

Senate Bill No. 659

CHAPTER 855

An act to amend Sections 1731 and 1768 of the Public Utilities Code, relating to public utilities.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 659, Soto. Public Utilities Commission: rehearings and judicial review.

Under existing law, after any order or decision has been made by the Public Utilities Commission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing with respect to any matters determined in the action or proceeding and specified in the application for rehearing. Existing law specifically prohibits a cause of action arising out of any order or decision of the commission construing, applying, or implementing Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session, relating to an electricity crisis, from accruing in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 10 days after the date of issuance of its order or decision, and requires the commission to issue its decision and order on rehearing within 20 days after the filing of that application.

Existing law also sets forth a specific procedure to expedite judicial review of an order or decision of the commission interpreting, implementing, or applying the provisions of Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session.

This bill would limit the expedited rehearing and review provisions applicable specifically to Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session, to only those orders or decisions of the commission that relate to either of the following: (1) the determination or implementation of the revenue requirements of the Department of Water Resources, or the establishment or implementation of bond or power charges necessary to recover those revenue requirements; or (2) in the determination of the department, require expedited review for the maintenance of any credit rating on any bonds or notes of the department issued pursuant to the division of the Water Code added by Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session, or to meet the



department's obligations with respect to any bonds or notes issued pursuant to that division.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session authorized the Department of Water Resources to purchase electric power for sale to customers of certain financially distressed electrical corporations, to issue bonds to fund a portion of the costs of those purchases, and to establish revenue requirements to recover its costs of operations and debt service from those customers. Chapter 4 contained additional provisions with respect to the rates and terms and conditions of service offered by electrical corporations.

(b) Chapter 9 of the Statutes of the 2001–02 First Extraordinary Session, enacted various amendments to the provisions described in subdivision (a), and also added expedited rehearing and judicial review provisions to the Public Utilities Code that apply to all orders and decisions of the Public Utilities Commission arising under Chapter 4.

(c) While the expedited rehearing and judicial review provisions may still be necessary with respect to orders and decisions of the commission that relate to the determination or implementation of the department's revenue requirements or the establishment or implementation of bond or power charges necessary to recover those revenue requirements, the expedited rehearing and judicial review provisions are not necessary or appropriate and should be repealed with respect to the other issues addressed by Chapter 4, so that rehearing and judicial review of orders and decisions of the commission that address those issues can be conducted under the statutory procedures that govern most other orders and decisions of the commission.

SEC. 2. Section 1731 of the Public Utilities Code is amended to read:

1731. (a) The commission shall set an effective date when issuing an order or decision. The commission may set the effective date of an order or decision prior to the date of issuance of the order or decision.

(b) After any order or decision has been made by the commission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in the action or proceeding and specified in the application for rehearing. The commission may grant and hold a rehearing on those matters, if in its judgment sufficient reason is made to appear. No cause of action arising out of any order or decision of the commission shall accrue in any court



to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 30 days after the date of issuance or within 10 days after the date of issuance in the case of an order issued pursuant to either Article 5 (commencing with Section 816) or Article 6 (commencing with Section 851) of Chapter 4 relating to security transactions and the transfer or encumbrance of utility property. For purposes of this article, “date of issuance” means the date when the commission mails the order or decision to the parties to the action or proceeding.

(c) No cause of action arising out of any order or decision of the commission construing, applying, or implementing the provisions of Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session that (1) relates to the determination or implementation of the department’s revenue requirements, or the establishment or implementation of bond or power charges necessary to recover those revenue requirements, or (2) in the sole determination of the Department of Water Resources, the expedited review of order or decision of the commission is necessary or desirable, for the maintenance of any credit ratings on any bonds or notes of the department issued pursuant to Division 27 (commencing with Section 80000) of the Water Code or for the department to meet its obligations with respect to any bonds or notes pursuant to that division, shall accrue in any court to any corporation or person unless the corporation or person has filed an application with the commission for a rehearing within 10 days after the date of issuance of the order or decision. The Department of Water Resources shall notify the commission of any determination pursuant to paragraph (2) of this subdivision prior to the issuance by the commission of any order or decision construing, applying, or implementing the provisions of Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session. The commission shall issue its decision and order on rehearing within 20 days after the filing of the application.

SEC. 3. Section 1768 of the Public Utilities Code is amended to read:

1768. The following procedures shall apply to judicial review of an order or decision of the commission interpreting, implementing, or applying the provisions of Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session that (1) relates to the determination or implementation of the revenue requirements of the Department of Water Resources or the establishment or implementation of bond or power charges necessary to recover those revenue requirements, or (2) in the sole determination of the department, the expedited review of an order or decision of the commission is necessary or desirable, for the maintenance of any credit ratings on any bonds or notes of the



department issued pursuant to Division 27 (commencing with Section 80000) of the Water Code or for the department to meet its obligations with respect to any bonds or notes pursuant to that division:

(a) Within 30 days after the commission issues its order or decision denying the application for a rehearing, or, if the application is granted, then within 30 days after the commission issues its decision on rehearing, any aggrieved party may petition for a writ of review in the California Supreme Court for the purpose of determining the lawfulness of the original order or decision or of the order or decision on rehearing. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the commission to certify its record in the case to the court within the time specified. No order of the commission interpreting, implementing, or applying the provisions of Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session shall be subject to review in the courts of appeal.

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

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

(d) All actions and proceedings under this section and all actions or proceedings to which the commission or the people of the State of California are parties in which any question arises under this section, or under or concerning any order or decision of the commission under this section, shall be preferred over, and shall be heard and determined in preference to, all other civil business except election causes, irrespective of position on the calendar.

(e) The provisions of this article apply to actions under this section to the extent that those provisions are not in conflict with this section.

