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Opponents of new power plants in California get right to sue in local courts

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The state Supreme Court cleared the way Wednesday for opponents of large new power plants to file suit in their local Superior Court under environmental laws.

The court denied review of a lower-court ruling striking down a state law, passed during an energy crisis in 2001, that required foes of new natural gas facilities and other thermal plants to sue the state Energy Commission in the state Supreme Court. That court decides which cases to review and, according to environmental groups, has not granted review of any such cases.

In a November ruling, the First District Court of Appeal in San Francisco said the 2001 law violates the state Constitution, which, with some specified exceptions, allows challenges to government actions to be filed in a county Superior Court, where a judge would review the legality of the Energy Commission's action. The judge's ruling could be appealed.

The appeals court decision became final Wednesday when the court unanimously denied review of the commission's appeal.

“This is a major step forward in the struggle to protect communities from dirty power plants and move our state toward cleaner energy,” said attorney Maya Golden-Krasner of the Center for Biological Diversity, one of the environmental groups that challenged the law. “Now, instead of a one-stop shop for permitting, communities

have a real chance to fight polluting power plants in their neighborhoods and move us towards a clean energy future.”

The ruling does not bar new power plants or limit their number, but allows opponents to argue that the commission failed to properly consider the plants’ environmental effects or their impact on local communities. They could also challenge the Energy Commission’s approval of modifications to existing plants.

The ruling applies to larger plants, those generating more than 50 megawatts of power, and does not authorize similar challenges to hydroelectric plants or currently designed solar power plants, said Shana Lazerow, legal director of Communities for a Better Environment. She said most of the plants that now could be challenged in Superior Court would be powered by natural gas.

State lawyers representing the Energy Commission, whose members are appointed by the governor, argued that allowing review only in the state Supreme Court streamlines power plant review and avoids unnecessary delays.

But the state Constitution “does not authorize the Legislature to constrain judicial review of Energy Commission decisions,” Justice Alison Tucher said in the appeals court’s 3-0 ruling, which upheld an Alameda County judge’s decision.