

## Summary of California Supreme Court And Court of Appeals Orders Reviewing Decisions of The California Public Utilities Commission

Thomas J. MacBride, Jr., Revised September 30, 2016<sup>1</sup>

Since 1950 the California Supreme Court has issued 70 opinions in response to a Petition for Writ of Review<sup>2</sup> of a Commission Decision or a Petition for Writ of Mandate directed at the Commission. Most of those decisions reversed the Commission decision in whole or in part. The balance affirmed the order, dismissed the matter as moot or otherwise disposed of the dispute in a manner leaving the Commission's order undisturbed.

The Court of Appeal has issued 33 such opinions since the enactment of SB 1322 and SB 779 in the late 1990s. Most of the opinions affirmed the Commission order at issue in its entirety; the rest reversed the Commission's order in whole or in part. None of the 33 opinions of the Court of Appeal have been accepted for review by the California Supreme Court.

The advent of review in the Court of Appeal has clearly resulted in a greater number of written opinions reviewing Commission decisions than was the case prior to the enactment of Calderon-Peace-MacBride Judicial Review Act of 1998 (SB779). By way of illustration, six opinions were issued in 2004 alone, more than any year since 1979 when the Supreme Court issued eight opinions reviewing Commission decisions. Four opinions were again issued in 2013 and three were issued in 2014. In the last ten years, the Court of Appeal has issued 14 opinions in Commission writ matters. By contrast, only eight opinions were issued by the California Supreme Court in the *fourteen year* period from 1983 to 1996 (and only one after 1995).<sup>3</sup>

The California Supreme Court has largely declined to review Commission decisions, whether review is sought by a petition for writ of review of a Commission decision or by a petition for review of a decision of the Court of Appeal. Only two written decisions, by the Supreme Court in a Commission writ of review matter have been issued in the last 21 years. (See Para. 2 and 35, *infra*).

Of course, California appellate courts also decide writ petitions by summarily denying them without a full written decision; those summary denials have *res judicata*, but not *stare decisis*, effect. (See Para. 46, *infra*).

In reverse chronological order, the published decisions rendered in those cases are summarized (briefly) below. A table of cases and other authorities is provided at the end of the Summary. All statutory references are to the California Public Utilities Code unless otherwise indicated.

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<sup>1</sup>This memorandum reflects court action on petitions for writs of review through September 30, 2016. It only addresses decisions that have been certified for publication. See e.g. *S. Cal. Generation Coalition v. Cal. PUC*, 2008 Cal. App. Unpub. LEXIS 4023 (May 19, 2008). In addition to adding recent decisions, this update revises the text related to some of the older cases to reflect recent developments in the law addressed in those cases.

<sup>2</sup>The main portion of this memorandum only addresses decision arising from petitions for writs of review. The reader is advised to review other recent decisions construing important provisions of the Public Utilities Code. A past limitation of this document stems from the fact that decisions arising out of writ review of Commission decisions will, by their nature, not address the issue of the extent to which the Commission's decisions bind the Superior Court pursuant to Section 1759. Accordingly, an Appendix to this document addresses the most significant of these. The reader is also advised to review the opinion of the California Supreme Court on questions certified to it by the Ninth Circuit Court of Appeal in *Edison v. Peevey*, 31 Cal. 4th 781 (2003).

<sup>3</sup>The Constitutionality of the Legislature's limitation of appellate review of Commission decisions was recently explained by the Fifth District Court of Appeal in *Gerawan v. ALRB*, 27 Cal. App. 4th 284 (May 9, 2016).