to them by registered mail." The proposed amendment would provide that the decisions are final upon their delivery or mailing and not subject to reconsideration or rehearing; the amendment would also authorize delivery by certified mail.

No public comments were received at the hearing, nor did NMVB receive any written comments. The Board unanimously adopted both amendments, which were approved by the Office of Administrative Law on De cember 19.

LEGISLATION:

SB 1113 (Leonard) would impose a $25 fee on the purchase of new automobiles and new light-duty trucks that do not meet, and provide specified rebates to the purchasers of those vehicles that do meet, prescribed standards relative to low-emission vehicles and safety. This two-year bill is pending in the Senate Transportation Committee.

SB 760 (Johnston) would require every applicant for a vehicle dealer's license and every managerial employee, commencing July 1, 1992, to take and complete a written examination prepared by DMV concerning specified matters; permit an oral examination in place of the written examination for any dealer or managerial employee who is not the sole owner of any vehicle dealership, so long as at least one person in the dealership ownership structure completes the written examination; prescribe continuing education requirements applicable to dealers and managerial employees consisting of at least six hours of instruction during the two-year period following the initial examination and at least four hours during each succeeding two-year period; and require DMV to adopt regulations with respect to these examination and instruction requirements. This two-year bill is pending in the Senate Transportation Committee.

SB 1164 (Bergeson) would provide that, for purposes of vehicle license fees, the market value of a vehicle shall be determined upon the first sale of a new vehicle to a consumer and upon each sale of a used vehicle to a consumer, but the market value shall not be redetermined upon the sale of a vehicle to specified family members. This two-year bill is pending in the Senate inactive file.

AB 126 (Moore), as amended July 10, would enact the "One-Day Cancellation Law" which would provide that, in addition to any other right to revoke an offer or rescind a contract, the buyer of a motor vehicle has the right to cancel a motor vehicle contract or offer which complies with specified requirements until the close of business of the first business day after the day on which the buyer signed the contract or offer. This bill is pending in the Senate Judiciary Committee.

FUTURE MEETINGS:

To be announced.

OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

Executive Director: Linda Bergmann
(916) 322-4306

In 1922, California voters approved a constitutional initiative which created the Board of Osteopathic Examiners; 1991 legislation changed the Board's name to the Osteopathic Medical Board of California (OMB). Today, pursuant to Business and Professions Code section 3600 *et seq.*, OMB regulates entry into the osteopathic profession, examines and approves schools and colleges of osteopathic medicine, and enforces professional standards. The Board is empowered to adopt regulations to implement its enabling legislation; OMB's regulations are codified in Division 16, Title 16 of the California Code of Regulations (CCR). The 1922 initiative, which provided for a five-member Board consisting of practicing doctors of osteopathy (DOs), was amended in 1982 to include two public members. The Board now consists of seven members, appointed by the Governor, serving staggered three-year terms.

MAJOR PROJECTS:

Regulatory Hearing Planned. OMB is planning to hold a regulatory hearing this summer regarding amendments to certain unspecified regulations that are inconsistent with legislation passed in 1991. At this writing, the proposed revisions have not yet been published in the *California Regulatory Notice Register.*

LEGISLATION:

AB 1691 (Filante), as amended May 8, would require, on or after July 1, 1993, every health facility operating a postgraduate physician training program to develop and adopt written policies governing the working conditions of resident physicians. This bill was rejected by the Assembly on June 27; it is pending in the Assembly inactive file.

SB 664 (Calderon) would prohibit osteopaths, among others, from charging, billing, or otherwise soliciting payment from any patient, client, customer, or third-party payor for any clinical laboratory test or service if the test or service was not actually rendered by that person or under his/her direct supervision, except as specified. This two-year bill is pending in the Senate Business and Professions Committee.

AB 819 (Speier) would, effective July 1, 1992, provide that, subject to specified exceptions, it is unlawful for specified licensed health professionals to refer a person to any laboratory, pharmacy, clinic, or health care facility which is owned in whole or in part by the licensee or in which the licensee has a proprietary interest; the bill would also provide that disclosure of the ownership or proprietary interest does not exempt the licensee from the prohibition. This two-year bill is pending in the Assembly Health Committee.

Future Legislation. OMB is currently looking for a legislator to carry a bill which would authorize the Board to recover investigative and prosecution costs incurred in specified discipline actions taken against osteopathic physicians.

FUTURE MEETINGS:

To be announced.

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 Chap-

ter 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 new Safety Division is concerned with the safety of the utilities, railway transports, and intrastate railway systems.

On October 4, Commissioner Mitchell Wilk resigned from his position on the PUC; at this writing, Governor Wilson has not announced Wilk's replacement.

On December 4, the PUC elected Commissioner Daniel Wm. Fessler as its president for a one-year term beginning on January 1. Fessler, who replaces Patricia Eckert, is a member of the UC Davis law faculty and also serves as a member of the California Transportation Commission. At this writing, the Governor's appointments to the PUC of both Fessler and Commissioner Norman Shumway have yet to be confirmed by the state Senate.

MAJOR PROJECTS:

Ratepayers, DRA Oppose Huge Rate Hike Proposed by Telephone Companies. At PUC-sponsored public hearings throughout the fall, consumers across the state criticized proposals by Pacific Bell and GTE-California to increase basic residential service and installation charges by over 60% (while decreasing toll call charges by 30%) during the next three years. The companies contend they are forced to raise monopoly loop residential rates because the PUC intends to permit competition in another area—the provision of intrastate toll call ("intraLATA") service. The Commission claims that current intraLATA rates far exceed their actual cost and seeks to introduce competition in this area to force rates closer to cost; the telephone companies claim they currently cross-subsidize low residential rates with higher toll call rates, but can no longer afford to do so if they must compete for intrastate toll call service. (*See supra* reports on TURN and CONSUMER ACTION; *see also* CRLR Vol. 11, No. 4 (Fall 1991) pp. 43 and 203–04 for background information.)

At eighteen public hearings throughout the state, ratepayers expressed a number of concerns to PUC Administrative Law Judge George Amaroli. Residential customers, especially those subscribing to the Universal Lifeline service, view the proposed rate increases as a disproportionate burden on them with no corresponding benefit (as residential customers make few toll calls in comparison with business subscribers). Some consumers complained about the fact that multi-digit access numbers may be required to reach a toll call company if competition in intraLATA service is permitted. Increased installation costs will unfairly impact those who move often, such as students, renters, and migrant workers. Ratepayers acknowledged that competition supposedly creates lower costs and better service, but argued that it is difficult to regulate a utility which retains a monopoly service but is permitted to compete in other areas.

On December 16, the Commission's Division of Ratepayer Advocates (DRA) released its own rate plan, which would increase basic residential rates by only 13%; even smaller increases were recommended for measured-service and Lifeline customers. Under DRA's proposal, residential installation charges would increase from the current $34.75 to $50 (instead of $56.70, as requested by PacBell). In contrast to the phone companies' proposal, DRA would also increase basic charges for business customers (from $10.90 to $12.70 per line per month), and hike charges for "private lines"—special phone lines often set aside for large companies. The Division contends these rate increases would be offset by commercial customers' full enjoyment of a decrease in toll call rates, which DRA would slash even more steeply than suggested by PacBell and GTE-California.

ALJ Amaroli will use the information gathered from public testimony, both companies' proposals, and DRA's suggestions to make his own comprehensive recommendation on both the intraLATA competition issue and overall rate design later in the year. Evidentiary hearings on the rate design issue were scheduled to begin in January in San Francisco.

DRA Recommends $94 Million Fine Against PacBell for Billing Improprieties. In response to a complaint filed by Toward Utility Rate Normalization (TURN) last February, DRA released a report on November 8, the result of its nine-month investigation into improper late fees charged by PacBell to customers between 1988 and 1991. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 204; Vol. 11, No. 3 (Summer 1991) pp. 42 and 192; and Vol. 11, No. 2 (Spring 1991) pp. 39–40 and 175 for background information.)

In its report, DRA stated that PacBell "misapplied its tariffs and did not keep adequate documentation to support the assessment of late payment charges, suspensions of service for nonpayment, disconnections for nonpayment, or reconnect fees and deposits." Further, PacBell's "inability to meet its own standards due to understaffing and antiquated equipment increased the potential for improper late payment charges and disconnects." DRA discovered a "widespread awareness of payment processing delays within Pacific Bell, spanning at least three years' time" and concluded that "channels of communication, accountability and internal control were inadequate to allow for resolution of these issues in a timely manner. Indeed, no effective action was taken to remedy customer-impacting processing and posting delays until the public and the CPUC were involved."

Based on its findings, DRA recommended that PacBell continue its efforts to refund inappropriate late payment charges, reconnect charges, and deposits to customers; make a convincing showing of how it intends to address communication, accountability, and internal control deficiencies within its organization; and make restitution for improperly-collected charges not refunded to individual customers, to include 100% of residence late payment charges and 20% of business customer late payment charges for the period from January 1988 through January 1991. According to the DRA, this restitution should amount to approximately $93.8 million.

DRA recommended that the fine be allocated as follows: up to $2 million to retain a consultant to provide an independent audit of PacBell's organizational accountability, communication, and internal control practices; up to $1 million to fund an interorganizational task force (consisting of representatives from PacBell, DRA, and consumer groups) to review the findings of the audit and the efforts of PacBell's Quality Improvement Team to ensure that steps are taken to prevent recurrence of customer- affecting organizational irre-

sponsibility; $10 million to fund activities of the Telecommunications Education Trust (created in 1986 from a $16.5 million fine against PacBell for deceptive marketing practices) to educate monopoly customers how to have service quality or improper collection action issues addressed by PacBell or the PUC; and returning the remaining funds to customers in the form of an immediate credit.

PacBell's response to DRA's findings is due by February 21; reply testimony by TURN and DRA is scheduled to be submitted by March 27. The PUC's evidentiary hearings are scheduled to start on April 27.

PUC Rejects PacBell/DRA Settlement Agreement. On November 6, in Decision 91-11-023, the PUC rejected a proposed settlement agreement submitted by DRA and PacBell, stating that the agreement "is not in the public interest as it fails to refund to the ratepayers money spent, since 1990, to cross-subsidize competitive services."

In the utility's 1985 general rate case, the Commission had set PacBell's rates provisionally pending completion of DRA's investigation into whether utility ratepayers were subsidizing competitive products and services in the areas of research and development, deployment, joint ventures, and strategic alliances; the PUC anticipated that once cross-subsidies were correctly identified, rates would be adjusted accordingly. In October 1990, DRA finally filed its completed audit report, which contained six basic recommendations intended to "remedy past cross-subsidies; stop the cross-subsidies that are currently occurring; avoid the potential for future cross-subsidies; and facilitate future monitoring efforts to detect cross-subsidy." For example, DRA recommended that PacBell be ordered to make an immediate rate reduction of $15.6 million to eliminate recovery of expenses for competitive products and refund $37 million to ratepayers for expenses incurred for competitive products since 1986. In December 1990, PacBell filed its response to DRA's audit report, denying that any refund or rate reduction was justified, and contending that the PUC should dismiss all but one of the recommendations. The PUC was scheduled to hold three weeks of public hearings on the DRA audit report and responses commencing in February 1991; however, on January 17, 1991, DRA and PacBell notified all parties that they had reached a settlement.

Among other things, the settlement would have provided that PacBell's customers would receive an $18.8 million prospective rate reduction and PacBell would adopt new tracking and reporting procedures that would enhance DRA's ability to monitor PacBell's new product development. Three parties to the proceeding—TURN, AT&T Communications of California, Inc., and MCI Telecommunications Corporation—objected to the proposed settlement, arguing that the agreement is not in the best interests of the ratepayers and contending that a refund should be due to the ratepayers dating from January 1, 1990, when the cross-subsidies identified in the audit began.

In considering the proposed settlement, the PUC stated that "the only [policy] issues to consider are not whether the cross-subsidy exists, but whether we are willing to overlook its prior existence. Given the fact that we have set rates subject to refund since 1986 for the specific purpose of reflecting the audit results, the essential inquiry is how far back should we hold Pacific accountable?" The PUC characterized DRA's four-year audit process—which was originally scheduled to consume only three months—as "contentious," "acrimonious," and "tortuous," due primarily to PacBell's repeated assertions that many documents the audit team wished to review were protected by the attorney-client privilege. The Commission concluded that "[t]he history of this audit shows that we are **not** willing to overlook past cross-subsidies. The narrowly-defined goal and object of this audit process was intended to determine the amount in question and to adjust rates accordingly" (emphasis original). The PUC noted that, from PacBell's perspective, "it is not difficult to ascertain why the settlement is preferable to further litigation. DRA has given up any claim to almost $34.5 million of past cross-subsidies in return for Pacific's agreement to comply with the law in the future. On the other hand, it is difficult to ascertain what the ratepayers gain by agreeing to this settlement. It appears that Pacific, by successfully stalling the audit process for several years, may now avoid accountability for past years of cross-subsidies."

The PUC thus concluded that the agreement fails to represent an appropriate resolution of the ratepayers' claims and rejected the proposal. The Commission ordered that further hearings be conducted, commencing on January 10, to seek resolution of various issues, such as the amount of the cross-subsidy both prospective and for refund, and how far back the refund should be calculated.

CPIL and TURN Awarded Intervenor Compensation. In December 1989, the Center for Public Interest Law (CPIL) filed a request for intervenor compensation for its contribution to Phase II of the Commission's Alternative Regulatory Framework (ARF) telecommunications proceeding. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 175; Vol. 10, No. 1 (Winter 1990) p. 151; and Vol. 9, No. 4 (Fall 1989) p. 133 for background information on ARF.) In the Phase II decision, the Commission replaced traditional cost-of- service pricing with a more flexible incentive-based regulatory framework for Pacific Bell and GTE-California, and set up an extensive monitoring program to ensure compliance with the new framework. In 1986–87, CPIL submitted testimony on the proposal, focusing on the possible adverse affects on consumers that would result from large expenditures on purported modernization investments and ventures by the regulated companies into the competitive marketplace without detailed economic analysis to prevent cross-subsidization of competitive enterprises with monopoly loop revenues. These increased costs would simply be passed on to monopoly loop consumers; CPIL maintained the pass-on option is a luxury unavailable to competitors, and that cross-subsidies from these ventures should be monitored, revealed, and addressed appropriately. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 1 for extensive background information on CPIL's "economic impact statement" proposal; *see supra* "*PUC Rejects PacBell/DRA Settlement Agreement*" for related discussion.)

TURN filed its request for Phase II intervenor compensation in November 1989, arguing that its policy and legal arguments made a substantial contribution to the Commission's Phase II decision. TURN submitted that it was the only active intervenor representing residential ratepayers, that its expert witness Bolter brought a nationwide perspective to the proceeding that most of the other witnesses lacked, and that its participation was critical for development of the adopted new regulatory framework.

On November 20, the PUC finally ruled on the two petitions, finding that both organizations made a substantial contribution to Phase II, and ordering Pacific Bell and GTE-California to reimburse CPIL $48,851.64 and TURN $55,527.17 for reasonable attorneys' fees, expert witness fees, and other costs of their participation. (*See supra*

reports on CPIL and TURN for related discussion.) Under the PUC's intervenor compensation program, the awards are initially paid by the utility and ultimately passed on to the utility's customers. The two-year delay in the PUC's rulings on these petitions and other consumer group complaints about the Commission's implementation of the intervenor compensation system are still being investigated by the Auditor General at this writing. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 206 for background information.)

PUC Addresses Inside Wiring Issues. On December 18, the PUC adopted Resolution T-14688, authorizing requested changes to PacBell's inside telephone wiring repair plan. (See CRLR Vol. 11, No. 4 (Fall 1991) pp. 43–44 and 204; and Vol. 10, No. 4 (Fall 1990) p. 179 for background information.) Effective March 1, PacBell is authorized to charge sixty cents per month for its residential repair plan, which now includes the service of isolating trouble caused by customer-provided equipment (previously a $35 flat fee); business repair plan charges remain the same. For residential customers without the plan, the premises visit fee was changed from a flat fee of $65 to $45 for the first fifteen minutes and $16 for each subsequent fifteen-minute increment. For business customers, the fee was changed from $65 for the first hour with a maximum of $90, to $55 for the first fifteen minutes and $16 for each subsequent fifteen-minute increment.

In response to concerns expressed by the Utility Consumers' Action Network (UCAN) and TURN over PacBell's minimal efforts to educate consumers about inside wiring, the PUC required PacBell to carry out customer notification plans, including information regarding troubleshooting techniques and inside wiring repair options other than PacBell. These notification requirements complement SB 841 (Rosenthal) (Chapter 1001, Statutes of 1991), which passed rental unit inside wiring repair responsibility onto landlords and requires telephone corporations to annually provide residential customers with basic facts about inside wiring. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 207 for background information.)

Another issue relating to inside wiring involves demarcation points, the place in or about a customer's premises where the utility's wiring stops and the customer's inside wiring begins; a demarcation point thus defines the relative responsibilities of customers and utilities for repair and maintenance of inside wiring. "Inside wiring," which refers to the wiring located on the customer's side of the demarcation point, is detariffed; the wiring located on the utility's side of the demarcation point, referred to as riser cable or intrabuilding network cable (INC), is a regulated product.

During 1991, a group of interested parties developed a formal settlement agreement covering several inside wiring-related issues, including the location of points of demarcation and the unbundling of INC. On October 16, the parties—including PacBell, DRA, AT&T, the County of Los Angeles, and several small local exchange companies—submitted the proposed agreement to the PUC for review. In general, the settlement seeks to promote competition in the market for customer-provided INC by requiring the utilities to unbundle INC charges rather than offer the products at no charge, which is the current practice.

At this writing, PUC staff is reviewing the proposed settlement agreement; the Commission was expected to make a decision on the proposal in January.

PUC Adopts Ex Parte Communications Rule. On October 23, the Commission adopted new Article 1.5, Chapter 1, Title 20 of the CCR, which governs but does not prohibit ex parte communications between parties to Commission proceedings and PUC decisionmakers. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 193 for background information.)

The article, which took effect on January 20, applies to all formal PUC proceedings except rulemaking and specified related investigations. The rules require disclosure of ex parte contacts in applicable proceedings and prohibits ex parte contacts after an enforcement proceeding is submitted for decision. An ex parte contact is defined as a "written or oral communication on any substantive issue in a covered proceeding, between a party and a decisionmaker, off the record and without opportunity for all parties to participate in the communication." Pursuant to the rules, contacts must be reported by the party (as opposed to the decisionmaker), regardless of who initiates the contact. The communications are to be reported within three working days of the occurrence by filing the original and twelve copies of a "Notice of Ex Parte Communication" with PUC's San Francisco Docket Office and simultaneously providing a copy of the Notice to the assigned PUC administrative law judge. The filing of a Notice will be reported promptly in the Commission's Daily Calendar. The Notice must include the date, time, and location of the communication and whether it was oral, written, or a combination; the identity of the initiator and recipient, as well as the identity of any other persons present during the communication; and a description of the party's, but not the decisionmaker's, communication and its content, including a copy of any written material used during the communication. The rules authorize the PUC to impose penalties and sanctions as it "deems appropriate to ensure the integrity of the formal record and to protect the public interest."

The PUC held informational workshops in December to educate utility industry personnel and the public on the operation of the new rules. Commission staff stressed that modifications to the rules to address unforeseen complications would be considered after they have been in operation for a few months.

Intervenor Compensation Awarded for Merger Work. On December 20, the PUC awarded San Diego-based UCAN $123,237 in intervenor compensation for its contribution to the PUC's proceeding to determine whether Southern California Edison (SCE) should be permitted to take over San Diego Gas and Electric (SDG&E). Last May, the Commission unanimously rejected the merger after an extensive evidentiary hearing process. (*See supra* report on UCAN; *see also* CRLR Vol. 11, No. 3 (Summer 1991) pp. 190–91; Vol. 11, No. 2 (Spring 1991) pp. 173–74; and Vol. 11, No. 1 (Winter 1991) p. 148 for background information on the merger.)

In its motion for intervenor compensation, UCAN requested $240,000 for its work relating to the merger. According to the PUC, the primary justification for the reduced award was that some of UCAN's contributions duplicated work performed by Commission staff. UCAN plans to seek rehearing on the reduction. The PUC decision requires that SCE contribute 80% and SDG&E contribute 20% of the award granted.

SDG&E Asks for $145 Million Rate Increase. On November 15, SDG&E filed an application with the PUC for a $145 million rate increase which would take effect on January 1, 1993. The proposed increase translates to an 8.7% increase for electric customers, a 4.2% increase for gas customers, and a 120.3% increase for San Diego's downtown steam customers. If the request is granted, it would raise the residential customer's bill by $5.63, making the average residential customer's bill $71.05. In addition to the increase re-

quested for 1993, SDG&E also requested an increase of $61 million for 1994 and $97 million for 1995.

SDG&E claims that the increases are needed to fund capital improvements that were put on hold over the past three years while its merger with SCE was being debated. In addition to improvements in power lines and electricity distribution substations, funds would also be used to implement energy conservation programs and comply with new environmental laws. Consumer groups blasted the company's "wish list," contending that many of SDG&E's requests are either inflated or unnecessary. (*See supra* report on UCAN for related discussion.)

According to the proposed schedule for this proceeding, evidentiary hearings will commence in May, with the final decision on revenue requirements expected in December and the final decision on rate design expected in April 1993.

PUC Sets 1992 Rates of Return for Energy Utilities. On November 20, the PUC set 1992 return on common equity and rate of return percentages for six of the state's major energy utilities. For 1992, the return on common equity was set at 12.65% for Pacific Gas & Electric Company, Southern California Gas Company, SDG&E, and SCE, and at 12.75% for Southwest Gas Corporation and Sierra Pacific Power Company. The rates of return established by the PUC for the utilities range from 10.07% for Sierra Pacific to 11.26% for Southwest. All of the 1992 rates of return were set at lower percentages than the utilities had been allowed in 1991. According to the PUC, this lowers the utilities' revenue requirements, which should be passed along to customers in the form of lower energy costs.

PUC Issues Rules on Natural Gas Capacity Brokering. In an effort to improve competition among natural gas markets to lower the price of gas and promote efficient use of the pipeline system, the PUC issued new rules on November 6 which will effect the capacity brokering of interstate gas markets. The PUC's rules will permit major natural gas customers to obtain a specific amount of transportation per day from out-of-state sources. The fixed amounts will be based on bids, allowing the customers who pay the highest prices to receive the most reliable service. Before the new plan may be implemented, the Federal Energy Regulatory Commission must issue capacity brokering certificates to the interstate pipelines which transport natural gas to California. The PUC expects the new system to be in full effect by October 1.

PUC Continues Investigation of Toxic Rail Accidents. Last August, the PUC initiated a formal Order Instituting Investigation (OII I.91-08-029) to evaluate whether Southern Pacific Transportation Company "has operated prudently and safely and satisfied applicable rules and regulations." The investigation, authorized under the PUC's general regulatory authority, followed the catastrophic July 14 Southern Pacific derailment in Dunsmuir which released almost 20,000 gallons of deadly pesticide into the upper Sacramento River, and the July 28 Southern Pacific derailment in Seacliff which spilled 440 gallons of poisonous hydrazine onto a portion of Highway 101, causing a shutdown of the highway in that area for five days. (See CRLR Vol. 11, No. 4 (Fall 1991) pp. 204–05 for background information.) The goals of the OII are to "(a) investigate the causes of the derailments, (b) identify any local safety hazards, (c) investigate compliance and pursue enforcement of existing CPUC jurisdictional rules and regulations, and (d) recommend improvements in state or federal laws or regulations necessary to prevent future derailments or to facilitate emergency response."

At this writing, the investigation is ongoing and no findings have been made public. A prehearing conference to determine the course of the investigation was scheduled for January 28 in San Francisco before Administrative Law Judge Robert L. Ramsey. Railroads, public agencies, emergency response organizations, and others interested in the outcome of the investigation were encouraged to attend the prehearing conference.

PUC Reports an Increase in Railroad Accidents. In its annual railroad accident report issued on December 4, the Commission found that although train-miles traveled declined slightly in 1990 (annual reports are one year behind schedule), there were 7% more accidents than in 1989. Injuries increased 4%, and hazardous material releases associated with rail incidents also increased. On a more positive note, 1990 railroad crossing accidents, excluding rail transit accidents, declined by 15%.

Human error, such as using improper switches, caused 43% of rail accidents in 1990. According to the PUC, such incidents underscore the need for rail employees to adhere to safe operating procedures. Track, roadbed, and structure contributed to 23% of train accidents; mechanical failures accounted for 10%; and miscellaneous factors included grade crossings accounted for 23%.

The report also found that vehicle-train accidents at railroad crossings primarily occur because drivers fail to stop, stop but fail to clear the tracks, ignore warning signals, drive around warning signals, or fail to realize that a passing train may obscure another approaching from the opposite direction.

Through regulations, accident investigations, railroad facilities inspections, and other initiatives, the PUC is attempting to reduce rail-associated accidents, hazardous materials incidents, and injuries to the public and rail employees.

PUC Suspends Issuance of Shuttle Van Permits. On November 6, the PUC suspended the issuance of operator licenses to shuttle vans serving Los Angeles International Airport (LAX) and San Francisco International Airport (SFO) for six months. Under Public Utilities Code section 201, the PUC regulates for-hire vehicles with fewer than eleven passengers, such as shuttle vans. The Commission has conducted surprise safety checks throughout California in an attempt to enforce safety regulations and publicize its efforts to ensure that carriers take preventive actions in the future. The moratorium on issuing permits is the PUC's response to continued safety violations found during its inspections. For example, in a July 10 inspection at LAX, the Commission cited 42 out of 45 shuttle vans for safety violations, issued 136 total violations, and pulled 23 vans out of service. In a follow-up check on October 1, the Commission found another 50 of 62 vans to have safety violations.

The order constitutes part of a joint effort by the Commission, airport authorities, and the California Highway Patrol to develop programs and regulations aimed at promoting safety, consumer protection, and better service. The moratorium will be effective through May 6; exceptions will be made only if public need cannot be met by existing carriers.

PUC Proposed as Regulator of California's Water Rates. On October 10, San Diego Mayor Maureen O'Connor and state Senator Wadie Deddeh announced a plan to have the PUC regulate all of the state's water rates. Currently, under the Public Utilities Code, the PUC regulates about 300 privately-owned, for-profit water companies; no public water agency is presently regulated by the PUC. For the private companies, the PUC gauges the cost of acquiring and distributing water, and then determines a reasonable profit margin. To raise rates, an agency must

submit a formal application to the PUC. Officials then scrutinize the request and evaluate whether the proposed rates are reasonable.

The proposal would require legislation to grant the PUC's Water Utilities Branch authority to act as the statewide water rate regulatory body. Deddeh was expected to introduce such a bill in January. The San Diego and Los Angeles city councils have endorsed PUC regulation of water rates; at this writing, the Commission is studying the proposed legislation before formally supporting or opposing it.

LEGISLATION:

SB 859 (Rosenthal), as amended June 10, would prohibit the PUC from approving any tariffs, contracts, or similar agreements pertaining to the procurement, storage, or transportation of natural gas by a gas corporation or intrastate pipeline company, to or for the benefit of an electric corporation, unless substantially similar services are also made available to cogeneration technology projects under similar pricing terms and conditions as the service offered to the electric corporation. This two-year bill is pending in the Assembly Utilities and Commerce Committee.

SB 1204 (Committee on Energy and Public Utilities) would require the PUC to use forecasts prepared by the California Energy Commission for determinations involving the acquisition of new electrical energy generation resources, including bidding and other competitive acquisition programs, and requests for proposal type solicitations. This two-year bill is pending in the Senate Committee on Energy and Public Utilities.

AB 1431 (Moore) would require the PUC to examine wholesale cellular telephone rates in the major metropolitan markets in California, including at least Los Angeles, San Francisco, San Diego, and Sacramento, and by December 31, 1992, to determine the costs, including a fair profit, to provide wholesale cellular telephone service in each of those markets, and to base wholesales rates on those costs. This two-year bill is pending in the Assembly Utilities and Commerce Committee.

AB 558 (Polanco). Existing law generally directs the PUC to require any call identification service offered by a telephone corporation, or by any other person or corporation that makes use of the facilities of a telephone corporation, to allow the caller, at no charge, to withhold, on an individual basis, the display of the caller's telephone number from the telephone instrument of the individual receiving the call. This bill would remove the requirement that the withholding of the display of the caller's telephone number be done on an individual basis. This two-year bill is pending in the Assembly Utilities and Commerce Committee.

AB 314 (Moore), as amended June 25, and ***SB 232 (Rosenthal)***, as amended April 18, would direct the PUC to require any call identification service to allow a residential caller, at no charge, to withhold, on either an individual basis or a per line basis, at the customer's option, the display of the caller's telephone number of the individual receiving the call. AB 314 is pending in the Assembly inactive file; SB 232 is pending in the Assembly Utilities and Commerce Committee.

SB 815 (Rosenthal) would prohibit an owner or operator of a coin-activated telephone available for public use or any telephone corporation from making any charge for the use of a calling card or collect call for any telephone call made from a coin or coinless customer-owned pay telephone above and beyond the surcharge applicable to users of credit cards for those calls. This two-year bill is pending in the Senate Energy and Public Utilities Committee.

AB 847 (Polanco). Existing law authorizes the PUC, as an alternative to the suspension, revocation, alternation, or amendment of a certificate for a highway common carrier or the permit of a household goods carrier, to impose a fine of up to $5,000 for a first offense and up to $20,000 for a subsequent offense. This bill would change that fine amount to not more than $20,000 for any offense. This two-year bill is pending in the Assembly Utilities and Commerce Committee.

SB 1145 (Johnston). Existing law directs the PUC to require highway carriers subject to the Highway Carriers' Act to carry accident liability protection, evidenced by a policy of liability insurance issued by either a licensed company or a nonadmitted insurer whose policies meet the PUC's regulations, a bond of a licensed surety company, or evidence of self-insurance upon the PUC's authorization. This bill would expressly authorize the PUC to include the determination of the amount of personal liability and property damage response that is required for the operation of common carriers, permit carriers, highway common carriers, and cement carriers. This two-year bill is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 636 (Calderon) would authorize the use of money in the PUC's Transportation Rate Fund for conducting studies and research into how to increase the public benefits attained from highway carriers in the areas of safety, environment, productivity, and traffic congestion management. This two-year bill is pending in the Senate Committee on Energy and Public Utilities.

SB 692 (Rosenthal) would direct the PUC to require every electrical, gas, and telephone corporation subject to its jurisdiction to transmit to its customers or subscribers, together with its bill for services, a legal notice which describes intervenor groups by name, address, and telephone number. This two- year bill is pending in the Senate Energy and Public Utilities Committee.

AB 1975 (Moore), as amended May 23, would enact provisions which would generally effectuate the participation of consumer groups, including but not limited to low-income and minority groups, which seek to intervene in proceedings of the PUC; participation by these groups would be effectuated by, among other means, the enactment of provisions to facilitate market-level compensation of these intervening consumer groups for their expenses in participating in Commission proceedings. AB 1975 would also ease intervenor eligibility filing requirements, permit intervenors to request compensation before the PUC makes a final decision, remove the existing "nonduplication" standard which effectively precludes intervenors from working together, and expand the types of PUC proceedings for which intervenors may request compensation. This two-year bill is pending in the Senate Energy and Public Utilities Committee.

SB 1036 (Killea), as amended July 10, would express legislative intent with regard to telephone information providers who do business with California consumers, and authorize state governmental agencies to act as, or contract with, information providers which charge consumers for the receipt of, or access to, information about governmental services over the telephone. This two-year bill is pending in the Assembly Utilities and Commerce Committee.

SB 743 (Rosenthal) would require the PUC to require that any telephone corporation which requests approval of the modernization of its telephone network with fiber optics also establish and provide an independent source of power for the telephone network in the case of a public emergency that could curtail electric power. This two-year bill is pending in the Senate Energy and Public Utilities Committee.

AB 844 (Polanco) would authorize

the PUC to cancel, suspend, or revoke a certificate or operating permit upon the conviction of a charter-party carrier of any felony. This two-year bill is pending in the Assembly Utilities and Commerce Committee

AB 846 (Polanco) would require the PUC, if, after a hearing, it finds that a highway permit carrier or a household goods carrier has continued to operate as such after its certificate or permit has been suspended pursuant to existing law, to either revoke the certificate or permit of the carrier or to impose upon the holder of the permit(s) a civil penalty of not less than $1,000 nor more than $5,000 for each day of unlawful operations. This two-year bill is pending in the Assembly Utilities and Commerce Committee.

AB 90 (Moore) would require the PUC, in establishing rates for an electrical, gas, telephone, or water corporation, to develop procedures for these utilities to recover, through their rates and charges, the actual amount of local taxes, fees, and assessments, and to adjust rates to correct for any differences between actual expenditures and amounts recovered in this regard. This two-year bill is pending Assembly Utilities and Commerce Committee.

AB 230 (Hauser) would require those public utilities which furnish residential service to provide with their bills a statement indicating the customer's consumption of electricity, gas, or water during the corresponding billing period one year previously and the number of days in, and charges for, that billing period. The bill would exempt public utilities furnishing water to fewer than 2,000 customers. This two-year bill is pending in the Assembly Utilities and Commerce Committee.

AB 379 (Moore) would create a Department of Telecommunications and Information Resource Management, which would be required to recommend to the Governor and the legislature elements of a state telecommunications and information resource policy, develop plans for the use of telecommunications and information resources by the state, and underwrite or participate in the development of technologies for use by state government. This two-year bill is pending in the Assembly Utilities and Commerce Committee.

AB 462 (Moore) would require the PUC, in establishing public utility rates (except the rates of common carriers) to not reduce or otherwise change any wage rate, benefit, working condition, or other term or condition of employment that was the subject of collective bargaining. This two-year bill is pending in the Senate inactive file.

AB 1792 (Harvey) would require the PUC to develop and implement cost estimates for the marginal costs of generation, bulk transmission, and energy costs for different classes of consumers of electrical energy, including but not limited to agricultural use and residential use, for the purpose of determining reasonable and just rates for electrical energy. This two-year bill, which would take effect immediately as an urgency statute, is pending in the Assembly Utilities and Commerce Committee.

ACA 30 (Bates) would require the legislature to provide for five public utility districts; provide for the election of the PUC commissioners, each representing one district for staggered four-year terms; and include PUC districts within existing constitutional requirements relating to reapportionment of elective districts. This constitutional amendment is pending in the Assembly Utilities and Commerce Committee.

SB 1042 (Roberti), as amended June 9, would revise specified procedures for hearings and judicial review of complaints received by the PUC or made on the Commission's own motion by requiring, among other things, that PUC hearings requested by complainants be assigned to an administrative law judge. This two-year bill is pending in the Assembly Utilities and Commerce Committee.

AB 1432 (Moore), as amended August 20, would provide that notwithstanding any other provision of law, when the Commission issues, denies, suspends, or revokes the certificate or permit of a passenger stage corporation, a highway common carrier or cement carrier, a highway permit carrier, a household goods carrier, or a charter-party carrier, the decision may be appealed directly to the San Francisco Superior Court, as specified. This two-year bill is pending in the Senate Appropriations Committee.

AB 1260 (Chacon) would establish procedures applicable to dump truck carriers and household goods carriers that provide for appeal of any interim, interlocutory, or other order of the PUC to a state court of appeal. This two-year bill is pending in the Assembly Utilities and Commerce Committee.

LITIGATION:

LECs Object to CHCF Changes. The California High Cost Fund (CHCF), created in 1985, is designed to mitigate the effects of certain regulatory changes on the local rates of small- and medium-sized local exchange telephone companies (LECs) in rural and high-cost areas of the state. Certain regulatory changes, such as reductions in access charges, trigger revenue losses for these LECs, which would normally be recovered from the LECs' customers through significant increases in their basic service rates at a level which would threaten universal service (affordable and available basic telephone service to all citizens statewide). As a result, the Commission adopted the CHCF as a source of supplemental revenue for the LECs to maintain low basic service rates and thereby protect the availability of universal service for all Californians. Phone companies which carry a high volume of calls between mostly urban service areas pay into the fund with a surcharge assessed on ratepayers. Smaller LECs can draw from the CHCF upon a showing to the PUC through rate proceedings that their earnings will be below their authorized rate of return level.

In December 1990, the Commission expressed concern that the LECs were drawing from the CHCF even when their earnings exceeded the authorized amount. A "phasedown" of funds allocated to these small utilities began in January 1991. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 192 for background information.) After public hearings in January 1991, the PUC adopted a "means test," which uses the LECs' performance for the past seven months to base forecasted intrastate rates of return for LECs. This test determines how much a LEC can take from the Fund to achieve its authorized rate of return.

The LECs objected to the Commission's decision, but the PUC denied a request for rehearing in September 1991. On October 10, the LECs filed a petition for writ of review with the California Supreme Court. The LECs raise a constitutional due process argument, contending that the "means test" constitutes a taking of the LECs' property by changing the rate regulations and denying LECs a reasonable opportunity to achieve their authorized rate of return. Briefs in the case were filed in November and December, and parties are now waiting for a decision by the Supreme Court. If the writ is accepted, oral argument would be scheduled.

FUTURE MEETINGS:

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