only under the direction and supervision of a physical therapist. In 1990, BOE plans to support draft legislation which would permit DOs to utilize physical therapist aides. The Board hopes that this legislation will remedy the fact that many insurance companies do not cover services rendered by a physical therapist aide who works with a DO instead of a physical therapist.

RECENT MEETINGS:

At its November 10 meeting, BOE discussed possible criteria which would be used to evaluate and select candidates for examination commissioners. These commissioners act as substitutes for Board members when they administer the oral examination to licensure applicants. The possible criteria include: the candidate must be able to administer the exam at three out of the four annual examinations scheduled; the candidate must supply three letters of recommendations; and the candidate must be board-certified. BOE will develop these criteria and address them again at its March meeting.

BOE also discussed the "single pathway resolution" drafted by the Federation of State Medical Boards. This resolution would institute a single national examination to test both MDs and DOs; the examination which would be used is the standard MD examination. BOE is concerned that, because this single examination does not test skills of osteopathic manipulation, it will not adequately ensure that only DOs competent to practice osteopathy are licensed. To address this concern, BOE has proposed a resolution which would allow BOE, or any other state DO agency, to independently test DOs in their jurisdiction for osteopathic manipulation. BOE has submitted this resolution to all state osteopathic boards for their input. At the November meeting, some Board members expressed the view that the single pathway resolution is a tactic being used by the American Medical Association, which supports the resolution, to absorb the DO profession into the MD profession; and that BOE's resolution is an inadequate attempt to preserve the independent identity of DOs.

Also present at the November meeting was a representative of the California Academy of Physician Assistants (CAPA). Members of the Board explained to the CAPA representative that they are displeased with a booklet that CAPA has distributed. This booklet describes the physician assistant profession to the consumer. Specifically, BOE members objected to CAPA's use of the term "medical doctor/physician assistant" throughout the booklet, and requested that it be replaced with the term "physician/physician assistant."

FUTURE MEETINGS:

June 22 in Orange County.
November 2 in Sacramento.

PUBLIC UTILITIES COMMISSION

Executive Director: Neal J. Shulman
President: G. Mitchell Wilk
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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 Orders Investigation Into Household Goods Carriers. 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. 9, No. 3 (Summer 1989) pp. 124-25 for background information.)

The PUC has regulated for-hire trucking since 1917, when the Auto Stage and Truck Transportation Act was enacted. During the 1930s, the Commission established a system of minimum rates for regulated truckers to promote the trucking industry. The household goods market is a unique sector of the state's trucking industry in that it is the only sector that tends to deal directly with the individual consumer. As a result, provisions emphasizing consumer protection historically have played a major role in the state's regulatory program for household goods carriers.

In 1951, the California legislature passed the Household Goods Carrier Act. The goal of this Act was to protect consumers and provide for adequate and dependable services by implementing certain requirements concerning business ethics and operating ability. The Act further established rules concerning notification of delay and estimates of costs. Finally, it gave broad power to the PUC to establish any other rules it

deems necessary to ensure adequate performance of moving services.

Since the mid-1970s, the state has been considering lessening or ending rate regulation of this industry and placing greater reliance on competitive forces to control prices to consumers. In 1974, the Commission on California State Government Organization and Economy ("Little Hoover Commission") issued a report recommending the abolition of minimum rates for all sectors of trucking. In 1975, the PUC announced its intention to move away from minimum rate regulation and has been investigating alternative regulatory systems.

In March 1988, the PUC held en banc informational hearings to increase its knowledge of current conditions in the for-hire trucking industry. (See CRLR Vol. 8, No. 2 (Spring 1988) pp. 120-21 for background information.) In November 1989, the PUC formally ordered an investigation into the economic regulation of household goods transportation. In the public's interest, the PUC will focus on the following objectives:

-consumer protection, and whether minimum rates actually protect the consumer or whether they needlessly raise prices and impede the carriers' operating abilities;

-economic efficiency and the effect of open competition;

-adequate service and the extent to which the PUC should retain control;

-highway safety and programs which could be undertaken to promote safety (considered are programs concerning tougher licensing standards, mandatory driver safety training, drug and alcohol abuse, terminal and highway inspections, and carrier fines for traffic violations); and

-administrative feasibility and the PUC's ability to implement and enforce any proposed program.

The Commission is currently considering comments and suggestions by interested parties, and the Commission estimates that a decision will be forthcoming later in 1990.

Alternative Regulatory Framework Proposal Adopted. On October 12, the Commission adopted a new incentive regulatory framework to replace its fifty-year-old cost-of-service regulation of the state's two largest phone companies, Pacific Bell and GTE California. This decision generally accepts Administrative Law Judge Charlotte Ford's proposal with just a few changes, and represents the culmination of Phase II of the Alternative Regulatory Framework proceeding in which the PUC is examining the way it regulates telephone companies. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 133; Vol. 9, No. 3 (Summer 1989) pp. 123-24; and Vol. 8, No. 4 (Fall 1988) p. 119 for background information.) The key provisions of the incentive regulatory framework are:

-pricing flexibility for some (non-monopoly) services where PacBell and GTE have growing competition;

-equal access to local phone networks for specialized telecommunications services by the telephone companies' competitors;

-annual rate adjustments based on the nationwide inflation rates, less a 4.5% productivity factor. This means that inflation must go up by 6% for phone rates to go up 1.5%; and if inflation goes up by 2.5%, the phone company will have to reduce its rates by 2.0%;

-rates will be adjusted every year to account for changes in inflation and productivity from the preceding year;

-a benchmark profit level is 13.00% (which is 1.5% higher than the market-based rate of return which the Commission has estimated for 1990). Profit between 13.00% and 16.50% would be split between the telephone company shareholders and consumers through rate reduction. Any profit above 16.50% would be returned to the customers;

-sometime in 1990, an expansion of the local calling area from the current eight miles to twelve miles; also, hearings will be held as part of Phase III to determine whether to eliminate the $1.20 charge for residential touch-tone service; and

-approval of Pacific Bell's request to spend $404 million to replace outdated switching equipment. This may cause rates to go up $11 million in 1990 to cover these costs.

The Commission will reassess the new system after three years, but has emphasized that the old system is buried for good. The new regulatory framework and rate changes went into effect on January 1.

Pacific Bell Rates Decrease as PUC Implements Incentive Regulation. On December 18, the PUC took the final step in Phase II by ordering rate adjustments for PacBell and GTE California. The adjustments were based on the companies' actual earnings for the first eight months of 1989 and are aimed at achieving an 11.5% market-based rate of return for the companies. Then, in the first use of the new incentive regulatory approach, the PUC used its newly-approved formula (Gross National Product/Price Index minus the 4.5% productivity factor) to calculate rates for 1990. The Commission's adjustments require PacBell to reduce its rates by $391 million or 6% ($152 million more than PacBell requested), but found that GTE California would require $32 million more revenue ($9 million less than GTE requested), to earn the 11.5% authorized profit level. A typical PacBell residential customer whose monthly bill is now $26 will see a decrease of $1.15. This decrease will show up as a surcredit on the bill and will be applied to all interstate access, local toll, and exchange services.

Pacific Bell Modernization: Phase III Proceedings. A proposed settlement between the DRA and Pacific Bell would require PacBell to reduce future rates by $36 million annually for four years and to hire a consulting firm to evaluate Pacific's modernization investment decisionmaking practices. Objections to the settlement filed by ratepayer organizations TURN and the Center for Public Interest Law (CPIL) decry the DRA's willingness to enter into the settlement after an extensive two-year modernization investigation, question the wisdom of allowing PacBell to hire and fire a consulting firm to guide its modernization decisions, and argue that the settlement would foreclose a PUC decision on CPIL's "economic impact statement" proposal. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 124 for background information.)

In early November, the PUC decided that further hearings would be necessary to decide all matters. Interested parties filed briefs in December and now await further rulings by the PUC.

SCE's Proposed Acquisition of SDG&E. The PUC's consideration of Southern California Edison's (SCE) proposed acquisition of San Diego Gas and Electric Company (SDG&E) continues in the prehearing stage. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 133; Vol. 9, No. 3 (Summer 1989) p. 123; and Vol. 9, No. 2 (Spring 1989) p. 117 for background information.) Formal PUC hearings are tentatively scheduled to begin in April 1990; the Federal Energy Regulatory Commission (FERC) was scheduled to

begin its hearings on the proposed acquisition on January 23. On October 25, FERC ordered its staff to conduct an environmental assessment of how the merger might affect air quality. FERC staff will determine whether the threat to air quality is significant enough to warrant a more detailed environmental impact statement.

On November 2, PUC commissioners Stanley W. Hulett and G. Mitchell Wilk ordered SCE and SDG&E to turn over documents requested by PUC staff and other parties to the merger. The utilities had claimed the documents were privileged. The documents in question include materials pertaining to unregulated subsidiaries of Edison, including Mission Energy; minutes of certain meetings of Edison's board of directors when the merger was discussed; and existing documents that were disputed during a public deposition undertaken by the City of San Diego of two former SDG&E directors, O. Morris Sievert and Charles R. Scott. These documents may be protected from public disclosure if the utilities so designate. Whether they become part of the public record is subject to further PUC hearing. The commissioners said they made the decision in the interest of ensuring a timely decision. As of December 18, the utilities still had not released the documents.

PUC Suspends Telesphere Network's Intrastate 900 Service. On November 9, the PUC withdrew the authority it had granted to Telesphere Network, Inc. to offer intrastate 900 service in California because the request it had filed did not contain safeguards against the potentially negative effects that some telephone services may have on unwary consumers and children. (See CRLR Vol. 9, No. 2 (Spring 1989) pp. 117-18 for background information on the 900 service.) Specific consumer protection measures which were either omitted from or appeared inadequate in Telesphere's request include the following: provision of a separate prefix to carry programs which may contain matters harmful to children; advertising guidelines that inform consumers of the price of a call and that tell children of the need for parental approval; requirement of presubscription for such service; notice to customers that blocking is available; measures to notify consumers when billing for 900 calls reaches a certain level, and direct contact if it goes above $150 with automatic blocking until the consumer is contacted; and allowance of a one-time adjustment of bills.

A request by MCI Telecommunications for 900 authority was denied in early November. MCI subsequently filed a formal application for its 900 service on November 17. Currently, the PUC is reviewing the formal applications for 900 service authority sought by U.S Telecom and ATT-California.

Customers of Small Phone Companies to Receive $14.9 Million Credit. On December 18, the PUC ordered that twenty small local telephone companies will pass along to their customers next year $14.9 million in revenues derived from the California High Cost Fund. The special fund, established by the PUC to hold down rate increases in less populated areas, is financed by toll revenues from long distance carriers. Because of a million-dollar surplus in the fund, the order also authorizes the long distance carriers, Pacific Bell, GTE California, and GTE-West Coast to decrease their carrier common line charge (on long distance calls within the state), by which the fund is underwritten, from $.0011 to $.0009 per minute.

Customer-Owned Pay Telephone (COPT) Hearings. In response to consumer complaints, the PUC has been investigating COPT services and payphone operations since April 1988. The workshops culminated in a settlement agreement between AT&T, Pacific Bell, GTE California, Contel, DRA, the California Payphone Association, and other interested parties. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 134; Vol. 9, No. 1 (Winter 1989) p. 106; and Vol. 8, No. 3 (Summer 1988) p. 125 for background information.) The PUC has reassigned the case to Administrative Law Judge Michael Galvin. A proposed decision is expected sometime in February.

LEGISLATION:

AB 544 (Moore) prohibits the making or maintaining of any unauthorized connection or attachment for the purpose of interfering with, altering, or degrading any cable television service being transmitted to others, or of transmitting or broadcasting any program or other service not intended to be transmitted or broadcast by the system. This bill was signed by the Governor on September 29 (Chapter 964, Statutes of 1989).

SB 460 (B. Greene) continues in effect beyond July 1, 1990, the PUC's rate recovery mechanism to pay for the programs whereby telecommunications devices are furnished to telephone subscribers who are deaf or severely hearing impaired and to statewide organizations representing the deaf or severely hearing impaired, and to provide specialized or supplemental telephone communications equipment to subscribers who are certified to be disabled, through a surcharge of not more than 1/2%. This bill was signed by the Governor on September 12 (Chapter 410, Statutes of 1989).

The following is a status update on bills reported in CRLR Vol. 9, No. 4 (Fall 1989) at page 136:

ACA 17 (Moore), which would increase the membership of the PUC from five to seven members and would abolish the requirement that the Governor's appointees be approved by the Senate, is pending in the Assembly Utilities and Commerce Committee.

AB 1974 (Peace), which would require the PUC to consider the environmental impact on air quality in air basins downwind from an electrical generating facility, is pending in the Assembly Utilities and Commerce Committee.

AB 1684 (Costa), which would require highway contract carriers to enter into a written contract for their services, and would require the contracts to be filed with the PUC, is pending in the Senate Energy and Public Utilities Committee.

AB 1506 (Moore) would authorize designated employees of the PUC assigned to the Transportation Division to exercise the power to serve search warrants during the course and within the scope of their employment if they receive a specified course in those powers. At this writing, this bill is in conference committee.

AB 338 (Floyd), which would provide that the California Supreme Court may transfer the review of an order or decision of the PUC to the First District Court of Appeal, or in its discretion, to another court of appeal, is pending in the Assembly Ways and Means Committee.

AB 1784 (Katz) would limit the maximum amount of the bond which must be filed with the PUC by highway carriers and common carriers of property who engage subhaulers or lease equipment from employees to $50,000. This bill is pending in the Senate inactive file.

The following bills died in committee: *SB 769 (Rosenthal)*, which would have required the PUC to exclude from

rates the amount utilities pay for buying power from affiliates; *SB 1124 (Rosenthal)*, which would have established standards for PUC approval of natural gas pipelines; *SB 1125 (Rosenthal)*, which would have established rules governing ex parte "off-the-record" communications with PUC Commissioners, staff, and ALJs; *SB 1126 (Rosenthal)*, which would have removed the PUC's authority to employ ALJs and would instead have required that all ALJs be employed by the Office of Administrative Hearings; *SB 1219 (Rosenthal)*, which would have provided a financial incentive for utilities to use cleaner-burning natural gas in place of fuel oil; *SB 1544 (Rosenthal)*, which would have required the PUC to establish standards for determining when a particular telecommunications market has become competitive; *SB 136 (Montoya)*, which would have prescribed the use of any funds received from payphones used by inmates in prisons; *SB 909 (Rosenthal)*, which would have required the PUC to report to the legislature on the feasibility and appropriateness of public utilities selling "extra space" in billing envelopes; *SB 1375 (Boatwright)*, which would have required telephone companies to inform each new subscriber that the subscriber may be listed in the directory as a person who does not want to receive telephone solicitations; *AB 902 (Killea)*, which would have established a rule for determining the value of a utility that is acquired under eminent domain proceedings; *AB 903 (Killea)*, which would have required any challenges to the validity of a municipal utility district incorporation to made within thirty days; *AB 1351 (Kelley)*, which would have repealed existing law and enacted new provisions for the regulation of dump truck drivers; *AB 1472 (Moore)*, which would have prohibited any telephone corporation from providing a new telecommunications service without first receiving authorization to do so from the PUC; *AB 1478 (Moore)*, which would have required the PUC to limit the amount an electrical corporation whose incremental fuel is natural gas could pay for electricity purchased from a private energy producer; and *AB 1797 (Moore)*, which would have required the PUC to license natural gas brokers and marketers.

LITIGATION:

Pacific Bell and General Telephone's efforts in trying to block "dial-a-porn" phone services have suffered another setback. In a recent case, Sable Communications alleged that Pacific Bell and GT lobbied local prosecutors to bring charges against Sable concerning its dial-a-porn service under obscenity laws. The phone companies then attempted to utilize PUC Rule 31, which would have required the immediate cut-off of such phone service once a magistrate found probable cause to believe a crime was being committed. In *Sable Communications of California v. Pacific Telephone & Telegraph*, No. 88-5586 (Nov. 22, 1989), the Ninth Circuit Court of Appeals ruled that application of Rule 31 would violate Sable's first amendment rights, and ordered PacBell and General Telephone to pay $150,000 to Sable in legal fees. The PUC was excused from paying legal fees because recent U.S. Supreme Court rulings have increased state agency protection against certain civil rights suits for damage.

FUTURE MEETINGS:

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

STATE BAR OF CALIFORNIA

President: Alan I. Rothenberg
Executive Officer: Herbert M. Rosenthal
(415) 561-8200
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 122,000 members, more than one-seventh 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; nine 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 282 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.

MAJOR PROJECTS:

Redistricting. Redistricting may be the most pressing of the State Bar's duties during 1990. The current nine-district division of the state has not changed since it was established by legislation in the 1930s. But due to the passage in September of SB 818 (Presley), a bill designed to force the Bar to redraw its district lines, redistricting has become a priority. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 137 and Vol. 9, No. 3 (Summer 1989) pp. 128-29 for background information.) SB 818 repeals the current district system as of June 30, 1990. And, in order to give adequate notice to would-be candidates for the Board of Governors, the new plan must be approved and in place between February and April.

When SB 818 was approved, the Bar hired a consultant, who subsequently presented the Board's Committee on