AMENDED IN ASSEMBLY AUGUST 28, 1998

AMENDED IN ASSEMBLY AUGUST 25, 1998

AMENDED IN ASSEMBLY AUGUST 17, 1998

AMENDED IN ASSEMBLY JULY 21, 1998

AMENDED IN ASSEMBLY JULY 21, 1997

AMENDED IN ASSEMBLY JULY 9, 1997

AMENDED IN ASSEMBLY JUNE 30, 1997

AMENDED IN SENATE JUNE 3, 1997

AMENDED IN SENATE MAY 20, 1997

AMENDED IN SENATE MAY 12, 1997

AMENDED IN SENATE MAY 1, 1997

SENATE BILL No. 779

Introduced by Senator Calderon

February 26, 1997

An act to amend Sections ~~311,~~ 311.5, 1701.1, 1701.2, 1701.3, 1701.4, 1706,~~ 1756, 1758,~~ 1759, and 1760 of, to *amend, repeal, and add Sections 311, 1756, and 1758 of, to* repeal Sections 311 and 1765 of, and to repeal, *add and repeal,* and add Sections 1757 and 1757.1 of, the Public Utilities Code, and to repeal Section 26 of Chapter 855 of the Statutes of 1996, relating to the Public Utilities Commission, *and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 779, as amended, Calderon. Public Utilities Commission: Administrative Procedure Act: judicial review.

(1) Existing law exempts the Public Utilities Commission from provisions of the Administrative Procedure Act relating to the adoption of regulations, the review of regulations by the Office of Administrative Law, and the judicial review of regulations.

This bill would require decisions, as defined and except as specified, of the commission to be served on parties and subject to at least a 30-day public review and comment period prior to being voted on by the commission, except as specified. The bill would require amendments, revisions, or modifications by the commission of only its Rules of Practice and Procedure after January 1, 1999, to be submitted to the Office of Administrative Law for review in accordance with certain provisions of the Administrative Procedure Act.

(2) Existing law requires that, prior to commencement of any meeting at which commissioners vote on items on the public agenda, the commission make available to the public copies of the agenda, and upon request, any agenda item documents that are proposed to be considered.

This bill would additionally require the commission to publish the agenda, agenda item documents, and adopted decisions in a manner that makes copies of them easily available to the public, including, commencing not later than July 1, 1999, publishing those documents on the commission's Internet site. The bill would also, commencing July 1, 1999, require the commission to additionally publish other specified matters on its Internet site.

(3) Existing law authorizes the commission to determine whether a proceeding requires a hearing, authorizes the commission to assign one or more commissioners and administrative law judges to oversee cases, and prescribes separate procedures for proceedings that the commission determines are either quasi-legislative, adjudication, or ratesetting cases. These authorizations are to be repealed on January 1,2002.

This bill would delete the repeal date, thereby continuing the above described authorizations indefinitely, and would make related changes.

(4) Existing law generally authorizes judicial review of Public Utilities Commission adjudicatory proceedings to take place in either the Supreme Court or court of appeal, and for all other decisions to only be reviewed by the Supreme Court.

This bill would revise these procedures to authorize a writ of review in the court of appeal to issue in certain ratemaking and licensing cases, and to specify the extent of review by either the Supreme Court or the court of appeal. The bill would preclude specified orders or decisions relating to the merger or acquisition of 2 specified telecommunications-related corporations from being reviewed in the court of appeal. The bill would delete existing authority of the Supreme Court or the court of appeal to issue a conditional stay of any order or decision by the commission denying a rate increase.

This bill would also retain existing procedures for review of quasi-legislative decisions affecting water corporations until January 1, 2001.

The bill in general would apply the changes relating to judicial review to commission orders and decisions the effective date of which are on or after January 1, 1999.

This bill would express the intent of the Legislature to conform the standard of judicial review of decisions of the commission to that of other state agencies, as specified, and to expressly overrule the holding of Camp Meeker Water System v. Public Utilities Commission, Inc. 51 Cal.3d 845, as specified.

The bill would provide, in the case of water corporations, until January 1, 2001, that the review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of this state.

(5) Existing law prohibits, on or before January 1, 2002, an order or decision arising out of the Public Utilities Commission's Rulemaking No. 94-04-031, the Order Instituting Rulemaking on the Commission's Proposed

Policies Governing Restructuring Regulation, or any specific implementation matters, decisions, or proceedings required, or instituted as a result of that rulemaking, from being deemed to be an adjudication proceeding reviewable in the court of appeal.

This bill would repeal that prohibition.

(6) This bill would appropriate $814,000 from the Public Utilities Commission Utilities Reimbursement Account to the Public Utilities Commission to implement the commission's internet site requirements, as described under (2) above.

Vote: ~~majority~~ *2/3*. Appropriation: ~~no~~ *yes*. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited
2 as the ~~Calderon-Peace-McBride Act~~
3 *Calderon-Peace-MacBride Judicial Review Act* of 1998.
4 SEC. 1.5. (a) The Legislature finds and declares that
5 the conversion of the energy, transportation, and
6 telecommunications industries from traditional
7 regulated markets to competitive markets necessitates a
8 change in the judicial review of Public Utilities
9 Commission decisions that pertain to those industries.
10 The Legislature finds that the activities of the
11 ~~deregulated~~ energy, telecommunications, and
12 transportation industries will require expanded access to
13 the court system at all levels. The Legislature finds that
14 uniformity of evolving decisional law and judicial
15 economy will be achieved by providing for appellate
16 review of certain Public Utilities Commission decisions.
17 The Legislature further finds and declares that inasmuch
18 as the water supply industry continues to operate in a
19 traditional, noncompetitive utility market, that changes
20 in judicial review of competitive utility markets are
21 inappropriate in their application to Public Utilities
22 Commission decisions and proceedings that pertain to
23 water corporations *until January 1, 2001*.
24 (b) It is the intent of the Legislature in enacting *the*
25 *judicial review provisions of* this act to, in part, establish

the manner and scope of review taken from decisions of the Public Utilities Commission. It is further the intent of the Legislature to conform judicial review of the Public Utilities Commission decisions that pertain to utility service providers with competitive markets to be consistent with judicial review of the other state agencies. It is the intent of the Legislature to, among other things, overrule Camp Meeker Water System, Inc. v. Public Utilities Commission, 51 Cal.3d 845, as it pertains only to decisions affecting the energy, transportation, and communications industries, but to leave that decision in place as it pertains to water corporations until January 1, 2001. Further, it is the intent of the Legislature that decisions by the commission pertaining to the energy, transportation, and communications industries, and pertaining to water corporations on and after January 1, 2001, be subject to review on grounds similar to those of other state agencies.

SEC. 2. Section 311 of the Public Utilities Code, as amended by Section 5 of Chapter 856 of the Statutes of 1996, is amended to read:

311. (a) The commission, each commissioner, the executive director, and the assistant executive directors may administer oaths, certify to all official acts, and issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state.

(b) The administrative law judges may administer oaths, examine witnesses, issue subpoenas, and receive evidence, under rules that the commission adopts.

(c) The evidence in any hearing shall be taken by the commissioner or the administrative law judge designated for that purpose. The commissioner or the administrative law judge may receive and exclude evidence offered in the hearing in accordance with the rules of practice and procedure of the commission.

(d) Consistent with the procedures contained in Sections 1701.1, 1701.2, 1701.3, and 1701.4, the assigned commissioner or the administrative law judge shall

prepare and file an opinion setting forth recommendations, findings, and conclusions. The opinion of the assigned commissioner or the administrative law judge is the proposed decision and a part of the public record in the proceeding. The proposed decision of the assigned commissioner or the administrative law judge shall be filed with the commission and served upon all parties to the action or proceeding without undue delay, not later than 90 days after the matter has been submitted for decision. The commission shall issue its decision not sooner than 30 days following filing and service of the proposed decision by the assigned commissioner or the administrative law judge, except that the 30-day period may be reduced or waived by the commission in an unforeseen emergency situation or upon the stipulation of all parties to the proceeding or as otherwise provided by law. The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision. Where the modification is of a decision in an adjudicatory hearing it shall be based upon the evidence in the record. Every finding, opinion, and order made in the proposed decision and approved or confirmed by the commission shall, upon that approval or confirmation, be the finding, opinion, and order of the commission.

(e) Any item appearing on the commission's public agenda as an alternate item to a proposed decision or to a decision subject to subdivision (g) shall be served upon all parties to the proceeding without undue delay and shall be subject to public review and comment before it may be voted upon. For purposes of this subdivision ''alternate'' means either a substantive revision to a proposed decision that materially changes the resolution of a contested issue or any substantive addition to the findings of fact, conclusions of law, or ordering paragraphs. The commission shall adopt rules that provide for the time and manner of review and comment and the rescheduling of the item on a subsequent public agenda, except that the item may not be rescheduled for consideration sooner than 10 days following service of the alternative item upon all parties. The commission's rules

may provide that the time and manner of review and comment on an alternate item may be reduced or waived by the commission in an unforeseen emergency situation.

(f) The commission may specify that the administrative law judge assigned to a proceeding involving an electrical, gas, telephone, railroad, or water corporation, or a highway carrier, initiated by customer or subscriber complaint need not prepare, file, and serve an opinion, unless the commission finds that to do so is required in the public interest in a particular case.

~~(g) (1) Prior to voting on any commission decision not subject to subdivision (d), the decision shall be served on parties and subject to at least 30 days public review and comment, except that the 30-day period may be reduced or waived in an unforeseen emergency situation, upon the stipulation of all parties or participants in the proceeding, for an uncontested matter in which the decision grants the relief requested, or for an order seeking temporary injunctive relief. Any alternate to any commission decision shall be subject to the same requirements as provided for alternate decisions under subdivision (e).~~

~~(2) For purposes of this subdivision, "decision" includes resolutions, including resolutions on advice letter filings.~~

~~(3) This subdivision does not apply to uncontested matters pertaining solely to water corporations, or to orders instituting investigations or rulemakings,~~

(g) (1) Prior to voting on any commission decision not subject to subdivision (d), the decision shall be served on parties and subject to at least 30 days public review and comment. Any alternate to any commission decision shall be subject to the same requirements as provided for alternate decisions under subdivision (e). For purposes of this subdivision, "decision" also includes resolutions, including resolutions on advice letter filings.

(2) The 30-day period may be reduced or waived in an unforeseen emergency situation, upon the stipulation of all parties in the proceeding, for an uncontested matter

in which the decision grants the relief requested, or for an order seeking temporary injunctive relief.

(3) This subdivision does not apply to advice letter filings or to uncontested matters, that pertain solely to water corporations, or to orders instituting investigations or rulemakings, categorization resolutions under Sections 1701.1 to 1701.4, inclusive, or orders authorized by law to be considered in executive session. Consistent with regulatory efficiency and the need for adequate prior notice and comment on commission decisions, the commission may adopt rules, after notice and comment, ~~providing~~ *establishing* additional categories of decisions subject to waiver or reduction of the time period in this section.

(h) Notwithstanding any other provision of law, amendments, revisions, or modifications by the commission of its Rules of Practice and Procedure after January 1, 1999, shall be submitted to the Office of Administrative Law for prior review in accordance with Sections 11349, 11349.3, 11349.4, 11349.5, 11349.6, and 11350.3 of, and subdivisions (a) and (b) of Section 11349.1 of, the Government Code. *If the commission adopts an emergency revision to its Rules of Practice and Procedure based upon a finding that the revision is necessary for the preservation of the public peace, health and safety, or general welfare, this emergency revision shall only be reviewed by the Office of Administrative Law in accordance with subdivisions (b) to (d), inclusive, of Section 11349.6 of the Government Code. The emergency revision shall become effective upon filing with the Secretary of State and shall remain in effect for no more than 120 days.* A petition for writ of review pursuant to Section 1756 of a commission decision amending, revising, or modifying its Rules of Practice and Procedure shall not be filed until the regulation has been approved by the Office of Administrative Law, the Governor, or a court pursuant to Section 11350.3 of the Government Code. If the period for filing the petition for writ of review ~~has~~ *would otherwise have* already commenced *under Section 1733 or 1756* at the time of that

approval, then the period for filing the petition for writ of review shall continue until 30 days after the date of that approval. ~~Except as provided in this subdivision, nothing~~ *Nothing* in this subdivision shall require the commission to comply with Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. This subdivision is only intended to provide *for* the Office of Administrative Law review of procedural commission decisions *relating to Commission Rules of Practice and Procedure*, and not General Orders, resolutions, or other substantive regulations.

(i) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 2.5. Section 311 is added to the Public Utilities Code, to read:

311. (a) The commission, each commissioner, the executive director, and the assistant executive directors may administer oaths, certify to all official acts, and issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state.

(b) The administrative law judges may administer oaths, examine witnesses, issue subpoenas, and receive evidence, under rules that the commission adopts.

(c) The evidence in any hearing shall be taken by the commissioner or the administrative law judge designated for that purpose. The commissioner or the administrative law judge may receive and exclude evidence offered in the hearing in accordance with the rules of practice and procedure of the commission.

(d) Consistent with the procedures contained in Sections 1701.1, 1701.2, 1701.3, and 1701.4, the assigned commissioner or the administrative law judge shall prepare and file an opinion setting forth recommendations, findings, and conclusions. The opinion of the assigned commissioner or the administrative law judge is the proposed decision and a part of the public

record in the proceeding. The proposed decision of the assigned commissioner or the administrative law judge shall be filed with the commission and served upon all parties to the action or proceeding without undue delay, not later than 90 days after the matter has been submitted for decision. The commission shall issue its decision not sooner than 30 days following filing and service of the proposed decision by the assigned commissioner or the administrative law judge, except that the 30-day period may be reduced or waived by the commission in an unforeseen emergency situation or upon the stipulation of all parties to the proceeding or as otherwise provided by law. The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision. Where the modification is of a decision in an adjudicatory hearing it shall be based upon the evidence in the record. Every finding, opinion, and order made in the proposed decision and approved or confirmed by the commission shall, upon that approval or confirmation, be the finding, opinion, and order of the commission.

(e) Any item appearing on the commission's public agenda as an alternate item to a proposed decision or to a decision subject to subdivision (g) shall be served upon all parties to the proceeding without undue delay and shall be subject to public review and comment before it may be voted upon. For purposes of this subdivision "alternate" means either a substantive revision to a proposed decision that materially changes the resolution of a contested issue or any substantive addition to findings of fact, conclusions of law, or ordering paragraphs. The commission shall adopt rules that provide for the time and manner of review and comment and the rescheduling of the item on a subsequent public agenda, except that the item may not be rescheduled for consideration sooner than 10 days following service of the alternative item upon all parties. The commission's rules may provide that the time and manner of review and comment on an alternate item may be reduced or waived by the commission in an unforeseen emergency situation.

(f) The commission may specify that the administrative law judge assigned to a proceeding involving an electrical, gas, telephone, railroad, or water corporation, or a highway carrier, initiated by customer or subscriber complaint need not prepare, file, and serve an opinion, unless the commission finds that to do so is required in the public interest in a particular case.

(g) (1) Prior to voting on any commission decision not subject to subdivision (d), the decision shall be served on parties and subject to at least 30 days public review and comment. Any alternate to any commission decision shall be subject to the same requirements as provided for alternate decisions under subdivision (e). For purposes of this subdivision, "decision" also includes resolutions, including resolutions on advice letter filings.

(2) The 30-day period may be reduced or waived in an unforeseen emergency situation, upon the stipulation of all parties in the proceeding, for an uncontested matter in which the decision grants the relief requested, or for an order seeking temporary injunctive relief.

(3) This subdivision does not apply to orders instituting investigations or rulemakings, categorization resolutions under Sections 1701.1 to 1701.4, inclusive, or orders authorized by law to be considered in executive session. Consistent with regulatory efficiency and the need for adequate prior notice and comment on commission decisions, the commission may adopt rules, after notice and comment, establishing additional categories of decisions subject to waiver or reduction of the time period in this section.

(h) Notwithstanding any other provision of law, amendments, revisions, or modifications by the commission of its Rules of Practice and Procedure after January 1, 1999, shall be submitted to the Office of Administrative Law for prior review in accordance with Sections 11349, 11349.3, 11349.4, 11349.5, 11349.6, and 11350.3 of, and subdivisions (a) and (b) of Section 11349.1 of, the Government Code. If the commission adopts an emergency revision to its Rules of Practice and Procedure based upon a finding that the revision is necessary for the

preservation of the public peace, health and safety, or general welfare, this emergency revision shall only be reviewed by the Office of Administrative Law in accordance with subdivisions (b) to (d), inclusive, of Section 11349.6 of the Government Code. The emergency revision shall become effective upon filing with the Secretary of State and shall remain in effect for no more than 120 days. A petition for writ of review pursuant to Section 1756 of a commission decision amending, revising, or modifying its Rules of Practice and Procedure shall not be filed until the regulation has been approved by the Office of Administrative Law, the Governor, or a court pursuant to Section 11350.3 of the Government Code. If the period for filing the petition for writ of review would otherwise have already commenced under Section 1733 or 1756 at the time of that approval, then the period for filing the petition for writ of review shall continue until 30 days after the date of that approval. Nothing in this subdivision shall require the commission to comply with Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. This subdivision is only intended to provide for the Office of Administrative Law review of procedural commission decisions relating to commission Rules of Practice and Procedure, and not General Orders, resolutions, or other substantive regulations.

(i) This section shall become operative on January 1, 2001.

SEC. 3. Section 311 of the Public Utilities Code, as added by Section 6 of Chapter 856 of the Statutes of 1996, is repealed.

SEC. 4. Section 311.5 of the Public Utilities Code is amended to read:

311.5. (a) (1) Prior to commencement of any meeting at which commissioners vote on items on the public agenda the commission shall make available to the public copies of the agenda, and upon request, any agenda item documents that are proposed to be considered by the commission for action or decision at a commission meeting.

(2) In addition, the commission shall publish the agenda, agenda item documents, and adopted decisions in a manner that makes copies of them easily available to the public, including, commencing publishing those documents on the commission's Internet site, commencing not later than July 1, 1999. Publication of the agenda and agenda item documents shall occur on the Internet site at the same time as the written agenda and agenda item documents are made available to the public.

(b) For decisions and resolutions adopted on or after July 1, 1999, the commission, at its Internet site, shall publish and maintain electronically all of its decisions and resolutions. That publication shall occur within 10 days of the adoption of a decision or resolution by the commission.

(c) Commencing on July 1, 1999, the commission shall publish at its Internet site the then-current version of its general orders and Rules of Practice and Procedure.

(d) The commission shall publish electronically at its Internet site all rulings issued on or after July 1, 1999, in all proceedings. The commission shall maintain those rulings at its site until final disposition, including disposition of any judicial appeals, of the respective proceedings in which the rulings were issued.

(e) For each proceeding filed on or after July 1, 1999, the commission shall publish electronically at its Internet site a docket card that shall list, by title and date of filing or issuance, all documents filed and all decisions or rulings issued ~~at~~ *in* such proceeding. The commission shall maintain the docket card until final disposition, including disposition of any judicial appeals, of the corresponding proceedings.

SEC. 5. Section 1701.1 of the Public Utilities Code is amended to read:

1701.1. (a) The commission, consistent with due process, public policy, and statutory requirements, shall determine whether a proceeding requires a hearing. The commission shall determine whether the matter requires a quasi-legislative, an adjudication, or a ratesetting hearing. The commission's decision as to the nature of the

proceeding shall be subject to a request for rehearing within 10 days of the date of that decision. If that decision is not appealed to the commission within that time period it shall not be subsequently subject to judicial review. Only those parties who have requested a rehearing within that time period shall subsequently have standing for judicial review and that review shall only be available at the conclusion of the proceeding. The commission shall render its decision regarding the rehearing within 30 days. The commission shall establish regulations regarding ex parte communication on case categorization issues.

(b) The commission upon initiating a hearing shall assign one or more commissioners to oversee the case and an administrative law judge where appropriate. The assigned commissioner shall schedule a prehearing conference. The assigned commissioner shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered and the applicable timetable for resolution.

(c) (1) Quasi-legislative cases, for purposes of this article, are cases that establish policy, including, but not limited to, rulemakings and investigations which may establish rules affecting an entire industry.

(2) Adjudication cases, for purposes of this article, are enforcement cases and complaints except those challenging the reasonableness of any rates or charges as specified in Section 1702.

(3) Ratesetting cases, for purposes of this article, are cases in which rates are established for a specific company, including, but not limited to, general rate cases, performance-based ratemaking, and other ratesetting mechanisms.

(4) ‘‘Ex parte communication,’’ for purposes of this article, means any oral or written communication between a decisionmaker and a person with an interest in a matter before the commission concerning substantive, but not procedural issues, that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on

the matter. ‘‘Person with an interest,’’ for purposes of this article, means any of the following:

(A) Any applicant, an agent or an employee of the applicant, or a person receiving consideration for representing the applicant, or a participant in the proceeding on any matter before the commission.

(B) Any person with a financial interest, as described in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code, in a matter before the commission, or an agent or employee of the person with a financial interest, or a person receiving consideration for representing the person with a financial interest.

(C) A representative acting on behalf of any civic, environmental, neighborhood, business, labor, trade, or similar organization who intends to influence the decision of a commission member on a matter before the commission.

The commission shall by regulation adopt and publish a definition of decisionmakers and persons for purposes of this section, along with any requirements for written reporting of ex parte communications and appropriate sanctions for noncompliance with any rule proscribing ex parte communications. The regulation shall provide that reportable communications shall be reported by the party, whether the communication was initiated by the party or the decisionmaker. Communications shall be reported within three working days of the communication by filing the original and 12 copies of a ‘‘Notice of Ex Parte Communication’’ with the commission. The notice shall include the following information:

(i) The date, time, and location of the communication, and whether it was oral, written, or a combination.

(ii) The identity of the recipient and the person initiating the communication, as well as the identity of any persons present during the communication.

(iii) A description of the party’s, but not the decisionmaker’s, communication and its content, to

which shall be attached a copy of any written material or text used during the communication.

SEC. 6. Section 1701.2 of the Public Utilities Code is amended to read:

1701.2. (a) If the commission pursuant to Section 1701.1 has determined that an adjudication case requires a hearing, the procedures prescribed by this section shall be applicable. The assigned commissioner or the assigned administrative law judge shall hear the case in the manner described in the scoping memo. The scoping memo shall designate whether the assigned commissioner or the assigned administrative law judge shall preside in the case. The commission shall provide by regulation for peremptory challenges and challenges for cause of the administrative law judge. Challenges for cause shall include, but not be limited to, financial interests and prejudice. The regulation shall provide that all parties are entitled to one peremptory challenge of the assignment of the administrative law judge in all cases. All parties are entitled to unlimited peremptory challenges in any case in which the administrative law judge has within the previous 12 months served in any capacity in an advocacy position at the commission, been employed by a regulated public utility, or has represented a party or has been a party of interest in the case. The assigned commissioner or the administrative law judge shall prepare and file a decision setting forth recommendations, findings, and conclusions. The decision shall be filed with the commission and served upon all parties to the action or proceeding without undue delay, not later than 60 days after the matter has been submitted for decision. The decision of the assigned commissioner or the administrative law judge shall become the decision of the commission if no further action is taken within 30 days. Any interested party may appeal the decision to the commission, provided that the appeal is made within 30 days of the issuance of the decision. The commission may itself initiate a review of the proposed decision on any grounds. The commission decision shall be based on the record developed by the

assigned commissioner or the administrative law judge. A decision different from that of the assigned commissioner or the administrative law judge shall be accompanied by a written explanation of each of the changes made to the decision.

(b) Ex parte communications shall be prohibited in adjudication cases.

(c) Notwithstanding any other provision of law, the commission may meet in a closed hearing to consider the decision that is being appealed. The vote on the appeal shall be in a public meeting and shall be accompanied with an explanation of the appeal decision.

(d) Adjudication cases shall be resolved within 12 months of initiation unless the commission makes findings why that deadline cannot be met and issues an order extending that deadline. In the event that a rehearing of an adjudication case is granted the parties shall have an opportunity for final oral argument.

SEC. 7. Section 1701.3 of the Public Utilities Code is amended to read:

1701.3. (a) If the commission pursuant to Section 1701.1 has determined that a ratesetting case requires a hearing, the procedures prescribed by this section shall be applicable. The assigned commissioner shall determine prior to the first hearing whether the commissioner or the assigned administrative law judge shall be designated as the principal hearing officer. The principal hearing officer shall be present for more than one-half of the hearing days. The decision of the principal hearing officer shall be the proposed decision. An alternate decision may be issued by the assigned commissioner or the assigned administrative law judge who is not the principal hearing officer. The commission shall establish a procedure for any party to request the presence of a commissioner at a hearing. The assigned commissioner shall be present at the closing arguments of the case. The principal hearing officer shall present the proposed decision to the full commission in a public meeting. The alternate decision, if any, shall also be presented to the full commission at that public meeting.

The alternate decision shall be filed with the commission and shall be served on all parties simultaneously with the proposed decision.

The presentation to the full commission shall contain a record of the number of days of the hearing, the number of days that each commissioner was present, and whether the decision was completed on time.

(b) The commission shall provide by regulation for peremptory challenges and challenges for cause of the administrative law judge. Challenges for cause shall include, but not be limited to, financial interests and prejudice. All parties shall be entitled to unlimited peremptory challenges in any case in which the administrative law judge has within the previous 12 months served in any capacity in an advocacy position at the commission, been employed by a regulated public utility, or has represented a party or has been a party of interest in the case.

(c) Ex parte communications are prohibited in ratesetting cases. However, oral ex parte communications may be permitted at any time by any commissioner if all interested parties are invited and given not less than three days' notice. Written ex parte communications may be permitted by any party provided that copies of the communication are transmitted to all parties on the same day. If an ex parte communication meeting is granted to any party, all other parties shall also be granted individual ex parte meetings of a substantially equal period of time and shall be sent a notice of that authorization at the time that the request is granted. In no event shall that notice be less than three days. The commission may establish a period during which no oral or written ex parte communications shall be permitted and may meet in closed session during that period which shall not in any circumstance exceed 14 days. If the commission holds the decision it may permit ex parte communications during the first half of the interval between the hold date and the date that the decision is calendered for final decision. The commission

may meet in closed session for the second half of that interval.

(d) Any party has the right to present a final oral argument of its case before the commission. Those requests shall be scheduled in a timely manner. A quorum of the commission shall be present for the final oral arguments.

(e) The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision based on evidence in the record. The final decision of the commission shall be issued not later than 60 days after the issuance of the proposed decision. Under extraordinary circumstances the commission may extend this date for a reasonable period. The 60-day period shall be extended for 30 days if any alternate decision is proposed pursuant to Section 311.

SEC. 8. Section 1701.4 of the Public Utilities Code is amended to read:

1701.4. (a) If the commission pursuant to Section 1701.1 has determined that a quasi-legislative case requires a hearing, the procedures prescribed by this section shall be applicable. The assigned administrative law judge shall act as an assistant to the assigned commissioner in quasi-legislative cases. The assigned commissioner shall be present for formal hearings. The assigned commissioner shall prepare the proposed rule or order with the assistance of the administrative law judge. The assigned commissioner shall present the proposed rule or order to the full commission in a public meeting. The report shall include the number of days of hearing and the number of days that the commissioner was present.

(b) Ex parte communications shall be permitted without any restrictions.

(c) Any party has the right to present a final oral argument of its case before the commission. Those requests shall be scheduled in a timely manner. A quorum of the commission shall be present for the final oral arguments.

(d) The commission may, in issuing its rule or order, adopt, modify, or set aside the proposed decision or any part of the rule or order. The final rule or order of the commission shall be issued not later than 60 days after the issuance of the proposed rule or order. Under extraordinary circumstances the commission may extend this date for a reasonable period. The 60-day period shall be extended for 30 days if any alternate rule or order is proposed pursuant to Section 311.

SEC. 9. Section 1706 of the Public Utilities Code is amended to read:

1706. A complete record of all proceedings and testimony before the commission or any commissioner on any formal hearing shall be taken down by a reporter appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review any order or decision of the commission, a transcript of that testimony, together with all exhibits or copies thereof introduced, and of the pleadings, record, and proceedings in the cause, shall constitute the record of the commission, but if the petitioner and the commission stipulate that certain questions alone and a specified portion only of the evidence shall be certified to the Supreme Court or the court of appeal for its judgment, the stipulation and the questions and the evidence therein specified shall constitute the record on review. The provisions of this section shall not apply to hearings held pursuant to Section 1702.1.

SEC. 10. Section 1756 of the Public Utilities Code is amended to read:

1756. (a) Within 30 days after the commission issues its decision denying the application for a rehearing, or, if the application was granted, then within 30 days after the commission issues its decision on rehearing, or at least 120 days after the application is granted if no decision on rehearing has been issued, any aggrieved party may petition for a writ of review in the court of appeal or the Supreme Court for the purpose of having the lawfulness of the original order or decision or of the order or decision

on rehearing inquired into and determined. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the commission to certify its record in the case to the court within the time specified.

(b) The petition for review shall be served upon the executive director of the commission either personally or by service at the office of the commission.

(c) For purposes of this section, the issuance of a decision or the granting of an application shall be construed to have occurred on the date when the commission mails the decision or grant to the parties to the action or proceeding.

(d) The venue of a petition filed in the court of appeal pursuant to this section shall be in the judicial district in which the petitioner resides. If the petitioner is a business, venue shall be in the judicial district in which the petitioner has its principal place of business in California.

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

(f) For purposes of this section, ~~until January 1, 2001,~~ review of decisions pertaining solely to water corporations shall only be by petition for writ of review in the Supreme Court, except that review of complaint or enforcement proceedings may be in the court of appeal or the Supreme Court.

(g) No order or decision arising out of a commission proceeding under Section 854 shall be reviewable in the court of appeal pursuant to subdivision (a) if the application for commission authority to complete the merger or acquisition was filed on or before December 31, 1998, by two telecommunications-related corporations including at least one which provides local telecommunications service to over one million California customers. These orders or decisions shall be reviewed pursuant to the Public Utilities Code in existence on December 31, 1998.

(h) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a

later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 10.5. Section 1756 is added to the Public Utilities Code, to read:

1756. (a) Within 30 days after the commission issues its decision denying the application for a rehearing, or, if the application was granted, then within 30 days after the commission issues its decision on rehearing, or at least 120 days after the application is granted if no decision on rehearing has been issued, any aggrieved party may petition for a writ of review in the court of appeal or the Supreme Court for the purpose of having the lawfulness of the original order or decision or of the order or decision on rehearing inquired into and determined. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the commission to certify its record in the case to the court within the time specified.

(b) The petition for review shall be served upon the executive director of the commission either personally or by service at the office of the commission.

(c) For purposes of this section, the issuance of a decision or the granting of an application shall be construed to have occurred on the date when the commission mails the decision or grant to the parties to the action or proceeding.

(d) The venue of a petition filed in the court of appeal pursuant to this section shall be in the judicial district in which the petitioner resides. If the petitioner is a business, venue shall be in the judicial district in which the petitioner has its principal place of business in California.

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

(f) No order or decision arising out of a commission proceeding under Section 854 shall be reviewable in the court of appeal pursuant to subdivision (a) if the application for commission authority to complete the merger or acquisition was filed on or before December 31, 1998, by two telecommunications-related corporations

including at least one which provides local telecommunications service to over one million California customers. These orders or decisions shall be reviewed pursuant to the Public Utilities Code in existence on December 31, 1998.

(g) This section shall become operative on January 1, 2001.

SEC. 11. Section 1757 of the Public Utilities Code is repealed.

SEC. 12. Section 1757 is added to the Public Utilities Code, to read:

1757. (a) No new or additional evidence shall be introduced upon review by the court. In a complaint or enforcement proceeding, or in a ratemaking or licensing decision of specific application that is addressed to particular parties, the review by the court shall not extend further than to determine, on the basis of the entire record which shall be certified by the commission, whether any of the following occurred:

(1) The commission acted without, or in excess of, its powers or jurisdiction.

(2) The commission has not proceeded in the manner required by law.

(3) The decision of the commission is not supported by the findings.

(4) The findings in the decision of the commission are not supported by substantial evidence in light of the whole record.

(5) The order or decision of the commission was procured by fraud or was an abuse of discretion.

(6) The order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution.

(b) Nothing in this section shall be construed to permit the court to hold a trial de novo, to take evidence other than as specified by the California Rules of Court, or to exercise its independent judgment on the evidence.

(c) Notwithstanding subdivision (a), ~~until January 1, 2001,~~ the standard of review in this section shall not apply

to ratemaking or licensing decisions of specific application addressed solely to water corporations.

(d) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 12.5. Section 1757 is added to the Public Utilities Code, to read:

1757. (a) No new or additional evidence shall be introduced upon review by the court. In a complaint or enforcement proceeding, or in a ratemaking or licensing decision of specific application that is addressed to particular parties, the review by the court shall not extend further than to determine, on the basis of the entire record which shall be certified by the commission, whether any of the following occurred:

(1) The commission acted without, or in excess of, its powers or jurisdiction.

(2) The commission has not proceeded in the manner required by law.

(3) The decision of the commission is not supported by the findings.

(4) The findings in the decision of the commission are not supported by substantial evidence in light of the whole record.

(5) The order or decision of the commission was procured by fraud or was an abuse of discretion.

(6) The order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution.

(b) Nothing in this section shall be construed to permit the court to hold a trial de novo, to take evidence other than as specified by the California Rules of Court, or to exercise its independent judgment on the evidence.

(c) This section shall become operative on January 1, 2001.

SEC. 13. Section 1757.1 of the Public Utilities Code is repealed.

SEC. 14. Section 1757.1 is added to the Public Utilities Code, to read:

1757.1. (a) In any proceeding other than a proceeding subject to the standard of review under Section 1757, review by the court shall not extend further than to determine, on the basis of the entire record which shall be certified by the commission, whether any of the following occurred:

(1) The order or decision of the commission was an abuse of discretion.

(2) The commission has not proceeded in the manner required by law.

(3) The commission acted without, or in excess of, its powers or jurisdiction.

(4) The decision of the commission is not supported by the findings.

(5) The order or decision was procured by fraud.

(6) The order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution.

(b) In reviewing decisions pertaining solely to water corporations, ~~until January 1, 2001,~~ the review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or this state.

(c) *No new or additional evidence shall be introduced upon review by the court.* The findings and conclusions of the commission on findings of fact shall be final and shall not be subject to review except as provided in this article. The questions of fact shall include ultimate facts and findings and conclusions of the commission on reasonableness and discrimination.

(d) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 14.5. Section 1757.1 is added to the Public Utilities Code, to read:

1757.1. (a) In any proceeding other than a proceeding subject to the standard of review under

Section 1757, review by the court shall not extend further than to determine, on the basis of the entire record which shall be certified by the commission, whether any of the following occurred:

(1) The order or decision of the commission was an abuse of discretion.

(2) The commission has not proceeded in the manner required by law.

(3) The commission acted without, or in excess of, its powers or jurisdiction.

(4) The decision of the commission is not supported by the findings.

(5) The order or decision was procured by fraud.

(6) The order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution.

(b) No new or additional evidence shall be introduced upon review by the court. The findings and conclusions of the commission on findings of fact shall be final and shall not be subject to review except as provided in this section. The questions of fact shall include ultimate facts and findings and conclusions of the commission on reasonableness and discrimination.

(c) This section shall become operative on January 1, 2001.

SEC. 15. Section 1758 of the Public Utilities Code is amended to read:

1758. (a) The commission and each party to the action or proceeding before the commission may appear in the review proceeding.

Upon the hearing the Supreme Court or court of appeal shall enter judgment either affirming or setting aside the order or decision of the commission.

(b) The provisions of the Code of Civil Procedure relating to writs of review shall, so far as applicable and not in conflict with this part, apply to proceedings instituted in the Supreme Court or court of appeal under this article.

(c) Under this article, the Supreme Court may review decisions of the court of appeal in the manner provided for other civil actions.

(d) The Supreme Court shall grant expedited consideration to any party or commission petition alleging that the court of appeal has assumed jurisdiction to review a commission decision pertaining solely to water corporations over which the court of appeal has no jurisdiction.

(e) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 15.5. Section 1758 is added to the Public Utilities Code, to read:

1758. (a) The commission and each party to the action or proceeding before the commission may appear in the review proceeding.

Upon the hearing the Supreme Court or court of appeal shall enter judgment either affirming or setting aside the order or decision of the commission.

(b) The provisions of the Code of Civil Procedure relating to writs of review shall, so far as applicable and not in conflict with this part, apply to proceedings instituted in the Supreme Court or court of appeal under this article.

(c) Under this article, the Supreme Court may review decisions of the court of appeal in the manner provided for other civil actions.

(d) This section shall become operative on January 1, 2001.

SEC. 16. 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.

SEC. 17. Section 1760 of the Public Utilities Code is amended to read:

1760. ~~In~~ *Notwithstanding Sections 1757 and 1757.1, in* any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of petitioner under the United States Constitution or the California Constitution, the Supreme Court or court of appeal shall exercise independent judgment on the law and the facts, and the findings or conclusions of the commission material to the determination of the constitutional question shall not be final.

SEC. 18. Section 1765 of the Public Utilities Code is repealed.

SEC. 19. This act shall apply to review of an order or a decision the effective date of which is on or after January 1, 1999. Review of orders or decisions the effective date of which is prior to January 1, 1999, shall be pursuant to the provisions of the Public Utilities Code in existence on December 31, 1998. However, where an order disposes of an application for rehearing of a decision or order the effective date of which was prior to January 1, 1999, or where an order is issued on rehearing of a decision or order the effective date of which was prior to January 1, 1999, review shall be pursuant to the provisions of the Public Utilities Code in existence on December 31, 1998.

SEC. 20. Section 26 of Chapter 855 of the Statutes of 1996 is repealed.

SEC. 21. The sum of eight hundred fourteen thousand dollars ($814,000) is hereby appropriated from the Public Utilities Commission Utilities Reimbursement Account to the Public Utilities Commission for the purpose of funding the costs incurred by the commission in

implementing the internet provisions of Section 311.5 of the Public Utilities Code as amended by this act.

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