

California State Auditor

B U R E A U O F S T A T E A U D I T S

Public Utilities Commission:

*Since the Judicial Review Act of 1998,
the Number of Petitions Seeking
Judicial Review of Commission
Decisions Has Increased*



July 2005
2004-118

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CALIFORNIA STATE AUDITOR

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July 14, 2005

2004-118

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the recent history of judicial review of decisions made by the Public Utilities Commission (commission).

This report concludes that together with legislation passed in 1996, the Calderon-Peace-MacBride Judicial Review Act of 1998 (act) expanded the courts in which parties could seek judicial review of commission decisions and broadened the grounds on which judicial review could be sought. Although the average annual number of decisions made by the commission in the six years since the act has not substantially changed from the five-year period before the act, the average annual number of petitions seeking judicial review of commission decisions has increased. Moreover, since the act, the number of petitions for which the courts have granted review of commission decisions has increased.

Since the act, the standard of review for commission decisions more closely resembles the standards of review for decisions of other agencies that regulate utilities at the federal level and in many of the 10 states we surveyed. However, judicial review is generally mandatory in the court level in which a party first seeks review of a decision by most of the entities we surveyed, whereas the California appellate courts have a certain degree of discretion in determining whether to grant or deny a petition seeking judicial review of a commission decision.

Respectfully submitted,

ELAINE M. HOWLE
State Auditor

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SUMMARY

Audit Highlights . . .

Our review of the recent history of judicial review of decisions made by the Public Utilities Commission (commission) revealed the following:

- With 1996 legislation, the Judicial Review Act of 1998 (act) expanded the courts in which parties could seek judicial review of commission decisions and broadened the grounds on which judicial review could be sought.*
- The average annual number of commission decisions since the act has not substantially changed from before the act, but the average annual number of petitions seeking judicial review of commission decisions has increased.*
- Since the act, the number of petitions for which the courts have granted review of commission decisions has increased.*
- Since the act, the standard of review for commission decisions more closely resembles that of agencies that regulate utilities at the federal level and in many of the 10 states we surveyed.*

continued on next page . . .

RESULTS IN BRIEF

In 1999, the Calderon-Peace-MacBride Judicial Review Act of 1998 (act) took effect. This act, together with other legislation enacted in 1996, expanded the courts in which parties could seek judicial review of Public Utilities Commission (commission) decisions and broadened the grounds on which review could be sought. Before these legislative changes, the California Supreme Court was the only court in which a party could file a petition seeking review of a commission decision. Since the legislative changes took effect, parties have been able to seek review of certain commission decisions either in the Supreme Court or in one of the six courts of appeal. Before these legislative changes, the law limited the court to reviewing whether the commission properly exercised its authority and required the court to uphold a commission decision if its factual findings were based on any evidence. The legislation added several new grounds for judicial review of commission decisions, including whether the commission acted beyond its powers, whether the commission proceeded as required by law, and whether the commission's decision was obtained by fraud. The legislation also changed the law to require the courts to determine whether the commission's factual findings are supported by substantial evidence in light of the whole record (substantial evidence).

Although the average annual number of decisions made by the commission in the six years since the act has not substantially changed from the five-year period before the act, the average annual number of petitions seeking judicial review of commission decisions has increased from 10 to 19. Moreover, since the act, the number of petitions in which the courts have granted review of commission decisions has increased. During the five years before the act, the courts granted review of 2 percent of petitions related to commission decisions, but since the act, the courts have granted review of 27 percent of commission-related petitions. Petitions seeking judicial review of decisions made by three other state agencies subject to similar court jurisdiction and standards of review—the Agricultural Labor Relations Board (ALRB), the Public Employment Relations Board (PERB), and the Workers'

- Judicial review of decisions by most of the entities we surveyed is generally mandatory at the court where a party first seeks it, whereas the California appellate courts have a certain degree of discretion in determining whether to grant or deny a petition seeking judicial review of a commission decision.*
-

Compensation Appeals Board (WCAB)—did not substantially increase in number from 1994 through 2004, with the courts granting review of no more than 20 percent of the petitions.

Since the act, the standard of review of commission decisions more closely resembles the standards of review of decisions of the Federal Energy Regulatory Commission, the Federal Communications Commission, and agencies regulating utilities in many of the 10 states we surveyed. As in the laws governing the standards of review for the decisions of most of the surveyed entities, when a court reviews a decision made by the commission when it has acted like a judicial body—such as when it has conducted an investigation into whether a regulated entity violated a commission rule—the current statutes require the court to review whether the commission’s factual findings were supported by substantial evidence, whether those findings support the commission’s decision, and whether the decision met certain other legal requirements. When a court reviews a decision made by the commission when it has acted more like a legislative body—such as when it has adopted rules affecting a regulated industry—the statutes require that the court only overturn the commission’s decision if the court finds that the commission abused its discretion or failed to meet certain other legal requirements. Also, similar to the laws governing the standards of review for decisions of half the surveyed entities, California law related to court jurisdiction generally establishes the intermediate appellate courts as the first level in which parties may seek judicial review of commission decisions.

In some ways, judicial review of decisions issued by the surveyed entities differs from judicial review of the commission’s decisions. For instance, the laws governing judicial review of decisions by most of those entities create a clear statutory right to an appeal at the court of initial review, and the court generally cannot deny the petitioner’s request to hear the matter. In contrast, a California appellate court has a certain degree of discretion in determining whether to grant or deny a petition seeking judicial review of a commission decision. Generally, the court must grant the petition if it finds that the commission, when making its decision, made an error of law that harmed the petitioner. Otherwise, the court may still grant the petition at its discretion. The court may choose to exercise this discretion when it believes that a petition, while not meritorious, involves new or important legal issues. Finally, for the three other California agencies that we reviewed, although there are some procedural differences, the legal requirements

applied by the courts when deciding whether to grant or deny a petition are essentially the same as those for petitions seeking review of commission decisions.

AGENCY COMMENTS

The commission believes that the characterizations of its decision-making processes and the judicial review statutes as applied to the commission are factually correct. The Administrative Office of the Courts indicates that our review accurately captures the law and procedure in this area. The Labor and Workforce Development Agency believes the report accurately represents the structure and procedures of the ALRB. Although the PERB and the WCAB did not provide a formal response, they informally conveyed to us that they were satisfied with the descriptions in the report pertaining to them. ■

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INTRODUCTION

BACKGROUND

The Public Utilities Commission (commission) consists of five commissioners appointed by the governor, with Senate approval, for six-year staggered terms. The governor appoints one of the five to serve as the commission president. As a constitutionally created agency that can function like both a judicial and a legislative body, the commission has broad powers to regulate privately owned and operated telephone, electric, natural gas, water, and transportation companies in California. Commission responsibilities include establishing service standards and safety rules, approving retail rate changes, allocating costs among customers, monitoring the safety operations under its jurisdiction, overseeing the electricity and natural gas markets to inhibit anticompetitive activities, prosecuting unlawful actions by public utilities or other regulated entities, and governing business relationships between utilities and their affiliates.

In conducting its regulatory activities, the commission renders decisions through a formal proceeding process. These decisions may affect the rights of consumers, public utilities,

and other interested parties. Commission proceedings fall into three overall categories: adjudicatory, quasi-legislative, and ratesetting (see text box). An *adjudicatory* case pertains to an enforcement action or a formal complaint filed by a consumer advocacy group or individual alleging that an entity the commission regulates has done something inappropriate and asking the commission to correct the problem. In a *quasi-legislative* case, the commission makes a rule or adopts a regulation affecting an entire industry. A *ratesetting* case typically is the result of the commission considering and setting the rates a specific company may charge, but can affect more than one company.

Cases From Which Public Utilities Commission Decisions Can Result

Adjudicatory—The commission acts like a judicial body, applying the law to disputed facts in a complaint or enforcement action.

Quasi-legislative—The commission acts like a legislative body, enacting rules that establish policy affecting industries the commission regulates.

Ratesetting—These cases include general rate cases, performance-based ratemaking, cost allocation, and licensing for a specific company.

A utility or consumer initiates a formal proceeding by filing appropriate documents, such as an application or a complaint, with the commission's docket office. The commission can also initiate a formal proceeding by issuing an order instituting

an investigation or an order instituting rule making. The commission typically assigns one of its commissioners and one of its administrative law judges to guide a case through the formal proceeding process, which may or may not require evidentiary hearings.¹ In an evidentiary hearing, the parties present evidence through exhibits and direct testimony from witnesses, who may be cross-examined by the other parties. After the evidentiary hearing, the administrative law judge prepares a proposed decision. If the commission does not hold evidentiary hearings, the administrative law judge prepares a draft decision based on written documents the parties submit to present their cases. Typically, within 30 days after the administrative law judge issues a proposed or draft decision, the public has a chance to review and comment on it, and the administrative law judge or any commissioner has an opportunity to amend it. Then the commission may vote to adopt the proposed or draft decision.

To address a minor or noncontroversial request from a utility company, the commission can use a less formal process that typically entails the utility company filing an advice letter with the commission to change, within specified parameters, the current rates, rules, operating conditions, or mix of services. In some instances, commission staff may identify an advice letter as highly complex and refer it to the commission's formal agenda by preparing a draft resolution that is subject to a period of public review and comment before the commission votes to adopt the draft resolution. Alternatively, commission staff may recommend that the utility file an application to initiate a formal proceeding.

Typically, parties may challenge a commission decision by filing an application for rehearing within 30 days after the decision is issued.² The commission may elect to rehear its original decision through a formal proceeding, or it may deny the application for rehearing. Within 30 days after the commission issues its decision denying an application for rehearing—or if the application was granted, within 30 days after the commission issues its decision on the matter raised in the application for rehearing—the party, in most cases, may request judicial review

¹ An administrative law judge may conduct hearings and prepare decisions.

² A party may also challenge a commission resolution or order initiating a formal proceeding. However, according to commission staff and data, these commission actions seldom result in applications for rehearing. Thus, for the purposes of our report, unless otherwise noted, commission decisions do not include resolutions or orders initiating formal proceedings.

of the decision on the rehearing or the original decision by filing a petition for writ of review with either the Supreme Court or the court of appeal in the district where the party resides or conducts business.³

STATE COURT SYSTEM AND JUDICIAL REVIEW

California's judicial branch consists of three separate levels: superior courts, courts of appeal, and the Supreme Court. The superior courts, located in each of California's 58 counties, are the State's trial courts and have general jurisdiction over criminal and civil matters. The six district courts of appeal serve as intermediate appellate courts and generally have jurisdiction in appeals arising from decisions of the superior courts. A court of appeal may reverse, affirm, modify, or remand a lower-court decision. The Supreme Court is the highest state court and hears direct appeals from the superior courts in death penalty cases. It also has discretion to review courts of appeal decisions. A party seeks review of a court of appeals decision by filing a petition asking the Supreme Court to review the decision. The grounds on which the Supreme Court may grant review are set forth in the California Rules of Court and call for the Court's review when needed to settle an issue of statewide importance or to resolve a conflict among the courts of appeal. The Supreme Court may reverse, affirm, modify, or remand a lower-court decision.

In addition, the superior courts, courts of appeal, and Supreme Court all have the authority to hear *writ proceedings*. In a writ proceeding, a party asks, or petitions, the court to issue a writ, or order, directing a lower court or another governmental body to take or refrain from taking some action. Writs include *writs of habeas corpus* filed by prisoners challenging the conditions of their confinement, *writs of mandate* to compel government officers to perform their duties, and *writs of prohibition* to stop governmental actions.

Although writ proceedings and appeals are both forms of judicial review in which the courts review the decisions of governmental entities, writ proceedings and appeals differ from one another in at least two ways under California law. First, appeals are available only for reviewing decisions of lower courts and are not available to review the decisions of government

³ A party may challenge a commission or other agency decision in federal court when the decision raises issues governed by federal law or the federal court has other statutory jurisdiction to hear the case, but we do not discuss these challenges because our review is confined to the State's court system.

agencies, including the commission. Second, unlike an appeal, a writ proceeding typically occurs in two stages. The court must first consider whether to hear the matter on the merits. A court may decide not to grant a petition for any one of the writs described in the previous paragraph for one of several reasons, such as the petition does not raise an important question of law or the petitioner has failed to provide a sufficient record for the court's review. Further, the petitioner may obtain relief through a later appeal because a denial of this type of petition generally does not prevent the petitioner from raising the same issues at a subsequent stage of the case. If the court decides to hear the matter on the merits, it may issue an order directing the agency to show why the court should not grant the requested relief. The court then must consider the writ petition and all relevant briefs and materials provided by the petitioner, may hear oral arguments, and must issue a written opinion granting or denying the relief sought in the writ petition.

In addition, state law establishes another type of writ—generally known as a *writ of review*—for challenging certain administrative decisions, such as those arising out of actions of the commission. Although a writ of review proceeding shares some similarities with the other types of writ proceedings described earlier, some differences exist. First, the appellate courts, rather than the superior courts, have original jurisdiction to consider petitions for writs of review. Second, because these writ petitions are the only means by which parties can challenge certain administrative decisions, the courts must review each petition on the merits at the first stage of consideration and cannot dismiss a petition simply because it does not present an important question of law. If the court determines that the claim presented in a petition for writ of review may have merit and that the petitioner has been harmed by the agency's decision or action, it must issue the writ. If, however, the court concludes that the claim does not have merit, it has discretion and may either deny the petition without issuing a written opinion, which is known as a summary denial, or it may grant the petition and write an opinion explaining its reasoning for future guidance. The latter distinction between the writ proceedings described earlier and the writ of review proceedings available for judicial review of commission decisions creates a form of review that, as one court has noted, is more like an appeal because the court must consider the merits of each petition at its initial stage.

Although the name of a petition seeking judicial review may differ (petition for writ of review, petition for writ of extraordinary relief, petition for writ of mandate), for the purposes of our report, we refer to a petition seeking judicial review of a decision of the commission or any of the other three state agencies we reviewed—the Agricultural Labor Relations Board (ALRB), the Public Employment Relations Board (PERB), or the Workers’ Compensation Appeals Board (WCAB)—as a petition for writ of review (petition).

JUDICIAL REVIEW OF COMMISSION DECISIONS

Before 1998, a party challenging a commission decision could seek judicial review only in the Supreme Court. The court’s authority to review these decisions was generally limited by statute to determining whether the commission had properly exercised its authority. In 1990, in *Camp Meeker v. Public Utilities Commission*, the Supreme Court interpreted this statutory language to mean that the Court generally would affirm a commission decision, as long as the commission’s factual findings were supported by any evidence in the record and the commission relied on those findings when making its decision. However, when addressing certain questions of law, such as whether the commission violated the petitioner’s constitutional rights or exceeded its statutory authority, the court could exercise its independent judgment on the conclusions reached by the commission. Table 1 on the following page summarizes judicial review of commission decisions before 1998 and the subsequent changes, which are described in more detail in the following paragraphs.

In 1996, the Legislature made several changes to the laws concerning judicial review of certain commission decisions issued on or after January 1, 1998. These changes did the following:

- Provided an additional level of judicial review by allowing parties to petition the courts of appeal to review commission decisions resulting from adjudicatory proceedings.
- Established new grounds for reviewing these decisions.
- Set a revised standard of review of the commission’s factual findings. The reviewing courts were now required to determine whether the factual findings were supported by substantial evidence in light of the whole record (substantial evidence).

TABLE 1

Effects of 1996 and 1998 Legislation on the Judicial Review of Decisions Rendered by the Public Utilities Commission

Legislation	Judicial Review Prescribed
Prior statutes	<p>Allowed parties to seek judicial review in the Supreme Court of any commission decision.</p> <p>The grounds for review were limited to considering whether the commission properly exercised its authority. Review of findings was limited to whether they were supported by any evidence, but the court was to exercise independent judgment when reviewing commission decisions interpreting the laws or affecting constitutional rights.</p>
1996 legislation	<p>Allowed parties to seek judicial review in the courts of appeal of decisions resulting from adjudicatory proceedings issued on or after January 1, 1998.</p> <p>Revised the grounds for review of decisions resulting from adjudicatory proceedings to determine whether any of the following occurred:</p> <ul style="list-style-type: none"> • The commission acted without, or in excess of, its powers or jurisdiction. • The commission has not proceeded in a manner required by law. • The decision is not supported by the findings. • The decision was procured by fraud or was an abuse of discretion. • The decision violates any right of the petitioner under the constitution of the United States or California. • The findings are not supported by substantial evidence in light of the whole record.
Calderon-Peace-MacBride Judicial Review Act of 1998	<p>Allowed parties to seek judicial review in the courts of appeal of decisions resulting from quasi-legislative and ratesetting proceedings issued on or after January 1, 1999.</p> <p>Applied the 1996 grounds for review of decisions resulting from adjudicatory proceedings to ratemaking or licensing decisions of specific application that are addressed to particular parties.</p> <p>Added grounds for review of decisions resulting from quasi-legislative proceedings and decisions not affecting a particular party. These grounds are similar to those for decisions resulting from adjudicatory proceedings, except for the requirement of substantial evidence to support the decision.</p>

Source: Current and previous sections of the Public Utilities Code.

Note: Certain nonadjudicatory decisions remain subject to review only by the Supreme Court under the standard of review prior to 1998. Moreover, parties can only seek review of decisions relating to certain legislation, such as that enacted in response to the State's energy crisis, in the Supreme Court.

The *standard of review* prescribes the parameters governing a court's review of an agency's decision-making authority when an interested party challenges the agency's decisions in court. For this report, we use the term *standard of review* to describe the various grounds on which a court may review an agency's decision as well as the amount of evidence that must support an agency's factual findings for the court to uphold a decision. After the 1996 legislation changed the standard of review applicable to decisions resulting from the commission's adjudicatory proceedings, which typically rely on factual findings, a court could reverse such a decision if, on viewing the entire factual record, the court found that the factual findings were not supported by substantial evidence or any of the grounds

specified in Table 1. Judicial precedent defines *substantial evidence* as “sufficient evidence upon which a reasonable person could have reached the same conclusion.” In contrast, under the prior standard, the court was generally required to affirm the decision if the commission’s factual findings were based on any evidence.

Two years later, the Legislature passed the Calderon-Peace-MacBride Judicial Review Act of 1998 (act), which further expanded the jurisdiction of the courts of appeal to allow them to review challenges to decisions resulting from the other two types of commission proceedings: ratesetting and quasi-legislative. In the act, the Legislature expressly overruled the Supreme Court’s 1990 decision in *Camp Meeker v. Public Utilities Commission*, which had concluded that the prior standard of review of commission decisions was limited to determining whether the commission had properly exercised its authority. In addition, the act revised the standard of review so that the broader standard that the 1996 legislation had applied to decisions resulting from adjudicatory proceedings would apply to decisions resulting from a ratesetting proceeding—specifically, any ratemaking or licensing decision that has specific application and addresses a particular party. The act also added a standard of review applicable to decisions resulting from quasi-legislative proceedings and decisions not affecting particular parties. That standard is very similar to the standard that applies to decisions resulting from adjudicatory proceedings, but it does not require substantial evidence in support of the factual findings in the decision, although there must still be a record to support the commission’s decision. The changes made by the act apply to commission decisions adopted on or after January 1, 1999, with the exception that certain decisions remain subject to review by the Supreme Court only. In addition, certain decisions remain subject to the pre-1998 standard of review.

SOME OTHER STATE AGENCIES SUBJECT TO SIMILAR JUDICIAL REVIEW

The commission is not the only state agency whose decisions are subject to judicial review sought directly from the appellate courts. For instance, judicial review of decisions issued by the ALRB, PERB, and WCAB is similar to judicial review of commission decisions both in terms of court jurisdiction and applicable standard of review. Unlike most other state agencies, the first court level to which a party may submit a petition seeking judicial review of these agency decisions is an appellate

court. In addition, the standards of review of decisions by these three state agencies are very similar to the standard of review of commission decisions. Specifically, state law requires that factual findings in adjudicatory decisions of the commission and these three state agencies be supported by substantial evidence for the reviewing court to uphold them. When reviewing certain other types of decisions by each of these three agencies, such as those in which the agency interprets the laws governing its authority or reaches legal conclusions that affect constitutional rights, the court can independently interpret the law but generally must give considerable deference to the agency's interpretation of the law, especially when that interpretation involves the agency's technical expertise.

The ALRB and PERB are both composed of five members, while the WCAB is composed of seven members. The governor appoints and the Senate confirms the board members of all three agencies. As agencies that oversee labor relations of the State's agricultural workers and public employees, respectively, the ALRB and PERB are mainly involved with preventing and remedying unfair labor practices and administering the process through which employees select organizations to represent them in labor relations with their employers. The WCAB primarily reviews petitions to reconsider decisions by administrative law judges of the Division of Workers' Compensation within the Department of Industrial Relations, and regulates the adjudication process by adopting rules of practice and procedure.

The ALRB and PERB primarily issue decisions regarding charges of unfair labor practices, and the decisions issued by the WCAB relate to claims filed by injured workers. Like the commission, all three state agencies follow decision-making processes. Although the specific procedures that apply to these three state agencies' decision-making processes are unique, each process generally begins when a party files an unfair labor practice charge, in the case of the ALRB and PERB, or a worker's compensation claim, in the case of the WCAB; continues with a prehearing conference that may include discussions of settlement, formal hearings, and the issuance of an administrative law judge's decision; and may conclude with a board decision that is similar or different from the administrative law judge's decision. Unlike commission decisions, administrative law judges' decisions are not brought before the board for approval, unless a party appeals an administrative law judge's decision to the board. To challenge a board decision, a party may file a petition seeking judicial review in the district court of appeal having jurisdiction

where the unfair labor practice occurred for the PERB, where the party resides for the WCAB, or where the unfair labor practice occurred or where the party resides or transacts business for the ALRB.⁴ Unlike the commission, after the ALRB, PERB, or WCAB renders a final decision, a party is not required to submit an application for rehearing to the board before it may seek judicial review of that decision.

SCOPE AND METHODOLOGY

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits review the recent judicial review history of commission decisions and compare it with that of other state agencies' decisions. Also, the audit committee asked us to compare the standard of review of commission decisions with the standards of review of other state agencies and those of other agencies that regulate utilities in other states and in the federal government.

Specifically, the audit committee asked us to determine the number of decisions the commission made both prior to and since the act to determine the number that resulted in petitions seeking judicial review in appellate courts and to compare this information to similar data for other state agencies. The audit committee also requested that we determine the number of petitions for writ of review of commission decisions filed with the courts of appeal and the Supreme Court; determine the number of petitions granted, denied without issuance of written opinions, and denied with issuance of written opinions; and compare that information to similar data for other state agencies.

In addition, the audit committee directed us to determine whether the courts of appeal and the Supreme Court have received additional staff and resources since the act to handle the commission's petitions and to determine the percentage of the caseloads in the courts of appeal and the Supreme Court represented by petitions seeking judicial review of the commission's decisions. Lastly, the audit committee asked us to compare the standard and processes currently used for review of the commission's decisions with the standards and processes

⁴ Parties may seek direct judicial review of ALRB decisions involving mandatory mediation in the Supreme Court, but during our review period, the ALRB issued only one such decision. In addition, parties may seek direct judicial review of WCAB decisions in the Supreme Court, but staff at the Administrative Office of the Courts provided an authoritative legal resource indicating that such petitions are typically transferred to the courts of appeal.

for review of decisions by other state agencies, public utility commissions in other states, the Federal Energy Regulatory Commission, and the Federal Communications Commission.

To determine the number of commission decisions made during the five years prior to the act and for the six years since, we obtained data on the number of decisions from the commission. To compare this information to the decisions of other state agencies that share similar court jurisdiction and standard of review, we also obtained decision data from three state agencies—the ALRB, PERB, and WCAB. To identify the number and disposition of the petitions seeking judicial review of the decisions of each agency we reviewed, we obtained petition data for the Supreme Court and the courts of appeal from the Administrative Office of the Courts and determined the number that were granted, denied without issuance of written opinions, denied with issuance of written opinions, or dismissed. We assessed the reliability of the data we obtained from each agency by interviewing key staff to identify pertinent system controls, obtaining corroborating evidence to verify that the totals reflected in the data were reasonable, performing electronic testing of the data fields pertinent to our review, and tracing a sample of data to source documents. We found the data sufficiently reliable for our purposes. However, data from the courts may be incomplete because of human error. In addition, we were unable to test for completeness of WCAB data because of the manner in which the information is maintained. Because of certain data and timing limitations, we did not identify the specific commission or state agency decisions from each year that subsequently resulted in petitions seeking judicial review. Rather, we report the number of decisions rendered by each agency as well as the number of petitions received by the courts for decisions of these agencies.

To determine the percentage of their caseloads that petitions seeking judicial review of the commission's decisions represent for the courts of appeal and the Supreme Court, both before and after the act was effective, we used data provided by the Administrative Office of the Courts that include the universe of cases the courts considered during our review period. To determine staff or resource increases since the act, we obtained budget change proposals from the Administrative Office of the Courts and interviewed staff. To understand the nature of the work the courts may perform in disposing of petitions, we

reviewed the published procedures of the various courts, but we did not test their application because it was beyond the scope of the audit.

To compare the standard and processes currently used for review of the commission's decisions with the standards and processes for review of decisions by other state agencies, public utility commissions in other states, the Federal Energy Regulatory Commission, and the Federal Communications Commission, we reviewed the relevant laws, rules, and regulations for judicial review of decisions of the commission and other California agencies and consulted our counsel. Further, we mailed out a survey to the two federal regulatory entities and agencies that regulate utilities in 10 other states. In the survey, we asked about the standard that governs judicial review of a decision, the court in which a party may first seek judicial review, and whether the court's review is mandatory or discretionary. Our legal counsel confirmed the responses by reviewing the laws, rules, or regulations cited by the survey respondents and contacting knowledgeable officials at the entities. ■

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AUDIT RESULTS

THE NUMBER OF PETITIONS SEEKING JUDICIAL REVIEW OF PUBLIC UTILITIES COMMISSION DECISIONS HAS INCREASED

Since the Calderon-Peace-MacBride Judicial Review Act of 1998 (act) went into effect, the average number of decisions the Public Utilities Commission (commission) made each year has not changed substantially from the five-year period prior to the act. Similarly, the average annual number of commission decisions for which at least one application for rehearing was submitted has been fairly constant. An application for rehearing is a prerequisite for a petition seeking judicial review of a commission decision. From 1994 through 2004, the average annual number of petitions seeking judicial review of commission decisions increased from 10 to 19, and the percentage of such petitions for which the courts have granted review has increased from 2 percent to 27 percent. As a result, the courts of appeal have seen their workload increase, but by less than the commission had estimated.

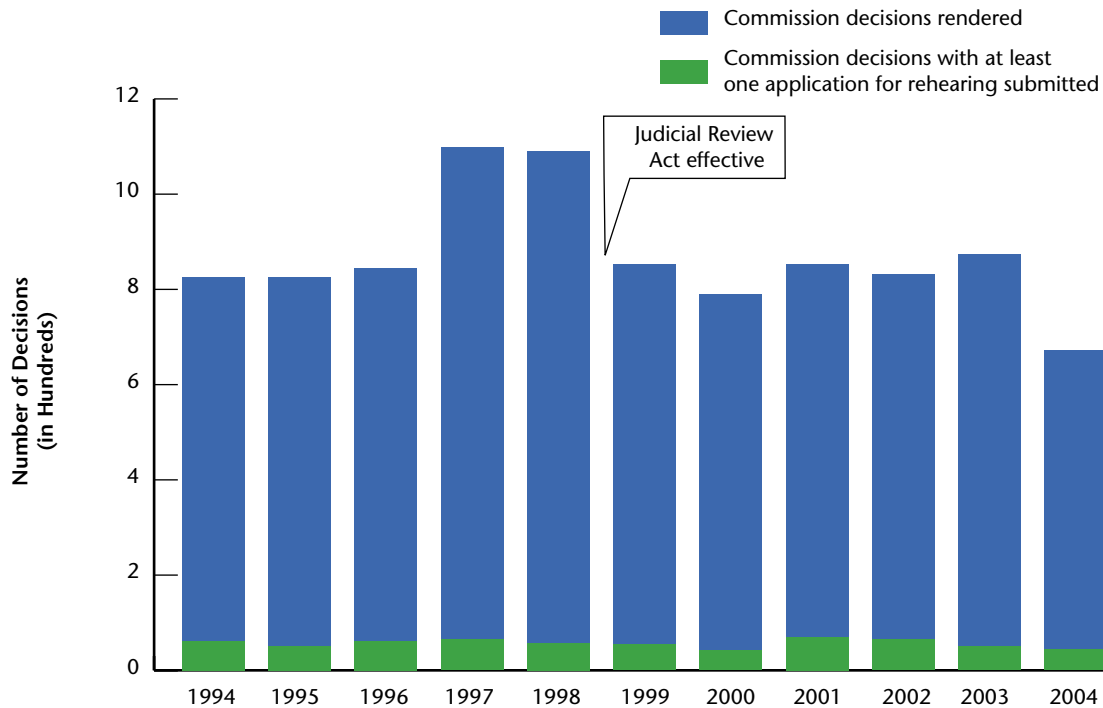
The Number of Commission Decisions and the Number of Decisions With at Least One Application for Rehearing Have Remained Relatively Stable

Before seeking judicial review of a commission decision, a party must give the commission an opportunity to rehear the case and correct any errors. Since the act went into effect in 1999, both the annual number of commission decisions and the annual number of decisions for which parties submitted applications for rehearing have not changed substantially. Figure 1 on the following page depicts the annual number of commission decisions that resulted from formal proceedings and the number of decisions for which at least one application for rehearing was submitted from 1994 through 2004.

As the figure shows, the number of decisions for which at least one application for rehearing was filed is small relative to the total number of decisions rendered. For the five years before the act became effective, the commission averaged 937 decisions each year, but decisions that had at least one application for rehearing averaged 60 each year, or 6.4 percent annually. For the six years following the act, the average number of decisions decreased to 813 each year, and the average number of decisions with at least one application for rehearing decreased to 54 each year, or 6.6 percent annually.

FIGURE 1

**Decisions Rendered by the Public Utilities Commission and Decisions for Which an Application for Rehearing Was Submitted
1994 Through 2004**



Source: Public Utilities Commission Case Information System.

Note: Figure 1 does not reflect commission resolutions or orders initiating formal proceedings. Although these actions may be subject to applications for rehearing and subsequent judicial review, according to commission staff and data, these actions seldom result in applications for rehearing. Also, because certain issues for which the commission engages in formal proceedings can result in multiple decisions, the commission can receive multiple applications for rehearing related to one proceeding.

Generally, a party must submit an application for rehearing with the commission within 30 days of a commission decision. The commission then decides either to grant the application for rehearing and consider the challenge in a formal proceeding or to deny the application for rehearing. Within 30 days after the commission issues its decision denying an application for rehearing or, if the application was granted, within 30 days after the commission issues its decision on the matter raised in the application for rehearing, the party, in most cases, may request judicial review by filing a petition for writ of review (petition) with the Supreme Court or the court of appeal in the district where the party resides or conducts business.

For perspective, Table 2 shows the average annual number of decisions subject to judicial review for the commission and for three other quasi-judicial state agencies subject to similar judicial

review: the Agricultural Labor Relations Board (ALRB), the Public Employment Relations Board (PERB), and the Workers' Compensation Appeals Board (WCAB). As stated in the Introduction, a party is not required to submit an application for rehearing of a decision of any of these three state agencies before seeking judicial review. Thus, the numbers in Table 2 include final decisions rendered by the ALRB, PERB, and WCAB as the result of formal proceedings, after which parties may submit to the courts petitions seeking judicial review. As such, the figures for the ALRB and PERB include only decisions rendered after administrative hearings on unfair labor practice charges, and the figures for the WCAB reflect all decisions resulting from dispositions of cases related to workers' compensation claims, which can range from a case dismissal to a full granting of the claim. Table 2 does not include ALRB and PERB decisions on cases related to employee groups selecting organizations to represent them in labor relations with their employer because, according to both statute and judicial precedent, those decisions are generally not subject to direct judicial review.

TABLE 2

**Average Annual Decisions for
Which a Party May Seek Judicial Review**

	1994–1998	1999–2004
Public Utilities Commission* (commission)	60	54
Agricultural Labor Relations Board (ALRB) [†]	7	3
Public Employment Relations Board (PERB) [†]	25	26
Workers' Compensation Appeals Board (WCAB) [‡]	6,207	4,208

Source: Public Utilities Commission Case Information System, ALRB summary report, PERB case management system, WCAB monthly statistics reports.

* These figures include only decisions for which at least one application for rehearing was submitted to the commission. The figures do not account for the small number of applications for rehearing that pertain to commission resolutions or orders initiating formal proceedings.

[†] These figures include only decisions rendered after administrative hearings on unfair labor practice charges because these represent the types of ALRB and PERB decisions for which a party may seek judicial review. For ALRB, there is also one decision under a new law related to mandatory mediation that is eligible for judicial review and included in the 1999–2004 count.

[‡] Parties may seek judicial review of all WCAB decisions.

Since the Act, the Number of Petitions Seeking Judicial Review of Commission Decisions Has Increased

As discussed earlier, the 1996 legislation allowed parties to seek review of decisions resulting from the commission's adjudicatory proceedings in the courts of appeal. The act further expanded the jurisdiction of the courts of appeal, allowing them to review challenges to decisions resulting from the commission's quasi-legislative and ratesetting proceedings. As expected, we found increased judicial activity at the intermediate appellate level: the number of petitions seeking judicial review of commission decisions has generally increased following the act. Figure 2 shows the increase in petitions as well as the increase in the proportion of petitions filed in the courts of appeal.

For additional perspective, Table 3 identifies the average annual number of petitions submitted to the courts of appeal related to decisions by the commission and the three other state agencies we reviewed for the five years preceding and the six years following the act. Petitions seeking judicial review of commission decisions may be submitted to either the Supreme Court or the courts of appeal, while petitions seeking direct judicial review of decisions by one of the other three state agencies we reviewed are generally considered by the courts of appeal.⁵ As shown in Table 3, the number of commission-related petitions has increased following the act, while the number of petitions has decreased for the other three state agencies during the same period. Specifically, the average annual number of petitions seeking judicial review of commission decisions has increased from an annual average of 10 for the five years prior to the act to an annual average of 19 in the six years since the act went into effect.

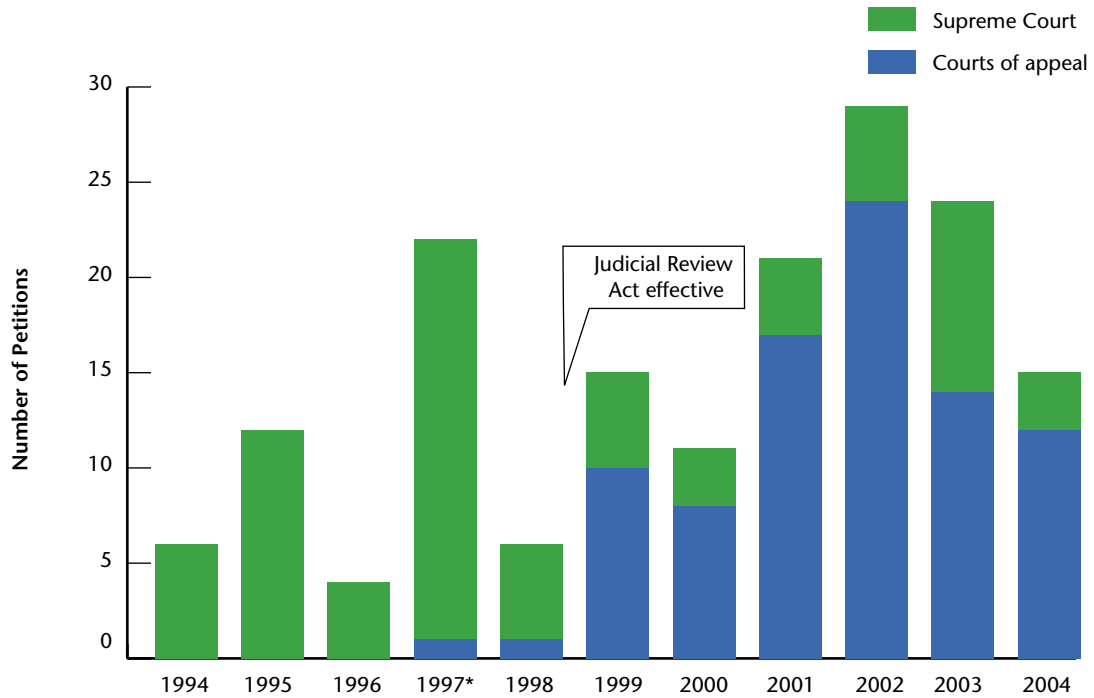
The Various Courts Have Similar Procedures for Handling Petitions Seeking Judicial Review of Decisions by the Commission and the Three Other State Agencies We Reviewed

Although courts may take any number of actions after receiving petitions, generally they grant, deny, or dismiss petitions. The procedures courts must follow in handling petitions are established by a combination of constitutional provisions, state statutes, statewide Rules of Court, and the courts' individual

⁵ During our period of review, only one decision issued by the ALRB could have resulted in a petition seeking direct judicial review in the Supreme Court. Similarly, parties may seek direct judicial review of WCAB decisions in the Supreme Court, but staff at the Administrative Office of the Courts provided an authoritative legal resource indicating that such petitions are typically transferred to the courts of appeal.

FIGURE 2

**Petitions Filed in the Courts for Judicial Review of
Decisions by the Public Utilities Commission
1994 Through 2004**



Source: Courts of appeal and Supreme Court case management systems. The data may not be complete because of human error.

Note: Figure 2 does not include petitions to the Supreme Court challenging courts of appeal rulings on petitions seeking judicial review of commission decisions. Figure 2 may include petitions seeking judicial review of commission resolutions or orders initiating formal proceedings. Figure 2 may also include more than one petition seeking judicial review of the same decision because one decision can affect multiple parties.

* Although a court of appeal received one petition in 1997, the courts of appeal could only review decisions that were effective on or after January 1, 1998.

TABLE 3

Average Annual Petitions Seeking Judicial Review

	1994–1998	1999–2004
Public Utilities Commission* (commission)	10	19
Agricultural Labor Relations Board	4	2
Public Employment Relations Board	5	3
Workers’ Compensation Appeals Board	743	487

Source: Courts of appeal and Supreme Court case management systems. The data may not be complete because of human error.

* Petitions seeking judicial review of commission decisions include petitions received by both the Supreme Court and the courts of appeal, while petitions seeking judicial review of decisions of the three other state agencies include only petitions received by the courts of appeal.

internal practices and procedures. All courts handling these petitions must follow the statewide requirements, which include constitutional requirements concerning issuance of written opinions, statutory requirements regarding transmittal of the record to the reviewing court, and statewide rules regarding when parties must file answers to petitions and replies.⁶ In general, the Rules of Court establish procedures for handling petitions, including briefing, oral argument, filing court opinions, and finality of court opinions. Each of the six district courts of appeal and the Supreme Court has also adopted individual internal practices and procedures (procedures) for handling petitions that are relatively similar and supplement the statewide requirements.

Our review of the procedures for each district court of appeal and discussions with staff at the Administrative Office of the Courts indicates that those courts have established the following steps for handling petitions:

- The petition is assigned to a staff attorney responsible for analyzing the petition and making a recommendation on its disposition.
- The assigned staff attorney analyzes all the materials submitted—the petition, exhibits, and answers and replies to the petition—prepares a written memorandum that includes a recommendation on whether to grant or deny the petition, and submits it to a panel of justices.
- The justices review the memorandum and the related materials and decide whether to grant or deny the petition.

However, there are variations among the courts' procedures for handling petitions. For example, some procedures call for the staff attorney to make oral presentations to the panel of justices, and other procedures require a written memorandum to be distributed to each justice on the panel. According to staff from the courts of appeal and the Administrative Office of the Courts, when analyzing whether to grant or deny a petition, the justices review all the materials submitted to the court relating to the petition, review the staff attorney's memorandum and recommendation, and then decide whether to grant or deny the petition.

⁶ State law requires the courts of appeal and the Supreme Court to give precedence to petitions seeking review of commission decisions over everything but challenges related to elections.

The Supreme Court's procedures specify a similar internal analysis of petitions. First, a staff attorney is to prepare a conference memorandum and written recommendation on whether to grant or deny a petition. Then the conference memorandum must be distributed to the chief justice and the six associate justices and the matter placed on their weekly conference agenda. According to staff at the Supreme Court and the Administrative Office of the Courts, the assigned staff attorney reviews all materials submitted to the Court relating to the petition when preparing the conference memorandum, which describes and analyzes the facts, the claims, and the applicable law to assist the Court in its consideration of the matter. The procedures call for the staff attorney to make a recommendation on whether to grant or deny the petition and for the conference memorandum and related materials to be delivered to the justices and their staff for consideration. Under Court procedures, the justices can remove a conference memorandum and related materials from the weekly conference agenda to undertake additional analysis for later consideration. At their weekly conference, the justices decide whether to grant or deny the petitions that are included in the agenda, according to Court procedures.

A petition must include a sufficient record for the court of appeal or the Supreme Court to determine whether to grant the petition. For a petition seeking review of an ALRB or PERB decision, state law requires the ALRB or PERB to file the full, certified record of the proceedings with the court within a certain time. In contrast, in WCAB and commission matters, state law requires that the portion of the certified record of the decision that is relevant to the petition be submitted to the court for review only if the court grants a petition to review a decision. However, if a petition seeking review of a WCAB decision claims that the evidence does not support the decision, the Rules of Court require that copies of the relevant material evidence be included with the petition.

If the court of appeal or Supreme Court grants the petition, the California Constitution requires the court to issue a written opinion regardless of whether it ultimately grants or denies the relief that the petitioner seeks.

If the court of appeal or the Supreme Court grants the petition, state law requires the court to direct the commission to send the complete, certified record in the case to the court. Court rules permit the party opposing the petition to file a response to the petition in addition to any opposition filed by the party at the outset of the petition process. The court then may set the matter for oral argument. Following oral argument, the court must issue a written opinion either affirming or setting aside the order or decision of the commission. The California

Constitution requires the court of appeal or the Supreme Court to issue a written opinion regardless of whether it ultimately grants or denies the relief that the petitioner seeks. As one appellate court noted, this requirement is meant to ensure that the reviewing court gives careful thought and consideration to the matter and that the court's reasoning shows that the appellant's contentions were reviewed seriously. As such, state law and the courts' procedures indicate that after granting the petition, the court is to consider the certified record of the decision, briefs submitted by the parties, and any oral arguments before issuing a written opinion stating its ruling and reasoning. If the petition for writ of review was filed in a court of appeal, after the court of appeal's decision is final, the parties may also petition for review in the Supreme Court.

The court is not compelled to grant the petition if it determines that the commission, when making its decision, did not make an error of law that harmed the petitioner, and the court may deny the petition without issuing a written opinion.

The court is not compelled to grant the petition if it determines that the commission, when making its decision, did not make an error of law that harmed the petitioner, and the court may deny the petition without issuing a written opinion. A denial without the issuance of a written opinion is known as a *summary denial*. The courts have noted, however, that the word *summary denial* means only that no written opinion was issued, not that the court did not consider the merits of the petition. The courts have held that a summary denial acts as a ruling on the petition's merits, and the parties cannot relitigate the same legal issues raised in the petition. The courts' practice of summarily denying a petition without issuing a written opinion has been challenged on the grounds that it violates the petitioner's constitutional rights, but the Supreme Court has rejected that argument and has concluded that the practice does not violate those rights.

Since the Act, the Courts Have Granted Many More Petitions for Judicial Review of Commission Decisions

Since the act and prior legislation allowed parties to seek judicial review of commission decisions in the courts of appeal and revised the standard of review of commission decisions, the courts have granted many more petitions seeking judicial review of commission decisions. Table 4 breaks down the disposition of petitions seeking judicial review of decisions made by the commission, ALRB, PERB, and WCAB in the five years prior to the act and the six years following. As the table shows, in the five years before the act took effect, the courts granted 2 percent of commission-related petitions, but in the six years after the act,

the courts granted 27 percent of such petitions.⁷ However, over the entire period, the percentage of petitions that the courts granted for the three other state agencies did not change substantially. This is not surprising because the act only applies to judicial review of commission decisions. For petitions seeking judicial review of ALRB, PERB, and WCAB decisions from 1994 through 2004, the courts granted review of no more than 20 percent.

TABLE 4

How the Courts Handled Petitions Before and After the Judicial Review Act of 1998

1994–1998 (Before the Act)								
Disposition of Petition Seeking Judicial Review	Public Utilities Commission*		Agricultural Labor Relations Board		Public Employment Relations Board		Workers' Compensation Appeals Board	
	Petitions	Percentage	Petitions	Percentage	Petitions	Percentage	Petitions	Percentage
Granted [†]	1	2%	4	18%	3	12%	313	8%
Denied with opinion	0	–	3	14	0	–	6	<1
Denied without opinion	47	94	4	18	13	52	3,195	86
Dismissed [‡]	2	4	11	50	9	36	201	5

1999–2004 (After the Act)								
Disposition of Petition Seeking Judicial Review	Public Utilities Commission*		Agricultural Labor Relations Board		Public Employment Relations Board		Workers' Compensation Appeals Board	
	Petitions	Percentage	Petitions	Percentage	Petitions	Percentage	Petitions	Percentage
Granted [†]	29	27%	1	11%	3	20%	199	7%
Denied with opinion	2	2	1	11	0	–	30	1
Denied without opinion	70	64	6	67	9	60	2,526	87
Dismissed [‡]	8	7	1	11	3	20	139	5

Source: Courts of appeal and Supreme Court case management systems. The data may not be complete because of human error.

Note: Table 4 does not reflect subsequent petitions to the Supreme Court challenging courts of appeal rulings on petitions seeking judicial review and does not include petitions the courts received that did not have dispositions as of March 25, 2005.

* Commission numbers include dispositions of petitions submitted to both the courts of appeal and the Supreme Court except as noted above.

[†] When a petition is granted, the court is constitutionally required to issue a written opinion.

[‡] The court may dismiss a petition for various reasons before or after it decides whether to grant review. Among the possible reasons are that the petition was not filed on time or that the dispute has been settled.

Table 4 also shows that denials of petitions without issuance of written opinions represent the majority of dispositions related to decisions of the commission and other state agencies. Finally, the courts also dismiss certain petitions. According to staff at

⁷ All commission-related petitions that were granted since the act went into effect were filed in the courts of appeal rather than the Supreme Court.

the Supreme Court, the courts of appeal, and the Administrative Office of the Courts, the primary reasons for dismissal are the court determines that a petition is untimely, the matter has subsequently been settled, and the matter has been rendered moot by subsequent events. A dismissal can occur at any time before or after the granting of a petition; thus, Table 4 separately identifies dismissals.

The Workload of the Courts of Appeal Has Increased Since the Act, but Not by the Amount the Commission Initially Estimated

Although the average annual number of petitions seeking judicial review of commission decisions has increased since the act, such petitions are a small proportion of the overall workload of the courts of appeal, which generally consists of hearing criminal and civil appeals from the superior courts as well as original proceedings, such as the initial review of an agency’s decision. As shown in Table 5, petitions seeking review of commission decisions, as a percentage of the courts of appeal’s caseload, have increased for the six-year period since the act, but those petitions make up less than 1 percent of the total caseload during that period. As expected, the Supreme Court’s caseload of petitions seeking judicial review of commission decisions has decreased since the act and prior legislation have allowed parties to seek review of commission decisions in the courts of appeal.

TABLE 5
Percentage of Court Caseload Represented by Petitions Seeking Judicial Review of Decisions Rendered by the Public Utilities Commission

Court	1994–1998 (Before the Act)	1999–2004 (After the Act)
Courts of appeal	0.0%	0.10%
Supreme Court	0.1	0.05

Source: Courts of appeal and Supreme Court case management systems. The data may not be complete because of human error.

Note: Table 5 does not include petitions to the Supreme Court challenging courts of appeal rulings on petitions seeking judicial review of commission decisions.

Because a report the commission prepared indicated that the commission expected the act to generate about 100 additional petitions to the courts of appeal yearly, the courts requested additional staff in two budget change proposals to accommodate the anticipated workload increase. For fiscal year 1998–99,

the courts of appeal requested six attorneys, one for each of the six appellate districts, but received only two. For fiscal year 1999–2000, the courts of appeal requested and received four attorneys to provide one attorney for each appellate district that did not receive an attorney in the prior budget change proposal. Although the courts of appeal received six additional staff to handle the estimated 100 additional petitions a year, in the six years following the act, the courts of appeal received no more than 30 petitions a year. However, staff at the Administrative Office of the Courts indicated that the courts of appeal have used the remaining staff time to address other types of petitions, such as certain petitions filed by prison inmates. Further, according to the same staff, two of the six attorney positions for reviewing commission-related petitions are currently vacant due to two districts' ability to absorb the commission-driven workload with the current staff. Finally, court staff indicate that although the number of commission-related petitions is not large, the courts can spend a substantial portion of their time disposing of the petitions because they typically involve complex issues.

THE STANDARD OF REVIEW THAT APPLIES TO COMMISSION DECISIONS IS SIMILAR TO THE STANDARDS OF REVIEW THAT APPLY TO DECISIONS OF OTHER AGENCIES THAT REGULATE UTILITIES

By expanding the opportunity for judicial review of commission decisions and changing the standard of review applicable to commission decisions, the 1996 legislation and the act made judicial review of commission decisions in California more consistent with judicial review of decisions issued by regulatory agencies at the federal and state level. However, some differences remain. For example, for most of the 12 entities we surveyed, judicial review is always mandatory in the first level of the courts in which a party seeks it because the statutes governing judicial review of those entities' decisions give the petitioners a statutory right to appeal the decisions. In contrast, judicial review of commission decisions occurs through a writ process, in which California appellate courts must grant writ petitions under certain circumstances but not others. Although there are some procedural differences, the California appellate courts are subject to essentially the same legal requirements when deciding whether to grant petitions seeking review of decisions by the WCAB, PERB, and ALRB.

The Standard of Review Varies With the Type of Commission Decision Under Review

The standard of review that a court must apply if a commission decision is challenged depends on the nature of the proceeding under review and on whether the court is asked to determine if the petitioner's federal or state constitutional rights have been violated. The Introduction describes the commission's three categories of proceedings: adjudicatory, quasi-legislative, and

ratesetting. The term *adjudicatory* is commonly used to describe the actions of a governmental entity when it acts like a judicial body to determine the rights of particular parties or entities whose activities it regulates. When the commission acts in an adjudicatory way, rendering a decision related to a complaint or enforcement action related to the activities of a regulated entity, the applicable standard of review requires that the commission's factual findings be supported by substantial evidence in light of the whole record (substantial evidence) and meet other criteria (see the text box). However, the standard of review applicable when the commission acts in a quasi-legislative manner to adopt rules or regulations that govern some aspect of a regulated industry does not require substantial evidence in support of the decision. For decisions resulting from ratesetting proceedings, the applicable standard can be the one applied to decisions resulting from adjudicatory proceedings or the one applied to decisions resulting from quasi-legislative proceedings depending on what state law prescribes.

Legal literature describes the standard of review as the lens through which the reviewing court views what happened at the level below and defines how much deference the court must give to a decision made by an administrative agency. Typically a reviewing court does not disturb an agency's factual findings supporting a decision unless those

findings are not supported by substantial evidence. However, the lens is wide open when the court reviews a decision in which the agency interpreted the law governing its statutory authority or made a decision that raises a constitutional issue. Here, the reviewing court independently interprets the meaning of the law but gives considerable deference to the agency's interpretation. The lens is nearly closed when the court reviews a decision in

Current Standard of Review for Public Utilities Commission Decisions

Under the standard of review established by the 1996 legislation and the Judicial Review Act of 1998, the court's review of commission decisions cannot extend further than to determine whether any of the following occurred:

- The commission acted without, or in excess of, its powers or jurisdiction.
- The commission has not proceeded in the manner required by law.
- The decision is not supported by the findings.
- The decision was procured by fraud or was an abuse of discretion.
- The decision violates any right of the petitioner under the constitution of the United States or California.
- In the case of a decision resulting from an adjudicatory proceeding or a ratemaking or licensing decision of specific application that is addressed to particular parties, the findings are not supported by substantial evidence in light of the whole record.

Source: Public Utilities Code, sections 1757 and 1757.1.

Common Legal Standards of Review

Independent judgment

Generally applies to questions of law; the court exercises independent judgment on the facts.

Substantial evidence

Generally applies to questions of fact. The court defers to the agency's decision if a reasonable person could have reached the same conclusion based on the factual record as a whole.

Abuse of discretion

Clearly erroneous

Arbitrary and capricious

The court defers to the agency's decision unless it was a clear error of judgment or clearly wrong.

Source: Case law.

which the agency engaged in adopting rules or regulations that involve the agency's technical expertise. In that case, the court generally does not modify the agency's decision unless it finds that it was based on an abuse of discretion or that the agency exceeded its authority or acted in an arbitrary or capricious manner. The text box shows some of the common standards of review.

The Standard of Review of Commission Decisions Is Similar to the Standards of Review of Decisions of Other Agencies That Regulate Utilities

The statutory language governing judicial review of commission decisions is very similar to the statutory language governing the judicial review of the decisions of two federal regulatory agencies as well as regulatory agencies in the 10 states we selected for review. As previously discussed, the standard of review applicable to decisions resulting from the commission's adjudicatory proceedings requires that factual findings be supported by

substantial evidence and permits the court to review the decisions on various grounds. Although the standard of review applicable to decisions resulting from the commission's quasi-legislative proceedings is very similar, it does not require substantial evidence in support of factual findings. Nevertheless, there must be a record to support a commission decision of that kind. For an adjudicatory decision issued by any of the other three California agencies we reviewed, a reviewing court must also consider whether the factual findings and conclusions in the decision are supported by substantial evidence and may review the decision on similar grounds to those used to review commission decisions. When reviewing certain other types of decisions of those agencies, such as those in which the agency interprets its statutory authority or affects the constitutional rights of a party appearing before it, the court can independently interpret the law but generally must give considerable deference to the agency's legal interpretations.

At the federal level, judicial review of decisions of both the Federal Communications Commission and the Federal Energy Regulatory Commission is governed by the federal Administrative Procedure Act (APA), which sets out the standard of review that applies when a federal agency's decisions are challenged. In general, the APA requires that the factual

Our review of agencies that regulate utilities in 10 states showed that the standard of review in nine of them requires that the factual findings in adjudicatory decisions be supported by substantial evidence and gives considerable deference to quasi-legislative decisions that involve the agencies' technical expertise.

findings in adjudicatory decisions be supported by substantial evidence and gives considerable deference to quasi-legislative, or rulemaking, decisions that involve agencies' technical expertise. Also, our review of agencies that regulate utilities in 10 states showed that the standard of review in nine states follows this general pattern. In general, state statutes require the courts to look for substantial evidence supporting adjudicatory decisions, which typically rely on factual findings related to a particular party. They also require the courts to review quasi-legislative decisions, which typically focus less on factual findings and more on legal determinations, to determine whether the entities abused their discretion, violated the constitution, acted in an arbitrary or capricious manner, or arrived at the decisions through unlawful procedures. Although the language of the various statutes defining the standards of review of decisions by most of the surveyed entities has many similarities, the application of the standard of review in a particular case is subject to judicial interpretation of how the standard applies to the particular issue before the court.

Judicial Review of Decisions by the Commission and Three California Agencies We Reviewed Is Discretionary Under Some Circumstances, While the Court of Initial Review for Most of the Other Surveyed Entities Must Always Hear the Matter

For judgments or decisions rendered by trial courts or administrative agencies (such as the commission), many state appellate court systems have two levels of review: an intermediate appellate court, often called the court of appeals, and a court of final appellate review, often called the Supreme Court. The federal court system also employs this model, having the U.S. Court of Appeals and the Supreme Court. As described earlier, in California the first court level in which a party may seek judicial review of certain commission, ALRB, PERB, and WCAB decisions is in the courts of appeal. For six of the 12 entities we surveyed, judicial review also begins at the appellate level. For the detailed results of our survey, see Table A in the Appendix.

Judicial review at the initial court level in which a party seeks review can be mandatory or discretionary. Judicial review is considered mandatory when the party seeking such review is guaranteed that right by statute, constitutional provision, or common law. Typically, mandatory judicial review exists when the party seeking review uses an *appeal*, which is a right created by statute. In contrast, when review is discretionary, the court with jurisdiction has the power to decide whether to hear the matter.

Mandatory judicial review exists when the party seeking review uses an appeal that is a right created by statute, whereas discretionary reviews are those where the court has the power to decide whether to hear the matter.

An example of a discretionary appeal is a *writ of certiorari* to the U.S. Supreme Court, in which the Court is not always required to hear the matter but may choose to do so at its discretion.

When seeking judicial review of decisions by the two federal entities we surveyed and the majority of surveyed entities in other states, parties have a statutory right to judicial review at the initial court level in which they first seek review. In contrast, when determining whether to grant a petition seeking review of a commission decision, the court must grant the petition if it finds that the commission, when making its decision, made an error of law that harmed the petitioner. One court has noted that the court does not have the discretion to deny a petition just because the petition does not present an important issue of law or because the court considers it less important than other matters. However, if the reviewing court finds that the commission did not make an error of law that caused harm to the petitioner, it has discretion and may decide whether to grant or deny the petition. The courts have exercised this discretion by granting a petition that, while not meritorious, still involved new or important legal issues.

In 2000, an appellate court issued an opinion that considered whether the court was compelled to grant a petition seeking judicial review of a commission decision, particularly in light of the legislative changes described in the Introduction. After analyzing the plain meaning of the relevant statutory provisions and reviewing the legislative analysis surrounding the enactment of those legislative changes, the court concluded that the Legislature had not intended to make review of commission decisions “a matter of right in the court of appeal akin to an ordinary appeal.” Rather, the court concluded that the Legislature had intended to provide for a discretionary writ, which would compel the court to grant the petition under the same circumstances as it had been previously—namely, when the petitioner’s claim had merit because it persuaded the court that the commission had committed an error of law that had caused harm to the petitioner. The court also went on to note that this method of review of commission cases “benefits both the courts and the parties. It permits the courts to deny summarily those petitions that lack merit and do not raise important issues, and to concentrate their oral argument and opinion writing resources on the meritorious petitions and those nonmeritorious petitions that raise issues significant to the development of the law.” Although there are some procedural

differences, consideration by the courts of appeal of petitions seeking review of decisions of the WCAB, PERB, and ALRB is subject to essentially the same legal requirements.

Judicial Review of Decisions by Some of the Surveyed Entities Differs From Judicial Review of Commission Decisions

Among the entities surveyed, we found some additional ways in which judicial review of those entities' decisions differs from judicial review of the commission's decisions. For example, seven states allow an interested party to seek judicial review of the rules or regulations of an agency regulating utilities by seeking a declaratory judgment at the trial court level. In this context, the declaration that the party seeks from the court is that the challenged rule or regulation is invalid. A declaratory judgment proceeding provides a way of resolving a potential dispute before an agency's decision is final or the party is harmed by the decision. As a result, a declaratory judgment proceeding may allow the party to avoid the time and expense of challenging the regulation through the more typical writ or appeal process. However, a declaratory judgment proceeding is not an option for a party wishing to challenge a commission rule, because a party is limited to seeking judicial review by submitting a writ petition to an appellate court. In contrast, a party wishing to challenge the rules or regulations adopted by most other agencies in California may seek a declaratory judgment in the appropriate superior court.

In addition, our survey results show that in some cases, judicial review is limited to a particular trial or appellate court, or a petitioner has the option of seeking review at a particular court, typically located in the district where the agency is headquartered. For example, judicial review of licensing decisions of the Federal Communications Commission must be brought exclusively in the Court of Appeals for the District of Columbia. It has been acknowledged that such exclusivity has allowed that specific court to develop expertise to address the complex issues associated with licensing decisions of the Federal Communications Commission. Moreover, it has been noted that in giving the Court of Appeals for the District of Columbia exclusive jurisdiction over licensing matters, Congress is attempting to avoid conflicting decisions in this area of law. In addition, the federal statutes applicable to the Federal Energy Regulatory Commission always allow parties to seek review in the Court of Appeals for the District of Columbia as a means of challenging certain decisions. Similarly, the statutes for

Judicial review of the commission's decisions can occur in any of the six district courts of appeal or in the Supreme Court, which is not surprising given the Legislature's intent in passing the act to expand access to the court system for parties seeking judicial review of commission decisions.

agencies that regulate utilities in four of the 10 states whose laws we reviewed also limit judicial review to an appellate or trial court in a specific jurisdiction. In contrast, judicial review of the commission's decisions is not limited to a specific court. Rather, judicial review of the commission's decisions can occur in any of the six district courts of appeal or in the Supreme Court. This arrangement for California is not surprising given the Legislature's intent in passing the act to expand access to the court system for parties seeking judicial review of commission decisions.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,



ELAINE M. HOWLE
State Auditor

Date: July 14, 2005

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APPENDIX

Survey Results on Judicial Review of Decisions by Other Agencies Within the Federal Government and in Other States That Regulate Utilities

To compare the standards and processes for review of decisions by agencies that regulate utilities in other states and under the federal government with the standard and processes currently used for review of decisions issued by the Public Utilities Commission (commission), we mailed a survey to agencies that regulate utilities in 10 other states, the Federal Energy Regulatory Commission, and the Federal Communications Commission. We asked about the standard of review of decisions, the court in which a party may first seek judicial review, and whether review by the courts is mandatory or discretionary. This Appendix provides background information taken from each of the 12 surveyed entities' official Web sites, and Table A shows elements of our survey results by entity or state and decision type where applicable. For comparison, we include California in Table A to reflect elements pertaining to the commission.

FEDERAL COMMUNICATIONS COMMISSION

"The Federal Communications Commission is an independent United States government agency." It is "charged with regulating interstate and international communications by radio, television, wire, satellite, and cable." Its mission is "to ensure that the American people have available—at reasonable costs and without discrimination—rapid, efficient, nation- and worldwide communications services."

FEDERAL ENERGY REGULATORY COMMISSION

"The Federal Energy Regulatory Commission is an independent [U.S. government] agency that regulates the interstate transmission of natural gas, oil, and electricity." It "also regulates natural gas and hydropower projects." Its mission is to "regulate and oversee energy industries in the economic and environmental interest of the American public."

ILLINOIS COMMERCE COMMISSION

The Illinois Commerce Commission is responsible “for ensuring the citizens of Illinois safe, efficient, reliable, and uninterrupted utility service at reasonable prices; regulating the financial organization of utility companies so that they provide such services and at the same time providing utility companies with the opportunity to earn a reasonable profit; regulating commercial motor carriers of property operating within Illinois; ensuring the public safety through the inspection of railroads and natural gas pipelines operating within Illinois; protecting consumers from unethical and unlawful business practices by regulating household goods carriers and relocation towers; and assisting the development and implementation of local 9-1-1 emergency telephone systems throughout Illinois.”

MAINE PUBLIC UTILITIES COMMISSION

The Maine Public Utilities Commission has the power to regulate electric, telephone, water, and gas utility companies in the state. It also “responds to customer questions and complaints, grants utility-operating authority, regulates utility service standards, and monitors utility operations for safety and reliability.” Its mission is to regulate “utilities to ensure that safe, adequate, and reliable utility services are available to Maine customers at rates that are just and reasonable for both customers and public utilities.”

MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

The Massachusetts Department of Telecommunications and Energy “is responsible for the structure and control of monopoly telecommunications and energy in the commonwealth; developing alternatives to traditional regulation and traditional monopoly arrangements; controlling prices and profits; monitoring service quality; regulating safety in the transportation and gas pipeline areas; and for the siting of energy facilities.” Its mission is “to ensure that utility consumers are provided with the most reliable service at the lowest possible cost as determined by its orders; to protect the public safety from transportation and gas pipeline related accidents; to oversee the energy facilities siting process; and to ensure that residential ratepayers’ rights are protected under regulations.”

MICHIGAN PUBLIC SERVICE COMMISSION

The Michigan Public Service Commission regulates utilities that provide electric, natural gas, telecommunications, and transportation services in the state. Its mission is “to grow Michigan’s economy and enhance the quality of life of its communities by assuring safe and reliable energy, telecommunications, and transportation services at reasonable prices.”

NEW JERSEY BOARD OF PUBLIC UTILITIES

The New Jersey Board of Public Utilities regulates services in the state, such as natural gas, electricity, water, telecommunications, and cable television. It “addresses issues of consumer protection, energy reform, deregulation of energy and telecommunications services and the restructuring of utility rates to encourage energy conservation and competitive pricing in the industry.” It “also has responsibility for monitoring utility service and responding to consumer complaints.” Its mission is “to ensure the provision of safe, adequate, and proper utility and regulated service at reasonable rates, while enhancing the quality of life for the citizens of New Jersey, and performing these public duties with integrity, responsiveness, and efficiency.”

NEW YORK STATE PUBLIC SERVICE COMMISSION

The New York State Public Service Commission “regulates the state’s electric, gas, steam, telecommunications, and water utilities.” It also “oversees the cable industry.” It is responsible for “setting rates and ensuring that adequate service is provided by New York’s utilities.” In addition, it “exercises jurisdiction over the siting of major gas and electric transmission facilities and has responsibility for ensuring the safety of natural gas and liquid petroleum pipelines.” Its mission includes ensuring “safe, secure, and reliable access to energy, telecommunications, and water services for New York’s citizens and businesses.”

OREGON PUBLIC UTILITY COMMISSION

The Oregon Public Utility Commission “regulates the customer rates and services of the state’s investor-owned electric and natural gas companies, certain telephone services, and water utilities.” It is primarily responsible for ensuring that “customers

receive adequate services at fair and reasonable rates.” Further, it is required “to see that the regulated companies are allowed an opportunity to earn a fair return on their investments.”

PENNSYLVANIA PUBLIC UTILITY COMMISSION

The Pennsylvania Public Utility Commission regulates “public utility entities furnishing the following in-state services for compensation: electricity, natural gas, telephone, water, wastewater collection and disposal, steam heat, transportation of passengers and property by train, bus, truck, taxicab, aircraft and boat, and pipeline transmission of natural gas and oil.” By regulating public utilities and by serving as “stewards of competition,” it seeks to ensure “safe, reliable, and reasonably priced electric, natural gas, water, telephone, and transportation service for Pennsylvania consumers.”

PUBLIC UTILITY COMMISSION OF TEXAS

The Public Utility Commission of Texas oversees the state’s “wholesale and retail electric and telecommunications markets,” regulates the rates and services of investor-owned electric utilities and certain local telephone providers, and regulates the service quality of all local telephone providers as well as retail electric providers. Its mission is “to protect customers, foster competition, and promote high quality infrastructure.”

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

The Washington Utilities and Transportation Commission “regulates the rates, services, and practices of privately-owned utilities and transportation companies [that offer services to the state’s citizens], including electric, telecommunications, natural gas, water, and solid waste collection companies, pipeline safety, private commercial ferries, buses, and motor carriers.” Its mission is to protect the state’s “consumers by ensuring that utility and transportation services are fairly priced, available, reliable, and safe.”

TABLE A

Survey Results Regarding Judicial Review of Agencies That Regulate Utilities

State/Entity	Typically Applicable Decisions	Initial Court of Review			Nature of Initial Court's Review	
		Trial	Intermediate Appellate	Final Appellate	Mandatory	Discretionary Under Some Circumstances
California	Adjudicatory and quasi-legislative (both)*		•	•		•
Federal Communications Commission	Both†		•		•	
Federal Energy Regulatory Commission	Both		•		•	
Illinois‡	Both		•		•	
Maine	Adjudicatory			•	•	
	Quasi-legislative	•			•	
Massachusetts	Adjudicatory			•	•	
	Quasi-legislative	•				•
Michigan	Both		•		•	
New Jersey	Both		•		•	
New York	Both	•			•	
Oregon	Adjudicatory	•			•	
	Quasi-legislative		•		•	
Pennsylvania	Both		•		•	
Texas	Adjudicatory	•			•	
	Quasi-legislative§	•	•		•	
Washington	Both	•			•	

Source: Survey responses and applicable laws, rules, regulations, and case law.

* *Adjudicatory*, as used in this table, refers to formal agency decisions, often made in the context of formal hearings, that typically determine the rights of particular parties. Adjudicatory decisions typically involve investigations or complaint proceedings, or may involve the issuance or revocation of licenses. *Quasi-legislative*, as used in this table, refers to such actions as rulemaking, when an agency adopts rules and regulations. Decisions in California that result from ratesetting proceedings are subject to the same judicial review presented in this table.

† For licensing decisions, review may only be sought in the U.S. Court of Appeals, District of Columbia.

‡ The Illinois Commerce Commission also contains a Transportation Bureau, charged with administering state laws related to commercial transportation. The judicial review of decisions of this bureau begins at the trial court level in two counties in Illinois.

§ In Texas, the court in which a party may seek judicial review depends on the type of rule the party is challenging.

|| In Washington, a party may seek review in a trial court, where review is mandatory, but may seek direct review at the intermediate level under a certain procedure. However, under the procedure, review at the intermediate level is discretionary.

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Agency's comments provided as text only.

Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

June 27, 2005

Ms. Elaine M. Howle, State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814

Re: California Public Utilities Commission-Related Portions of the Redacted Draft Report of the
Bureau of State Audits (No. 2004-118) of June 21, 2005, As Revised on June 24, 2005

Dear Ms. Howle:

Thank you for the opportunity to review and discuss with your staff the Commission-related portions in the Redacted Draft Report of June 21, 2005, As Revised on June 24, 2005, entitled: "Public Utilities Commission: Since the Judicial Review Act of 1998, the Number of Petitions Seeking Judicial Review of Commission Decisions Has Increased." The Commission staff has no comments or clarification to the Redacted Draft Report, as revised, and believes that the characterizations of the agency's decision-making process and the judicial review statutes as applied to the Commission are factually correct.

Very truly yours,

(Signed by: Steve Larson)

Steve Larson
Executive Director

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Agency's comments provided as text only.

Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102-3688

June 27, 2005

Elaine M. Howle, State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

I am responding to State Audit Report Number 2004-118, entitled "Public Utilities Commission: Since the Judicial Review Act of 1998, the Number of Petitions Seeking Judicial Review of Commission Decisions Has Increased." We appreciate the opportunity to work with your staff, who were very helpful and cooperative. The portion of the report that was provided to us for review accurately captures and describes the complex law and procedure in this area.

Sincerely,

(Signed by William C. Vickrey)

William C. Vickrey
Administrative Director of the Courts

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Agency's comments provided as text only.

California Labor and Workforce Development Agency
801 K Street, Suite 2101
Sacramento, California 95814

June 24, 2005

Elaine M. Howle, California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

RE: Report on the California Public Utilities Commission: Petitions Seeking Judicial Review of
Commission Decisions

The Labor and Workforce Development Agency (LWDA) has reviewed the portion of the above-referenced draft report related to the Agricultural Labor Relations Board (ALRB). LWDA believes the draft report accurately represents the structure and procedures of the ALRB.

Thank you for the opportunity to comment on the draft report. Please contact me at 327-9064 if you have any questions.

Sincerely,

(Signed by: Richard Rice)

Richard Rice
Undersecretary

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press