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Lawsuit Filed to Help Communities Fight Power Plant Air Pollution

*Concerned Public Denied Constitutional Rights to Challenge California Energy
Commission Permits*

SAN FRANCISCO— Environmental and Justice Groups went to court today to ensure the people of California have full access to the legal system to protect themselves from power plant air pollution and have a say about where and when new plants are built. Today's lawsuit aims to affirm the constitutionally guaranteed right to judicial review of permits issued by the California Energy Commission for polluting power plants. Attorneys at Earthjustice and Communities for a Better Environment (CBE) filed the suit in Alameda County Superior Court on behalf of the Center for Biological Diversity and CBE. The suit asks the court to affirm that superior courts have jurisdiction to hear appeals of licensing decisions.

“Families in surrounding neighborhoods of proposed power plants and cities alike have been frustrated for years by the lack of judicial review of Energy Commission siting and permitting decisions,” said Will Rostov, an attorney with the public-interest law firm Earthjustice. “When communities are denied their day in court, democracy unravels and pollution ensues.”

Californians have become increasingly concerned about the construction of new natural gas power plants. Not only are these energy facilities among the largest new stationary sources of air pollution in the state, they commit California to an energy future based on fossil fuels, including gas obtained by fracking.

Advocates have tried to address problems with the commission's decisions about where massive new power plants are sited, but have been stymied by the commission's claim that only the California Supreme Court can hear cases about mistakes in the approval process.

When state agencies make a mistake, the California Constitution guarantees that the trial courts, called superior courts, have the right to review the decisions. However, when the California legislature changed the law in 2001, cases about mistakes at the Energy Commission have been appealable only to the California Supreme Court, which can and does choose not to take the case. The Supreme Court has not taken even one direct appeal of a licensing decision since 2001.

California's government is built on a system of checks and balances within the three branches of government. A key part of that system is the constitutional requirement that most decisions made by executive branch agencies, like the Energy Commission, are subject to review by the three levels of courts in the judicial branch. The failure to have the review begin in the trial courts has eroded those vital checks and balances. In addition, the law prohibits any court from reviewing the facts of the licensing decision.

“Over the last two decades, CBE has had to fight new polluting power plants in our communities again and again,” said CBE staff attorney Shana Lazerow. “Based on our experience, the Energy Commission is completely confident that it need never justify its decisions in any court of law. Until the law that keeps the public out of superior court is declared unconstitutional, communities will pay the price with their health and safety.”

The California legislature established the Energy Commission in 1974 to serve in part as a “one-stop” permitting authority for thermal power plants fifty megawatts or higher. In the 1990s, the state deregulated the energy industry, changing the way power plants are permitted and built. Since deregulation, plants built by independent power producers only require a license from the Energy Commission. Current law requires the Commission to interpret and implement a wide range of statutes and ordinances that usually fall under other agencies' jurisdiction—and to do so without any meaningful judicial check on its actions.

“The energy industry will continue building plants we don't need in places they don't belong until people have the right to oppose bad decisions by the government agency approving these polluting facilities,” said Kassie Siegel, director of the Center for Biological Diversity's Climate Law Institute. “We filed this case because the need for meaningful public involvement in decisions affecting California's energy future is more urgent than ever.”

Link to lawsuit:

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