California State Auditor

BUREAU OF STATE AUDITS

California Public Utilities Commission:

State Law and Regulations Establish Firm Deadlines for Only a Small Number of Its Proceedings

November 2003
2003-103

The first five copies of each California State Auditor report are free.
Additional copies are $3 each, payable by check or money order.
You can obtain reports by contacting the Bureau of State Audits
at the following address:

California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814
(916) 445-0255 or TTY (916) 445-0033

OR

This report is also available
on the World Wide Web
http://www.bsa.ca.gov/bsa/

The California State Auditor is pleased to announce
the availability of an on-line subscription service.
For information on how to subscribe, please contact
the Information Technology Unit at (916) 445-0255, ext. 456,
or visit our Web site at www.bsa.ca.gov/bsa

Alternate format reports available upon request.

CALIFORNIA STATE AUDITOR

ELAINE M. HOWLE
STATE AUDITOR

STEVEN M. HENDRICKSON
CHIEF DEPUTY STATE AUDITOR

November 25, 2003 2003-103

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning our review of whether the California Public Utilities Commission (commission) promptly resolves the various types of administrative proceedings it is responsible for conducting. This report concludes that few of the 1,602 proceedings the commission initiated between January 1, 2000, and June 30, 2003, were actually subject to statutory deadlines. Additionally, although the commission did not complete 11 percent of its proceedings within statutory requirements when applicable, or within its own internal guidelines, most times it did. Commission staff provided various reasons, including delays caused by the commissioners themselves, delays caused because the outcomes of some proceedings were dependent on other decisions or investigations, or delays that occurred when the commission purposely kept certain proceedings open to take up related issues or to manage multiple phases. In processing its more informal advice letters, which the commission uses to approve minor requests from utilities, two factors contributed to delays: One was that some had a lower workload priority and the other was that some required formal resolution or investigation.

Finally, according to several reports prepared by the Department of Finance between February 1998 and February 2003, the commission lacks an adequate tracking system that would allow it to provide quantifiable justification to support its requests for staffing. Thus, although the commission cited workload and inadequate staffing as contributing to delays in processing its formal proceedings and advice letters, it was unable to provide us with any staffing workload analyses to support its belief.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE
State Auditor

CONTENTS

SUMMARY

Audit Highlights . . .

Our review of whether the California Public Utilities Commission (commission) promptly resolves formal and informal proceedings found the following:

- ☑ *Few of the 1,602 formal proceedings the commission initiated between January 1, 2000, and June 30, 2003, were subject to statutory deadlines.*
- ☑ *Commission staff provided various reasons for delays, including that the outcomes of some proceedings were dependent on other decisions or investigations or the proceedings were purposely kept open to take up related issues or to manage them in multiple phases.*
- ☑ *Two factors contributed to delays in processing the more informal advice letters, which the commission uses to approve minor requests from utilities: Some had a lower workload priority and some required formal resolution or investigation.*

Although the commission cited workload and inadequate staffing as contributing to delays in processing its formal proceedings and advice letters, the lack of a workload tracking system hinders its ability to justify staffing needs.

RESULTS IN BRIEF

In conducting its various regulatory activities, the California Public Utilities Commission (commission) typically uses a formal proceeding to review an issue and to ultimately make a final policy, procedural, or other type of decision. Although Senate Bill 960 (SB 960), Statutes of 1996, establishes several deadlines for processing them, few of the 1,602 formal proceedings the commission initiated between January 1, 2000, and June 30, 2003, are subject to those deadlines. SB 960 requires that the commission resolve only those proceedings categorized as adjudicatory that require hearings within 12 months. According to its chief administrative law judge (ALJ), the commission further interprets SB 960 to apply only to those proceedings subject to evidentiary types of hearings, making the deadline applicable to only 39 of the proceedings during the time period we reviewed. Our legal counsel advised that in view of the commission's broad rule-making authority, the commission's interpretations of statutes and its own rules are given great weight by the courts. Thus, we relied on the commission's interpretations of the relevant statutes in determining whether the commission is complying with statutory and regulatory deadlines for proceedings. In so doing, state law and regulations apply to only a few of the commission's proceedings.

The Legislature did include intent language in SB 960 that the commission should establish reasonable time periods (not to exceed 18 months) for resolving proceedings not covered by the deadline. According to the chief ALJ, the commission considers the SB 960 language to be a guideline encouraging rigorous case management, and our legal counsel advises that it does not legally compel the commission to complete other proceedings within 18 months. However, Assembly Bill 1735 (AB 1735), which takes effect January 1, 2004, statutorily requires the commission to resolve rate-setting and quasi-legislative proceedings within 18 months of issuing a scoping memo.[1] Unlike SB 960, the new law does not explicitly state that only proceedings with hearings are subject to its legal requirements. Nevertheless, the chief ALJ explained that the

[1] The commission typically issues a scoping memo early on in a proceeding that includes a proposed schedule.

new law explicitly states that it applies when there is a scoping memo and, according to statute and regulation, scoping memos are required in proceedings that require evidentiary hearings. Therefore, the chief ALJ noted that the commission intends to apply AB 1735 to only those types of proceedings. Thus, if the new law had been in effect during the period we reviewed for our audit, it would have applied to only 105 of 1,323 rate-setting and quasi-legislative proceedings. Because AB 1735 applies to so few proceedings when using the commission's interpretation, this new requirement may not be as effective in reducing the time it takes to resolve such proceedings as would a statute that clearly applies to all proceedings.

The commission provided various reasons to explain the delays in resolving 45 proceedings we reviewed that exceeded either statutory deadlines or guidelines. For example, the commission held four proceedings open to resolve numerous related issues or to manage multiple phases of the same proceeding. The chief ALJ stated that the commission will hold proceedings open if it believes evidence taken earlier will continue to be referred to in subsequent phases or when successive decisions will contribute to completing a single project. The commission actually resolved five of the proceedings promptly that appeared to exceed deadlines, but its tracking system does not appropriately reflect their resolution when they are reopened. The commissioners or management staff delayed another eight proceedings beyond their deadlines for various reasons, including the need to reassign a proceeding to a new commissioner who required additional time to become familiar with it, assigning a proceeding a lower priority, or allowing commissioners more time to consider how the energy crisis of 2000 and 2001 would affect a proceeding.

The commission uses more informal advice letters to address minor requests from utilities. We identified various factors that contributed to delays in the resolution of a sample of 90 such letters. For example, the commission either delayed or failed to input a closing date in its tracking system for 27 of the advice letters it processed on time. Consequently, the electronic database does not provide the commission with accurate data regarding the status of advice letters. The commission indicated that it considered another 16 advice letters as lower priority due to workload. However, we were unable to determine whether it requires additional staff to promptly process advice letters

because it has not implemented a workload tracking system that would allow us to assess the adequacy of current staffing levels. The commission was unable to provide us an explanation for its delay in resolving another 17 advice letters, 16 of which were the responsibility of the telecommunications division—one of the three divisions that process them. This same division has not adequately tracked and maintained its advice letters, which may have contributed to its inability to provide explanations for delays in resolving them.

Although the commission indicated that staffing is a limiting factor in promptly processing its formal proceedings and advice letters, it was unable to provide us with workload analyses to support these contentions. In fact, the Department of Finance (Finance), in various reports and management letters it prepared between February 1998 and February 2003, reported that the commission lacks a workload tracking system that would allow it to justify its staffing needs. In response to a February 2003 management letter, the commission began to revise its workload tracking system to address Finance's concerns; however, it does not anticipate implementing key phases of the new system until the end of 2003 or the beginning of 2004. Thus, during our audit the commission was unable to provide us any staffing analyses that would allow us to determine whether its staffing levels are adequate to promptly process formal proceedings and advice letters.

RECOMMENDATIONS

To ensure that it accurately reports the closing date of a proceeding, the commission should modify its tracking system to retain the original closing date as well as record its subsequent closing date for those proceedings it reopens.

To ensure that the information included in its tracking system is accurate for reporting on the timeliness of advice letters, the commission should review all advice letters in the system and close those that it has completed.

The commission should continue to work with Finance on improving its workload tracking system so that it can justify its staffing needs.

AGENCY COMMENTS

The commission indicates that it agrees with the numerical facts contained in the report and it accepts the recommendations. However, the commission provided brief comments concerning three aspects of the report. ■

INTRODUCTION

BACKGROUND

The California Public Utilities Commission (commission) consists of five commissioners appointed by the governor, with Senate approval, for six-year staggered terms. The governor appoints one of the five to serve as the commission president. The commission has broad powers to regulate privately owned and operated telephone, electric, natural gas, water, and transportation companies in California. Its responsibilities include establishing service standards and safety rules, approving retail rate changes, monitoring the safety of operations under its jurisdiction, overseeing the electricity and natural gas markets to inhibit anticompetitive activities, prosecuting unlawful utility actions, and governing business relationships between utilities and their affiliates.

As of June 30, 2003, the commission had 882 filled and 74 vacant positions. It employs economists, engineers, administrative law judges (ALJ), accountants, lawyers, and safety and transportation specialists in addition to support staff.

Currently, the commission is organized into 10 divisions, which include three industry divisions and an administrative law judge division that we discuss in this report. The administrative law judge division supports commission decision making by processing formal filings, facilitating alternative dispute resolution, conducting hearings, developing an adequate administrative record, preparing timely proposals for commission consideration, and preparing and coordinating commission business meeting agendas. The commission has organized three industry divisions to assist it as follows:

- The telecommunications division develops and implements policies and procedures to facilitate competition in all telecommunications markets, addresses regulatory changes required by state and federal legislation, assures affordable access to essential services, and provides consumer protections.

- The energy division advises whether to approve, deny, or modify all electric and natural gas utility requests not assigned for hearings; oversees compliance of orders; provides technical assistance; and advises and informs the commission about major developments affecting energy utilities.

- The water division investigates water and sewer system service quality issues and analyzes and processes utility rate change requests.

In conducting its various regulatory activities, the commission often uses a formal proceeding to review an issue and to ultimately make a final policy, procedural, or other type of decision. These proceedings may require that hearings take place as well. Utilities use a more informal advice letter to request the commission's approval for minor or noncontroversial actions, most often for a rate or service change.

FORMAL PROCEEDINGS

Generally, the commission uses three types of formal proceedings, as shown in Table 1, to regulate utilities. When a utility, consumer, or the commission itself initiates a proceeding, the appropriate documents must first be filed with its docket office. The docket office staff review the documents for completeness, provide them with a "date-filed" stamp, and assign them an identifying number. The commission uses the date filed as the beginning date for the proceeding when determining whether it has met certain deadlines established in law. The commission also notifies the public of the new proceeding by listing it in the daily calendar located on its Web site. Finally, the docket office staff also enter the proceeding into the commission's case information system for tracking purposes.

In all formal proceedings, the chief ALJ, who is also the chief of the administrative law judge division, and the commission president assign at least one commissioner and an ALJ to guide the case through the commission's review process. The commission also makes a preliminary determination of the categorization of each proceeding initiated by an application and whether or not evidentiary hearings will be required. Generally, the ALJ conducts the hearings, meets with the assigned commissioner to discuss developments and issues, and, in consultation with the assigned commissioner, prepares

TABLE 1

The Commission Categorizes Proceedings Into Three Types

Type of Activity	Description	Proceeding Generally Categorized as Indicated
Application	Used when a utility or transportation company requests commission authority to do something, such as increase rates.	Rate setting
Formal complaint	Used when a consumer advocacy group or individual alleges that a utility company has done something inappropriate and wants the commission to correct the problem.	Adjudicatory
Order instituting investigation	Used when the commission initiates an investigation to examine specific issues that may lead to new or changed legislation, programs, enforcement, policies, or rates.	Quasi-legislative or Adjudicatory
Order instituting rule making	Used to create or revise rules or guidelines that affect a utility or a broad sector of an industry.	Quasi-legislative

a proposed decision. After making these assignments, the commission holds a prehearing conference to schedule hearing dates and to give participants a chance to outline the issues on which they intend to focus. The assigned commissioner will consider the application, protests, responses, and the prehearing conference statements, and will issue a ruling, referred to as a scoping memo. The scoping memo designates the category or may confirm the category of the proceeding as adjudicatory, rate setting, or quasi-legislative; establishes a schedule and scope for the proceeding; and may also confirm whether the commission believes the proceeding will require evidentiary hearings.

According to the chief ALJ, how a proceeding is categorized and whether it requires a hearing is significant when determining its timelines. In fact, in 1996, the Legislature and the governor approved Senate Bill 960 (SB 960), which establishes several deadlines for those specific proceedings that require hearings. According to the chief ALJ, SB 960 was enacted in an effort to improve the quality and promptness of the commission's decision-making process. For example, SB 960 requires that the commission resolve within 12 months of initiation any proceeding it has categorized as an adjudicatory case requiring hearings, unless it issues an order extending the deadline. The chief ALJ indicated that the commission interprets "resolve" to mean that it has addressed and disposed of the substantive issues identified in the scoping memo and it has assigned a decision number to an order it has adopted.

Although SB 960 does not define hearings, the chief ALJ indicated that the commission has continued its long-standing administrative practice of interpreting a "hearing" to refer only to evidentiary hearings. Typically, adjudicatory proceedings or fact-specific complaint cases involve material disputed facts that must be tested by evidentiary hearings. Evidentiary hearings are those in which parties present their evidence through direct testimony and exhibits. Additionally, other parties may question witnesses in an attempt to clarify or challenge aspects of the testimony. The commission's interpretation of hearings excludes other types of hearings such as workshops, law and motion hearings, public participation hearings, and arbitration hearings.

The Legislature also included in the intent language of SB 960 that the commission should establish reasonable timelines for the resolution of proceedings other than adjudicatory, that it meet those timelines, and that the timelines not exceed 18 months. The commission views this intent language as encouraging rigorous case management and uses it as a planning tool for all other proceedings not categorized as adjudicatory and requiring evidentiary hearings. This would include all rate-setting and quasi-legislative cases—both those requiring hearings and those that do not—in addition to the remaining adjudicatory cases not requiring evidentiary hearings. The chief ALJ also points out that although the Legislature did not codify the 18-month timeline in statute, the commission's rules of practice and procedures, Article 2.5, Rule 6(e), which are also codified in the California Code of Regulations, require that parties to a proceeding propose time schedules for consideration by the assigned ALJ and commissioner. Rule 6(e) also indicates that the proposed time schedule should be no longer than 12 months for adjudicatory proceedings or 18 months for rate-setting or quasi-legislative proceedings. However, Rule 6.6 states that whenever the commission determines that a proceeding does not require evidentiary hearings, the rules and procedures of this article do not apply. While this seems inconsistent with the broad intent language of SB 960, the rules are consistent with the commission's long-standing administrative practice of limiting the 12-month deadline to proceedings requiring evidentiary hearings. According to the chief ALJ, the commission does depart from these rules of practice and procedures when circumstances justify it to do so, but any departure would have to be consistent with statute and due process.

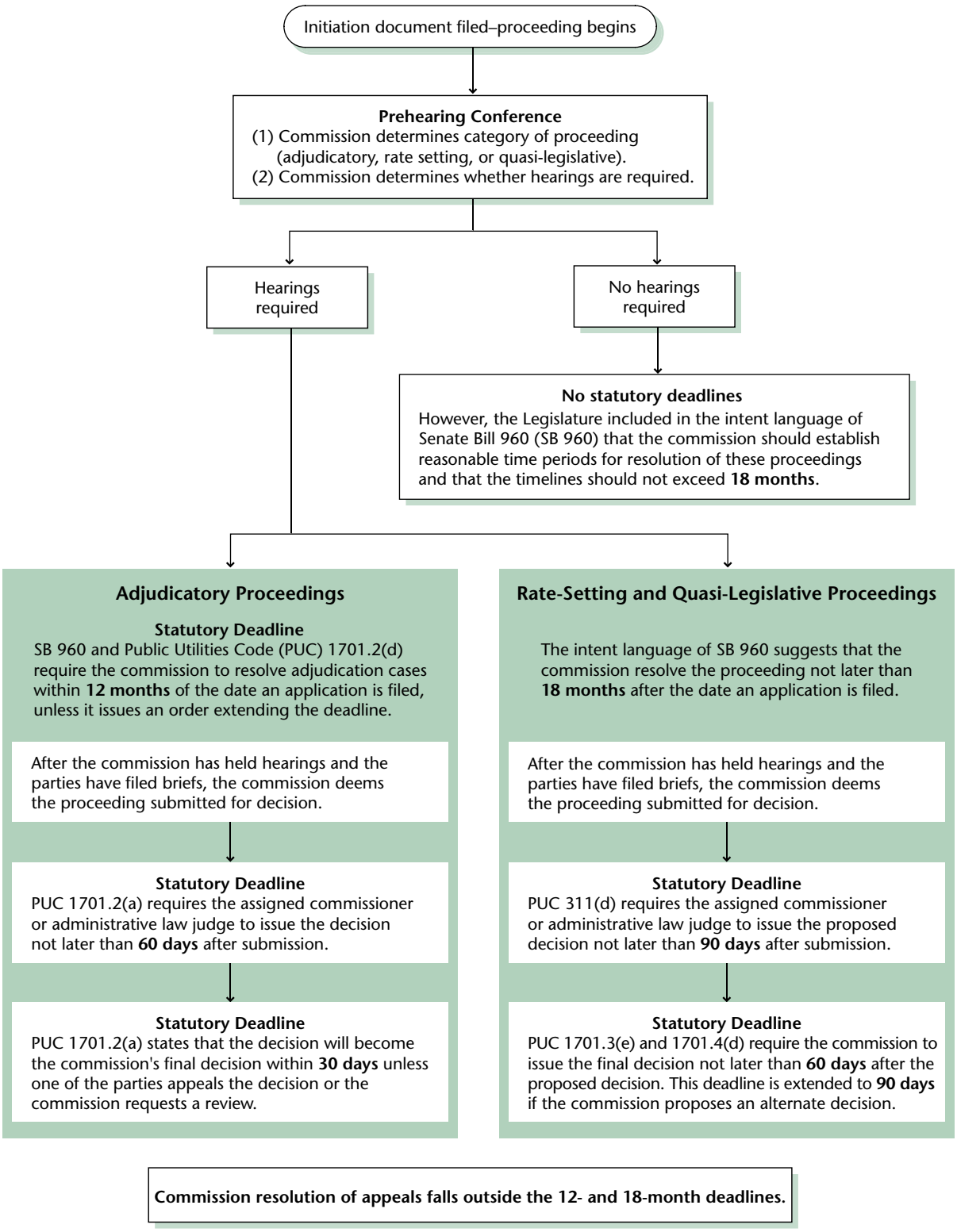
The California Constitution and the Public Utilities Code empower the commission to establish its own procedures, subject to statute and due process requirements. Further, California courts have found that the commission is "not an ordinary administrative agency, but a constitutional body with broad legislative and judicial powers." Our legal counsel advised that in view of the commission's broad rule-making authority, the commission's interpretations of statutes and its own rules are given great weight by the courts. Thus, we relied on the commission's interpretations of the relevant statutes in determining whether the commission is complying with statutory and regulatory deadlines for proceedings.

For all proceedings requiring hearings, state law has also established shorter, more specific deadlines within the overall 12- and 18-month timelines as shown in the Figure on the following page.

According to the chief ALJ, the submission of a proceeding is the date when the formal record of the proceeding closes; thus, the time between initiation and submission signifies the beginning and the end of the period during which the parties provide the pleadings, evidence, comments, and briefs on which the commission will base its decision. As the Figure indicates, for those proceedings categorized as adjudicatory, state law requires that the assigned commissioner or ALJ prepare and file a decision not later than 60 days after the proceeding has been submitted for decision. The chief ALJ indicated that the commission believes these 60 days must occur within the 12-month deadline for resolving an adjudicatory proceeding. State law also requires that the decision become final 30 days after its filing unless an appeal is filed or the commission requests a review. Additionally, as shown in the Figure, the chief ALJ stated that for those proceedings categorized as rate setting and quasi-legislative, the deadlines related to the preparation of a proposed decision, final decision, and alternate decision must all occur within the 18-month guideline for resolving those proceedings. An alternate decision is one prepared by a commissioner who did not prepare the proposed decision and the alternate decision substantially revises the original.

FIGURE

The Commission's Formal Proceeding Process



ADVICE LETTERS

The commission generally uses advice letters as a more informal procedure to address utility companies' requests that are minor, noncontroversial, or otherwise appropriate for processing without a hearing or formal proceeding. Typically, a utility company initiates and files with the commission an advice letter to change the lawful rates, charges, rules, or conditions under which the utility must operate, or to change a service or offer a new one. According to commission staff, some advice letters require very complex, time-consuming analysis by senior staff and a commission vote on a formal resolution.

Advice letters are processed by one of three divisions depending on the type of utility—the telecommunications division, the energy division, or the water division. When an advice letter is received, the appropriate division stamps the letter with a filed date and the commission notifies the public of the advice letter by publishing the letter in the daily calendar located on its Web site. Eventually, the appropriate division's staff also inputs the advice letter into the commission's proposal and advice letter tracking system.

State law and regulations do not establish any deadlines for the commission to review and approve advice letters. However, the Public Utilities Code, Section 455, provides that advice letters generally become effective 30 days from the date filed by the utility unless the commission suspends them. Additionally, the commission itself, pursuant to its rule-making authority, which is founded in the California Constitution and statutes, adopted General Order 96-A, which provides that advice letters become effective not less than 40 days after filing because this is the time frame typically necessary for approval. According to commission staff, the commission interprets these two requirements as generally allowing a utility to implement the proposed action in its advice letter 40 days after filing unless the commission suspends the advice letter within 30 days. However, according to commission staff, many utilities choose not to place the advice letter into effect under this time frame, instead preferring to first obtain the commission's approval because, ultimately, Section 455 allows the commission to later disapprove or modify the action taken by a utility. If this were to occur, the utility might be required to undo the actions in the advice letter, which could negatively affect it and its customers. As a result, commission staff indicated that they will often reach an agreement with a utility on what both consider to be a reasonable

effective date, and the utility will include that date in the advice letter or include a statement in the advice letter that it is effective upon the commission's approval.

However, commission staff indicated that for those instances when a utility insists that an advice letter become effective in less than the minimum of 40 days the commission believes it will require for review and approval, it will suspend the advice letter within 30 days of filing as outlined in the Public Utilities Code, Section 455.

According to commission staff, the use of advice letters has somewhat expanded in recent years, and they believe that the historic advice letter process as outlined in General Order 96-A has become inadequate in relation to the volume and variety of advice letters submitted for review. Energy division staff also noted that because of the increase in the quantity of advice letters, the complexity of the issues raised, and the need to prioritize them, processing time has lengthened. The three divisions that process advice letters have an internal goal of 90 days after filing to process and close them. Therefore, when we reviewed reasons for delays in processing advice letters, we focused on those that exceeded the internal goal of 90 days rather than the 30- or 40-day time frames described earlier.

SCOPE AND METHODOLOGY

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits determine whether the commission promptly completes the various types of administrative proceedings it is responsible for conducting. The audit committee asked that we determine how the commission sets priorities in the water, telecommunications, and energy areas when conducting its various types of administrative proceedings. Additionally, we were asked to review staffing levels to assess whether these levels are adequate for the commission to comply with its statutory mandates regarding administrative proceedings. As part of the assessment, we were to consider other studies that may have been performed related to staffing. Finally, the audit committee requested that we identify any timelines contained in law or regulations for the completion of proceedings. We were asked to select a sample of proceedings that exceeded the timelines and remain unresolved and another sample that exceeded the timelines but were resolved and determine the reasons for delays.

To find out how the commission sets priorities for formal proceedings, we interviewed staff and reviewed its criteria and procedures for prioritizing its formal proceedings. Further, we selected a sample of 40 proceedings to confirm whether the commission prioritized them in accordance with its criteria. To determine how the commission sets priorities for informal advice letters, we interviewed staff in the energy, telecommunications, and water divisions. We also reviewed those letters within our sample that the commission considered low priority to assess whether each division prioritizes its advice letters in accordance with stated criteria.

To understand the commission's responsibilities and timelines for resolving formal proceedings, we interviewed staff, reviewed policies and procedures, and researched all relevant state laws and regulations. Our review identified a 12-month statutory deadline and an 18-month guideline—depending on whether the category of a proceeding is adjudicatory, rate setting, or quasi-legislative. Additionally, the commission is required to meet three shorter, more specific deadlines within the overall 12- and 18-month timelines. We selected a sample of 45 of a total 1,602 proceedings that the commission initiated between January 1, 2000, and June 30, 2003, for which the commission's case information system showed that it did not resolve within the statutory deadline of 12 months for adjudicatory proceedings requiring hearings or the guideline of 18 months for all other formal proceedings it conducts. We excluded from our sample selection 480 proceedings related to transportation because these were not within the scope of our audit. Of the 45 proceedings we selected for testing, 20 had been resolved and closed and 25 were still open as of June 30, 2003. We ensured our sample represented the commission's three major areas—telecommunications, energy, and water. To understand why they were delayed, we reviewed each proceeding's files and interviewed the ALJs, commissioners, and commission management responsible for each proceeding.

We selected another sample of proceedings for which the commission failed to meet the three shorter statutory deadlines that are within the overall 12- and 18-month timelines, excluding any transportation proceedings, and further limited our sample to only those with evidentiary hearings because of the commission's interpretation of the statutory deadlines. We interviewed the ALJs, commissioners, or commission staff responsible for the selected proceedings to determine the reasons for any delays.

We also selected a sample of 90 of a total 16,128 advice letters initiated between January 1, 2000, and June 30, 2003. All of the letters we sampled exceeded the commission's internal goal of 90 days. We selected the letters in proportion to the total advice letters processed by the three divisions. This resulted in our sample comprising 54 telecommunications, 29 energy, and seven water advice letters. Our sample included 46 letters that had been resolved and closed and 44 that were still active as of June 30, 2003. We reviewed advice letter files and interviewed staff from each of the three divisions to determine why the commission took more than 90 days to process them.

Finally, to perform our assessment of the commission's staffing levels, we reviewed several reports prepared by the Department of Finance (Finance) between February 1998 and February 2003 in which Finance concluded that the commission lacks an adequate workload tracking system. In addition, we interviewed commission staff and obtained preliminary documents to gain an understanding of the new workload tracking system it is currently developing. However, because the commission will not complete its new workload tracking system until after the completion of our audit, we were unable to assess the adequacy of current staffing levels because we had no quantifiable justifications to support its staffing needs. ■

CHAPTER 1

Although Some of the Commission's Proceedings Were Delayed, Most Are Excluded From Statutory Deadlines

CHAPTER SUMMARY

The California Public Utilities Commission (commission) typically uses formal proceedings to review and issue decisions in policy, procedural, and other areas. State law has established several deadlines the commission must follow when processing formal proceedings. Although it initiated 1,602 proceedings between January 1, 2000, and June 30, 2003, few of them are subject to the deadlines established by Senate Bill 960 (SB 960). The legal framework established in SB 960 requires that the commission resolve only those proceedings categorized as adjudicatory requiring hearings within 12 months. The commission interprets SB 960, according to its chief administrative law judge (ALJ), as applying only to those proceedings subject to evidentiary hearings. Our legal counsel advised that in view of the commission's broad rule-making authority, the commission's interpretations of statutes and its own rules are given great weight by the courts. Thus, we relied on the commission's interpretations of the relevant statutes in determining whether the commission is complying with statutory and regulatory deadlines for proceedings. Using this interpretation, the 12-month deadline applies to only 39 proceedings initiated during the period we reviewed.

Although the Legislature did not mandate a similar deadline for the remaining proceedings, it did include intent language in SB 960 that the commission should establish reasonable time periods for resolving other proceedings not to exceed 18 months. The chief ALJ stated that the commission considers this intent language to be a guideline encouraging rigorous case management, and our legal counsel has advised that it does not legally compel the commission to complete these proceedings within 18 months.

Although it did not complete 11 percent of its proceedings within the applicable statutory requirements or its own internal guidelines, most times it did. The commission provided various reasons to explain the delays in resolving the 45 proceedings

we reviewed. For example, it held four proceedings open to resolve numerous related issues or to manage multiple phases of the same proceeding. The commission actually resolved five proceedings that appeared to exceed the timelines within the statutory limits, but the system tracking them does not appropriately reflect their resolution when they are reopened. Commissioners or management staff delayed eight other proceedings beyond their timelines for various reasons, including reassigning them to a new commissioner who required additional time to become familiar with the issues, assigning them a lower priority, or allowing the commissioners more time to consider how the energy crisis of 2000 and 2001 would affect them.

State law also includes three deadlines within the 12- and 18-month time frames that direct the commission to issue draft decisions within 60 or 90 days of submission, depending on the type of proceeding, and to approve final decisions for rate-setting and quasi-legislative cases within 60 days of the draft decision. We identified three main factors that delayed 19 draft decisions and four final decisions—commissioners needing additional time to review and research complicated issues, the heavy workload of the administrative law judges, and the impact of the energy crisis.

THE COMMISSION INITIATED 1,602 PROCEEDINGS BETWEEN JANUARY 1, 2000, AND JUNE 30, 2003

Although the commission resolved most proceedings within the time frames established in California laws and regulations, it experienced delays for roughly 11 percent of the proceedings. The proceedings it did not resolve promptly were frequently complex, and sometimes the reasons for the delays were beyond its control. For example, the energy crisis that gripped California beginning in 2000 caused delays in several proceedings while the commission worked to resolve issues that directly affected California ratepayers.

The commission experienced delays in closing 177, or 11 percent, of the proceedings initiated between January 1, 2000, and June 30, 2003.

Using the commission's case information system, we identified 1,602 proceedings it initiated during our review period of January 1, 2000, through June 30, 2003. As shown in Table 2, the commission experienced delays in closing 177, or 11 percent, of them. As described in the Introduction, for each type of proceeding SB 960 established timelines for resolving them, either in statute or through its intent language. For adjudicatory proceedings that require hearings, statutes require

commission resolution within 12 months of filing, whereas for rate-setting and quasi-legislative proceedings, the intent language establishes a time period for resolution of 18 months. However, according to its reading of SB 960, the commission makes a further distinction by interpreting the 12-month deadline to apply only to those proceedings with hearings that are considered evidentiary in nature.

TABLE 2

Few Proceedings Exceeded the Statutory or Intent Language Deadlines

Type of Proceeding	Deadline	Total Resolved Within Deadline	Total Exceeding Deadline	Total Number of Proceedings
Rate setting with hearing	18 Months	57	47	104
Rate setting without hearing	18 Months	1,106	82	1,188*
Adjudicatory with hearing	12 Months	20	19†	39
Adjudicatory without hearing	18 Months	222	18	240‡
Quasi-legislative with hearing	18 Months	0	1	1
Quasi-legislative without hearing	18 Months	20	10	30
Totals		**1,425**	**177§**	**1,602**

Source: The commission's case information system for proceedings initiated between January 1, 2000, and June 30, 2003.

* Included in these 1,188 are 32 rate-setting proceedings that, as of June 30, 2003, were active and for which the commission may yet hold hearings.

† Sixteen adjudicatory proceedings with hearings were extended by order of the commission within the initial 12 months as allowed by state law.

‡ Included in these 240 are 13 adjudicatory proceedings that, as of June 30, 2003, were active and for which the commission may yet hold hearings.

§ It initially appeared as if the commission had exceeded its established timelines for 220 proceedings. However, we found that 43 had been incorrectly coded in the case information system as open, when in fact they were closed and, thus, not actually delayed.

THE LAW EXCLUDES MOST PROCEEDINGS FROM THE STATUTORY DEADLINE

Current state law establishes that only adjudicatory proceedings with hearings are subject to statutory deadlines. Furthermore, according to the chief ALJ, the commission has interpreted state law to apply to only those proceedings for which it has conducted evidentiary hearings. Consequently, only 39 of the 1,602 proceedings it opened in the time period we reviewed are subject to current statutory deadlines. The Legislature and governor recently approved a new law that takes effect January 1, 2004, which establishes a deadline of 18 months to

resolve rate-setting and quasi-legislative proceedings. The chief ALJ explained that the new law explicitly states that it applies when there is a scoping memo and, according to statute and regulation, scoping memos are required in proceedings that require evidentiary hearings. Therefore, the chief ALJ noted that the commission intends to apply the new law to only those types of proceedings. Because the commission has interpreted it to apply to so few proceedings, this new requirement may not be as effective in reducing the time it takes to resolve such proceedings as would a statute that clearly applies to all proceedings. Our legal counsel advised that in view of the commission's broad rule-making authority, the commission's interpretations of statutes and its own rules are given great weight by the courts. Thus, we relied on the commission's interpretations of the relevant statutes in determining whether the commission is complying with statutory and regulatory deadlines for proceedings.

The categorization of a proceeding as adjudicatory, rate setting, or quasi-legislative and whether the proceeding requires a hearing is significant in determining whether the commission must meet statutory deadlines. According to state law, adjudicatory proceedings for which hearings have been held must be completed within 12 months after filing, unless the commission issues an order extending the deadline. However, the other types of proceedings are not subject to a statutory deadline for completion.

Using the commission's interpretation of statutes, of the 1,602 proceedings initiated from January 1, 2000, through June 30, 2003, only 39 were subject to a statutory deadline.

As Table 3 illustrates, the commission has held evidentiary hearings for only 144 of the 1,602 proceedings initiated between January 1, 2000, and June 30, 2003; however, it categorized only 39 of these 144 proceedings as adjudicatory requiring an evidentiary hearing. Thus, according to its interpretation, state law requires it to resolve only 39 proceedings within 12 months.

Furthermore, although the commission's records indicate that 19 of these 39 proceedings exceeded the 12-month deadline, in 16 instances the commission issued an order extending the deadlines before the 12-month period had elapsed, as permitted by law. The commission also issued extension orders for another two proceedings late but within two months of the 12-month deadline. The remaining proceeding was resolved within 16 months with no extension order being issued. Moreover,

TABLE 3

Most Formal Proceedings Do Not Require Evidentiary Hearings; Thus Are Not Subject to Statutory Requirements

Type of Proceeding	Evidentiary Hearings Held	Proceeding Still Active and May Yet Hold Evidentiary Hearings	Evidentiary Hearings Not Required	Totals
Adjudicatory	39	13	227	279
Rate setting	104	32	1,156	1,292
Quasi-legislative	1	0	30	31
Totals	**144**	**45**	**1,413**	**1,602**

Source: The commission's case information system for proceedings initiated between January 1, 2000, and June 30, 2003.

during the period we tested, rate-setting, quasi-legislative, and adjudicatory proceedings without evidentiary hearings were not subject to a statutory deadline for resolution. However, the intent language in SB 960 calls for the commission to resolve these types of proceedings within 18 months of filing. According to the chief ALJ, the commission considers this intent language to be a guideline for rigorous case management, and our legal counsel advises that this does not legally compel the commission to complete these proceedings within 18 months. Therefore, the statutory oversight mechanisms created by SB 960 that apply to the commission involve only 39 of 1,602 proceedings initiated during the period we reviewed.

The Legislature and governor recently approved Assembly Bill 1735 (AB 1735), which becomes effective January 1, 2004, and requires the commission to resolve all quasi-legislative and rate-setting cases within 18 months of issuing a scoping memo unless the commission makes a written determination that the deadlines cannot be met. The commission typically issues a scoping memo that includes a proposed schedule early on in a proceeding. AB 1735 does not explicitly state that only proceedings with hearings will be subject to its legal requirements. However, the chief ALJ explained that the new law explicitly states that it applies when there is a scoping memo and, according to statute, regulation, and the commission's interpretation, scoping memos are required in proceedings that require evidentiary hearings. Therefore, the chief ALJ noted that the commission intends to apply AB 1735 to only those types of

If the new law, AB 1735, had been in effect during the period reviewed in our audit, it would have applied to only 105 of the 1,323 rate-setting and quasi-legislative proceedings.

proceedings. If the new law had been in effect during the period reviewed in our audit, it would have applied to 105 proceedings with evidentiary hearings of the 1,323 rate-setting and quasi-legislative proceedings shown in Table 3 (1,292 rate setting plus 31 quasi-legislative). Because the commission has interpreted AB 1735 to apply to so few additional proceedings, this new requirement may not be as effective in reducing the time it takes to resolve such proceedings as would a statute that clearly applies to all proceedings.

The commission narrowly interprets hearings to refer only to evidentiary-type hearings and excludes from its definition other types of hearings such as law and motion hearings, public participation hearings, arbitration hearings, and workshops. Using this definition, of the 1,602 proceedings initiated from January 1, 2000, through June 30, 2003, only 39 were subject to a statutory deadline. Therefore, if the Legislature intended that all the types of proceedings the commission initiates should be subject to statutory deadlines, it would need to revise the law to either provide deadlines for all proceedings, regardless of whether hearings are required, or to a lesser degree, expand the definition of hearings to include other types not specifically identified as evidentiary.

MANY FACTORS CONTRIBUTED TO THE COMMISSION'S DELAYS IN RESOLVING FORMAL PROCEEDINGS

Although the commission did not complete 11 percent of its proceedings within statutory requirements when applicable, or within its own internal guidelines, most times it did. Commission staff provided various reasons, including delays by commissioners themselves, delays caused because the outcomes of some proceedings were dependent on other decisions or investigations, or delays when the commission purposely kept certain proceedings open to take up related issues or to manage multiple phases. We made no judgment as to whether the commission's explanations for these delays were reasonable; however, nothing came to our attention that would lead us to believe its explanations were not reasonable.

To determine the reasons for delays, we selected a sample of 25 open and 20 closed proceedings from those that exceeded either the statutory deadline or internal guideline without regard to whether the proceedings involved evidentiary hearings or were extended through a commission order. Applying the commission's interpretation, only seven of the adjudicatory

proceedings in our sample were subject to the statutory deadline of 12 months and the remaining 38 were subject to the 18-month timeline established in the intent language of SB 960. Table 4 summarizes the commission's reasons for the delays it experienced in resolving these proceedings.

TABLE 4

Various Reasons Contributed to Delays in Resolving Formal Proceedings

Reasons for Delay	Open Proceedings	Closed Proceedings	Totals
A commissioner or management delayed the proceeding for various reasons.	4	4	8
Resolution of the proceeding depended on other commission decisions or investigations.	3	3	6
Proceeding was resolved promptly but was reopened in the tracking system and shown as active to resolve a related issue or to resolve a past issue.	0	5	5
The proceeding was directly related to the energy crisis.	4	1	5
The commission kept the proceeding open to resolve numerous related issues or to manage multiple phases.	4	0	4
Proceeding received a lower priority in response to the energy crisis or when compared to other proceedings assigned to an administrative law judge.	2	2	4
Resolution of the proceeding depended on a California Environmental Quality Act review.	1	2	3
The commission, generally at a party's request, chose not to resolve the proceeding while the utility or other parties attempted to act on or settle the matter themselves.	2	1	3
Proceeding required additional evidence or other documentation from the parties to the proceeding.	2	1	3
Several proceedings consolidated under one delayed the original proceeding.	0	1	1
The commission was required to reassign staff to the proceeding, the parties delayed hearings, and the final decision was appealed.	1	0	1
Proceeding was resolved on time; however, the commission's tracking system incorrectly identified it as active rather than closed.	1	0	1
The proceeding was complex and highly contentious, requiring many public participation hearings and workshops.	1	0	1
Totals	**25**	**20**	**45**

A Commissioner or Management Delayed the Proceeding for Various Reasons

For eight proceedings, either management staff or the commissioners themselves delayed proceedings for various reasons, as described in the text box on the following page. For example, according to the assigned ALJ, the commission delayed one proceeding because of a change in commissioners. The ALJ responsible for drafting the decision had prepared one that the originally assigned commissioner approved, but because a lack

A commissioner or commission management delayed eight proceedings for the following reasons:

- Pending regulatory changes in the telecommunications industry may affect the final decision of the proceeding.
- A new commissioner was assigned to the proceeding.
- Management instructed the administrative law judge (ALJ) to take no action on the proceeding while the commission developed strategies regarding the PG&E bankruptcy.
- The assigned commissioner worked on revisions to the decision with the ALJ.
- Resolving the proceeding was a low priority on the commissioner's agenda.
- The assigned commissioner held the decision to determine its impact on the energy crisis.
- The assigned commissioner spent time negotiating with the parties in an attempt to resolve the issue.
- The decision was complex and required the assigned commissioner to meet with various stakeholders before issuing a decision.

of staff prevented the preparation of required supplementary information, the proposed decision was never submitted to the full commission for its review and approval. According to the ALJ, the newly assigned commissioner required additional time to become familiar with the issues related to this proceeding and to review the previously prepared decision. Ultimately, the new commissioner elected to revise the decision before submitting it to the full commission for approval. The combination of all these circumstances resulted in a delay of several months, causing the commission to resolve the proceeding well past the 18-month guideline.

Resolution of the Proceeding Depended on Other Commission Decisions or Investigations

The commission delayed resolving another six proceedings because they depended on other commission decisions or investigations. For example, the commission initiated an adjudicatory proceeding in November 2001 that, according to the assigned ALJ, raised identical issues to those of an earlier proceeding the commission was already examining. The assigned ALJ noted that the parties to the November adjudicatory proceeding also participated in a settlement involving the earlier proceeding that would probably resolve the November proceeding but kept the adjudicatory proceeding open until the commission acted on the settlement of the earlier proceeding. Ultimately, the commission and the parties to the first proceeding reached a settlement that rendered the later adjudicatory proceeding moot. However, when the commission finally issued its decision to dismiss the November proceeding, the 18-month guideline had already passed.

The Commission Closed Some Proceedings Promptly That It Later Reopened

The commission resolved five proceedings within the statutory deadline or guideline, but because its tracking system does not appropriately reflect the resolution of proceedings that are reopened, these proceedings appeared to have been delayed. The commission's system tracks numerous pieces of information about each proceeding, including the title and

type of proceeding, when it was opened and closed, and when it was reopened. However, when the commission reopens a proceeding, such as when it considers requests for a rehearing, and then closes the proceeding again, the later closing date replaces the initial one. Because only the later closing date is used in measuring how long the commission took to resolve the proceeding, the commission appears to have required more time than it actually did. For example, it initiated one proceeding in August 2000 and initially closed it in August 2001, within the 12-month deadline. However, it reopened this proceeding to process a request to award compensation to a party that assisted the commission in resolving the case and reclosed the proceeding in May 2002. The tracking system only reflected the reclose date, making it appear as if the proceeding had exceeded the deadline when it had not. Because the system fails to accurately track all of the relevant closing dates, the commission cannot rely on its tracking system alone to determine whether it promptly resolves proceedings. When we became aware that the closing dates in the tracking system were not always accurate, we reviewed all 70 of the proceedings that had reopen dates and found that the commission resolved 43 within the original deadlines.

Delays in the Proceeding Were Directly Related to the Energy Crisis

Five of the delayed proceedings we reviewed related to the energy crisis. For example, the commission initiated one of the proceedings to determine the impact of wholesale price spikes on retail electric rates in August 2000. Although this proceeding remained open as of June 30, 2003, 17 months beyond the 18-month guideline, the assigned ALJ explained that the commission did so to allow the investigation to continue. As of September 2003, the commission had issued four decisions related to this one proceeding.

According to the chief ALJ, because of the energy crisis the commission shifted its priorities to address these complex issues, initiating a total of 20 proceedings that directly related to the crisis.

According to the chief ALJ, because of the energy crisis the commission shifted its priorities to address these complex issues. It initiated several proceedings to implement legislation, consider the underlying causes and problems associated with the energy crisis, and establish programs and rate-making tools to address the energy crisis. In fact, according to a list subsequently provided to us by the chief ALJ, the commission initiated a total of 20 proceedings between January 1, 2000, and June 30, 2003, that directly related to the energy crisis.

The Commission Held Proceedings Open to Resolve Related Issues or Manage Multiple Phases of the Proceeding

The commission held four nonadjudicatory proceedings open to manage multiple phases or to resolve related issues. For example, the assigned ALJ stated that the commission decided to manage a proceeding in our sample in two phases. It resolved the first phase of a rate-setting proceeding through a decision reached within its 18-month guideline; however, it was still considering the second phase of the proceeding as of October 14, 2003, nearly 10 months beyond the guideline for resolution. The commission also issued at least one decision within 18 months for one of the remaining three proceedings.

According to the chief ALJ, the commission considers several factors when deciding to keep a proceeding open rather than closing it and opening a new one to resolve the issue. The chief ALJ explained that the commission reviews the proceeding to determine whether substantially the same parties will continue to be affected and will continue to participate, whether the evidence taken earlier will continue to be referred to, and whether successive decisions will all contribute to completing a single project. The chief ALJ also stated that some proceedings either have so many substantive issues that many decisions are required, or issues may be added as the case progresses and the commission keeps the proceeding open.

The remaining 17 proceedings included in our sample were delayed for the variety of reasons listed in Table 4 on page 21.

Types of Draft Decisions

Before the commission approves a final decision, it will issue a draft decision to the involved parties, who then have 30 days to review it. In proceedings with hearings, the commission issues two types of draft decisions, each guided by its own set of rules:

Presiding Officer's Decision—the commission issues this type of decision in adjudicatory proceedings only. State law requires that it issue the decision not later than 60 days after submission. Generally, the decision becomes final within 30 days of issuance unless an involved party files an appeal or the commission requests a review.

Proposed Decision—the commission issues this type of decision in both rate-setting and quasi-legislative hearings. State law requires that the commission issue the decision not later than 90 days after submission. The commission's final decision will be issued not later than 60 days after the issuance of the original one. This deadline is extended to 90 days if the commission proposes an alternate decision.

THREE MAIN FACTORS CONTRIBUTED TO DELAYS IN MEETING DEADLINES WITHIN THE 12- AND 18-MONTH TIME FRAMES

As described in the Introduction, state law added three deadlines within the 12- and 18-month time frames that direct the commission to issue draft decisions within the deadlines identified in the textbox. Our review of 19 draft decisions and four final decisions that did not meet these deadlines identified three main factors that delayed them.

According to the commission, it generally did not meet the 60-day deadline for final decisions because commissioners needed additional time to review and research complicated issues. Further, the commission indicated that the ALJs often did not issue draft decisions within the 60- or 90-day deadline because of a combination of the ALJ's workload and the impact of the energy crisis. The ALJ's heavy workload may indicate the commission's need for additional staff; however, as we discuss further in Chapter 3, we cannot determine whether staff levels are sufficient because the commission lacks an adequate workload tracking system. Finally, although the commission reports to the Legislature on whether it is meeting the deadline for issuing final decisions, it neither tracks nor reports whether it is meeting the deadlines for submitting draft decisions.

Workload Issues and the Energy Crisis Generally Contributed to Delays in Issuing Draft Decisions

State law requires that the assigned commissioner or the ALJ (presiding officer) in an adjudicatory proceeding, most often an ALJ, file a presiding officer's decision within 60 days of the date the commission deems the proceeding submitted for decision. The commission considers a proceeding submitted for decision once the parties have filed pleadings and briefs, and taken the evidence and comments upon which the commission will base its decision. According to its chief ALJ, the commission interprets this deadline to apply to only those proceedings with evidentiary hearings. Consequently, as we discussed earlier, the statutory requirement applied to only 39 of the 279 adjudicatory proceedings initiated between January 1, 2000, and June 30, 2003. Although the commission neither reports to the Legislature whether it is meeting this deadline nor comprehensively tracks the submission dates, we were able to obtain submission dates for the 39 proceedings. In 23, or 59 percent of these proceedings, the presiding officer issued the decision within the 60-day deadline. Of the 16 remaining proceedings, the presiding officer issued seven decisions within 30 days of the deadline and nine others more than 30 days late. We examined these last nine proceedings to determine the factors that contributed to their delay, which we have categorized in Table 5 on the following page.

In 23, or 59 percent of adjudicatory proceedings with evidentiary hearings, the presiding officer issued the decision within the 60-day deadline.

TABLE 5

The Workload of the Administrative Law Judges and the Impact of the Energy Crisis Contributed to the Majority of Delays in Filing Draft Decisions

Reasons for Delay*	Proceedings†
Administrative law judges' (ALJ) workload	4
Proceeding had a low priority in comparison to energy crisis related proceedings	4
Complex proceeding required extensive review by the ALJ	3
ALJ's decision was dependent on federal ruling	1

* We reviewed draft decisions that were issued more than 30 days beyond the 60-day deadline.

† Although we selected nine proceedings for our review, the ALJ cited two reasons for the delay related to three of them.

Although the commission substantially exceeded the 60-day deadline for these nine proceedings, it did not surpass the 12-month deadline for final resolution of one of them but did so on the other eight. The chief ALJ believes that exceeding the 12-month deadline is allowable in these cases because the commission issued an order extending the deadline, as provided in state law, for each of the eight proceedings when it became aware that it would be unable to resolve them within 12 months.

As shown in Table 5, the ALJs cited their heavy workload; the need to work on other, higher priority proceedings involving the energy crisis; complexity; and dependency on federal rulings as the reasons they did not meet the 60-day deadline for filing draft decisions. In fact, for three of these proceedings, the ALJs cited more than one reason as contributing to the delays, including heavy workloads. Although the ALJs' heavy workload may indicate the commission's need for additional staff, we could not determine whether its staffing levels are sufficient because it lacks an adequate workload tracking system.

According to the assigned ALJs, the commission's priority for handling energy crisis proceedings contributed to delays in four proceedings. For one proceeding submitted in August 2000, the assigned ALJ did not issue a draft decision until November 2002, more than 800 days after submission. According to the assigned ALJ, this proceeding, as well as several others, was placed on hold to work on a number of energy crisis proceedings.

For three of the nine proceedings selected, the assigned ALJs explained that the complexity of the issues further delayed their drafting of a decision. For instance, the assigned ALJ in one proceeding issued the draft decision 96 days after submission because the ALJ was waiting for technical assistance from the commission's telecommunications division. The ALJ obtained the information necessary to draft the decision 43 days after submission and issued the decision 53 days later.

State law also requires that the assigned commissioner or ALJ in rate-setting and quasi-legislative proceedings issue a draft decision within 90 days of the date the commission deems the proceeding submitted for decision. The commission considers only rate-setting and quasi-legislative proceedings with evidentiary hearings to be subject to this deadline. Thus, the statutory requirement applied to only 105 of the 1,323 rate-setting and quasi-legislative proceedings initiated between January 1, 2000, and June 30, 2003. Although the commission does not report to the Legislature on whether it meets this deadline, it was able to provide us with information pertaining to submission dates for the 96 draft decisions related to these 105 proceedings. The proceedings only required 96 draft decisions because the commission combined several under one decision. The commission did not meet the 90-day deadline for 37 of the 96 draft decisions. Of these, the commission issued 27 decisions within 180 days of their submission, and 10 took even longer. We reviewed the 10 decisions that took the longest to determine the causes of their delay, which we have categorized in Table 6.

TABLE 6

The Administrative Law Judges Cited Workload as Contributing to Delays in Several Draft Decisions

Reasons for Delay*	Proceedings†
Administrative law judges' (ALJ) workload	5
Complex issue required extensive review by the assigned ALJ	2
Proceeding was held by the commissioner for various reasons	3
Replacement of originally assigned commissioner or ALJ	3
The energy crisis and PG&E bankruptcy	3

* We reviewed draft decisions that were issued more than 90 days beyond the 90-day deadline.

† The ALJs cited two or more reasons for the delay of some proceedings.

Although the commission more than doubled the 90-day timeline for issuing the draft decisions for these 10 proceedings, it still resolved one within the overall 18-month guideline.

As footnoted in Table 6, the ALJs cited more than one reason as contributing to delays for some of the proceedings. They again cited workload as a reason for delays in the majority of the draft decisions and also explained that the energy crisis and the PG&E bankruptcy prolonged three more. The assigned ALJ in a PG&E rate increase proceeding did not issue the draft decision until 765 days after submission because of PG&E's April 2001 bankruptcy filing. The commission could not rule on the rate increase while the bankruptcy case was pending, and realizing the bankruptcy case would continue for some time, the ALJ issued a draft decision dismissing the original proceeding in December 2002.

The commission also noted that the reassignment of two commissioners and one ALJ delayed three draft decisions. The commissioners who were originally assigned to two proceedings left the commission at the end of their respective terms without completing the reviews. According to the ALJs involved, they could not issue their draft decisions until the newly appointed commissioners had reviewed all the relevant documents. For the remaining proceeding, the commission temporarily promoted the originally assigned ALJ to interim chief ALJ, a position that required her to dedicate a significant part of her time to managerial matters. The ALJ assigned to take over the proceeding explained that she did not issue the draft decision by the deadline because she had to become familiar with hundreds of pages of testimony and legal briefs.

The Commission Did Not Report Certain Proceedings

Although the commission tracks and reports to the Legislature whether it has met certain deadlines established in law, it does not report whether it is meeting the 60- and 90-day deadlines for issuing draft decisions.

Although the commission tracks and reports to the Legislature whether it has met certain deadlines established in law, it does not report whether it is meeting the 60- and 90-day deadlines previously discussed. Moreover, it does not adequately track the submission date that would allow it to do so. Although commission staff provided us with submission dates for rate-setting and quasi-legislative proceedings, two of the 12 submission dates we reviewed for accuracy were erroneous. In addition, the commission initially was unable to provide us with submission dates for adjudicatory proceedings. It eventually was able to provide submission dates in October 2003, after we had completed our review. According to the chief ALJ, the

commission based its decision to report only certain deadlines to the Legislature on its belief that the Legislature is most concerned with the portion of these proceedings involving commissioners' actions; therefore, it tracks and reports whether the commissioners have met the 60-day deadline to approve final decisions, which we discuss in the next section. However, because ALJs are most often responsible for meeting the 60- and 90-day deadlines to prepare draft decisions, the commission's decision not to report compliance with these deadlines to the Legislature overlooks the portion of the proceedings subject to these deadlines. Therefore, because state law requires the commission to issue draft decisions within either 60 or 90 days of submission, we believe it is important to accurately track all submission dates in order to monitor compliance with these requirements.

The Commissioners Delayed Final Decisions to Conduct Additional Analysis and Revise Draft Decisions

We identified 87 final decisions related to proceedings initiated between January 1, 2000, and June 30, 2003, that required a commissioner's action and were subject to either the 60- or 90-day deadline. The commission failed to meet these deadlines for 16 (18 percent) of the 87 final decisions. It exceeded the deadlines by 30 days or less for 12 decisions and by more than 30 days for four, the longest exceeding the deadline by 117 days. We examined the four decisions with the longest delays to determine the causes, which we have categorized in Table 7. The commission also exceeded the 18-month guideline for two of these four proceedings.

TABLE 7

The Commission Delayed Approval of Final Decisions in Rate-Setting and Quasi-Legislative Proceedings for Five Reasons

Reasons for Delay*	Proceedings†
Assigned commissioner modified proposed decision	2
Commissioner held decision to conduct an additional analysis	2
Commissioner issued an alternate decision	1
Commissioner's decision was dependent on a federal ruling	1
Commissioner deemed proceeding as low priority	1

* We reviewed final decisions that were issued more than 30 days beyond the deadline.

† Assigned commissioner cited more than one reason for delay.

Among the reasons commissioners gave for delaying their final decisions in three of the four proceedings was the necessity of either conducting additional analysis or drafting an alternate decision. For example, the commissioners did not issue a final decision in one proceeding until 94 days after the ALJ issued the draft decision. This occurred because a commissioner who was not assigned to the proceeding held the draft decision for 50 days to conduct an additional analysis to determine whether the decision would conflict with a pending decision and assess whether the decision would create perverse incentives within the gas market, according to the commissioner's chief of staff. Another proceeding did not meet the 60-day deadline because the assigned commissioner was waiting for a Federal Communications Commission ruling that affected the outcome of this proceeding.

THE COMMISSION RECENTLY DEVELOPED A NEW PROCESS FOR PRIORITIZING FORMAL PROCEEDINGS

Between January 2000 and January 2003, the commission did not formalize and provide to the public or the Legislature its criteria or the procedures it used to prioritize its formal proceedings. Beginning in February 2003, the commission established a more defined process for doing so. However, because it has yet to develop a comprehensive workload tracking system that links the administrative law judge division's workload to all other divisions, which we discuss in more detail in Chapter 3, the commission cannot determine whether its staffing levels are sufficient to manage the formal proceedings as it has prioritized them.

Although state law requires that the commission develop, publish, and annually update a work plan, it did not prepare the work plan for 2000 through 2002.

More specifically, although state law requires that the commission develop, publish, and annually update a work plan access guide (work plan), it did not prepare the work plan for 2000 through 2002. Among other things, state law requires the commission to include within the work plan a description of the scheduled rate-making proceedings and other decisions it may consider during the calendar year, information on how the public and ratepayers can gain access to the commission's rate-making process, and information regarding the specific matters to be decided. Ultimately, the commission did prepare a work plan for 2003 that included its criteria for determining regulatory priorities and a list of the 2003 major proceedings. The commission states in its 2003 work plan that it allocates its staff resources for decision making according to a stated set of priorities established

The Commission's February 2003 Criteria for Determining Regulatory Priorities

Law—the commission sets priorities to assure compliance with and enforcement of the law; where needed, the commission may advocate changes in the law.

Interests of the public—consistent with statute, the commission puts the interest of the public at large and the State ahead of any single entity or constituency.

Dollars at stake—the commission sets priorities considering the amount of money at stake and the impact on consumers and the State's economy.

Vulnerability of target groups—the commission places a higher priority on promoting the interests of the public, the State, and consumers than on arbitrating disputes between regulated service providers; it addresses issues affecting captive consumers ahead of consumers of services available from a variety of providers, and; considers the needs of consumers who are most vulnerable ahead of those who are more sophisticated.

Number affected—the commission sets priorities considering the number of consumers and businesses affected.

Importance of the service, product, or policy—in setting priorities, the commission considers the importance of the service, product, or policy to the welfare of the State and its consumers; generally, the commission addresses issues related to essential services ahead of nonessential services.

Degree of monopoly characteristics present—the commission addresses problems with industries and services with monopoly characteristics ahead of those that have some degree of competitive characteristic.

"Bang for the buck"—because it does not have the resources to address every issue, the commission must set priorities by evaluating the relative costs and benefits of acting or not acting.

by its president. When establishing its priorities and objectives, it considers the information shown in the textbox in no particular order.

Although the commission did not prepare a work plan for the three years preceding 2003, in response to the energy crisis it did prepare three internal documents, the first dated October 31, 2000, the second covering the period of March through August 2001, and the third for September 2001 through February 2002. The last two briefly described the commission's priorities between March 2001 and February 2002 as follows:

- Resolve the energy crisis.
- Address critical telecommunications matters.
- Enhance consumer protection, especially for those industries where competition, in varying degrees, has been introduced.

Additionally, these internal documents contained tables that designated proceedings as low, moderate, or high priority. Although the commission prepared these documents, it apparently did not share them with others outside of the commission.

Beginning in February 2003, using the criteria established in the work plan, the commission began to internally prioritize specific proceedings by designating them as A-, B-, or C-level priority and preparing a listing of the proceedings according to their priority ranking. According to the chief ALJ, the commission considers many of the proceedings to be routine and, therefore, does not include them on this list. In constructing the list of priority proceedings, the administrative law judge division first consults with the commission's division managers; the list is reviewed by the commissioners, and then is distributed to all divisions within the commission. We selected a sample of proceedings it included on its priority list as well as a sample of the routine proceedings to determine whether the commission was prioritizing according to its stated criteria in the work plan. Our testing found that the commission generally prioritized its proceedings as outlined in the work plan.

In addition, the chief ALJ for the division explained that, to ensure staff are working on higher priority items, proceedings are tracked on a work tracking system. Further, according to the chief ALJ, the commission's executive director meets on a regular basis with the industry division managers and they each prepare an internal "roadmap" to track the commission's proceedings that are relevant to them and their respective roles in those priority proceedings. However, because it has yet to develop a comprehensive workload tracking system that links the ALJs' workload to all other divisions, the commission cannot determine whether its staffing levels are sufficient to manage the formal proceedings as it has prioritized them.

RECOMMENDATIONS

To ensure that it accurately reports the closing date of a proceeding, the commission should modify its tracking system to retain the original closing date as well as record its subsequent closing date for those proceedings it reopens.

To ensure that it is complying with the 60- and 90-day deadlines between submission date and filing a draft decision, the commission should better track its submission dates and monitor whether it is meeting its deadlines.

To ensure that it discloses to the public and the Legislature its process for prioritizing its proceedings, the commission should continue to annually prepare and publicize a work plan that includes its criteria for prioritizing formal proceedings, as required by law. ■

CHAPTER 2

The Commission Processed Most of Its Advice Letters Within Its Internal Goal of 90 Days

CHAPTER SUMMARY

Unlike formal proceedings, state law and regulations do not establish any deadlines for the California Public Utilities Commission (commission) to review and approve advice letters. However, the three divisions that process advice letters—telecommunications, energy, and water—indicated that they have an internal goal of 90 days after the utility files the letter to process and close it. Considering the divisions' internal goal, the commission closed more than 13,500 advice letters submitted between January 1, 2000, and June 30, 2003, or 88 percent within the 90-day time frame. Our review of a sample of 90 advice letters that took longer than 90 days to process found that two factors contributed to delays: One was that some had a lower workload priority and the other was that some required formal resolution or investigation. Although two of the divisions promptly processed 27 of these advice letters, staff either delayed closing or failed to close them in the proposal and advice letter (PAL) tracking system. This represents 30 percent of the 90 advice letters we selected for testing. We believe that this should be of concern to the commission because it recently began using data recorded in the PAL tracking system to report on the status of advice letters. Furthermore, because its records were in such disarray, the telecommunications division was unable to provide us any explanations for the delays in processing 16 of its advice letters.

STATE LAW AND REGULATIONS DO NOT ESTABLISH DEADLINES FOR THE COMMISSION TO REVIEW OR APPROVE ADVICE LETTERS

Utility companies submitted to the commission for its review and approval more than 16,100 advice letters between January 1, 2000, and June 30, 2003. According to the commission, many of these letters deal with minor and noncontroversial issues; thus, commission staff could further process them without the need for hearings. Other advice letters are about more complex issues

requiring staff to spend a greater amount of time processing them. Table 8 summarizes the amount of time that elapsed between the receipt of the advice letters and either the date the commission ultimately approved and closed them in its PAL tracking system or June 30, 2003, if the advice letter was still open.

TABLE 8

The Commission Resolved 88 Percent of Advice Letters Within Its Internal Goal of 90 Days

Divisions	0-40 Days*	41-90 Days†	91 Days or More	Totals
Open advice letters				
Telecommunications	229	95	151	475
Energy	57	33	86	176
Water	23	9	23	55
Subtotals	309	137	260	706
Closed advice letters				
Telecommunications	8,626	3,078	1,202	12,906
Energy	735	522	573	1,830
Water	439	156	91	686
Subtotals	9,800	3,756	1,866	15,422
Grand Totals	**10,109**	**3,893**	**2,126**	**16,128**

Source: The commission's proposal and advice letter tracking system for advice letters submitted between January 1, 2000, and June 30, 2003.

* 40-day general order timeline as identified in General Order 96-A.

† 90-day internal goal timeline.

As discussed in the Introduction, state law and regulations do not establish any deadlines for the commission to review and approve advice letters. However, the commission has adopted General Order 96-A, which provides that advice letters become effective 40 days after filing. According to commission staff, the order envisions the commission typically needing at least that amount of time to approve advice letters so that they become effective. For those advice letters that the

commission anticipates needing more than 40 days to review and approve, the commission can allow for a later effective date. As Table 8 shows, according to the PAL tracking system, the commission resolved 9,800 advice letters within 40 days, 61 percent of those it received between January 1, 2000, and June 30, 2003. Although General Order 96-A establishes the 40-day time frame, the three divisions that process advice letters—telecommunications, energy, and water—indicated that they have an internal goal of 90 days to resolve and close them. The energy division indicated that the processing time has lengthened as the result of the increase in quantity received and the complexity of the issues raised. The commission closed more than 13,500 advice letters, or 88 percent, within the divisions' 90-day time frame. For the remainder, the commission took from 91 days to more than three years. We selected a sample of advice letters from those that required more than 90 days to resolve and reviewed them to identify the reasons for the delays.

The commission closed more than 13,500 advice letters, or 88 percent, within the divisions' 90-day time frame.

TWO FACTORS CONTRIBUTED TO DELAYS IN APPROVING ADVICE LETTERS

Our review revealed that two factors contributed to delays in the commission's review and approval of more than one-third of our sample of 90 advice letters. First, the commission considered the subject of 16 advice letters to be of low priority; thus, staff spent time on higher priority tasks rather than promptly reviewing and approving them. Second, 17 advice letters required a formal resolution or investigation by the commission, which took additional time to complete. In addition, although two of the divisions processed 27 of the advice letters sampled within 90 days, staff either delayed closing or failed to close them in the PAL tracking system. Furthermore, the telecommunications division could not provide us any explanation for what caused the delays in processing 16 of its advice letters, and the water division could not explain another. Table 9 on the following page provides a breakdown of the advice letters by division and the factors contributing to their delay.

TABLE 9

Various Factors Contributed to Delays in Promptly Resolving Advice Letters

Reasons for the Delay	Number of Advice Letters by Division			Total Number of Advice Letters
	Telecommunications	Energy	Water	
Division processed the advice letter within 90 days but either delayed or failed to close it in the tracking system.	17	10	0	27
Commission staff were unable to recall circumstances surrounding the advice letter.	16	0	1	17
The advice letter required a formal resolution or investigation by the commission.	9	4	4	17
Division considered the advice letter a low priority item (workload).	3	12	1	16
Utility company was not responsive to the commission's requests for information or clarification.	3	3	1	7
The advice letter dealt with a complex issue that required numerous document requests and correspondence with the utility.	3	0	1	4
Staff had the information needed to promptly process the advice letter but failed to do so.	3	0	0	3
Division could not process the advice letter until the commission issued a final decision in a related formal proceeding.	0	2	0	2
Totals	**54**	**31**	**8**	**93***

* Two energy division advice letters and one water division advice letter were delayed by more than one factor.

The three divisions indicated that 16 advice letters had a lower priority. For example, in four cases the utility was notifying the commission, as required, of the creation of a new affiliate. According to a project manager with the energy division, this type of advice letter is informational and requires little action by the commission; therefore, these letters are designated a lower priority than other tasks assigned to the division's analysts. Our comparison showed that the divisions appear to follow their stated priority criteria.

Although the telecommunications and energy divisions frequently cited a staffing shortage as a reason they believe contributes to their need to prioritize advice letters, we were unable to determine whether the divisions' claims have merit because the commission lacks a workload tracking system. We discuss the tracking of the commission's workload more fully in Chapter 3.

Table 9 also shows that the three divisions indicated 17 advice letters required a formal resolution or investigation by the commission necessitating additional time to either develop the resolution or perform the investigation. For example, the telecommunications division has not resolved and closed six of the nine advice letters in this category because they are the subject of an ongoing formal investigation that the commission's consumer protection and safety division is conducting. According to a program manager, the telecommunications division is holding these advice letters open until the investigation is complete. In another example, the energy division indicated that a utility used an advice letter to request the commission's approval to implement a surcharge for direct access customers. The subject of this advice letter required the energy division to spend additional time to review its details and draft a resolution for the commission's approval.

Although staff apparently promptly reviewed and approved 30 percent of the 90 advice letters we reviewed, they either delayed closing or failed to close them in the proposal and advice letter tracking system.

Also shown in Table 9, staff apparently reviewed and approved 17 of the telecommunications division's and 10 of the energy division's advice letters promptly. However, the staff either delayed closing or failed to close them in the PAL tracking system. This represents 30 percent of the 90 advice letters we selected for testing. Staff in the telecommunications division indicated that they generally did not close the advice letters in the tracking system because of a processing error or oversight. In addition, a program and project supervisor with the energy division typically provided the same explanation, except in three instances where energy division staff asserted they had more pressing priorities and, as a result, failed to close the letters in the tracking system. We believe that the high proportion of advice letters in our sample that remain open according to the dates in the PAL tracking system when they are actually closed should be of concern to the commission because it recently began using data recorded in the PAL tracking system to report to the commissioners on the status of advice letters. This type of erroneous data generated by the tracking system could be misleading to the commission and to those the commission reports to using this information.

To help expedite matters before the commission, in April 2003, its executive director prepared for the first time a report that describes the status of advice letters, which he shared with the commissioners during a public meeting. According to the executive director, he will prepare this report and provide it to the commissioners twice a year. The commission included in the April 2003 status report the number of advice letters resolved

and closed in 2002 and the number of advice letters pending in March 2003 for each division. According to commission staff, they obtained this information directly from the PAL tracking system. Based on the results of our sample, if we assume that 30 percent of all the advice letters included in the PAL tracking system are incorrectly coded as pending rather than resolved and closed, we question whether the information included in the status report is a reliable source on which to base decisions. We believe that it is important for the commission to review all the advice letters currently included in its PAL tracking system and make corrections where appropriate to ensure that the status report it is sharing with the commissioners in a public meeting is accurate.

The telecommunications division could not recall or was unable to provide reasons for the delays in processing 16 of its advice letters, and the water division failed to provide a reason for the delay in processing one. As we will discuss in a subsequent section of this chapter, the telecommunications division does not adequately maintain and track its advice letters.

TWO DIVISIONS USE A SIMILAR SET OF CRITERIA TO PRIORITIZE THEIR ADVICE LETTERS, WHILE THE THIRD DIVISION PRIORITIZES ON A CASE-BY-CASE BASIS

Because of the high volume of advice letters the telecommunications and energy divisions receive, they routinely prioritize them to promptly resolve those that are of the highest priority first.

Although the telecommunications and energy divisions provided us with descriptions of the criteria they use to prioritize advice letters, they had not documented these criteria as part of their policies and procedures in advance of our request. Moreover, the advice letter files do not contain any indication of how either of the two divisions classified the letters. Consequently, we could not confirm whether the divisions consistently applied their criteria, although our review of the 16 advice letters the divisions identified as low priority appeared to be consistent with the criteria described to us.

The energy division received more than 2,000 and the telecommunications division received more than 13,300 advice letters between January 1, 2000, and June 30, 2003. According to the divisions, it is because of this high volume that they routinely prioritize advice letters to promptly resolve those that are of the highest priority first. The two divisions' criteria for prioritizing advice letters are somewhat similar. Both indicated that they give a higher priority to letters that will have a significant impact on rates, customers, and the utility markets. The two divisions also stated that they give a higher priority to those advice letters that utilities file to comply with a commission decision. In addition, the director for the telecommunications division indicated that the division

also considers whether a letter involves issues so controversial as to elicit protests. Furthermore, according to its director, staff of the energy division also consider the age of an advice letter and attempt to address the oldest letters first among those that are pending, after attending to any with a higher priority.

Unlike the telecommunications and energy divisions, the water division has received substantially fewer advice letters—741 during the time period reviewed. A program manager of the water division indicated that consequently, the division has been better able to promptly resolve and close advice letters and therefore has less need to prioritize them. Instead, the water division's staff evaluates each letter on a case-by-case basis and prioritizes those that need to be completed more quickly.

THE TELECOMMUNICATIONS DIVISION DOES NOT ADEQUATELY MAINTAIN AND TRACK ITS ADVICE LETTERS

The telecommunications division (telecommunications) lacks a filing system that allows it to store advice letters and the supporting documentation for the letters in a central location. Thus, telecommunications had difficulties locating advice letter files and related supporting documents, which may have contributed to its inability to provide reasons for delays in resolving 16 advice letters as we described earlier in this chapter.

We requested that telecommunications provide us with the files, including supporting documents, for 60 advice letters. Telecommunications staff required several weeks to locate the advice letter files we requested and were ultimately unable to locate six of them. We observed that in many instances, advice letters were located at an analyst's desk or piled on tables rather than in a central filing area. For some advice letters, telecommunications had to request a copy from the utility because it was unable to locate its own copy. For those advice letters staff did eventually locate, the files contained only limited documentation to illustrate the reasons for their processing delays. Telecommunications staff conceded that maintaining and tracking advice letters has been and continues to be a problem.

In many instances, advice letters were located at an analyst's desk or piled on tables rather than in a central filing area.

In an attempt to address its filing problems, telecommunications has initiated a pilot project that allows utilities to submit advice letters and supporting documents in an electronic format. A program manager indicated that telecommunications intends to maintain electronic copies of the advice letter and supporting

documents, which he believes will facilitate their storage and tracking. He also stated that the utilities participating in the pilot project represent 46 percent of the advice letters submitted and, ultimately, telecommunications intends to include all utilities in its electronic filing process. Although this may eventually prove successful, telecommunications still needs to file and track the advice letters and supporting documents of utilities that currently choose not to file electronically in such a way that it is able to accurately and promptly retrieve them.

Telecommunications staff often could not locate the advice letter summary sheet used to indicate differing levels of review and approval or, when found, it was not fully completed.

Finally, as part of its processing, telecommunications requires utilities to submit a summary sheet with their advice letters. Telecommunications uses this summary sheet to track the advice letter's progress by indicating the differing levels of review and approval it has received and, ultimately, support staff use the summary sheet to input and update the information included in the PAL tracking system. However, staff often could not locate the relevant summary sheet or, when found, it was not fully completed. A program manager for telecommunications indicated that in the past, after resolving and closing an advice letter, staff discarded the summary sheets, which apparently occurred for several of our sample items. He stated that telecommunications recently discontinued this practice and now maintains the summary sheet along with the advice letter. The program manager also noted that although telecommunications has implemented the electronic pilot project, the utilities will still be required to submit the summary sheet and telecommunications staff will still need to complete it. Therefore, for purposes of oversight and internal and external review, telecommunications still needs to ensure that its staff complete and maintain the summary sheet.

RECOMMENDATIONS

To ensure that the information included in the PAL tracking system is accurate for reporting to the commissioners in public meetings on the timeliness of advice letters, the commission should review all advice letters in the system and close those where it is appropriate to do so.

As part of implementing its new electronic filing process, the commission should ensure that the telecommunications division creates an effective centralized filing system for those advice letters and supporting documents not submitted in electronic format.

For purposes of oversight and external and internal review, the commission should ensure that telecommunications staff consistently complete and retain summary sheets to evidence appropriate approval and review and that telecommunications maintains the summary sheets in its advice letter files. ■

Blank page inserted for reproduction purposes only.

CHAPTER 3

Although the Commission Cited Workload and Inadequate Staffing as Contributing to Delays, the Lack of a Workload Tracking System Hinders Its Ability to Justify Staffing Needs

CHAPTER SUMMARY

The Department of Finance (Finance), in various reports and management letters it prepared between February 1998 and February 2003, reported that the California Public Utilities Commission (commission) lacked a workload tracking system that would allow it to justify its staffing needs. In response to a February 2003 management letter, the commission began to revise its workload tracking system to address Finance's concerns; however, it does not anticipate implementing key phases of the new system until the end of 2003 or the beginning of 2004. Thus, the commission was unable to provide us any staffing analyses that would allow us to determine whether its staffing levels are adequate to promptly process its formal proceedings and advice letters.

THE COMMISSION LACKS A WORKLOAD TRACKING SYSTEM THAT WOULD ALLOW IT TO JUSTIFY ITS STAFFING NEEDS

According to several reports prepared by Finance between February 1998 and February 2003, the commission lacks an adequate workload tracking system that would allow it to provide quantifiable justification to support its requests for staffing. Consequently, although the commission indicated that understaffing is a limiting factor in promptly processing its formal proceedings and advice letters, it was unable to provide us with any staffing workload analyses to support this belief.

According to Finance, it first issued a report concerning a historical review of the commission's positions, expenditures, and funding sources in February 1998 that found the commission used a standard time reporting system to account for its employees' time that was based on employee time sheets and was used

In various reports and management letters it prepared between February 1998 and February 2003, Finance reported that the commission lacks a workload tracking system that would allow it to justify staffing needs.

to allocate personnel costs to specific funds. However, Finance's report disclosed several weaknesses in the commission's reporting system, including incorrectly charging programs and program funding sources and the system's inability to track authorized positions. During a second review that resulted in a report issued in November 2001, Finance ascertained that the commission had abandoned its standard time reporting system subsequent to Finance's 1998 review and, at the direction of its president, initiated a new time reporting system—the workload tracking system—effective July 2000. However, in its 2001 report, Finance noted that although the commission had taken significant steps to address workload data problems by establishing and implementing the new tracking system, limitations and weaknesses in available data impeded its ability to determine current staffing and workload levels. Thus, Finance made several recommendations to improve the tracking system.

According to Finance, in March 2002 the commission requested that it review and comment on the commission's proposed improvements to its tracking system, scheduled for implementation during 2002. Finance reported that the proposed improvements would not address the concerns it initially identified in its 2001 review. In fact, Finance stated that the proposed improvements did not allow the system to track the relational data necessary to develop workload standards and determine staffing needs. According to Finance, the commission responded to its concerns in a March 2002 memo, which indicated that the commission believed the output from the then-current version of its workload tracking system would enable it to develop staffing standards.

Ultimately, in accordance with an interagency agreement between Finance and the commission, Finance again reviewed the workload tracking system to determine whether it was providing sufficient data to identify priorities and develop workload standards and reported its results in early 2003. In its management letter dated February 2003, Finance reiterated the concerns identified in its previous reviews and, more specifically, noted that the current form of the tracking system would not allow for a determination of workload requirements or the development of workload standards. Further, Finance noted that management in some divisions had implemented certain improvements that made the tracking system a somewhat productive management tool for those divisions. However, Finance indicated that these independent systems and ad hoc modifications would not form an integrated system that could provide data useful on an organization-wide or even a division-specific basis. It again made

several recommendations, including developing a standardized system that could be used throughout the commission. In response to Finance's February 2003 management letter, the commission's president acknowledged that it had serious work to do to make its time reporting and the workload tracking system accurate and useful commission-wide.

THE COMMISSION IS REVISING ITS WORKLOAD TRACKING SYSTEM

The commission does not anticipate implementing key phases of its new workload tracking system until the end of 2003 or the beginning of 2004 and the final version of the system will take longer.

According to the commission, it is in the process of modifying its current workload tracking system to address Finance's concerns so that the "new" system will be a useful management and reporting tool at both the commission and division level. The program manager responsible for implementing the new tracking system indicated that the commission would not complete its modification to allow a common reporting format until the end of 2003 or the beginning of 2004 and that the final version of the system will take longer. Consequently, the commission was unable to provide the analyses or documents we needed to assess whether its staffing levels were adequate at the time we performed our audit.

As of June 2003, the commission noted that five different versions of the workload tracking system exist, and although it is possible to produce limited division-specific reports, it is not yet possible to generate reports on a commission-wide basis. However, according to commission staff, the new tracking system will be a unified version that allows work to be entered consistently throughout the commission and also allows the entire commission to use the system. Further, commission staff indicated that it has discussed the proposed modifications with Finance and believes it has addressed all of Finance's concerns.

More specifically, the commission indicated that the new tracking system will allow it to quantify the work it performs. As a result, it believes that the system will provide information such as how many hours staff spend on specific types of proceedings, the average time it takes for staff to complete an advice letter, and the type of work staff performs related to energy advice letters, among other things. Ultimately, the program manager believes that the new tracking system will allow the commission to determine whether it needs to increase its staffing levels in the various divisions based on workload data.

RECOMMENDATION

The commission should continue to work with Finance on improving its workload tracking system so that it can justify its staffing needs.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

ELAINE M. HOWLE
State Auditor

Date: November 25, 2003

Staff: Doug Cordiner, Audit Principal
Denise L. Vose, CPA
Rafael Garcia
Anissa C. Nachman
Matt Taylor

Agency's comments provided as text only.

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

November 13, 2003

Ms. Elaine M. Howle*
State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Re: California Public Utilities Commission (CPUC): State Law and Regulations Establish Firm Deadlines for Only a Small Number of Its Proceedings

Dear Ms. Howle:

Thank you for the opportunity to comment on your draft audit report. We found the State Auditor study to be professional and accurate. We do not take exception to any of the numerical facts contained in the report. Likewise, we accept the recommendations that the CPUC should:

1. Modify the Case Information System database so that it retains multiple closing dates for complex proceedings. (Database programming cost issue)
2. Better track proceeding submission dates. (Database programming cost issue)
3. Continue to prepare an annual work plan that contains work priorities and criteria for determining the priorities.
4. Review all open Advice Letters and close those that have been completed. (Staffing resource issue.)
5. Create a more effective filing system for Telecommunication Division Advice Letters. (Staffing resource issue.)
6. Make sure that the Telecommunications Division staff complete and retain advice letter approval and review forms. (Staffing resource issue)
7. Improve our Work Tracking System.

* California State Auditor's comments begin on page 51.

We will implement the recommendations as best as we are able with our existing resources.

However, three aspects of the report that deserve brief comment are: (1) Cost of implementing the recommendations, (2) Failure to study staffing levels, and (3) Interpretation of Assembly Bill 1735. Our comments on these subjects are attached.

Sincerely,

(Signed by: William Ahern)

William Ahern
Executive Director

Enclosure

Cost of Implementing the Recommendations

The report finds a structural problem with the CPUC's Case Information System (CIS-a very old legacy database system) in that the system does not allow for the retention of multiple "close" dates – the date on which a proceeding is closed. In addition, the audit report identified the difficulty of determining "submission" dates for some complex proceedings. Likewise the report found that some Advice Letters (PAL System) that were completed remained "open." The report goes on to recommend that these shortcomings be corrected.

What we find lacking in the report is the acknowledgment that the CPUC (like all state agencies) is operating under very tight resource constraints. Likewise the report fails to contemplate the perhaps significant cost of either enhancing or replacing the two existing database systems – CIS and PAL.

Failure to Study Staffing Levels

The State Auditor report details the efforts of the CPUC to work with the Department of Finance to create a new Work Tracking System that would allow the Commission to quantitatively justify staffing needs. The report finds that since the new system has not been implemented, it could not pursue any analysis of CPUC staffing levels.

We are disappointed in the State Auditors decision in this regard. We had hoped that if it were not possible for the State Auditor to perform quantitative analysis of the CPUC staffing levels, then the State Auditor might have performed some qualitative analysis. The State Auditor could have interviewed CPUC management to see what activities/projects the CPUC management believed should be undertaken but are prevented by inadequate staffing levels. The report seems to endorse our methodology of prioritizing our activities.

In addition, both the Telecommunication division and the Administrative Law Judge division attempted to show that much of the problem of tracking and maintaining proper records (Recommendations # 2,4, 5, and 6 in our cover letter) was the result of inadequate support staff staffing levels.

Interpretation of AB 1735

Although the report does not indicate that our interpretation of AB 1735 is legally incorrect, it uses language (for instance the wording of the title of the report) that implies that the commission should interpret AB 1735 so that the 18 month deadlines are applicable not only to proceedings that go to hearing but also, to proceedings that do not go to hearing.

This strong implication in the report caused us to reconsider our interpretation. Our reconsideration has led us to believe that our legal interpretation is correct and that the deadlines imposed by AB 1735 apply only to proceedings that have had Evidentiary Hearings.

In addition, we reviewed our interpretation in terms of both Legislative intent as well as cost effective administration. Our conclusion remains the same. One example of cost effective administration is that, as the report points out, there are very few problems of timeliness with proceedings that do not go to hearing. If we were to monitor, track and manage proceedings that do not have hearings in the same manner as those that do, then there would be a substantial cost involved with insignificant benefits.

However, as the report points out we have applied rigorous case management to cases that do not go to hearing which means that we make every attempt to insure that all cases are processed within the 18 month time period. Of course, we will continue this practice.

COMMENTS

California State Auditor's Comments on the Response From the California Public Utilities Commission

To provide clarity and perspective, we are commenting on the response by the California Public Utilities Commission (commission) to our audit report. The numbers below correspond to the numbers placed in the margins of the commission's response.

1. Based on discussions with our information technology staff, we do not believe that the cost to modify the commission's case information system (CIS) to retain the original closing date and subsequent closing date for reopened proceedings would be significant. However, since the commission acknowledges in its comments that it does not know whether the costs to enhance or replace its CIS would be significant, it should first determine what those costs are. If they are prohibitive, the commission should manually track the original closing dates for all proceedings it reopens.

   Additionally, the commission is mischaracterizing our report because we are not reporting any "structural problems" with the commission's proposal and advice letter (PAL) tracking system, thus we did not recommend that the commission enhance or replace the PAL tracking system. Instead, as we describe on page 37, staff either delayed closing or failed to close advice letters in the PAL tracking system and, consequently, the tracking system contains incorrect data. Therefore, we recommended that the commission review all advice letters in the system and close those where it is appropriate to do so. This does not entail enhancing or replacing the PAL tracking system.

2. We are confused by the commission's concerns regarding our inability to review its staffing levels because it lacked a workload tracking system. Contrary to the commission's response, we met with the commission's management staff from both its telecommunications and administrative law judge divisions on several occasions. During these meetings, management staff from both divisions asserted that workload and inadequate

staffing contributed to delays. However, as we state on pages 36 and 43, while the commission's management staff asserted they were short of staff, they could not provide evidence to support their claims.

- We strongly disagree with the commission's statement that our report implies it should interpret Assembly Bill 1735 (AB 1735) so that the 18-month deadline is applicable to proceedings that require hearings as well as those that do not. Moreover, it is the commission that implies we are somehow challenging its legal interpretation of the bill's provisions. Nothing could be further from the truth. In fact, on page 18, our legal counsel advised that in view of its broad rule-making authority, the commission's interpretations of statutes and its own rules are given great weight by the courts. Thus, we relied on the commission's interpretation of the relevant statutes in determining whether the commission is complying with statutory and regulatory deadlines. However, the fact remains that the commission's interpretation of AB 1735 is that it applies to only those proceedings requiring evidentiary hearings and, as such, if the new law had been in effect during the period we reviewed for our audit, it would have applied to only 105 of the 1,323 rate-setting and quasi-legislative proceedings. Therefore, we believe it is important to point out to the Legislature, as stated on page 20, that if it intended all the types of proceedings the commission initiates be subject to statutory deadlines, the Legislature would need to revise the law to provide deadlines for all proceedings, regardless of whether hearings are required. We do not believe this implies in any way that the commission should revise its interpretation of AB 1735.

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press