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. Formal evidentiary hearings on Southern California Edison's (SCE) proposal to take over San Diego Gas & Electric (SDG&E), which began in May, concluded on August 4. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 207-08; Vol. 10, No. 1 (Winter 1990) pp. 151-52; and Vol. 9, No. 4 (Fall 1989) p. 133 for background information.) In mid-July, the PUC approved a request by SCE to complete the hearings earlier than planned by adhering to an accelerated and compacted schedule. SCE indicated that it wants a final decision on the case by the end of the year. The Commission agreed with SCE that the hearing process should be expedited to allow it enough time to make its decision by December 31, as the terms of Commissioners Frederick Duda and Stanley Hulett expire at midnight that day. On September 6, however, PUC President Mitchell Wilk said that if no decision is made by December 31, the three remaining commissioners would decide the case.

Utility Consumers' Action Network (UCAN), the City of San Diego, Attorney General John Van de Kamp, state Senator Herschel Rosenthal, and the PUC's Division of Ratepayer Advocates (DRA), among others, protested the accelerated hearing schedule in the merger case, warning that curtailed or limited testimony and cross-examination might deny the intervenors due process. A procedural error successfully appealed in court could invalidate the entire proceeding and the Commission's ultimate decision.

If the merger is approved, SCE would be the largest privately-owned utility in the nation. DRA staff has called the SCE/SDG&E merger "momentous," stating that if the merger is allowed to go forward, it would irreversibly change the utility industry structure in California. In its final brief filed in September, DRA stated that it is now even more resolutely opposed to the merger than it was last March when it expressed "grave concerns," and stated that the merger is not good for ratepayers; no real prospects for savings to ratepayers exist; and the proposed consolidation cuts directly against the grain of encouraging a more competitive structure in the energy industry. The DRA brief asserted that the "bigger is better" argument does not apply here, citing studies showing that SCE is already far beyond the optimal size for an energy utility and that improved efficiencies are unlikely. In fact, DRA contended that there is a real possibility that rates will rise as a result of the merger. The DRA brief also argued the following:

-The merger is uneconomic and the inherent risks outweigh any potential benefits; there are no meaningful assured savings beyond 1994, and SCE's estimates are based on incorrect assumptions and faulty analyses.

-SCE's savings estimate is only 1.5% of a ten-year forecast of $110 billion revenue requirement—a narrow margin for forecasting error.

-The merger will not improve resource reliability or diversity.

-SCE's proposed 10% cut in SDG&E's rates is a public relations game.

-The citizens of San Diego are largely opposed to the merger.

-There are no conditions for the merger that sufficiently ameliorate the inherent risks of the merger, and which make up for SCE's failure to guarantee savings beyond 1994. Conditioning will not transform this inherently uneconomic merger into one that is beneficial to customers.

Participants in the merger case submitted final briefs on September 10. The two administrative law judges (ALJ) assigned to the merger case, Lynn Carew and Brian Cragg, were expected to make their recommendation to the Commission on the merger sometime in November.

SCE Fined for Sweetheart Power Purchase Deal. Concluding a two-year investigation, the PUC recently penalized SCE $48.3 million for a sweetheart power purchase contract between the utility and an unregulated sister firm. The penalty, which will be paid by reducing shareholder dividends, involves a contract between SCE and Kern River Cogeneration Company, a company jointly owned by SCE's unregulated sister firm, Mission Energy Company, and Texaco Oil Company.

PUC officials alleged that during the mid-1980s, SCE paid too much for the electricity purchased from the 300-megawatt cogeneration plant in Kern County. As a result, monthly bills for SCE customers increased by the amounts of the overpayment. The overpayment then increased the sister firm's bottom-line profits, which in turn increased SCE's stockholder dividends.

In addition to the fine, the PUC ordered SCE to: (1) renegotiate the contract that resulted in the penalty and obtain conditions and terms that will better benefit SCE customers; (2) discontinue buying power from sister firms unless the purchases are accomplished under strict state-regulated "standard offer" contracts; (3) buy power from sister companies and outside firms only with prior state approval of the terms of each contract if non-standard offer contracts are contemplated; and (4) abide by new regulations requiring periodic reports by SCE to assist the PUC in monitoring its power purchases.

The PUC's penalty decision applies to only three years of a twenty-year contract between SCE and Kern River; subsequent years of the same contract are still under investigation by the state and could result in additional penalties if similar circumstances are found. In addition, the PUC is investigating seven other major SCE contracts to buy power from affiliated firms.

Immediately after the decision was announced on September 25, SCE pledged that the utility would appeal the Commission's ruling.

Cellular Telephone Industry Regulations Issued. On June 6, the PUC released a comprehensive set of rules aimed at simplifying how cellular utilities can adapt their rates to changing market conditions, while assuring customers a fair price for service. The Commission's rules also seek to ensure that resellers (non-utility companies which buy large blocks of cellular numbers for resale) are protected against cellular utilities marketing numbers themselves at wholesale rates and applying (or cross-subsidizing) revenues from those sales to their own retail efforts.

Under the rules, an application for a decrease in rates is effective immediately when filed. A company may request a decrease as large as 10% at any one time, and as often as it sees fit. Once filed with the PUC, such changes will go into effect on a temporary basis until a twenty-day protest period runs. If no protests are filed, the rate change is permanent after twenty days. Under the rules, either a carrier or a reseller may reduce rates (within the guidelines), thus stimulating competitive pricing. Proposed price increases will still require that a utility file a formal request with the PUC and obtain Commission approval. This approach entails a thirty-day notice period which allows the rest of the industry to know what the competition is planning.

The PUC's order classifies reseller utilities as "non-dominant carriers." This requires resellers to obtain certification as small long distance carriers, which provides various benefits such as being able to submit disputes to the PUC; it also makes it easier for resellers to raise investment capital and to secure loans.

PUC Issues Inside Wiring Maintenance Interim Opinion. On June 20, the PUC issued an interim inside wiring maintenance (IWM) opinion, requiring California's local telephone companies to reduce their rates by the amount of revenues collected for providing IWM services. According to ALJ Kim Malcolm, this may amount to $50 million for Pacific Bell customers and $30 million for General Telephone of California (GTE-C) customers. In the future, the amount will be credited against basic local phone service charges.

The opinion denied utility requests to accelerate programs for the installation of standard network interface devices and found that utility transfers of IWM operations to unregulated affiliates are void. Also, the opinion ordered the utilities to tariff their IWM services.

Before the Federal Communications Commission (FCC) deregulated IWM several years ago, the cost of IWM was included in monthly phone bill charges. The purpose of the FCC order was to increase competition and allow customers to choose a competing company for repair service. However, most customers continue to pay their local phone company for the service through a 50-cent monthly maintenance policy or a charge of $65 per repair visit. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 133 for background information.) In response to this, the PUC opinion ordered the telephone utilities to direct their employees to inform customers that they may have competitive alternatives available for IWM services. (*See supra* report on CENTER FOR PUBLIC INTEREST LAW; *see also* CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 31 for background information.)

PUC Awards $2.1 Million From Telecommunications Education Trust. The Telecommunications Education Trust (TET) is a $16.5 million fund established to inform California consumers about telecommunications issues; the funds consist of penalties assessed by the PUC against Pacific Bell for marketing abuses in 1985-86 which directly affected limited-English speakers, low-income or inexperienced consumers, other residential consumers, and small business owners. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 133; Vol. 9, No. 2 (Spring 1989) p. 117; and Vol. 8, No. 4 (Fall 1988) p. 119 for background information.) On June 20, the PUC announced its grants for the second year of the five-year program, awarding a total of $2.1 million from the fund to 21 organizations, including the following:

-The National Geographic Society Education Foundation, based in Washington, D.C., received $301,934 to conduct a two-year education program involving Latino students in 24 California schools.

-La Cooperative Campesina de California received $282,188 for 18 months to expand statewide its Guia del Campesino (Farmworker Guide), a toll-free audiotext information line serving the state's farmworker community.

-Northern California Indian Development Council received $222,864 for a one-year program to set up a voice-mail system statewide to provide American Indians information and referrals to one of fifteen core emergency and support service agencies.

Lifeline Program Surcharge Increased. Beginning July 1, California telephone companies increased from 2.5% to 3.4% the surcharge they collect on long distance telephone calls within the state to fund the Universal Lifeline Telephone Service (Lifeline). The PUC estimates that the funding required to operate Lifeline through June 1991 is $165.6 million. The surcharge will raise about $166.4 million, and will continue through June 1991. Approximately 1.5 million low-income subscribers take advantage of the Lifeline program, which seeks to ensure that every household that wishes can have at least basic phone service.

PUC ALJ Proposes Local Toll Phone Service Competition. On July 27, PUC ALJ Charlotte Ford-TerKeurst issued a proposed decision which would open to competition from long distance telephone and other telecommunication companies provision of most local phone services, including toll service, within each of the state's ten local phone service areas. Ford-TerKeurst also recommended a major rebalancing of local telephone company prices to bring prices closer to service costs, while allowing local telephone companies to limit pricing flexibility so that they can compete more equally under the new competitive conditions.

Specifically, the proposal would allow competition in offering within each of the local phone service areas "switched toll services," including basic long distance service, toll-free "800" services, and transmission of "900" information services. Full competition would be permitted for operator services and pay telephone services as soon as new rates are set for the local telephone companies. No competition would be allowed for basic local service or zone usage measurement (ZUM) phone service, 911, local directory assistance, and certain operator services which are currently provided without charge, *e.g.*, calls to verify that a line is busy; all of these would continue to be provided by the local telephone company.

Customers would have to access long distance companies for completion of toll calls within the local areas by dialing "10XXX" codes—that is, by dialing the numbers "1" and "0" followed by a three-digit code specifying the long distance company, followed by the number they are calling. Local phone companies would be directed to explain clearly in their directories how to use the 10XXX dialing.

The PUC is expected to make a final decision on this matter later this year.

Pay Telephone Service Standards Issued. On June 6, the PUC released guidelines which seek to establish a standard level of service and standard charge for a local call from all pay phones, whether operated by one of the three major local phone companies or by a private independent company. The decision requires the Pacific Bell, GTE-C, and Contel of California to adopt the standards, and strongly recommends private companies to do the same. Otherwise, independent phone companies must demonstrate to the Commission why they should not be required to implement consumer safeguards. PUC's consumer safeguards seek to accomplish the following:

-allow customers to dial, without cost and without inserting a coin: 911 emergency assistance, 411 directory assistance, and 611 repair service; the pay phone provider, to request service, report trouble with the phone or service, make a complaint or request a refund or general assistance; "0" (for local operator assistance), 950-XXX or 10XXX (to access a long distance telephone company), and 800 XXX-XXXX (toll-free calls).

-allow customers to make both coin and non-coin local and long distance calls.

-have a clearly displayed, easily readable sign that includes specified information, including the cost and time limit (if any) of a local call, instructions for dialing, and the name and phone number of the pay phone provider.

Also, under the PUC's directive, customer-owned pay telephone providers (COPTs) which are now charging 25 cents for a local call must reduce the charge to 20 cents, which is the charge for a local call made from a major local phone company's pay phone; the charge will remain 20 cents for the next five years; the minimum length for a local coin call will be 15 minutes, and a beep or other warning will alert the caller to deposit more money to continue the call; all pay phones must return coins for any uncompleted call; and local phone companies and COPTs may charge a 25-cent service charge for calls when the caller does not use coins but instead charges the call or calls collect. Further, to improve the quality of COPT service, Pacific Bell and GTE-C must allow COPTs to be connected to their networks to the extent feasible.

The PUC decision is a result of an investigation which began in 1988 in response to complaints about COPT service from customers and complaints from COPTs and local phone companies about the regulation of COPTs. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 209; Vol. 10, No. 1 (Winter 1990) p. 152; and Vol. 9, No. 4 (Fall 1989) p. 134 for background information.)

1989 Deaf and Disabled Telecommunications Service Programs Report Released. In June, the PUC released its 1989 annual report on the fiscal status of the Deaf and Disabled Telecommunications Service Programs established and funded pursuant to Public Utilities Code section 2881. In 1989, the PUC directed that a surcharge of .3% be applied uniformly to each telephone corporation subscriber's intrastate telephone service, both within a service area and between service areas, with limited exceptions. The report estimates that the surcharge will generate $39.4 million in revenue for 1989 and $33.1 million in 1990. At this rate, the report states that the Program should be adequately funded through 1992.

The Deaf Equipment Acquisition Fund Program helps provide telecommunication devices for the deaf; these devices allow hearing-impaired persons to communicate with other hearing-impaired users either directly or with the assistance of relay operators. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 134; Vol. 9, No. 2 (Spring 1989) p. 118; and Vol. 8, No. 4 (Fall 1988) p. 120 for background information.)

Trucking Rate Regulation Controversy Continues. On July 11, in *Ad Hoc Carriers Committee v. PUC*, No. S014612, and *California Trucking Association v. PUC*, No. S014617, the California Supreme Court denied petitions for writ of mandate and rejected a challenge by the California Trucking Association (CTA) and other trucking groups to the PUC's recent relaxation of trucking rate regulation. This ruling upholds the PUC's October 1989 (D.89-10-039) and February 1990 (D.90-02-021) orders relaxing its regulation over general freight carriers.

The October 1989 decision—which was stayed due to opposition by the Teamsters, various trucking trade associations, and trucking companies—liberalized the "prior approval" system for common carrier rates; instead of filing rates with the PUC as part of a published tariff system, common carriers were allowed to set rates within a "zone of reasonableness" without seeking additional authority. Consistent with this "zone of reasonableness," common carriers were allowed to increase rates a maximum of 10% during a twelve-month period, and to decrease rates to the level of their costs. In return for this liberalization, common carriers were required to provide service, at least one day per week, to each community for which they have filed tariff rates. Further, the PUC expressed the intention of affirmatively monitoring the carriers for compliance with safety laws and regulations. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 124; Vol. 9, No. 2 (Spring 1989) p. 118; and Vol. 9, No. 1 (Winter 1989) p. 106 for background information on this proceeding.)

Under the new program, contract carriers were given even more flexibility. Contract carriers are those which serve specific shippers under a specific bilateral agreement. Unlike common carriers, they do not offer themselves to the marketplace at previously published tariffed rates. Contract carriers, including the contract operations of common carriage companies, were completely deregulated (except for antitrust prohibitions against below-cost pricing).

On February 7, the Commission further defined the "zone of reasonableness" for common carriers. The bottom (or minimum) rate of this zone is based on minimum wage calculations, rather than the actual labor charges used by carriers. The Commission also lifted the stay on its October 1989 order, and stated that the new flexible regulatory program would go into effect on March 15.

This ruling prompted CTA to file a petition for writ of mandate on March 15 to the Supreme Court (PUC decisions are appealed directly to the Supreme Court). CTA contended that the California Constitution (Article XII, section 4) and Public Utilities Code section 454 *et seq.* requires the Commission to find each rate change to be justified, and that reliance on marketplace forces constitutes an abdication of required oversight. CTA also argued that the common carrier requirement of only ten days' notice prior to rate change (rather than thirty days) violates the terms of Public Utilities Code section 491, which requires the latter thirty-day period prior to the effective date of a new rate. However, the Supreme Court denied review of the PUC's decision.

The struggle over the degree of competition to be applied to trucking continues. Since 1941, the pendulum has swung in the direction of regulatory control rather than free-market competition. Consumer critics and conservative economists have atypically agreed that the regulation which evolved at the federal and state levels was excessive, costly, and protective of industry interests. Conservative economists argued that the small fixed costs of trucking and its ability to adjust its invested capital to changes in volume made it an ideal industry for competition. Consumer critics complained that the actual system of regulation was not based on maximum rates to protect consumers from a high-fixed-cost natural monopoly, such as a utility, but was rather a "minimum rate" system or rate floor to protect industry profits and inefficiencies. Critics charged that the minimum prices were proposed by trucking cartels called "rate bureaus," and that the result was inefficiency and the compromise of consumer interests. Those defending the regulatory system—ironically the carriers and teamsters—argued that the public benefited from minimum rate floors because the disruption of "destructive pricing competition" was minimized, rural areas were served, and a margin of profit was assured to provide safe drivers and equipment.

During the late 1970s and early 1980s, the federal jurisdiction moved to deregulate trucking, outlawing the rate bureaus which set collusive rates and allowing carriers to charge based on market forces. However, this deregulation applied only to interstate carriage licensed by the Interstate Commerce Commission (ICC), not to intrastate carriage regulated by state public utilities commissions. In the case of California, such intrastate carriage is substantial.

After a delay of almost ten years, the Commission has moved to policies more consistent with the federal jurisdiction. The Commission's seminal decision in D.89-10-039 (as proposed in I.88-08-046 by ALJ Ferraro) is a major departure from the previous pro-CTA decision proposed just three years earlier by ALJ Turkish. (See CRLR Vol. 6, No. 1 (Winter 1986) pp. 7-11 for background information.) The new decision disappointed consumer critics and conservative economists by maintaining a prior approval system for common carriers and, more importantly, by allowing trucking cartels to remain as the proponents of joint rate change applications. However, the new Commission decision now in effect relies on the competitive force of independent pricers to moderate the joint pricing of a voluntary association.

The Commission has yet to extend its deregulation philosophy to all of the trucking specialties which are separately licensed, *e.g.*, the household goods carriers which charge over $35 per hour as a required minimum rate to pack consumer goods for home moving purposes (*see infra* for further information on this topic). Also, although contract carriage is indeed deregulated, the general freight common carriers still meet and collude on rate changes, still have to publicly notice their rate changes prior to effective date, and are still subject to other licensing restrictions. The combination of joint ratemaking by the truckers and prior approval is of concern to consumer critics, who contend that this combination facilitates anticompetitive price-fixing, since any price reduction must be noticed in advance and can be met by others prior to its impact on attracting new business. Hence, there is little incentive to reduce a price if the consequence will simply be a concomitant reduction by competitors, with no increase in business and lower revenues for all concerned. Despite these disappointments, the PUC's recent decisions and the refusal of the Supreme Court to overturn them are landmarks in state trucking deregulation and, for the first time, *allow* an efficient price competitor to set rates independently.

The focus of future Commission action will be on selective proactive regulation of specific problem areas, chiefly adequate service and safety. The Commission has accepted the argument that there is an insufficient nexus between assured minimum rates and any external societal benefit to warrant guaranteed pricing floors. However, directed regulatory requirements to perform up to minimum standards, to serve areas within license responsibility, and to obey safety rules may be imposed directly and without minimum prices. CTA is now forced into rear guard action to protect the specialized carriers currently allowed to establish minimum rates, and to attempt to persuade the Commission that there is a clear and direct relationship between assured rates and safety or other societal benefits.

It appears that the most meritorious argument available to CTA does not rest with accident statistics correlated with drivers' wages, but rather with standard antitrust arguments resting on fair marketplace principles. That is, where antitrust law requires that all competitors price above their actual out-of-pocket costs, the Commission should not allow pricing by firms below that level. Antitrust law applicable to markets in general prohibits such pricing, since it allows the firm with the "deepest pocket" to outlast competition, after which prices can be raised for a predatory and anticompetitive result. Hence, CTA can be expected to argue that the most recent Commission decision setting a rate floor based on minimum wage rates is too low and irresponsibly allows the deep pocket trucker to lower rates to levels below its out-of-pocket actual costs in violation of these generally applicable anti-predation prohibitions. CTA must contend that a "zone of reasonableness" cannot be presumed to include rates below actual costs.

PUC Assists Truckers and Passenger Carriers to Cope With Rising Fuel Costs. Responding to concerns expressed by the California trucking industry regarding rapidly rising fuel costs caused by the Mideast crisis, the PUC on August 8 authorized general freight common carriers operating in California to file revised tariffs—if they so desire—within a "zone of reasonableness" which could be up to 10% higher than presently allowed. By so doing, the PUC "enable[s] carriers to pass along to consumers only the increased cost of fuel that has been forced upon them as a result of the situation in the Middle East—not other costs."

Individual carriers may file a surcharge of up to 10% reflecting their actual costs; however, they must justify the surcharge by a simple calculation which shows how the increases in fuel costs have increased their overall costs since August 1, 1990; the increases in fuel costs should be expressed both in dollars and as a percentage.

On August 29, the PUC extended this authority to United Parcel Service and other common carriers, cement common carriers, highway contract carriers, buses, shuttles, and ferries.

Tarping Costs Drive Up Dump Truck Rates. Effective September 7, dump truck rates increased to allow truckers to recover the costs of tarping certain loads to reduce vehicle damage from falling rock, sand, and gravel. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 209 for background information.) Haulers will assess a 1.3% surcharge for two years and also permanently add to standard rates a $2.50 charge for tarping each cargo container. This $2.50 charge may be assessed only when the type of materials being shipped is required to be covered by Vehicle Code section 23114 and the carrier tells the shipper prior to loading that the charge may be assessed. The tarping charge does not apply to hourly rate shipments or where the shipper itself supplies the labor to tarp and untarp loads.

This Commission decision revises the minimum dump truck rates that haulers may charge under the Minimum Rate Tariffs 7-A, 17-A, and 20. Agreement on the new rates was reached through discussions among dump truck industry representatives, shippers, and the PUC's Transportation Division.

PUC Considers Change in Minimum Rates Charged by 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. 10, No. 1 (Winter 1990) p. 150 and Vol. 9, No. 3 (Summer 1989) pp. 124-25 for background information.) Public participation in the investigation and related hearings ended on May 30; a decision by the ALJ is expected by the end of the year.

LEGISLATION:

AB 2889 (Moore) requires any telephone corporation to give specified notices and to conduct public meetings prior to establishing a new area code; requires a telephone corporation which establishes a new area code, to provide for a transitional period during which a telephone number in the new area code may be reached by dialing either the old or new area code, if an area code is required; and provides that the rate structure of any call originating in or made to an area code shall not change with the split of an area code into two or more area codes. This bill was signed by the Governor on July 9 (Chapter 199, Statutes of 1990).

AB 3845 (Murray), as amended August 10, continues until January 1, 1992, existing provisions which prescribe the terms and conditions under which a cable television franchisee meeting specified requirements may elect to be exempt from the franchisor's regulation or control of the franchisee's rates, charges, and rate structure. This bill also deletes the existing requirement that such a cable television franchisee pay 50 cents per subscriber per year to the nonprofit foundation or entity designated by the local franchising authority. This bill was signed by the Governor on September 30 (Chapter 1518, Statutes of 1990).

SB 2765 (Killea). Under existing law, the PUC has jurisdiction over the rates and services of telephone corporations. As amended August 22, this bill requires an information provider, engaged in furnishing any live, recorded, or recorded-interactive telephone service, to provide callers with a delayed timing of information charges, as defined, and a price disclosure message of specified content; and requires a telephone corporation to provide a period of twelve seconds for such a message, during which the call could be disconnected without incurring charge. This bill was signed by the Governor on September 24 (Chapter 1317, Statutes of 1990).

The following is a status update on bills reported in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at pages 210-11:

AB 2568 (Moore), as amended August 20, prohibits 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 was signed by the Governor on September 30 (Chapter 1685, Statutes of 1990).

AB 3165 (Frizzelle), as amended August 9, requires 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 certificate of convenience and necessity for additional natural gas pipeline capacity proposed for construction within this state. This bill was signed by the Governor on September 13 (Chapter 896, Statutes of 1990).

AB 3691 (Moore), which would have listed the basic entitlements of telecommunications ratepayers in this state, was vetoed by the Governor on September 30.

AB 3696 (Moore), as amended May 15, would have required 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 was vetoed by the Governor on August 29.

SB 1836 (Rosenthal), as amended July 9, requires 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 was signed by the Governor on August 13 (Chapter 524, Statutes of 1990).

SB 2103 (Rosenthal), as amended June 28, requires 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; and requires the PUC to hold public hearings on these matters, consider certain specified policies, and provide progress reports to the legislature. This bill was signed by the Governor on September 11 (Chapter 791, Statutes of 1990).

SB 2145 (Rosenthal), as amended June 26, would have required 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.* This bill was vetoed by the Governor on September 17.

AB 1506 (Moore) authorizes 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. This bill was signed by the Governor on August 13 (Chapter 518, Statutes of 1990).

The following bills died in committee: *AB 2928 (Moore),* which would have authorized 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; *AB 3508 (Burton),* which would have applied to passenger air carriers existing law providing that, 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; *AB 3986 (Moore)*, which would have permitted DRA to seek rehearings of orders and decisions of the PUC, and to appeal those decisions and orders to the courts; *SB 1723 (Roberti)*, which would have directed the PUC to create an Office of Airline Consumer Information to represent the interests of airline consumers, and would have specified the duties of the office; *SB 2258 (Rosenthal)*, which would have required the PUC to investigate passenger air carriers doing business in this state, and would have permitted the PUC or its staff to require those carriers to provide detailed information concerning specified matters necessary to conduct the investigation; *SB 2413 (Rosenthal)*, which would have provided 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; *ACA 17 (Moore)*, which would have increased the membership of the PUC from five to seven members and abolished the requirement that the Governor's appointees be approved by the Senate; *AB 1974 (Peace)*, which would have required the PUC to consider the environmental impact on air quality in air basins downwind from an electrical generating facility; and *AB 1684 (Costa)*, which would have prohibited the PUC from issuing a specified certificate to a common carrier unless, among other things, the applicant obtains a negative declaration of environmental impact from each affected air quality management district or air pollution control district, or, where applicable, each county board of supervisors with jurisdiction in the areas where the applicant intends to operate.

LITIGATION:

In *People of the State of California; Public Utilities Commission of the State of California v. Federal Communications Commission*, 905 F.2d 1217 (June 6, 1990), the U.S. Court of Appeals for the Ninth Circuit ruled that the FCC's decision to permit the divested Bell Operating Companies (BOCs) to integrate their regulated and unregulated activities violated section 10(e) of the federal Administrative Procedure Act because it was arbitrary and capricious.

After the 1984 court-ordered breakup of American Telephone and Telegraph System (AT&T) into 22 "baby Bells," the FCC initiated a policy of keeping regulated basic telephone service structurally separate from unregulated enhanced services; it required the regional phone companies to maintain separate inventories, personnel, and billing of customer accounts. Fourteen months later, however, the FCC reversed its position, citing "changes in circumstances" including increased competition and new technology to bypass phone lines.

Petitioners argued that it was "irrational" for the FCC to abandon structural safeguards only fourteen months after imposing them on AT&T and the separate BOCs; the Ninth Circuit agreed. In striking down the FCC policy, the court quoted the Supreme Court's statement that "[a]n agency's view of what is in the public interest may change....But an agency changing its course must supply a reasoned analysis." The court could find no support for the FCC's claims that the "substitution of nonstructural safeguards for structural safeguards will benefit the enhanced service industry" or that market changes "reduced the danger of cross-subsidization by the BOCs."

The court also rejected the FCC's argument that section 2(b)(1) of the Communications Act does not bar the FCC from regulating enhanced services to the exclusion of state regulation of intrastate enhanced services. The court found nothing in the language of the statute to support the Commission's "cramped" interpretation of the Act. Rather, the court adopted a broad reading of the statute, stating that the sphere of state authority which the statute "fences off from FCC reach of regulation" includes, at a minimum, services that are delivered by a telephone carrier "in connection with" its intrastate common carrier telephone services. "That these enhanced services are not themselves provided on a common carrier basis is beside the point."

Assessing the impact of the decision, PUC President Mitchell Wilk commented that the court's decision "properly gives the states greater freedom to promote the development of enhanced services and to define the terms and conditions upon which those services are provided."

FUTURE MEETINGS:

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

STATE BAR OF CALIFORNIA

President: Charles S. Vogel
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.