



to section 1650 would delete references to the appendix of forms and replace references to the annual tax and registration fee with references to the new biennial fee. The proposed amendment would also clarify the required restoration fee by establishing the fact that the fee includes not only the new biennial tax and registration fee, but also a new delinquent tax and registration fee set forth in proposed amendments to section 1690(f) and (g) (*see below*).

• **Professional corporations.** Recently-amended law relating to professional corporations authorizes a chiropractor to be a limited corporate shareholder, director, officer, or employee of a medical corporation, under certain circumstances. OMBC's proposed changes to section 1670 would reflect the inclusion of a chiropractic licensee to these categories.

• **Tax and registration fee increased.** Recent amendments to Business and Professions Code sections 2455 and 2456.1 authorize an increase in the tax and registration fee which OMBC may charge its licensees. [14:4 CRLR 196] OMBC's proposed amendments to sections 1690(f), (g), and (h) would increase the annual tax and registration fee of \$200 to a biennial tax and registration fee of \$600; the proposed amendments would also fix the delinquency tax and registration fee at \$150.

On December 3, OMBC held a public hearing on all of these proposed changes; following the hearing, the Board adopted the amendments. At this writing, the proposed changes are undergoing review by the Office of Administrative Law (OAL).

Infection Control Regulations Adopted. On October 14, OMBC published notice of its intent to adopt new section 1633, Title 16 of the CCR, which sets forth minimum standards for infection control through citation to several documents promulgated by the U.S. Centers for Disease Control; the standards are designed to minimize the transmission of bloodborne pathogens such as HIV and hepatitis in the health care setting. Following a December 3 hearing, OMBC adopted the proposed changes in new section 1633, Title 16 of the CCR.

If the changes are approved by OAL, this action would bring OMBC into compliance with SB 1070 (Chapter 1180, Statutes of 1991), which requires the Board to adopt infection control guidelines through reference to those promulgated by the California Department of Health Services. Since Business and Professions Code section 2221.1 makes it unprofessional conduct to fail to follow infection control guidelines, OMBC plans to distribute these standards to licensees pending OAL approval. At this writing, the action awaits approval by OAL.

RECENT MEETINGS

At its December 3 meeting, OMBC heard a presentation by a representative from Occupational Health Services regarding its rehabilitation and diversion program for physicians who are impaired due to substance abuse; the representative discussed the structure of the program, its success rate, and its cost per participant. The Board noted the program's value, but was concerned about the cost of diversion. However, if OMBC joins the program, it would be reimbursed for any expenses by participating licensees.

Also at its December 3 meeting, OMBC discussed the necessity of taking a position on the growing use of ultrasound video for entertainment purposes. The U.S. Food and Drug Administration has issued a statement on its position that the nonmedical use of ultrasound for the purposes of making a home video of an unborn fetus constitutes the improper use of medical equipment. OMBC declined to take a position.

Also on December 3, Deputy Attorney General Alan Mangels discussed the Department of Insurance's (DOI) new Fraud Division Task Force. DOI's regulations require all insurance companies to have special investigative units for the investigation of insurance fraud; these units will report directly to newly-created district attorney units specializing in the prosecution of insurance fraud. [14:2&3 CRLR 133; 14:1 CRLR 103-04] OMBC hopes that this new system will obviate the need for its own investigation of insurance and workers' compensation fraud by licensees and has already asked that several of its cases be assumed by the appropriate district attorney's office.

FUTURE MEETINGS

March 4 in Anaheim.

PUBLIC UTILITIES COMMISSION

Executive Director:

Neal J. Shulman

President: Daniel Wm. Fessler

(415) 703-1487

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 the service and rates of more than 43,000 privately-

owned utilities and transportation companies. These include gas, electric, local and long distance telephone, radio-telephone, water, steam heat utilities and sewer companies; railroads, buses, trucks, and vessels transporting freight or passengers; and wharfingers, carloaders, and pipeline operators. The Commission does not regulate city- or district-owned utilities or mutual water companies.

It is the duty of the Commission to see that the public receives adequate service at rates which are fair and reasonable, both to customers and the utilities. Overseeing this effort are five commissioners appointed by the Governor with Senate approval. The commissioners serve staggered six-year terms. The PUC's regulations are codified in Chapter 1, Title 20 of the California Code of Regulations (CCR).

The PUC consists of several organizational units with specialized roles and responsibilities. A few of the central divisions are: the Advisory and Compliance Division, which implements the Commission's decisions, monitors compliance with the Commission's orders, and advises the PUC on utility matters; the Division of Ratepayer Advocates (DRA), charged with representing the long-term interests of all utility ratepayers; and the Division of Strategic Planning, which examines changes in the regulatory environment and helps the Commission plan future policy. In February 1989, the Commission created a new unified Safety Division. This division consolidated all of the safety functions previously handled in other divisions and put them under one umbrella. The Safety Division is concerned with the safety of the utilities, railway transports, and intrastate railway systems.

Members of the Commission include Daniel Wm. Fessler, President, Norman D. Shumway, P. Gregory Conlon, and Jessie J. Knight, Jr. The term of Patricia Eckert expired on December 31; thus, at this writing, the Commission is functioning with one vacancy.

MAJOR PROJECTS

Commission's Proposed Restructuring of California Electric Service Delivery Generates Sparks. At this writing, the PUC continues to consider various proposals to substantially restructure the delivery of electricity. [14:4 CRLR 197; 14:2&3 CRLR 215; 14:1 CRLR 170]

Traditionally, electric utilities have been considered "natural monopolies" not amenable to competition. Such inevitable monopoly occurs where a high fixed-cost structure is needed to provide service, as with utility lines and rights of way which must be provided "up front" to provide service. Where a single fixed-plant struc-



ture can serve all anticipated customers and business, it is uneconomic to build a second duplicative plant, only to have each operating at low utilization. In most communities, there is only one physical plant system, *e.g.*, a single set of power lines making up the "electricity grid."

However, the delivery of power through lines is only one part of an electricity-delivering monopoly; most such businesses also produce most of their own electricity in power plants. In a large state like California with huge utility firms, many sources generate electricity; generation is not a natural monopoly function with room for only one physical plant to operate efficiently. Thus, by separating out the generation of electricity, it might be possible to narrow the monopoly enterprise to the one aspect where monopoly is economically compelled (the delivery of power through power lines into homes and businesses), and leave the rest (*e.g.*, the generation of electricity) to competition.

Thanks to recent technology changes, the Commission has already opened competition in many telecommunications markets previously occupied by one entrepreneur (*see below*). For example, as technology has made it possible for more than one enterprise to carry telecommunications across long distances, the telephone company monopoly has been narrowed to lines and routes (the so-called "loop") which connect into a home. Phone utilities are now primarily local, and are required to "wheel" or provide access to their lines leading into homes to a variety of competing long distance carriers, charging a use fee. Electricity is amenable to the same kind of narrowing. Different and competing firms can produce electricity, and existing electricity utilities may be required to "wheel" that power for competing power providers in return for a use charge. In the alternative, utilities could be required simply to divest themselves of power generation, and buy power on a competitive basis from whomever they choose. The PUC has argued that utility ties to power production account for the fact that California's electricity rates are 50% higher than the national average.

The PUC's original plan anticipated "retail wheeling," where large industrial users, then commercial consumers, and finally households (in separate stages) would be permitted to contract directly with power producers, and the utilities would simply collect a fee for use of the grid to transmit the power to the user. Consumers could choose to remain users of the utility's own power generation, and would be subject to PUC rate review protection.

The PUC also proposed to initiate another policy called "performance-based ratesetting," which could be implemented together with or separately from retail wheeling. Here, the utility's maximum price would be set based on the average price of electricity. To the extent the utility is able to produce (or purchase from others) cheaper electricity and beat the average price, the savings are divided between ratepayers and stockholders. Under proposed policies, if the utility becomes less efficient, the losses are also split between ratepayers and stockholders.

The difficulty for utilities under both of these proposals is the fate of existing and inefficient power plants. The utilities seek a return on existing and sunk investment, which gives them a bias to use costly power generation where they can pass those higher costs on to consumers. Retail wheeling and performance-based ratesetting are each intended to provide a market incentive to generate or find electricity generation more cheaply. However, the PUC has won the backing of some utilities for its proposal by requiring ratepayers to pay for much of the costs of retiring uneconomic generators.

The initial reaction to the PUC's proposal included objections and concerns, and generated the following questions:

- Will the phase-in of industrial, then commercial, and then residential customers lead to industrial "skimming of the cream" of the best and cheapest power, with residential users getting what's left? What will be left for residential users—who have little ability to bargain among providers—except high-cost power from inefficient, outmoded plants?

- What will happen in the proposed system to needed cross-subsidies which assist low-income ratepayers in securing basic services?

- What will happen to the state's interest in long-run consequences as reflected in policies stimulating conservation, power from renewable sources, and pollution control? Utilities are currently required to obtain a percentage of their power from environmentally sound sources; will that societal interest be sacrificed for immediate energy gratification? What would happen to fledgling biomass generation (the burning of discarded plant material—the largest source of landfill trash) for electricity?

Thus far, Pacific Gas & Electric (PG&E) has embraced the PUC's plan in its broad outline. Southern California Edison, however, is bitterly opposed to it. The plan involves substantial alteration in both laws and regulations, as well as possible clearance from the Federal Energy Regulatory Commission (FERC) where the system

seems to be setting "transmission rates" subject to exclusive federal jurisdiction. Thus far, both FERC and the state legislature have been somewhat critical of aspects of the plan. The legislature is believed to be the most difficult barrier, given the complexity of the issue, the lobbying strength of Southern California Edison and other opponents, and the noted distaste of its chief proponent, PUC President Daniel Wm. Fessler, for legislative schmoozing.

Since April 1994, the Commission has been holding hearings throughout the state on its deregulation proposal. The original goal of completion by August was discarded as the hearings spawned substantial interest; more witnesses asked to speak than time permitted. The list of witnesses at the October 24 hearing in San Diego is indicative of the mix of interests seeking to influence policy; the line-up included representatives of Southern California Edison, ENRON Gas Services Group, California Energy Coalition, Independent Energy Producers, San Diego Gas & Electric Company, PG&E, the California Manufacturers Association, the Coalition of Energy Efficiency and Renewable Technologies, Jefferson Electric, the Department of General Services, the Resources Agency, the PUC's Division of Ratepayer Advocates, and consumer/environmental groups Toward Utility Rate Normalization (TURN), Utility Consumers' Action Network (UCAN), and the Environmental Defense Fund.

Consumer groups, including Consumers First, TURN, and UCAN, have been particularly critical of the plan. Consumers First scheduled organizing meetings of consumer activists in advance of some of the PUC hearings, and produced a videotape to educate consumers on the key issues. UCAN mobilized its considerable membership with the following newsletter headline: "Ghost of Christmas Future—Dickensian Electric Nightmare." TURN similarly critiqued the plan and presented an alternative, termed "Community Access to Competitive Energy," to the Commission in September. TURN's plan involves the following elements: (1) cities, counties, and other local authorities would be authorized to set up "consumer-owned utilities" to purchase power transmission and distribution services from utilities at regulated prices (choosing their own sources of power); rates for participating subscribers would be set by the authority, as would any cross-subsidies for conservation and nonrenewable resources; and (2) utilities would be phased out entirely as producers of power and confined to transmission. TURN contends that the suggested alternative is needed so that



otherwise diffuse and powerless consumers can achieve bargaining power to purchase energy on near equal terms with large industrial users.

In late October and early November, the new Joint Oversight Committee on Lowering Electricity Costs, chaired by Assemblymember Byron Sher and created by ACR 143 (Sher) (Chapter 148, Resolutions of 1994) [14:4 CRLR 199, 204-05], convened a series of hearings on the PUC's proposal. Much of the testimony before the Oversight Committee concerned the fate of utility "stranded investments"—that is, generators of electric power which are uneconomic in a competitive marketplace for power generation which the new policy would create. If left in place, these high-cost energy producers would be the major sources of power left after industry and business (given years of advance opportunity under the PUC's phased-in plan) had secured lower-priced sources for their exclusive use. Witnesses questioned who would bear the cost of repaying investors a fair rate of return on an uneconomic investment if these high-cost generators were to be closed down. Unsurprisingly, the utilities would have the ratepayers bear the cost; consumer groups argue that utility owners (investors) should pay because they controlled the decisions to rely on high-cost options. An even more difficult question is presented where utility high-cost production is the result of state- or PUC-imposed environmental or resource conservation requirements. However, Severin Bornstein, director of the University of California Energy Project, testified that the critical issue of stranded investments revolves around nuclear power, now improvidently providing about 30% of the state's electricity—an option not imposed by the state and hardly providing an environmentally sound benefit.

The utilities' advocacy concentrated on two themes: "Let us continue to produce as well as transmit electricity, but give us more options from whom we can buy and allow us to charge ratepayers to retire our uneconomic plants." Utilities generally support the ability of users to pick their own power suppliers, but differ as to the details. PG&E supports a system of "supply coordinators" as brokers for electricity purchase. Other utilities, including Southern California Edison, have proposed a supplier pool known as "POOLCO" that would create a central, independent, private company dispatching electricity from various producers.

On December 7, the Commission issued an "interim decision" in which it revised the schedule for its release of a

policy proposal to restructure the California electric industry. Importantly, the PUC has moved the agenda from consideration of an initial phase-in proposal of direct customer-supplier contracting to three broad alternative models: (1) wholesale and retail market reform wherein retail consumers are able to purchase power from any entity they prefer and the market would largely govern the process; (2) wholesale and retail market reform wherein a mandatory pool of power generated from all sources is created through which all purchasers transact business, with an option to enter into "contracts for differences" outside the pool; and (3) wholesale reform with a mandatory pool through which all utilities transact business, and all consumers continue to purchase from their present utility provider.

The common element in each of the three alternatives framed in the PUC's December 7 order is the intended separation of generation from transmission so that the former may benefit from market competition. Commentators agree that the challenge for the PUC is to adjust its proposal so that there is (1) real independence between existing utilities (who want to protect their present sunk investment in uneconomic plants) and the new power generators; (2) both real competition within the newly-created power generation market and sufficient monitoring to inhibit antitrust and unfair competition violations, and (3) some system to supplement the market to account for the social benefits of subsidy for low-income ratepayers, and the long-range benefits of renewable resource and environmental protection. Economists studying the issue contend that the third is optimally an equitable assessment of all users to provide a modest subsidy for the very poor, and a series of fees corresponding to the external costs of various power production options—allowing a corrected market internalizing those costs to assess their proper weight. However, such an option would require legislation, and legislation involving fees or taxes is a difficult prospect—however necessary and meritorious.

Notwithstanding the extensive series of public hearings, legal scholars fear that the PUC's current procedural course appears to have three fatal infirmities. First, the Commission has "left open the possibility" that its decision may trigger a requirement to complete an environmental impact report under the California Environmental Quality Act (CEQA). The PUC has not provided for such a report. It is unclear how the momentous decision it contemplates does not invoke CEQA's EIR requirement.

Second, it is unclear how the PUC can create a naked market as a panacea without reference to serious market flaws across a spectrum of public policy concerns. Environmentalists contend that the lowest available price in a marketplace for power may be a very high price for future generations. A series of statutes and public policies designed to provide some weight to those concerns would appear to conflict with naked relegation to lowest price as the sole answer. Some consumer advocates concede that the market may be a proper starting point from which adjustments are made to account for extra-marketplace benefits and costs; they argue that it is the starting place, not the final answer.

Third, it is unclear how the PUC intends to implement the proposed far-reaching change in electricity provision rules without either legislative changes or formal rulemaking required under the Administrative Procedure Act (APA). Although "ratesetting" by the PUC does not require APA rulemaking, the restructuring proposals at issue appear to involve much more than the setting of rate levels, and the procedural course chosen—an alleged "policy change"—may be later voided as unlawful "underground rulemaking."

The December 7 revised schedule also created a working group to comment on the sustainability of existing social, economic, and environmental programs under the various restructuring models presented to the Commission. At this writing, the working group is scheduled to provide a written report by February 22. Its membership initially consists of representatives of the six power utilities directly affected. Briefs from other interested parties to address how alternative models will affect PUC obligations under existing state and federal law are to be filed by January 31. Under the revised schedule, the Commission will propose a policy for public comment on March 22, and adopt its "policy decision" 60 days later, to become effective in early September 1995.

Some Alternative Power Cogeneration Bids Challenged. In 1986, the Biennial Resource Plan Update (BRPU) was proposed in order to add alternative energy to the utility power grid. The market price of electric energy from a given source does not reflect properly all of its external or future costs. Market imperfections mean that the indirect costs of pollution or the exhaustion of nonrenewable materials are not assessed in the production or sale of generated electricity. The use of power generation methods which avoid those costs should have that benefit somehow credited for marketplace inclusion. In addition, there is what economists



call an "external benefit" not assessed by the marketplace in having a diverse array of power sources; power is a necessity for a modern society and its secure delivery is enhanced by a diversity of sources able to fill in when one or two fail.

The BRPU was designed to see whether alternative energy could compete with traditional sources of power. Hence, private independent power producers are allowed to cogenerate power and add it to existing utility grids for predetermined compensation. In June 1994, the PUC announced the results of a formal bid process (also known as the "Final Standard Offer 4" or "FSO4") to determine which producers would be permitted to add power to the grid; the average winning bid amounted to 33% less than current utility alternatives. Producers providing power from gas, wind, and other energy sources were predicted to save ratepayers \$260 million annually, and at the same time would add 500 MW of renewable energy capacity to California grids. [14:4 CRLR 200]

On October 12, however, the PUC stayed implementation of the accepted bids following complaints that some of the bids were improperly and unrealistically low. On December 21, the PUC announced that it would grant a limited rehearing on its FSO4 order awarding 500 MW of renewable energy following complaints by Southern California Edison, SDG&E, PG&E, and FloWind Corporation that a number of "as-available" wind generation bids should be disqualified. Allegedly, some bidders overstated capacity factors and capital costs, and manipulated the accounting to produce low bid scores but high payments. The PUC's December 21 press release noted that the "as-available wind bidders" who were the targets of the complaints are required to file testimony demonstrating the reasonableness of their bids; the Commission will disqualify those which fail to comply with federal law, and those contracts will be rebid with new on-line dates established. As to the rest of contracts (non-"as available" wind), they will go forward as scheduled, with the timetables extended for 70 days, reflecting the time of the Commission's stay (from October 12 to the December 21 decision).

In a related matter, Senators Bill Leonard and Steve Peace introduced SB 25 (Leonard) on December 8. The bill would abolish the BRPU auction by prohibiting the PUC from requiring the state's public utilities to purchase specified portions of energy from alternative sources (see LEGISLATION). This auction, which implements the Public Utilities Regulatory Policy Act of 1978, is designed to create a

market for innovations in electric generation technologies and shift the electric generation industry away from the use of large, centralized oil and coal resources and towards the use of newer decentralized technologies (such as wind, geothermal, and biomass) which are either renewable or more efficient than those typically developed by utilities. The rationale for the program rests with the long-run benefits of stimulating renewable energy to leave additional resources available for future generations. The bill's authors contend that eliminating the requirement will lower immediate prices for California consumers and enhance the business climate now impeded by state utility rates above the national mean.

Supporters of the BRPU program have two arguments. First, they contend that policymakers should be concerned not only with the short-term interests of economic consumption but also with the needs of future generations; we currently consume vast quantities of nonrenewable resources—most of which we waste. Those resources may be extremely valuable 100 or 500 years from now to our legatees, and we should stimulate power consumption which does not involve those important costs that the marketplace does not assess or reflect without some intervention. Second, they argue that the bidding is only applied where the PUC finds there is a need for new capacity. If a utility is operating at near capacity, the addition of new demand may involve substantial capital plant expansion, and actually raise average costs substantially. Instead, the BRPU program requires such utilities to buy power at close to marginal (lower than average) cost from alternative energy providers. Hence, not only does the auction stimulate alternative power, but it does so at equal or lower utility costs to ratepayers. Accordingly, supporters of BRPU are not confined to environmental groups, but include the California Manufacturers Association and the California Chamber of Commerce.

The chief opponent of BRPU is Southern California Edison, which claims that it is not operating at capacity and does not need power produced outside its own domain. Proponents argue that Southern California Edison is merely attempting to protect its sunk investment in costly, high-polluting, and outdated generators.

PUC Sets 1995 Rates of Return for Energy Utilities. On November 22, the PUC set the return on common equity and the return on rate base for California energy utilities. The rates of return are critical factors in determining residential and commercial electric and gas rates. Where

utilities are not subject to "performance-based ratesetting" [14:4 CRLR 199-200], they are under the traditional "fair rate of return" method of calculating maximum prices for a monopoly power utility. This method involves calculating anticipated "prudent costs of operation," and adding to them gross profit sufficient to pay for the capital (plant) investment provided by investors and lenders. Hence, "used and useful" investment in plant and overhead facilities makes up the total "rate base." Some of the capital to buy these facilities comes from investors, and some from lenders (e.g., utility bonds). The interest rates appropriate to pay each of these sources varies, since the risk each assumes varies (in case of losses, the lenders get paid first). Hence, the "return on common equity" is the profit or possible dividends provided to those who gave equity capital to purchase the plant, and the total "return on rate base" includes both that equity percentage and the lower percentage needed to pay the more secure bondholders and other lenders. In setting rates, the PUC calculates a proper investment value for the invested capital (the rate base), and then applies the percentage return on rate base for one year to this amount (factoring in depreciation and needed reserves). The prudent operating costs mentioned above are added to this capital need and rates are set to yield that revenue target.

The allowed equity and debt return to energy utilities is higher in 1995 than for 1994. Rates of return on equity and on rate base, respectively, were set as follows for the major energy utilities: PG&E—12.10% and 9.79%; SDG&E—12.05% and 9.76%; Southern California Edison—12.10% and 9.80%; and Southern California Gas—12% and 9.67%.

The higher rates of return authorized will not affect PG&E electric rates which are subject to a 1995 rate freeze (see below), nor have substantial impact on SDG&E rates subject to performance-based ratesetting, but they do portend rate increases as to other utilities governed by rate of return maximum ratemaking.

PUC Sets PG&E 1995 Rates. On December 21, the PUC extended its freeze on PG&E's electricity rates through 1995. PG&E gas rates were increased by 3% to provide the utility with \$100 million in additional operating revenues, effective January 1, 1995. The freeze on electricity rates appears to be temporary, since the PUC has acknowledged an alleged \$445.7 million in additional fuel costs which the utility is "deferring" for later collection. A typical Bay Area residential natural gas consumer will see a monthly increase from \$40.83 to \$42.06.



PUC Continues Telecommunications Deregulation. In December 1993, the PUC issued a report to the Governor entitled *Enhancing California's Competitive Strength: A Strategy for Telecommunications Infrastructure*. The report targeted January 1, 1997, as the date for opening all telecommunications markets to competition. [14:1 CRLR 168-69; 13:4 CRLR 205-06] This date was legislatively affirmed last year by AB 3606 (Moore) (Chapter 1260, Statutes of 1994). [14:4 CRLR 206] Toll call competition, which started on January 1, and proposed competition in the provision of local phone service are just steps toward reaching the goals set forth in the report.

• **IntraLATA Competition Begins, Higher Basic Rates.** On January 1, intraLATA toll calls (that is, calls that are initiated and received within the same Local Access Transport Area or LATA) were opened to competition. Due to competition, rates for intraLATA toll calls dropped approximately 40%, but basic monthly rates increased. [14:4 CRLR 200] The new rate structure is intended to be revenue-neutral for telecommunications companies, and is designed to bring basic service rates closer to the costs of the respective services provided. Critics contend that the new rate design is not revenue-neutral, and that it particularly impacts elderly, low-income, and minority customers. The PUC predicts the median residential customer of GTE will pay 16% more in 1995, and the median Pacific Bell customer will pay 2% more. The new mix of charges increases phone bills for low-volume, local users, which—according to critics of the program—discourages the “universal service” policy which benefits the system as a whole.

The intraLATA competition ordered by the PUC gives Pacific Bell and GTE an advantage over their competitors because customers must enter a five-digit access code (“10XXX”) in order to choose a competitor’s service. TURN telecommunications analyst Regina Costa contends that this access advantage “virtually guarantees that PacBell and GTE will remain dominant carriers in the [intraLATA] market.” Nineteen states have partially implemented or are currently pursuing investigations to implement intraLATA “equal access,” which allows a consumer to presubscribe with a competitor. This eliminates the need for the “10XXX” access code and requires a single “1” to access a competitor’s service. The PUC is expected to conduct further research into “equal access” in future months.

• **PUC Orders Settlement Talks on Local Phone Service Competition.** On December 21, the PUC challenged the telecommunications industry to negotiate a settlement of continuing issues impeding competition in

local service by 1997. Cable and long distance companies would like to compete for local service but basic issues such as pricing, number portability, and phone book listings have yet to be decided. TURN Executive Director Audrie Krause criticized the PUC for telling the telephone companies to “go out and figure out how to regulate yourselves [because] we don’t want to be bothered.” However, Commissioner Jessie J. Knight, Jr. said the PUC is seeking not to delegate its regulatory authority but to “empower the participants,” and PacBell Vice-President John A. Guedner stated that a negotiated settlement approach “would get it done even sooner [than the target date of January 1, 1997].”

Starting on January 1, 1995, parties have 90 days to work out a settlement on implementation issues and must issue a progress report by March 31. In the meantime, proposals for interim rules for competition may be filed up to January 31 with the Telecommunications Branch of the PUC’s Commission Advisory and Compliance Division (CACD). At this writing, the Commission plans to issue a proposal for comment in April, unless a settlement is reached. In June, the Commission intends to adopt interim rules allowing competitors to seek PUC authority to offer local service soon thereafter.

Also on December 21, the Commission announced that it will issue several orders under the ongoing Open Access and Network Architecture Development (OANAD) proceeding that are key steps in freeing local phone markets to competition. The first of two orders would address restructuring the way calls are transmitted; the second would define the monopoly elements that make up the phone network in order to break out (or “unbundle”) specific costs. This would allow competition in providing these unbundled services, and prevent the local exchange carriers (LECs) from abusing their monopoly position through discriminatory pricing and cross-subsidies from the market sector where they retain monopoly power into newly competitive sectors. An order to review the present and future status of universal service will be issued in January, calling for both public participation and full panel hearings. The PUC will submit a report to the legislature by January 1, 1996.

If negotiations fail or issues remain unresolved, PUC staff will be working on a parallel track in three broad areas: technical issues including OANAD, local competition, and regulatory streamlining.

PUC Orders PacBell to Return Lifeline Fund Money, Commences Examination of All Low-Income Programs. On October 26, the PUC ordered PacBell to return \$8.25 million to the Universal

Lifeline Telephone Service (Lifeline) Fund, a program which helps ensure that every household in the state has basic phone service. The Lifeline Fund receives its revenue from a 4% surcharge on intrastate and intraLATA toll calls. The purpose of this limited cross-subsidy is to reflect the society benefit from “universal service,” with as many citizens as possible accessible to the communication system which binds the populace together. The order adopts a settlement between PacBell and the PUC’s Division of Ratepayer Advocates (DRA); approves minor changes in the charter of the committee which administers the Lifeline Fund; and requires workshops to review General Order (GO) 153, the Commission’s regulations governing the Lifeline program.

In 1990, CACD audited PacBell’s Lifeline reimbursement claims for 1984 through 1989. It advised the Commission in 1992 that it had found five areas of noncompliance which staff believed amounted to more than \$35 million in overpayments from the Lifeline Fund to PacBell. [13:1 CRLR 136] PacBell refused to reimburse any money until it had an opportunity to be heard. [13:2&3 CRLR 211] In April 1993, at a prehearing conference prior to formal hearings on the matter, PacBell and DRA announced they had entered into settlement negotiations. In addition to the return of \$8.25 million, the settlement requires PacBell to cease seeking reimbursement for lost revenue due to measured Lifeline local calls beyond the 60-call allowance (reducing PacBell’s overall Lifeline reimbursement claims by about \$600,000 per year); reduce its per-customer reimbursement claim for time spent by service representatives in explaining Lifeline service to applicants (amounting to about \$300,000 less in claims per year); and waive all Lifeline reimbursement claims submitted during the 1984-89 time period (amounting to about \$13 million).

CACD’s investigation also found that telecommunications utilities have applied the Lifeline surcharge inconsistently. For example, some telecommunication carriers applied the Lifeline surcharge to intraLATA toll private line services, while others did not. CACD will hold workshops to revise or replace GO 153, and to specifically define telecommunication services subject to the Lifeline Fund surcharge.

In a related development, the PUC has proposed examining all aspects of its programs which assist low-income ratepayers in securing basic services from public utilities, including Lifeline service and the California Alternate Rates for Energy (CARE) program (the PUC’s sister program for energy services, formerly known as the Low-



Income Ratepayer Assistance (LIRA) program). Currently, only income is used to determine program eligibility; Lifeline customers are not required to show proof of their income, but CARE customers must do so. The Commission will consider whether to evaluate both income and assets when assessing eligibility, and whether to continue to allow Lifeline service applicants to self-certify. At this writing, the PUC plans to hold a public hearing on its low-income programs on February 3. Consumer Action (CA) believes that eligibility requirements should be as simple as possible so that eligible people can take advantage of the programs; CA plans to file a brief for the February 3 hearing urging the PUC to base eligibility solely upon income and to allow both Lifeline and CARE participants to self-certify.

PUC Fines Cellular Firms for Siting Violations. On November 9, the PUC concluded part of its ongoing investigation of all facilities-based cellular company compliance with its cellular tower siting regulations in GO 159. Four companies will pay fines totalling \$5,520,000 for various violations to the state's general fund, and must correct the violations (Los Angeles Cellular Telephone company (LACTC)—\$5.1 million; Mountain Cellular—\$80,000; GTE Mobilnet of California—\$343,000; and Bay Area Cellular—\$2,000). LACTC admitted that in a number of instances it failed to file for PUC approval prior to constructing cellular sites and failed to obtain required permits from other government agencies. Additionally, PUC staff maintains that when the utility did make the required filings, they contained inaccurate information.

Prior to 1994, when the violations occurred, fines under Public Utilities Code section 2107 were limited to \$500–\$2,000 per offense. Effective January 1, 1994, the maximum fine was raised. Now a utility may be fined \$500–\$20,000 per offense for violating PUC regulations and each day a violation exists may be considered a separate offense. As part of its cellular siting investigation, the Commission issued an order to show cause to each of the four companies seeking their explanation and justification for apparent violations of cellular siting regulations. After weighing the responses, the Commission ordered the fines.

The Commission also instructed cellular firms to avoid adding new sites without prior authorization, stated that filings already submitted will be examined on a case-by-case basis, and reopened a proceeding to consider changes to clarify GO 159.

New Federal Law Terminates PUC Review of General Freight Transportation Regulation. On October 12, the PUC

issued an order terminating its investigative and rulemaking proceeding regarding the regulation of general freight transportation by truck. The order was issued in response to Public Law No. 103-305, a 1994 federal statute that generally deregulates the price, route, or service of motor carriers transporting property and air carriers transporting property by motor vehicle, with the exception of the transportation of household goods. The PUC had instituted these proceedings to examine whether legislation creating the integrated intermodal small package (IISP) carrier had the unintended effect of changing the competitive balance between carriers, and to propose changes to its regulations governing the transportation of general freight. [14:4 CRLR 203-04; 14:2&3 CRLR 218] However, the federal law has preempted any state economic regulation of the trucking industry. Because the PUC proceedings involve rate regulation of general freight transportation by truck, these proceedings are now moot.

The PUC has started to develop guidelines for the implementation of Public Law No. 103-305. On October 26, the Commission issued a resolution directing staff not to enforce requirements preempted by the federal law and to effect other changes pursuant to the new law. A subsequent resolution adopted on December 7 detailed more changes. That resolution limits the uses for which certain Transportation Rate Fund fees are expended, consistent with the federal preemption. All monies paid into the Transportation Rate Fund, based on revenues from transportation operations on or after January 1, 1995, by highway carriers (except household goods carriers), will only be used by the PUC for activities consistent with the new federal law. The activities to be funded are: regulating the safety and financial responsibility of carriers; licensing carriers subject to federal preemption pursuant to section 601 of Public Law No. 103-305; and establishing and implementing the state's standard transportation practices specifically permitted by section 601 of Public Law No. 103-305.

PUC Issues Final Report and Sanctions for 1991 Southern Pacific Train Derailments. On November 22, the PUC adopted its final report on the 1991 Southern Pacific Transportation Company (SP) train derailments at Dunsmuir and Seacliff. In its final decision, the Commission fined SP \$492,000 for not complying with hazardous material reporting requirements. It also established train make-up and safety requirements for all SP trains at the Cantara Loop near Dunsmuir, a 14-degree curve which is the sharpest curve on SP's system within California.

During July 1991, SP was involved in two train derailments. One occurred near Dunsmuir in Siskiyou County, spilling 20,000 gallons of toxic metam sodium into the Sacramento River and killing all aquatic life and vegetation in or near the river for a 45-mile stretch; and second occurred near Seacliff in Ventura County, spilling 440 gallons of poisonous hydrazine onto a portion of Highway 101 and causing a shutdown of that portion of the highway for five days. [11:4 CRLR 164, 204-05] In response to these accidents, in August 1991, the PUC instituted its own investigation into the causes of the derailments and SP's compliance with applicable laws, rules and regulations, the existence of any local safety hazards, and recommendations for improvements in state or federal laws and regulations. The Railroad Safety Branch of the Commission's Safety Division issued separate reports on each accident. [12:2&3 CRLR 261-62] In November 1992, a PUC administrative law judge (ALJ) presided over two weeks of evidentiary hearings concerning the circumstances of the derailments and accident prevention methods. Each party was then given an opportunity to submit briefs. On May 26, 1993, the record was closed and the matter submitted to the ALJ for decision. The matter was reopened for an additional hearing on September 1, 1993. [13:4 CRLR 207; 12:2&3 CRLR 213-14; 13:1 CRLR 138] Closing briefs were submitted and the record closed. The ALJ issued a proposed decision on the Dunsmuir spill on September 20, 1994, with opportunity for comment by both parties and intervenors. The comments by PUC staff and intervenors were nonsubstantive and did not significantly alter the decision.

The PUC concluded that the Dunsmuir derailment was caused by improper train make-up which, when combined with the increase of power and negotiation of a sharp curve, resulted in the generation of excessive pulling forces at the couplers and which caused wheel lift on the fourth car behind the last locomotive. The ideal train make-up requires that heavy cars be placed closest to the motive power, and lighter cars be placed farthest from the motive power. In this case, the heaviest cars should have been placed closest to the power source, which was in the front, with the lightest cars following. Examination of the derailed train and records showed that this was clearly not done. Prior to reaching the 14-degree Cantara curve, all eastbound trains (like the derailed train) must pass through a siding, where speed is reduced to ten miles per hour. After leaving the siding, the crew must dramatically increase power to accelerate to the



Cantara curve recommended track speed of 20 mph. This created dangerous levels of pulling and lateral wheel forces.

The PUC adopted new rules that apply to train operations in the vicinity of the Dunsmuir spill. The new rules prohibit the use of the siding track, address train weight, require the use of helper locomotives, and prohibit placing short or heavy cars before long or empty cars. Additionally, metam sodium, which becomes hazardous only when mixed with water, has been added to the Department of Transportation's hazardous list.

The PUC concluded that the Seacliff derailment was caused when a wheel bearing failed, causing a wheel to separate from the axle. One of the derailed cars leaked aqueous hydrazine, and cleanup was delayed partly because the train crew did not have a record of how many barrels of hazardous materials it carried or how much was in each barrel.

In the Dunsmuir spill, the PUC found that SP failed to provide the Office of Emergency Services (OES) with a systems map as required by Public Utilities Code section 7673(a) from July 14, 1991 to November 12, 1991, and fined SP \$2,000 per day for this violation, for a total of \$244,000. During this time period, SP also violated Public Utilities Code section 7673(b), which required SP to provide OES with an annual publication detailing emergency guidelines for hazardous materials; for this violation, the Commission also assessed SP \$2,000 per day, for a total of \$244,000. The sanctions for the Seacliff spill were significantly lower—\$2,000 for not reporting the spill immediately to OES and \$2,000 for failing to carry the emergency handling procedures for aqueous hydrazine on the train, as required.

PUC Issues Annual Report on Train Accidents. On December 21, the PUC's Safety and Enforcement Division reported that the number of train accidents, excluding grade crossing accidents, dropped from 142 in 1992 to 138 in 1993. However, the number of persons killed in railroad accidents increased from 123 in 1992 to 162 in 1993. The report noted that most of those killed were trespassers. The Commission issues this annually to assist agencies in devising ways to reduce train accidents and fatalities.

There were 301 grade crossing accidents in 1993, compared with 319 in 1992. Most of these occurred because drivers misguess train speed, fail to look in both directions, and cross while a slow freight train approaches without realizing that a faster train may be hidden behind it.

PUC to Study Intervenor Compensation Reform. In November, the PUC issued a paper detailing problems with the

current intervenor compensation process and called for public participation in a proceeding to reform the process. The reforms are part of the Commission's Alternatives to Litigation Program, the goal of which is to streamline the PUC's complaint resolution process. [14:1 CRLR 171-72]

Under Public Utilities Code section 1801 *et seq.* and related rules, a public utility customer who can demonstrate a significant financial hardship related to his or her involvement in a Commission proceeding can receive "intervenor compensation" if he or she has made a "substantial contribution" to the decision. The paper noted that the current process tends to discourage alternative dispute resolution; consumer groups also complain about the arbitrary nature of the "substantial contribution" test, and the excessive amount of time it takes to receive compensation. [10:1 CRLR 1] PUC President Fessler noted that the Commission's current intervenor compensation rules were framed in a trial-type context and reward only a party's "on-the-record" contributions, which tends to discourage cooperation, negotiation, and settlements. While 1992 statutory requirements defined "proceeding" for compensation purposes to include alternative dispute resolution (ADR) [13:1 CRLR 139], it is difficult for parties to prove substantial contribution if they compromise during ADR proceedings.

Another area of concern is the "substantial contribution" requirement. Section 1802(h) defines "substantial contribution" as having "substantially assisted the Commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer." Currently, this does not guarantee that a signature party to a settlement agreement, later approved by the Commission, can demonstrate a substantial contribution.

The "substantial contribution" test has another problem as applied to agreements: It rewards a party who endorses a settlement agreement—even if it is a betrayal of the constituency purportedly represented. If a party dissents and refuses to sign, and the Commission later approves that agreement, the dissenter will be unable normally prove "substantial contribution." The result of this incentive system may be "sweetheart" agreements and a false impression that they are enthusiastically endorsed by all participants.

Another problem with the current compensation system is that it takes too long to receive actual payments. Dragging out actual payment favors those with deeper pockets—traditionally utilities with rate-

payer-supported lawyers and technical experts.

Thus, the Commission announced its intent to form a "study group" to formulate a consensus proposal to reform its intervenor compensation process, with an eye toward encouraging alternatives to litigation. The "study group" will convene under the direction of PUC ALJ Steven Weissman.

Alternatives to Litigation Guidelines. In December, the Commission released draft Alternatives to Litigation Guidelines, which will assist those who voluntarily wish to use methods other than litigation to resolve disputes or address issues before the Commission.

The Guidelines outline five different alternative dispute resolution procedures. The first option is unassisted negotiation, which is the least formal and least coercive alternative to litigation. Negotiators must have the authority to agree to a settlement and confidentiality should be protected during negotiations. The Commission may reject a settlement if it resolves issues significantly affecting the interests of a person or group that is not adequately represented in the negotiating process.

The second method is mediation, which is a flexible, informal process in which a neutral individual or panel works with two or more parties to reconcile differences and resolve disputes.

A third method is facilitation. Unlike a mediator who tries to obtain a final agreement, the facilitator normally focuses on the process. The facilitator tries to use techniques that will aid in developing solutions and options. Currently, CACD staff members serve as facilitators at workshops which can be used to clarify or resolve a variety of issues.

A fourth method is early neutral evaluation. In this confidential process, a neutral third party offers a non-binding assessment of the relative strengths and weaknesses of the parties' positions and the value of the case.

The final method is arbitration. In this procedure, an arbitrator will issue a binding decision and the parties lose some or all rights to appeal the results. This method is used primarily for non-precedential, non-ratemaking disputes.

At this writing, public comments on the draft Guidelines will be accepted until January 20. After the comment period, further changes may be made and the guidelines will be presented to the PUC for its adoption in the form of a resolution.

LEGISLATION

SB 25 (Leonard), as introduced December 8, would prohibit the PUC from



requiring energy utilities to purchase specific "resource additions" from alternative independent power producers which meet specified standards regarding plant size, type of fuel, and fuel efficiency; this bill would abolish the Biennial Resource Plan Update (BRPU) procedure implemented by the Commission through which alternative energy producers bid for the right to sell their energy to utilities at a PUC-determined price (see MAJOR PROJECTS). [S. EU&C]

LITIGATION

On September 15, the U.S. Ninth Circuit Court of Appeals decided *Independent Energy Producers Association v. California Public Utilities Commission*, 36 F.3d 848 (9th Cir. 1994), holding that the PUC's regulation of cogeneration "qualification" is preempted by the Federal Energy Regulatory Commission (FERC).

Currently, Title II of the federal Public Utility Regulatory Policies Act (PURPA) and FERC, its regulating agency, require utilities to purchase energy from "qualifying cogeneration facilities" (QFs) at a rate that is equal to the incremental cost to the utility of purchase elsewhere. Section 201 of PURPA designates a group of facilities as QFs, which group includes any cogeneration facility that meets operating and efficiency standards and ownership requirements prescribed by FERC. Pursuant to federal law, the QFs and the utilities enter into contracts for the sale and purchase of electric energy. These contracts contain standardized terms for the purchase and sale of electric energy and set the rates to be paid to the QFs for that energy.

As with the BRPU bid process (see MAJOR PROJECTS), the purpose of this requirement is to broaden and diversify energy sources for the basic power grid by allowing entry from new and small sources otherwise shut out by utilities, and "reduce American dependence on fossil fuels by promoting increased energy efficiency." Quite apart from the alternative energy benefits of the very limited BRPU program described above, if any energy source can beat the price of alternative additional energy available to the utility, it should be given preference.

In 1991, the utilities and the PUC devised a program which authorizes the utilities to monitor the compliance with federal operating and efficiency standards of the QFs with which they have contracts. If a utility determines that a QF does not meet federal operating and efficiency standards, it is authorized to suspend payment of the rates in the contract and to substitute a lower "alternative" rate. Independent Energy Producers Association

and other independent cogenerators challenged the PUC's program on grounds that FERC's authority to enforce PURPA's operating and efficiency requirements is exclusive and that the PUC's program is preempted by federal law; specifically, it contended that the PUC's program authorizes the utilities to enforce PURPA's operating and efficiency standards, and thus represents a state intrusion into an area of exclusively federal law. The district court found in favor of the PUC and the utilities.

The Ninth Circuit reversed, sustaining the position of the independents and holding FERC jurisdiction to be exclusive and preempting the PUC in enforcing Section 201 of PURPA (which specifies who is a qualified cogenerator in terms of ownership and efficiency requirements). The Ninth Circuit specifically criticized the PUC's policy of delegating to self-interested utilities the authority to penalize independent producers by the assessment of funds at a level 20% below contract price—to be kept by the utilities. Under PURPA, the independent cogenerators are entitled to the incremental avoided cost as compensation; 80% of that amount is nowhere mentioned in the federal statute. The court conceded that the PUC has a broad coextensive role in enforcing section 210 of PURPA; accordingly, it ruled that states may calculate the rate for incremental avoided cost and may oversee contracts consistent with FERC rules. However, the federal statutory scheme envisions relatively easy "certification" as a qualified cogenerator; in fact, the cogenerators "self-certify." If a utility contests the qualification of an entity seeking to sell electricity as a cogenerator, then FERC may override that refusal and alternatively certify the QF. PURPA contains no provision allowing a state PUC to become involved in certification, which should occur before the contract is awarded, not three or four years down the road.

In *US West Inc. v. United States*, 48 F.3d 1092 (Dec. 30, 1994), the Ninth Circuit ruled that the telephone company-cable television cross-ownership prohibition of the Cable Franchise Policy and Communications Act of 1984 (Cable Act) violates the first amendment. If upheld, the ruling will mean the entry of telephone companies into the cable television market.

The Federal Communications Commission (FCC) originally adopted the cross-ownership prohibition in 1970 to prevent telephone companies from gaining an unfair competitive edge in the enhanced services industry by using their monopoly of telephone transmission facilities, and to prevent them from financing this expan-

sion through improper cross-subsidization. In 1984, Congress enacted 47 U.S.C. section 533(b) as part of the 1984 Cable Act, which prohibits regional Bell Operating Companies (BOCs) from providing video programming directly to subscribers in their telephone service areas; although legislative history on the provision is scarce, it indicates that Congress' intent was to codify the FCC rule and to "prevent the development of local media monopolies, and to encourage a diversity of ownership of communications outlets." US West, a BOC that provides local service in 14 states, wants to enter the video programming market in competition with local cable companies by offering its customers "video dialtone service," which consists of constructing and making available transmission facilities for third parties' provision of video programming on a common carrier basis. US West argued that the cross-ownership provision violates its first amendment rights; the district court agreed, finding section 533(b) unconstitutional.

The Ninth Circuit affirmed. Preliminarily, the court rejected the government's argument that the cross-ownership prohibition should be reviewed on a rational basis test, and US West's argument that it should be reviewed under strict scrutiny. The court instead applied the "intermediate scrutiny" test of *United States v. O'Brien*, and analyzed whether the prohibition "further an important or substantial government interest...and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." On this issue, the Ninth Circuit found that the government could not demonstrate Congress' intent due to the paucity of legislative history on the cross-ownership provision; and noted that several agencies, including the FCC and the Antitrust Division of the U.S. Department of Justice, favor repeal of the provision. Finding that US West submitted evidence showing that the goals of section 533(b) are achievable through less restrictive means, the court agreed that the ban is unconstitutional as it "fails the narrow tailoring requirement of the intermediate scrutiny test."

Pacific Bell believes this ruling enables it to carry out its plan to construct a \$16 billion fiber-optic and coaxial cable network. [13:4 CRLR 205-06] This new service would provide video dialtone services (such as movies-on-demand, interactive games, and cable television shows) in addition to normal telephone service through a single wire or optical fiber in each customer's house. Critics acknowledge the benefit of a competitor to the



existing cable monopolies which are still largely unregulated. However, they remain concerned about possible telephone cross-subsidization of cable operations from monopoly loop revenues. One monopoly may end up merely replacing another, except once cable is precluded and its lines are removed, there may be a more absolute monopoly free from the prospect of potential competition from another existing loop. This concern does not lead to exclusion of telephone company entry into cable markets, because it does little good to have a potential competitor who is categorically precluded from competing. But it does indicate a strong public interest in regulating telephone entry to preserve continuing competition.

In *Assembly of the State of California v. Public Utilities Commission*, No. S044844, Assembly Speaker Willie Brown has petitioned the California Supreme Court to review the PUC's disposition of a \$49 million fund established to compensate Pacific Bell ratepayers for cross-subsidizing Pacific Tel-esis' development of its wireless operation, which it recently spun off as a new company called "AirTouch." In August 1994, the PUC decided that \$7.9 million should be allocated to PacBell ratepayers through a surcredit on monthly bills; \$40 million should be used for telecommunications programs and facilities in public schools statewide; and \$2.1 million should be used to continue the PUC's Telecommunications Education Trust. [14:4 CRLR 201-02] Speaker Brown argues that all of the money should be refunded to ratepayers, or it should revert to the state general fund. At this writing, the Supreme Court has not decided whether to review the PUC's decision.

■ FUTURE MEETINGS

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

STATE BAR OF CALIFORNIA

President: Donald Fischbach

Executive Officer:

Herbert Rosenthal

(415) 561-8200 and

(213) 765-1000

TDD for Hearing- and Speech- Impaired:

(415) 561-8231 and

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Toll-Free Complaint Hotline:

1-800-843-9053

The State Bar of California was created by legislative act in 1927 and codified

in the California Constitution at Article VI, section 9. The State Bar was established as a public corporation within the judicial branch of government, and membership is a requirement for all attorneys practicing law in California. Today, the State Bar has over 145,000 members, which equals approximately 17% of the nation's population of lawyers.

The State Bar Act, Business and Professions Code section 6000 *et seq.*, designates a Board of Governors to run the State Bar. The Board President is elected by the Board of Governors at its June meeting and serves a one-year term beginning in September. Only governors who have served on the Board for three years are eligible to run for President.

The Board consists of 23 members—seventeen licensed attorneys and six non-lawyer public members. Of the attorneys, sixteen of them—including the President—are elected to the Board by lawyers in nine geographic districts. A representative of the California Young Lawyers Association (CYLA), appointed by that organization's Board of Directors, also sits on the Board. The six public members are variously selected by the Governor, Assembly Speaker, and Senate Rules Committee, and confirmed by the state Senate. Each Board member serves a three-year term, except for the CYLA representative (who serves for one year) and the Board President (who serves a fourth year when elected to the presidency). The terms are staggered to provide for the selection of five attorneys and two public members each year.

The State Bar includes twenty standing committees; fourteen special committees, addressing specific issues; sixteen sections covering fourteen substantive areas of law; Bar service programs; and the Conference of Delegates, which gives a representative voice to 245 local, ethnic, and specialty bar associations statewide.

The State Bar and its subdivisions perform a myriad of functions which fall into six major categories: (1) testing State Bar applicants and accrediting law schools; (2) enforcing the State Bar Act and the Bar's Rules of Professional Conduct, which are codified at section 6076 of the Business and Professions Code, and promoting competence-based education; (3) ensuring the delivery of and access to legal services; (4) educating the public; (5) improving the administration of justice; and (6) providing member services.

Almost 75% of the Bar's annual \$56 million budget is spent on its attorney discipline system. The system includes the first full-time professional court for attorney discipline in the nation and a large staff of investigators and prosecutors. The

Bar recommends sanctions to the California Supreme Court, which makes final discipline decisions. However, Business and Professions Code section 6007 authorizes the Bar to place attorneys on involuntary inactive status if they pose a substantial threat of harm to clients or to the public, among other reasons.

■ MAJOR PROJECTS

Bar Analyzes Recommendations of Discipline Evaluation Committee. In August 1994, the "blue-ribbon" Discipline Evaluation Committee (DEC) chaired by retired U.S. Ninth Circuit Court of Appeals Judge Arthur L. Alarcón released a report of its eight-month evaluation of the State Bar's disciplinary system. Established in December 1993 by then-Bar President Margaret Morrow to conduct the first external review of the Bar's restructured discipline system, the DEC was to thoroughly evaluate the structure, cost, effectiveness, and fairness of all components of the Bar's system—including its Intake/Legal Advice Unit, Office of Investigations (OI), Office of the Chief Trial Counsel (OCTC), State Bar Court (SBC), and Complainants' Grievance Panel (CGP). While the DEC's final report contained high praise for the quality and quantity of adjudicative decisionmaking by the new State Bar Court, it nonetheless contained 52 recommendations on a wide spectrum of issues—including several which have caused controversy within the Bar. A major theme of the DEC report is that the Bar, particularly the State Bar Court, has devoted excessive resources to upper management and supervisory positions, while other components have been under-resourced. [14:4 CRLR 209-10]

In September, new Bar President Donald Fischbach appointed Discipline Committee Chair James Towery to head the Task Force on Implementation of the DEC Report, and directed the Task Force to commence an initial analysis of the DEC report and recommend a procedure whereby the Discipline Committee and full Board could take action on those recommendations as appropriate. Fischbach instructed the Task Force to present its initial analysis at the Bar's October meeting.

Following two public hearings during September, the Task Force presented its analysis to the Board at its October 30 meeting. The Task Force categorized the recommendations in the DEC report as follows:

• **Recommendations that are already implemented or in place:** With regard to the State Bar Court, the Task Force noted that the Bar already reduced the time of two of its three Review Department judges