

M e m o r a n d u m

Date: April 2, 2008

To: The Commission
(Meeting of April 10, 2008)

From: Pamela Loomis, Deputy Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 1973 (Ruskin) – Public Utilities Commission: governance.
As introduced: February 14, 2008**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE

SUMMARY OF BILL:

AB 1973 would make the president of the California Public Utilities Commission (CPUC) an appointee of the Governor subject to confirmation by the Senate. It also would provide that the general counsel and the executive director of the CPUC shall both operate as directed by the CPUC rather than as directed by the president of the CPUC.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

This bill would further politicize the appointment of the president, thereby compromising the Commission's Constitutionally-established independence. It would also dilute the accountability and efficiency achieved by placing the executive director and general counsel under the president's direct control.

SUMMARY OF SUGGESTED AMENDMENTS:

None.

DIVISION ANALYSIS (Office of Governmental Affairs):

- This bill is a partial reintroduction of Assemblyman Ruskin's AB 1157 (2007), sponsored by the Communications Workers of America, which would have expanded intervenor compensation in addition to changing the CPUC's governance.
- According to the author's statements last year, this bill is intended "to reduce the direct intervention of the Governor in the internal workings of the PUC. This will assist the Legislature and the public in achieving greater independence and accountability from this crucial public agency. It will reduce the politicization of internal staffing and procedural decisions, while promoting collegiality and cooperation among commissioners."
- However, requiring Senate confirmation of the Governor's selection of president would increase the politicization of the office, and run contrary to the Legislature's intent in 1999, when it enacted SB 33 (Peace).
- SB 33 made the President of the CPUC a designee of the governor instead of an appointment by his/her fellow CPUC commissioners. The reason for this change was a belief that having the president appointed by the governor would make the CPUC more accountable to the Administration and the Legislature. SB 33 also explicitly centralized accountability for the functioning of the CPUC with its president by putting the Commission's executive director and the general counsel directly under the control of the president.
- Requiring an additional Senate confirmation for the office of CPUC president would be duplicative and unnecessary. The Senate provides extensive consideration through its confirmation process of appointments to the CPUC with the understanding that the appointment may eventually become CPUC president.
- The president's ability to direct the executive director and general counsel on routine matters enhances the efficient operation of the CPUC, and should not be changed.

PROGRAM BACKGROUND:

- Under current law, the president is appointed by the Governor, and therefore is responsive to the Governor. However, if the Governor decides to replace the president, the president still remains a Commissioner, and the replacement president must be named from among the other Commissioners.
- Furthermore, under current law the president directs the CPUC's staff (other than DRA staff), including the general counsel and the executive director, subject to the possibility that the full Commission may vote to over-rule the president.

- Prior to 1999 and the enactment of SB 33 (Peace), the CPUC president was elected by his/her fellow Commissioners, and the general counsel and executive director performed at the direction of the Commission.
- Excerpted from the Senate Floor analysis of SB 33:

The basic structure of the CPUC was established early this century in response to the dominance of railroad interests into much of California's economic and political life. As part of Governor Hiram Johnson's reform movement, a series of constitutional amendments were enacted, one of which established Article XII creating the CPUC.

The CPUC has historically been afforded much independence, in keeping with the turn of the century concerns about undue influence by the railroads. Consequently, commissioners were appointed for staggered six-year terms to ensure that no single governor could appoint a majority of commissioners within that governor's four-year term. The governor has no power to remove a commissioner; only the Legislature has that power. The CPUC has been given broad latitude to set its own procedures and any review of CPUC decisions has historically been limited to review only by the Supreme Court.

Concurrent with the 1996 electric restructuring effort, a series of procedural reforms were enacted. Central to those reforms was an effort to improve the accountability of individual commissioners by encouraging those commissioners to spend more time in hearings and to take "ownership" of draft decisions. Those efforts have been at least partially successful in that commissioners are now more involved in the cases. The limited judicial review of CPUC decisions was also broadened to permit appellate court review, rather than Supreme Court review.

LEGISLATIVE HISTORY:

AB 1157 (Ruskin, 2007) was identical to this bill except that it also included an expansion of intervenor compensation. It died in Assembly Committee on Utilities and Commerce Committee.

SB 33 (Chapter 509 of 1999) made the President of the CPUC a designee of the governor instead of appointed by the CPUC commissioners, and explicitly centralized accountability for the functioning of the CPUC with its president by putting the Commission's executive director and the general counsel directly under the control of the president.

FISCAL IMPACT:

None.

STATUS:

AB 1973 is awaiting a hearing date in Assembly Committee on Utilities and Commerce.

SUPPORT/OPPOSITION:

Unknown.

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Date: April 2, 2008.

BILL LANGUAGE:

BILL NUMBER: AB 1973 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Ruskin

FEBRUARY 14, 2008

An act to amend Sections 305, 307, and 308 of the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

AB 1973, as introduced, Ruskin. Public Utilities Commission.

(1) The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities, as defined. The California Constitution grants the commission certain general powers over all public utilities, subject to control by the Legislature, and authorizes the Legislature, unlimited by the other provisions of the Constitution, to confer additional authority and jurisdiction upon the commission, that is cognate and germane to the regulation of public utilities. Existing law requires the Governor to designate the president of the commission from among its members and requires the president to direct the executive director, the attorney, and other staff of the commission, except for the Division of Ratepayer Advocates.

This bill would require the Governor to appoint, subject to the approval of the Senate, a president of the commission from among its members. The bill would repeal the requirement that the president direct commission staff.

(2) Existing law authorizes the attorney for the commission, if directed to do so by the president, except as otherwise directed by vote of the commission, to intervene, if possible, in any action or proceeding involving any question arising pursuant to the Public Utilities Act. Existing law requires the attorney for the commission to commence, prosecute, and expedite the final determination of all actions and proceedings, and to generally perform all duties and services as attorney to the commission, as directed or authorized by the president, except as otherwise directed or authorized by vote of the commission.

This bill would authorize the attorney for the commission, if directed to do so by the commission, to intervene, if possible, in any action or proceeding involving any question arising pursuant to the Public Utilities Act. This bill would require the attorney for the commission to commence, prosecute, and expedite the final determination of all actions and proceedings, and to generally perform all duties and services as attorney to the commission, as directed or authorized by the commission.

(3) Existing law requires the executive director for the commission to keep a full and true record of all proceedings of the commission, issue all necessary process, writs, warrants, and notices, and perform such other duties as the president, or vote of

the commission, prescribes. Existing law provides that the president may authorize the executive director to dismiss complaints or applications when all parties are in agreement thereto, in accordance with rules that the commission may prescribe.

This bill would require the executive director to keep a full and true record of all proceedings of the commission, issue all necessary process, writs, warrants, and notices, and perform the other duties the commission prescribes. The bill would provide that the commission may authorize the executive director to dismiss complaints or applications when all parties are in agreement thereto, in accordance with rules that the commission may prescribe.

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 305 of the Public Utilities Code is amended to read:

305. The Governor shall ~~designate~~ *appoint, subject to the approval of the Senate,* a president of the commission from among the members of the commission. ~~The president shall direct the executive director, the attorney, and other staff of the commission, except for the staff of the division described in Section 309.5, in the performance of their duties, in accordance with commission policies and guidelines.~~

The president shall preside at all meetings and sessions of the commission.

SEC. 2. Section 307 of the Public Utilities Code is amended to read:

307. (a) The commission may appoint as attorney to the commission an attorney at law of this state, who shall hold office during the pleasure of the commission.

(b) The attorney shall represent and appear for the people of the State of California and the commission in all actions and proceedings involving any question under this part or under any order or act of the commission. If directed to do so by the ~~president,~~ ~~except as otherwise directed by vote of the~~ commission, the attorney shall intervene, if possible, in any action or proceeding in which any such question is involved.

(c) The attorney shall commence, prosecute, and expedite the final determination of all actions and proceedings directed or authorized by the ~~president, except as otherwise directed or authorized by vote of the~~ commission, advise the commission and each commissioner, when so requested, in regard to all matters in connection with the powers and duties of the commission and the members thereof, and generally perform all duties and services as attorney to the commission that the ~~president, or vote of the commission,~~ *commission* may require of him *or her* .

SEC. 3. Section 308 of the Public Utilities Code is amended to read:

308. (a) The commission shall appoint an executive director, who shall hold office during its pleasure. The executive director shall be responsible for the commission's executive and administrative duties and shall organize, coordinate, supervise, and direct the operations and affairs of the commission and expedite all matters

within the commission's jurisdiction.

(b) The executive director shall keep a full and true record of all proceedings of the commission, issue all necessary process, writs, warrants, and notices, and perform ~~such~~ the other duties ~~as~~ the ~~president, or vote of the commission,~~ commission prescribes. The ~~president~~ commission may authorize the executive director to dismiss complaints or applications when all parties are in agreement thereto, in accordance with rules that the commission may prescribe.

(c) The commission may appoint assistant executive directors who may serve warrants and other process in any county or city and county of this state.