Study B-800 April 21, 1997

Memorandum 97-29

Public Utility Deregulation: Electrical Industry

This memorandum summarizes the current status of deregulation in the electrical industry, and the input of stakeholders and the California Public Utilities Commission on the need for code revisions. The material on the current status of deregulation was prepared by Deborah Muns, of Stanford Law School.

CURRENT STATUS OF DEREGULATION

Electrical energy has historically been sold to retail customers by regulated utilities with exclusive service monopolies. This regulatory framework is believed to be partially responsible for California's electricity rates being some 50 percent higher than the national average. The electric utilities were vertically integrated monopolies responsible for the generation, transmission, and distribution of electricity and electrical services. Retail customers had no choice but to purchase power from the local monopoly.

Congress began encouraging competition in the industry in 1978 with the passage of the Public Utilities Regulatory Policies Act, which effectively created competition among independent and utility generators. Congress pushed the industry closer to full scale competition in 1992 by enacting the Energy Policy Act, which promoted greater wholesale competition by lowering the threshold for new producers to enter the market and allowing greater access to the transmission lines owned by monopoly utilities. The Act also allowed states to create a market where individual customers could buy power from independent producers.

The California Public Utilities Commission began investigating new approaches to regulating the supply and distribution of electricity in 1993. In 1996, the Legislature passed AB 1890, which provides a legislative framework for the restructuring of California's electric industry. The goal of the bill was to restructure California's electrical services industry in order to transition to competitive markets by December 31, 2001, lower the cost of electricity, retain and attract jobs, and reduce power outages.

In the restructured electrical industry, there will be competition in the generation of electricity. Thus in the future, electricity consumers may choose among competing providers of electricity. The transmission and distribution of electricity, however, will continue to be done by regulated franchise monopolies.

Delivery of a third party's power to customers over the local distributor's lines is commonly referred to as 'retail wheeling.' In order to implement retail wheeling, two new public benefit, non-profit market institutions were created: the Power Exchange and the Independent Service Operator. The Power Exchange is required to provide an efficient, competitive electric energy auction, open on a non-discriminatory basis to all providers, to meet the electricity loads of exchange customers. The Power Exchange must provide results of its auction to the Independent Service Operator. The Independent Service Operator is responsible for providing centralized control of the state-wide transmission grid and for ensuring efficient use and reliable operation of the transmission system. In order to ensure reliability, the Independent Service Operator is required to adopt standards for maintenance of the transmission facilities, and to conduct reviews of power failures affecting more than 10 percent of a service area. The Independent Service Operator has authority to levy sanctions where appropriate. Both publicly-owned and investor-owned electric utilities are required to commit control of their transmission facilities to the Independent Service Operator until the end of 2001.

The move to a competitive generation market will result in transition (or stranded) costs. These costs consist primarily of continuing obligations for past utility power plant investments and power purchase contracts that will not be recovered in a competitive generation market. Investor-owned utilities have through December 31, 2001, to recover most of these costs through an accelerated recovery system. The Legislature found that these costs should be recovered because the costs were imposed by regulations and were then included in utility rates.

Once the restructuring of California's electrical industry is complete, electricity consumers will have the opportunity to choose among competing providers of electricity and to negotiate the purchase terms. Although customers will be able to choose the energy-services company they wish, they can also choose to remain traditional utility customers.

PUC will still have regulatory responsibilities to ensure that consumers are protected from fraud and misinformation. PUC will be required to provide

electricity consumers with information necessary to compare electric service offerings. In addition, because many aspects of electric service will remain monopoly-based, PUC will continue to be responsible for protecting consumers where services are provided by monopoly suppliers.

PUC indicates a commitment to developing alternatives to the historical cost of service methods of regulation to encourage efficient and least-cost service. PUC is currently investigating regulatory reforms that will provide stronger incentives for efficient utility operations and investment, simplify complex rate proceedings, and reduce administrative burdens.

INPUT OF STAKEHOLDERS AND PUBLIC UTILITIES COMMISSION

PUC's request for input on code revisions required by deregulation of the electrical industry resulted in the letter from Southern California Edison, attached as Exhibit pp. 1-16. This letter identifies a number of areas where code revisions may be appropriate.

We have attached a chart as Exhibit pp. 17-29, based on tables provided by PUC, that shows by code section the suggestions of Southern California Edison and the preliminary reactions of PUC.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

SOUTHERN CALIFORNIA EDISON
An EDISON INTERNATIONAL Company

Robert G. Foster
Senior Vice President

January 30, 1997

Mr. Kent W. Kauss, Chief
Office Of Government Affairs
California Public Utilities Commission
1327 "O" Street, Suite 404
Sacramento, CA 95814

Re: Senate Bill ("S.B.") 960 Report on Recommendations for Statutory Changes Needed Because of the Changing Competitive Environment

Dear Mr. Kauss:

Thank-you for your letters of November 7, 1996 and January 10, 1997 requesting our comments on the reports required by S.B. 960 Sections 12[1] and 14,[2] and on the process for finalizing those reports. S.B. 960 requires:

- The CPUC to provide the Legislature by March 31, 1997 with recommendations for changes to regulations or statutes that may be required as a consequence of the changing competitive environment in which regulated and unregulated entities are competitors.

- The CPUC, in consultation with the Law Revision Commission, to submit to the Legislature by June 30, 1997, a report on revisions to the Public Utilities Code that are needed as a result of the restructuring of the electricity, gas, transportation, and telecommunications industries.

We appreciate this opportunity to offer our views and recommendations on changes to regulations and statutes that may be required as a

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1/ "On or before June 30, 1997, the Public Utilities Commission in consultation with the Law Revision Commission shall submit a report to the Legislature on needed revisions of the Public Utilities Code that result from the restructuring of the electrical, gas, transportation, and telecommunications industries." S.B. 960 §12

2/ "In order to enhance fair competition, on or before March 31, 1997, the Commission shall submit a report to the Legislature concerning its recommendations for changes to regulations or statutes that may be required as a consequence of the changing competitive environment in which regulated an unregulated entities are competitors." S.B. 960 §14.

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result of the changing competitive environment. We urge the Commission to pursue broad comprehensive changes to statutes and regulations that will ensure that the people of California enjoy the benefits of the emerging competitive marketplace. The following reflects our current thinking on the content of the two reports, and the process for bringing the reports to finalization.

Constitutional Amendment -- The Ability to Enact Reform

The Little Hoover Commission recently issued a report that identifies need for significant legislative action. Although we are still reviewing the Little Hoover Commission's recommendations, it is clear that reform issues will be the subject of legislative debate in the upcoming session.

For example, as adopted in 1879, and essentially unchanged to this date, the Constitution provides that there shall be five commissioners. The clear and present danger stated by the Little Hoover Commission is that:

> "Among the lessons that have been learned is that fourth branch commissions are not effective when their workload is so large that commissioners must delegate policymaking authority to their staff or rely on private meetings to make up for the hours of public debate that they missed."[3/]

If the Commission's workload is so large that Commissioners must delegate their policymaking authority to staff, as is frequently the case at the Commission, then the Legislature may need to adjust the number of Commissioners. Moving the provisions regarding the Public Utilities Commission from the Constitution to the Public Utilities Code would enable the Legislature to make this change if needed so that the Commission can be responsive to the needs of the People of the State.

Moving the provisions regarding the Public Utilities Commission from the Constitution to the Public Utilities Code would also make it clear that the Legislature can eliminate the overlapping functions of the California Energy Commission and the CPUC. As the Little Hoover Commission pointed out, the State does not need two agencies to regulate energy:

> "The State has learned that giving two commissions overlapping duties is better at stopping events from happening than making desired outcomes a reality. Dueling commissions are particularly good at frustrating progress when those commissions are left to pursue newly plotted policy direction without the guidance of elected lawmakers and the State's executive."[4/]

[3/] Little Hoover Commission Report, p.177.
[4/] Little Hoover Commission Report, p.177.

The CPUC has indicated that this type of reform may again require constitutional amendment.[5/] A constitutional amendment conveying the Constitutional provisions to the Public Utilities Code would make it clear that the Legislature can undertake the fundamental reforms of the Commission that it finds to be in the interest of the State.

Procedural Reform

In enacting S.B. 960, the Legislature took a first step in encouraging the Commission to use legislative-type procedures when it is deciding legislative-type questions. However, it did not go far enough.

The CPUC's recent report on intervenor compensation indicates that the public views the Commission's processes as fractured and confused, with complex procedures that are unintelligible to the uninitiated. Hearings are too long, the Commissioners are too busy to attend, and it is too expensive to participate. Many of these views are caused by the Commission's use of trial-type processes to determine policy. In addition, the Commission uses procedures different from other State and Federal agencies that operate under the Administrative Procedures Act. Rather than overhauling the intervenor compensation process to increase payments to the public to litigate in CPUC hearings, it would be better to reform the process to lower regulatory barriers to public participation.

The obvious way to lower regulatory barriers is to categorize any case where policy is made as quasi-legislative. This would provide several important public benefits. First, the Commissioners are required to be present in the hearings. This was the original intent of S.B. 960.[6/] Commissioner involvement will result in more accountable, and presumably better policymaking. In addition, the practical effect of requiring a Commissioner to be present is to reduce hearing time, resulting in more timely decisions. Thus, we recommend that the "ratesetting" category be eliminated leaving the two traditional well-defined categories of adjudicative and quasi-legislative.

The least expensive and most direct way for a member of the public to access their appointed representatives is usually by writing a letter or meeting them. Unless the proceeding is categorized as quasi-legislative, under the CPUC *ex parte* rules the public member may be subject to very significant and expensive filing and mailing requirements. If the proceeding is categorized as quasi-legislative, there are no restrictions on *ex parte* communication. Although lawyers

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[5/] "Discussions of PUC reform are often stymied over the degree that the PUC can be changed without amending the State Constitution. If that issue persists, it should be resolved expeditiously be the appropriate authorities." Little Hoover Commission Report, p. v.

[6/] The original purpose of S.B. 960 was "to eliminate the option for the Administrative Law Judge to sit alone while presiding over hearings" and require the Administrative Law Judge to "assist the Commissioners who will hear the case." S.B. 960 as amended May 2, 1996.

and judges may look askance at *ex parte* communication in the judicial context, in the context of legislative policymaking open communication with constituents is beneficial and appropriate.[7]

If the "ratesetting" category is retained and an *ex parte* notice does need to be filed in a ratemaking proceeding, the CPUC should follow procedures allowed for ratemaking proceedings in the APA to make the process less burdensome. For other agencies in the State under the APA, the agency simply places the letter in the record, or places a summary of the meeting in the record.[8] After notice or letter is in the record, it ceases to be "ex parte" by definition. A member of the public does not have to file notices, or undertake the possibly expensive process of mailing copies of his or her letter to everyone on the service list.

The Courts have given the CPUC's proceedings an extremely deferential standard of review precisely because they defer to the agency's discretion on policymaking.[9] The CPUC itself, in arguing against a broader scope of judicial review, stated that the majority of its work involves ratemaking and policy which resembles an exercise in discretion.[10] In summary, CPUC proceedings should be presumptively quasi-legislative because Commissioner presence is in the public interest. Policy should be made by the Commissioners, not delegated to the staff.

The problem of the CPUC's processes being confusing and non-uniform would be alleviated if the Commission operated under the Administrative

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[7] "Under our system of government, the very legitimacy of general policymaking performed by unelected administrators depends in no small part upon the openness, accessibility, and amenability of these officials to the needs and ideas of the public from whom their ultimate authority derives, and upon whom their commands must fall.... As judges ... we must refrain from the easy temptation to look askance at all face-to-face lobbying efforts, regardless of the forum in which they occur, merely because we see them as inappropriate in the judicial context." Sierra Club v. Costle, 657 F.2d 298, 400 (D.C. Cir. 1978).

[8] "An ex parte communication to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated is permissible in an individualized ratemaking proceeding if the content of the communication is disclosed on the record and all parties are given an opportunity to address it in the manner provided in Section 11430.50." Cal. Gov't Code § 11430.70(b)

[9] "[T]he purpose of a relatively deferential standard of review is to ensure that the CPUC, and not the courts, make the important economic and policy decisions involved in regulating utilities. These considerations apply most strongly to CPUC decisions that establish policy or that set rates for major utilities. We believe that these kinds of CPUC decisions should remain subject to direct Supreme Court review as under the present law." July 3, 1996 Comments of President Conlon and Commissioner Knight to the Conference Committee on S.B. 960.

[10] "[H]owever, the majority of the PUC's work involves ratemaking and policy issues and deals more with predicting the future than with deciding what happened in the past. In that context, the application of law (particularly some of the very general standards found in the P.U. Code) to facts more nearly resembles an exercise of discretion, than the determination of a pure question of law." November 14, 1995 letter from Ex-President Fessler to the California Law Revision Commission.

Procedure Act, as does the California Energy Commission and most agencies in the state. A good first step for the upcoming session would be to require that the Commission's rules comply with the rulemaking provisions of the APA.[11/] The Commission is currently required to promulgate its rules of procedure under the APA; however in practice it often does not.[12/] Requiring the use of APA procedures would make the process more transparent and uniform.

Finally, although S.B. 1322 enacted judicial review as of right for adjudicatory cases, there is effectively no review for other cases. Parties perceive that the absence of effective judicial review oversight has created a sense of omnipotence that breeds arbitrary and even careless decisionmaking.[13/] Providing judicial review of all cases at the District Court of Appeal would alleviate the problems created by case categorization and concerns about *ex parte* communication. For most agencies, whether a particular decision is adjudicatory or quasi-legislative affects the standard of review, not where the decision is reviewed. The issue of case categorization is ultimately one for the court to determine, and there is a well-developed body of case law on the subject. It would also alleviate the underlying concern regarding *ex parte* communication, i.e. that a decision will not be based on evidence in the record. The remedy to ensure that a decision is based on evidence in the record is to provide judicial review, not eliminate *ex parte* communication.

Regulatory Sunset Process

The Legislature should establish a procedure that requires that the Public Utilities Code and CPUC administrative regulations periodically undergo a comprehensive sunset review to determine if the law or regulation is still needed. Many statutes and regulations are obsolete or unnecessarily complicate proceedings. For example, certain computer modeling statutes, long-run resource planning statutes, and statutes that require the CPUC to set rates are obsolete as they pertain to certain industries. Pacific Bell provided a list of statutes at the Conference Committee that they believe are obsolete with respect to the telecommunications industry. We attach a similar list of code provisions with

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11/ The CPUC apparently believes that its constitutional authority under Article XII, that provides the Commission may establish its own procedures (subject to statute), and its plenary authority in Pub. Util. Code §§ 701 and 1701(a), exempt it from those rulemaking provisions of the APA that apply to the CPUC. Resolution ALJ-170, mimeo p.6.

12/ For example, S.B. 960 was enrolled in August 1996 and signed by the Governor shortly thereafter. In September 1996, CPUC Staff issued for comment rules on font, type size, and procedural rules that were clearly in conflict with S.B. 960. Had those resources been directed toward developing S.B. 960 implementation rules in September, instead of waiting until November 21 to issue its first draft of rules, the Commission could have complied with the Government Code. Nor did the Commission seek a waiver from the OAL for an earlier effective date, as provided in Government Code § 11343.4.

13/ See Little Hoover Commission Report, p. 162, quoting TURN.

respect to the electric industry. (Attachment I.)[14] In addition, we note that the Public Utilities Code is cluttered with other regulations concerning highway carriers and railroads that should be removed or reorganized. There should also be standards for determining when the Commission should cease to regulate rates for a service that is being provided by competitive markets. We also recommend legislation that would provide that parties may petition the Commission to repeal or modify obsolete regulations. Government Code Sec. 11340.6 provides such a mechanism for agencies in the state that operate under the APA. (Attachment II.)

To minimize litigation, it is also critical that there be a bright line between the responsibility of the regulatory agency, and the courts. This would require legislatively overruling the California Supreme Court's recent decision in Cellular Plus.[15] There, although the CPUC set the rates, Cellular Plus filed suit against Pacific Telesis and US West for fixing prices for wholesale and retail cellular service. The California Supreme Court determined the CPUC's authority over the regulated rates did not immunize PacTel and US West against claims for price fixing under the Cartwright Act. The Court found that neither the Cartwright Act nor the Public Utilities Code contained any provisions exempting or immunizing providers with regulated rates from the Cartwright Act.

As the energy market moves to a competitive framework, the opportunity Cellular Plus creates for duplicative litigation cannot be overemphasized. One can visualize market players unhappy with regulatory outcomes crowding the courts with frivolous antitrust litigation. Therefore, we suggest that the Legislature amend the Public Utilities Code and the Cartwright Act, as appropriate, to draw a "bright line" between those activities subject to regulation and those subject to the state antitrust laws. In other words, there should be one litigation before the regulatory agency to set rates, or before the courts for unregulated conduct, but not both.

Finalizing the Report

With regard to process for finalizing the report, it should provide for a meaningful opportunity for parties to comment on staff's draft, and for parties to make recommendations once they have reviewed the draft. The California Law Revision Commission has monthly meetings which provide a forum for parties to comment in a legislative-type of setting. We urge the CPUC to issue draft legislation expeditiously so that the Law Revision Commission may hold at least two such public comment meetings.[16] We also suggest the service list of R.84-12-028 be used to notice such Law Revision Commission meetings.

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[14] We caveat that recent events, such as legislative activity in response to the Little Hoover Commission report, may dictate significant changes to our list.

[15] Cellular Plus v. the Superior Court of San Diego County, 14 Cal.App. 4th 1224, 18 Cal.Rptr.2d 308, (1993), pet. for reh. denied, 18 Cal.App.4th 512 (1993).

[16] We suggest that the Commission's report be issued in time for the Law Revision Commission to address the S.B. 960 report in at least two of their regularly scheduled meetings. The California

I would be happy to discuss these ideas with you further, and please feel free to call me or call Steve Pickett at (818) 302-1903 if you have any questions.

Very truly yours,

Robert G. Foster

Enclosures

cc: Mr. Nathaniel Sterling, California Law Revision Commission
The Honorable Steve Peace, Chair, Senate Energy, Utilities and Communications Committee
The Honorable Bill Leonard, Vice Chair, Assembly Utilities and Commerce Committee
The Honorable Diane Martinez, Chair, Assembly Utilities and Commerce Committee

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Law Revision Commission's meetings are scheduled for January 24, February 27, April 10, 1997, and May 8, 1997.

ATTACHMENT I

PUBLIC UTILITIES CODE
Provisions that should be deleted, revised, or subject to a sunset statute.

§ 3	Tenure of present officer holders. Grandfathers officeholders holding office in 1951. Obsolete.
§ 211 et seq.	Revise. The CPUC is now pre-empted by federal law from regulating rates for railroads and trucks, although it still sets rates for some carriers, such as shuttle services, household movers, and limousine companies.
§ 303 Eligibility for appointment	Delete. Uses archaic 'pecuniarily interested' standard. Superseded by the Fair Political Practices Act.
§ 310 Quorum	Amend to provide that a majority of the <u>then-sitting</u> commisisoners constitute a quorum -- to clarify the commission's power to act when there are vacant seats.
§ 454.4 Cogen Gas Rates	Rates for gas use in cogeneration technology projects shall be capped by rates for the electric utility. Delete. Obsolete because of gas deregulation, i.e. there is no longer a single UEG rate for electric utilities. It is also obsolete as a result of the changing competitive environment in which regulated and unregulated entities are competitors.
§ 454.6 Solar Gas Rates	Rates for gas used in solar electric generation station technology projects shall not be higher than the rates for gas used as a fuel by an electric plant. In effect until January 1, 2001. Delete. Same reason as above
§ 454.7 Cogeneration Natural Gas Preference	Provides cogeneration technology projects with the highest possible priority for the purchase of natural gas. Delete. Same reason as above.
§ 454.8 Recovery of costs of new construction	In any decision establishing rates reflecting the costs of new construction or additions to the corporation's plant, the CPUC shall consider a method in which recovery of costs would be constant. Delete this out-dated, overly-prescriptive procedure based on cost-of-service ratemaking.

§ 701.3 Renewable set-aside	Reservation of future electrical generating capacity for renewable rescues. This provision was cited in the Biennial Resource Plan Update as requiring the CPUC to direct that a specific portion of future electrical generating capacity need for California be reserved or set aside for renewables resources. Delete. No need for the CPUC to perform long-run resource planning for the electric utilities.
§ 701.4 Renewable Resources Adder	Requires including a value for resource diversity in the Biennial Resource Plan Update. Delete. No need for the CPUC to perform long-run resource planning for electric utilities.
§ 1001 CPCN	Certificate required prior to commencement of construction. CPCN requirements should be revised. The interests of the general public will be protected by competition, rather than by a finding by a regulatory agency of future public convenience and necessity. Note that utilities are still required to get permit from the proper county, city or other public authority. Also, these statutes do not apply to municipally-owned public utilities.
§ 1003	Application for certificate authorizing new construction by an electrical or gas corporation nct regulated by the Public Resources Code. Revise or delete the detailed requirements for engineering information, cost estimates of the financial impact of the plant on ratepayers, and a construction management plan for power plant construction. This section was designed to allow the CPUC to establish fair rates to cover prudent and reasonable costs for the construction of electric plants.
§1003.5	Application for certificate authorizing new construction by electrical or gas corporation regulated by Public Resources Code. Same as above.

§1005	Issuance or denial of certificate for new construction; Issuance of certificate for new construction of gas or electric facilities
§ 1005.5	Specification of maximum reasonable cost of new construction Should no longer be necessary for the commission to establish a maximum cost to be reasonable and prudent of any new construction or addition.
New section in 1700 series	Add provisions that require disclosure of commission material in a manner similar to the Federal APA under 5 U.S.C. § 552(c), including disclosure of all statements of formal and informal procedure, staff manuals and instructions that affect members of the public, statements of policy interpretation and common use, and rules of general applicability.
New Section, or amend Government Code §11126	Require the CPUC to conduct rulemaking under the rulemaking provisions of the APA. In particular, there is no reason to exempt the Commission's Rules of Procedure from parts of the APA.
§ 1801 - § 1812 Intervenor Compensation	Revise intervenor compensation rules. For example, Large Agricultural Groups and other industry groups, whose members cannot show financial hardship, should not be made eligible by special interest statute. (§ 1812)
§ 1821 - 1824	Computer model access, duty of the CPUC to review, monitor, and studies and reports. Delete. No need for the CPUC to perform long-run resource planning for the utilities. The computer model requirements for economic forecasting and need analysis are overly complex, unduly burdensome, and outdated. These rules heavily contributed to over a decade of wasteful and expensive modeling wars between the CEC and the CPUC in the Biennial Resource Plan Update.
§ 2106 Liability for Punitive Damages	Modify § 2106 to eliminate the potential for punitive damages for alleged breach of QF contracts because: 1) equity -- QFs cannot be sued for punitives under the civil code; and 2) state policy against awarding punitives for breach of commercial contracts.

PUBLIC RESOURCES CODE

[Note: the following statutes in the Public Resources Code are related to the Long-Run Resource Planning in the Public Utilities and should be deleted or subject to a sunset statute.]

§ 25300 Electricty Report	Forecasts and reports by electric utiltiies Requires every electric utility to prepare and submit 5, 12, and 20 year forecasts of loads and resources every two years setting forth the electric facilities which will be required to supply electric power during the forecast period.
§ 25301 Electricity Report Requirement	Common methodology for forecasts
§ 25302 Electricity Report Requirement	Copies of reports available to all concerned
§ 25303 Electricity Report Requirement	Receipt of comments concerning an evaluation or reports
§ 25304	Review and evaluation of forecasts
§ 25305	Draft electricity report regarding forecasts
§ 25306	Distribution of draft report
§ 25307	Public hearings on draft reports
§ 25307.5	Procedures in hearings to prepare reports
§25308	Draft final electricity report
§25308.5	Criteria in determining demand conformance for siting of factilities
§ 25309 Biennial Report Integrated Assessment of need as basis for planning resource additions	Requires a biennial report with a 20 year forecast on energy requirements, and integrated assessment of need for new resource additions.
§ 25309.1 Biennial Report Requirement	Biennial Report requirement for a forecast of transportation energy demands

§ 25309.2 Biennial Report Requirement	Biennial Report requirement for the Governor's review and report to Legislature
§ 25310 Biennial Report Requirment	Report on energy trends and alternate technologies

ATTACHMENT II

GOV'T. CODE SECTION 11340.6. PETITION FOR ADOPTION OR REPEAL; CONTENTS

Except where the right to petition of adoption of a regulation is restricted by statute to a designated group or where the form of procedure for such a petition is otherwise prescribed by statute, an interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation as provided in Article 5 (commencing with Section 11346). This petition shall state the following clearly and concisely:

(a) The substance or nature of the regulation, amendment, or repeal requested.

(b) The reason for the request.

(c) Reference to the authority of the state agency to take the action requested.

GOV'T. CODE SECTION 11340.7. PETITION FOR ADOPTION, AMENDMENT OR REPEAL; RELIEF; RECONSIDERATION

(a) Upon receipt of a petition requesting the adoption, amendment, or repeal of a regulation pursuant to Article 5 (commencing with Section 11346), a state agency shall notify the petitioner in writing of the receipt and shall within 30 days deny the petition indicating why the agency has reached its decision on the merits of the petition in writing or schedule the matter for public hearing in accordance with the notice and hearing requirements of that article.

(b) A state agency may grant or deny the petition in part, and may grant any other relief or take any other actions it may determine to be warranted by the petition and shall notify the petitioner in writing of this action.

(c) Any interested person may request a reconsideration of any part or all of a decision of any agency on any petition submitted. The request shall be submitted in accordance with Section 11340.6 and include the reason or reasons why an agency should reconsider its previous decision no later than 60 days after the date of the decision involved. The agency's reconsideration of any matter relating to a petition shall be subject to subdivision (a).

(d) Any decision of a state agency denying in whole or in part or granting in whole or in part a petition requesting the adoption, amendment, or repeal of a regulation pursuant to Article 5 (commencing with Section 11346) shall be

in writing and shall be transmitted to the Office of Administrative Law for publication in the California Regulatory Notice Register at the earliest practicable date. The decision shall identify the agency, the party submitting the petition, the provisions of the California Code of Regulations requested to be affected, reference to authority to take the action requested, the reasons supporting the agency determination, an agency contact person, and the right of interested persons to obtain a copy of the petition from the agency.

Electric Services				
Code Section	**Suggested Action**	**Rationale**	**Opposition**	**CPUC**
3 Grandfathers provisions for Commissioners in office in 1951 when code was adopted.	**Delete**: Edison suggests deleting this section.	Obsolete		Agrees with deletion--section is obsolete.
211 et. seq. Provide definitions for terms used in the code.	**Amend**: Edison states that this section should be revised. Union Pacific also suggests amending § 211. See discussion below.	The CPUC is now pre-empted by federal law from regulating rates for railroads and trucks, although it still sets rates for some carriers, such as shuttle services, household movers, and limousine companies.		Did not address.
303 Prohibits a person who holds an office or is pecuniarily interested in a regulated corporation from being appointed a Commissioner, or being employed by the CPUC.	**Delete**: Edison suggests deleting this section.	Uses archaic "pecuniarily interested' standard. Superseded by the Fair Political Practices Act.		Agrees with modification--but does not view it as a clean-up issue. Legislation has been introduced to address this issue. (SB 595).

310 States that no vacancy in the Commission shall impair the right of the remaining commissioners to exercise all powers of the commission. A majority of the commissioners shall constitute a quorum.	**Amend**: Edison suggests amending to provide that a majority of the then-sitting commissioners constitute a quorum.	To clarify the Commission's power to act when there are vacant seats.		Agrees with amendment in concept--amendment would clarify validity of actions taken when there are only 3 sitting Commissioners.
454.4 Requires Commission to set rates for gas used in cogeneration technology projects no higher than rates for gas used as fuel by an electric plant.	**Delete**: Edison suggests deleting this section. SoCalGas also suggests amending this section. See discussion below.	Section is obsolete because of gas deregulation, i.e. there is no longer a single UEG rate for electric utilities. It is also obsolete as a result of the changing competitive environment in which regulated and unregulated entities are competitors.		Agrees in concept that mandatory cogeneration rate parity with UEG rates is inconsistent with a competitive energy market. CPUC will work with parties on language.

454.6 Requires Commission to set rates for gas in solar electric generation station projects no higher than the rates for gas used as fuel by an electric plant. In effect until January 1, 2001.	**Delete**: Edison suggests deleting this section.	Section is obsolete because of gas deregulation, i.e. there is no longer a single UEG rate for electric utilities. It is also obsolete as a result of the changing competitive environment in which regulated and unregulated entities are competitors.		Agrees in concept that mandatory cogeneration rate parity with UEG rates is inconsistent with a competitive energy market.
454.7 Requires Commission, to the extent permitted by federal law, to provide cogeneration technology projects with the highest possible priority for the purchase of natural gas.	**Delete**: Edison suggests deleting this section.	Section is obsolete because of gas deregulation, i.e. there is no longer a single UEG rate for electric utilities. It is also obsolete as a result of the changing competitive environment in which regulated and unregulated entities are competitors.		Agrees in concept--will work with parties on language.

454.8 Requires that in any decision establishing rates reflecting the costs of new construction or additions to the corporation's plant, the CPUC shall consider a method in which recovery of costs would be constant in real economic terms over the useful life of the facilities.	**Delete**: Edison suggests deleting this section.	Section is an out-dated, overly-prescriptive procedure based on cost-of-service ratemaking.		Agrees in concept--will work with parties on language.
701.3 Requires Commission to direct that a specific portion of future electrical generating capacity needed in California be reserved or set aside for renewable resources.	**Delete**: Edison suggests deleting this section.	No need for the CPUC to perform long-run resource planning for the electric utilities.		Agrees in concept--if state policy to support renewable development is to be eliminated. Competitive market could include renewables program.

701.4 Requires electric resource acquisition programs to recognize and include a value for the resource diversity provided by renewable resources.	**Delete**: Edison suggests deleting this section.	No need for the CPUC to perform long-run resource planning for the electric utilities.		Agrees in concept--if state policy to support renewable development is to be eliminated. Competitive market could include renewables program.
1001 Requires some public utilities to obtain a certificate of public convenience and necessity (CPCN) from the Commission prior to commencement of construction.	**Amend**: Edison states modifying to delete requirement for CPUC approval prior to construction.	The interests of the general public will be protected by competition, rather than by a finding by a regulatory agency of future public convenience and necessity. Note that utilities are still required to get permit from the proper county, city, or other public authority. Also, these statutes don't apply to municipally-owned public utilities.		Opposes deletion--proposal is over broad, since under competition electric distribution utilities may continue to operate some generation facilities and will operate distribution lines under CPUC performance based regulation.

1003 States information that must be included in application for certificate authorizing new construction by an electrical or gas corporation not regulated by the Public Resources Code.	**Amend**: Edison suggests revising or deleting the detailed requirements for engineering information, cost estimates of the financial impact of the plant on ratepayers, and a construction management plan for power plant construction.	This section was designed to allow the CPUC to establish fair rates to cover prudent and reasonable costs for the construction of electric plants.		Opposes deletion--but revisions may be necessary in light of competitive electricity market. Some facilities may continue to require certificate approval.
1003.5 States information that must be included in application for certificate authorizing new construction by electrical or gas corporation regulated by Public Resources Code.	**Amend**: Edison suggests revising or deleting the detailed requirements for engineering information, cost estimates of the financial impact of the plant on ratepayers, and a construction management plan for power plant construction.	This section was designed to allow the CPUC to establish fair rates to cover prudent and reasonable costs for the construction of electric plants.		Opposes deletion--but revisions may be necessary in light of competitive electricity market. Some facilities may continue to require certificate approval.

1005 Permits Commission to issue or refuse to issue certificates for new construction. If a certificate for new construction is granted, requires the Commission to specify the operating and cost characteristics of the plant, line, or extension for which the certificate was granted.	**Unclear**: Edison does not specify how it would like this section changed.			Opposes deletion as premature--Section 1005(b) may be in the public interest for distribution electric utilities. Also see comments to Section 1001 above.
1005.5 Requires the Commission to specify in the certificate a maximum reasonable cost of new construction.	**Delete**: Edison suggests deleting this section.	Should no longer be necessary for the Commission to establish a maximum cost to be reasonable and prudent for any new construction or addition.		Opposes deletion as premature--there could be electric and gas distribution utility projects that this section could apply to. Also see comments to Section 1001 above.

1801-1812 Provide rules for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers for participation or intervention in any proceeding of the Commission.	**Amend**: Edison suggest revising intervenor compensation rules. For example, large agricultural groups and other industry groups, whose members cannot show financial hardship, should not be made eligible by special interest statute. (§ 1812)			Agrees with amendment in concept--intervenor program needs to be looked at. CPUC has opened a Rulemaking and Investigation. (R.97-01-009, I.97-01-010).

1821-1824 Rules regarding use of computer models for forecasting. Sections require computer models that are used as the basis for any testimony or exhibit in a hearing or proceeding before the Commission be available to the Commission and parties for review and verification. Also require Commission to periodically review and monitor the development and use of any operations model used by any public utility.	**Delete**: Edison suggests deleting this provision.	No need for CPUC to perform long-run resource planning for the utilities. The computer model requirements for economic forecasting and need analysis are overly complex, unduly burdensome, and outdated. These rules heavily contributed to over a decade of wasteful and expensive modeling wars between the CEC and the CPUC in the Biennial Resource Plan Update.		Opposes deletion--these computer models are being used in the OANAD and Universal Service proceedings and CPUC must have continued access to them.
2106 Permits court to impose punitive damages on public utilities for willful violations of law.	**Amend**: Edison suggests modifying to eliminate the potential for punitive damages for alleged breach of qualified facilities (QF) contracts.	1) Equity--QFs cannot be sued for punitives under the civil code. 2) State policy against awarding punitives for breach of commercial contracts.		Opposes amendment.

Proposed new section: 1700 et seq	**Add**: Edison suggests adding provisions that require disclosure of commission material in a manner similar to the Federal APA under 5 U.S.C. § 552(c), including disclosure of all statements of formal and informal procedure, staff manuals and instructions that affect members of the public, statements of policy interpretation and common use, and rules of general applicability.			Opposes addition of new section as premature--the current provisions for disclosure of documents in CPUC hearings appear to be adequate.

Proposed new section or amendment to Gov't Code § 11126.	**Add**: Edison suggests adding a section requiring the CPUC to conduct rulemaking under the rulemaking provisions of the APA. Edison sees no reason to exempt the Commission's Rules of Procedure from parts of the APA.	Ideally, Edison would prefer that the "ratesetting" category be eliminated, and that cases where policy is made to be categorized as quasi-legislative because this would lower regulatory barriers to public participation. If the "ratesetting" category is retained, Edison would like the *ex parte* rules that sometimes subject members of the public to significant and expensive filing and mailing requirements removed. If the *ex parte* requirement is retained, Edison thinks the CPUC should follow procedures allowed for ratemaking proceedings in the APA to make the process less burdensome. *See* Edison letter dated Jan. 30, 1997, at 3-5.		Did not address.

Proposed new section--similar to Gov't Code § 11340.6.	**Add**: Edison suggests adding a new section that would provide that parties may petition the Commission to repeal or modify obsolete regulations. Gov't Code § 11340.6 provides such a mechanism for state agencies that operate under the APA.			Did not address.

Proposed new section.	**Add**: Edison suggest amending the PUCode and the Cartwright Act to draw a "bright line" between those activities subject to regulation and those subject to state antitrust laws.	The California Supreme Court recently held that the CPUC's authority over the regulated rates did not immunize PacTel and US West against claims for price fixing under the Cartwright Act. (Cellular Plus v. Sup. Ct. of San Diego County, 14 Cal.App. 4th 1224 (1993)). As the energy market moves to a competitive framework, Cellular Plus creates the opportunity for duplicative litigation. Law should provide for one litigation before the regulatory agency to set rates, or before the courts for unregulated conduct, but not both.		Did not address.
Proposed revisions to Public Resources Code §§ 25300-25309.1 Sections are related to the long-run resource planning in the public utilities.	**Amend**: Edison suggests that these sections should be deleted or subject to a sunset statute. (See attached exhibit for contents of specific provisions.)			Did not address.