refer a person to a laboratory, pharmacy, clinic, or health care facility solely because the licensee has a proprietary interest or coownership in the facility. As introduced February 27, this bill would, effective July 1, 1992, instead provide that, subject to specified exceptions, it is unlawful for these 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 would not exempt the licensee from the prohibition. This bill is pending in the Assembly Health Committee.

RECENT MEETINGS:

The Board's June 14 meeting was cancelled.

FUTURE MEETINGS:

August 30 in Orange County.

PUBLIC UTILITIES COMMISSION

Executive Director: Neal J. Shulman
President: Patricia M. Eckert
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The California Public Utilities Commission (PUC) was created in 1911 to regulate privately-owned utilities and ensure reasonable rates and service for the public. Today, under the Public Utilities Act of 1951, Public Utilities Code section 201 *et seq.*, the PUC regulates the service and rates of more than 43,000 privately-owned utilities and transportation companies. These include gas, electric, local and long distance telephone, radio-telephone, water, steam heat utilities and sewer companies; railroads, buses, trucks, and vessels transporting freight or passengers; and wharfingers, carloaders, and pipeline operators. The Commission does not regulate city- or district-owned utilities or mutual water companies.

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

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

PUC Rejects SCE's Proposed Acquisition of SDG&E. On May 8, almost three years after Southern California Edison (SCE) proposed to acquire San Diego Gas and Electric (SDG&E) in a $2.5 billion stock-swap merger, the PUC announced its unanimous decision rejecting the merger. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 173-74; Vol. 11, No. 1 (Winter 1991) p. 145; and Vol. 10, No. 4 (Fall 1990) p. 178 for extensive background information on the merger.)

Public Utilities Code section 854, added by SB 52 (Rosenthal) (Chapter 484, Statutes of 1989), requires the Commission to find that a proposed merger both (1) does not adversely affect competition, and (2) provides short-term and long-term net benefits to ratepayers and ensures that ratepayers receive these benefits. Section 854 also specifies seven criteria necessary to the Commission's determination of whether a merger is in the public interest. Any proposed merger between telephone or energy utilities, either of which has gross California revenues in excess of $500 million, must be evaluated using these criteria. Under section 854, in order for the Commission to approve a proposed merger, the utilities must prove, by a preponderance of evidence, that the merger meets all three of these requirements.

The Commission concluded: "Our decision to deny the [Edison/SDG&E] merger stands on three independent bases: failure of the proposed merger to meet the statutory requisites of Public Utilities Code Sections 854(b)(1), (b)(2) and (c)." According to the Commission:

-Edison and SDG&E failed to prove that the merger would provide net benefits to ratepayers in the long term—that is, at least several years beyond 2000. In addition, the utilities did not present a ratemaking proposal which would assure that ratepayers would receive the forecasted long-term benefits of the merger, as required by section 854(b)(1);

-the merger would have adverse effects on competition among utilities who transmit power and who sell their excess energy. These effects could not be mitigated as required by section 854(b)(2); and

-after consideration of the seven criteria listed in section 854(c) and of their proposed mitigation, in conjunction with the section 854(b)(1) and (b)(2) findings, on balance, the merger would not be in the public interest.

The Commission's decision not to authorize the Edison/SDG&E merger ends the possibility of the merger going forward, despite the fact that the Federal Energy Regulatory Commission (FERC) has yet to vote on the matter. Both agencies must approve the merger for it to take effect. Rejection by either agency prevents the merger.

In rejecting the merger, the Commission agreed with the recommendations of PUC Administrative Law Judges (ALJ) Lynn Carew and Brian Cragg, who presided over evidentiary hearings for over a year on the merger issue and issued a 1,300-page recommended rejection of the proposal on February 1. If the merger had been approved, SCE would have become the largest privately owned utility in the nation. Because of the potential adverse effects on the ratepayers, the utility industry structure in California, competition both within and outside the state, and the environment, the merger had been hotly contested. Some of the organizations against the merger included the Utility Consumers' Action Network (UCAN), the City of San Diego, San Diego Air Pollution Control District, former state Attorney General John Van de Kamp, and the PUC's Division of Ratepayer Advocates (DRA).

The lingering question whether the utilities would seek judicial review of

the PUC's decision was resolved a week later. On May 16, Edison announced that the boards of directors of the two utilities had terminated their merger agreement and withdrawn their application from the PUC and FERC, whose ALJ George Lewnes has also recommended unconditional rejection of the proposed merger.

SCE Requests Rate Increase. On March 4, the PUC announced it will hold public hearings at various locations in its investigation of SCE's request to increase its rates in each of the next three years (1992-94). SCE is asking for a $152.4 million increase in 1992, $174 million for 1993, and $212 million for 1994. The 1992 request was adjusted down from $188 million because of an earlier rate increase approval of $30 million in December. These increases, which would mean an approximate increase to the average residential customer of 2%, are to cover the upgrading of existing equipment and increased operating maintenance costs. The requested increases do not cover fuel or purchased power expenses.

On March 12, DRA announced its opposition to the requested increase for 1992 and recommended instead that Edison offer a $264 million rate reduction. DRA estimated that Edison needs $164 million less than requested for operating expenses. An additional reduction of expenses of $85 million is possible through improved productivity. DRA also estimated capital expenditures of $381 million less than estimated by Edison. DRA's recommended reduction of $264 million would mean an average rate decrease of 3.5%.

Utility Power Swap for Benefit of Both. SCE and the Bonneville Power Administration, which produces hydroelectric power on the Columbia River, have agreed to send each other electricity at different times of the year. Edison officials contend that the proposal has environmental as well as financial benefits.

Under the plan, Bonneville would send excess power south during spring and early summer, allowing SCE to reduce production from its fossil-fuel generating plants when smog levels are on the rise. This would eliminate the modest amount of over 12 tons of emissions annually, and would help SCE meet the requirements of the South Coast Air Quality Management District Plan, which calls for reduced nitrogen oxide emissions over the next decade. During the winter, SCE would return the "borrowed" power, when it is less smog-producing to generate. If the utility could make this return with power purchased outside of California, it would add to the reduction in smog.

The benefit to Bonneville comes with the excess production of power in the spring and summer. Bonneville would be able to release more water from dams on the Columbia River in Washington and Oregon, which helps flush baby salmon down the river to the Pacific Ocean, encouraging their life cycle. This increase in water levels during migrations would help Bonneville avoid federal orders to raise the water level, as a result of petitions before the National Marine Fisheries Service dealing with endangered salmon runs.

The swap only covers 200 megawatts; however, it is a somewhat novel and creative transaction with apparent benefits for both states.

San Diego Gas & Electric Ordered to Return $25 Million to Customers. On March 27, PUC ALJ Mark Wetzell ruled that SDG&E does not have the option to hold $25 million it received in December from a lawsuit windfall. On April 24, the PUC upheld the recommendation that SDG&E return the money immediately to its customers. This will result in a 1% decrease for residential rates, small increases (1.2-1.5%) for commercial and industrial customers, and a 2.5% decrease for agricultural customers. On May 1, SDG&E had planned to implement a previously-scheduled rate increase of $30 million; however, the immediate use of the $25 million keeps SDG&E's rates 13% below those charged by SCE. They are also reportedly the lowest of any utility in California.

The $25 million award came from the favorable settlement of a lawsuit against another utility, Century Power Company of Tucson, over a power purchase. Century is an independent power company and a former subsidiary of Tucson Electric Company.

Southern California Gas Customers to Receive Refund. The PUC recently authorized a refund plan for Southern California Gas Company customers as the result of a $49 million refund from the gas company's suppliers. The refunds are due to reductions in federal taxes, gas costs, and wholesale gas rates from El Paso Natural Gas Company, Northwest Pipeline Company, Pacific Gas Transmission Company, and Pacific Interstate Transmission Company. Since higher charges were previously collected by Southern California Gas, the refunds are being flowed through the utility back to the customers. Customers are eligible for the refund if they were customers in March 1991. Current customers will receive the refund as a credit on their bill. Former customers will receive their refunds via other means.

California-Oregon Transmission Project Participation Denied. On April 24, the PUC denied participation in the California-Oregon Transmission Project (COTP) to Pacific Gas & Electric (PG&E), SCE, and SDG&E. The utilities may not participate in the construction of or own a share in the project; however, they may ultimately contract with other COTP participants for COTP capacity and electric energy if the line is built. As to PG&E and SCE, the denial was based on the utilities' failure to demonstrate that the project would be cost-effective. PG&E and SCE had requested that they be allowed to exclude information on residual environmental costs and benefits, which the Commission held to be relevant factors. The Commission found that SDG&E had shown its participation in the project would be cost-effective. However, SDG&E did not demonstrate the feasibility of negotiating contracts for Pacific Northwest capacity at reasonable rates. Accordingly, the Commission denied SDG&E's participation as well.

COTP is a unique project because the three major investor-owned electric utilities, almost every municipal electric utility in the state, and the federal Western Area Power Administration had jointly agreed to construct the line and to coordinate its operation with other existing transmission systems in California. Construction of COTP began in June of 1990, with operation planned for December 1992. The financing arrangements for the construction were already completed by the Transmission Agency of Northern California (TANC), which represents fifteen of the municipal utilities and is the project manager and lead agency for the project. The Commission's decision is, therefore, not expected to preclude construction.

Experts estimate that by 1993 the surplus power picture in the Pacific Northwest will have changed due to growth, environmental restrictions on coal burning and hydrogeneration, and other changing conditions. Anticipated change will mean an increased demand for power within the Northwest, and substantially reduced cheap surplus power available to California. In rejecting the applications of the three utilities, the Commission was persuaded by DRA's arguments that PG&E and SCE ratepayers would bear significant net costs if these two utilities participate in construction of COTP, with most of the capital costs incurred over the next two years. Thus, the certain immediate costs overshadowed the uncertain benefits,

which had been forecast over a 40-year period, and the Commission denied the petitions to participate.

Trucking Deregulation Impact Report Released. In April, the PUC's Transportation Division, assisted by an advisory committee, published a report entitled *Service and Price in the California General Freight Trucking Market 1989-1990.* The report attempts to survey the empirical effects of the PUC's general freight deregulation decision of October 1989. The survey of effects is mandated by D.90-02-021, which also requires "regular monitoring by staff of the effects of the deregulation policy." (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 180-81; Vol. 9, No. 3 (Summer 1989) p. 124; and Vol. 9, No. 2 (Spring 1989) p. 118 for background information.)

The new PUC policy allows rate freedom to common carrier truckers within a "zone of reasonableness," and allows contract carriers to compete in an open competition setting. Consumer advocates favoring deregulation had argued that the deregulation did not go far enough, particularly in allowing the retention of trucking cartels' ability to collusively propose tariffed rates; however, it was conceded that the new policies make it possible for competitors to price at lower levels where independent pricers could be found or encouraged. The trucking industry, which opposed the changes, contended that they would lead to industry displacement, the bankruptcy of smaller truckers, declining service to rural communities, and highway safety diminution.

The staff report included a freight bill study of common and contract carriers. The study also attempted to evaluate the degree of competition and the state of service to small and rural communities. The report concluded that there was a 4.5% decrease in prices in the year since the decision was final for truckload carriage. The much less competitive and more concentrated "less than truckload" market showed a price increase of 6.1%. Consumer advocates had predicted that the degree of efficacy of the new rules would turn on the degree of competition allowing price undercutters to independently operate—which is more difficult in the more highly concentrated "less than truckload" market. Taking inflation into account, the truckload rates fell 10.3% and the "less than truckload" rates increased but hauls decreased. In general, heavier loads are being hauled and the industry appears to be moving toward more consolidation of loads and greater efficiencies.

The report concluded that service levels are good and have not declined based on shipper and other surveys. The responses from rural areas were similar to those received from higher density markets. Further, the data indicate that there has been no serious net exit of trucking firms "from vulnerable locations," and that "competition does not appear to have suffered in the past year."

ALJ Rejects Telephone Companies' Petition to Indefinitely Suspend Provisions of the California High Cost Fund. On December 19, 1990, PUC ALJ Kim Malcolm denied the petitions of the state's small- and medium-sized local exchange carriers to indefinitely suspend provisions of the California High Cost Fund (CHCF) which impose a "phasedown" of CHCF funding beginning in 1991. CHCF was created in 1988 in order to maintain stable and responsible basic exchange rates for companies in high cost (*e.g.*, rural) areas of the state, by cross-subsidizing small- and medium-sized companies serving these areas from a fund fed by contributions from large companies serving urban areas.

Under existing rules, funding from CHCF was reduced to 80% of full funding beginning January 1, 1991 for companies which had not initiated a general rate proceeding by December 31, 1990. The percentage will decrease to 50% for those companies which do not initiate a proceeding by December 31, 1991.

As a result of concerns that CHCF relief does no more than bolster the earnings of local exchange carriers which are already earning sufficient revenue without the subsidy, ALJ Malcolm rejected the utilities' petitions to indefinitely suspend the "phasedown" of CHCF funding in 1991. The decision also denied a petition from DRA which sought suspension of the phasedown in 1991. A final policy determination on the issue will be made in conjunction with the Alternative Regulatory Framework Phase III decision.

Pacific Bell Responds to Complaint in Billing Scandal. As a result of a billing scandal in which Pacific Bell was unable to process all of the payments it received daily and then charged consumers "late penalties" for payments timely received but which it was delaying, Toward Utility Rate Normalization (TURN) filed a formal complaint seeking penalties and other relief with the PUC. (*See supra* report on TURN; *see also* CRLR Vol. 11, No. 2 (Spring 1991) pp. 39-40 and 175 for background information.) In its answer filed April 10, PacBell explained its billing process and argued that the company did not intend to improperly charge its customers. PacBell argued that since corrective action has been taken and efforts have been made to give refunds to customers, no penalties are necessary. PacBell's final defense was a statute of limitations claim in which it stated the complaint is limited to events which occurred in the past two years. A prehearing conference to schedule PUC hearings on TURN's complaint was set for July 19.

Caller ID Hearings Held. Between March 27 and April 4, the PUC held a series of six regulatory hearings for public comment on PacBell's request to offer seven additional COMMSTAR features, including Caller ID. (See CRLR Vol. 11, No. 2 (Spring 1991) pp. 40 and 175; Vol. 11, No. 1 (Winter 1991) pp. 145-46; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 209 for background information.)

In San Diego, those speaking in favor of Caller ID included numerous elderly citizens who thought the device would allow them to screen unwanted and obscene calls. Also, three members of the deaf community and one severely disabled woman implored the Commission to consider the benefits Caller ID would give them. They said they need to see the phone number of the caller in order to screen calls since they cannot recognize voices. They also emphasized their vulnerability to harassing and obscene calls.

Critics of Caller ID pointed out that consumers will receive more harassing phone calls from telemarketers and business people who obtain their phone number through Caller ID. Calls made to commercial establishments by consumers will result in the sale and cross-circulation of the caller's number for massive targeted solicitation by others. A representative from a battered women's shelter emphasized the need for confidentiality for women who call home from the shelter.

Critics noted the irony of a new state law which prohibits those who accept credit cards from asking for phone numbers to preserve confidentiality, while Caller ID would expose phone numbers electronically.

PUC Rejects AT&T's Request for Ten-Cent Increase in Directory Assistance. On March 13, the PUC refused AT&T's request for a ten-cent increase within California in long distance directory assistance calls. AT&T proposed to increase the rates for all such calls from the current 40 cents to 50 cents, but the PUC denied the request because AT&T failed to show the request was cost-based. About 600 people wrote to the Commission complaining that it is unfair to charge a caller once to obtain a phone number and again to call the number,

and that since consumers cannot obtain non-local numbers in their phone books, they must use directory assistance.

AT&T admitted that it suffers a $165,000 shortfall because it does not charge any amount for such directory assistance from pay phones, hospitals, or hotels. The PUC noted that AT&T could make up for the shortfall if it charges a modest amount for those calls, which make up 17% of all directory assistance calls.

PUC Approves GTE-Contel Merger. On March 13, the PUC approved the GTE purchase of Contel subsidiaries in California. The decision is the first in a two-phased approval which will allow the firms to complete a nationwide merger after which GTE will own Contel. The March 13 decision allows the nationwide merger to occur. No protests were filed.

In the second stage, the Commission will hold hearings to examine whether GTE's post-merger consolidation plans for its California subsidiaries will adversely affect competition and meet the seven relevant criteria found in Public Utilities Code section 854(c). The criteria include maintaining or improving the quality of service and management, and being fair and reasonable to public utility employees and shareholders. In the interim, the companies must keep separate management and personnel and make the changes in service or operations.

PUC Receives Public Comments on Proposed Rule Governing Ex Parte Contacts in Commission Proceedings. The PUC recently sought comments from the public on a proposed rule governing ex parte communications in defined Commission proceedings. Comments were due by April 22.

The idea of a generic rule governing ex parte contacts in Commission proceedings is not new. In 1986, the Commission held workshops, drafted a generic rule, and solicited comments, but deferred final action in order to gain experience with its newly adopted rules governing "Decisions and Proposed Reports" (Rules 77-77.5). Since that time, the Commission has adopted ex parte rules in specific proceedings on a case-by-case basis, either on its own motion or in response to requests by parties. And during 1986 to 1991, several bills were introduced and defeated to require disclosure of ex parte contacts between commissioners and interested parties.

The Commission is now considering changing its previous case-by-case approach. It has extensive experience with the proposed decision/comments process, and some contend that an ex parte rule would complement that process. Further, because of the PUC's recent policy of introducing competition into many of the industries it regulates (*e.g.*, trucking and telecommunications), its proceedings have become increasingly complex and controversial. As a result, decisionmaking individuals within the PUC are exposed to diverse self-interested advocacy. The Commission has recognized a need to maintain both the appearance and reality of due process and fair access for all parties appearing before it.

The Commission has requested its Administrative Law Judge Division to review the comments and to make a recommendation for the consideration of the full Commission by July 2.

LEGISLATION:

SB 1041 (Roberti), as amended May 6, would authorize judicial review of PUC proceedings to take place in either the Supreme Court or the court of appeal. This bill is pending in the Senate Appropriations Committee.

AB 1663 (Eaves), as amended April 25, would authorize the PUC to approve contracts between an electrical corporation and its heavy industrial customers as determined by the electrical corporation, of not more than ten years' duration, in which the electrical corporation buys from the heavy industrial customer the right to interrupt the customer's service on short notice, as determined by the PUC. The bill would also expressly authorize the PUC to amend these contracts, and would require the inclusion of a provision in each contract recognizing that authority. This bill passed the Assembly on May 30 and is pending in the Senate Energy and Public Utilities Committee.

SB 859 (Rosenthal), as amended May 7, 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 bill is pending in the Senate Appropriations Committee.

AB 1166 (Moore), as amended April 23, would require the PUC to verify, validate, and review the computer models of any electric corporation that are used for the purpose of planning, operating, constructing, or maintaining the corporation's electricity transmission system, and that are the basis for testimony and exhibits in hearings and proceedings before the PUC. This bill is pending on the Assembly floor.

SB 1204 (Committee on Energy and Public Utilities), as introduced March 8, 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 bill is pending in the Senate Committee on Energy and Public Utilities.

SB 547 (Rosenthal), as introduced February 28, would provide that the ownership or operation of a facility which sells compressed natural gas at retail to the public for use only as a motor vehicle fuel does not make the corporation or individual a public utility. This bill passed the Senate on April 25 and is pending in the Assembly Utilities and Commerce Committee.

AB 1585 (Moore), as amended April 24, would provide that in establishing the relative priority for gas used for the purpose of generating electricity, either by utility electric generators or by cogenerators, the PUC must consider the effect of the priority it establishes on electric ratepayers, and shall consider the location of the electric generation facility in an extreme nonattainment area for purposes of state and federal air quality laws and regulations. This bill passed the Assembly on May 29 and is pending in the Senate Committee on Energy and Public Utilities.

AB 1607 (Costa), as amended May 7, would permit the PUC to authorize natural gas utilities to (1) construct and maintain compressed natural gas refueling stations to be owned and operated by the utility, or to be transferred to nonutility operators; (2) support the construction and maintenance of compressed natural gas vehicle conversion and maintenance facilities; (3) provide incentives for conversion of motor vehicles to compressed natural gas fueled vehicle, and incentives to promote the purchase of factory-equipped compressed natural gas fueled vehicles; and (4) recover through rates, as specified, the reasonable costs associated with these projects. This bill is pending in the Assembly Ways and Means Committee.

AB 1431 (Moore), as introduced March 7, 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,

determine the costs, including a fair profit, to provide wholesale cellular telephone service in each of those markets and base wholesales rates on those costs. This bill is pending in the Assembly Utilities and Commerce Committee.

SB 721 (Rosenthal) would require the PUC to require, by rule or order, that every facilities-based cellular service provider provide access for end users on its system to the local emergency telephone services, that they utilize the "911" code as the primary access number for those services, and that (where feasible) "911" calls from cellular units be routed to an office of the California Highway Patrol that is nearest to the cell site from which the call has originated. This bill passed the Senate on April 25 and 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. As introduced February 15, 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 bill is pending in the Assembly Utilities and Commerce Committee.

SB 815 (Rosenthal), as introduced March 7, 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 bill is pending in the Senate Energy and Public Utilities Committee.

AB 1123 (Moore), as introduced March 5, would extend indefinitely provisions which require every telephone corporation furnishing local service, on or before March 1, 1988, and annually thereafter, to provide to its residential subscribers a description of its public telephone service and its policies for furnishing public telephone service, including policies of public need and safety and how a customer or subscriber can contact the corporation for additional information. This bill passed the Assembly on May 2 and is pending in the Senate Appropriations 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. As introduced February 27, this bill would change that fine amount to not more than $20,000 for any offense. This 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. As amended May 16, this bill would place conditions on the option for the policy to be issued by a nonadmitted insurer, include a policy issued after application to the California Automobile Assigned Risk Plan, and make those changes applicable to passenger stage corporations, household goods carriers, and charter-party carriers of passengers. The bill would also 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 bill is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 636 (Calderon), as introduced March 5, 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 bill is pending in the Senate Committee on Energy and Public Utilities.

AB 1747 (Boland), as introduced March 8, would include persons who provide charter-party carrier services incidental to commercial balloon operations as eligible for a Class C certificate, which entitles them to special insurance and regulatory fee requirements. This bill passed the Assembly on May 9 and is pending in the Senate Committee on Energy and Public Utilities.

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 2 (Spring 1991) at pages 177-79:

SB 841 (Rosenthal), as amended April 30, would make lessors responsible for installing and maintaining telephone inside wiring in rental units, and would require telephone corporations to annually provide residential subscribers with prescribed information on their responsibilities and those of the telephone utility respecting inside wiring. This bill passed the Senate on May 16 and is pending in the Assembly Utilities and Commerce Committee.

SB 692 (Rosenthal), as introduced March 5, 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 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. (*See infra* LITIGATION for related discussion.) This bill is pending in the Assembly Ways and Means Committee.

SB 973 (Rosenthal), as amended May 7, would require the PUC to establish procedures governing the offering of information services through information access services offered by local or interexchange telephone companies. This bill passed the Senate on May 24 and is pending in the Assembly Utilities and Commerce Committee.

SB 1036 (Killea), as amended April 30, would express legislative intent with regard to telephone information providers who do business in California, and prohibit state governmental agencies from contracting with information providers which charge consumers for the receipt of, or access to, information about governmental services over the telephone. This bill passed the Senate on May 6 and is pending in the Assembly Utilities and Commerce Committee.

AB 807 (Roybal-Allard) would extend indefinitely certain duties of the PUC which otherwise would become inoperative on July 1, 1991; these duties include requiring telephone corporations to offer to residential telephone subscribers a means to delete access to information access telephone services at no charge, and requiring telephone corporations to refund to subscribers any amount paid for deletion of access prior to a specified date. This bill passed the Assembly on May 2 and is pending in the Senate Appropriations Committee.

SB 693 (Rosenthal), as amended April 29, would require that the PUC's program of assistance to low-income electric and gas customers, as soon as practicable, include nonprofit group living facilities specified by the PUC, if the PUC makes specified findings. This bill passed the Senate on May 23 and is pending in the Assembly Utilities and Commerce Committee.

SB 743 (Rosenthal), as introduced March 6, 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 bill is pending in the Senate Energy and Public Utilities Committee.

AB 842 (Polanco), as amended April 16, would authorize the PUC to suspend or revoke the permit of a household goods carrier for the filing of a false report of understated revenues and fees, and would expressly make every highway permit carrier and every officer, director, agent, or employee of a highway permit carrier who falsely states the carrier's gross operating revenues in order to underpay PUC's reimbursement fees guilty of a misdemeanor. This bill passed the Assembly on May 9 and is pending in Senate Energy and Public Utilities Committee.

AB 844 (Polanco), as introduced February 27, 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 bill is pending in the Assembly Utilities and Commerce Committee.

AB 684 (Moore). Under the Passenger Charter-Party Carriers' Act, specified passenger transportation services are required to be furnished pursuant to a certificate of public convenience and necessity or a permit issued by the PUC. Exempted from that Act is the transportation of persons between home and work locations or of persons having a common work-related trip purpose in a vehicle having a seating capacity of fifteen persons or less, including the driver, which is used for the purpose of ridesharing, when the ridesharing is incidental to another purpose of the driver. As amended April 4, this bill would include in that exemption the requirement that the transportation is not for profit. This bill passed the Assembly on May 2 and is pending in the Senate Energy and Public Utilities Committee.

AB 846 (Polanco), as introduced February 27, 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 bill is pending in the Assembly Utilities and Commerce Committee.

AB 90 (Moore), as amended April 8, 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 bill is pending Assembly Utilities and Commerce Committee.

AB 218 (Hauser), as amended April 11, would require the PUC to conduct an investigation on the use of propane as a clean transportation fuel, including hearings on propane service, rates, and safety; the PUC would be required to report the results of the hearings and its recommendations regarding regulation of propane service, rates, and safety to the legislature on or before June 1, 1992. This bill passed the Assembly on April 18 and is pending in the Senate Energy and Public Utilities Committee.

AB 314 (Moore), as amended May 23, 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 Ways and Means Committee; SB 232 is pending on the Senate floor.

AB 230 (Hauser), as introduced January 14, 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 bill is pending in the Assembly Utilities and Commerce Committee.

AB 379 (Moore), as introduced January 30, 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 bill is pending in the Assembly Utilities and Commerce Committee.

AB 462 (Moore), as introduced February 8, 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 bill passed the Assembly on May 2 and is pending in the Senate Appropriations Committee.

AB 554 (Moore), urgency legislation introduced February 15, would require the PUC, as expeditiously as possible, to develop and implement procedures which mitigate the significant additional expense incurred by service men and women in communicating with their families and friends during the Persian Gulf War. This bill passed the Assembly on April 18 and is pending in the Senate Appropriations Committee.

SB 1227 (Russell), as amended May 28, would require the PUC, upon being informed by the California Highway Patrol or otherwise finding and determining that the proof of financial responsibility required of a carrier has lapsed or been terminated, to revoke the carrier's registration. This bill passed the Senate on May 9 and is pending in the Assembly Utilities and Commerce Committee.

AB 1792 (Harvey), as introduced March 8, 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 bill, which would take effect immediately

as an urgency statute, is pending in the Assembly Utilities and Commerce Committee.

AB 2236 (Costa), as amended May 8, would prohibit the PUC from increasing, or approving an increase in, rates for electrical services by an amount more than the system average rate increase for agricultural and pumping customers before June 1, 1992. This bill, which would take effect immediately as an urgency statute, is pending in the Assembly Ways and Means Committee.

ACA 30 (Bates), as introduced March 8, 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 May 7, 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 (ALJ). This bill is pending in the Senate Appropriations Committee.

AB 1432 (Moore), as amended May 23, would provide that notwithstanding any other provision of law, when the Commission 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 superior court, as specified. This bill is pending on the Assembly floor.

AB 1260 (Chacon), as introduced March 6, 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 bill is pending in the Assembly Utilities and Commerce Committee.

AB 682 (Moore), as amended April 29, would extend until July 1, 1993 numerous provisions of law regarding the PUC's jurisdiction and control over the billing and collection practices of telephone corporations for specified purposes. This bill passed the Assembly on May 29 and is pending in the Senate Energy and Public Utilities Committee.

AB 461 (Moore), as amended May 28, would require that telecommunications consumers in this state be provided with specified rights. This bill is pending in the Assembly Ways and Means Committee.

LITIGATION:

In *CP National Corp. v. Bonneville Power Administration*, 926 F.2d 905 (Mar. 26, 1991), the Ninth Circuit Court of Appeals affirmed the Bonneville Power Administration's rate determination that a power utility may be lawfully limited by a regulator in its allocation of overhead costs. CP National, an investor-owned utility, had requested an increase in its "average system cost" to cover certain "costs of cogenerated power purchase." Bonneville had determined CP was not entitled to the increase since the Oregon PUC had not determined that the costs in question were reasonable for ratemaking purposes. FERC affirmed, and the Ninth Circuit agreed. The court wrote: "[I]t seems that if CP National has a dispute at all it lies with [the Oregon PUC]," not Bonneville or FERC, and dismissed all pending motions in these consolidated cases—generally deferring to the Oregon PUC's criteria for cost allocation.

In *Information Providers' Coalition v. Federal Communications Commission*, 928 F.2d 866 (Mar. 21, 1991), the Ninth Circuit unanimously rejected the dial-a-porn industry's contention that the 1989 amendment to the Communications Act, known as the Helms Amendment, 47 U.S.C. section 223(b) *et seq.*, and the Federal Communications Commission's (FCC) Report and Order and the regulations promulgated under that order, 47 C.F.R. Part 64.201 (1990), violate the first and fifth amendments of the Constitution. These rules allow for the blocking of certain for-pay telecommunications services. The plaintiff Coalition—an ad hoc association of dial-a-porn operators, equipment providers, listeners, and others—claimed the statute and regulations violate the first amendment because they do not utilize the least restrictive means for limiting minors' access to dial-a-porn programs and create a prior restraint on speech. It also argued they violate the fifth amendment because they result in a taking of property without due process. Finally, the Coalition argued the FCC acted in an arbitrary and capricious manner and abused its discretion in determining "safe harbors" (the allowable defenses to criminal prosecution), and that the FCC's definition of "indecent" is unconstitutionally vague.

Note that in *Sable Communications of California, Inc. v. FCC*, 492 U.S. 115 (1989), the Court had held a prior version of the Communications Act overbroad because it was an outright ban on the programs. It held Congress and the FCC could oversee indecent dial-a-porn messages so long as the regulations were narrowly drawn to serve the compelling interest of preventing minors from being exposed to such messages.

Under the amended scheme in section 223, a dial-a-porn provider has defenses, known as "safe harbors," against criminal prosecution. "Reverse blocking," attacked by the Coalition, is one of three "safe harbors"; it requires a subscriber to register for the service, whereas "central blocking" requires the customer to call the phone company and request the service be unavailable. It is triggered only if the provider asks the telephone carrier to engage in billing and collection services. This court held that "reverse blocking" is narrowly tailored because it does not take place if the provider bills users directly or if it accepts payment by credit card or requires an access code. Furthermore, the court found the Commission's decision was based on substantial evidence and was thus not arbitrary nor capricious.

The court also determined that the FCC's definition of indecency passed the void-for-vagueness test, and that there was no prior restraint in the statute or regulations. If a subscriber pays for dial-a-porn, he or she receives it and pays for it. There is nothing, according to the court, which government action or rule suppresses, prohibits, inhibits, hinders, or constrains. Rather, the court analogized access to dial-a-porn to requesting access to a periodical by subscription or requesting admittance into an adult theater.

In *In the Investigation of 976 Services*, No. S019355 (Apr. 18, 1991), the California Supreme Court refused to grant a petition for review filed by Public Advocates (PA), a San Francisco public interest organization, which challenged the sufficiency of the PUC's methods of calculating intervenor compensation awards. (*See supra* report on PA; *see also* CRLR Vol. 11, No. 2 (Spring 1991) p. 36 for extensive background information on this issue.) PA filed the petition in January after the PUC cut its intervenor fee request from $495,790 to $130,048 for five years of work in proceedings on Information Access Service (976) tariffs and policies. PA claimed the PUC has adopted a cap of $150 per hour for fees awarded to intervenor lawyers in utility matters, refuses to make award decisions in a timely fashion, and arbitrarily and capriciously cuts awards where not all of the contentions of intervenors are adopted.

Numerous public interest organizations—including the Center for Public Interest Law (CPIL), Consumers Union, and TURN—provided substantial documentation in support of PA's petition. In one case involving CPIL, the Commission has not ruled for almost two years on advocacy undertaken four years ago. Intervenors, who often provide advocacy resulting in hundreds of millions in consumer savings, contend that PUC policies preclude them from obtaining market level compensation even where they prevail, while utility counsel are guaranteed full market rates paid by ratepayers for all hours incurred whether or not they prevail. The PUC denied the charges, claiming it merely "scrutinizes" the fees under its unique fee statute, Public Utilities Code sections 1801-08.

Thus, the only available course for PA and the other intervenor groups is to turn to the legislature for aid in changing the statute under which the PUC awards intervenor compensation fees. (*See supra* LEGISLATION for summary of AB 1975 (Moore)). In addition, Senator Robert Presley has asked the Office of the Auditor General to inquire into the procedures and delays in the PUC's award of intervenor compensation.

In *Ataide v. Hamilton Copper & Steel Corp.*, 229 Cal. App. 3d 624 (Apr. 22, 1991), Fifth District Court of Appeal affirmed a judgment of the Fresno County Superior Court which held that a trucking company which had been issued a highway contract carrier permit by the PUC may recover undercharges based on low trucking-shipping rates. Essential to the court's decision was its belief that where no contract exists which has been executed by a carrier and shipper and approved by the Commission for transportation covered by Transition Tariff 2 (T.T.-2), the T.T.-2 rates are applicable and are, in effect, the minimum rates.

Plaintiff John Ataide, doing business as Ataide Trucking Company (Ataide), brought suit against defendant Hamilton Copper & Steel Corporation (Hamilton), to recover undercharges for trucking services it provided to Hamilton. These undercharges were the difference between the amount Hamilton paid Ataide and the amount which Hamilton should have paid in accordance with the applicable tariff. Ataide had been ordered by the PUC to "take all reasonable steps including legal action to collect any and all undercharges that may be due."

The trial court concluded that the hauls in question required shipping rates based on T.T.-2 and that the amounts charged for these hauls were lower than the T.T.-2 rate by $48,732.91. Adding interest, the court awarded Ataide $63,699.88. The court further found that, as a result of these low shipping rates, Hamilton acquired an economic advantage over its competitors. The court also concluded that Ataide would not incur a windfall as a result of recovering the undercharges because Ataide was lawfully entitled to these amounts.

FUTURE MEETINGS:

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

STATE BAR OF CALIFORNIA

President: Charles S. Vogel
Executive Officer: Herbert Rosenthal
(415) 561-8200
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Toll-Free Complaint Number:
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 non-lawyer public members. Of the attorneys, sixteen of them—including the President—are elected to the Board by lawyers in nine geographic districts. A representative of the California Young Lawyers Association (CYLA), appointed by that organization's Board of Directors, also sits on the Board. The six public members are variously selected by the Governor, Assembly Speaker, and Senate Rules Committee, and confirmed by the state Senate. Each Board member serves a three-year term, except for the CYLA representative (who serves for one year) and the Board President (who serves a fourth year when elected to the presidency). The terms are staggered to provide for the selection of five attorneys and two public members each year.

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

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

On May 30, the Bar's Chief Trial Counsel, Robert Heflin, was confirmed by the state Senate.

MAJOR PROJECTS:

Complainants' Grievance Panel Backlog. State Bar Discipline Monitor Robert Fellmeth has drafted legislation designed to alleviate the current backlog problem of the Complainants' Grievance Panel (CGP). CGP, a seven-member body which is authorized to review the early closure of Bar discipline cases at the request of the complaining consumer, is plagued with a backlog of over 2,000 cases awaiting review and decision—now the most serious backlog in the Bar's discipline system. (See CRLR Vol. 11, No. 2 (Spring 1991) pp. 179-80 for background information.)

Current law arguably requires the Panel to consider every case appealed to it; these cases are now entering the system at over 200 per month. The proposed legislation would give CGP discretion to review cases which are closed prior to a finding of probable cause to investigate (*i.e.*, so-called "closed inquiries"). Instead of being required to review the closure of all cases where appealed by complaining witnesses, CGP could conduct periodic random audits of cases to determine whether these cases closures were properly decided. The Monitor believes that the majority of cases in CGP's backlog are "closed inquiries," and less than 1% of these cases are ever reinvestigated and result in discipline. A much higher percentage of appeals of closed investigations result in Panel action and