



REGULATORY AGENCY ACTION

conference for July 7. Plaintiff and intervenors challenge BCE's adoption of section 302 of BCE's regulations, which defines the scope of chiropractic practice. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 112 and Vol. 9, No. 1 (Winter 1989) p. 97 for background information on this case.)

RECENT MEETINGS:

In March, Board member Dr. Bartels reported that at a recent meeting of the Federation of Chiropractic Licensing Boards, colleges and associations were encouraged to use the term "chiropractic physiological therapeutics" instead of "physical therapy" to avoid confusion between the practices.

FUTURE MEETINGS:

To be announced.

CALIFORNIA ENERGY COMMISSION

Executive Director: Stephen Rhoads
Chairperson: Charles R. Imbrecht
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In 1974, the legislature created the State Energy Resources Conservation and Development Commission, better known as the California Energy Commission (CEC). The Commission's major regulatory function is the siting of power plants. It is also generally charged with assessing trends in energy consumption and energy resources available to the state; reducing wasteful, unnecessary uses of energy; conducting research and development of alternative energy sources; and developing contingency plans to deal with possible fuel or electrical energy shortages.

The Governor appoints the five members of the Commission to five-year terms, and every two years selects a chairperson from among the members. Commissioners represent the fields of engineering or physical science, administrative law, environmental protection, economics, and the public at large. The Governor also appoints a Public Adviser, whose job is to ensure that the general public and other interested groups are adequately represented at all Commission proceedings.

The five divisions within the Energy Commission are: (1) Conservation; (2) Development, which studies alternative energy sources including geothermal, wind and solar energy; (3) Assessment, responsible for forecasting the state's energy needs; (4) Siting and Environ-

mental, which does evaluative work in connection with the siting of power plants; and (5) Administrative Services.

The CEC publishes *Energy Watch*, a summary of energy production and use trends in California. The publication provides the latest available information about the state's energy picture. *Energy Watch*, published every two months, is available from the CEC, MS-22, 1516 Ninth Street, Sacramento, CA 95814.

MAJOR PROJECTS:

Development of CEC Intervenor Award Program. The CEC Public Adviser held three public meetings in May to gather input from groups and individuals interested in the development of CEC's intervenor award program. The program is being developed in accordance with Senator Rosenthal's SB 283 (Chapter 1436, Statutes of 1988), which earmarked \$285,000 for establishment of a program to provide intervenors facing financial hardship with reasonable awards to pay for the costs of participation in certain Commission proceedings. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 98 for background information.)

According to CEC Public Adviser Thomas Maddock, the Commission has received authorization from the U.S. Department of Energy to spend the funds, and he has mailed a first working draft of his proposed provisions to all interested parties. The proposals outline the process whereby petitioners may (1) obtain intervenor status by demonstrating financial hardship; (2) offer to substantially contribute to CEC proceedings under the program; and (3) apply for compensation. At all stages, the Public Adviser would review and make recommendations as to intervenor eligibility and amounts of compensation. The draft also specifies the types of expenditures that would qualify for reimbursement, and proposes definitions for "hardship" and "substantial contribution."

Maddock states he is pleased by the input he received at the informational meetings, which were attended by representatives from the Sierra Club, the Natural Resources Defense Council, UCAN, and other ratepayer and consumer groups. Michael Shapiro of Senator Rosenthal's office also attended the meetings, which were held in Sacramento, Los Angeles, and San Francisco.

Although the Public Adviser's first working draft is similar to the rules of the Public Utilities Commission's (PUC) intervenor compensation program, one major difference is that the CEC proposal does not require the proceedings

to be resolved in the intervenor's favor in order to recognize a "substantial contribution" in the proceedings. Public Adviser Maddock hoped to issue a second draft of the proposed rules in early June; he anticipates significant changes from the incorporation of suggestions made at the three May meetings. Full Commission hearings on the program could take place as early as July, according to Maddock.

Pipeline Proposals Pondered. In March, CEC's Energy Forecasting and Planning Division published a report which concluded that new natural gas pipeline capacity could provide benefits in the tens of billions of dollars for California consumers. The report, entitled *An Economic Evaluation of Alternative Interstate Pipeline Projects to Serve California*, reached this conclusion by comparing scenarios for eleven different hypothetical configurations of new capacity with a scenario representing no expansion of existing pipeline capacity.

There are currently at least seven major proposals to add natural gas pipeline capacity into California. For several years, CEC has recommended that the Federal Energy Regulatory Commission (FERC) consider issuing permits for all pending applications to build interstate pipelines into California to ensure that the state can successfully compete for new interstate gas supplies.

Until recently, the PUC had argued, contrary to CEC's position, that new interstate pipelines were not needed. But in December 1988, the PUC initiated an investigation into the need for such capacity. The PUC's reassessment of its opposition to new pipelines was prompted by two major natural gas curtailments which occurred in southern California during the winter and summer of 1988. (See *infra* for further discussion; see also CRLR Vol. 9, No. 1 (Winter 1989) p. 99 and Vol. 8, No. 2 (Spring 1988) p. 115 for background information.)

According to CEC spokesperson Claudia Barker, the CEC report was prompted by the Commission's mandate to forecast energy demand, supply, and prices for California. Barker says market forces will determine whether new pipelines are built. Inadequate pipeline capacity could affect California's energy security, but excessive pipeline construction could increase energy costs. Barker estimates the cost of new pipeline at close to \$1,000,000 per mile. CEC's Fuels Policy Committee will continue to hold workshops, such as the one held on March 31 in Bakersfield, to gather information from the industry and the public.



Natural Gas Curtailments Probed. Southern California Gas Company (SoCal), California's largest gas utility, curtailed gas service to its low priority users (utility power plants and 849 industrial users) from December 17, 1987 to February 2, 1988, to protect storage inventories for high priority users (residential and commercial users). At a CEC hearing on February 10, 1988, SoCal emphasized that the curtailment was due chiefly to high demand for gas caused by extremely cold weather in December. CEC's Fuels Planning Committee published a report in May 1988 which recorded SoCal's view that the curtailment should be considered an isolated incident. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 115 for background information.)

The following summer, from August 16 to September 30, 1988, SoCal again declared a capacity curtailment. Curtailment of gas service in California during the summer months was unprecedented and provoked additional concern, because power plants had to burn low-sulfur fuel oil instead of natural gas during the period of lowest air quality in the Los Angeles basin. To minimize the smog danger, the PUC issued an emergency order authorizing power utilities to purchase expensive gas and electricity from sources outside the Los Angeles area.

On October 13, 1988, the Fuels Planning Committee held an informational hearing to study the summer curtailment. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 99 for background information.) The ensuing report, written and recently released by Natalie Walsh of CEC's Energy Forecasting and Planning Division, concluded that new market demand for natural gas is beginning to tax the capacity of California's gas delivery system. The report refutes the PUC's view that the curtailment was caused by unusually high demand for natural gas in 1988 due to record-setting heat in early summer and a severe reduction in hydroelectric power supplies attributed to a second year of drought. The CEC analysis shows that overall growth in gas demand in southern California is a more important and fundamental consideration, and that demand for gas in 1988 was not unusually high.

The summer curtailment report explains that demand has increased largely due to the rapidly expanding use of gas for enhanced oil recovery (EOR) and for new cogeneration projects. Annual residential, commercial, and industrial demand for gas has remained relatively stable over the last five years. The

authors decline to make predictions on future curtailments in California.

LEGISLATION:

AB 1107 (Moore) would require the CEC to provide technical assistance and support for development of petroleum diesel fuels and diesel engines which are as clean or cleaner than alternative clean fuels and clean diesel engines. The bill is pending in the Senate Energy and Public Utilities Committee.

AB 1499 (Sher) would delete the authority of a superior court, in reviewing a determination by the CEC, to review any relevant facts to determine the validity of the decision. This bill would recast the court's authority to require that the decision of the Commission be sustained unless the court makes specified findings. AB 1499 is pending on the Senate floor at this writing.

AB 2008 (Farr) would require the CEC to develop a plan to achieve feasible solar energy implementation in this state by the year 2000. This bill is pending in the Senate Energy and Public Utilities Committee.

AB 2151 (W. Brown) would require the Commission to include in its electricity report the effect of electricity production on the production of gases which add to the decline of atmospheric ozone and the ensuing "greenhouse effect." The CEC would also be required to consider the increasing greenhouse effect in all its decisions, as well as develop and maintain an inventory of all greenhouse gases in the state. The bill is pending in the Senate Natural Resources and Wildlife Committee.

AB 2395 (Sher) would add to the Warren-Alquist State Energy Resources Conservation and Development Act the declaration that employment of a range of measures to reduce wasteful, uneconomical, and unnecessary uses of energy will reduce the state's contribution to global warming and the production of greenhouse gases. This bill is pending in the Senate Energy and Public Utilities Committee.

SB 538 (Rosenthal) would require the Commission to submit to the Senate Rules Committee and the Speaker of the Assembly a compilation and summary of all rules, regulations, and hearing procedures adopted in the past twelve months, and being considered for adoption in the next twelve months. The bill is in the Senate Energy and Public Utilities Committee.

SB 539 (Rosenthal) would direct the Commission to submit a report by December 31, 1990 to the legislature setting

forth options for implementing a comprehensive statewide electricity demand-side management program. The goal is to study action being taken by California and other states to integrate energy demand-side bidding into energy supply-side bidding programs. The bill is pending in the Assembly Natural Resources Committee.

SB 1219 (Rosenthal) would provide financial incentives for utilities to use cleaner-burning natural gas in place of fuel oil. It would restrict utilities from recovering the costs of using fuel oil in rates unless the combined cost of fuel oil and the costs to society of the extra pollutant emissions from fuel oil is less than the cost of natural gas. The CEC is to incorporate the additional air pollution costs of fuel oil in its planning regulatory activities. This bill is pending in the Senate Energy and Public Utilities Committee.

SB 1527 (Hart) would require the Commission to consider the societal costs of air pollution when evaluating the cost-effectiveness of its energy conservation standards for buildings. Currently, the Commission considers only the actual cost of energy to determine cost-effectiveness. The bill is pending in the Assembly Natural Resources Committee.

SB 1679 (Hart) would require the Commission to develop and implement a statewide fuel economy incentive program in conjunction with the Department of Motor Vehicles. The program would require persons registering a new motor vehicle with a fuel economy rating below the average for all new cars that year to pay a fee. Similarly, those registering vehicles with fuel economy above that average would receive a rebate. The goal is to reduce overall carbon dioxide emissions by cars, which produce 34% of that pollutant emitted statewide. This bill is pending in the Senate Transportation Committee.

The following is a status update on legislation reported in detail in CRLR Vol. 9, No. 2 (Spring 1989) at page 113:

AB 286 (Assembly Committee on Transportation), which would require the California Highway Patrol to determine eligibility criteria for replacement school-buses, is pending in the Assembly Appropriations Committee.

AB 361 (Vasconcellos), which would extend the termination date of a program which encourages third-party financing of energy projects at state-owned sites, is pending in the Senate Energy and Public Utilities Committee.

AB 345 (Torres), which would require



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the CEC to study the benefits of increasing the surface reflectance of buildings, streets, and highways to conserve energy and reduce global warming, is pending in the Senate Energy and Public Utilities Committee.

SB 1527 (Hart), which would require the CEC to take into account the environmental costs to society of consuming fossil fuels when it considers the cost-effectiveness of residential and commercial building standards, is pending in the Assembly Natural Resources Committee.

RECENT MEETINGS:

In March, the Commission considered and denied a petition from Pacific Thermonetics, Inc. (PTI). PTI requested that the CEC reverse Commissioner Noteware's February 16 order denying PTI's motion to reopen the evidentiary record on its application for certification of the Crockett Cogeneration Project (Docket No. 84-AFC-3). Because the record has been closed, PTI may not introduce any further evidence on its application. PTI sought to introduce evidence that additional safety measures can be implemented at the Crockett Cogeneration Project, and that the project poses no credible risk of public harm from ammonia used in the project. PTI also desired to introduce into the record a proposed community assistance program which it claims would commit \$250,000 annually to the local community. Extensive oral testimony was heard in support of C&H Sugar, which has a refinery at the Crockett location.

Much public testimony was heard in opposition to the petition. Most argued that the certification process has consumed five years, when the average time for such a proceeding is one year. The Commission agreed. CEC staff opposed the motion to reopen, questioning whether the proposed additional safety measures would adequately protect against certain hazards, and noting that even if the new proposal eliminates the ammonia risk, the project would still not pass the need test under Electricity Report 5. Additionally, if the record were reopened, the permit for the project issued by the Bay Area Air Quality Management District would have to be renewed.

At the March meeting, Commissioner Imbrecht stated that the Commission should construe liberally the opportunity for parties to be heard, and that he still had questions about whether PTI had received full due process. However, the petition was denied, the record remains closed, and the decision to certify Crockett will be made based on the

existing record.

FUTURE MEETINGS:

General CEC meetings are held every other Wednesday in Sacramento.

HORSE RACING BOARD

Secretary: Leonard Foote
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The California Horse Racing Board (CHRB) is an independent regulatory board consisting of seven members. Each member serves a four-year term and receives no compensation other than expenses incurred for Board activities.

The purpose of the Board is to allow parimutuel wagering on horse races while assuring protection of the public, encouraging agriculture and the breeding of horses in this state, generating public revenue, providing for maximum expansion of horse racing opportunities in the public interest, and providing for uniformity of regulation for each type of horse racing.

The Board has jurisdiction and power to supervise all things and people having to do with horse racing upon which wagering takes place. If an individual, his/her spouse, or dependent holds a financial interest or management position in a horse racing track, he/she cannot qualify for Board membership. An individual is also excluded if he/she has an interest in a business which conducts parimutuel horse racing or a management or concession contract with any business entity which conducts parimutuel horse racing. (In parimutuel betting, all the bets for a race are pooled and paid out on that race based on the horses' finishing positions, absent the state's percentage and the track's percentage.) Horse owners and breeders are not barred from Board membership. In fact, the legislature has declared that Board representation by these groups is in the public interest.

The Board licenses horse racing tracks and allocates racing dates. It also has regulatory power over wagering and horse care.

MAJOR PROJECTS:

Blue-Ribbon Committee on Drug Testing. On March 23, CHRB Chair Leslie Liscom appointed a blue-ribbon committee and charged it with the following assignment: "Evaluate the alternatives necessary to restore confidence by evaluating and improving the testing program in the CHRB's drug testing

program." (See CRLR Vol. 9, No. 2 (Spring 1989) p. 114 for background information.)

At the Board's April 28 meeting in Los Angeles, the Committee made the following recommendations: the establishment of an Equine Medical Director position, who would report directly to the Board and supervise its equine testing program; CHRB initiation of a supplemental testing program at Industrial Diagnostic Systems Laboratories; development of a model program for increased security and enforcement; and finally, methods of financing these proposals. At this writing, the Board is considering the Committee's recommendations.

Review of Applicants' License History. The Board has recently expressed concern about its procedures for licensing individuals with repeated infractions and violations of the Horse Racing Law and the Board's rules and regulations. Consequently, at CHRB's May 18 meeting in Sacramento, the Board adopted staff's proposal that any licensee with an accumulation of thirty days or more suspension be referred to the Board's Sacramento office for licensing consideration. This referral would not constitute a denial or refusal, but would merely enable the Board to consider whether licensing the individual is in the best interests of horse racing.

Regulation Changes. At its April meeting, the Board adopted an amendment to section 1481(f), Title 4 of the California Code of Regulations (CCR). The amendment increases the number of individual persons conducting racing operations as a syndicate or general partnership from five to ten general partners before payment of a registration fee as a multiple ownership entity is required.

On May 19, the Board adopted regulatory action to amend section 1459, Title 4 of the CCR, to delete the requirement that public telephones in the racing enclosure be locked during the racing program. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 115 for background information.)

LEGISLATION:

AB 425 (Floyd) would repeal the statute providing that no state lottery game may use the theme of horseracing or be based on the results of a horse race. The bill would provide that state lottery games may be based only upon the results of horse races sanctioned by the CHRB. The bill is in the Assembly inactive file.

AB 726 (Hill) would authorize the Board to allow associations licensed to conduct quarter horse meetings to in-