



faced tight budgetary constraints over recent years; according to Board officials, the current fiscal crisis may have a detrimental effect on OMBC's enforcement and disciplinary capabilities. [13:2&3 CRLR 208] At its October 30 meeting, OMBC estimated that its 1993-94 enforcement budget will be depleted in January, five months prior to the end of the fiscal year. In addition to seeking a fee increase (see below), OMBC is considering the feasibility of recouping some of the administrative costs associated with its enforcement activities through a "cost recovery" mechanism; at its October 30 meeting, the Board instructed staff to determine whether cost recovery revenue would be devoted to OMBC's operating budget or deposited in the state's general fund.

OMBC Reviews Its Public Disclosure Policy. Like the Medical Board of California and the Board of Dental Examiners, OMBC recently began considering what information regarding a licensee's history can and should be disclosed to the public, and at what point such disclosures should be made. At its October 30 meeting, the Board acknowledged that numerous consumer groups are concerned that health care regulatory boards are not providing consumers with accurate and timely information with which they can make informed decisions about health care providers.

Currently, OMBC discloses information on licensee malpractice judgments over \$30,000, disciplinary action taken in another state, and felony convictions. At its October meeting, OMBC considered the possibility of also disclosing fully investigated disciplinary cases which have been referred to the Attorney General's Office for the filing of an accusation, and a DO's loss of hospital privileges.

OMBC members voiced several concerns about implementing this enhanced scope of disclosure. For example, the Board stated it may subject itself to litigation based on misrepresentation, since it does not always receive information that is correct and complete. The Board agreed that a disclaimer would solve this potential problem. In addition, members were concerned about the added time burdens which would be placed on staff members and the possibility of having to hire additional personnel to answer consumer inquiries about DOs. Under one proposal discussed by the Board, OMBC would initially disclose only a minimum amount of information, and give the consumer the option of writing a letter to OMBC requesting more specific information; the agency would then comply with the re-

quest, to the best of its ability, and include a bill for the time and resources expended by Board staff in gathering the information. As a result, members of the public would have to pay OMBC in order to receive a complete response to their inquiries.

Following discussion, the Board directed staff to further analyze the cost aspects of an enhanced disclosure policy, and report its findings at a future OMBC meeting.

Rulemaking Update. At this writing, OMBC's proposed amendments to section 1600, 1602, 1668, 1620, 1621, 1656, 1690, and Article 18, Title 16 of the CCR, still await review and approval by the Office of Administrative Law. [13:4 CRLR 202] Among other things, the proposal would make the following changes:

- change references to the Board of Osteopathic Examiners to the Osteopathic Medical Board of California, in accordance with the Board's recent name change mandated by various sections of the Business and Professions Code;

- delete a reference to a 75% pass rate for the Board's written examination;

- provide that a petition for reinstatement shall not be heard by the Board unless the time elapsed from the effective date of the original disciplinary decision or from the date of the denial meets the requirements of Business and Professions Code section 2307; and

- increase the Board's examination fee from \$125 to \$350, its duplicate certificate fee from \$10 to \$25, its annual tax and registration fee from \$175 to \$200, and its delinquent annual tax and registration fee from \$87.50 to \$100.

LEGISLATION

AB 2156 (Polanco). Under existing law, insurers that provide professional liability insurance, or the parties to certain settlements where there is no professional liability insurance as to the claim, are required to report a settlement or award in a malpractice claim that is over specified dollar amounts to the applicable licensing board. As amended May 25, this bill would require reports filed with OMBC by professional liability insurers to state whether the settlement or arbitration award has been reported to the federal National Practitioner Data Bank. [S. Inactive File]

RECENT MEETINGS

At its October 30 meeting, OMBC discussed the infection control guidelines recently issued by the California Department of Health Services (DHS). Under state law, OMBC is required to adopt these

guidelines as Board policy and ensure that all licensees are familiar with them; knowing failure to follow them is grounds for discipline. [13:4 CRLR 63; 13:2&3 CRLR 82-83] Although the Board initially agreed that the most efficient means of giving notice of these revised regulations to the osteopathic community would be through a newsletter, this idea was rejected because of the Board's tight budget situation. OMBC deferred the issue of notice until its next meeting; however, the Board approved a motion to adopt the guidelines prepared by DHS.

FUTURE MEETINGS

To be announced.

PUBLIC UTILITIES COMMISSION

Executive Director:

Neal J. Shulman

President: Daniel Wm. Fessler

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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 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.

The current members of the PUC are Daniel Wm. Fessler, President, Patricia M. Eckert, Norman D. Shumway, P. Gregory Conlon, and Jessie J. Knight, Jr.

MAJOR PROJECTS

PUC Rescinds Its Tainted IntraLATA Decision; TURN Calls for Commissioner Shumway's Resignation. On October 6, PUC President Daniel Wm. Fessler announced the rescission of the Commission's "intraLATA" toll call competition decision, less than three weeks after that decision was unanimously approved by the Commission; the order to rescind the decision was the culmination of an internal investigation of allegations that a top-level Pacific Bell (PacBell) official assisted in writing and editing the draft decision on the evening before it was announced, and engaged in unreported *ex parte* communications with a decisionmaker in violation of PUC rules of procedure. [13:4 CRLR 203] The original decision would have opened the door to competition among local and long distance phone companies for the provision of "short distance" toll call service (calls ranging between 13-70 miles in distance); these calls are currently handled by local exchange carriers (LECs) such as PacBell and GTE on a monopoly basis. The plan would have allowed LECs to raise rates for residential basic service by over 50% to compensate for lost earnings due to toll call competition. Originally scheduled to go into effect on January 1, 1994, the decision has been indefinitely postponed while the PUC conducts hearings to determine the extent to which the decision was altered by the improper activities.

According to the PUC's internal investigation report, issued on October 13, the improprieties arose because of the complexity of the decision and the Commission's strong desire to announce it at an early enough date to give the LECs time to develop a framework for implementation by January 1. Due to the highly technical nature of the decision and the complex task of changing the local exchange and intraLATA toll rates for vir-

tually all of California's telecommunications consumers, the PUC formed a "proprietary team" which included employees of PacBell and GTE. The activities of this team were specifically limited to providing "calculations and computations" necessary for the decisionmaking task. Proprietary team members were specifically enjoined from discussing any of the terms of the decision with anyone not on the proprietary team, including both PUC decisionmakers and LEC officials; they were also prohibited from making copies of any protected materials, and from making any substantive changes or additions to the decision, apart from "number crunching."

As the target date for announcing the decision approached, PUC staff realized that they were falling behind and believed that the decision would not be completed in time. At this point, several questionable actions were taken regarding the proprietary team. First, the Commission added five new members to the team in late August and early September; included in these additions was the primary actor involved in the alleged improprieties, Jerry Oliver of PacBell. According to the PUC's report, Oliver—who testified as PacBell's chief expert witness in the evidentiary hearings which were the basis for the decision—wrote in a memo that he had been assigned to the team "to help provide a reasonableness check of the final decision," a role which would appear to exceed the "number crunching" limitations imposed on the proprietary team. Additionally, Oliver failed to honor the restrictions on copying protected materials, and engaged in frequent *ex parte* contacts with Phebe Greenwood, Commissioner Shumway's chief advisor. Although these contacts are required by PUC rules to be reported to all formal parties to the proceeding, they were never so reported by Oliver.

As the target date grew near, PUC staff came under increasing pressure to complete the draft in time for a Commission vote on September 17. However, because the text was still incomplete on September 16, staff worked all day and into the night and early morning of September 17. According to the PUC report, Greenwood called Oliver and an assistant that evening and asked them to come to the PUC building. Oliver arrived sometime between 8:00 and 10:00 p.m. and began making changes to the text. PUC staff, who were exhausted by this time, apparently did not fully review the changes that Oliver was making. Oliver also had extensive *ex parte* discussions with Greenwood throughout the evening; he did not leave the PUC building until 5:30 a.m. Work on the deci-

sion ended at 8:00 a.m., and copies were sent to the Commissioners for a vote. None of the Commissioners indicated that they were aware of Oliver's presence in the building during the hours preceding the vote.

The investigation concluded that Oliver's actions, especially those occurring on the evening of September 16, "were not only disruptive to the structure and mission of the...proprietary team, but also constitute the type of pre-decision contacts that are most damaging to the spirit of fairness inherent in the Commission's *ex parte* rule." The investigators concluded that several parts of the decision were "tainted" by these actions, including its sections on customer-owned pay telephone service, Centrex, ContraNet, and private branch exchange services, cost imputation and contracts, and implementation.

The internal investigation report noted that the PUC had already taken some corrective actions, such as rescinding the original decision in its entirety; circulating the decision for comment by all parties; prohibiting all *ex parte* communication between parties and decisionmakers in this proceeding; and commencing a review of the proprietary team concept, including the use of outside technical experts as members of a proprietary team.

Several entities, including the City of Los Angeles, the California Cable Television Association, AT&T Communications of California, and MCI Telecommunications, responded to the PUC's invitation to comment on the decision. In its comments, MCI asserted that the alterations made by Oliver to the imputation and contracts chapter were the most damaging to the entire decision. The term "imputation" refers to the cost assigned to so-called "bottleneck services" in setting price minimums, or floors, for toll call services; bottleneck services are those that competing service providers must purchase from the LECs to reach their customers through the common line network. In setting competitive price floors, a cost must be imputed to the LEC for the use of its own bottleneck services. According to MCI, this cost should be the tariffed rate which the LEC charges its competitors for the same service. However, the rescinded decision, as apparently altered by Oliver, provided that this cost be determined by a "contribution" method, which operates on the assumption that an LEC can provide these services at a lower cost as part of a "bundled plan," and any price floor mechanism should take this into account. MCI argued that this method would allow companies such as PacBell to cross-subsidize the cost of bottleneck services with other



monopoly services such as local service, and enable it to provide an "anticompetitive pricing scheme," especially to its largest customers.

The circumstances surrounding the rescinded decision have prompted shock and outrage from consumer groups and legislators, and were the subject of a joint hearing of the Assembly Utilities and Commerce Committee and the Senate Energy and Public Utilities Committee on October 21. At that hearing, Toward Utility Rate Normalization (TURN) Executive Director Audrie Krause testified that these improprieties are the latest example of "a complete breakdown of the carefully crafted checks and balances intended to protect the public interest," and that a decision that was supposed to propel California into a "leadership role in expanding long distance competition within local service areas" had instead transformed the state into a "national laughing-stock." TURN also called for the resignation of Commissioner Shumway, claiming that his office "was responsible for allowing Pacific Bell to rewrite a regulatory order intended to govern its rates in an increasingly competitive industry structure." Calling Shumway "completely ignorant of his role as a regulator," TURN charged that he "invited the fox into the henhouse with open arms, flouting due process in order to ramrod through a regulatory plan that betrays the majority of Californians."

At this writing, TURN also intends to sponsor comprehensive PUC reform legislation when the legislature reconvenes in January; the reform package is expected to include a complete ban on *ex parte* contacts; the right to appellate court review of PUC decisions; and increases in the PUC's budget to allow it to hire its own technical support staff. Additionally, TURN contends that PUC Commissioners should be required to participate more actively in the evidentiary hearing process; Commissioners should be required to listen to the public's concerns about utility issues; and the process for appointing Commissioners must be reformed so that two of the five appointees are members of a political party other than the Governor's party.

PUC Approves Pacific Telesis Spin-Off. On November 2, the PUC voted 3-2 to approve the Pacific Telesis Group's (Telesis) plan to spin off its PacTel Corporation, its wireless operations, into a separate company; the new company will consist of PacTel Cellular, PacTel Paging, and Pacific Telesis International, while Telesis will consist primarily of Pacific Bell, Nevada Bell, and some other subsidiaries. Telesis claimed that the spin-off is required in order to allow each entity to

operate under regulations geared to the type of business in which it engages. [13:4 CRLR 204]

The PUC directed Telesis to refund a total of \$41.3 million to PacBell to cover basic research and development of cellular technology financed by telephone basic service revenues between 1974-83; the Commission will hold further proceedings in 1994 to determine how PacBell should distribute the refund. This amount fell far short of the \$3-\$5 billion that representatives of TURN argued is a better estimate of the research and development costs cross-subsidized by monopoly loop PacBell ratepayers. PUC President Fessler and Commissioner Gregory Conlon, who voted against the spin-off proposal, expressed dissatisfaction with the refund, and contended that the PUC should have conducted hearings to determine the amount. The two Commissioners had set up discussions between Telesis and consumer advocates several days before the decision, in an attempt to reach agreement on the amount to repay; however, the talks broke down after Telesis informed a mediator that it was no longer interested in discussing any compensation terms.

Also under the terms of the Commission's decision, PacBell is required to file a financial plan, including a full range of scenarios showing how it will assure the future financial stability of the wireline utility after separation; no assets may be transferred out of PacBell or any of the California wireless utilities; the initial public offering and/or private placement of PacTel stock must be made in such a way that no individual, corporation, or group may hold more than 2.24% of PacTel stock upon conclusion of the spin-off, although no Telesis stockholder will be required to divest itself of Telesis stock to meet the 2.24% limit; and Telesis must file its plan for achieving Universal Life-line Telephone Service.

Consumer advocates such as TURN, as well as the PUC's Division of Ratepayer Advocates, contend that the spin-off decision denies ratepayers substantial benefits from revenues invested in the cellular technology. They argue that, as with any investment in a risky enterprise, ratepayers should be compensated for its successes. According to TURN staff attorney Kathleen O'Reilly, "[r]atepayers have funded development of cellular technology through rates for basic service since the 1950s. It would be unconscionable for PacTel now to walk off with those multi-billion dollar assets and pay ratepayers nothing."

Telesis executives—who claim that investor funds alone, and not ratepayer

funds, went into cellular development—expressed satisfaction at the decision. Telesis CEO Sam Ginn opined that "[t]he world's financial community was watching and the PUC voted yes. The Commission sent a strong signal that California is open for business." Telesis has said that it wanted to move quickly in order to complete a stock offering in the new company while the stock market is still on the upswing. However, industry analysts point out that a timely divestment of the cellular operations would enable Telesis to bid for personal communications services (PCS) when the Federal Communications Commission (FCC) begins auctioning licenses in the spring of 1994; PCS is a wireless technology which operates at higher frequencies and lower power than cellular technology, but is still seen as direct competition. Had Telesis kept its cellular operations, it would have been severely restricted in bidding for PCS services.

TURN has said it will ask for a rehearing on the matter, or appeal the decision to the California Supreme Court, although Executive Director Audrie Krause acknowledged that the high court has not heard a PUC case in many years. The consumer group renewed its call for the resignation of Commissioner Shumway, the assigned Commissioner of this decision (*see above*); Shumway was the only Commissioner who backed Telesis' contention that it should be allowed to make no payments to compensate PacBell's ratepayers.

Governor Calls for Reorganization of PUC. In early December, Governor Wilson called for the PUC to be restructured in conjunction with his proposed elimination of the California Energy Commission (CEC). The Governor proposed that the PUC restructure its existing evidentiary proceedings away from trial-like hearings, by recasting the Commission's Administrative Law Judge Division into an "Alternative Dispute Resolution Division" to facilitate negotiation and decisionmaking. Under the proposal, the Commission would resolve disputes through negotiation rather than more formal hearings. The Governor would change the PUC from a court-like decisionmaker into a more informal arbitrator among factions. The Governor also suggested the creation of a new panel to handle site selection of energy plants, which is currently CEC's responsibility. Presumably, the Wilson administration will sponsor legislation to accomplish the Governor's proposal in 1994.

Senate Committee Convenes Advisory Group to Study PUC Restructuring. In addition to the Governor's pro-



posal to restructure the PUC, a legislative committee intends to study structural changes to the Commission. As noted in the recitation of events above, a number of controversies involve current PUC procedures. The problem of Pacific Bell *ex parte* influence in formal Commission proceedings, the absence of judicial review as of right of Commission decisions, the large number of minor matters subject to Commission decision, and other problems have led Senator Herschel Rosenthal, chair of the Senate Committee on Energy and Public Utilities, to convene a special advisory group of outside experts to examine the structure and procedures of PUC decisionmaking. The motivation for the study also involves the recognition of certain morale problems within Commission staff, including substantial dissatisfaction by administrative law judges (ALJ) with their current role.

Consumer critics such as TURN and the Center for Public Interest Law (CPIL) contend that the Commission's workload compels it to devolve decisions to a single "assigned Commissioner." Because all decisions of ALJs are merely "proposed" to the Commission, the assigned Commissioner becomes the critical decisionmaker. However, the Commission is made up of disparate individuals, and results may excessively depend upon who is assigned to a given case. This happenstance is particularly important given the unusual absence of court review of PUC decisions: Appeal is directly and only by discretionary petition for review to a very busy California Supreme Court. Further, the final decisionmaker—effectively a single Commissioner in many cases—does not see the presentation of the evidence and may not spend the necessary time and attention on it; the ALJ who has presided over the hearing does not always understand the basis for a revision by a necessarily less informed source. Further, although *ex parte* contacts from litigants are limited *vis-a-vis* the ALJs hearing a case, the Commissioners are subject only to specific limitations adopted on a case-by-case basis, if at all. Hence, a carefully and fairly considered ALJ proposal may be reversed by a private conference or contact from one of the litigants free from cross-examination or counterargument.

At the same time, several PUC Commissioners have contended privately that the staff excessively dominates proceedings and is out of touch with modern market conditions and the opportunities increased competition may present to enlightened regulation. Further, some Commissioners believe that staff tends to introduce overly complex and extensive evi-

dentiary proceedings which delay needed changes. The staff of the Commission is clearly concerned about this view; it privately fears that it is wrongly considered an impediment to Commission "deregulation" policies, remains wedded to the paternalistic approach, and is engaging in behind-the-scenes "guerilla-legal warfare" to halt the PUC's surrender of its regulatory powers to a market it does not trust. Most staff members contend that they understand their obligation to pursue the policies of the Commission; that the problem is one of inattention to detail by Commissioners; that total workload for the Commission has not increased over the past decade; and that most delay occurs due to Commission failure to act on a proposed decision submitted to it in a timely fashion.

Donald Vial, a former member of the PUC, has been appointed to chair the advisory group. During the spring of 1994, the group is expected to consider structural changes appropriate for legislation, including the screening and division of cases appropriate for ALJ or informal process without full Commission review, increased staffing of Commissioners, altered judicial review of PUC decisions, *ex parte* rules, and other reforms.

PUC Report to Governor Proposes Precedent-Setting Telecommunications Strategy for California. On December 8, in response to a request from Governor Wilson, the PUC issued a report which proposed sweeping changes in the state regulatory structure of the telecommunications industry, and a sharply reduced role for the Commission in controlling telecommunications rates and practices. Entitled *Enhancing California's Competitive Strength: A Strategy for Telecommunications Infrastructure*, the report contains proposals to reform California's regulatory framework to better reflect the increasingly competitive nature of the industry and to help transform local telephone service from a protected monopoly to a highly competitive business. [13:4 CRLR 205-06] The report proposes recommendations for opening all markets to competition, streamlining regulations, promoting a "two-tiered" statewide foundation for advanced capabilities, and maintaining consumer protection.

The proposal recommends that all telecommunications markets, including local telephone service, be opened to competitive entry by January 1, 1997; this strategy would allow any company complying with basic quality and service standards to provide local service anywhere in the state. The report also supports the removal of state and federal barriers to competition

in long distance service, manufacturing, and cable programming over the next three years, the further reallocation of radio spectrum, and the licensing of additional service providers for commercial mobile telephone and PCS by the FCC. The recommendations also include a plan for streamlining the regulatory process, including the termination of rate regulation in markets which face vigorous competition; replacing entry barriers with simple registration programs open to all providers of services; encouraging private networks to offer their services to the public; promoting a "technology-neutral" infrastructure policy, which would allow telecommunications providers to make their own decisions regarding investment in new technology; and reform of the PUC's New Regulatory Framework (NRF) to eliminate all remaining limitations on profitability currently imposed upon dominant service providers. [10:1 CRLR 151]

The report further recommends the adoption of a "two-tiered" approach to basic service, effective January 1, 1997. The first tier would include conventional voice telephone service, and would be offered by competing firms; prices would be subject to rate ceilings until the market becomes fully competitive. An optional second tier of digital access services would be provided by competing firms, who could charge a separate price for its delivery; digital access services would make possible high-speed data exchange networks, as well as interactive educational, financial, and entertainment services. As a longer-term objective, the report noted that the PUC should strive to achieve statewide access to full-motion switched video and mobile communications capabilities by the end of the decade.

The report includes four recommendations aimed at maintaining effective consumer protection. First, the PUC should retain simplified but firm regulatory control of companies which dominate specific telecommunications markets, with emphasis placed on protecting captive customers from monopoly practices. Second, rate caps for basic telecommunications services should be in place to protect ratepayers from monopoly pricing. Third, the PUC should continue its commitment to lifeline service, including low rates for voice telephone service, and consider reforms to make universal service compatible with a competitive market and multiple basic service providers. Finally, the report recommends that the PUC work with the legislature, the Department of Consumer Affairs, the Attorney General's Office, and other appropriate agencies to



ensure that fundamental consumer protections are in place.

The specific recommendations contained in the proposed strategy require formal review by the PUC, other agencies, and the legislature before they may be implemented. The report received general approval from Governor Wilson and representatives of various telecommunications and cable television companies. However, it was criticized by consumer groups such as TURN, which expressed concern that the plan places too much emphasis on competition, without proper safeguards against abusive monopoly practices or adequate lifeline and universal service commitments.

In a related development, PacBell announced on November 11 that it plans to spend \$16 billion to develop an "information superhighway," a broadband digital network that will eventually enable it to bring interactive educational and entertainment services to California consumers by the turn of the century. By 1995, PacBell will begin the transition from copper wires to fiber optic and coaxial cables, which will eventually transmit hundreds of television signals and one billion bits of computer data every second to homes or businesses. PacBell officials claim that the network will be built through existing telephone revenues, with no increase in basic telephone rates; PacBell plans to recover its costs by providing high-speed data and video services to customers at higher rates.

Additionally, on November 12, PacBell notified the PUC that it intends to enter the electronic publishing services market; electronic publishing refers to a class of services and products through which information, traditionally provided in print form, is distributed or accessed over the telephone network. In its application to the PUC, PacBell referred to existing on-line services such as CompuServe and Prodigy, and to services comparable to "electronic classified advertising" and "electronic yellow pages," as the types of services which it wishes to offer to businesses and residents as soon as it can develop them. Because these services are highly speculative and part of a larger, very competitive advertising market, PacBell has asked the PUC to allow it to develop and offer them on a "below-the-line" basis; PacBell claims that such a decision would be consistent with the PUC's position in prior NRF proceedings. No decision has been issued by the PUC at this writing.

PUC to Review Cellular and Mobile Telephone Industry Regulation. Looking to competition rather than regulation to control the wireless communication

market, the PUC has initiated a review of a variety of cellular and mobile telephone service regulations. First, in an Assigned Commissioner's Ruling issued on December 2, PUC President Fessler asked parties to comment on proposed interim modifications to existing cellular regulations; these proposed modifications are intended to relieve perceived regulatory barriers, streamline the filing requirements for lowering rates, provide consumers with information on competitive options, and generally facilitate pricing flexibility to encourage price competition.

Among the subjects to be reviewed is a proposal to eliminate the 10% maximum rate reduction rule and renewal filing requirements for obtaining temporary authority to lower rates under the temporary tariff authority. This temporary authority to lower tariffed rates upon one day's notice to the PUC was granted in the Commission's Phase II Cellular Decision. [13:2&3 CRLR 212] The proposed change would grant all cellular utilities a blanket authorization to use the temporary tariff process for rate reductions of any amount, and eliminate the yearly renewal requirements for rate changes presently required by the temporary tariff authority. According to the Assigned Commissioner's Ruling, this authorization process has become a routine, non-controversial process which imposes an unnecessary burden on both the industry and PUC staff.

Other proposed changes include relaxation of regulations on withdrawal of optional service plans and prohibitions on provisional tariff plans with expiration dates; relaxation of the gift rule which currently limits service providers to \$100 of free service as part of a service package; and review of the procedure for requiring advice letters and Commission approval of service contracts containing automatic renewal clauses. The PUC will also conduct a workshop within ninety days of the order to determine the need for an "Important Information Booklet" to be provided to consumers to help them make informed decisions when selecting cellular services; such an information package could be required as competition increases as a *quid pro quo* for relaxing regulatory protections.

The PUC's second review of cellular regulation was initiated on December 17, in response to the anticipated entry of mobile telephone and personal communication service (PCS) providers into direct competition with the cellular industry. The PUC proposes to replace the current regulatory structure with one that distinguishes service providers as "dominant" or "non-dominant." The two existing cellular car-

riers in each geographical area would be classified as dominant carriers; new entrants into the market, such as specialized mobile radio and PCS providers, would be classified as non-dominant and would be subject to minimal regulation and registration requirements. Dominant carriers would be subject to either a current rate price cap (in which wholesale cellular rates would be capped at existing levels), or a cost-based price cap (in which the PUC would determine a standard operating cost and use it as a rate ceiling). The Commission would relax these price limits if it determines that effective long-term competition exists in a particular service area. According to the PUC, these changes are in line with the proposed strategy issued in its report on the future of telecommunications in California (*see above*).

Finally, a large number of matters are currently pending before the PUC which relate to cellular service, including unbundling the wholesale tariff and the reseller switch, which were left unresolved by the decision to rehear portions of the Phase III Cellular Decision last May. [13:4 CRLR 205] At this writing, a review of these issues is in progress.

PUC Report Finds Minimal Fraud Associated with Universal Lifeline Program. On December 17, the PUC sent to the legislature a report which concludes that there is minimal fraud associated with the Universal Lifeline Telephone Service (Lifeline) program's method of verifying eligibility to obtain reduced-cost telephone service. However, the report also concludes that substantial numbers of California customers eligible for the reduced rates do not take advantage of the Lifeline service. The report was prepared in response to AB 3299 (Moore) (Chapter 354, Statutes of 1992), which required the PUC to assess the extent to which fraud might exist in the Lifeline program. [13:4 CRLR 205; 12:4 CRLR 230] Applicants to the program currently "self-certify" by filing a form showing that they meet certain income eligibility guidelines. The self-certification process was implemented to protect customer privacy, encourage enrollment, and minimize paperwork for the phone companies. The Lifeline service is funded by ratepayers, who pay 6% of their total monthly charges for long distance calls within California to support the program.

The Commission used Stanford Research Institute (SRI) International, a consulting firm, to conduct the study. SRI randomly sampled 4,691 Lifeline customers and found that only 9.2% of the current 2.3 million Lifeline customers failed to meet one or more of the eligibility criteria:



6% because their household income is above the limit for household size or they are listed as a dependent on another person's federal tax return; and 3.2% because their family has more than one telephone number or because the location receiving Lifeline service is not their primary residence. Many of these ineligible customers expressed confusion about eligibility criteria, calculation of income for eligibility purposes, and some of the questions on the certification form.

The study also determined that about 15% of the 2.5 million eligible households do not have Lifeline service, primarily due to a lack of awareness of the service among low-income groups. Recommendations for expansion of current Lifeline outreach/information efforts include streamlining and simplifying eligibility criteria; providing Lifeline funds directly to community groups for outreach; allowing community groups to help eligible individuals complete the certification forms; changing the program name to include the words "low-income" (to differentiate the service from medical services which also use the term "lifeline"); developing a standardized application form in several languages; and using highly visible posters, booklets, and radio advertising to promote the service.

In an effort to spark a dialogue about the report's recommendations, the PUC is seeking comments from interested individuals and groups. Additionally, on January 20, the PUC will co-sponsor a public forum in Los Angeles with the National Telecommunications and Information Administration of the U.S. Department of Commerce to discuss these and other universal service issues.

PUC Awards Intervenor Compensation to TURN and Consumer Action. On October 6, the PUC awarded \$164,323 in compensation to Toward Utility Rate Normalization (TURN) and Consumer Action for their substantial contributions to a PUC decision approving Caller ID and other "CLASS" services proposed by PacBell, GTE, and Contel. [13:1 CRLR 135] The telephone companies have yet to offer Caller ID, but they do provide other CLASS services such as Call Trace, Call Return, Repeat Dialing, and Priority Ringing.

Intervenor compensation is awarded by the PUC only upon showing both financial hardship and that participation in a Commission proceeding made a substantial contribution to a decision. In this case, TURN was awarded \$149,323 because it argued successfully for increased privacy safeguards for Caller ID and contributed recommendations for a plan to notify and educate customers about the

new services and their implications. Consumer Action was awarded \$15,000 for its efforts to increase privacy safeguards and for recommending that the notification and education plan be comprehensive enough to reach all low-income and limited-English-speaking customers.

The compensation is paid for by the utility or utilities involved, from revenues derived from rates paid by customers. The three telephone companies involved in this decision will split the payment of the awards as follows: PacBell, 80%; GTE-California, 18%; and Contel, 2%.

Further Deregulation of Electricity Provision Planned. The Commission is currently considering how to further deregulate electric utilities. The natural monopoly portion of electricity generation is increasingly the rights of way and wiring. But there are many ways to generate electricity to add to the grid from many competitive sources; no single capital structure is required. Hence, a monopoly power utility could control only the high-fixed-cost wire "loop" and "wheel" or transport to homes and businesses electricity generated by the lowest-cost competitive producer—whether a wind farm, coal plant, or dam. Accordingly, the PUC may require utilities to sell their electric generation facilities to unregulated companies, dividing the industry into clearer monopoly power vs. competitive sector pieces and eliminating the current bias of the utility to favor its own power generation facilities as built—even if uneconomic.

The suggestion has sparked resistance from some ratepayer advocates and enthusiasm from businesses. If deregulation were to occur, some consumer advocates argue the rates would increase for small consumers, but substantially decrease for large businesses. The Commission may see the change as a boost to the state economy. Regulated utilities would be involved only in the distribution of electricity, while new unregulated companies would compete for the generation market. At this writing, the Commission's decision is expected in April.

PUC Sets 1994 Rates of Return for Energy Utilities. On December 3, the PUC approved by 3-1 vote revised rates of return for California's energy utilities. The 1994 approved rates of return on common equity are as follows: 11.10% for Sierra, down from 11.95% for 1993; 11% for Pacific Gas & Electric (PG&E), down from 11.90%; 10.85% for San Diego Gas & Electric (SDG&E), down from 11.85% for 1993; 11% for Southern California Gas, down from 11.90% for 1993; 11% for Southern California Edison, down from 11.80% for 1993; 10.90% for Southwest,

down from 11.95% for 1993; and 10.85% for PacifiCorp.

The rate of return on the "rate base," which includes debt-financed plant and investment (and is sensitive to interest rates), was set at about 2% below the return on equity levels above. Consumer groups criticized the rates as excessive given the recession and interest rates achieved for similarly secure investments. Commission President Fessler dissented from the final decision, and noted publicly that Commissioner Shumway, who did not attend the meeting, would have dissented with him.

PUC Approves Edison's \$90 Million Pilot Program. On October 6, the PUC approved Southern California Edison's plan to purchase energy efficiency equipment for its large customers. The customers will then pay Edison back from their energy savings. Through this program, Edison hopes to mitigate electricity demand, reduce the need for new generating plants, stimulate the "efficiency industry" (e.g., conservation devices and services), and cut air pollution. Critics contend the new program gives Edison control over the efficiency industry: Using money from ratepayers, Edison can choose which companies will install energy efficiency equipment and which pieces of equipment are installed where. Critics also fear that where loans or investment in "efficiency" fail, ratepayers will pay through higher charges given utility backing. The new program is scheduled to begin immediately.

PUC Adopts Interim EMF Policy. On November 2, the PUC adopted interim measures, effective December 2, to address the possible health hazard resulting from exposure to electric and magnetic fields (EMF) associated with utility facilities (including electric facilities and power lines). These measures have been prompted by the increasing number of utility liability lawsuits [13:2&3 CRLR 217-18], and what appears to be a growing body of evidence correlating sustained proximity to high-voltage lines with cancer and other illness. The PUC's interim measures include no-cost and low-cost steps to reduce EMF levels; workshops for utilities to develop EMF design guidelines; uniform residential and workplace EMF measurement programs; public involvement in development of research and education programs; a four-year, \$1.4 million education program; a four-year, \$5.6 million, non-experimental and administrative research program; and authorization for the utilities to contribute to federal experimental research. Although the PUC contends that there is no conclusive scien-



tific evidence of harm caused by EMF, the Commission has adopted the policy of avoiding any unnecessary new exposure—if it can be avoided at low cost.

The policies suggest that EMF reduction or shielding will be an expected consideration where cost is not a critical factor (however defined) in the location of new high-voltage lines, in altering tower line geometry (e.g., raising lines), undergrounding, or in widening rights of way. The policies (not adopted as rules) are based on a March 1992 report of the "EMF Consensus Group" convened by the PUC and including 17 members from industry, consumer groups, and agencies. [12:2&3 CRLR 260]

PUC Approves Rate Increase for PP&L. On December 3, the PUC approved a 2% rate increase for Pacific Power and Light Company (PP&L). The monthly residential bill will increase by \$2.66, or 4%, effective in 1994. The increase was due to alleged "increased operating costs" of the utility, which serves Del Norte, Modoc, Shasta, Siskiyou, and Trinity counties. The PUC also agreed to set rates for PP&L annually using a formula which reflects costs and productivity gains, the national average price for electricity, taxes, and accounting treatment for demand-side resources. This new form of regulation is intended to "simplify the ratesetting procedures and keep prices stable." This abbreviated method is in lieu of the traditional calculation of a "fair rate of return" on an invested rate base and replicates a similar "indexed" maximum ratesetting procedure applicable to SDG&E. [13:4 CRLR 206]

PUC Investigating Mobile Home Parks' Energy Charges. On October 22, the PUC began an investigation of the charges mobile home park residents pay for gas and electricity. Numerous mobile home park residents have complained that they are being charged twice for these services—once by the utility companies and once by the park owners to cover the cost of sub-metering and maintenance. Although the utilities already give a discount to park owners to cover these costs, the owners claim it is also necessary to charge the residents an extra sum in order to break even. The PUC has assigned an administrative law judge to the case who is not taking evidence but is considering written argument.

PUC Institutes Rulemaking on the Disqualification of Administrative Law Judges. Section 309.6 of the Public Utilities Code, enacted by the legislature in 1993, requires the PUC to adopt procedures for the disqualification of its administrative law judges (ALJ) for bias or prej-

udice. On November 24, the Commission published notice of proposed rules to provide for the disqualification of an ALJ in a proceeding to which he or she is assigned (1) if his/her spouse or relative is a party, a professional associate, or likely to be a material witness, (2) if the ALJ served as a representative within two years in the same or similar proceeding or for one of the parties upon a matter disputed in the proceeding, (3) if the ALJ has a financial interest in the matter, (4) if the ALJ believes recusal would be in the interests of justice, or there is doubt as to the ALJ's impartiality, or a reasonable person might doubt the ALJ's impartiality, and (5) if the ALJ is physically impaired and is unable to perceive the evidence or conduct the hearing. Ethnic or minority background, expertise in the area, or assistance in the drafting of the laws in issue are not grounds for disqualification. Under the proposed rules, the parties may waive disqualification if all parties agree, and *ex parte* communications regarding disqualification of a particular ALJ are prohibited. Written comments on the proposed rule were due by December 14; under section 309.6, the PUC is required to report to the legislature on the status of its rulemaking by February 28.

Diesel Truck Emissions. On October 1, the Air Resources Board (ARB) implemented new regulations requiring diesel fuel sold in California to meet new low-sulfur, low-emission standards. Intended to help clear the air, the new regulations were immediately criticized by truckers for increasing prices, producing fuel shortages, and damaging truck engines.

California refineries estimated that the reformulated fuel would add six cents per gallon in price but, in an ironic coincidence, ARB's new regulations requiring the use of less-polluting diesel fuel were implemented on the same day that President Clinton's 4.3 cents-per-gallon federal tax increase on diesel fuel became effective. Attempts to avoid the new costs by hoarding fuel caused spot shortages, especially in the northern part of the state. These shortages led to opportunistic price increases of up to 40 cents per gallon in some areas.

In mid-October, Governor Wilson appointed a state task force to study the cause and economic impact of ARB's regulations. On November 8, the task force—headed by PUC President Fessler—released a report which noted that, as expected, prices had fallen considerably and the supply/demand problems appeared to be ending; the task force recommended that ARB's rules be retained. While en-

dorsing the findings of the task force, Governor Wilson attacked ARB and the U.S. Environmental Protection Agency (responsible jointly for the regulations) for allegedly being indifferent to the marketplace and the effects of regulation on people's livelihoods. But the Governor did not repeal the regulations or grant a requested six-month moratorium, stating, "California has no choice but to clean up the air emission of mobile sources, and suspension of the rules is inconsistent with that goal."

On November 19, Governor Wilson appointed James Strock, head of the California Environmental Protection Agency, to lead a new task force to investigate whether the new fuel damages diesel engine fuel pumps and whether the state should compensate truckers for such damage. Such damage is hotly disputed by the oil industry. If liability were to be found, the replacement cost of the fuel pumps ranges from \$600 to \$2,500 each. In addition, Governor Wilson directed the PUC to look into "tariff relief" for the truckers in response to the price increases. (See agency report on ARB for related discussion.)

Alternatives to Litigation Workshop. On September 30, the PUC's Consumer Affairs Branch (CAB) held a workshop in San Francisco to discuss how to avoid litigation in disputes between utilities and their customers. The meeting was attended by CAB staff, representatives from most of the major utilities in the state, and consumer advocacy groups including TURN and CPIL.

At the workshop, the participants identified the types of disputes among individual customers, business customers, and the utilities. Common complaints range from excessive tariff levels to improper billing and disconnection of service to disputes between utilities over objectionable competition from each other. Despite the variety of complaints, the workshop focused on individual consumer vs. utility problems, which are the most frequent and which involve consumers who lack bargaining power and basic information about the PUC.

The primary goal of the workshop was to streamline or avoid the PUC's formal complaint process, which involves expense and delay. The current alternative to the formal complaint process consists of a consumer telephoning or writing the Commission, a review of the matter by PUC staff, and a non-binding opinion which is sent to both the consumer and the utility. If the consumer is dissatisfied with the decision, he or she may appeal it to the manager of the PUC's Consumer Affairs



REGULATORY AGENCY ACTION

Branch within 15 days. If the consumer is still unsatisfied, the last method of recourse is a formal complaint.

The formal complaint process itself is of two types: expedited and regular. Each is heard by an ALJ. The expedited formal complaint is only available for disputes involving less than \$5,000. Neither party may have legal representation at an expedited complaint hearing. There is no court reporter present and the hearing must be held within 14 days of receipt of the utility's answer to the consumer's complaint. If the ALJ's decision is appealed and a rehearing is granted, the rehearing will be conducted under formal complaint procedures.

Formal complaints may be requested in any case, but if the complaint does not specify which procedure is desired and the amount in controversy is less than \$5,000, the Commission's Docket Office will consider the complaint an expedited complaint. When a formal complaint is filed, the 14-day deadline in the expedited process does not apply. Each party may be represented by legal counsel at a reported hearing. If appealed and a rehearing is granted, the rehearing will be held under the same formal procedure. All decisions of the ALJ are proposed decisions to the Commission and are reviewed by it and accepted, rejected, or modified as the Commission sees fit.

The workshop participants identified certain problems with the current system. First, the informal complaint process is not binding on either party and simply adds another level of time and expense when the parties are truly in controversy. Second, consumers unknowingly end up on the formal complaint path when they may be simply asking for information or their complaint could be resolved through the informal process. Finally, many consumers are unaware of the role played by the PUC in the process and are discouraged by the PUC's first advice—which is for the customer to contact their utility. Most callers have already called the utility and have been frustrated. When they call the PUC and receive the rote response to deal with those whom they consider to be the source of the problem, they view the PUC as biased in favor of, if not a captive of, the utility.

Participants discussed use of the informal process before filing a formal complaint. The formal complaint form now asks whether the consumer has tried to resolve the issue informally. While the consumer has the prerogative of filing informally or formally, the utilities recommend automatically sending a consumer to the informal process if they do not spe-

cifically request formal proceedings—whatever the amount in dispute. Consumer participants worried that consumers misunderstand what it means to have “filed an informal complaint”; many believe that calling their utility qualifies. This problem and others concerning the role of the PUC in disputes and the available remedies for a complaint could be solved with more thorough explanation of the procedure and options over the phone.

Another utility suggestion was that the PUC stress the availability of informal remedies, and possibly not even disclose the availability of the formal complaint process until after the consumer has had an opportunity to consider the informal process. And the utilities suggested localizing the process by referring complainants to regional or community panels comprised of utility representatives and consumers. One final suggestion concerns the use of mediation. Although this is currently a popular alternative to litigation in other settings, the participants agreed that the informal complaint process is similar to mediation. Consumer participants acknowledged the need of the Commission to focus on high-priority matters and the possible speed of informal dispute resolution. But they also argued that the PUC is not simply charged with the resolution of problems lodged by those who complain. Its underlying mandate is to police a monopoly enterprise—which may require pattern detection and affirmative intervention to protect those who do not or cannot approach the Commission personally.

Commission Sanctions Deja Vue Livery Service. On November 23, the PUC ordered Leonard Kamenetsky, owner and operator of Deja Vue Livery Service, Inc. to shut down operations for one year. The order, which prohibits Kamenetsky from owning, operating, or managing any limo service for the duration of the sanction, is the result of a settlement between the Commission and Kamenetsky. He will be subject to a \$20,000 fine if he violates any part of the settlement. In addition to the one-year prohibition, Kamenetsky must remove all permit numbers and PUC-issued decals from all Deja Vue vehicles and have the telephone service for the vehicles disconnected. Deja Vue was cited for numerous violations, including operating as a limo service without a valid PUC permit, operating in violation of a PUC cease and desist order to halt service, and failing to have personal liability and damages insurance or workers' compensation coverage. Kamenetsky also operated limo services under the names Entertainment Express and Deja Vue Limousine. This order clears

Alexander Kamenetsky, who held the service permit, of any responsibility for the violations. The Commission found that the “continuous flow of consumer complaints” resulted from violations of Commission regulations committed by his son Leonard, who was actually operating Deja Vue.

Best Move, Inc. On October 18, the Santa Clara County Superior Court fined Ed Reyes, who has done business as Best Move, Inc., \$50,000 for illegal actions as a household goods carrier. The PUC's Transportation Division initiated the investigation and found that Reyes had ignored more than \$150,000 worth of customer claims of lost and damaged property. At least 60 customers filed complaints charging theft of furniture, use of bait and switch tactics, fraud, operating without a PUC license, and other unlawful practices. Reyes has also operated under two previous PUC suspensions for failure to pass CHP safety inspections.

Balloon Affaire. On October 15, Commission staff, accompanied by the Napa Police Department, shut down Balloon Affaire's operations and seized the firm's equipment. The Commission charges Jim Hunter, the owner, with piloting balloon rides without insurance and transporting customers in vans without a PUC permit. State law requires balloon companies to carry a minimum of \$100,000 liability insurance for each passenger. Because each balloon gondola can carry up to ten passengers, Balloon Affaire was required to have at least \$1 million in insurance. Further, balloon companies which transport customers in their own vehicles must hold a PUC permit for that purpose.

This case was part of a statewide PUC investigation into unlawful, uninsured balloon companies. PUC staff are investigating other operators who may not be properly insured in the Bay Area and in Los Angeles and San Diego counties.

■ LEGISLATION

AB 683 (Moore), as amended March 29, bill would require the PUC to reopen and reconsider a specified decision relating to rates charged retail electric customers for electricity from the Diablo Canyon Nuclear Powerplant. [A. U&C]

SB 828 (Mello), as introduced March 4, would require the PUC to adopt and implement rules and regulations to assure that electrical corporations meet specified requirements in providing electric power to commercial customers maintaining high technology dependent operations. [S. E&PU]

SB 1177 (Alquist), as introduced March 5, would require the PUC to review the



federal Energy Policy Act of 1992 and to report to the legislature by March 31, 1994, concerning the effects of the Act on electric transmission services in California. [S. E&PU]

SB 1077 (Lewis). Under existing law, the PUC establishes and approves the rates which are charged by common carriers. As introduced March 5, this bill would repeal various provisions relating to the establishment of those rates, and instead permit the PUC to establish a "zone of rate freedom" for common carrier service, other than cement carrier service, which the PUC finds is operating in competition with other common carriers or competitive transportation service from any other means of transportation, if the Commission finds that these competitive transportation services will result in reasonable rates and charges when considered along with the authorized zone of rate freedom. [S. E&PU]

SB 320 (Rosenthal), as amended April 21, would permit the Commission to expand the funding base of the Universal Lifeline Telephone Service program surcharge to include any or all telephone corporations or telecommunications services, except for basic monthly telephone service, provided by telephone corporations. [A. U&C]

AB 860 (Moore), as amended April 12, would require the PUC, in the regulation of cellular telecommunications utilities, to implement a regulatory mechanism that permits the utilities to raise and lower prices within a specified range with minimum intervention and review by the PUC. [S. E&PU]

AB 1386 (Moore), as amended August 27, would require the PUC to cause a gas corporation to publish a tariff establishing terms and conditions of wholesale gas service for a municipality within its service territory, including rates, as specified; prohibit the PUC from imposing conditions that foreclose competition between the utility and the municipality, but allow utilities to petition the PUC to abandon service within municipalities eligible for wholesale gas service under the provisions of this bill; permit the PUC to grant petitions for abandonment of service, but when granting a petition for abandonment, the Commission would be required to impose conditions requiring that affected municipalities provide service on a nondiscriminatory basis to former customers of the utility abandoning service; define the basis on which the PUC may establish charges to be paid by a municipality to a utility for the transfer of gas distribution facilities to the municipality in the event the utility abandons service;

and require the PUC to disallow any consideration of the expense of redundant distribution facilities when setting the rates of a utility which has failed to take advantage of the abandonment provisions of the bill. [S. Floor]

SB 662 (Bergeson), as amended May 17, would require the PUC, in consultation with specified departments and representatives, to prepare and adopt a program for telecommunications services for disabled persons for motorist aid in the event of a freeway emergency, to comply with specified federal standards. [A. U&C]

SB 141 (Alquist). Under existing law, the California Energy Commission (CEC) has specified powers and duties relating to the conservation of energy resources, and the PUC is responsible for the regulation of public utilities within the state. As amended April 15, the bill would require that, for investor-owned electric and gas utilities, regulatory decisions relating to energy conservation programs, budgets, and rate treatment for various programs (including appropriate shareholder incentives) shall be made by the CEC with input from the PUC and the Division of Ratepayer Advocates of the PUC. The bill and would require the PUC to implement these programs, as specified. [A. NatRes]

AB 2333 (Morrow), as amended August 24, would require public utilities to provide designated peace officers and investigators and law enforcement officers, as defined by reference to existing law, with limited customer information under specified conditions with respect to investigations relating to missing or abducted children. The bill would require a law enforcement officer requesting this information to prepare and sign a written affidavit supporting the request, and would provide that specified persons and entities shall not be subject to criminal or civil liability for reasonably relying on an affidavit pursuant to this provision. [S. Appr]

AB 1879 (Peace). Under existing law, the meetings of the PUC are required to be open and public, in accordance with the specified provisions of law. The Commission is required to include in its notice of meetings the agenda of business to be transacted, and no item of business may be added to the agenda subsequent to the notice, absent an unforeseen emergency situation. A rate increase is specified as not constituting an unforeseen emergency situation. As amended April 22, this bill would provide that a rate decrease may constitute an unforeseen emergency situation. [S. E&PU]

SB 1147 (Rosenthal), as amended April 15, would require the PUC to determine the total statewide dollar amount of social

costs, as specified, which are embedded in regulated utility rates for delivered natural gas, and spread that amount equally as a surcharge to all consumers of natural gas in the state, whether regulated or unregulated, utility or nonutility. [S. Appr]

SB 335 (Rosenthal). Existing law permits the PUC to authorize natural gas utilities to construct and maintain compressed natural gas (CNG) refueling stations to be owned and operated by the utility, or to be transferred to nonutility operators; support the construction and maintenance of CNG vehicle conversion and maintenance facilities; provide incentives for conversion of motor vehicles to CNG-fueled vehicles, and incentives to promote the purchase of factory-equipped CNG-fueled vehicles; and recover through rates the reasonable costs associated with the above projects. These provisions are to be repealed on January 1, 1997.

As amended April 19, this bill would expand these provisions to include all natural gas and permit the Commission to authorize natural gas utilities to conduct research development and demonstration of advanced natural gas vehicles and natural gas vehicle refueling technologies. In addition, the bill would permit the PUC to authorize electric utilities to purchase and demonstrate to the public electric vehicles and other forms of electric transportation; conduct electric vehicle battery research, demonstration, and leasing programs; construct and maintain electric vehicle recharging facilities and equipment to be owned and operated by the utility, or to be transferred to nonutility persons or enterprises; and provide electric vehicle consumer incentives to offset all or part of the estimated initial battery costs of electric vehicles. [A. U&C]

AB 2363 (Moore). Existing law prohibits gas, heat, or electrical corporations and their subsidiaries that are regulated as public utilities by the PUC from conducting work for which a contractor's license is required, except under specified conditions. As amended April 19, this bill would also permit the work to be performed if the work is incidental to another utility function and is performed by a utility employee who is present on the premises for the other function. [A. Inactive File]

AB 2028 (Bronshvag), as amended April 13, would require the PUC to implement the consensus recommendations contained in the report of the California Electromagnetic Field Consensus Group dated March 20, 1992. [12:2&3 CRLR 260] [S. Appr]

AB 766 (Hauser). Existing law defines a gas plant for purposes of the jurisdiction and control of the PUC pursuant to



the provisions of the Public Utilities Act as all facilities for the production, generation, transmission, delivery, underground storage, or furnishing of natural or manufactured gas except propane. As amended May 26, this bill, notwithstanding the provision summarized above or any other provision of law, would require the PUC to assume, no later than July 1, 1994, regulatory jurisdiction over the safety of propane pipeline systems, including inspection and enforcement, for mobilehome parks, condominiums and other multi-unit residential housing, and shopping centers. [13:2&3 CRLR 213] It would require the PUC to establish a uniform billing surcharge designed to cover the PUC's cost in implementing these provisions, with all surcharge fees to be deposited by the PUC in the Public Utilities Commission Utilities Reimbursement Account in the general fund, to be used, upon appropriation by the legislature, for these purposes. [S. E&PU]

AB 173 (V. Brown), as amended August 30, would limit the amount of salary paid to the President and each member of the PUC, on or after July 1, 1994, to an amount no greater than the annual salary of members of the legislature, excluding the Speaker of the Assembly, President pro Tempore of the Senate, Assembly majority and minority floor leaders, and Senate majority and minority floor leaders. [S. Inactive File]

■ FUTURE MEETINGS

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

STATE BAR OF CALIFORNIA

President: Margaret Morrow

Executive Officer:

Herbert Rosenthal

(415) 561-8200 and

(213) 765-1000

TDD for Hearing- and Speech-Impaired:

(415) 561-8231 and

(213) 765-1566

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 137,000 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 291 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 new 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 sub-

stantial threat of harm to clients or to the public, among other reasons.

In mid-December, the Bar relocated its Los Angeles staff to the Transamerica Center at 1149 S. Hill Street. Nearly 400 State Bar employees from three separate Los Angeles locations were consolidated at the new location; the Bar now occupies seven floors of the building, and increased its floor space by 25,000 square feet in the move.

■ MAJOR PROJECTS

Board Maintains Secret Ballot Policy. After a lengthy and sometimes heated debate at its December meeting, the Board of Governors voted 12-8 to maintain the secret ballot it uses to annually elect its president. The issue of the secret ballot has surfaced frequently in recent years, but prior boards have affirmed the policy based on "collegiality" concerns ("a secret ballot fosters collegiality because it removes the discomfort of board members having to vote publicly against those with whom they have a close relationship").

This year, the Board's own Legal Committee urged it to abandon the secret vote in favor of "the Board's overriding responsibility...to be accountable." The Committee's analysis of the issue recognized that "[t]he Bar is both a regulatory agency, accountable to the public; and an organization representing the interests of lawyers, accountable to those lawyers....How does the State Bar show its accountability as to the election of its leaders if the Board maintains a secret ballot? The answer is simple: the secret ballot affords no accountability whatsoever."

The Committee argued that the secret ballot system fosters a lack of respect for the State Bar as an institution, among lawyers and the public at large—which the Bar and the legal profession can ill afford at the present time. [13:4 CRLR 213] As to the "collegiality" argument, the Committee said: "The obvious response is that the purpose in serving on the Board is not to be comfortable, but rather to act as leaders, and to make decisions—often difficult—for which Board members are accountable."

In retaining the secret ballot, the Board of Governors rejected not only the recommendations of its own committee, but those of four major metropolitan bar associations (from San Francisco, Los Angeles, Santa Clara, and Orange counties). Several Board members who had argued for opening the ballot hinted that the legislature should take action to overrule the Board's decision.

In other action affecting the selection of its president, the Board voted to abolish