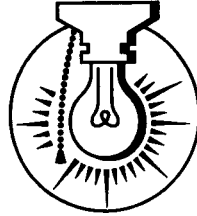


Public Utilities Commission

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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 470 privately-owned and operated gas, electric, telephone, water, sewer, steam, and pipeline utilities, as well as 4,300 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; PUCALJs 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 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 division 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, together with

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 to plan future policy.

Members of the Commission currently include PUC President Richard A. Bilas and Commissioners Jessie J. Knight, Henry M. Duque, Josiah L. Neeper, and P. Gregory Conlon. The terms of Commissioners Knight and Conlon expire in early 1999; Governor Gray Davis will appoint their successors.

Major Projects

Power Utility Regulation

The PUC continues to implement its novel and controversial December 1995 decision to restructure and substantially deregulate California's \$23 billion electricity industry. [15:4 CRLR 234-37]

♦ **Electric Power Deregulation: Summary of History and Status.** Generally, utility regulation is based on the need to control abuses which flow from unfettered monopoly power. Some enterprises are "natural monopolies," meaning that there is room for only one entrepreneur or physical plant to function efficiently. Such natural monopolies normally exist in industries with high initial "threshold capital costs," such as electric power delivery. The high fixed costs involved in the distribution systems (*e.g.*, rights of way, wiring switching, and boosters) do not allow for a competitor to operate efficiently. A second enterprise stringing a competing and duplicative distribution system simply

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reduces both such systems to 50% or less utilization, raises average costs for each, and increases consumer prices due to the inefficiency. However, economists have argued that it is possible to isolate the monopoly power part of a utility and subject its remaining components to competition. In telecommunications, that restructuring has led to competition in long distance, toll call, and even local service. In electricity, the PUC's December 1995 restructuring decision has led to competition in power generation, with the monopoly confined to the delivery system itself.

Hence, the concept behind the PUC's electric utility deregulation is to isolate the unavoidable power distribution grid, regulate it as a natural monopoly, but open power generation—where a wide variety of sources now exist without natural monopoly features—to competition. Although conceptually advantageous, the practical difficulties flowing from such deregulation include the following:

(1) where the entity owning the remaining monopoly power part also operates power generating facilities, it will favor its own power generation in its distribution;

(2) rate regulation imposed on a monopoly enterprise allows a regulator to finetune rates to adjust for marketplace flaws (e.g., pollution harm) or for socially beneficial cross-subsidies (e.g., lower rates for the impoverished, special features for the disabled, stimulation of universal access); and

(3) new competition in a major industry can raise the spectrum of traditional unfair competition, including misleading advertising and promotional excesses, which requires continued monitoring.

In its decision and through implementing legislation, the PUC has adopted a number of regulatory strategies to address some of these problems in electricity deregulation, including in particular the use of an "independent system operator" (ISO) to control an independent power exchange (IPE or "PX"). The concept here is to separate the buying and selling of power from the existing utility—which necessarily retains control over the distribution system. This separation gives sources of power generation, now subject to competition, a chance to sell power to the "grid" on a non-discriminatory basis. The alternative strategy favored by most consumer activists would confine existing utilities to distribution alone, and force them to sell their power generation assets. Consumer critics contend that retention of power generation assets by the utilities encourages a conflict of interest-based motivation to favor their own power generation, and leaves them with a continuing incentive to use nuclear power or other forms of non-economic or environmentally dangerous power. Alternatively, where those assets are subject to competitive pressure, they seek "bailout" recovery for lost asset value, which normal utility rate regulation may or may not allow.

The PUC's December 1995 restructuring plan was subject to approval and authorization by the Federal Energy Regulatory Commission (FERC), and required state legislation to restructure the industry. In 1996, the legislature enacted AB 1890 (Brulte) (Chapter 854, Statutes of 1996), which authorized the creation of an ISO system and made other changes relevant to some of the concerns outlined above. The bill created a five-member Oversight Board to supervise the ISO and the PX, and to appoint governing boards for each that are "broadly representative of California electricity users and providers"; the Oversight Board consists of three gubernatorial appointees subject to Senate confirmation and two non-voting legislators. The bill 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 the general plan to accomplish the "unbundling," or separation, of the three dis-

tinct functions of electricity service: (1) generation, (2) transmission, and (3) distribution (including an unbundling of maintenance of electricity lines, metering, and billing).

In one of its more controversial features, AB 1890 also authorized the collection of nonbypassable "transition costs" from ratepayers, defined as the "stranded" or "sunk" costs of utility powerplants and power purchase contracts that cannot be recovered in a competitive generation market (see below). To sweeten the deal for consumers, the bill required a rate freeze from June 10, 1996 through December 31, 1996, and then a 10% rate reduction for residential and small commercial ratepayers by January 1, 1998; the bill also requires the Commission to cut rates an additional 10% by June 30, 2002. To finance the rate reductions, AB 1890 authorized the issuance of up to \$10 billion in bonds by the power companies. The bill also stated the intent of the legislature to protect consumers by requiring registration of certain sellers, marketers, and aggregators of electricity service; requiring information on the new restructuring scheme to be provided to consumers; providing for the compilation and investigation of complaints; and continuing to fund low-income ratepayer assistance and other public purpose programs in an unbundled manner.

The detailed implementation of AB 1890 was subject to PUC rulemaking and subsequent refining legislation. The general timeline set forth by the statute began with the designation of the ISO no later than March 31, 1997. The phase-in period for direct transactions between independent electricity providers and end use customers was to begin no later than January 1, 1998, and is to be completed no later than January 1, 2002. The "transition costs" will be collected from ratepayers until December 31, 2001 (with several exceptions, including extended recovery of non-economic costs for the San Onofre Nuclear Generating Station until December 31, 2003).

On December 22, 1997, the ISO Governing Board and the PX Governing Board announced a delay in their assumption of transmission control. On December 30, 1997, in PUC Decision 97-12-131, the Commission acknowledged the necessity of the delay and preserved most of the status quo (e.g., the rate freeze, the 10% rate reduction, and the consumer education provisions of the initial plan) pending start-up.

On March 31, 1998, the PX became operational, and direct service began to residential and small commercial end users. Currently, more than thirty electric service providers (ESPs) are actively registered with the PUC. An updated list of ESPs, as well as other consumer information, may be found at the PUC's website at www.cpuc.ca.gov.

♦ **Deregulation Problems—Stranded Costs.** As noted above, in a competitive market, utilities would not be able to recover their investments in nuclear generation and other facilities that produce energy at above market prices. Even under standard utility rate regulation doctrine, such uneconomic compensation would be limited. Although utility shareholders have a constitutional right to a "fair rate of return" on their investment, that right applies only to "prudent costs" and to investments which are "used and useful" for ratepayers. During the debate on AB 1890, the utilities argued that these now uneconomic assets have sufficient historical merit as

“used and useful” assets, and that they are entitled to a full fair market recovery on them even though they are now of limited value. Hence, the utilities argued that they should be compensated for these “stranded costs,” also called “transition costs” or “sunk investments.” As noted above, AB 1890 permits the utilities to assess a special charge to pay for these “transition costs,” estimated at \$28 billion. This ratepayer assessment was given the special name “Competition Transition Cost” (CTC) and part of it appears as a special charge on utility bills. Several 1998 attempts to invalidate this controversial charge on ratepayers were defeated in the legislature (see LEGISLATION).

Further, the bill allows utilities to freeze electricity rates for residential and small business users at recent high levels (about 50% above the national average). Consumer critics note that the “freeze” here ordered is not a consumer benefit, as it was with insurance reform efforts or in areas where prices normally rise over time. With electricity deregulation, substantial cost reductions will occur—including the acquisition of power at lowest cost, rather than at the cost incurred by the utility’s choice of power generation. Hence, the freeze allows the utility to keep those cost savings for itself. In other words, maintenance of rates at levels extant when a utility’s own inefficient power generation mix determined costs allows it to assure stable and continuing profit levels notwithstanding the exposure of its generation operation as inefficient and costly.

◆ **Deregulation Problems—Consumers to Finance Their Own Rate Reduction.** As a concession to consumers during the AB 1890 bargaining process, and to assuage public protests over the new CTC charge, the law requires 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 transition costs have been fully recovered. However, the reduction was accompanied by the issuance of “rate reduction bonds” by the utilities to finance it, and consumers are required to pay the borrowed money back in another specially designated charge on their monthly bills (called the “trust transfer amount” or “TTA”). This latter charge—originally authorized in AB 1890 and then fleshed out in SB 477 (Peace) (Chapter 275, Statutes of 1997)—is greater than the value of the rate cut (due to interest accumulation). In other words, the rate reduction bonds are secured by a surcharge that more than offsets the reduction itself. Many consumer groups, particularly the Proposition 103 Enforcement Project directed by Harvey Rosenfield, complained vocally, but the legislature wasn’t listening.

◆ **Electrical Service Deregulation—Consumer Protection Rules.** In 1997, the legislature enacted SB 477 (Peace) to refine AB 1890 and to redefine the rate reduction bonds authorized in AB 1890 (see above). SB 477’s passage occurred in the context of consumer dissatisfaction with utility bill manipulation and stranded cost consumer assessments noted above. Although SB 477 did not address the underlying stranded cost problem, bill manipulation, or other com-

plaints of consumer activists, it included a number of new or clarified consumer protections to overcome consumer group opposition to the bonds. For example, although AB 1890 required ESPs servicing residential and small commercial customers to “register” with the state prior to beginning operations only until January 1, 2002, this legislation extends the registration requirement indefinitely, adds a \$25,000 registration fee, and includes new requirements. Hence, although power generation was to be subject to marketplace forces—particularly as to pricing—a less onerous form of regulation (registration, rather than licensing) is available for public protection against competition flaws or competitive abuses. The legislation also requires the PUC to compile consumer information and make it available to the public, including fraudulent practice information. And, cognizant of the excesses in “switch-to-me” long distance telecommunications marketing, the bill requires the PUC to compile a “no-solicitation list” of those customers who do not wish to be contacted by ESPs.

◆ **PUC Decision 98-03-072.** On March 26, 1998, the Commission adopted Decision 98-03-072 to implement further the provisions of SB 477. The regulatory scheme adopted in Decision 98-03-072 strikes a balance between allowing ready access to the marketplace and filtering to prevent unsafe products or other irreparable harm to the public. It adopts interim standards that ESPs must satisfy, consisting of three primary requirements: (1) as noted above, a regulatory registration requirement to screen retailers of electrical power to consumers, including “proof of technical and operational ability” as well as “proof of financial viability” pursuant to SB 477 and in accordance with Public Utilities Code section 394; (2) a bonding requirement to protect consumers; and (3) a notice/information disclosure requirement applying to the service contract and billing. The interim standards are based on proposed standards and earlier actions taken by PUC staff, and they were effective immediately upon the publication of Decision 98-03-072.

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The registration requirement implements a form of regulation allowing for greater competition, with the retention of some state intervention. Instead of comprehensive regulation, including ratesetting, the registration process attempts to ascertain qualification as a barrier to entry, followed by relatively relaxed regulatory involvement post-entry (with the exception of a limited bond requirement). Hence, at point of registration, a new service provider (for residential or small commercial customers) must vouch for its ability by demonstrating experience in the energy field or related businesses, and proof of technical, operational, and financial ability. Providers seeking to register must wait 30 days while the PUC conducts a background check to verify the information before it will issue a registration number to the applicant.

Consistent with SB 477, Decision 98-03-072 requires a \$25,000 security deposit, bond, or customer trust account as well as an executed service agreement with each utility distribution company (UDC) in whose service area the ESP intends to offer service. The notice requirement to customers consist

of a "Notice of Price, Terms, and Conditions of Service." The PUC suggests specific form wording to assure that the notice is uniform for all providers and to enable consumers to easily compare prices and services. And utilities and ESPs will use a standard bill format so that no matter who serves a customer, the bill will include the same minimum body of information, in itemized detail to allow customer monitoring.

Decision 98-03-072 also requires the PUC's Consumer Services Division to track customer complaints about ESPs. A broad array of information about complaints and PUC response must be made available to the public on the PUC's website. Unauthorized switching of providers is explicitly prohibited. The PUC has established a cost recovery remedy to provide a financial incentive against "slamming" (unconsented transfer of customers), as well as an immediate suspension capability as a punitive measure.

◆ **Voters Defeat Proposition 9.** Frustrated by the legislature's restructuring of AB 1890's rate reduction bonds to require consumers to repay them, several consumer groups qualified Proposition 9 for the November 1998 ballot. The initiative would have answered the complaints against the controversial surcharges of AB 1890 and SB 477 with a plan to: (1) prohibit private electric utilities from charging ratepayers for transition costs for the nuclear powerplants (other than reasonable decommissioning costs); (2) prohibit the TTA charge to finance the rate reduction bonds; and (3) mandate a 20% rate reduction in electric rates. These proposed measures were intended to block what consumer advocates contended was a shameless financial bailout of utilities in order to buy their support for deregulation and the system advantages flowing from enhanced competition.

On November 3, 1998, California voters defeated Proposition 9 by a three-to-one margin. Harvey Rosenfield, co-author of Proposition 9, complained that the media campaign against Proposition 9 cost an extraordinary \$40 million, almost all of it coming from the state's three largest electric utilities—Pacific Gas & Electric, Southern California Edison, and San Diego Gas & Electric. The companies created an organization called "Californians for Affordable and Reliable Electric Services" (CARES) and funneled millions of dollars in contributions timed in such a way as to escape public scrutiny until it was too late. Rosenfield, Ralph Nader, and other consumer activists charged that the utilities' anti-Proposition 9 advertisements were demonstrably false, relying on the "big lie" technique of repetition without opportunity for rebuttal or correction. The ads claimed that the initiative would impose "higher consumer bills" (when it would explicitly mandate lower bills) and paraded a series of dubious scenarios of state credit diminution affecting local government bond financing, and the likelihood of required state payment of bond indebtedness notwithstanding the initiative's terms to the contrary. The consumer activists' claims were bolstered by the Legislative Analyst's Office (LAO) analysis of the measure, which concluded that the state would not be required to foot the bill in the event of a bond default. The opinion carried substantial weight given the legislative leadership's consis-

tent and strong support for the utilities' position. Consumer activists also cited the different policies of other states now deregulating utilities. Illinois' Commonwealth Edison wrote off \$1.36 billion in the fourth quarter of 1997, absorbing losses from unproductive power generation. Pennsylvania's utility, PECO Energy, similarly wrote off \$3 billion. California has provided an extreme example of utility solicitude.

Had the initiative won enactment, it was scheduled for court challenge by utilities, which were expected to argue that it would violate both the legislature's promise to repay bonds via the TTA surcharge discussed above, and a similar agreement with the state's Infrastructure and Economic Development Bank. Prior to the election, an appellate court declined to bar the initiative from the ballot based on these and other arguments, consistent with judicial doctrine not to interfere in such issues until and unless ripe. Consumer activists were prepared to argue the merits of this contention, citing the prohibition on any one legislature from binding future legislatures. Hence, unless and to the extent that constitutional public "taking" limitations are involved, the public—acting as a subsequent legislature under the constitution—can refashion such terms in the same way it can alter the Tax Code.

Funded almost entirely by the utilities who stood to gain (and lose) the most, CARES outspent Proposition 9's proponents \$40 million to \$1.4 million (including the \$1.1 million spent to qualify the initiative). The scale of the utility campaign was substantial; the two gubernatorial candidates—combined—spent \$50 million.

Some consumer activists contend that notwithstanding some first amendment application to utility-sponsored speech, large-scale public deceit should invoke PUC intervention and sanction. None has occurred. Consumer activists charge that instead of enforcing minimum ethical standards of honesty, the PUC and other state agencies joined in the deception. Weeks before the election, the California Energy Commission (CEC) prepared an analysis showing that Proposition 9 would have dramatically reduced rates for 10 million Californians. The report was finalized on October 16, 1998, but was not released by the CEC until the week of November 16, two weeks after the November 3 election. The report stated that Proposition 9 would have reduced Californians' power bills by 11%–18%, contradicting the advertisements of the utility companies.

◆ **The Impact of Deregulation on the Environment.** Some environmentalists have complained that AB 1890 provides only half the money budgeted in 1994 for energy-efficient programs—and that funding is limited to four years. AB 1890 does include a so-called "green marketing" provision, which encourages the use of electricity generated from renewable resources. However, some environmental critics contend that the restructuring plan makes "green marketing" so difficult and unprofitable that only seven-tenths of 1% of California's residential consumers have chosen energy generation from environmentally sound suppliers. Nevertheless, the concessions by the utilities for environmentally sound energy subsidy which were obtained were substantially greater than would have occurred with naked deregulation. Moreover, they were negotiated by two major

environmental groups, the Natural Resources Defense Council (NRDC) and the Environmental Defense Fund (EDF), in the course of AB 1890's enactment. Both groups therefore felt "honor-bound" to oppose Proposition 9, and did so.

Telecommunications Utility Regulation

The following is a description of recent PUC activity related to its regulation of telecommunications in California.

◆ **Commission Defers PacBell's Application to Become a Long Distance Carrier.** On December 17, the PUC ruled against Pacific Bell's so-called "section 271" request to become a long distance carrier, giving the utility until June 1, 1999 to demonstrate that it meets the requirements of federal law.

Until 1996, PacBell—a Regional Bell Operating Company (RBOC) born of the 1982 consent decree in *United States v. AT&T*, in which AT&T agreed to divest itself of its local operating companies—enjoyed a monopoly in local telephone service but was prohibited by the final decree from entering into the long distance ("interLATA") business. That year, however, Congress enacted the Telecommunications Act of 1996 (FTA) [15:4 CRLR 237]; Congress' stated intent was to create an open and competitive telecommunications market, including local markets. Hence, pursuant to AB 3606 (Moore) (Chapter 1260, Statutes of 1994), the PUC implemented competition in the "intraLATA" toll call market on January 1, 1995, and expanded competition to the local market in 1996 to force incumbent local exchange carriers (LECs), such as PacBell, to open their markets to competitors. [15:4 CRLR 238] Section 271 of the FTA permits RBOCs to enter the long distance market, so long as they can prove they have opened their respective local exchange markets to competition. To meet this requirement, an RBOC must demonstrate that it has complied with a 14-point "competitive checklist" and that "the requested authorization is consistent with the public interest, convenience, and necessity."

The FTA explicitly preempts any state or local regulation which impinges on the federal open competition goal. Because of preemption, state public utilities commissions are now subject to Federal Communications Commission (FCC) guidance relating to most telecommunications regulation. State PUCs have acted as local agents of the FCC when dealing with the local RBOC under acknowledged FCC jurisdiction. When a RBOC attempts to enter the long distance market, it does so by initially filing an application with the state commission, which holds hearings to determine whether the RBOC has satisfied the "checklist" and can be passed on to the FCC for approval.

On March 31, 1998, PacBell filed for permission to provide long distance service in California. Because of the volume of materials involved, PUC staff was unable to make a recommendation within the 90-day statutory period for initial investigation and response. The Commission altered the application procedure to allow staff more time, and PacBell was granted a change in the application hearing format. The new format included a series of workshops in which all involved parties (competitors, public interest groups, and staff) met and discussed ways in which PacBell could meet the section 271 checklist requirements.

The PUC staff's final report, issued on October 5, 1998, identifies deficiencies that PacBell must correct before it can expect PUC endorsement of a long distance filing before the FCC. In November, PUC Administrative Law Judge (ALJ) Jacqueline Reed considered the report, and drafted a decision with a final list of recommended compliance actions.

On December 17, the Commission issued a decision finding that PacBell has not yet fully opened its local market to competition. According to the PUC, PacBell has complied with only four of the required fourteen points on the statutory checklist; the Commission 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 will mean that PacBell must refile its section 271 application and begin the process anew.

◆ **PUC Fines PacBell Over Missing ISDN Data.** On September 17, the PUC fined PacBell \$309,000 for failing to produce customer survey data about the quality of its Integrated Services Digital Network (ISDN), or high-speed data transmission lines, during 1997, and then failing to offer up witnesses who could explain the omission.

In March 1997, the PUC granted PacBell rate increases it requested for ISDN services, and also ordered the utility to submit customer satisfaction survey results every six months and to offer billing credits to certain ISDN customers to make up for poor service. The utility failed to produce its survey data for a 103-day period between September 1 and December 12, 1997, and then provided witnesses who could not explain why they were not filed. When PacBell finally did produce survey results for the April–September 1997 period, they showed a marked deterioration in ISDN service quality beginning in March 1997 (coincidentally corresponding in time to the PUC rate increase). Monthly statistics showed PacBell failed to meet the standards set by the PUC in every month and in every category except one (47 out of 48 possible points of compliance) during 1997–98.

In addition to the \$3,000-per-day fine, the Commission ordered PacBell to absorb installation costs if, during any consecutive three months through December 31, 1999, more than 10% of residential and business customers report that PacBell's provision and repair of ISDN service is "poor" or "terrible."

◆ **PUC Permits PacBell to Offer Anonymous Call Rejection.** On September 19, PacBell began offering Anonymous Call Rejection (ACR), following the PUC's June 19 approval of its request to offer the service; the Commission provisionally approved ACR for two years under strict privacy safeguards.

ACR rejects incoming calls from callers who block their number from being disclosed through Caller ID, another service offered by PacBell. If a call is blocked, a recorded message informs callers that in order to complete the call, they must disclose their number by dialing *82 (or 1182 from a rotary phone). ACR will be available free to Caller ID subscribers who pay \$6.50 per month for the service, and at \$2 per month to non-Caller ID subscribers.

PacBell has been offering Caller ID for two years. The utility insists that Caller ID protects subscribers' personal

privacy by enabling them to screen calls before answering them. Privacy advocates, such as the Privacy Rights Clearinghouse (PRC) based at the Utility Consumers' Action Network in San Diego, warn consumers that Caller ID permits their telephone numbers to be displayed to, captured, and sold by telemarketing firms and other commercial entities to whom consumers make calls. The PRC advises consumers to block display of their number to preserve their privacy. The PRC opposed ACR as well, arguing that businesses will use ACR to force consumers to divulge private telephone numbers—which will then be used in marketing schemes. SB 1070 (Peace), which would have prevented PacBell from offering ACR to businesses for this very reason, was vetoed by Governor Wilson (see LEGISLATION).

The PRC also expressed concern that consumers will not be given enough information to be able to use the feature to their advantage. In response to these concerns, the PUC has required PacBell to report monthly during the 24-month trial period on such factors as consumer response to the service, number of complaints, number of subscribers, and number of rejected calls per month. Finally, before it can launch ACR service permanently, the company must assure the Commission that it has the technical ability and system in place to provide rejected callers an immediate recorded response, without in any way degrading overall network operations.

Privacy advocates, such as the Privacy Rights Clearinghouse (PRC) based at the Utility Consumers' Action Network in San Diego, warn consumers that Caller ID permits their telephone numbers to be displayed to, captured, and sold by telemarketing firms and other commercial entities to whom consumers make calls.

♦ **Modification of Universal Lifeline Telephone Service Program.** On September 3, 1998, the PUC opened a rulemaking proceeding to consider modifying California's Universal Lifeline Telephone Service (ULTS) Program and General Order (GO) 153.

The ULTS program was created to implement the 1983 Moore Universal Telephone Service Act, which provides low-income households with access to basic telephone service at a discounted rate (generally 50% lower). The ULTS program cost is currently \$245 million, and the program serves 3.1 million subscribers. Local phone service companies recover the costs of providing ULTS from rates paid by ULTS phone customers, subsidies from federal universal service programs, and subsidies from the ULTS program. ULTS program costs are funded by the ULTS surcharge all customers pay on their intrastate charges.

The goal of the ULTS program has been to increase the access of low-income households to basic phone service. The program has traditionally offered basic telephone service to impoverished consumers at or close to the "marginal cost" to the utility. Hence, although business and other residential users pay the "fully distributed cost" which included contribution of roughly their proportionate share of fixed costs, low-income consumers do not. Economists justify such price variation as consistent with both market and efficiency models. Quite apart from the social advantage of universal communication among citizens, the system's efficiency may be enhanced by higher utilization of its fixed costs if these addi-

tional customers are hooked in, even if their contribution is only up to the marginal costs they impose. However, as noted above with electricity deregulation, the relegation of pricing to market forces makes this pricing format uncertain. Utilities often select other beneficiaries for marginal cost pricing advantage (e.g., attraction of new business customers, or competitive response). [15:4 CRLR 1]

The modifications to be considered would update the 1984 GO 153 (which defines the procedures for administering the program) to reflect ULTS program changes, make ULTS conform to similar federal programs, foster competition in providing ULTS, and require telecommunications providers to follow uniform ULTS procedures.

This rulemaking stems from changes in the federal Lifeline and Link Up universal service programs. Also, ULTS has not kept pace with emerging competition in the local phone service market because installation charges are not discounted for ULTS customers who switch from a local phone company to a competitor. This may discourage customers from choosing among competing local phone service providers. And because there are no uniform standards governing compliance with the ULTS program, program administration is becoming burdensome.

Modifying California's ULTS program to conform to federal standards will enable ULTS customers to get discounted installation charges whenever they move to different residences. It will also give them the option of a deferred payment schedule for installation charges, enable them to receive toll calling control services without charge, and prohibit disconnection of an ULTS customer for non-payment of toll charges. Other proposed ULTS program modifications would enable all local phone service providers to recover their costs of providing ULTS service to the extent they are not reimbursed from the federal Lifeline and Link Up programs, and allow ULTS subscribers to pay discounted installation charges once per year when switching ULTS providers. The uniform procedures proposed in the rulemaking are intended to reduce ULTS program administrative costs and ensure that all carriers are treated equally and fairly. The proceeding is scheduled to be concluded with Commission action by September 1999.

♦ **PacBell Seeks Substantial Increase in Service Charges.** In June 1998, PacBell applied to the PUC for rate increases on several services which remain within PacBell's monopoly power and the Commission's rate regulation purview. Under the proposed rate hikes, emergency interruption charges would increase from \$1 to \$4; busy line verification from 50 cents to \$2; directory assistance from 25 cents to 50 cents, with an option to raise the rate to \$1.10; calling card calls from 35 cents to 60 cents; collect and bill-to-third-number calls from 95 cents to \$1.60; person-to-person calls from \$2.95 to \$4; and inside wiring charges from 60 cents per month to \$1.50.

The PUC held public hearings on these proposed rate increases in Fresno on November 11 and in San Jose on No-

ember 12, and evidentiary hearings on December 6–7. PacBell argued that no significant rate hikes for these services have been imposed for several years, and that they are justified by labor cost increases. Consumer advocates countered that the increasing use of technology should more than offset increases in labor and that consumers should be given a rate rollback. The evidence has gone to the ALJ, and—at this writing—a proposed decision is expected in early 1999.

♦ **Service Quality Standards for Telecommunications Carriers.** On June 19, 1998, the PUC initiated a rulemaking proceeding “to determine the types of service quality standards that should be applicable to telecommunications carriers, what the applicable technical standards should be, what means should be used to measure compliance with the standards established, and whether these standards should apply equally or at all to both dominant and non-dominant carriers.” Although the PUC remains fully committed to its ongoing goal of opening all telecommunications markets to competition, and expressed hopes that competition will “ultimately be the major driving force to ensure that high levels of service quality will prevail,” it also wants to ensure “both in this transitional period and in the long term that customers are assured of certain minimal quality standards that all competing carriers need to achieve.”

The PUC’s inquiry concerns the “minimal standards of performance required of telecommunications companies” in order to remain licensed, as set forth in General Order (GO) 133–B. GO 133–B was last revised in 1992, “prior to the dramatic growth in consumer demand for additional telecommunications services and lines to customers’ premises, and prior to all but the earliest stages of competition development.” GO 133–B is applicable to all telephone utilities providing service within California; these utilities compile service quality data on a monthly basis and report to the PUC on a quarterly basis when any reporting unit does not meet the specified service level criteria for any month. Some telephone companies maintain tariff rules that allow customers to receive a credit when service installation or repairs are not completed as agreed; others—notably Pacific Bell—offer no such credit or even a service guarantee to customers.

The Commission noted that the number of service quality complaints regarding telephone service made to its staff almost doubled between 1996 and 1997; for this same period, complaints relating to missed commitments increased from 30 to 502, while complaints related to delayed installations increased from 171 to 703. “It is the purpose of this rulemaking to propose for comment a set of service quality standards and compliance mechanisms intended to address these and other service quality problems and set minimal standards for all customers.”

On July 14, 1998, the assigned ALJ agreed to requests from consumer advocates and telephone companies to hold a two-day workshop on the issues, and to extend the deadline for briefs and comments. Several proposals have been submitted to modify GO 133–B, but action is currently being deferred until Governor Davis replaces with permanent appointees the two vacancies among the five commissioners.

Implementation of SB 960 (Leonard)

The PUC continues to move forward with implementation of SB 960 (Leonard) (Chapter 856, Statutes of 1996), which became effective on January 1, 1998. The legislation primarily deals with the internal decisionmaking processes within the PUC. The law is intended to involve PUC Commissioners more in all aspects of Commission decisionmaking, including hearings, and to establish rules governing *ex parte* communications between interested parties and Commission decisionmakers in PUC proceedings.

♦ **Classification of Procedures and Ex Parte Communication Rules.** The new statute requires the Commission to identify and classify each proceeding into one of three categories: quasi-legislative, ratesetting, or adjudicatory. A Commissioner must issue a “scoping” memo for each type of proceeding and lay out a timetable for resolution of the matter. However, the classification into one of these three types of proceedings triggers different respective rules; most controversial among the differences are the propriety and regulation of *ex parte* communications.

An “*ex parte*” communication refers to a private message to a public official from a person with some interest in a proceeding which is the subject of the communication and in which the official is involved. The PUC has a long history of *ex parte* communication embarrassments, including the disclosed drafting of a critical Commission decision by utility lobbyists in secret. [14:1 CRLR 166–67; 13:4 CRLR 203–04] In general, the more adjudicatory—or court-like—a proceeding is considered, the more limitations apply on such private communications. Quasi-legislative functions (*e.g.*, rulemaking) are given wider latitude, consistent with the legislature’s protective posture toward private communications (lobbying) in its own operations. The limitations common on *ex parte* contacts range from categorical prohibition (generally applicable to judges unless all parties are present, and similar to the PUC’s existing rule applicable to its administrative law judges), to allowable contacts followed by timely disclosure of such contacts to other interested parties (currently applicable to Commission members in adjudicative proceedings), to no limitations at all (as with the state legislature).

Under SB 960, the PUC must classify each proceeding into one of the three categories; that classification triggers differing rules as to *ex parte* communications and other issues. Interestingly, the bill also requires the Commission to establish regulations on *ex parte* communications on case categorization issues (see below).

If a proceeding is classified as adjudicatory, Public Utilities Code section 1701.2 requires the assigned commissioner or ALJ to hear the case as described in the scoping memo (which must designate whether the assigned commissioner or ALJ will preside in the case). *Ex parte* communications are prohibited in adjudication cases. Once the evidence has been presented, the assigned commissioner or ALJ must prepare and file a decision setting forth findings, conclusions, and recommendations. The decision must be filed with the PUC and served on all parties to the action “without undue delay” (no later than 60 days after the matter has been sub-

mitted for decision). The decision of the assigned commissioner or ALJ will become the decision of the Commission if no further action is taken within 30 days. Any interested party may appeal the matter to the Commission, or the Commission itself may initiate a review of the proposed decision on any grounds. The Commission may meet in closed session to consider the decision that is being appealed; however, the vote on the proposed decision shall take place in a public meeting and must be accompanied by an explanation. Adjudication cases must be resolved within twelve months of initiation unless the PUC makes findings why that deadline cannot be met and issues an order extending the deadline.

If the PUC classifies a proceeding as ratesetting, the Commission will appoint an ALJ or a commissioner to be the principal hearing officer. The principal hearing officer must be present for more than one-half of the hearing days. A commissioner must be present at closing argument. With regard to ex parte communications, Public Utilities Code section 1701.3(c) states: "Ex parte communications are prohibited in ratesetting cases. However, oral ex parte communications may be permitted at any time by any commissioner if all interested parties are invited and given not less than three days' notice. Written ex parte communications may be permitted by any party provided that copies of the communication are transmitted to all parties on the same day. If an ex parte communication meeting is granted to any party, all other parties shall also be granted individual ex parte meetings of a substantially equal period of time and shall be sent a notice of that authorization at the time that the request is granted. In no event shall that notice be less than three days." Once the ex parte contact period is ended, the PUC may meet in closed session to consider the case.

Public Utilities Code section 1701.4 establishes the rules for quasi-legislative proceedings, in which the PUC establishes policy and effectuates rulemaking. SB 960 provides that the Commission shall appoint a commissioner to hear the case, and an ALJ to assist the commissioner. The assigned commissioner must be present for all of the formal hearings. In rulemaking proceedings, ex parte communications are permitted without any restrictions.

The bill also establishes procedures for removing PUC ALJs from cases where there is a potential conflict of interest or where the ALJ has recently been a party to a case before the PUC. In adjudicatory and ratesetting proceedings, SB 960 provides for unlimited peremptory challenges to the assignment of an ALJ who (1) has served in an advocacy position at the Commission or has been employed by a regulated public utility within the last twelve months; (2) has served in a representative capacity in the proceeding; or (3) has been a party to the proceeding. Also, in a major change in adjudicatory proceedings, SB 960 provides all parties a one-time peremptory challenge to the assignment of an ALJ.

In January 1997, the Commission established experimental rules for implementing SB 960, prior to its effective date of January 1, 1998. The Commission wanted some experience operating under the new requirements of the bill before its effective date in order to recommend appropriate refinements.

Also, the Commission was directed by SB 960 to make certain reports to the legislature before the effective date of the bill, and the Commission felt that some experience under the new rules would enhance its ability to make effective recommendations to the legislature. On December 3, 1997, in Decision 97-12-043, the PUC issued its Opinion Adopting Final Rules Implementing SB 960, codified as new Article 2.5 of the Commission's Rules of Practice and Procedure. The PUC then sent these rules to the Office of Administrative Law (OAL) for inclusion in the California Code of Regulations.

Major provisions of the new rules include Rule 6, which requires any person who files an application after January 1, 1998 to state in the application the proposed category for the proceeding (adjudicatory, ratesetting, or quasi-legislative), the need for a hearing, the issue to be considered, and a proposed schedule. Rule 6c states that a Commission order shall preliminarily determine the category and need for hearing, and shall attach a preliminary scoping memo. If a proceeding fits into more than one category, the Commission may determine which category appears most suitable to the proceeding, and may divide the subject matter of the proceeding into different phases or one or more new proceedings.

Rule 7 implements the requirements of SB 960 regarding ex parte communications during the categorization process (see above). Rule 7 permits ex parte communications during the categorization process, but requires that they be reported (disclosed, as discussed above). Rule 7 also requires that ex parte communications in a ratesetting proceeding must be reported. Rule 7.1 sets out the reporting requirements. An original and seven copies of a "Notice of Ex Parte Communication" must be filed with the Commission's San Francisco Docket Office within three working days of the communication. The notice must include the date, time, and location of the communication; whether it was oral, written, or a combination; the identities of the decisionmaker involved and the person initiating the communication; and a description of the interested person's communication and its content. These reporting requirements apply to ex parte communications in ratesetting and categorization proceedings. In adjudication proceedings, the new rules go a step further, and apply the ex parte communication prohibition to both ALJs and to commissioners. In quasi-legislative proceedings, ex parte communications are permitted without restriction.

Rule 63.2 implements the provisions of SB 960 regarding the automatic reassignment of ALJs in an adjudicatory proceeding pursuant to a peremptory challenge. Rule 63.2(a) contains the form of the petition to be used to exercise this challenge, and states that no party in an adjudicatory proceeding will be permitted to make more than one petition for reassignment. Rule 63.3 implements the procedure for reassignment of an ALJ for cause in a ratesetting or adjudicatory proceeding. Petitions for reassignment for cause are not limited.

◆ **Closed Meeting Changes.** SB 960 exempts the PUC from the Bagley-Keene Open Meeting Act's requirements in limited cases—when the full Commission is acting on appeals of adjudicatory cases, and when it is discussing ratesetting cases.

Public Utilities Code section 1701.2(c) allows the Commission to meet in a "closed hearing" to consider an appealed decision in an adjudicatory proceeding. This provision was implemented by Rule 8.2(g), which states (in relevant part) that the Commission "may meet in closed session to consider the decision of the presiding officer that is under appeal." Resolution ALJ-175, adopted February 4, 1998, states that it is the belief of the Commission that the term "hearing" in section 1701.2(c) is equivalent to "session" as used in Rule 8.2(g).

In proceedings categorized as ratesetting, after a hearing has been held and a decision has been proposed, Public Utilities Code section 1701.3(c) states that the Commission may establish a period during which no oral or written ex parte communications are permitted, and may meet in closed session to consider the decision during that period, which shall not exceed 14 days (subject to the disclosure requirements discussed above). If the Commission decides to "hold" the decision (for possible change), section 1701.3(c) permits it to accept ex parte communications during the first half of the interval between the hold date and the date that the decision is calendared for final decision. And, under section 1701.3(c) and Rule 8.1(d), the Commission may meet in closed session for the second half of that interval. During its rulemaking process on these regulations, utilities urged the Commission to adopt a default rule for open deliberations in all ratesetting proceedings. In Resolution ALJ-175 (February 4, 1998), however, the Commission provided that the default protocol will be for closed deliberations in these proceedings, and that the provision for quiet time be observed. The thrust of the Commission's arrangement is to retain the ability of commissioners to communicate with interested parties (e.g., to obtain collateral or explanatory information, or to test the proposed terms of a decision) before finally meeting in closed session to hammer out a final decision. However, consumer advocates contend that such license opens the way for substantial abuse of the administrative process. Given the substantial resources of those traditionally benefitting from these private conferences, they are already well-represented in extensive hearing records, written briefs, and oral argument. In ratesetting proceedings, utility representation is usually funded involuntarily from ratepayers at substantial cost in terms of legal counsel and particularly in terms of expert witness use. Critics contend that allowing private communication beyond such formal proceedings, without opportunity for cross-examination, undermines the integrity of the hearing and factfinding process.

♦ **Office of Ratepayer Advocates.** SB 960 also revamps the Division of Ratepayer Advocacy, a PUC entity that represents the consumers in all significant cases before the Commission. Under SB 960, the Division is transformed into the Office of Ratepayer Advocates (ORA), and the ORA director serves at the pleasure of the Governor, subject to Senate confirmation. The new law also requires that the ORA's annual budget be separately identified. Since its creation in the 1980s, the purpose of the ORA has been to provide an independent voice for the consumer and a check on utility influence within the agency. Both of these changes are intended to give the ORA

additional independence from the Commission so it may represent consumer interests without fear of reprisal or sanction.

PUC Seeks Changes to Intervenor Compensation Program

In April 1998, the Commission approved Decision D.98-04-059, which makes minor changes to its intervenor compensation rules (Article 18.8). In addition, in recognition of the fact that major changes to the program would require statutory change given their provision in existing law, the PUC has suggested legislative amendments to broaden intervenor participation in PUC proceedings. Under the changed procedures, the PUC will provide scoping memos to parties to inform them of what issues will be covered and thus subject to the recovery of intervenor compensation.

Under current law, an intervenor may be reasonably compensated for participation in Commission proceedings if the intervenor's contribution (1) does not duplicate other parties; (2) is needed for a fair determination of the case; (3) causes a financial hardship to the intervenor; and (4) makes a substantial contribution to the case. Restructuring of the utilities industry towards a more competitive model has led utility companies to argue that new competition adequately protects consumers, given their ability to change companies when dissatisfied with current rates or service. However, consumer advocates, with current Commission support, contend that the intervenor compensation program remains necessary, particularly given the transition difficulties in accomplishing competition, and given the incomplete application of competition to both telecommunications and electricity and its continued non-application to water supply.

The current intervenor compensation program has suffered from slow compensation to worthy intervenors. Currently, intervenors are compensated after the Commission makes its decision in a proceeding. [10:1 CRLR 1] The Commission is inviting parties to propose legislative amendments to permit the use of an "optional track" in formal proceedings that would allow for periodic payments to an intervenor during the course of the proceeding if the intervenor commits to a budget, and agrees that compensation will be capped at the amount submitted in its Notice of Intent.

Currently, any compensation awarded to an intervenor is paid by the utility involved in the proceeding. However, with increased competition in the affected industries, many policy and rulemaking proceedings will involve many utilities, and often these utilities are represented through associations and other representatives. The new order requires all utilities participating in such proceedings on their own, through a representative, or through an association to share in paying the compensation. The Commission directed its General Counsel to prepare a recommendation for legislative changes to the intervenor compensation governing statutes based on this decision.

PUC Requires Utilities to Prepare for Year 2000

Disruption of services provided by PUC-regulated telecommunications, energy, water, and transportation utilities would adversely affect millions of Californians. It is crucial

that computer software and hardware used by the regulated industries properly recognize the year 2000. With this in mind, the PUC has sent letters to the regulated utilities requesting confirmation of their Year 2000 (Y2K) plan, preparation, and timetable for readiness. In addition, on November 5, 1998, the Commission adopted Resolution M-4792, which requires utilities to certify that they are compliant by November 1, 1999, and to develop contingency plans to address Y2K problems that may develop in spite of their efforts. In order to prevent undue public concern, the PUC intends to mount a consumer education effort, informing the public about its efforts to overcome the Y2K problem, and to assure the public that contingency plans are in place in the event of service disruption.

PUC Adopts 1998 Business Plan

In March 1998, the PUC adopted its *1998 Business Plan*, which details the major objectives and strategies each PUC division will pursue in the coming year. The plan focuses on competition and consumers. In the competition area, the plan places particular emphasis on introducing and facilitating competition between former monopoly utilities and viable new market participants. The Commission believes that by fostering such competition, consumers will have greater choice of providers and obtain new or improved services, products, and prices. In the area of consumer protection and services, the plan focuses on educating consumers about changing utility markets and how changes will affect them. The plan also proposes new complaint and dispute resolution methods to resolve customer disputes, and promises prompt action to address illegal or abusive business practices or services.

The Commission's Consumer Protection Role and Responsibilities

In March 1998, PUC President Richard Bilas created a task force to evaluate the Commission's consumer protection role and responsibilities. Commissioner Josiah Neepner convened a Consumer Protection Roundtable on April 2 and, on July 31, Commission staff issued its report. The report states that the Commission must recognize that consumer and market fraud can and will occur in the newly competitive marketplace, and that the Commission has a responsibility to inform consumers of their rights in this new environment.

In order to implement this responsibility, the Commission will use three primary tools: (1) setting policies and rules; (2) enforcing those rules; and (3) educating consumers by providing the public with accurate, unbiased, and timely information. The report identifies four challenges the PUC faces in order to improve consumer protection. First, the Commission must improve public intake and resolution of consumers' informal complaints by streamlining public access to the Commission, especially for non-English-speaking consumers. Second, the report states that the Commission must proactively identify consumer problems and trends in consumer fraud and take expeditious corrective action; the PUC plans to accomplish this goal by better compilation and validation of customer complaint data and the establishment of clearer protocols for investigation and enforcement. Third, the report recommends

that the Commission streamline consumer protection rules for competitive utility service providers by initiating rulemaking that will establish a single set of minimum rules applicable to all competitive service providers (see above for discussion of minimum service standards for telecommunications providers). Finally, the report urges the Commission to enhance and reorganize its public information function, outreach activities, and consumer education efforts and to prominently display the Commission's toll-free telephone numbers on the Commission's website and public information documents.

Legislation

AB 1154 (Martinez), AB 2648 (Martinez), and AB 2703 (Martinez) all would have limited ratepayers' liability for electrical utilities' uneconomic sunk costs of facilities, particularly limiting liability for the uneconomic costs of nuclear generation assets; under AB 1890 (Brulte), these liabilities are to be charged to various consumers as part of the competition transition charge (CTC) (see MAJOR PROJECTS). None of these bills passed in 1998.

- **AB 1154 (Martinez)**, as amended on January 8, would have prohibited the inclusion of uneconomic sunk costs for nuclear generation assets in the CTC, and deleted nuclear generation assets and settlement costs from transition costs that can be financed by rate reduction bonds. This bill died in the Assembly Utilities and Commerce Committee.

- **AB 2684 (Martinez)**, as introduced on February 23, would have required the uneconomic costs associated with electric deregulation to be allocated in the same proportion as the marginal cost of generation was recovered as of June 10, 1996, as opposed to being allocated in substantially the same proportion as similar uneconomic costs were recovered as of June 10, 1996, through the regulated retail rates of the relevant electric utility. This bill would have also mandated an additional 10% rate decrease for residential and small commercial customers of electrical corporations, and prohibited the imposition of any tax, bond payment, surcharge, or other assessment on any electrical customer to pay for the rate reduction required by the bill. On April 20, this bill failed passage at its second hearing in the Assembly Utilities and Commerce Committee.

- **AB 2703 (Martinez)**, would have created a "nuclear stranded assets panel" which would determine what, if any, uneconomic costs for nuclear generation plants and related obligations and assets are to be paid for by the electric utility customers, and the amounts. The bill would have required the panel to develop criteria for allocating these amounts between residential and small commercial customers and all other classes of electric utility customers; and prohibited the uneconomic costs for nuclear generation plants and related assets and obligations from being paid for by electric utility customers until the panel has filed its determinations and criteria with the Commission. On April 20, this bill failed passage at its second hearing in the Assembly Utilities and Commerce Committee.

AB 2728 (Martinez). Existing law requires electric utilities, prior to implementation of the CTC and in conjunction with the PUC, to devise and implement a customer education

program informing customers of the changes to the electric industry. As amended June 30, this bill would have (1) prohibited the Commission from funding an entity to educate or inform consumers about electric, gas, or telephone deregulation, if the entity has a pecuniary interest in that market; (2) permitted the Commission to obtain funding from specific entities for consumer education and consumer information programs regarding electric, gas, or telephone deregulation; and (3) permitted the Commission to solicit competitive bids using the procedures of the State Contract Act, to contract with a neutral third party to assist in administering and developing consumer education programs regarding electric, gas, or telephone deregulation. The author contended that precluding entities with a pecuniary interest from conducting educational programs (and advertising their sponsorship thereof) and requiring that such education is undertaken by entities whose true goal is unbiased education will therefore ensure that the consumer will receive a better educational product. Utilities would have consequently been barred from "free-riding" their marketing efforts, and competitors would not suffer a competitive disadvantage. This bill failed passage on the Senate Floor on August 26.

AB 1158 (Martinez), as amended August 24, would have made findings that as utilities prepare for competition, service quality may suffer; and that the PUC lacks an adequate mechanism to track and deal with consumer complaints resulting from the loss of quality of services attributed to the transition to a competitive market. This bill would have required the Commission to investigate and report to the legislature, on or before December 31, 1999, on the impact of competition on the quality of services provided by telecommunications, energy, and natural gas utilities. On August 30, this bill failed passage on Senate Floor.

SB 1602 (Peace), as amended August 10, is an urgency bill that imposes a moratorium on any further action by the PUC to deregulate the natural gas industry. The bill permits the PUC to investigate the restructuring of natural gas services, but prohibits it—prior to January 1, 2000—from enacting any gas industry restructuring decisions and from enforcing any natural gas restructuring decisions for core customers (residential and small commercial users) adopted prior to the effective date of this bill but after July 1, 1998. SB 1602 also requires the PUC to report to the legislature should it find additional restructuring of the natural gas industry to be in the public interest. This bill provides the legislature with the opportunity to enact legislation authorizing the PUC to develop consumer protection regulations before the natural gas market for core customers is opened. This bill was approved by the Governor on August 25 (Chapter 401, Statutes of 1998).

AB 2461 (Campbell), as amended August 26, would have created eight advisory boards to advise the Commission regarding the implementation, development, and administration of various public purpose programs relating to electric and telephone corporations, and to carry out the programs pursuant to the Commission's direction, control, and approval. The bill would also have created a fund for each advisory board in the State Treasury, and required utilities to submit collected revenues

to the PUC for transfer to the Controller and credit to the appropriate fund. According to the PUC, the overall revenues collected for these programs exceeds \$1 billion and that the sum is expected to grow substantially in the next few years.

This bill was vetoed by the Governor on September 26. In his veto message, the Governor stated that the bill would transfer the duties and responsibilities for collecting various surcharges and fees from the respective utility companies of each program to the state. Furthermore, he stated that he has sought to reduce the size of government by encouraging state departments to privatize their functions, and that this bill is a movement in the opposite direction because it would require functions currently performed by private utilities to be performed by state employees.

AB 1605 (Committee on Utilities and Commerce), as amended August 12, is a technical bill that would have (1) eliminated obsolete provisions of the Public Utilities Code; (2) extended peace officer authority to certain officials, including investigators of the PUC's Consumer Services Division; (3) earmarked funds to be transferred from the PUC's Reimbursement Account to the Public Utilities Ratepayer Advocate Fund in order to cover a lack of funding for the Ratepayer Advocate Fund in existing law; (4) authorized the Commission to direct telephone companies to implement the Deaf and Disabled Telecommunications Program (DDTP), which is currently implemented by the Commission; and (5) made other related and technical changes, including technical changes to the written reporting requirement associated with ex parte communications by a decisionmaker. Governor Wilson vetoed this bill on September 26. In his veto message, the Governor acknowledged that "AB 1605 is a technical bill of importance to the Public Utilities Commission." However, he vetoed the bill because it conflicts with AB 1051 (Bordonaro) (see below) and because it would interfere with the PUC's DDTP, which provides telecommunications devices to individuals who are deaf or hearing-impaired through a legislatively mandated surcharge appearing monthly on each California ratepayer's telephone bill. The Governor called on the legislature to reintroduce the bill without its provisions affecting the DDTP.

AB 1051 (Bordonaro) enhances the access of consumers to the PUC's DDTP, whereby telephone corporations provide sound amplification devices, together with a single party line, at no additional charge to the basic exchange rate to any subscriber who is certified as being deaf or hearing-impaired by a licensed physician, audiologist, or a qualified state agency. Under this bill, a licensed hearing aid dispenser is also authorized to certify the need of an individual to participate in the program if the individual has been previously fitted with an amplification device by the dispenser and the dispenser has the individual's hearing records on file prior to certification. This bill was signed by the Governor on May 21 (Chapter 38, Statutes of 1998).

AB 1096 (Martinez), as amended June 30, enhances existing law which prohibits telephone corporations, or any person, firm or corporation representing a telephone corporation, from changing a subscriber's telephone service without specified verification (also known as "slamming"), and provides

that any corporation that violates the verification procedures is liable to the telephone corporation previously selected by the subscriber in an amount equal to all charges paid by the subscriber after the violation. AB 1096 additionally makes a telephone corporation that violates the verification procedures on or after January 1, 1999, liable to the subscriber for an overcharge penalty in an amount equal to 10% of all charges billed the subscriber after the violation, and requires the amount the amount to be credited to the subscriber's telephone bill. This bill was signed by the Governor on September 20 (Chapter 671, Statutes of 1998).

AB 284 (Baca), as amended August 17, also addresses the practice of "slamming." This bill requires a telephone corporation, in addition to complying with existing verification provisions, to mail to a residential telephone subscriber by United States Postal Service a notice that the subscriber's telephone service provider has been changed; any telephone corporation that violates those verification provisions must credit to a subscriber any charges paid by the subscriber in excess of the amount that the subscriber would have been obligated to pay had the subscriber's telephone service not been changed. The PUC is required to adopt regulations to govern those credits. This bill was signed by the Governor on September 20 (Chapter 672, Statutes of 1998).

AB 1127 (Knox), as amended July 24, expands existing prohibitions on the sale or use of illegal telecommunications equipment with the intent to avoid any lawful payment, and requires courts—in the event that a person violates these provisions with the intent to avoid the payment of any lawful charge for telecommunications service to a telecommunications service provider—to order the person to pay restitution to the telecommunications service provider. According to the author, "each year cellular providers lose an estimated \$100 million as a result of unauthorized use of cellular telephones and equipment. This loss affects all of us, since stolen cellular telephones and...identification information have become the communications devices of choice for narcotics traffickers in California." This bill was signed by the Governor on September 28 (Chapter 554, Statutes of 1998).

AB 1937 (Campbell), as amended June 18, requires the Commission—until January 1, 2000—to submit to the legislature, on or before October 31 of each year, a report on telecommunications that includes the following: (a) the status of competition in the telecommunications marketplace; (b) significant changes that have occurred in the telecommunications marketplace in the previous year; (c) a review of any statutes that might impede or discourage competition in, or deregulation of, the telecommunications marketplace; and (d) recommendations to the legislature on statutes that should be amended, repealed, or enacted to enhance and reflect the competitive telecommunications environment or promote the orderly deregulation of the telecommunications industry, or both. This bill was signed by the Governor on September 13 (Chapter 465, Statutes of 1998).

AB 1994 (Bowen), as amended August 20, this bill prescribes—effective July 1, 1999—certain consumer disclosure requirements with respect to the advertising and sale of pre-

paid calling cards and prepaid calling services. This bill was signed by the Governor on September 23 (Chapter 802, Statutes of 1998).

AB 1424 (Martinez), as amended March 23, amends the Public Utilities Act to require entities offering the services of telephone prepaid debit cards that are not certified by the Commission to provide telephone service to register with Commission; failure to register with the Commission is a crime. This bill was signed by the Governor on September 23 (Chapter 799, Statutes of 1998).

AB 2134 (Escutia). Various federal and state laws have been enacted to protect residential telephone subscribers' privacy rights with respect to telephone solicitations; these rights are described in various governmental publications, including the Federal Trade Commission's brochure entitled *Straight Talk About Telemarketing* and the Federal Communications Commission's publication entitled *Consumer News: What You Can Do About Unsolicited Telephone Marketing Calls and Faxes*. As amended June 22, this bill requires telephone corporations to annually provide residential customers with information on these privacy rights in their billing statements. The bill also requires the publication of conspicuous notices regarding these rights in the consumer information pages of the local telephone directories distributed by telephone corporations. This bill was signed by the Governor on September 13 (Chapter 473, Statutes of 1998).

AB 2716 (Martinez), as amended June 25, revises the notice and public input process and changes the transition period involved in the creation of new area codes.

Area code establishment and creation was previously the duty of Pacific Bell. Federal law has removed this duty from PacBell and turned it over to a non-telephone company coordinator, eliminating the potential conflict of interest. The coordinator is responsible for creating the options for the new area codes, including the establishment of area code boundaries and timeframes. Ultimately, the PUC decides which area code option is implemented.

Existing law requires a telephone corporation that establishes a new area code to provide a transitional dialing period of at least six months during which a number in a new area code may be reached by dialing either the old area code or the new area code. This bill deletes the six-month transitional dialing period, and instead requires a provider that opens a new area code to provide a transitional dialing period with no time limit specified. The bill requires a provider, if prefix codes are available subsequent to a transitional dialing period, to permit a caller, without charge, to reach a recorded announcement that informs the caller of the new area code when the existing area code is dialed. The bill makes the law requiring a transitional dialing period, and the recorded announcement subsequent to the transitional dialing period if prefix codes are available, inoperative if an authorized federal or state agency orders mandatory 10-digit dialing. The bill also permits the PUC to order a transitional dialing period or recorded announcement when a new area code plan requires 10-digit dialing. This bill was signed by the Governor on September 16 (Chapter 574, Statutes of 1998).

AB 487 (Leach) exempts unlisted or unpublished telephone numbers of customers which are made available to public entities only for public safety purposes (such as 911 and flood evacuation warning systems) from public inspection under the Public Records Act. This bill was signed by the Governor on April 6 (Chapter 13, Statutes of 1998).

SB 1070 (Peace), as amended July 2, would have prohibited telephone companies from offering Anonymous Call Rejection to California businesses, such that customer calls would be rejected unless they agree to disclose their telephone number to the business. On September 30, Governor Wilson vetoed SB 1070, stating that ACR "is a valuable tool for corporate customers who subscribe to a caller identification service and do not wish to do business with callers who are not willing to disclose their telephone numbers to the party they themselves are calling. In fact, the ability to block calls from certain potential customers has become a matter of security for some businesses. While the intent of this bill is to protect Californians' privacy, I believe that this bill represents an intrusion into the rights of business owners to make legitimate corporate decisions."

SB 2150 (Peace), as amended April 21, sets forth legislative findings and declarations regarding telecommunication policies and requires the Commission, no later than January 1, 2000, to commence a proceeding to consider whether to establish a new regulatory framework that does all of the following: (a) ensures that the public has universally available access to basic local exchange service; (b) applies appropriate rules to all telecommunications service providers; and (c) encourages the provision of advanced, high-speed digital telecommunications services to the public. This bill was signed by the Governor on August 5 (Chapter 266, Statutes of 1998).

SB 378 (Peace), as amended August 21, establishes protections intended to reduce the inclusion of unauthorized charges on a telephone customer's bill, a practice known as "cramming," which has recently been the subject of increasing complaints to the PUC. Among other things, SB 378 provides that only communications-related goods and services may be displayed on a telephone bill until 2001. This bill permits non-communications goods and services to be billed, within the same envelope, but on a separate bill; in this manner a subscriber can clearly distinguish all charges. On January 1, 2001, the limitations on what may be placed on a telephone bill become less stringent. From that date, SB 378 no longer distinguishes between communications and non-communications services; it only requires that products or services placed on a telephone bill contain subscriber authorization.

This bill also attempts to reduce the incidence of "cramming" by requiring entities that produce charges on a telephone bill to comply with certain provisions. The entity must include in the bill a clear description of the item being charged and the amount they are charging. Furthermore, the billing entity must include their name and telephone number in order to provide subscribers a manner to resolve disputes. This bill was signed by the Governor on September 30 (Chapter

1041, Statutes of 1998).

SB 405 (Peace), as amended August 6, establishes customer notice requirements when a telephone corporation sells its long distance customers to another telephone corporation. The bill requires telephone servers to provide written notice to their customers prior to the transfer of accounts to a different server. Specifically, this bill (1) requires the telephone service provider that is exiting the market to provide their customers with a written notice to include (a) a description of the proposed transfer, (b) any fees that the customer will be liable for as a result of the transfer, (c) all applicable rates, terms and conditions of the new service, and (d) a statement notifying the customer of his/her right to transfer to another telephone service provider; (2) requires that the telephone service provider that is exiting the market establish a toll-free customer service telephone number to resolve customer questions and complaints; and (3) specifies that the provisions of this bill do not apply when the telephone corporation has entered into a written contract with the customer, and when the change in telephone corporation results in no rate increase for the customer. This bill was signed by the Governor September 20 (Chapter 663, Statutes of 1998).

AB 1977 (Campbell), as amended June 18, streamlines the PUC's enforcement of an existing law prohibiting telephone companies from providing telephone service to unlicensed household goods carriers. As Public Utilities Code section 5322 is currently implemented, PUC staff must secure a search warrant from a magistrate in order to obtain

subscriber information related to telephone numbers advertised by entities or individuals who appear to be offering services as unlicensed household goods carriers. The subscriber information (*i.e.*, name of provider, name of subscriber and location of service) is

necessary to prepare documents required to obtain a magistrate's order for the disconnection of phone services. This bill requires telephone companies and related entities, on demand and the order of a magistrate, to provide the Commission or an authorized official of the Commission, with access to the name and address of the subscriber to a telephone number being used by an unlicensed household goods carrier. This bill was signed by the Governor on August 24 (Chapter 361, Statutes of 1998).

AB 1182 (Keeley), as amended August 24, requires the PUC, in consultation with the California-American Water Company (Cal-Am), the Department of Water Resources, and other affected interests, to prepare a prescribed long-term contingency plan that the company would pursue if Cal-Am's proposed Carmel River Dam and Reservoir project does not go forward. The bill effectively shifts the burden of preparing the contingency plan from Cal-Am to the PUC. The bill was approved by the Governor on September 23 (Chapter 797, Statutes of 1998).

SB 779 (Calderon), as amended August 28, expands public access to PUC proceedings and expands judicial review of major PUC decisions by both the California Supreme

SB 779 (Calderon), as amended August 28, expands public access to PUC proceedings and expands judicial review of major PUC decisions by both the California Supreme Court and the courts of appeals.

Court and the courts of appeals. Previous law exempted the PUC from provisions of the Administrative Procedure Act (APA) relating to the adoption of regulations, the review of regulations by OAL, and judicial review of regulations. This bill subjects major PUC decisions to a 30-day public review and comment period prior to being voted on by the Commission. The bill also requires the PUC, by July 1, 1999, to publish a large volume of information regarding Commission proceedings, including agendas, agenda item documents, and adopted decisions, on its Internet website. The bill appropriates \$814,000 to implement the expanded Internet site. Further, the bill requires the Commission to adopt any changes to its Rules of Practice and Procedure in accordance with APA rulemaking procedures, including review and approval by OAL.

In the area of judicial review, SB 779 (Calderon) seeks to conform judicial review of PUC decisions with judicial review of other state agencies' decisions. Existing law authorizes judicial review of PUC adjudicatory proceedings to take place in either the Supreme Court or the Court of Appeal, and judicial review of all other decisions to take place only in the Supreme Court. This bill authorizes courts of appeal to issue a writ of review in PUC ratemaking and licensing cases. However, the bill retains existing judicial review procedures affecting water corporations until January 1, 2001.

Finally, this bill extends indefinitely the provisions of SB 960 (Leonard), which became effective January 1, 1998 (see MAJOR PROJECTS). The provisions of that bill were scheduled to be repealed on January 1, 2002. SB 779 was approved by the Governor on September 26 (Chapter 886, Statutes of 1998).

SB 2008 (Kelley), as amended June 24, expands the authority of the PUC to hold closed sessions to deliberate on the institution of proceedings, or disciplinary action, against any person or entity under the jurisdiction of the Commission. Prior law allowed such closed sessions only with regard to "regulated utilities." The bill also permits the PUC's meeting agendas to describe in general terms the purpose of a closed session, rather than to specifically identify the proceeding or disciplinary action contemplated, if (1) specific identification would jeopardize the Commission's ability to effectuate service of process, or (2) specific identification would fail to protect the entity being investigated. The PUC sought this legislation to protect consumer interests and to prevent respondents from avoiding the Commission's disciplinary actions. This bill was signed by the Governor on July 20 (Chapter 210, Statutes of 1998).

Litigation

North Shuttle Service, Inc. v. California Public Utilities Commission, 67 Cal. App. 4th 386 (Oct. 21, 1998), is the first appellate court decision reviewing an action of the PUC, under new jurisdiction established in SB 1322 (Calderon) (Chapter 855, Statutes of 1996). The bill provides that, generally, judicial review of PUC decisions may be sought in either a court of appeal or the California Supreme Court. Prior to SB 1322, only the California Supreme Court had jurisdiction to review PUC decisions—and that review was (and is) discretionary.

In *North Shuttle Service*, the First District Court of Appeal ruled on a request by petitioner North Shuttle Service to stay the effect of a PUC ruling revoking its license. Noting that the stay provisions in the Public Utilities Code were enacted in 1911 and that "the Supreme Court has provided little guidance for their application," the court found that the case raises issues of first impression, and held that an airport shuttle service regulated by the PUC must show more than a loss of asset value and revenue in order to obtain a stay of the PUC's decision to revoke the shuttle service's operating permit.

On May 7, 1998, after nine days of hearings before an ALJ, the PUC issued a decision revoking North Shuttle Service's permit to operate an airport shuttle service at San Francisco Bay Area airports, and suspending North's right to participate in regulated transportation for one year. North then petitioned the PUC for a rehearing, and an automatic 60-day stay was granted. On September 17, the Commission denied North's request for a rehearing. On October 5, North filed a petition for writ of review in the First District Court of Appeal, incorporating a motion for a stay of the Commission's decision until the matter was resolved. The motion merged an express request for a temporary stay pending a decision of the court on a long-term stay under Public Utilities Code section 1763, with an implied request for a long-term stay pending final determination of its petition under section 1762.

In ruling on North's request for a temporary stay, the First District held that the shuttle carrier had not met its statutory burden of demonstrating that irreparable injury would result if a temporary stay were not granted. In its motion, North had presented information that it would lose \$2,500–\$4,000 of revenue each day that it could not operate, and that its customers and employees would be harmed by the stay. North also contended that the value of its 13 operating permits would be lost if the revocation were to take effect. The court viewed this information as "some evidence" of the adverse effects of the license revocation, but not as sufficient evidence to justify a temporary stay. The court then reasoned that since North had not presented sufficient evidence to grant a temporary stay, it could summarily deny the request for a long-term stay.

The court concluded that North had not presented enough evidence of its overall financial condition to support its request for a stay. The court started with the presumption that some injury, loss, or damage is inherent in any adverse decision by the PUC, and such loss might be irreversible. However, the court held that such irreversible losses did not constitute "irreparable" damage to the company, as required by both sections 1762 and 1763. In order to show irreparable damage, North would have had to present the court with evidence that it could not counter the adverse effects of the license revocation by relying on other financial resources, or diverting its resources to unregulated business activities.

Future Meetings

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