Governor signed the bill on August 31 (Chapter 585, Statutes of 1992).

AB 2743 (Frazee) provides that except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before OMBC, the Board may request the administrative law judge to direct the licentiate found to have committed a violation of the Board's licensing act to pay to OMBC a sum not to exceed the reasonable costs of the investigation and enforcement of the case. This bill was signed by the Governor on September 30 (Chapter 1289, Statutes of 1992).

AB 2372 (Frizzelle). Section 2453 of the Business and Professions Code expresses state policy that physicians holding MD and DO degrees be accorded equal professional status, and prohibits discrimination by health facilities and other specified entities on the basis of the type of degree held by the physician. Existing law further requires that when health facility staffing requirements mandate that a physician be certified by an appropriate American medical specialty board, the position shall be available on an equal basis to osteopathic physicians certified by an appropriate osteopathic specialty board; existing law also prohibits the adoption of bylaws by a health facility that would circumvent these provisions. This bill revises these provisions to also prohibit entities that contract with physicians to provide managed care or risk-based care from discriminating on this basis, and provides that in any contract offered by those entities, a reference to the American Medical Board shall be construed to mean American Osteopathic Board when the contracting physician is an osteopathic physician. This bill also prohibits those entities from adopting bylaws that would circumvent the policy of nondiscrimination. This bill was signed by the Governor on September 11 (Chapter 619, Statutes of 1992).

SB 664 (Calderon). Existing law prohibits 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, unless the patient is apprised at the first solicitation for payment of the name, address, and charges of the clinical laboratory performing the service. This bill also makes this prohibition applicable to any subsequent charge, bill, or solicitation. This bill makes it unlawful for any osteopath to assess additional charges for any clinical laboratory service that is not actually rendered by the osteopath to the patient and itemized in the charge, bill, or other solicitation of payment. This bill was signed by the Governor on June 4 (Chapter 85, Statutes of 1992).

AB 819 (Speier), which would have prohibited physicians from referring patients to any diagnostic imaging center, clinical laboratory, physical therapy or rehabilitation facility, or psychometric testing facility in which the physician has an ownership interest, was substantially amended and then died in committee.

RECENT MEETINGS

The Board has not met since February 15.

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, radiotelephone, 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.

At this writing, the Commission continues to function with only four members. Governor Wilson has not yet appointed a replacement for Mitch Wilk, who resigned in October 1991.

MAJOR PROJECTS

PUC Approves Caller ID With Stringent Consumer Safeguards. On June 17, the PUC voted unanimously to approve the controversial Caller ID telephone service sought to be offered by Pacific Bell, GTE California (GTEC), and Continental Telephone. It also approved five other proposed "CLASS" services, including Call Trace, Priority Ringing, Select Call Forwarding, Special Call Waiting, and Special Call Acceptance. In so ruling, the Commission rejected the proposed decision of Administrative Law Judge John Lemke, who in January recommended that Caller ID be prohibited after months of evidentiary hearings. *[12:2&3 CRLR 38, 257–58]* "We listened to those who said no, we listened to those who said yes, and we struck a balance," said Commissioner Patricia M. Eckert. "Today's decision promotes competition and balances the interests of all Californians by giving them a choice."

PUC President Daniel Wm. Fessler said the Caller ID service may be offered in some parts of the state on a two-year trial basis "with the strictest consumer safeguards in the nation." In approving the service, which allows subscribers to see a caller's telephone number on a box attached to the phone, the PUC required the companies to offer customers a choice of three blocking options at no charge. Per-call blocking allows customers to block their number from appearing on the box of a particular person or business they are calling. Per-line blocking prevents display of the caller's number on all calls made, and provides complete protection for those who do not want their number dis-

closed at any time. Per-line blocking with per-call enabling allows customers to block their number on all calls except those they specifically unblock. This provides protection for those who want their number blocked in most, but not all, circumstances.

In allowing the service, the PUC also ordered the telephone companies to establish an extensive customer notification and education program for the four privacy-related CLASS services: Caller ID, Call Block, Call Return, and Call Trace. Under the ruling, the telephone companies may not offer these services until the PUC first approves their notification and education plans. After PUC approval and implementation, the telephone companies must file reports with the Commission, addressing the level of service, effectiveness of the privacy protections and education programs, and any reasons to discontinue the program.

The PUC's announcement elicited a variety of responses. The restrictions imposed by the Commission drew strong criticism from the telephone companies. They contend that requiring them to offer three options which prevent display of a telephone number defeats the purpose of the service. The phone companies also targeted the Commission's decision that a subscriber with an unlisted phone number will automatically receive per-line blocking with per-call enabling unless he/she requests otherwise. In California, over 40% of residential telephone numbers are unlisted, thus greatly reducing the number of identifiable callers. GTEC immediately decided to not offer Caller ID to its customers. Pacific Bell announced that it would petition the PUC to loosen the restrictions before it decides whether to offer the service, and questioned the economic viability of the service. PacBell filed a motion for reconsideration in July, objecting specifically to the per-line blocking default option for subscribers with unlisted numbers and the required educational campaign.

Consumer groups opposed to Caller ID were generally satisfied with the ruling. Toward Utility Rate Normalization (TURN) had urged the Commission to reject Caller ID entirely, but said the restrictions protect the privacy rights of the consumer. (*See supra* report on TURN for related discussion.)

On the same day it approved Caller ID, the PUC's Telecommunications Education Trust awarded a grant of nearly $157,000 to the Center for Public Interest Law (CPIL) to establish a clearinghouse for research, questions, and complaints about telephone privacy. Through its Privacy Rights Clearinghouse and its toll-free hotline (800-773-7748), CPIL plans to field questions about a variety of issues related to telephone privacy, including the use of cordless and cellular telephones and voice mail systems. (*See supra* report on CPIL for related discussion.)

ARF Phase III: Rate Design and Other Issues. The Commission recently concluded the evidentiary hearings in Phase III of its Alternative Regulatory Framework (ARF) proceeding, which began in 1987. In a 1989 ARF ruling, the PUC issued D.89-10-031, in which it replaced traditional cost-of-service telephone regulation with a new, incentive-based regulatory framework for Pacific Bell and GTEC, which has dramatically altered the state's regulation of telecommunications services and opened many such services to competition. The "new regulatory framework" (NRF) was implemented to encourage utility efficiency and avoid unfair utility cross-subsidization of competitive services with monopoly loop revenues. The new program includes a rate indexing mechanism and monitoring system designed to benefit the utility and the consumers in addition to preventing monopoly market abuses. *[10:1 CRLR 151]*

Phase III focuses on the overall rate design of the local exchange carriers (LECs) and the feasibility of allowing competition in intrastate toll call service for the first time. The LECs insist that they will need to increase rates for basic residential service by 60% if they are required to compete for intrastate, or "intraLATA," toll call service. *[12:2&3 CRLR 258–59; 12:1 CRLR 185]* ALJ George Amaroli will consider the information from last fall's public hearings and the recent evidentiary hearings and submit a recommendation to the Commission on competition and rate design issues in the near future.

On July 31, Pacific Bell filed a petition to modify D.89-10-031 so that its 1993 price cap index rate adjustments can be made by changing its billing surcharges and surcredits rather than by changing individual tariff rates. The price cap indexing mechanism serves as a key element of the NRF by adjusting prices that the LECs are allowed to charge for basic services. The price cap index was first applied to adjust rates for 1990. D.89-10-031 required the LECs to apply the index that year as an adjustment to their respective billing surcharges and surcredits, rather as changes to individual tariff rates. The decision required price cap index rate adjustments in subsequent years to be implemented through changes in the LECs' individual tariff rates and charges. However, the PUC granted requests to authorize 1991 and 1992 price cap adjustments to be implemented by changes to the LECs' tariff rates. Pacific Bell's petition requests that the decision be further modified to authorize the 1993 price cap adjustment to be implemented by changing Pacific Bell's billing surcharges and surcredits.

Pacific Bell contends that it will continue to have significant billing surcharges and surcredits in effect until the PUC issues its decision in the ongoing rate design phase of ARF. Pacific Bell expects the Commission's decision in the rate design phase to require major revisions to its tariff schedules. Thus, Pacific Bell contends that its "ratepayers would be less confused and irritated by these changes if the 1993 price cap index changes were implemented by adjusting Pacific's billing surcharges/surcredits rather than by changing individual tariff rates." AT&T opposes Pacific Bell's petition to modify D.89-10-031.

In a related matter, on August 20, the Commission's Advisory and Compliance Division (CACD) issued a report evaluating the impact of the NRF on "low-cost, efficient regulation" in light of certain regulatory goals set by the Commission. The report focused on five procedural concerns: regulatory staffing impact at the affected utilities, volume of formal and informal complaints, procedural costs, public awareness of the new process, and the level of public participation in the regulatory process. CACD concluded that the NRF has had few measurable impacts on the LECs in any of the areas evaluated. According to CACD, the absence of measurable, negative impacts indicates that the program is working well. Further, CACD concluded that because the level of the public's knowledge of the NRF has not changed significantly since its inception, the public must not be dissatisfied with the current program. Noting that public awareness and understanding of the regulatory system is "fairly low," CACD remarked that "[i]f the Commission desires to increase this level of interest and knowledge, then more active measures may need to be considered."

Commission Orders PacBell to Refund $57 Million for Cross-Subsidization Violations. On July 22, the PUC ordered Pacific Bell to refund approximately $57 million to customers and to reduce prospective rates by $19.1 million annually for improperly using monopoly loop ratepayer revenues to cross-subsidize competitive ventures. Also, Pacific Bell must implement new procedures for tracking and allocating

product development costs so that PUC auditors are more easily able to ensure that ratepayers do not subsidize programs and products unless they receive a return on their investment.

An October 1990 audit by the PUC's Division of Ratepayer Advocates (DRA) of Pacific Bell's joint venture and research and development programs determined that ratepayers had subsidized competitive products that ultimately benefitted only PacBell shareholders. Specifically, DRA found that PacBell used monopoly service ratepayer revenues to finance programs for voice mail, electronic message systems, and information services. The July 22 decision adopted a settlement agreement between DRA and PacBell to resolve the cross-subsidization issue; the PUC had rejected a previous proposal because it provided inadequate refunds to monopoly loop ratepayers. *[12:2&3 CRLR 259; 12:1 CRLR 186]*

The refund amounts to nearly twenty cents monthly for twelve months, along with a permanent deduction of seven cents per month. The refund amounts will appear as surcredits on customer bills.

In a separate action on September 2, the Commission ordered Pacific Bell to refund $2.25 million spent in 1990 for research and development of "protocol conversion" technology. The PUC found that Pacific Bell's shareholders—not ratepayers—should assume the risk of developing protocol conversion, which is a means of translating data from one electronic form to another. Pacific Bell ratepayers who paid rates which included the development costs of the new service are due a refund; the refund will appear on customer bills at the end of 1992.

In a related decision, the PUC denied refunds for another aspect of PacBell's enhanced services called "public packet switching" (PPS), a means of transmitting data in large chunks. The Commission ruled that funds expended in 1990 for PPS development are recoverable in customer rates by Pacific Bell.

PUC ALJ Completes Evidentiary Hearings in PacBell Billing Scandal. On July 20, evidentiary hearings began on TURN's complaint against Pacific Bell for charging customers late fees on timely-made payments. TURN asked the PUC to refund all the improperly-assessed fines and fine PacBell $50 million for management's allegedly willful violations of rules regulating its operations. *[12:2&3 CRLR 38, 259]*

Pacific Bell concedes that management knew about the late payment charges in 1988 but did not implement a refund program until the matter was made public in a 1991 *San Diego Union* article. Pacific Bell claims to have refunded $2 million in customer reimbursements and spent $6.5 million on a refund notification program, and plans to refund up to $4 million to business customers. However, TURN contends that customers are still owed more than $23 million in refunds dating back to 1986, plus $22 million in interest.

PacBell says the problem stemmed from customers who mailed their bills in regular envelopes instead of the envelopes provided by the company. TURN contends that overcharging extended to all types of mail. At this writing, the ALJ has not yet issued a proposed decision.

PUC Approves Inside Wire Insurance for Landlords. On September 2, the Commission ordered Pacific Bell and GTEC to offer inside wire insurance to landlords. The order extends coverage to landlords who, under SB 841 (Rosenthal), are now responsible for inside wire maintenance in rental premises. Wire insurance plans allow landlords to pay a monthly fee for repairs and maintenance instead of a charge per visit. The wiring plans offered by the various telephone companies differ in certain respects. Pacific Bell will not be required to offer continuous service which includes coverage of vacant rental units, because of potentially prohibitive costs associated with converting its present billing system from customer telephone numbers to landlord-generated lists. GTEC, which has until July 1993 to implement its program, will provide continuous service under which landlords must sign up all units of a building. Smaller telephone companies will also be allowed to offer inside wire insurance to landlords. Such coverage will not be mandated because such requirements could be financially prohibitive for smaller companies, especially in terms of landlord notification and billing arrangements. Also, pursuant to a DRA recommendation, the Commission ordered that all informational, marketing, and sales materials on the inside wiring insurance program include both written and oral statements informing tenants that landlords are responsible for the maintenance of telephone inside wiring, and that tenants no longer need the insurance.

PUC Issues Proposal on Cellular Phone Competition. On June 15, PUC ALJ Michael Galvin issued a proposed decision lifting a ban against cellular resellers operating in the same market as the cellular phone utility from which they buy wholesale services. The proposal also sets reporting and consumer guidelines which enable the PUC to monitor the industry. Specifically, the proposal would permit "resellers," the companies that buy wholesale phone services for resale at retail rates from the two primary cellular utilities in each market, to compete by offering the same services. This recommendation could boost competition in the cellular phone industry and lower cellular phone rates.

In concluding Phase III of a PUC investigation into the cellular industry that began in 1988 *[9:4 CRLR 134; 9:1 CRLR 105]*, Judge Galvin's proposal would require the primary cellular utility companies to "unbundle," or break down the rates now charged under the wholesale tariff into component parts, and permit resellers of cellular phone service to provide switching functions currently provided only by primary cellular utilities.

If the PUC approves the ALJ's proposal, the phone companies will have 120 days to file an advice letter breaking down their wholesale rates into specific areas. The unbundling of rates would enable the resellers to subscribe only to those functions needed from the primary carrier, thus reducing operating costs and ultimately benefitting consumers.

EMF Testimony Submitted by Parties in Anticipation of December Hearing. In September 1991, a consensus group comprised of utility, environmental, and public interest representatives was appointed to study and report on the potential health effects of exposure to electric and magnetic fields (EMF). In a rather lackluster interim report issued in March 1992, the Consensus Group concluded that "[a]lthough there is no conclusive scientific evidence of a cause and effect link between EMF exposure and cancer, neither can the weight of scientific evidence allow us to dismiss the possibility that significant health risks may exist." Omitting any discussion of potential funding sources, the Consensus Group recommended that the PUC encourage more research into potential EMF hazards until scientific evidence can provide better direction for public policy. *[12:2&3 CRLR 260; 11:4 CRLR 205]*

Most recently, parties to an ongoing EMF proceeding, I.91-01-012, filed testimony with PUC ALJ Michael Galvin documenting their positions on issues related to EMF research, funding, education, and PUC policy. The filed testimony came from concerned citizens, consumer groups, Pacific Gas & Electric (PG&E), San Diego Gas & Electric (SDG&E), and Southern California Edison (SCE).

All three big utilities unanimously recommended that the PUC authorize, not require, no-cost or low-cost EMF reduction measures; that EMF guidelines be established for "new" facilities; that a 4%

ceiling on EMF mitigation be imposed per project; and that the PUC make a clear finding to the public that the evidence gathered has yet to demonstrate an appreciable EMF health risk. In addition, SDG&E boldly proposed a minimum aggregate EMF reduction of 20%, while PG&E offered a 15% minimum reduction.

In other testimony, SCE joined TURN in proposing that the PUC address EMF reduction in all projects requiring PUC approval. SCE and TURN also concurred that separate guidelines be established for transmission and distribution facilities. Finally, SCE and TURN clarified their position that no basis presently exists for concluding that EMF reduction will result in public health benefits.

Testimony from concerned citizens proposed a reduction in EMF levels in areas where exposure is exceptionally high, such as areas where EMF registers five to ten times higher than median EMF levels (estimated at 1.5% of California homes, or 170,000 residences). Estimates place the cost of retrofitting these areas at $1 billion.

On the controversial issue of who should fund EMF research and education efforts, each party was quick to point to the others as possible funding sources. The utilities proposed that ratepayers finance any required EMF research, education, or mitigation. Consumer groups such as TURN, however, argued that utility shareholders must bear part of the burden. TURN indicated that if EMF is determined to pose serious health risks, utility shares will be adversely affected, and thus, the shareholders should equally bear the risk. TURN also suggested that the cost of EMF research and education should be borne by the taxpayers of the state, since EMF reduction benefits all Californians, not just ratepayers.

The utilities also proposed to finance a four-year, $10 million research program managed by the Department of Health Services (DHS), short of the $13 million requested by DHS for a more detailed research project. Again, TURN indicated that utility ratepayers should not be primarily responsible for picking up the tab, and argued that the program could be funded out of the state general fund.

Finally, testimony unanimously recommended that the PUC deter local attempts to regulate EMF and vigorously assert its own jurisdiction over EMF issues.

Another evidentiary hearing on EMF was preliminarily scheduled for the week of December 7 at the PUC building in San Francisco.

Parties Near Settlement in 1993 SDG&E General Rate Case. SDG&E's 1993 General Rate Case (GRC) has been the subject of evidentiary hearings and public dialogue since early May. Initially, the company sought a $145 million rate increase, effective January 1, 1993, which would raise the typical residential customer's monthly bill by $5.63 to $71.05. Not since 1983, when SDG&E gained notoriety as one of the country's most expensive electric producers, has the average bill reached the $71 level. *[12:2&3 CRLR 40, 261; 12:1 CRLR 27, 187–88]*

The 1993 GRC is broken down into three major components: Revenue Requirement, Revenue Allocation, and Rate Design. Each component is argued before a separate administrative law judge but all three require the approval of the full Commission. After considerable debate and negotiation among the utility, angry consumer groups, and PUC staff, a tentative settlement was reached in late August regarding the Revenue Requirement portion of the rate case. The initial $145 million increase was drastically slashed to an increase of approximately $68.5 million. In addition, SDG&E had asked for an increase in its rate of return, or legally allowable profit margin, from 12.65% to 13%, which would raise rates $15.4 million in 1993. Under strong protest from consumer groups, the utility abandoned this request as part of this Revenue Requirement settlement. (*See supra* report on UCAN for related discussion.) The proposed settlement still requires PUC approval, which was expected in November.

The second component of the GRC, Revenue Allocation, which determines how to split to revenue pie, is apparently largely settled, but details are sparse. The final component, Rate Design, which sets customer charges per month to reflect the actual costs of providing service, is still at issue. At this writing, expert testimony is ongoing in the GRC; the parties hope a proposed decision will be ready for presentation to the full PUC by December.

SDG&E Shocks Consumer Groups by Filing for Additional $66.5 Million Rate Increase to Cover Fuel Costs. In order to cover what it claims are much higher than anticipated fuel costs, SDG&E filed an application with the PUC on September 29 for an additional 3.8%, $66.5 million rate increase effective May 1, 1993. This proceeding, completely distinct from the ongoing 1993 General Rate Case, takes advantage of a utility's ability to file separate rate increase requests with the PUC to cover variations in its fuel costs. If approved, SDG&E rates could reach their highest levels in ten years.

SDG&E claims that the ongoing drought in the Pacific Northwest has reduced the availability of inexpensive hydroelectric power, forcing SDG&E to burn more expensive natural gas in its conventional generating plants. Moreover, the latest request includes $18 million to permanently retire San Onofre's oldest and least efficient nuclear reactor, Unit 1, later this year. High operating costs and decreased efficiency at the plant were cited as prime reasons to close Unit 1 before its license expires in 2004. The reactor, owned jointly by SDG&E and SCE, has been running at only 60% capacity in recent years. Closure of the facility was tentatively approved by the PUC in January, but not affirmed until August. (*See supra* report on UCAN for related discussion.)

SDG&E officials claim that this new rate request reflects its best guess of how much fuel costs will increase next year. Consumer groups, however, have suggested that fuel costs should actually decline because of excess electricity in the Southwest. The PUC is expected to vote on the rate increase in April following a series of hearings.

PUC Sets SCE Rates, Then Agrees to Reopen Rate Case. On June 3, the PUC announced a revised rate schedule for SCE effective June 7. Average residential rates remained relatively stable and increased approximately 1.4%. An average residential customer saw an increase of $.99 in his/her monthly bill, from the current $47.77 to $48.76. Customers living in recreational vehicle parks are no longer charged a set fee, but will be charged for electricity actually used. Low-income discounts and baseline allowances will still be applicable to those who qualify.

The PUC also approved a new program aimed at residential customers who conserve energy during the daytime hours. Under this elective program, a residential customer may request service with higher rates between 10:00 a.m. and 6:00 p.m., but correspondingly lower rates between 6:00 p.m. and 10:00 a.m. The PUC applauded this idea as representative of its new commitment to energy conservation.

Three months later, however, the Commission agreed to reopen SCE's 1992 General Rate Case to investigate whether its shifting of numerous customers to a new rate schedule constituted severe rate shock. The June 7 rate design decision also transferred approximately 17,000 small and medium-sized general service customers from schedule GS-1 to GS-2, a schedule which now includes a demand charge component. After a flood of complaints from ratepayers whose bills have

doubled, the PUC decided to study the matter. These customers, many of whom own small businesses, are now forced to pay a charge based on their peak demand in any given month. Big businesses already pay a demand charge, but—until June 7—small businesses were exempt from the charge.

The PUC decided to reopen the case on September 2. SCE responded with a proposal to limit the amount charged these customers until 1996. The PUC was scheduled to vote on the proposal at its October 21 regular meeting.

Final Rules on Natural Gas Capacity Brokering. On July 1, the PUC issued D.92-07-025, which adopts final rules for implementing brokering of excess capacity using the transportation rights held by PG&E and Southern California Gas Company on the interstate natural gas pipeline systems. Although the two gas companies have yet to begin actually selling the pipeline rights, this PUC action furthers what Commission President Daniel Wm. Fessler has deemed "our intent to not delay capacity brokering any longer than necessary."

Under the plan, large quantity natural gas users will no longer have to purchase their gas exclusively from the utilities. Customers will be able to buy directly from out-of-state sources and pay the local utility only for the per day right to use its interstate gas transportation systems. The entire capacity brokering policy is still pending Federal Energy Regulatory Commission (FERC) authorization, but the PUC has directed utilities to implement capacity brokering over each pipeline as soon as they receive FERC approval.

The major elements of this plan were first introduced in a November 6, 1991 PUC decision designed to encourage competition among natural gas markets and promote efficient use of the pipeline system. *[12:1 CRLR 188]* It wasn't until this recent decision, however, that the implementation issues were finally resolved.

PUC Issues Interim Rules on Reporting of Utility-Affiliate Transactions. On August 11, the PUC issued interim rules requiring utilities to report annually on business dealings with their affiliates, subsidiaries, and parent companies. According to the PUC, the proposed reporting procedures will enable the Commission to comply with Public Utilities Code sections 587 and 797, which require it to track, monitor, and audit utility-affiliate transactions. The PUC monitors these transactions to ensure that utility-affiliate business transactions do not harm utility customers by imposing upon them either higher costs or financial risks.

Under these reporting requirements, utilities will be required to file annual reports detailing business and financial interactions with their subsidiaries, affiliates, and controlling corporations. The reporting requirements apply to calendar years 1989, 1990, and 1991, and will remain in effect for calendar year 1992 and beyond unless changed by the Commission.

The utilities affected by this order must submit information on organizational and contractual relationships; procedural, budgeting, and accounting safeguards they use to protect their customers' interests when dealing with an affiliate; the amount and price paid for goods, services, or property they buy from or sell to an affiliate; financial transactions; the transfer of intangible properties, such as patents and marketing information; and the exchange of personnel.

Only those utilities which have either monopoly control of a customer base or substantial market power are covered by these rules. Included are all electric and gas utilities, local telephone companies, the two primary cellular utilities in each market, and American Telephone and Telegraph.

The Commission also instituted a rulemaking proceeding in order to codify the interim rules into a Commission general order. The PUC seeks industry feedback on the interim rules before making them permanent.

Proposed Changes to the Current General Freight Regulatory Program. On June 3, the PUC opened a rulemaking proceeding to consider proposed changes to the current general freight regulatory program, implemented in part by General Order (GO) 147-C. A number of carriers have requested departures from Rules 3.6, 6.3, 6.10(c), 6.14, 8.1, and 8.2 of GO 147-C.

Rules 3.6, 6.3, and 6.14 provide for, among other things, annual expiration of all contracts. Rule 6.10(c) requires the signatures of both the carrier and shipper on amendments to contracts. Rule 8.1 provides for a 10-day delay before common carrier tariffs may become effective. Rule 8.2 provides for a 20-day delay before special contracts may become effective.

In ordering the rulemaking proceeding, the Commission noted that its Transportation Division had recommended an exploration of issues raised as a result of the filed applications for departure from rules. After analyzing the applications and the issues raised, staff recommended against granting departures from the 10-day and 20-day delays individually. Additionally, staff recommended—the Commission agreed—that a rulemaking proceeding commence to seek comments on the following issues:

–whether the 10-day and 20-day delays to common carrier tariffs and special contracts should be reduced or eliminated from GO 147-C for all carriers;

–whether the protest and suspension procedures for common carrier tariffs and special contracts should be eliminated (or otherwise modified);

–whether publication of special contracts and/or common carrier tariffs in the Transportation Division's daily calendar should be eliminated;

–whether the annual expiration of special contracts should be eliminated (or otherwise modified); and

–whether the requirement for shipper signature on special contract amendments should be changed or eliminated.

On August 13, PUC ALJ Anand Garde ordered all parties to serve their comments on these issues on other parties by August 24; responses to comments were due on September 22. Any party who believes evidentiary hearings are necessary must so request by October 2.

PUC Imposes Higher Fines on Illegal Transportation Carriers. AB 842 (Polanco) (Chapter 927, Statutes of 1991) requires the imposition of substantial penalties on passenger carriers and trucking firms which continue to operate after PUC suspension of their operating permits for safety violations. On July 1, the Commission announced that it will either revoke the operating permit or levy a fine of $1,000–$5,000 per day for every day that a carrier continues to operate after the PUC, at the request of the California Highway Patrol, has suspended the carrier's permit for violations of safety regulations.

In addition to the revocation and per day penalties described above, the Commission also delegated to its staff authority to impose fines up to a maximum of $20,000 as part of the PUC's informal citation procedure. Previously, staff had authority to impose fines to a maximum of $10,000. A carrier is given the option of contesting the charges and requesting a formal hearing.

Evidentiary Hearings on Train Derailments Postponed. PUC ALJ Robert L. Ramsey was scheduled to hold evidentiary hearings on two recent Southern Pacific train derailments in September; however, both sets of hearings were postponed. At this writing, ALJ Ramsey is scheduled to conduct hearings on the July 14, 1991 Dunsmuir derailment, in which almost 20,000 gallons of

metam sodium were dumped into the Sacramento River, on November 5–13; hearings on the July 28, 1991 derailment near Seacliff, which spilled 440 gallons of poisonous hydrazine onto Highway 101, were scheduled for November 16–19. *[12:2&3 CRLR 261–62]*

LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at pages 263–65:

SB 1894 (Alquist) and **AB 2812 (Moore)** are two responses to the Federal Communications Commission's recent decision to permit telecommunications corporations to provide so-called "enhanced services." Enhanced services provide on-line access to electronic information over telephone lines. There are many forms of enhanced services; current examples include voice mail, LEXIS, Genie, Prodigy, bank-by-telephone services, and shop-by-telephone services, while future examples may include "video-on-demand."

SB 1894 authorizes the PUC, until January 1, 1998, by rule or order, to waive for certain classes of telephone corporations the usual filing requirements, in full or in part, for enhanced telephone services. In other words, this bill permits telecommunications companies to offer enhanced services without prior review and approval by the PUC. SB 1894, which was strongly opposed by the cable television industry, the state's newspaper publishers, AT&T, and TURN, was signed by the Governor on September 26 (Chapter 980, Statutes of 1992).

AB 2812 imposes specified conditions on a local telephone corporation which offers enhanced services, to ensure that there is fair competition between all enhanced services providers, basic telephone service ratepayers do not subsidize the local telephone company's enhanced services, the provision of enhanced services contributes to keeping basic telephone rates affordable, and consumers are well-informed of their choices and options when purchasing enhanced services. This bill was signed by the Governor on September 26 (Chapter 996, Statutes of 1992).

SB 1450 (Russell). Under existing law, the unauthorized disclosure of information by a radiotelephone utility may give rise to a civil action against the utility. This bill provides that the disclosure of any information by a radiotelephone utility, as defined, in good faith compliance with the terms of a state or federal court warrant or order or administrative subpoena is a complete defense against any civil action brought pursuant to existing law. This bill was signed by the Governor on July 18 (Chapter 263, Statutes of 1992).

SB 1548 (Rosenthal) requires the PUC to adopt and enforce an operating requirement for coin-operated telephones available for public use, whether owned by telephone corporations or persons other than telephone corporations, which requires that every telephone display a notice that surcharges may apply to operator-assisted and calling card calls. This bill was signed by the Governor on August 20 (Chapter 539, Statutes of 1992).

SB 1393 (Rosenthal) requires the PUC to assess the reliability of the public telecommunications network, develop recommendations for improvements, and report its analysis, findings, and recommendations to the legislature by December 31, 1993. This bill was signed by the Governor on September 27 (Chapter 1017, Statutes of 1992).

AB 2465 (Connelly). The Cordless and Cellular Radio Telephone Privacy Act of 1985 prescribes criminal penalties for persons who, among other things, maliciously and without the consent of all parties, intercept, receive, or assist in intercepting or receiving communications transmitted between cellular radio telephones, between a cellular radio telephone and a landline telephone, between cordless telephones, between any cordless telephone and a landline telephone, or between a cordless telephone and a cellular telephone. Among other things, this bill makes the same criminal penalties applicable to persons who, without the consent of all parties to the communication, intercept or receive, or assist in the interception or reception and intentional recordation of, a communication transmitted between the above-mentioned telephones. This bill was signed by the Governor on July 22 (Chapter 298, Statutes of 1992).

AB 2702 (Moore) deals with the subject of "slamming," or the unauthorized changing of a telephone customer's long distance telephone company. Existing anti-"slamming" law prohibits an interexchange telephone corporation from authorizing a local exchange telephone corporation to make any change in a residential telephone subscriber's presubscribed long distance carrier unless specified steps related to customer verification have been taken. This bill applies these provisions to all changes in telephone service. In other words, the bill broadens existing anti-"slamming" statutes to cover short-distance telephone companies, in anticipation of a PUC decision opening intraLATA toll call service to competition. This bill was signed by the Governor on July 24 (Chapter 359, Statutes of 1992).

AB 2746 (Speier) regulates the information access service business, as defined, and, among other things, prohibits specified acts aimed at soliciting callers to utilize an information access service; requires information access service providers to disclose certain information in all solicitations; and prohibits the solicitation or sale of an information access service which offers the person being solicited the opportunity to participate in a sweepstakes unless specified conditions are met. This bill was signed by the Governor on September 26 (Chapter 944, Statutes of 1992).

AB 3494 (Gotch) would have prohibited a telephone solicitor, when making an unsolicited consumer telephone call, to make the call before 8:00 a.m. or after 9:00 p.m. Pacific standard time, except as specified. This bill also would have required every telephone corporation to inform subscribers of specified federal protections. This bill was vetoed by the Governor on September 30.

AB 3299 (Moore) imposes specified limits on charges for the universal telephone service, and designates the class of universal telephone service as lifeline telephone service. This bill also requires the PUC to assess whether there is a problem with customers who fraudulently obtain lifeline telephone service, and if the PUC makes that determination, requires it to recommend and promulgate appropriate solutions. This bill was signed by the Governor on July 24 (Chapter 354, Statutes of 1992).

SB 1601 (Rosenthal) requires publicly-owned electric and gas utilities that provide energy for space heating for low-income customers to also provide home weatherization services for low-income customers if a significant need for those services exists in the utility's service territory. The bill also requires each of those utilities to file a biennial report with the California Energy Commission (CEC) on the status of its weatherization program, and requires the PUC to report to the legislature. This bill was signed by the Governor on September 21 (Chapter 809, Statutes of 1992).

SB 1962 (Rosenthal) permits the PUC to enter property as necessary to carry out its gas safety inspection and enforcement program for mobilehome parks with distributing systems, and to enter and inspect all mobilehome parks, wherever situated,

and inspect all documents, accommodations, equipment, or paraphernalia used in connection with or related to the gas distribution system of the mobilehome park. This bill also permits the PUC to issue citations in enforcing the program. This bill was signed by the Governor on September 21 (Chapter 817, Statutes of 1992).

AB 2742 (Peace), sponsored by Southern California Edison, provides that in determining the emission values associated with the current operating capacity of existing electric powerplants, PUC shall adhere to a specific protocol in determining values for air quality costs and benefits to the environment. This bill was signed by the Governor on September 21 (Chapter 836, Statutes of 1992).

AB 1380 (Sher) requires every private energy producer to be in compliance with applicable federal laws, including the federal Clean Water Act, as well as state laws relating to the control, appropriation, use, and distribution of water, and generally declares every contract entered into by a private energy producer to sell electricity or electrical generating capacity from a hydroelectric project on and after either of specified dates, whichever is applicable, void in the absence of that compliance. This bill was signed by the Governor on September 17 (Chapter 739, Statutes of 1992).

AB 2815 (Moore) declares the policy of the state regarding the rates and charges established by the PUC for water corporations; authorizes the PUC, in establishing rates for water service, to establish separate charges for costs associated with customer service, facilities, and fixed and variable operating costs; and declares that access to an adequate supply of healthful water is a basic necessity of human life and that water be made available to all residents of California at an affordable cost. This bill was signed by the Governor on August 22 (Chapter 549, Statutes of 1992).

SB 1787 (Alquist). Existing law requires the PUC to require the payment of fees by every common carrier and related business, including railroad corporations, and by every other category of public utility, with the requirement that these fees equal the amount of the PUC's annual budget prorated to the extent of the PUC's regulatory duties with respect to each class of carrier or related business or public utility for whom each particular fee is established. Existing law requires that fees which are paid by railroad corporations shall be used for activities of the PUC's Safety Division relating to common carriers by rail. This bill limits the scope of activities of the Safety Division that are supported by the fees paid by railroad corporations to those that relate to the safe operation of common carriers by rail, other than those relating to grade crossing protection. This bill was signed by the Governor on September 21 (Chapter 813, Statutes of 1992).

AB 3546 (Conroy) provides that when the PUC Executive Director determines that any household goods carrier, passenger stage corporation, highway common carrier or cement carrier, or highway carrier, or any officer, director, or agent thereof is failing or omitting or about to fail or omit to do anything required of it by law or any order, decision, rule, direction, or requirement of the PUC, or is doing anything or about to do anything, or permitting anything or about to permit anything to be done, in violation of law or of any order, decision, rule, direction, or requirement of the PUC, the Executive Director may make application to the superior court for injunctive relief, a restraining order, or another order, upon a specified showing. This bill was signed by the Governor on September 8 (Chapter 609, Statutes of 1992).

AB 2759 (Moore). Existing law directs the PUC to require specified highway carriers whose rates are unregulated to pay specified reduced fees, and authorizes the PUC to increase the fees on other carriers whose rates are regulated up to a maximum of .5%, if necessary, to maintain adequate financing. This bill would have required an amount equal to .05% of highway carriers' gross operating revenue to be allocated from the Transportation Rate Fund to the Commercial Motor Carrier Safety Enforcement Fund, to be used by the California Highway Patrol to administer and enforce the acts which regulate the safe operating practices of highway carriers, and would have required the Department and the PUC to report to the legislature, as specified. This bill was vetoed by the Governor on September 30.

AB 2919 (Lee) requires the PUC to review existing rules, regulations, and orders, and develop and adopt new rules, regulations, or orders as may be appropriate or necessary, to establish expedited procedures to be followed by public utilities in the event that a determination is made by the President that an emergency exists of the severity and magnitude that effective response is beyond the capabilities of the state and the affected local governments and that federal assistance is necessary, pursuant to federal law. This bill was signed by the Governor on September 17 (Chapter 752, Statutes of 1992).

AB 3804 (Boland). Under the Passenger Charter-Party Carriers' Act, the furnishing of specified passenger transportation services by a charter-party carrier of passengers is subject to the jurisdiction and control of the PUC, and is required to be furnished pursuant to a certificate of public convenience and necessity or a permit issued by the PUC. This bill exempts from the above requirements the transportation of hot air balloon ride passengers in a balloon chase vehicle from the balloon landing site back to the original take-off site, under specified conditions. This bill was signed by the Governor on July 14 (Chapter 221, Statutes of 1992).

AB 1975 (Moore) enacts provisions which generally effectuate the participation of groups, such as customers and other parties, who seek to intervene in all proceedings of the PUC. Among other things, the bill encourages the PUC to award fees to attorneys for consumer intervenors at market rates. This bill was signed by the Governor on September 26 (Chapter 942, Statutes of 1992).

SB 1036 (Killea) would have expressed legislative intent with regard to telephone information providers who do business with California consumers, and authorized 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 bill was vetoed by the Governor on September 13.

AB 462 (Moore) would have required 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 bill was vetoed by the Governor on September 19.

AB 1432 (Moore) requires that the PUC, when designating energy baseline quantities and rates, to ensure that the gradual differential between the rates for the respective blocks of usage is such that the rate for the highest block of usage is at least 35% greater than baseline rates. Also, existing law requires the PUC to use increased revenues resulting from any increase in baseline rates exclusively to reduce rates for service above the baseline quantity. This bill instead provides that the PUC retain an appropriate inverted rate structure in establishing residential rates, and requires that if the PUC increases baseline rates, revenues resulting from those increases be used exclusively to reduce nonbaseline residential rates. This

bill was signed by the Governor on September 27 (Chapter 1040, Statutes of 1992).

The following bills died in committee: **SB 1425 (Craven)**, which would have revised the definition of "inside telephone wiring" by specifying that, in designating a point of demarcation for a telephone corporation's responsibility in maintaining, repairing, or replacing telephone cable or wire to serve single-family dwellings, a telephone corporation shall treat all single-family resident-owned dwellings, including mobilehomes located in mobilehome parks, in the same manner; **SB 1812 (Rosenthal)**, which would have—among other things—required the CEC, in cooperation with the Department of Health Services and the PUC, to conduct education and training activities to provide utilities, electric appliance manufacturers, local governments, and others with basic information regarding health risks that may be associated with exposure to electric and magnetic fields; **AB 2694 (Moore)**, which would have required the PUC to promulgate regulations to assure that the acquisition of new electric generation resources by electric utilities results in the lowest cost to ratepayers consistent with maintaining environmental quality and a high degree of reliability; **AB 3795 (Moore)**, which would have amended AB 3995 (Sher) (Chapter 1475, Statutes of 1990), which requires the PUC to factor environmental values into the determination of need by electric corporations for new energy facilities; **AB 2794 (Polanco)**, which would have provided, notwithstanding any other provision of law, that electrical corporations and their subsidiaries have the right to offer, perform, and conduct operating, maintenance, and repair work or services on electrical distribution systems, devices, and equipment that operate at a nominal voltage of 4,000 volts and higher, and that are owned by a customer of the electrical corporation; **AB 3430 (Moore)**, which would have authorized, rather than required, the PUC to establish rates for gas utilized in cogeneration projects; **AB 3311 (Moore)**, which would have declared state policy that costs of customer growth be borne by those customers who are subject to that growth, and permitted water utilities to impose service connection fees on new service connections at a level determined to be appropriate by the PUC; **SB 1833 (Thompson)**, which would have required the PUC to report to the legislature on sites on railroad lines in the state which the PUC finds to be hazardous on or before January 1, 1993, and on January 1 of each year thereafter; **SB 1042 (Roberti)**, which would have revised 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; and **SB 232 (Rosenthal)**, which would have required the PUC to order a telephone company wishing to offer Caller ID to also offer free per-line blocking.

FUTURE MEETINGS

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

STATE BAR OF CALIFORNIA

President: Harvey I. Saferstein
Executive Officer:
Herbert Rosenthal
(415) 561-8200 and
(213) 580-5000
TDD for Hearing- and Speech-Impaired:
(415) 561-8231 and
(213) 580-5566
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 128,000 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 nonlawyer 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.

In July, the Board of Governors elected Harvey I. Saferstein as its new president. A Los Angeles attorney, Saferstein is a partner in the firm of Irell & Manella. Saferstein is a former president of the Legal Aid Foundation of Los Angeles and former regional director of the Federal Trade Commission under President Jimmy Carter. Saferstein was instrumental in organizing "LAW-HELP-LA," a State Bar program which coordinated assistance provided by Los Angeles legal services providers to citizens in the wake of the civil unrest following the Rodney King verdict (*see infra* MAJOR PROJECTS).

State Bar members recently elected six new attorneys to serve on the Board of Governors for a three-year term: Susan Troy of Los Angeles, Peter Keane of San Francisco, Hartley Hansen of Sacramento, James Towery of San Jose, and Jay Plotkin of North Hollywood. Alan Friedenthal of Sherman Oaks was chosen to represent CYLA.

At this writing, three public member positions on the Board of Governors are vacant due to the recent resignations of Los Angeles businessperson and real estate investor Richard Annotico, Orange County real estate developer Kathryn Thompson, and former Republican Assemblymember Bruce Nestande. Gover-