FUTURE MEETINGS:
June 14 (location undecided).

PUBLIC UTILITIES COMMISSION

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The California Public Utilities Commission (PUC) was created in 1911 to regulate privately-owned utilities and ensure reasonable rates and service for the public. Today, under the Public Utilities Act of 1951, Public Utilities Code section 201 *et seq.*, the PUC regulates 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 Division 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.

The PUC is available to answer consumer questions about the regulation of public utilities and transportation companies. However, it urges consumers to seek information on rules, service, rates, or fares directly from the utility. If satisfaction is not received, the Commission's Consumer Affairs Branch (CAB) is available to investigate the matter. The CAB will take up the matter with the company and attempt to reach a reasonable settlement. If a customer is not satisfied by the informal action of the CAB staff, the customer may file a formal complaint.

MAJOR PROJECTS:

FERC Judge Rejects Merger; PUC Judges Delay Recommendation. On November 27, Federal Energy Regulatory Commission (FERC) Administrative Law Judge George Lewnes issued a proposed decision categorically rejecting the proposed takeover of San Diego Gas & Electric Company (SDG&E) by Southern California Edison (SCE or Edison). (See CRLR Vol. 10, No. 4 (Fall 1990) p. 178; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 207-08; and Vol. 10, No. 1 (Winter 1990) pp. 151-52 for extensive background information on the merger.) Both FERC and the PUC must approve the proposed merger.

In reaching his conclusion, Judge Lewnes noted that the merger applicants must demonstrate that the merger will be consistent with the public interest, under the Federal Power Act of 1935 and numerous judicial decisions. He discussed the evidence in three areas of inquiry mandated by FERC: (1) the effect of the proposed merger on the existing competition situation; (2) the effect of the proposed merger on the applicants' operating costs and rate levels; and (3) the environmental assessment. Judge Lewnes also listed other areas of concern, which he itemized as follows: (1) the reasonableness of the stock purchase price per se or the effect of the purchase price on shareholders; (2) the applicants' methods of accounting for the proposed merger; (3) any impairment of effective regulation by FERC or the State of California due to the proposed merger; (4) whether the proposed merger was the result of coercion and/or whether Edison's Board of Directors is unlawfully constituted; (5) the effect of the proposed merger on employment- related matters; and (6) non-cost impacts of the proposed merger on the environment.

In his recommended decision, Judge Lewnes compared the proposed merger of SDG&E and SCE to a marriage "to wed, or not to wed," and found that the "proposed nuptials" will "not take place on a reasonable and supportable bed of facts." In the conclusion of his ruling, Judge Lewnes noted: "The sole conceivable beneficiaries in the long term will be SCE Corporation and its shareholders. Meanwhile, the market loses an efficient and vigorous competitions, SDG&E, while the surviving corporation gains greater market power and acquires all of the monopolistic anticompetitive advantages attendant thereto. During that process, the pollutants in the South Coast, San Diego and Ventura areas will increase under the merger to levels beyond those absent the merger, levels found to be unacceptable by the Environmental Protection Agency and other State agencies. Greater societal costs will be incurred in seeking to mitigate these needless and debilitating intrusions on the environment."

Meanwhile, the recommended decisions of PUC ALJs Lynn Carew and Brian Cragg were scheduled for release in November, but have been delayed due to the ALJs' request for additional briefing on the effect of takeover on $550 million in tax-exempt bonds issued by the City of San Diego for SDG&E projects. The tax-exempt bonds are for use only by utilities operating in one or two counties. The tax-exempt status of the bonds could be withdrawn if SCE is successful in taking over SDG&E.

The PUC had hoped to receive a recommended decision before December 31, because the terms of two commissioners (Stanley Hulett and Frederick Duda) expire on that date. However, the Commission has now dropped its plans to release a decision before the end of 1990.

Caller ID. On November 9, Pacific Bell filed a request with the PUC for approval of COMMSTAR Custom Calling Services, including Caller ID. This feature displays the phone number of the calling party on a specially designed phone or device that attaches to the customer's phone. The proposed cost is $6.50 per month, plus $60-$80 for the unit which displays the number. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 209 for background information.) In its request, Pacific Bell, acknowledged the concerns of some members of the public regarding their right to privacy and the effect of Caller ID on that right. In response to those concerns, Pacific Bell has proposed per call blocking without a separate charge. This feature requires callers to dial a special multi-number code before making each individual call, in order to block disclosure of their phone number to call recipients. Further, another COMMSTAR feature—Call Block (at an extra $4 per month)—allows the customer to

automatically block the receipt of incoming calls from a list of up to ten telephone numbers.

Consumer groups charge that Pacific Bell has opened a "Pandora's box" of privacy issues with its request to sell Caller ID. Other states have permitted introduction of the service, but not without some controversy. A Pennsylvania court has barred the sale of Caller ID as an unconstitutional violation of protected privacy rights. California consumer groups criticize the fact that Caller ID will immediately impact all telephone consumers, even those who do not subscribe to Caller ID, by forcing them to pay a substantial amount of money to block disclosure of their phone number (which—if it's unlisted—has already cost them a substantial amount of money) or engage in call-by-call blocking through the burdensome entry of dial codes. As to Pacific Bell's claim that Caller ID will prevent harassing or obscene phone calls, several less expensive products or services already on the market remedy that problem. Some consumer groups insist that Caller ID should be permitted only if the PUC requires PacBell to offer free per line blocking, which automatically blocks disclosure of the caller's phone number on all calls made from that line (without the entry of extra codes).

The PUC scheduled a prehearing conference in this proceeding for January 15.

Touch-Tone Charges Eliminated and Local Calling Area Expanded to Twelve Miles. On November 21, the PUC ordered all local telephone companies to eliminate the touch-tone service charges for residential and business customers effective February 1, 1991. The order is a result of Phase II of the PUC's Alternative Regulatory Framework Proceeding ruling in October 1989. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 151; Vol. 9, No. 4 (Fall 1989) p. 133; and Vol. 9, No. 3 (Summer 1989) pp. 123-24 for background information.) According to Dianne Dienstein of the PUC, the delay in implementation was necessary to ascertain the loss of revenue to local phone companies. Although the order will produce revenue shortfalls for local phone companies, the Commission allows the companies to recover the loss by increasing rates for other services.

The order also expanded local calling areas from eight to twelve miles effective June 1, 1991. Customers will be notified of the changes in their monthly bill. The Commission expects the changes will stimulate wider use of the telephone system and produce customer and cost benefits for residential customers and businesses.

PUC Proposes to Abandon Minimum Rates for Household Goods Movers. In November 1989, the PUC formally ordered an investigation into the economic regulation of household goods transportation, and into whether and the extent to which prior Commission decisions or general orders should be modified. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 182; Vol. 10, No. 1 (Winter 1990) p. 150; and Vol. 9, No. 3 (Summer 1989) pp. 124-25 for background information.) Public participation in the investigation and related hearings ended on May 30. On October 10, Administrative Law Judge (ALJ) Burton Mattson issued a proposed decision recommending that limits be set on how much household goods carriers may bill customers, turning upside down the minimum rate system used by the PUC for more than forty years to regulate the moving and storage business.

Following a 20-day public comment period ending on October 30, the PUC announced its support of Judge Mattson's proposal. On December 19, the Commission declared its intent to replace the present minimum rate regulation with maximum rate regulation. The PUC hopes this decision will facilitate negotiation between consumers and moving companies for the price of a move, and protect consumers against price gouging.

Interim maximum rates will become effective in April 1991, and will be contained in the document Maximum Rate Tariff 4 (MAX 4). Final maximum rates will be established after further hearings.

The new maximum rates could be no higher than 23% above the current minimum rates for distance moves and no higher than 26% above current minimum rates for local moves, both of which were last updated in 1987. The percentage difference roughly reflects adjustments for three factors: inflation of about 12% for distance and 15% for local moves since the last revision in 1987; a 1% increase due to Proposition 111 (which increased weight fees and fuel taxes); and a range of up to 10% allowed for reasonable cost increases to cover unusual moving needs. The PUC hopes this approach will enable consumers to get competitive price estimates from several carriers and to choose the best price and services from among them.

In addition to maximum rates, the PUC put into place new consumer protections, service standards, and safety requirements to protect consumers. The Commission stated that this continued but revised rate regulation will be matched with enhanced regulation and enforcement of service, safety, and consumer protections.

PUC Allows Truckers to Increase Their Minimum Rates to Cover Rising Fuel Prices, Then Reports Few Takers. The PUC has reported that only 22% of all general freight common carriers, 14% of all charter buses, and 11% of all vessel carriers have taken advantage of the fuel surcharge authorized by PUC in August 1990. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 181 for background information.) Only 4% of these property carriers and 3% of all passenger carriers are assessing the maximum 10% fuel surcharge allowed.

Based on these relatively low percentages, PUC staff concluded that the current PUC fuel surcharge program appears to provide adequate flexibility for the freight and passenger carriers to increase rates to recover fuel costs, and that additional Commission action to raise the percentages of the surcharge allowed is not warranted at this time.

The fuel surcharge program was established by various emergency actions of the PUC in August when it gave general freight common and contract carriers, charter bus, and passenger vessel carriers greater flexibility to increase rates to recover potential increases in fuel costs resulting from the Mideast crisis. These carriers were allowed to increase their rates by up to 10% in response to fuel cost increases. This 10% fuel surcharge is in addition to the previously authorized annual 10% zone of rate flexibility established by the PUC in its general freight regulatory program. However, a recent survey of 25 of the 127 general freight common carriers revealed no carriers have had to use both of the 10% discretionary increases to the maximum 20%. Any carrier may apply to the PUC for additional rate increases beyond these two 10% increases, provided it can justify its higher fuel costs.

1989 Report on State's Railroad Accidents Shows Deaths, Injuries Increases. In spite of a drop in railroad miles traveled, the number of train accidents and train-related deaths and injuries continued to rise throughout the state during 1989, according to PUC's annual staff analysis of rail safety released in December 1990.

The number of accidents at public grade crossings was 324, 12 more than in 1988, with more deaths—35—in 1989 than any year since 1979. "In spite of many programs to reduce crossing accidents," the report states, "such as Operation Lifesaver, the Grade Separation Fund, and crossing installation and

maintenance programs, the total number of accidents is not decreasing."

Of the 324 grade crossing accidents in 1989, 38 were caused by motorists driving around lowered gates. Thirty-five persons died in such accidents. Drivers not only violate the Vehicle Code by avoiding gates, but ignore the basic warning of danger that gates provide, the report states. Moreover, drivers often fail to realize that a crossing with more than one set of tracks may be used by two trains at the same time. Drivers may not know that a train traveling at 30 miles per hour takes two-thirds of a mile to stop.

General railroad crossing accidents decreased from 280 in 1988 to 246 in 1989, but so did train-miles traveled. As for light-rail operations, which increased in activity, crossing accidents went up from 44 in 1988 to 78 in 1989. Of the total 324, 82% involved vehicle-train accidents at public crossings.

The PUC report is based on information derived from the Federal Railroad Administration forms and investigations conducted by the PUC Safety Division staff into many of the cases covered. The Safety Division is charged by the Commission with monitoring and making recommendations for improvement of safety measures and guidelines in the railroad industry. In an effort to reduce railroad-related accidents and deaths, the PUC has contracted with the University of San Francisco to study why people are being injured at an increasing rate and to suggest recommendations as to what might be done to reduce such accidents. The report is expected during the fall of 1991.

Use of "Extra Space" in Utility Billing Envelopes. On October 24, the Commission initiated an investigation (I.90-10- 042) into policies and procedures to be applied to the use of "extra space" in utility billing envelopes. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 8 and Vol. 8, No. 3 (Summer 1988) p. 1 for extensive background information on this issue.)

In the early 1980s, the Commission determined that the extra space in utility billing envelopes belonged to the ratepayers, and ordered SDG&E to permit a fledgling ratepayer organization in San Diego to place a billing insert recruiting members in the utility's bill envelopes. This order led to the creation of the Utility Consumers' Action Network (UCAN), now 52,000 members strong (*see supra* report on UCAN). The PUC issued a similar order to Pacific Gas & Electric Company (PG&E) to assist Toward Utility Rate Normalization (TURN), a San Francisco Bay area ratepayer organization. However, PG&E challenged the constitutionality of the order on first amendment grounds, and eventually prevailed in a plurality opinion by the U.S. Supreme Court. In *PG&E v. PUC*, 475 U.S. 1 (1986), the Court ruled that the Commission's order violated the first amendment rights of PG&E, a regulated natural monopoly utility corporation, because it forced PG&E to be associated with the views of parties with whom it disagreed.

In 1987, the Commission established a new Ratepayer Notice Program. Under this program, a Commission-sponsored billing insert was mailed to ratepayers quarterly; the legal notice insert simply informed ratepayers of the existence of various intervenor groups which represent ratepayer interests before the PUC in electric, gas, and telephone utility proceedings. The consumer was required to write to the PUC for the complete list of intervenor groups' names and addresses, and then contact directly the group of his/her choice for more information. This program lasted until December 1988.

In February 1990, the PUC's Public Advisor notified the Commission that the Ratepayer Notice Program was a complete failure. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 208 for background information.) The Public Advisor's report suggested several other options which would enhance ratepayer participation in PUC proceedings without running afoul of the Supreme Court's order in *PG&E v. PUC*.

Thus, the Commission initiated its October 24 order to review the "extra space" issue in light of the Court's decision and its recent experience. Opening comments by utilities and other interested parties were due on December 24.

LEGISLATION:

AB 90 (Moore), as introduced December 4, 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, as specified, and to adjust rates to correct for any differences between actual expenditures and amounts recovered in this regard. This bill is pending in the Assembly Committee on Utilities and Commerce.

FUTURE MEETINGS:

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

STATE BAR OF CALIFORNIA

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

The State Bar includes twenty standing committees; fourteen special committees, addressing specific issues; sixteen sections covering fourteen substantive areas of law; Bar service programs; and the Conference of Delegates, which gives a representative voice to 291 local, ethnic, and specialty bar associations statewide.

The State Bar and its subdivisions perform a myriad of functions which fall into six major categories: (1) testing State Bar applicants and accrediting law schools; (2) enforcing the State Bar Act and the Bar's Rules of Professional Conduct, which are codified at section 6076