CALIFORNIA

1996

PUBLIC UTILITIES COMMISSION REFORM

SENATE BILL 960 (Leonard)

SENATE BILL 1322 (Calderon)
CONFEREE REPORT COMMITTEE ANALYSIS

Bill No: SB 960
Author: Leonard
RN: 9628541
Report date: August 28, 1996

SUBJECT: Public Utilities Commission Reform

Were the Conference amendments heard (*) in committee? Yes
If yes, were they defeated? No

SUMMARY:

The amendments to SB 960 create within the Public Utilities Commission (PUC) a consumer advocacy division to represent consumer interests before the commission. The goal of the division is to obtain the lowest possible rates for service consistent with reliable and safe service levels. The head of this division is appointed by the Governor and confirmed by the Senate.

The amendments to SB 960 change the internal processes within the PUC. Generally, the bill requires much greater involvement of commissioners in all aspects of commission decision-making, including more up-front involvement of commissioners in all hearings, requiring the attendance of commissioners at particular hearings and permitting parties to argue their cases before a quorum of the commission.

The amendments to SB 960 create three classes of cases within the PUC: adjudication, ratesetting, and quasi-legislative. At the start of each case a commissioner must issue a scoping memo which describes the issues and lays out a timetable for resolution. In adjudication cases, where the PUC is acting like a court, off-the-record, or ex parte, contact is prohibited. In ratesetting cases the PUC may have ex parte contacts provided that all parties have an equal opportunity for contact. Once the ex parte contact is ended the PUC may meet in closed session to consider the case. In cases in which the PUC is setting policy (quasi-legislative) a commissioner must be present for all formal hearings. To facilitate the free flow of information, there are no ex parte contact restrictions.

The amendments to SB 960 require a report from the commission with its recommendations as to necessary regulatory and statutory changes to
recognize the increasingly competitive nature of the energy and communications industries.

The amendments to SB 960 provide that the bill become effective 1/1/98 and sunset on 1/1/2002.

By: Senate Energy, Utilities, and Communications Committee
   Randy Chinn

*See Senate Rule 29.6 (b) for definition of “heard”.*
Bill No: SB 1322  
Author: Calderon  
RN: 9628547  
Report date: August 28, 1996

**SUBJECT:** Public Utilities Commission: Judicial Review

Were the Conference amendments heard (*) in committee? Yes
If yes, were they defeated? No

**SUMMARY:** SB 1322 permits all decisions of the Public Utilities Commission to be reviewed at the Appellate Court. The conference report amends SB 1322 to limit Appellate Court review only to the PUC’s adjudicatory decisions, other than those related to electric industry restructuring. The provisions of the bill permitting all non-adjudicatory PUC decisions to be reviewed at the Appellate Court were deleted. Consequently, all non-adjudicatory PUC decisions, as well as those adjudicatory PUC decisions relating to electric industry restructuring, may be reviewed only at the Supreme Court, as is in current law.

The conference report further provides for expedited Supreme Court consideration to any petition alleging that the Appellate Court has assumed jurisdiction to review a PUC decision over which it has no jurisdiction.

The conference report makes the effective date of the bill January 1, 1998.

By: Senate Energy, Utilities, and Communications Committee  
Randy Chinn

*See Senate Rule 29.6 (b) for definition of “heard”.*

CONTINUED
CONFERENCE COMPLETED

Bill No: SB 1322
Author: Calderon (D)
Amended: Conference Report No. 1, 8/28/96
Vote: 21

SENATE JUDICIARY COMMITTEE: 8-0, 4/18/95
AYES: Campbell, Lockyer, Mello, O'Connell, Petris, Solis, Wright, Calderon
NOT VOTING: Leslie

SENATE APPROPRIATIONS COMMITTEE: 7-5, 5/15/95
AYES: Calderon, Dills, Killea, Leslie, Lewis, Mountjoy, Polanco
NOES: Johnston, Alquist, Greene, Kelley, Leonard
NOT VOTING: Mello

SENATE FLOOR: 26-12, 5/30/95
NOES: Alquist, Beverly, Hayden, Hurtt, Johannessen, Johnston, Kelley, Leonard, Maddy, Mountjoy, Rogers, Russell
NOT VOTING: Marks, Peace

CONFERENCE COMMITTEE VOTE: 6-0, 8/28/96
AYES: Senators Peace, Sher, Leonard; Assembly Members Conroy, Kuykendall, Martinez

ASSEMBLY FLOOR: 67-0, 8/8/96

CONTINUED
SUBJECT: Public Utilities Commission: judicial review

SOURCE: Author

DIGEST: This bill provides that courts of appeal be granted jurisdiction to review Public Utility Commission (PUC) decisions.

This bill would broaden the bases for judicial review and reversal of quasi-judicial PUC decisions, as specified.

This bill provides that a party affected by a PUC decision be able to file an appeal with the Court of Appeal if the PUC has granted a rehearing in the case but has failed to render a decision within 120 days of granting the rehearing request.

Conference Committee Amendments:


2. Delete provision allowing all non-adjudicatory PUC decisions to be reviewed by the Appellate Court.

3. Provide for expedited Supreme Court consideration to specified petitions.

Assembly Amendments:

1. Clarify legislative intent language.

2. Provide that no new or additional evidence may be introduced upon review by the court.

ANALYSIS: Article XII of the State Constitution establishes the Public Utilities Commission for the purpose of fixing rates, establishing rules, examining records, and prescribing a uniform system of accounting for all public utilities subject to its jurisdiction. To this end, the commission institutes internal procedures governing its decision-making process. Article XII, Sec. 5 provides that "the Legislature has plenary power ... to
establish the manner and scope of review of commission action in a court of record ...." Thus, the Legislature may create different standards for review of commission decisions or designate lower courts for appeal.

Existing law confers original jurisdiction upon the Supreme Court to hear appeals from PUC decisions. This grant of power precludes appeals of PUC decisions at the trial or lower appellate court level.

This bill would instead confer jurisdiction upon the courts of appeal to hear appeals of PUC decisions. The bill provides that where the decision of the commission was issued in an adjudicatory proceeding, the petition for Writ of Review may be filed in the Court of Appeal. In all other matters, the petition for Writ of Review may only be filed in the Supreme Court. Appeals of a court of appeal decision may be made to the Supreme Court by a petition for review. The venue of a petition would be in the judicial district in which the petitioner resides. If the petition is a business, the venue would be where the business is located.

Any party may seek from the Supreme Court, pursuant to California Rules of Court, an order transferring related actions to a single appellate district.

Under existing law, a PUC decision may be appealed (following the Commission's denial for rehearing) by filing a writ of certiorari or petition for review by the State Supreme Court. The Supreme Court has the discretion whether to grant the writ or petition.

This bill would instead provide for an appeal to a court of appeal as a matter of right. The bill would require the appellate court to issue a writ of review and to review the PUC decision unless, upon examination of the record and the petition, the court of appeal determines that the petition is procedurally deficient and denies the petition.

Under existing law, judicial review of a PUC decision is limited under Section 1757 to a determination of whether the commission has "regularly pursued its authority", including a determination of whether the PUC decision violates any federal or state constitutional right of the petitioner. Judicial review is strictly limited to the record without any consideration of any additional evidence not before the commission in reaching its decision. Under case law, *Camp Meeker Water System, Inc. v. Public Utilities Commission* (1990) 51 Cal.3d 845, judicial review by the appellate court is

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foreclosed if there exists any evidence supporting the factual findings and conclusions upon which the PUC's decision was based.

The bill provides that no new or additional evidence may be introduced in the Supreme Court and the Court of Appeal. In a complaint, enforcement, or other adjudicatory proceeding, the review by the court shall not extend further than to determine, on the basis of the entire record which will be certified by the commission, whether any of the following occurred:

-- The commission acted in excess of its powers or jurisdiction.

-- The commission did not proceed in the manner required by law.

-- The commission's decision is not supported by the findings.

-- The findings in the decision of the commission are not supported by substantiated evidence in light of the whole record.

-- The PUC order or decision was procured by fraud or was an abuse of discretion.

-- The PUC order or decision violates a state or federal constitutional right of the petitioner.

Of the above six grounds, only the "substantial evidence" provisions is new. The other five provisions codify existing bases for appeal of a PUC decision.

The bill defines "adjudicatory proceedings" are enforcement proceedings and all complaint cases, except those challenging the reasonableness of rates and charges.

The court's determination would be made based on the record before the commission. No new or additional evidence could be introduced for the court's review.

This bill would also provide that a party may file a petition for review by the court of appeals if the PUC has granted a petition for rehearing but has failed to issue a decision on the rehearing within 120 days of granting the petition.
Under existing law, the Supreme Court may review decision of the Court of Appeal in a manner provided for other civil actions. This bill would require that the Supreme Court grant expedited consideration to any party or commission petition decision over which the Court of Appeal has no jurisdiction.

The bill provides that the Writ of Mandamus shall be from the Supreme Court and with regard to a complaint enforcement or other adjudicatory proceedings of the commission, from the Court of Appeal to the commission in all proper cases as prescribed in Section 1085 of the Civil Code.

The effective date of the provisions of this bill is January 1, 1998.

Prior Legislation

SB 1041 (Robert), passed the Senate 9/13/91, 22-9 (Noes: Alquist, Davis, Johnston, Leonard, Leslie, Maddy, Presley, Rogers, Russell) but was vetoed by the Governor. Governor's veto message:

"This bill would transfer the original review of Public Utilities Commission decisions from the Supreme Court to the First District Court of Appeals. SB 1041 would also change the standard of review for the appeal from "regularly pursuing their authority" test to the substantial evidence test.

"The Railroad Commission, and its modern successor Public Utilities Commission, were deliberately fashioned to centralize the state's authority with respect to regulated economic activity. In the process of enacting these reforms, function of both the legislative and judicial branches of government were transferred by constitutional amendment to the commission. In a deliberate departure from a system in which powerful economic interests used litigation to delay, if not block, the final orders of the commission, the Legislature limited the scope and centralized the function of judicial review in the California Supreme Court. Such a system has functioned for three-quarters of a century to balance the need for agency accountability with the public interest in having vital economic decisions settled with finality."
"I remain committed to that vision. At this critical stage in its economic and social evolution, California can ill afford the delay, expense, and uncertainty invited by the enlarged predicates for judicial review contained in this bill.

"Further, the appending of an additional layer of appellate litigation between the decisions of the commission and their implementation or correction is without justification in my mind. I note that the California Judicial Council has consistently opposed the vague and open-ended scope of review provisions in this legislation, insisting that these would add significantly to the burden, while clouding the mission of the California judiciary."

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

**SUPPORT:** (Verified 8/30/96)

AT&T  
Airtouch Communications  
Association of California Water Agencies  
California Ass. of Long Distance Telephone Companies  
California Teamsters Public Affairs Council  
Call America of San Luis Obispo  
Call America Business Communications, Inc.  
Cellular Carriers Assn. of California  
Cellular One  
Cellular Resellers Association, Inc.  
City of Chino Hills  
City of Commerce  
City of Hawaiian Gardens  
City of Industry  
City of Laguna Hills  
City of Palm Desert  
City of South Gate  
City of Vernon  
City of Thousand Oaks  
City of West Sacramento  
City of Yorba Linda  
Communication TeleSystem International  
Executeline Long Distance Savings You Can See
ARGUMENTS IN SUPPORT: Proponents of the bill assert that SB 1322 is necessary to protect the due process rights of parties appearing before the Public Utilities Commission (PUC). Under existing law, the California Supreme Court is the court of original jurisdiction for appeals from PUC decisions and has total discretion whether or not to accept appeals. According to proponents, the Supreme Court has not granted a petition to review a PUC decision since 1990. Of 49 writ petitions filed between 1990 and mid-1994, 2 petitions were dismissed as being moot and the other 47 were summarily denied. In a manner of speaking, proponents argue, the Supreme Court's refusal to review PUC decisions leads to the false impression that the PUC has not committed legal error since 1990. Proponents contend that the practical effect, however, is that the failure has effectively denied due process to PUC intervenors.

This bill would grant a court of appeal jurisdiction to hear PUC appeals. A decision of the court of appeal could be appealed to the Supreme Court in the same manner as any other appeal from the lower court.

Proponents dispute the claim that SB 1322 would overburden the appellate courts. Their survey of other states indicate that virtually all states allow review of PUC-type decisions as a matter of right. Their review of the number of appeals filed in the some of the other large states does not
support a claim that SB 1322 would result in a litigation explosion. New York State is cited as an example of where the number of appeals of utility commission decisions remained very low even though decisions were appealable to a lower appellate court and subject to further review by New York's highest appellate court.

Proponents also dispute the contention that lower appellate court review would delay and interfere with PUC decision-making. They point out that the filing of an appeal will not in and of itself stay a Commission decision; the appealed decision will go into effect unless the appellate court finds that "great or irreparable harm" would otherwise result to the petitioner. (Section 1762(b).) Moreover, orders staying a Commission decision cannot be issued until the party seeking the stay has filed a "suspending" bond (Section 1764(a). Further, recent amendments (April 17) provide that a stay order may not be issued to suspend an order or decision increasing or decreasing rates or changing a rate classification. These provisions, contend proponents, ensure that SB 1322 would not be result in lengthy delays and would not create instability or delay in the implementation of the PUC's ratemaking decisions.

Regarding the potential for conflicting lower court opinions, proponents respond that review by the Supreme Court is available to settle conflicting law, as is the case in other civil matters.

Finally, proponents point out that the most recent amendment on May 18 substantially reduced the number of cases potentially affected by SB 1322. The amendment, which limits use of the "substantial evidence" test to quasi-judicial determinations, would affect one-third or fewer of the appeals filed in the last five years. This and other amendments have removed the Judicial Council's previous opposition.

RJG:sl 8/30/96 Senate Floor Analyses
SUPPORT/Opposition: SEE ABOVE

**** END ****
Reform bill aims to protect ratepayers
Legislators reject Public Utilities Commission's plan to eliminate consumer advocacy unit

"California ratepayers will continue to be served by an independent advocate, and we will make sure that it is not starved to death."

The president of the PUC said he and his colleagues will abide by the Legislature's decision but added that he thinks the commission's intentions were misunderstood.

"We still think that the role of consumer advocacy will decline and the need for consumer protection will increase over time," said P. Gregory Conlon. "But the Legislature didn't agree."

In July, the Mercury News reported that the Public Utilities Commission intended to eliminate the advocacy unit and reassign its staff to other divisions, including a new Customer Services Division that would process individual consumer complaints.

Critics immediately charged that the PUC was underestimating its representation of several broad classes of consumers at a time such advocacy was needed most — as the $23 billion electric industry is being deregulated.

PUC staffers said Thursday they were gratified by the panel's vote of confidence.

"This breathes new life into the Division of Ratepayer Advocates and gives us another opportunity to prove our value to ratepayers," said Elena Schmid, a supervisor in the advocacy unit. "The legislators saw unique value in what we do, standing up for those who otherwise wouldn't have representation."

Consumer advocates approved a requirement that the unit's new director be required to report to the Legislature each year about unit staffing, funding and accomplishments.

"I'm very pleased that the Legislature has taken action to protect ratepayer interests," said Nettie Hoge, executive director of the consumer group Toward Utility Rate Normalization in San Francisco.

The panel's new limits on lobbying would distinguish the first time among the different roles performed by the commissioners.

Henceforth, private contacts between lobbyists and commissioners would be banned in cases in which they sit as judges. In rate-making cases, there would be a new requirement that notice be posted three days in advance of all such meetings. This would give all interested parties a chance to participate and reduce the perception that utilities get heard and consumer advocates get excluded.

In return for these tighter lobbying rules, the commission gets something it wants: relief from part of California's open-meetings law. Specifically, commissioners will be allowed to deliberate privately in judicial-type cases, similar to the way juries and judges deliberate.

Under existing law, only two commissioners can meet without violating the law, unless they are in a public session.