



tributed to all in-state osteopaths and recent graduates who pass the osteopathic exam.

Also at the October meeting, the Board's staff announced that during the last fiscal year, BOE used approximately 94% of the \$396,000 allocated. The remaining amount will go to BOE's reserve account.

At its October meeting, BOE met with various osteopathic-related organizations to discuss the present state of the osteopathic profession in California. Those present discussed the large number of osteopathic-related bills which were passed during the last legislative session but were vetoed by Governor Deukmejian. BOE expressed interest in working with other groups in order to get a fairer share of postgraduate resources that are allocated in this state. Those present agreed to organize efforts and work toward getting pro-osteopath legislation reintroduced during the 1989 session. BOE also contemplated meeting with various members of the Governor's staff in order to explain and/or emphasize the need to recognize the osteopathic profession as an equal to the medical doctor profession.

FUTURE MEETINGS:

April 1 in Pomona.
June 23 in Pomona.

PUBLIC UTILITIES COMMISSION

Executive Director: Victor Weisser
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 the PUC regulates the service and rates of more than 25,000 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 commis-

sioners appointed by the Governor with Senate approval. The commissioners serve staggered six-year terms.

In late 1987, the PUC renamed three of its organizational units to clarify their roles and responsibilities. The former Evaluation and Compliance Division, which implements Commission decisions, monitors utility compliance with Commission orders, and advises the PUC on utility matters, is now called the Commission Advisory and Compliance Division. The former Public Staff Division, charged with representing the long-term interests of all utility ratepayers in PUC rate proceedings, is now the Division of Ratepayer Advocates. The former Policy and Planning Division is now the Division of Strategic Planning.

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.

On December 19, G. Mitchell Wilk was elected President of the PUC by a unanimous vote of his colleagues. Wilk was appointed to the Commission by Governor Deukmejian in 1986 after serving on the Governor's staff. Wilk succeeds Stanley W. Hulett.

MAJOR PROJECTS:

Realignment of Residential Energy Rates Begins. As required by SB 987 (Dills) (Chapter 212, Statutes of 1988), the PUC began allowing utilities to raise baseline rates while lowering "second tier" rates. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 120 and Vol. 8, No. 3 (Summer 1988) p. 127 for background information.)

Adjustments approved by the November 1, 1988 deadline were modest and reflected a desire to resolve general rate cases and other matters before proposing extensive and fundamental changes in rate structure. With the exception of Southern California Edison's 10% baseline increase and a 8.7% "second tier" decrease, all other utilities received adjustments of 4% or less.

SB 987 (Dills) also requires a program to aid low-income ratepayers in order to mitigate the effects of increased baseline rates. The bill does not specify the nature

of the aid; it could take the form of weatherization programs, deferred billing, direct subsidies, or any other measure or combination of measures approved by the PUC. A prehearing conference was scheduled for December 28 in San Francisco before Administrative Law Judge Greg Wheatland.

PUC Approves Settlement of Diablo Canyon Costs. On December 19, the Commission unanimously approved and adopted the settlement of the Diablo Canyon Nuclear Power Plant case agreed to by Pacific Gas and Electric Company (PG&E), the state Attorney General, and the PUC's Division of Ratepayer Advocates (DRA), with slight modifications to preserve future PUC discretion. (See CRLR Vol. 8, No. 4 (Fall 1988) pp. 118-19; Vol. 8, No. 3 (Summer 1988) p. 133; and Vol. 8, No. 1 (Winter 1988) p. 106 for background information.) The decision is not binding on future Commissions, but is expected to be upheld if conditions remain substantially the same.

The parties describe the settlement as one which shifts the risk of poor plant performance from ratepayers to shareholders while giving the utility an opportunity to recoup more of its investment. Under traditional ratemaking, the PUC would have determined how much of PG&E's \$5.5 billion investment in Diablo Canyon was reasonably incurred and allowed the utility to earn a return on that amount over the thirty-year estimated useful life of the plant. During the thirty-year period, ratepayers would bear the cost of operating the plant and the risk that rates would be raised if it did not generate sufficient power and/or revenue.

In contrast, under this settlement ratepayers will purchase whatever energy is produced, but the price will not vary with the efficiency of the plant. PG&E's recovery of its investment is based on Diablo Canyon performing at the national average efficiency rate for similar nuclear power plants. If the plant operates at the average, PG&E is expected to recover approximately \$3.5 billion over the 28-year term of the settlement. If Diablo Canyon performs more efficiently than the average, PG&E could recover its entire \$5.5 billion investment. If the plant performs significantly less efficiently than the average, PG&E might recover closer to the \$1.1 billion originally suggested by the DRA. This so-called "performance-based" ratemaking gives PG&E an incentive to increase investment recovery by operating the plant more efficiently.



The settlement contains additional terms which mitigate PG&E shareholder risk. If the PUC orders the plant shut down because it produces no ratepayer benefits, PG&E may request "abandonment payments." This compensation is \$3 billion in year one of the plant's life, decreasing by \$100 million per year to zero after thirty years. In addition, PG&E may request "floor payments" if plant efficiency drops 22% below the national average. The floor payments, plus interest, are subject to repayment out of half the revenue earned while the plant efficiency is 2% or more above the national average. In the event PG&E abandons the plant after receiving floor payments, the PUC may refund payments in excess of abandonment payments to ratepayers. If the plant operates for the full length of the settlement period, however, PG&E will not have to repay any floor payments. Despite the provisions to mitigate risk, it is unlikely that PG&E can recover its entire \$5.5 billion investment unless it actually operates Diablo Canyon more efficiently than the national average for the majority of the settlement period.

Opponents of the settlement fear that a shift in cost from ratepayers to shareholders may encourage PG&E to disregard safety to maximize profits. The PUC contends that a shareholder loss caused by inadequate safety is sufficient incentive to operate the plant properly.

To further allay opponents' fears, the settlement provides for a three-member Safety Committee funded by ratepayers. Nominations for the Committee membership will be made by the PUC President; the Dean of the School of Engineering, University of California at Berkeley; and PG&E. From the nominees, the Governor, the Attorney General, and the Chair of the California Energy Commission will each appoint a member. The Committee will have access to the plant and plant documents and will submit an annual report of observations and recommendations to the Governor, the Energy Commission, and the PUC.

An appeal of the PUC's decision is expected. (See *supra* report on TURN.) Opponents contend the settlement does not adequately shift the risk of poor plant performance and the proposed compensation is not sufficiently performance-based.

SDG&E General Rate Case. In concluding the triennial San Diego Gas and Electric Company (SDG&E) General Rate Case, the PUC recently approved a 10.7% decrease in electricity rates

for residential customers and a 0.7% increase in natural gas rates for non-residential customers. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 119 for background information.) This action resulted from three other decisions in addition to the General Rate Case order. These decisions include a forecast of SDG&E's energy-related expenses, the adoption of a 13% return on equity as reasonable for California's major energy utilities in 1989, and a final decision on SDG&E's responsibility for post-commercial operating costs for Units 2 and 3 of the San Onofre Nuclear Generating Station.

In addition to rate adjustments, the PUC approved a reduction of the baseline allowance for gas customers starting May 1, 1989. (See *supra* *Realignment of Energy Rates*.) The establishment of a late payment charge beginning April 1, 1989, on all non-residential bills not paid within thirty days of the billing date was also approved. Further, the PUC is requiring SDG&E to encourage female- and minority-owned businesses to compete for utility contracts by providing technical assistance in meeting loan and insurance requirements at competitive rates.

Several groups were awarded intervenor compensation in the General Rate Case. Utility Consumers' Action Network (UCAN) received \$44,907; the Center for Public Interest Law was awarded \$3,582; and Rate Watchers received \$2,038. Public Advocates was also declared eligible to request similar compensation.

AT&T Communications Rate Reduction. In a three-part decision issued December 19, the PUC ordered AT&T to issue a one-time credit of \$110 million to all customers to offset overcollections in the first part of 1988. (See CRLR Vol. 8, No. 4 (Fall 1988) pp. 119-20 for background information.) AT&T will not advertise the credit but was scheduled to explain to customers why they are receiving the credit through an insert in their bills for the January period.

The Commission also ordered a 9% decrease in intrastate rates as part of a seven-year program to reflect reduced costs paid to local phone companies. The rates will decline proportionally as the costs of providing a given service decline, thus preserving the link between rates and costs.

Finally, the PUC granted AT&T's application for pricing flexibility. AT&T may now adjust rates for its services within 15% of those currently authorized. This should allow AT&T to respond to market changes and compete for the

long distance telephone service market while providing new technologies and customer services.

By granting flexibility, the PUC is responding to AT&T's position in a competitive market, but the Commission has maintained control by imposing some restrictions on the grant. AT&T must maintain statewide average rates; introduce new services statewide; make no more than four rate revisions per year; not restrict resale and sharing of its services; not abandon any service or initiate a new service except by formal application to the PUC; and not seek to withdraw any service from a community on a geographically discriminatory basis.

The PUC will monitor the pricing flexibility to measure the benefit or harm to consumers and competitors and will rescind the grant or allow greater flexibility as necessary.

Pacific Bell Rate of Return Adjustments. In response to a recent PUC order, Pacific Bell will reduce rates in a 15% surcredit on residential phone bills for the first four months of 1989 and then 5% after that. This reduction will fix its 1989 rate of return at 11.34%; PacBell had requested an 11.96% rate of return.

Between general rate cases every three years, the PUC adjusts base rates to offset the effects of changes in expenses due to inflation. Decreases in estimated expenses for 1988 and 1989 and refunds from rates collected for income tax are partially offset by losses resulting from revised accounting methods.

Cellular Phone Regulation. The PUC has begun an investigation to determine how to effectively regulate the fast-growing cellular radiotelephone industry. Current regulation of this five-year-old industry may not be adequate to meet customer needs. The Commission must grapple with the sometimes conflicting goals of protecting consumers from overpricing and ensuring rapid development of new technologies.

While Los Angeles is the largest market in the nation, and one-fifth of the total number of subscribers in the United States are in California, rates for service in California are among the highest in the nation. Without meaningful price competition, the cellular carriers are not implementing price reductions which correspond to the increased number of cellular radiotelephone users.

In Phase I of the investigation beginning in January 1989, the PUC requests interested parties to submit comments on broad regulatory issues. The Commission's Advisory and Compliance Div-



REGULATORY AGENCY ACTION

ision will submit a plan for developing information on cellular costs and financial performance. Phase II of the investigation will focus on more specific questions related to the wholesale and retail markets and connection to local exchange carriers.

Customer-Owned Pay Telephone (COPT). In a November 23 order, the Commission awarded non-utility payphone providers six cents for every coinless call made from COPT payphones. The local exchange carriers (LECs) were ordered to work out a plan for reimbursement by mid-February. Additionally, COPT companies will be able to collect a ten-cent fee for credit card calls which the PUC had previously granted. In the past, COPT providers had been unable to collect this charge from the LECs.

This decision provides interim relief until the Commission issues a final order in its current investigation into COPT services and payphone operations. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 125 and Vol. 8, No. 2 (Spring 1988) p. 98 for background information on COPTs.)

Hearings on Trucking Regulation. On November 7, the PUC began formal hearings in its review of the regulation of California's general freight industry, entitled *In the Matter of the Regulation of General Freight Transportation by Truck*. The proceeding stems from a PUC en banc informational hearing on trucking regulations which occurred last March in San Francisco. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 120-21 for background information.)

Traditionally, the PUC applied minimum rate tariff regulation to all regulated carriers. During the 1970s, it modified its regulatory approach in many trucking sectors either by deregulating them or by requiring carriers to file their own cost-based tariffs with the Commission. However, in 1980, the PUC reversed course and instead has imposed over the subsequent eight years a complex system of "reregulation." Some areas of trucking were subject to increased competition while others maintained the entry barriers and minimum rate structures. The PUC now has a minimum rate regulation system in the traditional mode for dump trucks, livestock carriers, household goods carriers, and substantially for cement carriers; while general freight carriers operate under an "IFT" system (individually filed tariffs). Under that system, each carrier is allowed to file its own tariffs and contracts with the PUC based on cost of service, which may be changed only where the carrier can justify changes as profitable.

Proponents of continued freight regulation include the California Trucking Association and the Teamsters, as well as several ad hoc groups of small associations which are part of the freight industry. These proponents of trucking regulation, who are predominantly within or under contract to the trucking industry, justify price regulation by citing their fear of "destructive competition." They further argue that trucking is particularly amenable to "price wars"; that is, the predatory tactics of some entrepreneurs to drive others out of business by going below cost. The resultant competitive struggle at price levels at or below marginal costs usually means service diminution, a refusal to serve rural areas, and cutbacks on safety. In addition, proponents of trucking regulation believe that destructive rate competition creates a disruptive pattern of quick entry and exit from the marketplace, which adversely affects shipper ability to plan for their transportation needs.

Opponents of the existing freight regulatory scheme include the Division of Ratepayer Advocates, the Center for Public Interest Law, Ralph Nader's Public Citizen organization, the California Coalition for Trucking Deregulation, the California Manufacturing Association, a coalition of shippers which includes corporations such as Long's Drugs, and several small trucking firms. These opponents contend that the current regulatory scheme, including industry rate proposals, minimum price floors, and PUC review, is conceptually flawed. They believe there is little nexus between safety, service, or other external cost concerns and the imposition of minimum rates. The PUC could fully enforce rules to ameliorate any such harms by means other than intervention into the market to artificially increase rates. Opponents of the current system favor targeted regulation, an end to minimum price floors, and deregulation of rates and entry, while continuing to impose safety regulations. They argue that the existing regulatory structure of the general freight industry serves merely to benefit the trucking industry's profit margin, while having little regard for consumer welfare.

At this writing, hearings on the regulation of general freight transportation by truck are being held on a daily basis with nonstop testimony. The hearings were targeted to end in the latter half of January. The administrative law judge presiding over the proceeding will then submit a recommended decision, upon which a thirty-day public comment period

will commence. After the public comment period ends, the opinion will be considered by the Commission, which may adopt, amend, or reject the ALJ's recommendation.

LEGISLATION:

SB 52 (Rosenthal) was introduced on December 5, and would amend Public Utilities Code section 854 to prohibit any person or corporation from taking any significant action to acquire control, either directly or indirectly, of any public utility without first securing approval from the PUC. The bill would also require the PUC to consider ten specific factors before granting approval, including the effect on ratepayers, shareholders, and public utility employees, as well as the effect on state and local economies. The bill would also require the PUC to request an Attorney General's opinion regarding the effect of an acquisition on competition.

SB 52 is an urgency bill prompted by Southern California Edison's attempt to acquire SDG&E. The utilities filed an application with the PUC on December 16 for approval of the acquisition. At this writing, SB 52 is pending in the Senate Committee on Energy and Public Utilities.

SB 53 (Rosenthal) would amend sections 852 and 853 of, and add section 856 to, the Public Utilities Code. Existing law prohibits a public utility from purchasing or acquiring the capital stock of any other public utility in California without PUC authorization. This bill would extend that prohibition to any subsidiary or affiliate of, or corporation holding a controlling interest in, a public utility. This bill is also pending in the Senate Committee on Energy and Public Utilities.

FUTURE MEETINGS:

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

STATE BAR OF CALIFORNIA

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