

Date of Hearing: April 23, 2025

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY

Cottie Petrie-Norris, Chair

AB 1222 (Bauer-Kahan) – As Amended April 21, 2025

SUBJECT: Public utilities: judicial review

SUMMARY: Makes a number of changes to the judicial review of actions by the California Public Utilities Commission (CPUC). Specifically, **this bill:**

- 1) Prohibits the CPUC from authorizing electrical or gas corporations to recover from ratepayers the costs associated with seeking judicial review of a CPUC decision in federal agencies or courts.
- 2) Extends the timeframe for aggrieved parties to file a petition for a writ of review from 30 days to 90 days after the CPUC issues its decision denying a rehearing application or, if granted, after the decision on rehearing is issued.
- 3) Establishes a presumption that a CPUC final decision is arbitrary and unlawful if it significantly deviates from an administrative law judge's proposed decision, unless the CPUC can justify the deviation as necessary to comply with state or federal law.

EXISTING LAW:

- 1) Establishes the CPUC with jurisdiction over all public utilities and grants the CPUC certain general powers over all public utilities and common carriers, subject to control by the Legislature. (California Constitution, Article 12)
- 2) Requires the CPUC to regulate utilities, establish just and reasonable rates for service, and establishes a division of the CPUC responsible for consumer protection and safety. (Public Utilities Code § 451 and § 309.7)
- 3) Requires the CPUC to determine whether a proceeding requires a hearing and whether it is quasi-legislative, adjudication or ratesetting. Provides rules governing each type of proceeding, including prohibiting any substantive communication between a decision maker and a party in adjudicative cases. (Public Utilities Code §§ 1701.1 and 1701.2)
- 4) Establishes the right to petition for judicial review of CPUC decisions within 30 days of denial of rehearing (or decision on rehearing). Requires petitions to be filed in the Court of Appeal or Supreme Court, depending on the matter. Specifies filing locations based on the petitioner's residence or principal place of business. (Public Utilities Code § 1756)
- 5) Establishes the standard of review of CPUC decisions, limiting review to legal errors, lack of jurisdiction, unsupported findings, abuse of discretion, fraud, or constitutional violations. (Public Utilities Code § 1757)
- 6) Prohibits courts from hearing new evidence in cases of CPUC judicial review; review is based solely on the record before the CPUC. (Public Utilities Code § 1757.1)

- 7) Provides that CPUC orders and decisions can only be appealed at the California Supreme Court and the courts of appeal. (Public Utilities Code § 1759)
- 8) Prohibits courts from staying or suspending any order or decision by the CPUC authorizing a change in rates. Any matter regarding rates shall be referred back to the CPUC for further action, consistent with court orders. The CPUC is prohibited from authorizing refunds in such circumstances; only prospective rate changes are permitted. (Public Utilities Code § 1766)

FISCAL EFFECT: Unknown. This bill is keyed fiscal, and will be referred to the Assembly Committee on Appropriations for its review.

CONSUMER COST IMPACTS: Unknown, likely negligible. However, many CPUC decisions relate to allocation of costs; this bill would make it easier to challenge those costs and thereby has the potential to lower customer bills.

BACKGROUND:

History of Reforms to Judicial Review of CPUC Actions – California has undertaken several legislative initiatives to reform the judicial review process of decisions made by the CPUC. Prior to 1998, parties aggrieved by CPUC decisions could only seek review directly from the California Supreme Court, which rarely granted such petitions. This limited access prompted concerns about the lack of effective checks on the CPUC’s authority. In response to these concerns, the Legislature passed Senate Bill 779 (Calderon, Chapter 886, Statutes of 1998). This bill expanded judicial review by allowing parties to petition the California Courts of Appeal for review of CPUC decisions. SB 779 marked a significant shift, providing a more accessible avenue for challenging CPUC decisions and promoting greater accountability.

Over a decade later, in September 2010, eight people were killed when a natural gas pipeline exploded in San Bruno, California. This tragedy focused the public’s attention on gas utilities, and the regulators tasked with overseeing them. With this increased public focus came increased legislative action, primarily as a package of reform bills aimed at the CPUC.

SB 48 (Hill, 2015) contained a number of reforms to the governance and operations of the CPUC, including language allowing certain actions of the CPUC to be heard in superior court. The Governor vetoed SB 48 in October 2015. In his signing message for his veto, the Governor stated his support of the intent of the bill but felt additional work was needed.¹

In response to the Governor’s veto message, a package of bills enacting major CPUC reforms was introduced in 2016,² including SB 1017 (Hill, 2016) which sought greater access to judicial review of CPUC decisions; namely, allowing certain actions of the CPUC to be heard in superior, rather than appellate, court. This bill failed passage off the Assembly floor. Subsequent legislative efforts have continued to seek judicial reform of CPUC’s processes, most recently AB 2911 (Muratsuchi, 2022), reflecting a continued legislative focus of ensuring the CPCU operates with transparency and accountability.

¹ Brown, Edmund G., Jr. *Governor’s Veto Message for SB 18, SB 48 and AB 825*; Oct. 9th 2015.

² AB 2168 (Williams), AB 2903 (Gatto), SB 62 (Hill), SB 215 (Leno), SB 512 (Hill), SB 661 (Hill), and SB 1017 (Hill)

COMMENTS:

- 1) *Author's Statement.* According to the author, "AB 1222 protects ratepayers by preventing utilities from raising energy rates to pay for the costs of seeking judicial review, and by making it easier for stakeholders to challenge last-minute changes to California Public Utility Commission (CPUC) decisions. California has some of the highest energy rates in the country, with residents paying significantly more per kilowatt-hour than the national average. The CPUC plays a key role in setting these rates. The judicial review process for CPUC decisions is unique compared to other state agencies: aggrieved parties have only 30 days to seek review, compared to 90 days at most other agencies. CPUC commissioners also have significant latitude to amend proposed commission decisions immediately before adopting a final decision. Limited judicial oversight of CPUC rulings makes it difficult for individuals and businesses to contest regulatory decisions that impact their energy rates. As energy costs continue to rise, AB 1222 helps keep the CPUC accountable to California's ratepayers."
- 2) *Purpose of Bill.* Judicial review provides a check on government agencies by allowing courts to determine whether an agency has acted within its legal authority. While most state agency decisions can be reviewed by trial courts within 90 days, the CPUC follows a more restrictive process. For CPUC judicial review, parties must petition the Court of Appeal or Supreme Court within 30 days of a final decision. This unique and narrower pathway limits judicial oversight of CPUC actions, making it more difficult to challenge decisions that directly affect energy costs and services. The limited judicial review of CPUC actions has been a point of continued legislative scrutiny and action over the past decades, as noted above. Most of those efforts have sought to allow legal actions against the CPUC arising from the Public Records Act review to be brought before superior court.

This bill seeks to make three changes to CPUC judicial review: 1) prohibiting electric or gas utilities from charging ratepayers the cost of seeking judicial review of CPUC decisions; 2) extending the timeframe for aggrieved parties to file a petition for a writ of review from 30 days to 90 days, in alignment with other state agencies; and 3) establishes a presumption that a CPUC final decision is arbitrary and unlawful if it significantly deviates from an administrative law judge's proposed decision.

The author motivates these changes as necessary checks on the CPUC, which has authority to set electric and gas rates significantly affecting the majority of Californians. The author notes the high cost of energy rates in the state, and the desire to have more opportunities for the public to engage and scrutinize CPUC actions. Specifically regarding the provision establishing a presumption related to CPUC final decisions, the author notes examples of "last-minute" amendments to final decisions, sometimes made from the dais during a voting meeting, where the public was afforded little, if any, chance to review or comment upon these changes.³

³ Specifically, two proposed decisions related to Diablo Canyon: R. 23-01-007, Issuance of D. 23-12-036 and A. 23-04-018, Issuance of D. 24-12-033.

The large electric and gas utilities are opposed to this measure, noting the extension of the judicial review filing period introduces financial uncertainty to needed safety and reliability work, among other stated concerns. It is important to note that some CPUC decisions approve rate recovery for prospective work, such as during the general rate case application, while other decisions approve rate recovery after the work has been completed, for prudence and reasonableness. The delay to safety work seems limited in such after-the-fact rate recovery decisions.

While the changes to judicial review put forward in this measure are likely to increase the volume of filings challenging CPUC decisions, the barrier to filing these challenges is still high compared to other state agencies; namely, only courts of appeal or the state Supreme Court may review CPUC decisions. Moreover, the courts are prohibited from staying or suspending any order or decision by the CPUC authorizing a change in rates. Any matter regarding rates must be referred back to the CPUC for further action, consistent with court orders. The CPUC is prohibited from authorizing refunds in such circumstances; only prospective rate changes are permitted.⁴ Given these circumstances, it is unclear the degree or impact this bill may have on delaying needed safety work, as the utilities state. Rather, it is for the committee to weigh whether the increases to public scrutiny of CPUC actions, via enhancements to judicial review, put forward to this bill is on balance beneficial to ratepayers.

3) *Related Legislation.*

AB 1167 (Berman, 2025) prohibits various categories of utility political spending from being recovered in rates, including litigation regarding existing or proposed regulations, legislation, or ordinances. Status: *Set for hearing* in this committee on April 30, 2025.

4) *Prior Legislation.*

AB 2911 (Muratsuchi, 2022) among its provisions, allows an action against the CPUC for a violation of either Open Meeting rules or Public Records requests to be brought in superior court. Status: Died – Assembly Committee on Appropriations.

SB 19 (Hill) provides a suite of reforms to the operations of CPUC. An earlier version allowed legal actions against the CPUC arising from the CPRA to be brought before superior court. Status: Chapter 421, Statutes of 2017.

SB 1017 (Hill, 2016) would have modified the confidentiality of documents furnished to the CPUC by public utilities and would have stated the jurisdiction of judicial review of CPUC CPRA decisions to be with the superior court. Status: Held on the Assembly Floor.

AB 825 (Rendon, 2015) would have proposed a package of reforms of the CPUC largely directed at increased transparency of the activities of the agency, including requiring the California State Auditor's Office to appoint an Inspector General within its office for the CPUC, expanding the roles and responsibilities of the CPUC public advisor, specifying additional requirements of commissioners, and

⁴ Public Utilities Code § 1766

increased transparency of electric utilities' procurement, among others. Status: Vetoed.

SB 48 (Hill, 2015) would have proposed a suite of reforms of the governance and operations of the CPUC, including, among others, requiring sessions in Sacramento, applying the Code of Ethics from the APA to ALJ, clarifying and augmenting the information the CPUC must provide the Legislature in its annual report, and others. Status: Vetoed.

SB 660 (Leno/Hueso, 2015) would have proposed a suite of reforms of the governance, rules, operations and procedures of the CPUC, including reforming laws and rules related to ex parte communications, criteria and process for disqualification of commissions to a proceeding, and authorizing the CPUC to appoint the chief administrative law judge. Status: Vetoed.

SB 779 (Calderon) among its suite of reforms, expanded judicial review by allowing parties to petition the California Courts of Appeal for review of CPUC decisions. Status: Chapter 886, Statutes of 1998.

- 5) *Double Referral*. This bill is double referred. Upon passage in this committee, it will be referred to the Assembly Committee on Judiciary for its review.

REGISTERED SUPPORT / OPPOSITION:

Support

California Environmental Voters (formerly CLCV)
California Solar & Storage Association
Democrats of Rossmoor
NRG Energy

Oppose

Edison International and Affiliates, Including Southern California Edison
Pacific Gas and Electric Company and its Affiliated Entities
San Diego Gas & Electric
Southern California Gas Company

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