



CALIFORNIA PUBLIC UTILITIES COMMISSION

BILL ANALYSIS

BILL SUMMARY

SB 1941 (Morrow) Public Utilities Commission: orders and decisions: judicial review.
As Introduced 2/22/02

Recommendation: Oppose

Summary: This bill provides that nothing in the rehearing and judicial review articles of the Public Utilities Act (Title 1, Part 1, Chapter 9, Articles II & III, Sections 1731 et seq. and 1751 et seq.) "shall impair the Legislature from enacting laws that abrogate, change, or modify an order or decision of the Commission."

Analysis: This bill adds new subdivisions to Section 1731 (application for rehearing) and Section 1759 (exclusive jurisdiction of the courts). The new subdivisions are identical and provide:

"Nothing in this article shall impair the Legislature from enacting laws that abrogate, change or modify an order or a decision of the Commission."

Comments: The legal effect of this bill is unclear. Under the Constitution, the Legislature has broad vis-à-vis utilities regulated by the Commission. However, its power is not unlimited. The bill purports to confirm power in the Legislature to "abrogate" the Commission's decisions. If this means that under the bill the Legislature can pass a statute having retroactive effect on a Commission order adjudicating rights parties before it or undoing rates or remedies. It may be violating both the express terms of the Constitution providing for a review of Commission decision "in a court of record" (Article XII, Section 5) and more generally, restrictions on the ability of legislatures or commissions to make enactments that has retrospective effects.

The use of the terms "change" or "modify" raise the same concern. The authority of the Legislature to provide for prospective rules for utilities subject to its control vis-à-vis the courts is clear from the Constitution, Article XI, Section 2. If the bill does nothing more than reiterate that principle, it is unnecessary. If the bill is attempting to arrogate for the Legislature, authority traditionally vested in the courts, it is raising issues under both the state and federal constitutions.

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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1731 of the Public Utilities Code is amended to read:

1731. (a) The commission shall set an effective date when issuing an order or decision. The commission may set the effective date of an order or decision prior to the date of issuance of the order or decision.

(b) After any order or decision has been made by the commission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in the action or proceeding and specified in the application for rehearing. The commission may grant and hold a rehearing on those matters, if in its judgment sufficient reason is made to appear. No cause of action arising out of any order or decision of the commission shall accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 30 days after the date of issuance or within 10 days after the date of issuance in the case of an order issued pursuant to either Article 5 (commencing with Section 816) or Article 6 (commencing with Section 851) of Chapter 4 relating to security transactions and the transfer or encumbrance of utility property. For purposes of this article, "date of issuance" means the date when the commission mails the order or decision to the parties to the action or proceeding.

(c) No cause of action arising out of any order or decision of the commission construing, applying, or implementing the provisions of Chapter 4 of the Statutes of 2001-02 First Extraordinary Session shall accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 10 days after the date of issuance of the order or decision. The commission shall issue its decision and order on rehearing within 20 days after the filing of that application.

(d) Nothing in this article shall impair the Legislature from enacting laws that abrogate, change or modify an order or decision of the commission.

SEC. 2. Section 1759 of the Public Utilities Code is amended to read:

1759. (a) No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, as provided by law and the rules of court.

(b) The writ of mandamus shall lie from the Supreme Court and from the court of appeal to the commission in all proper cases as prescribed in Section 1085 of the Code of Civil Procedure.

(c) Nothing in this article shall impair the Legislature from enacting laws that abrogate, change or modify an order or decision of the commission.

