Objectives
- And of Programs, Policies & Priorities
- Often Accompanied by Deficiencies in Communication and Information Flow

GOVERNANCE & ENTERPRISE MANAGEMENT

- CPUC Lacks a Process for Executive level Enterprise Management
- Manifestations:
 - No Integrated Strategic Plan
 - No Effective Metrics
 - No Means of Evaluating Agency's Success or Lack Thereof
 - CPUC Staff Has No Common Sense of Mission
- Problem Has Long Been Recognized

Remedies

- Some Can Be Implemented By CPUC
 1. Expanding Public Business Meetings to Include Discussion of Policies, Programs & Priorities
 2. Allocating Executive Level Management Responsibilities Among All Commissioners
 3. Increasing Commissioner Outreach to Staff
- Others Key Barriers Require Legislation
 1. Bagley-Keene Act Reform
 2. Ex Parte Reform

Bagley-Keene Act

- Prohibits members of a multi-member state agency or other body from “meeting” outside a noticed meeting open to the public, to discuss or deliberate on anything within the agency’s jurisdiction’
- “Meeting” is broadly defined:
“Any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.” Gov. Code sec. 11122.5(a)

Bagley-Keene Act

- Indirect & “seriatim” meetings are also prohibited

“A majority of the members of a state body shall not, outside of a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body” Gov. Code sec. 11122.5(b)(1)

Effect of Bagley-Keene Act on CPUC

- Discussion of Sensitive Matters in Public Constrains Candid Discussion & Collaboration
- Given the Extraordinary Breadth & Scope of CPUC Jurisdiction & Number of Formal Proceedings, it is Impossible to Manage Agency Through Noticed Public Meetings
- Thorough Preparation for Public Business Meetings is Virtually Impossible
- Interrelated Proceedings, e.g. RPS, LTPP, DRP, EE, DR & Storage, cannot be effectively coordinated by Different Assigned Commissioners

Proposed Bagley-Keene Reform

- Amend the Act to permit “discussion” of policies, programs and priorities among members of multi-member agencies
- Expand the existing CPUC-specific exemptions to permit discussion in closed sessions of quasi-judicial adjudication proceedings and decisions regardless of whether hearings have been held
- So long as no vote is taken, or collective consensus is reached, outside of public business meetings

Ex Parte Statutes

- PU Code Established Different Rules for 3 Different “Categories” of Proceedings:
 1. “Adjudication” – Ex Partes Prohibited
 2. “Quasi-Legislative” – Ex Partes Permitted Without Restriction
 3. “Ratesetting” – Ex Partes Prohibited, But “All Party” Permitted; & Individual Permitted Subject to Certain Notice, “Equal Time,” and Disclosure Requirements

Effect of Ex Parte Statutes & Rules

- CPUC Commissioners Have Entertained & Relied on Ex Parte Communications in “Ratesetting” & “Quasi-Legislative” Proceedings at the Most Critical Stage of Proceedings
- Commissioners’ Reliance on Ex Partes With Utilities & Outside Stakeholders Has Driven A Wedge Between Commissioners & Staff
- Contributing to Internal Communications Barriers & Deficiencies
- Ex Parte Rules Are Complex & Ripe for Abuse

Proposed Ex Parte Reform

- Simplify Rules - Based on 2 Rather than 3 Different Types of Proceedings:
 1. Quasi-Judicial “Adjudication” - Enforcement, Licensing & Rate Proceedings Affecting Individual Rights & Obligations
 2. “Quasi-Legislative” - Policy Proceedings Affecting Broad Classes of Utilities and Customer Groups
- Ban Ex Parte Communications unconditionally in contested Quasi-Judicial “Adjudication”
- Permit Ex Parte Communications without Restriction in “Quasi-Legislative”

Proposed Ex Parte Reform

- Establish a Clear Duty on CPUC Decision-Makers & Interested Parties to Disclose Any Improper Ex Parte Communications
- Adopt Meaningful Sanctions For Violations
- Require Final On-The-Record En Banc Hearings Before Commissioners in Contested Quasi-Judicial Adjudication Proceedings

CONCLUSION

- It Is Critical to Address the Communications and Governance Issues at the CPUC
- The CPUC Will Not Have a Prayer of a Chance of Achieving Its Potential if They Are Not Remedied
- The Two Most Important Reforms Necessary to Do So Are:
 1. Bagley-Keene Reform, &
 2. Ex Parte Reform