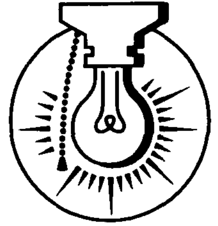
Public Utilities Commission



Executive Director: Wesley M. Franklin ♦ President: Richard A. Bilas ♦ (415) 703-2782 ♦ (213) 576-7000 ♦ Consumer Affairs—(800) 649-7570 ♦ Electric Education Call Center—(800) 253-0500 ♦ Internet: www.cpuc.ca.gov/

The California Public Utilities Commission (PUC) was created in 1911 to regulate privately-owned utilities and ensure reasonable rates and service for the public. Today, under the Public Utilities Act of 1951, Public Utilities Code section 201 *et seq.*, the PUC regulates more than 1,200 privately-owned and operated gas, electric, telephone, water, sewer, steam, and pipeline utilities, as well as 3,300 truck, bus, railroad, light rail, ferry, and other transportation companies in California. The Commission grants operating authority, regulates service standards, and monitors utility operations for safety.

It is the duty of the Commission to see that the public receives adequate services at rates which are fair and reasonable both to customers and utility shareholders. Overseeing this effort are five commissioners appointed by the Governor with Senate approval. The commissioners serve six-year staggered terms.

The Commission has quasi-legislative authority in that it establishes and enforces administrative regulations, some of which are codified in Chapter 1, Title 20 of the California Code of Regulations (CCR). The Commission also has quasi-judicial authority; like a court, it may take testimony, subpoena witnesses and records, and issue decisions and orders. The PUC's Administrative Law Judge (ALJ) Division supports the Commission's decisionmaking process; PUC ALJs preside over evidentiary and other types of hearings and forward recommended decisions to the Commission, which makes all final policy, procedural, and other decisions. In its decisionmaking, the Commission attempts to balance the public interest and the need for reliable, safe utility services at reasonable rates with the need to ensure that utilities operate efficiently, remain financially viable, and provide stockholders with an opportunity to earn a fair return on their investment. The PUC encourages ratepayers, utilities, consumer, and industry organizations to participate in its proceedings.

PUC staff—which include economists, engineers, ALJs, accountants, attorneys, administrative and clerical support staff, and safety and transportation specialists—are organized into twelve major divisions and offices, including industry-specific divisions addressing energy, telecommunications, rail safety and carriers, and water. The Commission's Consumer Services Division attempts to resolve consumer complaints regarding utility service, safety, and billing problems; its various branches provide consumers with information, analysis, conflict resolution, and advocacy services to help them make intelligent decisions about utility purchases. The San Francisco-based Public Advisor's Office and the Commission's outreach offices in Los Angeles and San Diego provide procedural information and advice to individuals and groups who want to participate in formal PUC proceedings. Under Public Utilities Code section 309.5, the Office of Ratepayer Advocates independently represents the interests of all public utility customers and subscribers in Commission proceedings in order to obtain "the lowest possible rate for service consistent with reliable and safe service levels." The Strategic Planning Division analyzes emerging policy issues and changes in the regulatory environment caused by economic, financial, institutional, and technological trends, and helps the Commission plan future policy.

On June 9, Governor Davis announced his appointment of Joel Z. Hyatt and Carl W. Wood as members of the PUC. Hyatt is an attorney who co-founded Hyatt Legal Plans, Inc., in 1990 and Hyatt Legal Services in 1997; since 1998, he has served as chair of Global Business Network. Wood has twelve years of experience in the utility industry, analyzing regulations and restructuring issues for electric and natural gas providers. A former electrical technician, Wood has served with the Utility Workers Union of America since 1986. The other members of the PUC include Commission President Richard A. Bilas and Commissioners Henry M. Duque and Josiah L. Neeper.

MAJOR PROJECTS

Electricity Industry Restructuring

The PUC continues to implement its precedent-setting December 1995 decision to deregulate California's $23 billion electricity industry. Under the new regime, the PUC maintains regulation of the power distribution grid (*e.g.*, the rights of way and wiring which bring power into homes and businesses), but subjects power generation to competition.

The Commission's decision required approval by the Federal Energy Regulatory Commission (FERC) and the state legislature. In 1996, the California legislature confirmed most of the PUC's initiative by enacting AB 1890 (Brulte) (Chapter 854, Statutes of 1996). Effective March 1, 1998, the statute authorized creation of an "Independent System Operator" (ISO), which assumed control of the power grid that transmits electricity statewide between the respective utilities controlling local delivery; further, a second agency, the Power Exchange (PX), functions like a stock exchange, enabling sellers and buyers to bargain for the best price for electricity. AB 1890 authorizes "direct access"—direct transactions can occur between electricity suppliers and end use customers without effective interference from the utility carrying the electricity. AB 1890 also outlined a general plan to accomplish the "unbundling," or separation, of the three distinct

functions of electricity service: (1) generation, (2) transmission, and (3) distribution (including the unbundling of the maintenance of electricity lines, metering, and billing). Thus, under the new scheme, the traditional local utility—now called a "utility distribution company" (UDC)—will continue to transmit electricity to end users, but generation and some aspects of distribution (such as metering and billing) are being removed from direct private utility control and placed under a competitive format managed by the ISO or the PUC. Power generators are now called "electricity service providers" (ESPs).

AB 1890 also permits utilities to charge ratepayers a "competition transition cost " (CTC) to compensate them for "stranded costs" or "sunk investments" in imprudent power generation facilities; the CTC appears as a special itemized cost on energy bills. Further, the utilities were allowed to freeze the price of electricity for residential and small business users at high 1996 levels (about 50% above the national average). The bill also required the utilities to give consumers a 10% reduction in electricity rates from those in effect on June 10, 1996. This rate reduction was effective January 1, 1998 and continues until the earlier of March 31, 2002, or such time as each utility fully recovers its transition costs (the "transition period"). Many of the utilities have sought to sell these assets, or place them in other entities, to end the freeze expeditiously. However, the rate reduction was accompanied by the issuance of "rate reduction bonds" by the utilities to finance the reduction, and consumers are required to pay the borrowed money back in another specially designated charge on the monthly bill called "trust transfer amount" (TTA). The latter charge is greater than the rate cut (due to interest accumulation). In other words, the rate reduction bonds were secured by a surcharge that completely offset the reduction itself. Finally, the bill promised ratepayers an "anticipated result" of "no less than a 20% reduction" in post-transition rates.

As described in prior issues, the PUC's implementation of the new scheme has been fraught with problems. *[16:2 CRLR 140–44; 16:1 CRLR 158–62; 15:4 CRLR 234-37]* The proceedings described below underline the consumer critique of the PUC's new method of preventing excess rates by the remaining monopoly power utilities. Consumer advocates argue that a new and complicated set of terms of art and multi-step proceedings have been created. The current process breaks rate regulation into "transition period" and "post-transition period" phases, and separates out rules and factors for individual decisionmaking in separate hearings. The fragmented series of proceedings is impossible for consumer advocates to cover comprehensively, and advocates contend this is to the advantage of the remaining monopoly utilities—which have overwhelming legal and expert witness resources available.

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Moreover, the process lacks the critical reference point of traditional "rate of return" ratemaking. That process allows utilities to assess ratepayers for their prudent costs, plus a "rate of return" on a "rate base." That rate base represents the "used and useful" value of the physical plant used by the utility for the benefit of its ratepayers. The current process avoids the calculation of the most important element of ratemaking—the proper calculation of the rate of return on invested capital. That is the standard against which all investment is measured in a capitalist society. Where that rate of return is substantially above fair market levels, rates are set too high. Consumer advocates argue that the current phalanx of complex proceedings described below studiously avoids that reference point in order to cloak the true price being paid for the abandonment of physical plant which is, in fact, not "used and useful" and is not properly added to the invested capital against which ratepayers should be obligated to finance a profit return. The PUC's shift to performance-based ratemaking, which is based on adjustment of prior approved rate levels without proper calculation of invested capital, creates windfall profits for the utilities (see discussion below). Some commentators believe that gaining the political support of the utilities for deregulation required some concessions to assure certain stockholder confidence. Others, including the Utility Consumers' Action Network (UCAN) and The Utility Reform Network (TURN), have criticized the PUC's facilitation of an unmeasured "buy-off" by abandoning traditional rate of return ratesetting, and in particular by avoiding the calculation of actual "used and useful" capital entitled to a return. Instead, the agency has engaged in elaborate arcane proceedings, largely initiated by counsel for the utilities.

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◆ ***Performance-Based Ratemaking.*** As to Pacific Gas & Electric (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric (SDG&E)—the remaining monopoly utilities that deliver electricity to businesses and homes, the PUC has altered traditional "fair rate of return" maximum rate regulation at the same time it has devolved power generation and some transmission to a less regulated competitive arrangement. As noted above, instead of calculating prudent costs and allowing their recovery plus a fair

rate of return on used and useful invested capital, the PUC now engages in what it terms "performance-based ratemaking" (PBR). Under PBR, utilities' rates are set according to an average market price for electricity. If a UDC is able to purchase electricity for less than the benchmark price, the savings are split between the ratepayers and the utility's stockholders. The theory behind PBR is to give the utility an incentive to improve efficiency by allowing it to share in savings, to provide a reward similar to that extant in the free market for improved performance. However, the calculations made under this more nebulous standard lack the reference point of fair rate of return analysis, which is important in preventing excess profit—the purpose of maximum rate control over a monopoly enterprise. Consumer critics argue in particular that much improved efficiency in power distribution comes from the economy of scale advantage of serving a growing population. Unit costs should fall without any improved performance by the utility; allowing it to take a substantial share of such cost reductions provides an improper windfall not replicating the dynamics of a free and competitive market.

As part of this ongoing process, the PUC issued a decision (D. 99-05-030) on May 13 which approves a new PBR mechanism to evaluate SDG&E's revenue requirement. Current rates will not change due to this PBR method, but it will be used when the Commission next reviews SDG&E's performance. At that time, the PUC will look at how well SDG&E meets benchmarks set today in the areas of employee safety, electricity reliability, customer satisfaction, call center responsiveness, and service guarantees. When SDG&E performs better than the benchmarks set, it will receive a reward through ratepayer cost inclusion or increase. When it performs worse, it will be penalized and customers will receive a refund. On October 1, SDG&E filed its annual advice letter to update electric distribution and gas rates for 2000 using the approved PBR mechanism.

In SCE's PBR Midterm Review (A. 99-03-020), PUC staff held workshops on June 15–18 to discuss the reports and studies provided by SCE in its application, and to formulate recommendations to the Commission. The Energy Division issued a workshop report on July 16; and comments on the workshop report were filed on August 6. This matter was considered submitted as of September 20. A decision is expected before the end of the year.

◆ ***Other Proceedings to Establish Calculations for Other Costs.*** In addition to establishing ground rules for PBR and its reward for efficiency enhancement (discussed above), the PUC is engaged in separate proceedings to establish ground rules as to underlying cost calculations to which the PBR factor may be added. These separate proceedings concern the calculation of "avoided costs" (those costs that are no longer incurred because competition has removed the need for those operations), which are properly subtracted from the utility revenue requirement; and "long-run marginal costs" (operating costs excluding fixed threshold investment). These costs may be reflected in "annual transition cost proceedings" (ATCP) (allowing the utilities to adjust for cost changes during the transition-to-competition implementation period ending April 1, 2002), or in the comprehensive "revenue adjustment proceedings" (RAP), both of which are discussed below.

◆ ***Annual Transition Cost Proceedings.*** During the period of transition (while utilities dispose of uneconomic generating facilities to achieve stability), the PUC continues to regulate rates through annual transition period rate adjustments. These adjustments involve cost recovery to utilities subject to competition-caused loss. Part of that loss is calculated through the CTC (discussed above). That loss also includes restructuring implementation costs—the costs that occur when a utility gives up its generating plants and associated assets. All three utilities filed their first ATCP applications in September 1998; at this writing, a proposed decision is expected in mid-December.

◆ ***SDG&E Divestiture and Early Application to End the Rate Freeze.*** In December 1997, SDG&E filed an application (A. 97-12-039) to divest all of its fossil fuel plants, its 20% interest in the San Onofre nuclear powerplant, as well as all of its long-term power purchase contracts. On February 18, 1999, the Commission approved (D. 99-02-073) the sale of SDG&E's Encina power plant and 17 combustion turbines to a consortium comprised of Dynergy Power Corporation and NRG Energy, Inc. As of December 31, 1997, Encina and the combustion turbines had a combined net book value of $94.8 million; the sale price was $356 million.

On March 4, 1999, the Commission approved the sale and donation of SDG&E's South Bay powerplant to the San Diego Unified Port District. Under the agreement, the Port District will pay $110 million for the plant to SDG&E, and SDG&E will provide the Port District with a charitable donation of the main plant site land, the LNG Parcel, the Transmission parcel, and the value of the South Bay plant facilities (which exceeds $110 million). The Port District has leased the plant to Duke Energy to operate.

On February 19, SDG&E filed an application (A. 99-02-029) proposing to end the rate freeze for its customers effective July 1, 1999. *[16:2 CRLR 143]* On May 27, the Commission approved (D. 99-05-051), with certain conditions, a settlement filed by SDG&E, PG&E, SCE, the PUC's Office of Ratepayer Advocates (ORA), other large and small customer interest groups, ESPs, and the PX, which ended SDG&E's rate freeze. The settlement determines how SDG&E's accounting, rates, and customers' bills will change once the utility's capital investment in generation facilities is paid in July 1999. Now that SDG&E's capital investment is paid off, the CTC on consumers' bills will decrease. (The CTC charge remains minimally on bills because it is also used to recover cost for purchase power contracts, nuclear plants, and certain employee costs which do not lapse until later.) Pursuant to that decision, SDG&E filed new post-transition tariff rates effective July 1, and San Diego County became the first California region to experience the "benefits" of electric deregulation.

As discussed above, AB1890 ordered a rate freeze at 1996 levels and a 10% rate reduction while investments were being paid off through the CTC; the bill also permitted the utilities to seek bonds to cover the reduction and finance the bonds through the TTA. As of July 1, the investments were paid off, the rate freeze ended, the CTC is somewhat reduced, and the TTA remains on the bill. As a result, SDG&E electricity rates rose by 10% in July and August, and consumers were mystified. SDG&E insists that customers' bills will decrease on a yearly average; however, it acknowledges that summer bills may be higher due to seasonal increased energy consumption. As designed by the deregulation plan, SDG&E purchases electricity through the PX at prices that change every hour. When the demand for electricity is high (summer), costs will increase. For customers wanting to avoid seasonal fluctuations in their bills, SDG&E offers a level payment plan that averages out the bill based on an annual estimate.

San Diego-based Utility Consumers' Action Network sees it differently. On October 29, UCAN released a white paper entitled *The Coming Electric Shock*, in which it warned San Diego residents that instead of the legislatively promised 20% reduction in rates due to deregulation cost savings at the end of the transition period, they would more likely see a 20% increase because of San Diego's "dysfunctional" power market. The San Diego region only has generating capacity to meet 35% of the area's needs. Therefore, it must import power from distant locations. Further, SDG&E's parent company, Sempra Energy, controls natural gas distribution throughout southern California. UCAN contends that Sempra is manipulating prices, including increases in natural gas prices to electricity-generating plants which are now no longer part of SDG&E.

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◆ ***PG&E Plant Divestitures.*** On April 21, 1999, the PUC filed its decision (D. 99-04-026) concerning major PG&E divestiture of generating assets as part of its transition-to-deregulation process. D. 99-04-026 approved the sale of a second grouping of PG&E powerplants. Southern Energy purchased the Potrero and the Delta plants for $801 million; the net book value of these plants was $318 million. Calpine purchased the Sonoma County Geysers and the Lake County Geysers powerplants for a total of $ 212.8 million; the combined net book value of these plants was $273 million.

Earlier, PG&E had sold a total of 2,645 MW of capacity (Morrow Bay—1,002 MW; Moss Landing—1,478 MW; and Oakland Powerplant—165 MW) to Duke Power Services for $501 million; the net book value of these plants was $390 million.

◆ ***Southern California Edison Divestiture.*** SCE offered all twelve of its oil/gas-fired powerplants for sale through an open auction process approved by the PUC. Ten of these plants were sold in November 1997, and the sale was approved by the PUC on December 16, 1997 (D. 97-12-106). The two remaining units—Long Beach and Ormond Beach—were sold in early 1999. The total capacity of all twelve plants was 9,562 MW. The first ten plants sold for a total of $ 1.115 billion—2.65 times their net book value. Long Beach (530 MW) was sold to NRG Energy and Destec Energy for $29.9 million. Ormond Beach was purchased by Houston Industries for $40 million. The net book value for this plant was $125 million.

◆ ***Post-Transition Period Ratemaking Applications.*** In January 1999, PG&E, SCE and SDG&E proposed (A. 99-01-016, *et al.*) methods to mark the end of the transition period and to establish the mechanism for future revenue adjustment proceedings. Commissioner Duque issued a scoping memo on March 11. The proceeding addresses what is needed to end the rate freeze and other ratemaking matters (*e.g.*, balancing account treatment for energy procurement costs and ongoing CTC recovery).

The scope of the proceeding includes broad rate design matters which are integral to ending the rate freeze and the development of post-transition ratemaking. The Commission addressed the mechanics of ending the rate freeze in Phase 1, and will consider post-transition rate regulation in Phase 2. *[16:2 CRLR 142–43]* Opening briefs in Phase 2 were filed on October 22, and reply briefs are due on November 5. At this writing, the ALJ's proposed decision is scheduled for December 1999, with a final decision in early 2000.

◆ ***Revenue Adjustment Proceedings.*** As discussed briefly above, the purpose of the revenue adjustment proceeding (RAP) is to consolidate the revenue requirements for each utility, including transition costs and PBR factors discussed above, and a rate of return to be allowed each utility. The RAP is an omnibus decision that pulls together all cost-related proceedings, calculates the revenue needed by the utility, and formulates a "rate design" to determine how charges are to be imposed among customers and services proffered. All three UDCs filed their RAP applications in August, and the proceedings are ongoing.

◆ ***Reduced Rate of Return for PG&E, SDG&E.*** On June 10, the PUC set the 1999 return on equity (ROE) at 10.6% for PG&E and SDG&E. This ROE is a reduction for PG&E from the current 11.2%, and a reduction for SDG&E from the current 11.6%. The rate of return (ROR) is set at 8.75% for both companies. The new 8.75% ROR results in a reduced revenue requirement for both utilities, as follows: PG&E—a reduction of $46.3 million for electric service and $15.5 million for gas; and SDG&E—a reduction of $14.6 million for electric service and $4.8 million for gas.

This is the first time the Commission has addressed the rate of return issue for electric utilities since electric

restructuring began. The rate of return calculation includes two elements: the percentage return on the "rate base" or invested capital, and the calculation of allowable invested capital. The RAP proceeding adjusts the percentage return, but does not analyze that portion of the utilities' investment which is "used and useful" and which is properly included to calculate the revenue change. Rather, the Commission has calculated the ROR as the weighted average of the utilities' cost of capital: the cost of long-term debt, cost of preferred stock, and the return on common stock equity. The problem with using stock prices as the basis against which the rate of return percentage is applied is that they may bear little relationship to the traditional equity value of the capital assets used and useful for ratepayers. Rather, the stock prices themselves tend to fluctuate based on anticipated profit, which in turn varies according to the revenue achieved. In other words, the utilities have created a self-fulfilling justification for excessive rates. As rates go up, profits go up; as profits go up, the stock prices go up, thus lowering the rate of return on the previous profits notwithstanding their excessive nature.

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◆ ***Distributed Generation and Distribution Competition Rulemaking.*** The PUC is examining the potential for competition in distribution services, including distributed generation (electricity produced on or near a customer's premises), and the roles and responsibilities of big electric distributors. Distributed generation (also referred to as "distributed energy resources") refers to small, modular electric generation and/or storage devices installed close to the customer's premises.

This rulemaking (R. 98-12-015) was initiated on December 17, 1998 to consider whether the Commission should pursue further reforms in the structure and regulatory framework governing electricity distribution services. This effort is being undertaken as a collaborative effort among the PUC, the California Energy Commission, and the Electricity Oversight Board. Its goal is to identify the range of issues on distributed generation and distribution competition and their interrelationships, and to explore options.

Over 61 parties submitted opening comments in March 1999, responding to a series of initial questions and providing views on whether to undertake a more focused consideration of the UDC's role in distributed generation, or a broader look at the overall future role of the UDC. Reply comments from over 37 parties were filed on May 17.

On October 21, the PUC issued a decision (D. 99-10-065) that identifies the "electric distribution competition" issues to be addressed in future rules. They include the benefits and disadvantages of distributed generation, end user side-distributed generation (a plant generating some of its own electricity also provides some to another plant), grid side applications of distributed generation (a plant with its own generating capacity for itself has excess power to contribute to the grid), interconnection issues, sale of excess electric capacity, rate design issues, stranded costs, California Environmental Quality Act issues, and local government impacts. In addition, the decision sets forth twelve additional issues inherent in competition in these distributed services (from line extensions to rights of way and metering procedures). Finally, the decision lists broader impacts to examine, including labor, consumer education, natural gas infrastructure impacts, and requests from the Solar Development Cooperative. The decision does not set policy, but rather sets the agenda of questions to be answered in future proceedings. Accordingly, the decision directs the PUC's Division of Strategic Planning and Energy Division to report on policy options.

◆ ***PG&E Outage.*** On September 2, the PUC issued an interim order (D. 99-09-028) in an ongoing investigation (I. 98-12-013) of PG&E's power outage that cut power to most of San Francisco on December 8, 1998. The blackout left most of the city and outlying area without power for most of the workday, affecting one million PG&E customers from San Mateo to San Francisco. The Commission noted its concern about "the implication that a major metropolitan area can remain vulnerable to a major outage of extended duration as a result of simple human error." The order advances the PUC investigation, setting forth a process of collaboration with the ISO and scheduling various actions, beginning with a prehearing conference in November.

The Commission also resolved a threshold question about the extent of its jurisdiction over the safety and reliability of PG&E's system, finding that it has both the authority and the obligation to investigate the outage. In a collaborative effort with the ISO, the agencies will seek to determine the cause of the outage and ways to prevent future blackouts. The ISO, which has concurrent jurisdiction over transmission outages, has already imposed a $440,000 fine against PG&E for the December 8 outage. PG&E has submitted a report to the Commission, which admits liability for the outage and attributes its cause to an isolated human error on its system, but recommended no further action by the PUC. The PUC commissioned its own investigation of the cause of the blackout; in a criticized report, the Commission's consultant concluded that "PG&E has an error prone work culture that tends to bypass procedures and work practice requirements" (see agency report on BUREAU OF STATE AUDITS for related discussion).

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Pursuant to D. 99-09-028, the assigned Commissioner will issue a ruling with a draft of protocols, which will be posted on the PUC's website as well as mailed to the service list, and upon which interested parties may comment. The Commission will adopt the protocols by means of a resolution, upon which all parties will have a further opportunity to comment.

◆ ***Energy Efficiency and Demand Side Management.*** When the PUC regulated power comprehensively, it was able to impose cross-subsidies through its rate design and to reward customers for conservation, notwithstanding its exclusion in normal market dynamics. With the imposition of competition, the Commission needs to formulate new ways to stimulate energy conservation, which provides long-term economic and social benefit. For example, use of renewable energy resources will exact a cost on future generations as the supply is diminished, a cost the marketplace will not assess. Similarly, benefits flowing from more efficient energy use are normally not the first priority of those selling energy. The PUC is in the midst of two proceedings concerning energy efficiency and demand side management programs (D. 99-08-021 and R. 98-07-037). D. 99-08-021 addresses standards for conservation which may apply in 2000 and 2001, including low-income weatherization programs. Hearings on the policy and procedural issues were held during the last week of August and first week of September; hearings on program accomplishments are set for early November. Further proceedings are expected in 2000.

◆ ***Low-Income Programs.*** On May 17, PG&E—on behalf of itself, SCE, SDG&E, and SoCal Gas—filed a joint proposal to standardize the treatment of administrative costs for the California Alternate Rates for Energy (CARE) and Low-Income Energy Efficiency (LIEE) programs. CARE provides eligible low-income households with a 15% discount on their electric and gas bills; LIEE provides funding to weatherize and install other energy savings devices to reduce the amount of energy required by eligible low-income families. Comments on the joint proposal were due June 30; responses were due July 12. On June 1, the Low-Income Governing Board submitted its recommendations on standardized utility reporting guidelines for the CARE and LIEE programs.

Applications from the utilities to competitively bid out their program year 2000 LIEE programs were due July 1, 1999. A prehearing conference was held on August 24 regarding these applications which categorized the proceeding as rate-setting. A scoping memo is expected soon, and hearings are scheduled for November.

◆ ***Consumer Education.*** In D. 99-05-051, in which the Commission approved the multi-party settlement related to SDG&E's post-transition rate application (see discussion above), the PUC also required SDG&E to implement a communications plan. The utility is to provide consumers with information about the post-transition competitive energy market. The communications plan includes bill inserts, print and radio advertisements, and brochures available through the PUC's Electric Education Call Center and SDG&E. The materials being developed by SDG&E are subject to Commission review and approval.

The utilities' initial customer education program mandated by AB 1890 and approved by the Commission in D. 97-08-064 concluded on May 31, 1998. However, the PUC's Electric Education Call Center started in 1997 continues to serve residential and small business customers in 11 languages, with further language support available when necessary, providing customer service operators to answer questions and forward printed materials. Consumers may also access the consumer education website at <www.knowledgeispower.org>.

◆ ***Consumer Protection.*** Pursuant to SB 477 (Peace) (Chapter 275, Statutes of 1997), the Commission adopted rules to protect consumers from unfair or abusive marketing practices by electric service providers. *[16:2 CRLR 141-142]* Among other things, an ESP offering service to small commercial or residential customers must be registered by the Commission. The PUC adopted interim standards for ESP registration in D. 98-03-072, and established final standards in D. 99-05-034. Currently, 35 ESPs are registered with active status. Information for consumers and ESPs is available at the "Electric Service Provider" link on the PUC's website.

◆ ***Guide for Comparing Electricity Prices.*** The Office of Ratepayer Advocates (ORA), an independent unit of the PUC representing ratepayers, has released the second edition of its *Guide to Residential Electric Service Options*. The document, available on the Web or in hard copy, makes it easier to compare prices and services of energy providers in each local service territory. The guide compares the service plans, rates, and monthly bills of electricity providers in California. The guide, combined with the Shoppers Guide, another brochure available from the ORA, gives consumers the information they need to make informed decisions.

Options To Bring More Competition Into the Natural Gas Industry

Partially responding to SB 1602 (Peace) (Chapter 401, Statutes of 1998) *[16:1 CRLR 168]*, on July 8 the PUC began an investigation (I. 99-07-003) identifying the most promising options to enhance competition in the natural gas industry. The Commission also began a related investigation to assess the costs and benefits of the options, and will report to the state legislature recommendations that would facilitate healthy competition. The options are:

Partially responding to SB 1602 (Peace), on July 8 the PUC began an investigation identifying the most promising options to enhance competition in the natural gas industry.

• Enhance consumer protections for "core customers" (residential and small commercial customers that rely on the utility for all their natural gas needs) to enable them to make informed

decisions regarding their options, protect themselves from unscrupulous providers, and seek assistance if problems arise.

- Improve access to transmission and storage services, and transmission, storage, and balancing rights trading. In addition to companies using the utilities as a primary source for transmission and storage services, the Commission will consider creating a secondary market.
- Improve the "balancing service" whereby gas is added to the pipeline system by the utility pipeline operator when supplies are low and gas is drawn off the system when supplies are high.
- Identify appropriate conditions for offering "hub services," which include holding an extra gas supply somewhere in the system, or selling some of a utility's gas to a customer for short-term use.
- Refine gas utility procurement practices and expand competitive options for core customers.
- Improve the flow of information related to market transactions. The Commission is looking at the information the gas utilities currently provide to customers and competitors to determine if it is sufficient or if more should be provided.
- Assure accountability for system safety and meter choice by requiring utilities to be responsible for installation, operation, and maintenance of their system and the meters they use, as well as provision of after-meter services. Standards will be developed for manufacture and utility procurement of alternative metering technologies.
- Consider billing options that allow competitors to bill for their services through the utilities' bills.
- Separate costs and rates for all gas utility services.
- Review inconsistencies in programs administered by PG&E and SoCal Gas to determine if they need to be consistent.

The Commission is seeking to develop a structure that preserves the utilities' traditional role of providing full service to core customers while clearing obstacles to the competitive offering of gas, transmission, storage, balancing, and other services for all customers throughout the state.

Telecommunications Regulation

Telecommunications deregulation has preceded California's electricity deregulation by several decades. The seminal 1982 consent decree in *United States v. AT&T*, 552 F.Supp. 131 (D.D.C. 1982) (termed the "Modified Final Judgment" or "MFJ"), divested the defendant of its existing national telephone monopoly, spinning out the so-called "Baby Bells" to substantial regulation by state public utilities commissions, and introducing competitive choice in long distance service, telephone equipment manufacture, inside wiring of homes, and other aspects of telephone service then subject to AT&T control. This divestiture created 22 local operating companies known as Bell operating companies (BOCs). These BOCs were then grouped into seven unaffiliated regional BOCs (RBOCs). Because of subsequent mergers, five RBOCs are now in operation.

The newly competitive environment has created serious problems in telecommunications, including: (1) the unclear division of jurisdiction between state commissions and the Federal Communications Commission (FCC); (2) serious and growing concentration in the provision of cable services, which have emerged as an alternative to telephony; (3) government's failure to apply "cross-ownership" media restrictions to cable (thus allowing cable giants Time Warner and AT&T to consolidate significant holdings in newspapers, magazines, entertainment production, theaters, *et al.*, and—together with the enterprises of Rupert Murdoch—to dominate television satellite transmission); (4) government's failure to regulate maximum rates by cable providers, allowing them to achieve monopoly power profit to cross-subsidize and undercut potential competitors unfairly; and (5) Internet access problems (including the contention of the cable giants that they can restrict Internet access to their designated Internet service provider now being tested in *Portland v. AT&T*, currently pending before the U.S. Ninth Circuit Court of Appeals). *[16:2 CRLR 144–45]* Most of these issues lie beyond the purview of the PUC, but they affect the market position of the telephone companies subject to its continuing jurisdiction.

The 1982 MFJ precluded the BOCs from providing interLATA services. "InterLATA" refers to service that crosses different "local access and transit areas" (LATAs). In common parlance, the regional bell companies are not allowed to provide "long distance" service themselves (except to deliver the message locally). The court included this prohibition to prevent the BOCs from using their local exchange monopoly to bar competitive entry into the long distance field. The BOCs may request permission to enter the long distance market if they can show that they are no longer capable of using monopoly power to stifle competition. None of the BOCs have yet received permission to enter the long distance market under the MFJ.

The federal Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) (hereinafter FTA) was enacted to enhance competition in telecommunications, including local markets. Hence, many provisions were created to force incumbent local exchange carriers (LECs) to open their markets to competitors. At the same time, BOCs may potentially enter into the regional and interstate markets now open to competition under section 271 of the Act. However, that section effectively requires BOCs to prove that they have opened their respective local exchange markets, including the interLATA calls within their own territorial jurisdictions, operating on the underlying principle that "what is sauce for the goose is sauce for the gander." To meet this requirement, the BOC must demonstrate that it has complied with a fourteen-point "competitive checklist."

The FTA explicitly removes or preempts any state or local regulation which impinges on the open competition goal. Because of preemption, state public utilities commissions are now subject to FCC guidance in most telecommunications regulation. State PUCs have acted as local agents of the FCC

when dealing with the local BOC under acknowledged FCC jurisdiction. When a BOC attempts to enter the long distance market, it does so by initially filing an application with the state PUC, which then processes it through either of two tracks and holds hearings to determine whether the BOC has satisfied the "checklist" and can be passed on to the FCC approval process.

◆ ***Pacific Bell Reapplies for Permission to Enter Long Distance Market.*** Relevant to the background discussed above, Pacific Bell (PacBell) filed its first section 271 application for permission to enter into the interLATA market within California in March 1998. Following a series of workshops, PUC staff's final report, issued in October 1998, identified deficiencies that PacBell must correct before it can expect PUC endorsement of a long distance filing before the FCC. On December 17, 1998, the PUC announced that PacBell had complied with only four points of the required fourteen on the checklist, and gave PacBell until June 1, 1999 to comply with the remaining ten requirements and submit proof of its compliance. Failure to meet all fourteen points at that point would mean that PacBell must refile its 271 application and begin the process over *de novo. [16:2 CRLR 145–46; 16:1 CRLR 162]*

On July 15, PacBell reapplied for state approval to provide long distance service in California, claiming that it has now complied with the suggested guidelines recommended by the PUC last December, and that the local market is currently open to competition. However, the second application drew initial criticism from consumer advocacy groups and would-be competitors. These groups claim that PacBell has not yet fully opened its lines to competition. Since PacBell owns virtually every phone line running to California homes, it must allow competitors to hook up to its computer systems and resell service on PacBell lines. In the past, competitors who linked up to PacBell's network contended that they were not able to reach homes cheaply, and that consumers experienced problems such as dropped connections and errant billing. In its reapplication, PacBell proposes PUC and independent consultant testing (called operational support systems testing) to prove that its computers will accommodate multiple competitors without substantial problems. PacBell hopes that independent audits of its operation will show increasing compliance and justify a final approval.

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At this writing, PacBell's section 271 application proceeding is currently in the "reply comments" phase, which follows the filing of initial comments by all other (non-PacBell) parties. The major contention is that PacBell has not satisfied the public interest requirement of the FTA—a requirement that is independent of the fourteen-point checklist. While the checklist requirements are to ensure competitive access for the benefit of competitors, the public interest requirement is for the competitive benefit of consumers. Some objectors contend that PacBell has not "irreversibly opened" up its lines to competition and that consumers do not have a "realistic choice" of alternative providers of local long distance.

◆ ***PUC Halts Planned Area Code Overlays.*** The PUC is caught in a firestorm of consumer and business protest over proliferating area code changes. *[16:2 CRLR 147–48]* The problem is partly caused by the explosion in demand for new lines for Internet, fax machine, and other new technology uses, as well as the need for increased numbers to facilitate competition. However, consumers have discovered that FCC policies have allowed existing utilities to reserve tens of thousands of numbers based on projections of possible use. New FCC rules have been proposed to free these "held in reserve" numbers so new area codes are only created when and as needed. At this writing, the FCC is expected to decide by April 2000.

In the meantime, the increased demand for phone numbers has created an area code proliferation problem that has provoked vocal consumer dissatisfaction in the past year. The PUC has already "split" many area codes into two areas—one that retains the existing area code and another whose residents must assume a new area code. The number of area codes in California has more than doubled since 1991—due to the alleged need for more and more numbers. Further, in 1998, the PUC approved a new concept called an "overlay" for use in the 310 area code in Los Angeles, as an alternative to the unpopular "split" maneuver. Rather than splitting the 310 area into two area codes (310 and new 424), the PUC approved an "overlay" plan whereby all residents in the 310 area (some of whom would be assigned a 424 area code) would have to dial eleven digits (1 + area code + seven-digit phone number) on all calls, even if the call is to next door. Unlike a split, which divides a region into two separate area codes, the overlay allows two area codes to simultaneously serve an entire territory. Subscribers must then use 11-digit dialing every time they dial a number. The new 310 overlay was scheduled to take place on July 17, 1999. Subsequently, the PUC approved an overlay for the 408 area code in the San Jose area in November 1998, scheduled to commence on October 1, 1999. In March 1999, the Commission approved an overlay for the 714 area code in Orange County, scheduled to begin on October 7, 2000; and in April 1999, the PUC approved an overlay for the 650 area in San Mateo and Santa Clara counties, effective September 2000.

However, the overlay frenzy met with strong resistance from consumers and their representatives. Consumer groups argued it is cumbersome to dial 11 digits, and the change from the normal seven-digit dialing has created disruption and confusion. In June, Assemblymember Wally Knox and U.S. Representative Henry Waxman filed a petition with the PUC,

urging it to suspend—and ultimately reverse—its overlay decision regarding the 310 area code in Los Angeles. On June 24, the Commission announced plans to temporarily suspend the planned July 17 imposition of the 310 overlay to give it more time to consider the petition. On August 23, the Commission issued a draft decision denying the petition and announced its intent to vote on the draft decision on September 16.

In the meantime, on September 2, Commissioner Joel Hyatt proposed an alternate decision that would halt the implementation of the 310 overlay, and instead pursue—with the permission of the FCC (which had been requested by the PUC)—a variety of number conservation measures. FCC rules require telephone numbers to be allocated to telecommunications providers in blocks of 10,000; Hyatt's proposal called on FCC to permit and the industry to form a numbering pool that would allow the allocation of numbers in blocks of 1,000 and require companies to return unused numbers so they can be allocated to those that need them. The alternate decision also requires a study to determine the extent to which numbers already allocated to telecommunications providers are being used, and requires that carriers use up numbers from one block of 1,000 numbers before assigning numbers from another. In this way, untapped blocks of 1,000 numbers can be preserved.

The Commission's decision to halt the overlay is an acknowledgment of the public's discontent with the current solution to the problem. The decision states that "customer resistance and disruption generated by the implementation of 11-digit dialing suggests that the hardships encountered by the public have been greater than those the Commission originally anticipated."

At its September 16 meeting, the PUC revealed that on September 15, the FCC had granted its request, and voted to adopt Commissioner Hyatt's alternate decision halting the 310 overlay. The Commission's decision to halt the overlay is an acknowledgment of the public's discontent with the current solution to the problem. The decision states that "customer resistance and disruption generated by the implementation of 11-digit dialing suggests that the hardships encountered by the public have been greater than those the Commission originally anticipated." Subsequently, the legislature passed and the Governor approved AB 406 (Knox), which will impact this issue (see LEGISLATION).

The information gained from the overlay experience in the 310 area code prompted the PUC to take action halting overlays approved for other area codes. On September 21, the PUC suspended mandatory 11-digit dialing in the 408 area code in San Jose. On October 7, the PUC announced that it would implement number pooling and other conservation measures in the 818 area code, thereby eliminating or delaying the need for new area codes or 11-digit dialing. At this writing, the Commission is still considering petitions to stop the overlays planned for area codes 714 in Orange County, 909 in San Bernardino County, and 415, 510, and 650 in the San Francisco Bay Area. A decision on these requests is expected by the end of the year.

◆ ***PUC Retains Policy on Reciprocal Compensation Fees for Internet Connection.*** On June 24, the PUC decided that PacBell must continue to pay Pac-West Telecomm, Inc. (Pac-West) for dial-up calls that customers make to Internet service providers (ISPs). The ruling means that calls to ISPs will continue to be treated as local rather than long distance calls. *[16:2 CRLR 149]*

In March 1996, PacBell and Pac-West entered into an interconnection agreement under section 256(b) of the FTA. The agreement required PacBell to pay a fee to Pac-West for handling Internet calls. Internet calls originate with a caller's local carrier (usually PacBell), and must be transferred to the ISP's carrier (usually a smaller company such as Pac-West). Arrangements such as this were created to increase competition among local carriers. In August 1997, PacBell quit paying the connection fees to Pac-West, claiming that since the calls were often destined for remote websites, they were long distance calls for which no fee was required under the agreement. PacBell now owes $50 million in overdue fees, which it has been holding in an escrow account.

The PUC noted that its ruling against PacBell was influenced by the fact that this issue is also before the FCC in a separate proceeding, so continuing the existing relationship between the two companies would cause less harm than attempting a change and possibly having the decision reversed. The Commission also found that a ruling in favor of PacBell could harm Pac-West as well as its customers through increased Internet service rates.

◆ ***PUC Approves PacBell's Plea to Raise the Cost of Inside Wiring Service.*** On June 10, the PUC approved increases in some of PacBell's inside wiring repair service rates, raising the cost of its residential WirePro insurance plan from 60 cents per month to $1.20, and increasing the cost of its wire plan for businesses from $1.30 per month to $1.90. The Commission also deregulated the company's inside wire repair services, effectively moving them into the competitive arena. The PUC noted that this action to reduce price controls is in keeping with 47 other states that have deregulated this service. PacBell's current rates, it stated, are half those in the next lowest state. The Commission noted that since PacBell holds only 15% of the business inside wire repair market, deregulation is appropriate; in the residential market, PacBell's prior rates were below cost.

The decision has drawn much criticism from consumer advocates, who claim that the service is unnecessary because inside wire repair is easily available and that PacBell's marketing tactics are deceptive. Consumer groups argued that PacBell pushed its higher-priced "WirePro Plus" program (which—at $2.25 per month—includes all coverage under the basic WirePro plan plus the use of a loaner phone for up

to 60 days), and only told consumers of its lower-priced plan after they rejected WirePro Plus. In fact, a customer could purchase a new phone for $15, and in many cases will never need inside wiring repairs at all. Inside wiring in a home, it is claimed, rarely needs repair, and PacBell's plan does not cover wire damage due to gnawing. For apartment residents, the landlord is obliged to cover the cost of inside wire repairs. Although the PUC approved PacBell's rate increases, it criticized its marketing practices. The PUC stated that in the future, PacBell must clearly explain to its callers that it sells more than one wire repair service, and that the customer may choose a plan or skip it altogether.

♦ ***Rulemaking to Support Universal Telephone Service Goals.*** The Commission is engaged in a rulemaking proceeding to modify California's Universal Lifeline Telephone Service Program and related General Order 153. *[16:2 CRLR 146–47]* The program gives low-income consumers a discount to encourage universal connection, a recognized general societal benefit. The discount is often at about 50% lower than the normal charge. However, given the high fixed costs of telephone service, the utility may be achieving net profit from that pricing practice where its rates exceed the marginal (out-of-pocket) cost of providing service to those customers, many of whom would otherwise not be able to afford service. Nevertheless, the Commission calculates the program's cost by comparing these revenues to the charge for other customers and sets it at $245 million. Approximately 3.1 million subscribers currently receive Lifeline rates.

The modifications now proposed would modify the 1984 program authorized by General Order 153. The 1996 FTA favors continuation of universal service stimulation. However, with the advent of competition and an end to an imposed "rate design" to achieve a projected "revenue requirement," the Commission is limited in its ability to provide such an incentive. The Commission's rules are intended to require all competitors to provide the same discount formula or to otherwise preserve universal service goals without imposing a competitive disadvantage on any particular competitor. At this writing, the final rules are expected to be adopted in early 2000.

♦ ***PacBell Service Charge Increase Requests.*** In May 1998, PacBell applied to the PUC for a substantial increase in rates for services which remain within the utility's monopoly control, including emergency interruption, busy line verification, directory assistance, calling card calls, collect and bill-to-third-number calls, person-to-person calls, and inside wiring repairs (see above). The degree of proposed increases ranged from 60% to 400%, alarming consumer advocates. *[16:2 CRLR 148–49]* The final decision was originally scheduled for September 1999, but is now expected in late November.

1999–2000 Business Plan

On September 16, the Commission published its business plan for the 1999–2000 fiscal year. The PUC's goals are similar to those identified in last year's plan. *[16:1 CRLR 167]* The Commission intends to protect consumers through regulatory frameworks that promote fair competition and safe, reliable service; add complaint and dispute resolution methods to resolve customer and service provider disputes; take prompt action to address illegal or abusive business practices or services; educate consumers about changing utility markets and how changes affect them; introduce and facilitate competition between former monopoly utilities to provide more customer choice; assure access for all Californians to basic, reliable services; oversee remaining monopoly services; and introduce innovations to ensure that the way the Commission conducts its business is fully aligned with the public's needs and expectations.

Each of the Commission's major substantive divisions—Legal, Administrative Law Judge, Strategic Planning, Public Advisor's Office, Consumer Services, Energy, Office of Ratepayer Advocates, Rail Safety and Carriers, Telecommunications, and Water—has contributed a chapter to the business plan that outlines its goals and objectives for the coming year and includes a "five- to ten-year outlook" overview of its planned activities.

Utilities' Y2K Preparation

In November 1998, the PUC implemented a Y2K readiness campaign to ensure that utilities under its jurisdiction have addressed any anticipated problems associated with the so-called "Y2K bug." Resolution —4792 requires regulated utilities to file a survey outlining how they are addressing Y2K problems. The survey requires utilities to prioritize their Y2K efforts and to address safety and reliability of service delivery systems ahead of billing and other administrative systems. This resolution only applied to utilities under the PUC's jurisdiction, namely privately-held utilities; Y2K preparedness by utilities not under the Commission's jurisdiction is overseen by the California Department of Information Technology.

From March 1999 through March 2000, utilities are required to provide the Commission with quarterly updates on the status of their efforts. At this writing, each utility must certify that its systems are Y2K-compliant by November 1.

LEGISLATION

Power Utility Legislation

SB 96 (Peace), as amended June 14, revises specified provisions of AB 1890 (Brulte) (Chapter 854, Statutes of 1996) relating to the Independent System Operator and the Power Exchange, and to the duties of the Electricity Oversight Board (see MAJOR PROJECTS). SB 96 requires the ISO and the PX to each be administered by a governing board appointed by the EOB until an agreement with a participating state is in effect. SB 96 authorizes the EOB to decline to confirm the appointments of specified members of the governing boards of the ISO and the PX, and specifies that the Board has the

exclusive right to approve procedures and qualifications for those governing board members, all of whom are required to be electricity consumers. The bill makes the Electricity Oversight Board the appeal authority for majority decisions of the governing board of the ISO only with respect to prescribed matters, that would be subject to California's exclusive jurisdiction. The bill also imposes prescribed requirements regarding the bylaws of the ISO and the PX.

SB 96 also repeals intent language in AB 1890 (Brulte) stating the intent of the legislature that California enter into a compact with western region states, and that the compact should require the publicly and investor-owned utilities located in those states that sell energy to California retail customers to adhere to enforceable standards and protocols to protect the reliability of the interconnected regional transmission and distribution systems. Instead, SB 96 states the intent of the legislature to provide for the evolution of the ISO and the PX into regional organizations to promote the development of regional electricity transmission markets in the western states and to improve the access of consumers served by the ISO and the PX to those markets. The bill states that the preferred means by which that voluntary evolution should occur is through the adoption of a regional compact or other comparable agreement. This change reflects FERC's position that the ISO and the PX, as corporations engaged in interstate commerce of electricity transmission and wholesale power, cannot be governed exclusively by California. Governor Davis signed SB 96 on September 27 (Chapter 510, Statutes of 1999).

SB 96 states the intent of the legislature to provide for the evolution of the ISO and the PX into regional organizations to promote the development of regional electricity transmission markets in the western states and to improve the access of consumers served by the ISO and the PX to those markets.The bill states that the preferred means by which that voluntary evolution should occur is through the adoption of a regional compact or other comparable agreement.

AB 1149 (Aroner), as amended August 17, requires the Commission to conduct a study on ways to amend, revise, and improve its rules for the replacement of overhead electric and communications facilities with underground facilities; authorizes the PUC to revise these rules without prior approval of the legislature; and requires the Commission to submit a report on the study to the legislature on or before January 1, 2001. Governor Davis signed this bill on October 8 (Chapter 844, Statutes of 1999).

SB 282 (Kelley), as amended June 29, requires the PUC to include in its annual work plan access guide and in its annual report to the Governor a statement specifying activities that the Commission has taken and proposes to take to reduce the costs of and rates for energy (including electricity), and for improving the competitive opportunities for state agriculture and other rural energy consumers. The bill also requires the California Energy Commission to study the causes of high rates for electrical service to agriculture and compare agricultural electric rates with certain other rates; authorizes the CEC to recommend strategies for reduction of service costs, and identify factors affecting agricultural rates; and requires the CEC, on or before September 1, 2000, to prepare and submit to the legislature a report that details its findings and conclusions pursuant to these provisions. Governor Davis signed SB 282 on September 3 (Chapter 322, Statutes of 1999).

SB 1159 (Sher), as amended in April 1999, relaxes the current safeguards against "slamming," the unauthorized switching of a customer's electric service provider. The bill deletes an existing third-party verification requirement for residential customers when the change is made via the Internet or via written transaction. The required verification is preserved for telemarketing transactions. Governor Davis signed SB 1159 on July 27 (Chapter 214, Statutes of 1999).

AB 1421 (Wright). SB 1602 (Peace) (Chapter 401, Statutes of 1998), permits the PUC to investigate the restructuring of natural gas services, but prohibits the Commission—prior to January 1, 2000—from enacting any gas industry restructuring decisions and from enforcing any natural gas restructuring decisions for core customers as considered in Rulemaking 98-01-011. *[16:1 CRLR 168]* As amended August 18, AB 1421 repeals that prohibition in SB 1602, and instead requires the PUC to require each gas corporation to provide bundled basic gas service (including transmission, storage for reliability of service, distribution of natural gas, purchasing natural gas on behalf of a customer, revenue cycle services, and after-meter services) to all "core" (*i.e.*, small commercial and residential) customers in its service territory unless the customer chooses or contracts to have natural gas purchased and supplied by another entity. This means that utilities are prevented from charging separately to investigate gas leaks, relight pilot lights, check gas appliances, or check for carbon monoxide leaks.

AB 1421 also requires the PUC to conduct a study of electric distribution rates for agricultural customers with multiple meters. According to the legislative analysis of the bill, many agricultural customers believe that utilities are not fairly metering their consumption, which leads to high distribution rates. The intent of this study is to create a more accurate load profile for agricultural customers by determining the typical simultaneous peak load for those customers. The PUC is required to consider the research results in setting distribution rates for agricultural customers. Governor Davis signed AB 1421 on October 9 (Chapter 909, Statutes of 1999).

AB 1393 (Wright), as amended September 3, requires electric and gas utilities that participate in the California Alternate Rates for Energy (CARE) program to administer low-income energy efficiency and rate assistance programs subject to Commission oversight. The bill requires the administrators of the program to undertake certain functions, and al-

lows the Commission to require these participating corporations to competitively bid, to the extent practical, service delivery components of these programs. The bill also requires the bidding criteria to recognize specified factors (such as the bidder's relevant experience; knowledge of and ability to reach targeted communities; and ability and commitment to train, utilize, and employ people from the local area), subject to Commission modification. The bill also requires the PUC to require electric and gas corporations to perform home weatherization services for low-income customers, and expands the definition of "weatherization services." AB 1393 was signed by the Governor on October 6 (Chapter 700, Statutes of 1999).

SB 427 (Peace), as amended in May 1999, would require electrical corporations to mitigate for the removal of trees under utility lines by planting an unspecified amount of Number 5 container trees for each tree removed. These corporations would also be required to use the services of local conservation corps or the California Conservation Corps to replant trees, unless volunteer labor is available. They would have to give first priority to planting trees on or near the site from which trees were removed, but could plant trees elsewhere in order to maintain a right-of-way free of trees. The Department of Fish and Game would be required to assist such corporations in developing a plan to reduce the impacts on nesting birds of tree trimming or removal. The bill would also require the PUC to chair a working group to develop a list of trees which will not interfere with power lines. *[S. Appr]*

SB 1194 (Sher), as amended in April 1999, is a PUC-sponsored bill that would require the Commission to study the feasibility of administering the low-income and energy efficiency programs mandated by AB 1890 (Brulte) through a nonprofit public benefit corporation. Rather than permitting the utilities themselves to administer these programs, the PUC has expressed a preference for independent administration of the programs. However, the legislature has passed and the Governor has signed AB 1393 (Wright) (see above), thus mooting the need for SB 1194 in its current form. *[A. U&C]*

AB 1003 (Wright), as introduced in February 1999, is similar to SB 96 (Peace) (see above) in that it would fine-tune the ongoing restructuring of the electrical services industry under AB 1890 (Brulte) (Chapter 854, Statutes of 1996) by specifying the composition, functions, and duties of the ISO, PX, and Energy Oversight Board. *[A. U&C]*

Telecommunications Legislation

AB 406 (Knox), as amended September 9, is an urgency bill entitled the "Consumer Area Code Relief Act of 1999." The bill requires the PUC to (1) develop specified measures aimed at efficiently allocating telephone numbers; (2) request that the FCC delegate specific authority to the states for the purpose of enabling the PUC to implement specified measures that would assist in the efficient allocation of telephone numbers; (3) request that telecommunications providers provide information relating to the number of used and unused numbers in all telephone prefixes that they possess, and submit a report to the legislature on that information on or before July 1, 2001; (4) institute—as an interim measure—that telecommunications providers assign numbers to their customer first from prefixes that are more than 25% used, and only from prefixes with less than 25% use when numbers are not otherwise available; and (5) consider the cost-effectiveness of any measures it develops to efficiently allocate telephone numbers within prefixes. The bill states that among the measures that should be considered are rate center consolidation and allocation of numbers in blocks smaller than 10,000 and unassigned number porting (see MAJOR PROJECTS). Governor Davis signed AB 406 on October 8 (Statutes of 1999). In a signing message, the Governor noted that "AB 406 codifies aspects of the PUC's actions and provides for key utilization studies to be completed to determine the extent of unused numbers. These studies will allow California to allocate numbers more efficiently and avoid costly and confusing area code overlays."

AB 406 (Knox), as amended September 9, is an urgency bill entitled the "Consumer Area Code Relief Act of 1999."

AB 991 (Papan), as amended August 16, enacts the California High Speed Internet Access Act of 1999, and requires the PUC to monitor and participate in a specified FCC proceeding addressing whether to require incumbent local exchange carriers (LECs) to permit interconnection by competitive data local exchange carriers at any technically feasible point, to permit those competitive local exchange carriers to provide high bandwidth data services over telephone lines with voice services provided by incumbent LECs. The bill requires the Commission, if the FCC adopts an order on or before January 1, 2000, in its proceeding, to comply with and implement, in a manner that the PUC determines to be appropriate, that order within 90 days from the date that the rules adopted by that order are published in the *Federal Register*. The bill requires the PUC, if the FCC does not adopt an order on or before January 1, 2000, in its proceeding, to examine the technical, operational, economic, and policy implications of interconnection, and—if the PUC determines it to be appropriate—to adopt rules to require incumbent LECs in this state to permit competitive local exchange carriers to provide high bandwidth data services over telephone lines with voice services provided by incumbent LECs.

AB 991 is intended to give California residential consumers a choice of high speed data providers using "digital subscriber line" (DSL) technology. DSL allows a high-speed data channel to run on higher frequencies above the frequency used to deliver analog voice signals. By separating the line into a voice channel and a high-speed data channel, a single telephone line can carry both voice and data services simultaneously and, potentially, each service could be provided by

a different carrier. DSL provides residential users with the ability to connect to the Internet at speeds 50 times faster than modems. This bill is intended to ensure that customers can choose to receive DSL service from either the incumbent LEC or a competitive LEC at an affordable price. This bill does not affect the provision of high-speed Internet access by cable television companies. AB 991 was signed by the Governor on October 6 (Chapter 714, Statutes of 1999).

SB 669 (Polanco), as amended September 7, creates six advisory boards within the PUC to advise the Commission regarding the implementation, development, and administration of the following programs: (1) the California High-Cost Fund-A, designed to keep rates for rural telephone companies low; (2) the California High-Cost Fund-B, designed to keep rates for rural customers low; (3) the Universal Lifeline Telephone Service Trust Administrative Committee and Fund, designed to provide low-cost telephone service to low-income households; (4) the Deaf and Disabled Telecommunications Program, designed to provide discounted telephone service and equipment to the deaf and disabled; (5) the Payphone Service Providers Committee and Fund, designed to provide consumer protection to pay telephone customers; and (6) the California Teleconnect Fund Administrative Committee and Fund, designed to fund advanced communications services for schools, libraries, and community organizations. These programs are subsidized by ratepayers through rates authorized by the PUC.

The bill requires the PUC to determine the number and qualifications of the members of each advisory board, and prescribes certain matters or organization and procedure for each advisory board; it further requires each board to submit an annual budget to the PUC for approval and a report describing its activities. SB 669 further creates a fund in the State Treasury for each advisory board; requires the PUC, on or before July 1, 2000, to report to the Governor and the legislature regarding a transition plan for programs associated with those funds; specifies that all revenues collected by telephone corporations to fund these programs shall be submitted to the PUC pursuant to a schedule established by the PUC, and then transferred by the PUC to the State Controller for deposit in the appropriate fund; and requires the PUC to conduct financial audits of the revenues for each of the funds, and to conduct compliance audits of each program. Governor Davis signed SB 669 on October 6 (Chapter 677, Statutes of 1999).

AB 617 (Campbell). Existing law shields local and long distance telephone companies and radiotelephone utilities from civil actions arising from their good faith compliance with a state or federal court warrant, orders, or subpoena. As amended June 16, AB 617 extends that liability protection to wireless telecommunications providers and companies providing one-way paging service. The protections shield telecommunications providers from liability when they release information about subscribers to law enforcement officials and other local, state, or federal agencies upon issuance of a state or federal court warrant or administrative subpoena. In these instances, the release or disclosure of information without the written consent of the subscriber is not subject to civil actions relating to the subscriber's right to privacy. This bill also replaces the term "radiotelephone utility" with the term "commercial mobile service provider," consistent with a similar change in terminology enacted in federal law. This bill was signed by the Governor on August 30 (Chapter 256, Statutes of 1999).

AB 535 (Reyes), as amended August 17, prohibits local exchange carriers that automatically provide custom calling services on a pay-per-use basis from providing such service to a subscriber unless the subscriber agrees to sign up for the service by returning a prepaid postcard to the carrier. This bill is restricted to those services that do not require dialing an access code. This bill addresses a number of complaints filed with the Office of Ratepayer Advocates regarding the inadvertent use of pay-per-use calling features. This bill was signed by the Governor on September 15 (Chapter 384, Statutes 1999).

SB 932 (Bowen), as amended August 16, the "Telephone Consumers Bill of Rights," would establish several new consumer protection provisions for residential telephone customers, and prohibit the disconnection of local telephone service for nonpayment of long distance charges. While all major consumer groups and the PUC's Office of Ratepayer Advocates support the bill, Pacific Bell and all the major long distance companies oppose SB 932.

Specifically, this bill would require a telephone corporation providing a new telephone service or feature to mail a written notice to each subscriber within three business days of service activation describing the price, terms, and conditions of the new service or feature. The bill would also require phone companies to provide customers with a ten-day right of recission on new telephone services and features (with specified exceptions); reimburse customers for any charge resulting from the inadvertent use of pay-per-use services (with specified exceptions); provide complete pricing information in any advertisements for telephone service; and provide customers with complete and neutral information about Caller ID blocking options whenever such options are offered to the subscriber.

SB 932 would also require telecommunications providers that offer local telephone service to allow subscribers the ability to block access to non-essential services, and provide subscribers with a printed alphabetical telephone directory, unless the subscriber waives this requirement via a written declaration. The bill would prohibit telephone corporations from imposing any charge for a telephone service or feature that a subscriber has not used and has rescinded; requiring service deposits for local telephone service that exceed an amount equal to an average of two months' local telephone service bills, unless the subscriber has a poor credit history; disconnecting local telephone service for nonpayment of charges imposed by a third party, including long distance tele-

phone providers; and declining to provide service if the subscriber declines to provide his/her social security number. In addition, the bill would permit telecommunications providers to request the social security number of a subscriber only after disclosing to him/her that providing the number is optional and not required as a condition of receiving service. *[A. U&C]*

SB 1217 (Alarcon), as amended July 7, would enact the Internet Access Enhancement Act of 1999, and would require a "wireline broadband Internet access transport provider" (defined to mean a person or entity that provides broadband Internet access transport services by aid of wire, cable or other like connection, over facilities owned by it or under its control, for a fee, directly or indirectly, to the public) to provide any other requesting Internet service provider (defined to mean a person or entity that provides a service that enables users to access content, information, electronic mail, or other services offered over the Internet) with access to the broadband Internet access transport services of that transport provider. Under this bill, cable operators would be treated as common carriers, and would therefore be subject to the federal Telecommunications Act of 1996; however, treating cable operators as common carriers would contravene section 621(c) of the Federal Communications Act, which expressly provides that cable operators offering cable services may not be treated as common carriers or utilities. This bill attempts to regulate Internet services, an area that has been left largely unregulated by the federal government. *[A. U&C]*

AB 301 (Wright), as amended August 17, requires the PUC to modify its rules to expand access to its rulemaking process and permit all interested persons to petition the Commission to adopt, amend, or repeal a regulation.

AB 1263 (Thomson), as amended in April 1999, would create the California Wireless 911 Task Force, consisting of specified representatives of the wireless telecommunications industry and state and local government. The task force would be charged with reviewing and recommending improvements to local emergency telephone services for wireless telecommunications end users. *[S. EU&C]*

AB 651 (Wright), as amended in April 1999, was introduced in response to a recent PUC decision providing that building owners must grant telecommunications providers with access to the "minimum point of entry" of occupied buildings. The Building Owners and Managers Association of California believes that the decision does not provide adequate protections to building owners regarding the quality of work that may be provided by competitive providers of telecommunications services, many of whom are new entrants in the industry. AB 651 would require telecommunications providers to pay the actual costs associated with installation and maintenance of the equipment necessary to provide telecommunications services; indemnify the building owner for losses that may arise from the installation of telecommunications equipment; carry not less than $2 million in insurance and workers' compensation insurance; and work with the health, safety, and consideration of the building's tenants as a primary consideration, and restore the premises to the prior condition.

Among other things, AB 651 would also prohibit the owner of an occupied building from demanding or accepting payment in exchange for permitting a telecommunications provider access to tenants or occupants of an occupied building; prohibit telecommunications providers from offering or making payment to a building owner for access; and prohibit building owners from entering into agreements that discriminate against any telecommunications provider or limit the ability of a tenant to receive service from the telecommunications provider of his/her choice. *[S. EU&C]*

AB 365 (Wright), as amended in April 1999, would require the PUC to develop and place on the Internet information about local and long-distance telephone services offered by providers and other consumer information. The bill would prohibit the Commission from implementing the above requirement until July 1, 2001, unless otherwise authorized by the Department of Information Technology. *[A. Appr]*

AB 818 (Knox), as amended in conference committee on September 3, would rescind the PUC's implementation of a split, overlay, and 11-digit dialing in the 310 area code until September 1, 2000 and until several specified conditions have been met. This bill became unnecessary after the PUC rescinded the 310 overlay on September 16 (see MAJOR PROJECTS).

Other PUC-Related Legislation

AB 301 (Wright), as amended August 17, requires the PUC to modify its rules to expand access to its rulemaking process and permit all interested persons to petition the Commission to adopt, amend, or repeal a regulation. The PUC is required to consider such a petition within six months, and either deny the petition or open a proceeding to adopt, amend, or repeal the regulation addressed by the petition. If the petition is denied, the PUC must state its reasons for denying it; if the petition is approved, the PUC may use any process for considering how to adopt, amend, or repeal the regulation. On or before July 1, 2001, the Commission must amend its Rules of Practice and Procedure to provide more specific procedures for handling a petition pursuant to this bill. Governor Davis signed AB 301 on September 28 (Chapter 568, Statutes of 1999).

SB 177 (Peace and Burton), as amended September 7, limits the eminent domain power of public utilities. SB 177 amends the Public Utilities Act to prohibit a telephone corporation from condemning any property on an airport, unless that property is necessary to provide telecommunications services as a carrier of last resort seeking to serve an unserved area. The bill also amends the Act to prohibit specified public utilities that offer competitive services from condemning any

property for the purpose of competing with another entity in the offering of those competitive services, unless the PUC finds—pursuant to a petition or complaint filed by the public utility, an adjudication hearing in accordance with specified provisions of the act governing hearings and judicial review, and a public hearing in the local jurisdiction that would be affected by the proposed condemnation—that such an action would serve the public interest. The PUC may make a finding that the public interest would be served by the condemnation if either of the following conditions are met: (1) the proposed condemnation is necessary to provide service as a provider of last resort to an unserved area, except when there are competing offers from facility-based carriers to serve that area; or (2) the public interest requires the project, the property is necessary for the project, the public benefit of acquiring the property by eminent domain outweighs the hardship to the owners of the property, and the project is located in a manner most compatible with the greatest public good and least amount of private injury. Governor Davis signed SB 177 on October 7 (Chapter 774, Statutes of 1999).

AB 923 (Hertzberg), as amended September 2, raises the minimum fine for failure to stop at a railroad crossing, and requires the PUC—in consultation with the California Department of Transportation—to adopt regulations prescribing uniform standards regarding the time after the warning signal begins at a railroad crossing at which traffic enforcement shall begin. The PUC must hold public hearings and consult with local transit districts or transportation commissions before formally adopting the regulations. Governor Davis signed AB 923 on October 8 (Chapter 841, Statutes of 1999).

AB 957 (Scott). Existing provisions of the Public Utilities Code require the PUC, upon recommendation of the California Highway Patrol and after a hearing, to suspend the permit of a household goods carrier if the carrier has either (a) failed to maintain any vehicle used in transportation for compensation in a safe operating condition or to comply with the Vehicle Code or with regulations relative to motor safety, if that failure is either consistent failure or presents an imminent danger to public safety, or (b) failed to enroll all drivers in the required pull notice system. AB 957 adds failure to submit any application or to pay any fee required through the Biennial Inspection of Terminals Program within the required timeframes to the list of actions for which the CHP may recommend suspension. The Governor signed this bill on October 10 (Chapter 1006, Statutes of 1999).

AB 1658 (Wright), as amended September 3, is a technical clean-up bill sponsored by the PUC. The bill is largely copied from SB 1605 (Committee on Utilities and Commerce), which was vetoed by Governor Wilson in 1998 because it conflicted with another bill and because it made changes to the PUC's Deaf and Disabled Telecommunications Program of which Wilson disapproved. *[16:1 CRLR 168]*

With two exceptions, AB 1658 contains no policy changes. The first is a provision dealing with PUC decisions regarding water utilities; it exempts routine decisions and decisions regarding uncontested matters from the requirement of a 30-day public review and comment period. These review provisions were initially created for all utilities by SB 779 (Calderon) (Chapter 886, Statutes of 1998), but water utilities argue they were supposed to be exempted from the new requirement because they are still regulated monopolies. The exemption was reportedly agreed to by all of the parties that worked on SB 779, but it was inadvertently omitted due to a drafting error. The second substantive change to the bill requires applicants for a household goods carrier's permit to submit fingerprints of all of its owners, partners, officers, and managers, thus mirroring the existing fingerprint requirement that applies to electric service providers. These fingerprints are to be submitted to the Department of Justice to determine if the applicant has a criminal history. Existing permitholders are not required to submit fingerprints. Governor Davis signed AB 1658 on October 10 (Chapter 1005, Statutes of 1999).

SB 33 (Peace), as amended July 7, changes the way the PUC President is chosen. Currently, the members of the PUC elect one of their number as President of the Commission; this bill requires the Governor to appoint the PUC President. This bill also subjects the Commission's Executive Director and General Counsel to the direct control of the PUC President; currently, the Executive Director and General Counsel are hired, fired and directed by the Commission as a whole. The bill also permits the Governor, until January 1, 2003, to appoint up to two advisers for each Commissioner, and prohibits the total number of advisers exempt from civil service from exceeding ten. The Governor signed this bill on September 27 (Chapter 509, Statutes of 1999).

SB 531 (Baca), as amended August 19, requires the PUC, on or after July 1, 2001, to establish procedures to permit the submission of informal complaints via e-mail and over the Internet; requires the Commission, on or before January 1, 2002, to provide on its Internet website the means by which consumers may submit informal complaints through electronic means; and provides that its provisions may not be implemented, and no information technology-related preparatory work may be undertaken prior to July 1, 2001, without the concurrence of the Commission and the authorization of the Department of Information Technology. Governor Davis signed SB 531 on September 3 (Chapter 327, Statutes of 1999).

SB 310 (Peace), as introduced in February 1999, would prohibit the PUC from enacting or implementing any decision, order, or rule that interferes with the rights and obligations of the directors of a corporation, including a utility holding company, to efficiently and effectively discharge their fiduciary obligations to the corporation's shareholders. The bill is apparently intended to supercede the PUC's affiliate transaction rules, which are intended to facilitate the establishment of a competitive energy marketplace by ensuring that utilities do not engage in anticompetitive behavior with affiliated companies. The bill finds that "the adoption and enforcement by the Commission of rules against self-deal-

ing, cross-subsidization, market power, and other anticompetitive activities...must not interfere with the ability of a utility holding company to efficiently and effectively discharge its fiduciary responsibilities to its shareholders." *[S. EU&C]*

SB 640 (Perata), as amended in April 1999, relates to settlments in certain proceedings before the PUC. The bill would state legislative intent that if an applicant and the Office of Ratepayer Advocates agree to a settlement on any or all issues in an application proceeding, the Commission should regard the settlement as creating a rebuttable presumption that the proposed settlement is just, reasonable, and in the public interest. *[S. EU&C]*

AB 1352 (Longville), as introduced in February 1999, would create the California Trucking Commission to educate motorists on the importance of the trucking industry, topics relating to highway safety, and sharing the road with trucks. The Commission would be authorized to publish and disseminate materials, develop educational programs, and perform any other activities required to educate the public concerning highway safety in relation to motor vehicle interactions with trucks. The Commission would be funded by an assessment on trucking companies, and the bill would not become effective until trucking companies vote by referendum in favor of the bill. *[A. Trans]*

LITIGATION

In ***Hartwell Corporation v. Superior Court (Santamaria, et al., Real Parties in Interest),*** 74 Cal. App. 4th 837 (Sept. 1, 1999; as modified Sept. 29, 1999), the First District Court of Appeal affirmed the PUC's exclusive jurisdiction over tort claims against regulated utilities. However, the court refused to extend the PUC's jurisdiction—and thus preemption—to claims involving utilities not regulated by the Commission even though issues of the same or similar subject matter are involved.

The First District Court of Appeal affirmed the PUC's exclusive jurisdiction over tort claims against regulated utilities. However, the court refused to extend the PUC's jurisdiction—and thus preemption—to claims involving utilities not regulated by the Commission even though issues of the same or similar subject matter are involved.

Beginning in April 1997, three separate plaintiff groups of residents filed tort actions in two superior courts against various PUC-regulated southern California water companies, including Southern California Water Company, Suburban Water Systems, and Southwest Water Company ("regulated utilities"), other non-PUC-regulated water companies ("nonregulated water providers"), and general industrial companies ("industrial defendants") for money damages arising from the contamination of well water in the San Gabriel Valley. One month after the filing of the last action, the PUC commenced an investigation (I. 98-03-013) into well water quality in the San Gabriel Valley and elsewhere. Plaintiffs challenged the Commission's jurisdiction to investigate issues of water quality, indicating the PUC's investigation would hinder the litigation. Defendants immediately filed demurrers and/or sought a stay of the court proceedings on grounds that the PUC has exclusive jurisdiction over the matter.

The trial courts responded in different ways. Two judges of the Los Angeles County Superior Court stayed the civil matters pending the PUC's completion of its investigation. The Ventura County Superior Court sustained the demurrers of the regulated defendants, finding that the PUC's jurisdiction over the quality of water provided by public water utilities preempts civil court jurisdiction over tort actions against those defendants; but rejected the demurrers and denied the stay requests of the nonregulated water providers and the industrial defendants alleged to have originally polluted the groundwater. The Los Angeles plaintiffs appealed to the Second District Court of Appeal, challenging the stay orders. The successful Los Angeles defendants appealed as well, arguing that the cases against them should have been dismissed instead of stayed. The unsuccessful Ventura defendants also appealed. Eventually, the Second District recused itself and transferred all the matters to the First District.

In finding preemption as against the regulated water utilities, the First District apparently relied heavily on the PUC's own affirmation of jurisdiction over water quality in D. 99-06-054 (June 10, 1999), and expressly relied on *San Diego Gas & Electric Co. v. Superior Court (Covalt),* 13 Cal. 4th 893 (1996), in which the California Supreme Court determined that Public Utilities Code section 1759 bars a private tort action against a public utility. In *Covalt*, plaintiffs sued SDG&E over issues involving the public health risks arising from electric and magnetic fields (EMF) attributed to powerlines owned by the utility. Long before the *Covalt* plaintiffs had filed their action, however, the PUC had investigated the issue and reported its conclusion that EMF hazards have not been scientifically established, and the Supreme Court held that court jurisdiction over tort claims against a public utility would interfere with the PUC's ongoing jurisdiction over the issue. The *Covalt* decision broadly affirmed the PUC's sweeping constitutional and statutory mandates to regulate every public utility in the state. In addition, this grant of authority is to be liberally interpreted.

In this case, however, the PUC's investigation did not commence until after the filing of the tort actions; further, the Department of Health Services (DHS) has recognized that certain chemicals may be harmful to water consumers, and has established maximum contaminant levels for many of the pollutants which concern the plaintiffs. However, these distinguishing facts did not bother the First District. The court examined the following issues: (1) whether the PUC is authorized to adopt water quality standards for regulated utilities, (2) if so, whether the PUC has exercised this authority,

and (3) if it has, whether these private lawsuits would interfere with the PUC's regulation of water quality. The court first noted that Article X, section 5 of the California Constitution subjects water distribution to state control, and Article XII, section 3 states that private corporations that control systems for transporting or furnishing water to the public are "public utilities subject to control by the Legislature." The court also found that the PUC has regulated public utility water companies "since its early days as the Railroad Commission." After an exhaustive review of the complex area of water quality regulation in California, the court concluded that DHS and the PUC have entered into a water quality regulation "concurrent partnership," in that DHS sets water quality standards to protect public health and safety, and the PUC enforces them.

Under *Covalt*, an action for damages against a public utility is barred "when an award of damages would directly contravene a specific order or decision of the commission, *i.e.*, when it would 'reverse, correct, or annul' that order or decision, but also when an award of damages would simply have the effect of undermining a general supervisory or regulatory policy of the commission, *i.e.*, when it would 'hinder' or 'frustrate' or 'interfere with' or 'obstruct' that policy." As to the regulated utilities, the First District found that the civil lawsuits would "call[] into question the [maximum contaminant levels as determined by DHS], the timing of imposing the levels, and the commission's effectiveness in enforcing maximum contaminant levels," and would thus "hinder" the PUC's overall regulatory scheme. In rejecting plaintiffs' argument that no PUC policy would be contravened by their civil actions because "the PUC has no policy regarding compensating persons injured by drinking water," the court held: "The fact that the PUC has no policy on compensating injured consumers does not contradict its central role in enforcing health standards for public utilities. At most, it shows that the PUC's primary focus is on evaluating current conditions and avoiding future problems." The court analogized these cases to *Ford v. Pacific Gas & Electric Co.*, 60 Cal. App. 4th 696 (1997), a case similar to *Covalt*, in which plaintiffs argued that the PUC's inability to award tort damages makes court review appropriate. According to the First District, "*Ford* explained that plaintiff was not without a remedy; she could file a complaint with the PUC. The court upheld the Legislature's authority to so limit a plaintiff's options." Accordingly, the court held that plaintiffs' civil cases against the regulated utilities are preempted by the PUC's exclusive jurisdiction.

The court rejected, however, the preemption arguments of the nonregulated water providers and the industrial defendants. "None of [the cases cited by these defendants] announced these defendants' remarkable principle that the PUC's regulation of public utilities should somehow extend into the affairs of water providers and industrial defendants not otherwise subject to PUC jurisdiction....However inconvenient it may be for these defendants to respond to these trial court actions, we conclude that their nonregulated status imposes that consequence."

In sum, the First District ruled that the Los Angeles trial courts had erred in staying the civil actions as to the regulated utilities, and remanded those cases to be dismissed; the Ventura court ruled correctly on the preemption issue and did not abuse its discretion in refusing to stay the proceedings against the nonregulated water providers and the industrial defendants. The nonregulated water providers, industrial defendants, and plaintiff groups (real parties in interest) have all filed petitions for review with the California Supreme Court.

FUTURE MEETINGS

The full Commission usually meets every other Thursday in San Francisco.