**Item # ____**
**Agenda ID #6521**

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

**M e m o r a n d u m**

**Date:** April 2, 2007

**To:** The Commission
(Meeting of April 12, 2007 )

**From:** Delaney Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** **AB 985 (Saldana) Environment: judicial review.**
**As Introduced: February 22, 2007**

**LEGISLATIVE SUBCOMMITTEE RECOMMENDATION**: OPPOSE

**SUMMARY OF BILL:**

This bill would amend Public Resources Code section 21168.6, to provide for California Court of Appeal review of CPUC decisions involving the California Environmental Quality Act ("CEQA"), and sets forth the venue for the filing of a petition for writ of mandate filed at the California Court of Appeal.

In addition, this bill also would amend Public Resources Code section 25531, involving judicial review of decisions by State Energy Resources Conservation and Development Commission ("Energy Commission") on applications for certification of a power facility and related facility.

**SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:**

As California's population continues to grow, the construction and enhancement of the infrastructure of such critical utilities as energy, communication, and water, is indispensable to the health of California's economy. An additional layer of judicial review of CPUC CEQA-related decisions would effectively discourage infrastructure investment by increasing regulatory uncertainty and delay.

**SUMMARY OF SUGGESTED AMENDMENTS (if any):**

None.

## DIVISION ANALYSIS (Legal Division):

The author of this bill notes that the Supreme Court has granted only one writ since 1972. This fact underlies the author's implied assumption that expanding judicial review to include Courts of Appeal will increase the number of appeals granted.

The standard of review applied to appeals of CEQA-related decisions does not change between Courts of Appeal and the Supreme Court. The standard is, and will remain, whether there has been legal error, e.g. statutory or constitutional violation, abuse of discretion, no substantial evidence, etc. (See generally, Public Utilities Code sections 1757 and 1757.1; Public Resources Code section 21186.5.)

Writ petitions filed at the California Supreme Court receive equal review; yet they have been summarily denied because they have no merit. Thus, adding Court of Appeal review for CEQA-related decisions would not necessarily result in more cases being granted for review.

Limiting judicial review to the California Supreme Court preserves judicial recourse while streamlining the appellate review process for CEQA-related decisions on infrastructure critical to California's economy. Adding an additional layer of review would adversely affect the timeliness and finality of decisions.

## PROGRAM BACKGROUND:

Public Resources Code section 21168.6, added in 1972 subsequent to the adoption of CEQA, limits review of CPUC decisions involving CEQA exclusively to the California Supreme Court.

Petitioners have tried to challenge the Commission's CEQA actions in the California Courts of Appeal, but the CPUC has successfully requested transfer to the California Supreme Court pursuant to section 21186.6.

Not many Supreme Court challenges to CPUC CEQA-related decisions have been filed over the years. Of these court challenges, only one writ has been granted since 1972. In that case, the CPUC CEQA determination was overturned. (See *Napa Valley Wine Train, Inc. v. Public Utilities Com.* (1990) 50 Cal.3d 370.)

## LEGISLATIVE HISTORY:

Prior to 1996, judicial review of all CPUC decisions was limited to the California Supreme Court.

SB 1322 (Ch. 855, 1996) provided for California Court of Appeal review of the CPUC's decisions involving adjudicatory and enforcement matters.

SB 779 (Ch. 886, 1998) provided for judicial review of almost all CPUC decisions, except those involving water corporations.

Subsequently, other legislation limited judicial review for certain types of decisions to the California Supreme Court. For example, AB 1x (Ch. 4, 1st Extraordinary Session of 2001-2002) limited judicial review for matters related to emergency measures to address the energy crisis adopted by the Legislature. Also, decisions involving Public Utilities Code section 848, et seq., fall into this category. (See generally, Public Utilities Code sections 1768 and 1769.)

**FISCAL IMPACT:**

Unknown.

**STATUS:**

This bill will be considered by the Assembly Judiciary Committee on April 24, 2007.

**SUPPORT/OPPOSITION:**

Unknown.

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**Date**: April 2, 2007

## BILL LANGUAGE:

BILL NUMBER: AB 985 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Saldana

FEBRUARY 22, 2007

An act to amend Sections 21168.6 and 25531 of the Public Resources Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 985, as introduced, Saldana. Environment: judicial review.

The California Environmental Quality Act provides that in an action or proceeding against the Public Utilities Commission pursuant to the act the writ of mandate may only be filed with the Supreme Court of California. The Warren-Alquist State Energy Resources Conservation and Development Act provides that judicial review of decisions of the State Energy Resources Conservation and Development Commission on applications for certification of a power facility and related facility are subject to judicial review by the Supreme Court of California.

This bill would, additionally, provide jurisdiction in these instances to a court of appeal. The bill would specify the venue in the Court of Appeal for a petition or judicial review.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 21168.6 of the Public Resources Code is amended to read:

21168.6. In any action or proceeding under Sections 21168 or 21168.5 against the Public Utilities Commission the writ of mandate shall lie only from the Supreme Court *or a court of appeal* to ~~such~~ *the* commission. *The venue of a petition for a writ of mandate filed in the Court of Appeal pursuant to this section shall be in the judicial district in which the p etitioner resides. If the petitioner is a business, the venue shall be the judicial district in which the petitioner has its principle place of business in California.*

SEC. 2. Section 25531 of the Public Resources Code is amended to read:

25531. (a) The decisions of the commission on ~~any~~ *an* application for certification of a site and related facility are subject to judicial review by the Supreme Court of *California or a court of appeal. The venue of a petition for a writ of mandate filed in the Court of Appeal shall be in the judicial district in which the petitioner resides. If the petitioner is a business, the venue shall be the judicial district in which the petitioner has its principle pla ce of business in* California.

(b) ~~No new~~ *New* or additional evidence ~~may~~ *shall not* be introduced upon review and the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the United States Constitution or the California Constitution. The findings and conclusions of the commission on questions of fact are final and are not subject to review, except as provided in this article. These questions of fact shall include ultimate facts and the findings and conclusions of the commission. A report prepared by, or an approval of, the commission pursuant to Section 25510, 25514, 25516, or 25516.5, or subdivision (b) of Section 25520.5, shall not constitute a decision of the commission subject to judicial review.

(c) Subject to the right of judicial review of decisions of the commission, ~~no~~ *a* court in this state ~~has~~ *does not have* jurisdiction to hear or determine ~~any~~ *a* case or controversy concerning ~~any~~ *a* matter ~~which~~ *that* was, or could have been, determined in a proceeding before the commission, or to stop or delay the construction or operation of ~~any~~ *a* thermal powerplant except to enforce compliance with the provisions of a decision of the commission.

(d) Notwithstanding Section 1250.370 of the Code of Civil Procedure:

(1) If the commission requires, pursuant to subdivision (a) of Section 25528, as a condition of certification of any site and related facility, that the applicant acquire development rights, that requirement conclusively establishes the matters referred to in Sections 1240.030 and 1240.220 of the Code of Civil Procedure in any eminent domain proceeding brought by the applicant to acquire the development rights.

(2) If the commission certifies ~~any~~ *a* site and related facility, that certification conclusively establishes the matters referred to in Sections 1240.030 and 1240.220 of the Code of Civil Procedure in ~~any~~ *an* eminent domain proceeding brought to acquire the site and related facility.

(e) ~~No~~ *A* decision of the commission pursuant to Section 25516, 25522, or 25523 shall *not* be found to mandate a specific supply plan for ~~any~~ *an* utility as prohibited by Section 25323.

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