RECENT MEETINGS:

At its March 2 meeting in Palm Springs, BOE adopted six criteria for evaluating and selecting candidates for examination commissioners and/or consultants. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 150 for background information.) According to BOE's criteria, a candidate must: (1) be a graduate from an approved osteopathic medical school; (2) be currently licensed by BOE; (3) have either satisfied the CME requirements during the most recent CME requirement period or have been granted a waiver by BOE; (4) be a member in good standing of either a national, state, or local osteopathic professional organization; (5) demonstrate an interest in the academics or current concepts of osteopathic medicine by possessing a current faculty appointment to teach, by having CME credits within the past year, or through another means approved by BOE; and (6) have a current curriculum vitae on file with BOE. The candidate, if approved, would serve a two-year term and be eligible for reappointment.

Also at its March 2 meeting, BOE discussed the possibility of changing its name. This discussion was prompted by the recent name change by the Board of Medical Quality Assurance to "Medical Board of California." BOE is concerned that its name confuses consumers, who may not realize that the jurisdiction of the "Board of Osteopathic Examiners" extends beyond examinations. Also, BOE noted that consumers attempting to find the regulatory agency dealing with an osteopath might be unable to locate BOE in a directory, since they may not know to look under "Board." BOE will continue to consider a possible name change at future meetings.

Also, BOE discussed the possibility of issuing licenses every two years, instead of the current practice of issuing them every year. BOE will take this subject up at a future meeting.

FUTURE MEETINGS:

November 2 in Sacramento.

PUBLIC UTILITIES COMMISSION

Executive Director: Neal J. Shulman
President: G. Mitchell Wilk
(415) 557-1487

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

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

SCE's Proposed Acquisition of SDG&E. On May 16, under the direction of PUC Administrative Law Judges (ALJ) Lynn Carew and Brian Cragg, the PUC finally began its formal evidentiary hearings on Southern California Edison's (SCE) proposal to take over San Diego Gas & Electric Company (SDG&E), which—if approved—would create the largest electric utility in the nation. (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 151-52; 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.) The PUC hearings began with consideration of policy and general issues, and will eventually cover environmental impacts surrounding the merger, competition issues such as market power and affiliated transactions, net costs and benefits of the merger, and ratemaking issues.

The hearings, which will be held in San Diego throughout the summer and early fall, were preceded by the release of several reports on various aspects of the proposed takeover. On February 8, the Commission's Division of Ratepayer Advocates (DRA) recommended that the PUC reject the merger. DRA argued that the proposed merger fails to satisfy the requirements of Public Utilities Code section 854, which requires that the merger "provide net benefits to ratepayers in both the short-term and the long-term, and provide a ratemaking method that will ensure, to the fullest extent possible, that ratepayers will receive the forecasted short- and long-term benefits." While DRA found that the merger would provide some small short-term benefits, it was not satisfied that long-term benefits would be passed on to ratepayers. In fact, DRA concluded that, beyond 1994, "the proposed merger could result in inefficiencies and higher rates compared to those expected on a stand-alone basis." DRA further noted environmental problems presented by the merger, including worsening air quality in southern California. DRA foresees an estimated 22-25% average increase in power plant emissions in the South Coast Air Basin unless specific mitigation measures are implemented.

DRA also concluded that the proposed merger raises serious anticompetitive concerns. The merger would increase SCE's already substantial market power in the Southwest and remove SDG&E as a major purchaser of economy energy—both of which raise issues of anticompetitiveness. In addition, the merger would contribute to what DRA views as a continuing and serious problem of Edison purchasing energy from its Mission Energy affiliate (see CRLR Vol. 9, No. 4 (Fall 1989) p. 133 for

background information). Edison is already the second-largest utility in the country and, according to DRA's analysis, exceeds the size at which an electric utility can be expected to have the lowest average cost. Because Edison is already larger than minimum efficient scale, DRA concluded that the merger would not produce the economies of scale and rate reductions the two utilities have estimated.

On February 7, Attorney General John Van de Kamp also announced that he opposes the merger, citing antitrust violations and a dramatic increase in air pollution in the Los Angeles Basin. Van de Kamp said his office would oppose the merger at the hearings of both the PUC and the Federal Energy Regulatory Commission (FERC), and will seriously consider litigation to prevent a merger should one be administratively approved. The Attorney General's recent victory in *California v. American Stores Co.*, No. 89-258 (April 30, 1990), affirms the authority of states to pursue a divestiture remedy for mergers which constitute a violation of federal antitrust laws. (*See infra* LITIGATION for further discussion of this case.)

FERC began its hearings on the proposed takeover on February 12. In a prehearing report, FERC staff concluded that if certain conditions are met, the proposed merger would not substantially reduce competition in the wholesale power markets of the west. Staff suggested conditions which would ensure that small cities have access to SCE's transmission lines to purchase power from an Edison competitor. During the 57-day FERC hearings, Edison witnesses conceded that SCE's oft-repeated promise of lower rates is wholly contingent on approval of the PUC, bolstering the claims of merger opponents that Edison's promises are disingenuous. The FERC hearings, which focused to a great extent on the ability of the merged corporation to serve small cities and towns currently served by SDG&E, included the presentation of more than 80 witnesses and 1,800 exhibits. The FERC hearings concluded on May 4, followed by written briefing by the parties. A recommended decision by FERC ALJ George P. Lewnes, is expected this fall; FERC itself is not expected to rule until the end of 1990.

On April 9, the PUC released a draft environmental impact report (DEIR) on the effects of the merger, concluding that there would be significant increases in air emissions in the Los Angeles, Ventura, and southeast desert areas with a merger, while air quality in San Diego would be substantially improved (because more existing Edison power plants would be used in the greater Los Angeles area instead of older, less efficient plants in San Diego). Although the DEIR cites several "significant" environmental impacts, it says all of them can be mitigated to less than significant levels.

Many air quality officials disagreed with the DEIR, saying that prevailing winds will ship more Los Angeles-based smog to San Diego. Merger opponents argue that the DEIR supports their theory that San Diego customers will have to pay for Los Angeles-area air pollution mitigation. The DEIR must undergo a public comment period before it is finally approved.

Ratepayer Notice Program. On February 23, the PUC Public Advisor submitted a report to the Commission regarding the Ratepayer Notice Program. The program has been in operation since 1987, and requires utilities to include inserts in billing envelopes informing ratepayers that they may contact the Public Advisor for a list of intervenor groups which represent the public interest in PUC proceedings; theoretically, the consumer will in turn contact the ratepayer organization of its choice and join or otherwise support it. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 1 for detailed background information.) The report found that the PUC's current Ratepayer Notice Program has failed to meet its goals because very few ratepayers contacted intervenors. The report concluded that the two-step process of writing first to the Public Advisor, and then to various intervenor groups, appears to be the reason for the failure of the program to meet its primary goals. The Commission formally accepted the report at its February 23 meeting and is expected to initiate a proceeding to investigate alternatives in the future.

PUC Looks at the Airline Industry in California. On March 12, the PUC's Transportation Division Staff completed a study of intrastate air passenger service, fares, and airport gate allocations as was required by Concurrent Senate Resolution 50 (Garamendi) (Chapter 171, Resolutions of 1989). The staff report draws some conclusions and recommends areas for further study, but cautions that the state may be unable to address problems with in-state airline prices, services, or routes, because state authority has been preempted by the federal Airline Deregulation Act. The PUC has not regulated the airline industry since the Airline Deregulation Act of 1978.

The staff study of in-state airline service and fares was based on quarterly actual fare data from the federal Department of Transportation for 27 city-pairs in California, thirteen of which accounted for 96.8% of total California enplanements in 1988. The staff reported several findings, including the following: the number of passengers increased by 58%, while the number of available seats grew by 76%; real in-state fares rose by more than 40% above inflation from 1979 to 1988, and fare levels became increasingly volatile in the last four quarters studied; fare increases are partly due to the increased demand in California for air transport associated with the higher California per capita disposable income; and fare increases also appear to be statistically related to seven nationwide mergers that took place in 1986.

The report concludes that although a number of current practices appear to restrict competition in the in-state airline industry, the complexity of the industry and the limited assessment made by the PUC staff leaves many questions and areas which require additional research. Staff suggests that areas which can be properly addressed by other state agencies include: allocation of gates and terminal facilities; availability and quantity of consumer information; airline incentives for travel agents; and studies of the airline market structure.

Several legislators have taken an interest in this issue *(see infra* LEGISLATION).

PUC Investigates Placement of Cellular Telephone Transmitters. In January, the PUC initiated a rulemaking procedure to determine what rules are needed to provide for appropriate public and environmental review of new cellular telephone transmission tower sites. Because mobile phones are one of the most rapidly growing sectors of the telecommunications industry, nearly every county in the state is faced with problems relating to the placement of the cellular transmitters. The PUC is concerned with drafting rules and regulations to preserve community values and to avoid adverse environmental effects.

Because of the hectic pace of cellular tower construction in the state, the PUC issued interim rules on March 28 to govern the placement of expansion sites. The rules apply immediately and are based on public comments from the industry, public officials, and consumers. The interim rules address the two basic types of jurisdiction with which the PUC must deal in bringing order to the state's cellular industry: applications to provide cellular service in new geographic areas, and construc-

tion of additional towers to fill in coverage gaps in existing areas. Certain major concerns are met by the interim rules, including the right of property owners near a proposed installation to be assured of advance notice and an opportunity to be heard; and the elimination of duplicative permit procedures by first requiring a cellular company to seek and obtain zoning and building permits from local authorities, and to comply with California Environmental Quality Act (CEQA) requirements at a local level.

The Commission expects to issue final rules following review of a staff report which summarizes comments received in workshops held earlier this year.

New Incentive Regulatory Framework Open for Comment. On February 23, the PUC opened a proceeding which will serve as a forum in which to raise issues relating to the new incentive regulation program for Pacific Bell and GTE California. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 151 and Vol. 9, No. 4 (Fall 1989) p. 133 for background information.) This forum will remain open for the next two years. "A Forum to Consider Rates, Rules, Practices and Policies of Pacific Bell and GTE California" will enable individuals, businesses, and organizations to bring issues to the attention of the PUC by submitting a petition when petitioners have shown that existing procedures are not adequate or appropriate to meet their needs, and when petitioners have unsuccessfully sought informal resolution of a problem with the assistance of the PUC's Advisory and Compliance Division.

PUC Investigation of Access to Utility Customers' Information. On January 24, the PUC opened an investigation to consider what customer information possessed by public utilities in California should be made available to other public utilities and to competitors, and what measures should be taken to protect the privacy of customer information. While the focus of the investigation will be on these issues as they affect local phone companies, the eventual resolution of this investigation is expected to apply to gas and electric utilities as well.

One issue which will undoubtedly be addressed is "Caller ID"—a new service also known as "Automatic Number Identification", which flashes the number of the caller on a screen located at the receiver's telephone. Although this system has not yet been approved for use in California, other states have implemented the service, and its introduction has already sparked heated debates on telephone and privacy rights. A caller may be unable to withhold his/her identity when he/she calls another. This effect may have a positive effect on telephonic harassment and obscene phone calls; however, it may have a detrimental effect on other services such as phone counseling centers, suicide hotlines, and anonymous tips about criminals. The phone company may be in a position to market a service called "Caller Block", which would block "Caller ID". One writer commented, "It's a great business; the phone companies get you both ways."

PUC Rules Some Trucks Must Use Covers. On March 28, the PUC ruled that trucks carrying rocks, sand, gravel, or other material that is likely to spill on California roadways will have to use tarpaulin covers as of September 1, 1990. The PUC said its study of vehicle damage claims due to truck spillage showed no increase or decrease since January 1, 1989, the effective date of a state law requiring truck modification to prevent spills. The tarp requirement takes effect this September unless the PUC finds a significant reduction in vehicle damage claims. The requirement does not apply to shipments of petroleum, coke, or asphalt, or any load that is at least six inches below the upper edge of the carrier.

PUC ALJ Reopens COPT Proceedings. In April, in response to consumer complaints about overcharging and from payphone companies about anticompetitive practices, the PUC reopened an investigation into the customer-owned pay telephone (COPT) industry in California. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 152 and Vol. 9, No. 4 (Fall 1989) p. 134 for background information.)

Although the three major parties—Pacific Bell, Intellicall, and the California Payphone Association—seemed to have come to an agreement among themselves, ALJ Michael Galvin indicated that he was not satisfied that other parties had a chance to review the agreement, and reopened the proceeding to enable all of the parties to consider the agreement. An evidentiary hearing was held on April 9.

On May 11, ALJ Galvin issued a set of proposed rules which would cover all pay telephones within the service territory of PacBell, GTE California, and Contel of California, including the following: a basic local call on any pay telephone would cost no more than twenty cents; payphones would give customers free access to 911 emergency, 411 directory assistance, 611 repair for PacBell phones, payphone providers' facilities for service, trouble, complaints, refunds, and general assistance, and a utility operator when a caller dials specified numbers; each payphone would have to display clearly cost, dialing instructions, and company identification on easy-to-read and understandable signs; and public policy payphones, such as those on bridges or highways for use in emergencies, would have to be paid for by all pay phone providers.

The PUC was expected to rule on Judge Galvin's proposed rules in June or July.

PUC Allows Pacific Bell to Return to Cold Selling. The problems associated with Pacific Bell's "cold selling" of its services reached scandalous proportions during a two-year period following the break-up of the Bell system. (See CRLR Vol. 7, No. 2 (Spring 1987) p. 90 and Vol. 6, No. 4 (Fall 1986) p. 90 for background information.) On February 23, the PUC lifted its cease and desist order, giving Pacific Bell the green light to initiate PacBell telemarketing calls to residence and small business customers. The order, which had been in effect since May 1986, banned certain sales practices including "cold selling" telemarketing, sales quotas, collecting deposits, renaming and packaging basic service, and free trials of COMSTAR services.

While lifting the order removes restrictions on outbound telemarketing and sales quotas, all requirements regarding what PacBell says about its products, collection of deposits, and free trials of any services remain in place. PacBell has chosen not to reinstate sales quotas for service representatives or their supervisors as an internal safeguard.

PacBell's outbound calling efforts will continue to be closely monitored by the PUC as part of an independent five-year audit of PacBell's ongoing performance. Also, Field Research Corporation (FRC) is interviewing residential and small business customers who recently called PacBell to initiate service order activity. FRC will compile the information it obtains and make recommendations for benchmarks for future outbound calling activity.

LEGISLATION:

AB 2836 (Moore). Existing law prohibits the costs and expenses of implementing a program of solar energy development from being passed through to the ratepayers of an electrical or gas corporation. As amended May 30, this bill prohibits the costs and expenses of implementing a program of solar energy

development from being passed through to the ratepayers of an electrical or gas corporation until the corporation is authorized to do so by the PUC. This bill requires the PUC to determine that it is in the ratepayers' interest to do so, and requires the electrical or gas corporation to notify the PUC if an affiliate of the corporation seeks to implement a solar energy development program. This bill was signed by the Governor (Chapter 339, Statutes of 1990).

AB 1568 (Epple) would have required the PUC to adopt rules governing the settlement of administrative proceedings, and prohibited the settlement of any proceeding establishing a rate, fact, or rule unless all intervenors who contest the settlement have been provided an opportunity for reasonable discovery and an evidentiary hearing on contested issues of material fact. This bill was vetoed by the Governor.

AB 2568 (Moore), as amended May 2, would prohibit the PUC from issuing or authorizing the transfer of a permit to operate as a livestock carrier, agricultural carrier, tank truck carrier, or vacuum truck carrier except upon a showing before the PUC, and a finding by the PUC, that the applicant or proposed transferee meets specified requirements. This bill is pending in the Senate Energy and Public Utilities Committee.

AB 2928 (Moore), as amended June 1, 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 satisfactorily complete a specified course. This bill would also permit the PUC to impose a fine against any charter-party carrier which holds itself out as a carrier without a valid certificate or permit, or which advertises without displaying the number of its permit or identifying symbol, as required by existing law. Finally, AB 2928 would permit the Executive Director of the PUC to seek a permanent or temporary injunction or restraining order when he/she determines that a charter-party carrier is engaging in any acts in violation of the Passenger Charter-Party Carriers Act. This bill is pending in the Senate inactive file.

AB 3165 (Frizzelle), as amended April 16, would require the PUC to consider the state's need to provide sufficient and competitively priced natural gas supplies for present and future residential, industrial, and utility demand in issuing a certification of convenience and necessity for additional natural gas pipeline capacity proposed for construction within this state. This bill would also require, when the PUC makes a specified finding, that it issue certificates of convenience and necessity to all applicants and for all projects which otherwise comply with the Public Utilities Act without requiring competitive hearings or imposing any additional nonstatutory requirements. This bill is pending in the Senate Energy and Public Utilities Committee.

AB 3508 (Burton). Under existing law, whenever the PUC finds, after a hearing, that the rates demanded, observed, charged, or collected by any public utility for or in connection with any service, product, or commodity, are insufficient, unlawful, unjust, unreasonable, discriminatory, or preferential, the PUC is authorized to determine and fix, by order, the just, reasonable, or sufficient rates to be charged. This bill would specify that these provisions apply to passenger air carriers, as defined. This bill is pending in the Senate Energy and Public Utilities Committee.

AB 3691 (Moore), as amended May 2, would enact the Telecommunication Ratepayers' Bill of Rights and would list the rights of telecommunication ratepayers in this state. This bill is pending in the Senate Energy and Public Utilities Committee.

AB 3696 (Moore), as amended May 15, would require the PUC to require that each electrical, gas, and telephone corporation with gross annual operating revenues in excess of $1 billion include in a specified report information concerning the racial, ethnic background, and gender of all employees, together with a plan for increasing the representation of women and minorities in that group of employees, along with information on the implementation of programs undertaken pursuant to these plans. This bill requires the PUC to report to the legislature on the progress of activities for the promotion of women and minority employees undertaken by the subject employees. This bill is pending in the Senate Energy and Public Utilities Committee.

AB 3986 (Moore), as amended May 8, would permit DRA to seek rehearings of orders and decisions of the PUC, and to appeal those decisions and orders to the courts. This bill is pending in the Assembly Utilities and Commerce Committee.

SB 1723 (Roberti), as amended January 22, would direct the PUC to create an Office of Airline Consumer Information to represent the interests of airline consumers, and would specify the duties of the office. This bill would also require passenger air carriers with annual gross intrastate generated revenues in excess of $25,000,000 to pay an annual charge for the purpose of supporting the activities of the office. This bill is pending in the Assembly Utilities and Commerce Committee.

SB 1836 (Rosenthal), as amended April 16, would require the PUC to promulgate a rule or order requiring all local exchange carriers to include in their telephone directory and to annually provide to all subscribers in the form of a billing insert, information concerning emergency situations which may affect the telephone's network. This bill is pending in the Assembly Ways and Means Committee.

SB 2103 (Rosenthal), as amended May 24, would require the PUC, in cooperation with the California Energy Commission, the state Air Resources Board, air quality management districts and air pollution control districts, electrical and gas corporations, and the motor vehicle industry, to evaluate and implement policies to promote the development of equipment and infrastructure needed to facilitate the use of electric power and natural gas to fuel low-emission vehicles. The bill would require the PUC to hold public hearings on these matters, consider certain specified policies, and provide progress reports to the legislature. This bill is pending in the Assembly Transportation Committee.

SB 2145 (Rosenthal), as amended June 4, would require the PUC to annually publish a list of the cellular radio telephone carriers operating within each designated cellular area, to be known as the "Cellular Carrier Service and Rate Directory." The directory would be required to be available at no cost to the public and to include, next to each carrier's name, a telephone number for customer information on service and rates. This bill is pending in the Assembly Ways and Means Committee.

SB 2258 (Rosenthal), as amended June 13, would require the PUC to investigate passenger air carriers doing business in this state, and would permit the PUC or its staff to require those carriers to provide detailed information concerning specified matters necessary to conduct the investigation. The bill would require the PUC to annually provide the legislature with a progress report on its investigation, together with its recommendation for enhancing competition and reducing fares. This bill is pending in the Assembly Utilities and Commerce Committee.

SB 2413 (Rosenthal). Under existing law, when the PUC orders rate refunds to be distributed, it requires public utili-

ties to pay refunds to all current utility customers and, when practicable, to prior customers on an equitable pro rata basis. This bill would provide that whenever the PUC orders a local-exchange telephone carrier to distribute excess profits, it shall require the carrier to rebate its excess profits in accordance with that provision. This bill is pending in the Assembly Utilities and Commerce Committee.

The following is a status update on bills described in CRLR Vol. 10, No. 1 (Winter 1990) at page 152:

AB 1506 (Moore), which 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 complete a specified course in those powers, has been enrolled to the Governor.

ACA 17 (Moore), which would increase the membership of the PUC from five to seven members and 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 Senate Energy and Public Utilities 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 338 (Floyd), which would have provided 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, failed passage in the Assembly.

AB 1784 (Katz) was substantially amended and no longer pertains to the PUC.

LITIGATION:

In *United States of America v. Western Electric Co., et al.*, 900 F.2d 283 (Apr. 3, 1990), the U.S. Court of Appeals for the District of Columbia Circuit upheld a district court's ruling that, pursuant to the 1982 consent degree that severed the seven Regional Bell Operating Companies (BOCs) from AT&T, the BOCs may not provide interexchange (long distance) services or manufacture telephone equipment. However, the court affirmed the district court's removal of the restriction against BOC participation in non-telecommunication businesses, which had been an element of the consent decree.

Another element of the consent decree prohibited BOCs from providing information services. Despite the absence of opposition from any party to the litigation, the district court refused to lift this prohibition, citing the lack of "significant, relevant change" in market conditions justifying removal of this restraint. The Court of Appeals reversed and remanded this issue to the district court, directing that a more flexible standard of review be applied.

In *Napa Valley Wine Train, Inc. v. Public Utilities Commission*, No. S007919 (Mar. 19, 1990), the California Supreme Court overturned a PUC ruling requiring compliance with the California Environmental Quality Act (CEQA) before a company could initiate passenger service on a railroad right-of-way that was already in use. Napa Valley Wine Train, Inc., wished to take over a railroad line that had not been used since 1985. The PUC claimed jurisdiction over the matter and barred Wine Train from instituting passenger service until it had complied with CEQA.

However, section 21080(b)(11) of the Public Resources Code provides that a "project for the institution or increase of passenger or commuter service on...rail rights-of-way already in use" is exempt from environmental review under CEQA. The court found that even though the railroad line in question had been out of use for three years, its existence alone satisfied this requirement.

In *San Diego Gas & Electric Company v. Public Utilities Commission*, No. C89-3551-WWS, SDG&E is challenging a PUC finding that $21 million paid to the Public Service Company of New Mexico and to Tucson Electric Power Company for electricity is an unreasonable cost that SDG&E may not recover from its ratepayers. Regarding a specified contract entered into by SDG&E, the PUC determined that the utility failed to "consider and analyze carefully several of the important [contract] terms" and "fail[ed] to react appropriately to changing circumstances and information that affected key terms of the contract." SDG&E claims, among other things, that the federal "filed rate" doctrine, as reaffirmed by the Supreme Court in *Nantahala Power & Light v. Thornburg*, 476 U.S. 953 (1986), requires a state utility commission to allow, as reasonable operating expenses, costs incurred as a result of paying a wholesale price for electric energy.

The PUC has filed a motion to dismiss based on lack of jurisdiction, and both sides have filed motions for summary judgment. A March 19 hearing on these motions was cancelled and has not yet been rescheduled.

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