



ing fee from \$95 to \$145. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 126-27 for background information.)

The Board has also adopted new sections 311 (registration of fictitious names), 331.11 (minimum grade point average requirement in order to enter chiropractic school), and 317(u) ("no out of pocket" advertising). BCE decided not to adopt proposed section 313.1 (preceptor program for unlicensed students). At this writing, the Board is preparing the rulemaking package on these regulations for submission to OAL. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 126-27 for background information on these changes.)

At its October 12 meeting, the Board decided to modify the language of its proposed amendment to section 335(c), which would require 48 hours of post-graduate work in thermography before one may operate or supervise the use of a thermography unit, to include an effective date. The Board must now decide whether it is necessary to renotice the regulation and provide an additional opportunity for public comment.

During its December 7 meeting, the Board approved draft language of a proposed amendment to section 331.1. The amendment would read as follows: "Doctors of Chiropractic accept patients who may be initially entering the health care system in California. Therefore, chiropractic doctors have a legal obligation to diagnose and recognize even those diseases and conditions which may be beyond their scope of practice to treat. The purpose for their knowledge of diagnosis and their trained ability to recognize all manner of health problems is to make those appropriate referrals for the overall protection of the public." BCE planned to hold a public hearing on this proposed change at its March meeting.

LEGISLATION:

SB 1608 (Stirling) would have required an attorney representing a plaintiff in an action arising out of the professional negligence of a physician, dentist, podiatrist, or chiropractor to file a certificate stating that the attorney has reviewed the facts of the case, consulted with a health care provider of equivalent experience, obtained a statement from the licensee consulted that the defendant's conduct fell below the ordinary skill exercised by similar professionals, and that the attorney has concluded that there is a reasonable and meritorious cause for filing the action. This bill died in committee.

LITIGATION:

In California Chapter of the American Physical Therapy Ass'n et al., v. California State Board of Chiropractic Examiners, et al., Nos. 35-44-85 and 35-24-14 (Sacramento Superior Court), petitioners and intervenors challenge BCE's adoption and OAL's approval of section 302 of the Board's rules, which defines the scope of chiropractic practice. Following the court's August 1989 ruling preliminarily permitting chiropractors to perform physical therapy, ultrasound, thermography, and soft tissue manipulation, the parties engaged in settlement negotiations. A January 5 status conference was postponed until March 2. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 127; Vol. 9, No. 3 (Summer 1989) p. 118; and Vol. 9, No. 2 (Spring 1989) p. 112 for background information on this case.)

RECENT MEETINGS:

At a public meeting on November 16, the Board withdrew its approval of Southern California College of Chiropractic, effective December 16. The Board had issued an order to show cause due to the financial instability of the college, and took action pursuant to regulatory sections 331.14 and 331.15(b). This action means that graduates of the school will be ineligible to take the California licensing exam. The school has indicated it may petition for reconsideration.

FUTURE MEETINGS:

To be announced.

CALIFORNIA ENERGY COMMISSION

Executive Director: Stephen Rhoads
Chairperson: Charles R. Imbrecht
(916) 324-3008

In 1974, the legislature enacted the Warren-Alquist State Energy Resources Conservation and Development Act, Public Resources Code section 25000 *et seq.*, and established the State Energy Resources Conservation and Development Commission—better known as the California Energy Commission (CEC)—to implement it. 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. CEC is empowered to adopt regulations to implement its enabling legislation; these regulations are codified in Title 20 of the California Code of Regulations (CCR).

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 interested groups are adequately represented at all Commission proceedings.

There are five divisions within the Energy Commission: (1) Administrative Services; (2) Energy Forecasting and Planning; (3) Energy Efficiency and Local Assistance; (4) Energy Facilities Siting and Environmental Protection; and (5) Energy Technology Development.

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:

CEC Amends Regulations On Appliance Efficiency Standards. In September, CEC published a notice of proposed action in order to increase the clarity and workability of its regulations pertaining to appliance efficiency standards, update its regulations to reference test methods and standards adopted by national organizations, and to bring the regulations in line with recent amendments to federal law.

Specifically, CEC proposed the following: (1) amend sections 1602-04 and 1606-08, Title 20 of the CCR; (2) adopt new regulations to replace portions of existing sections 1601-03 and 1608(d); (3) eliminate the "infrared gas space heaters" exception in subsections 1601(d)(5) and (9); (4) adopt standard 90.1 of the American Society of Heating, Refrigerating, and Air-Condition Engineers into section 1604; (5) adopt the standards of the National Appliance Energy Conservation Act into sections



1604 and 1606; and (6) adopt such other changes as are necessary to make the regulations consistent with federal and national changes in test methods and efficiency levels.

CEC held a public hearing on the proposed action on November 15, and adopted it on December 13. At this writing, CEC is preparing the rulemaking package on the proposed regulatory changes for submission to the Office of Administrative Law (OAL).

CEC Proposes Amendments To Fuels And Energy Report Regulations. On October 6, CEC published a notice of proposed action to amend sections 1301-11, Title 20 of the CCR. These regulations address the collection and analysis of data for CEC's *Quarterly Fuels and Energy Report*. CEC is required to perform forecasting and reporting functions, and is authorized to obtain and analyze data regarding gas usage and electricity generation under various statutes and the regulations at issue. According to CEC, the current regulations are outdated, inadequate, and hinder the CEC's ability to carry out its information gathering and forecasting functions. CEC asserts that the proposed amendments improve the data collection process and accuracy of forecasts. On November 29, CEC adopted the proposed action. At this writing, CEC is preparing the rulemaking file for submission to OAL.

CEC 1989 Biennial Report Published. On September 20, CEC adopted the Final 1989 Biennial Report. The report found that California is continuing to increase its dependence on petroleum fuels. Increases in dependence were attributed to the rise in transportation in California. Similarly, increasing demand for electricity was found to exacerbate California's fossil fuel dependence. The report concluded that California's reliance on fossil fuels present major environmental problems such as air pollution and climatic warming. In order to combat the environmental and dependency difficulties, CEC committed itself to the development of innovative, clean, and efficient alternative fuels.

Global Warming Report. In September, CEC's Intergovernmental Relations Committee released its interim report entitled *The Impacts of Global Warming on California*, approved by the full Commission at its August meeting. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 128 for background information.) The report summarizes the risks and impacts of

global warming. The Committee recognized the following potential risks: (1) a 2.7 to 8.1 degree Fahrenheit warming by the middle of the twenty-first century; (2) a .9 to 3.6 degree Fahrenheit warming may already be unavoidable; (3) indications point to increased "greenhouse gases" as the cause of a one degree Fahrenheit increase in temperature over the past 100 years; (4) it may be ten to fifteen years before it is certain that "greenhouse" warming has occurred; and (5) the timing and magnitude of warming will be influenced by the amount of greenhouse gases emitted in the future as a result of human activities. The Committee also found that the state faces potential impacts such as decreases in water resources, agriculture, forestry, natural habitat (e.g., coastal flora and fauna), and the economy, as well as increases in the demand for electricity and deterioration of air quality and human health.

The report concludes that the potential risks and impacts warrant an examination of possible policy measures to combat further warming. The results of this examination will be presented to the legislature on June 1, 1990.

CEC Holds Hearing Regarding The Geysers KGRA Decline. On September 21, CEC held an informational hearing to discuss the declining generation of The Geysers Known Geothermal Resource Area (KGRA). (See CRLR Vol. 9, No. 4 (Fall 1989) p. 128 for background information.) Representatives of utilities, steam suppliers, and public agencies testified on possible causes and remedies for reductions in steam at the world's largest complex of geothermal plants. CEC Chairman Charles Imbrecht indicated that CEC must account for the unexpected decline as it prepares electricity supply forecasts.

The hearing concluded that declines in generation were "spotty," with some geothermal units showing no decline in production while others have experienced significant reductions.

Some attributed the decline to falling fuel prices that eliminate the economic incentive to drill new wells and renovate the old. Conversely, others credited the decline to overexploitation by utilities, and the drilling of new wells which often reduce output from existing wells.

1989 Fuels Report Available. The 1989 Fuels Report, adopted by CEC on December 13, is now available to the public. The report covers energy and the

environment, oil and gas price scenarios, the importance of the natural gas supply system, impacts of efficiency improvements on utility power plants, fueling transportation in California, and economic incentives as environmental policy tools.

CEC Releases Quarterly Oil Report For First Quarter 1989. In November, CEC released its Quarterly Oil Report For The First Quarter Of 1989. The report surveys and summarizes oil market activities, price trends, refinery activities, production, and petroleum company financial statements for the January-March 1989 period. According to the report, petroleum fuel volumes (with the exception of exports and fuel stocks), prices of crude oil, federal outer continental shelf production, and oil company revenues and net income increased in California from one year ago and from the previous quarter. The price of retail gasoline, refinery activity, and California onshore and offshore production, as well as exports and fuel stocks, declined compared to a year ago and the previous quarter.

LEGISLATION:

SB 427 (Torres) would have required CEC to study California's progress in reducing total emission of carbon dioxide from the combustion of fossil fuels; undertake a study to determine the benefits, in terms of energy conservation and reduction of global warming, of increasing the surface reflectance of buildings and other developments, including streets and highways; undertake a study on time-of-use electricity pricing, which shall include quantitative objectives and target dates for increasing the availability of time-of-use metering for residential consumers; undertake a study to evaluate the causes of tropical rain forest destruction worldwide, as prescribed; undertake a study to determine the potential for reduction of global greenhouse gases by specified plantings in nondesert, urban environments; and report its findings and recommendations as prescribed. This bill was vetoed by the Governor on October 2 and was stricken from the file on January 8.

The following is a status update on bills described in CRLR Vol. 9, No. 4 (Fall 1989) at page 129:

AB 2395 (Sher), which would enact the Global Warming Response Act of 1989, is pending in the Senate Appropriations Committee's suspense file.

SB 539 (Rosenthal) would require



CEC to prepare and submit, by December 31, 1990, a report to the Governor and the legislature setting forth options and recommendations for aligning investor-owned and public utility conservation and demand side management programs with long-term utility resource plans for minimizing the cost of reliable electricity services. This bill is pending in the Assembly Natural Resources Committee. SB 345 (Torres), which would have required CEC to study the benefits of increasing the surface reflectance of buildings, streets, and highways to conserve energy and reduce global warming, died in committee.

SB 538 (*Rosenthal*), which would have required CEC 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, died in committee.

SB 1219 (*Rosenthal*), which would have provided financial incentives for utilities to use cleaner-burning natural gas in place of fuel oil, died in committee.

SB 1679 (*Hart*), which would have required CEC to develop and implement a statewide fuel economy incentive program in conjunction with the Department of Motor Vehicles, died in committee.

RECENT MEETINGS:

On December 18, San Diego Gas and Electric Company (SDG&E) filed an application with the Commission for construction of a 460-megawatt combined cycle project. The project will consist of two combined cycle units, each generating 230 megawatts. SDG&E proposes to locate the plant at one of the following sites: (1) an undeveloped site, formerly considered for the Sundesert power plant, near Blythe in Riverside County; (2) the Heber Geothermal powerplant in Imperial County; (3) an undeveloped site in the West Sycamore Canyon in the eastern section of Miramar Naval Air Station in San Diego County; (4) the South Bay power plant in Chula Vista in San Diego County; or (5) the Encino powerplant in Carlsbad in San Diego County.

CEC consideration of SDG&E's Notice of Intent and the Executive Director's recommendation of data adequacy was scheduled for CEC's business meeting on January 17.

FUTURE MEETINGS:

General CEC meetings are held every other Wednesday in Sacramento.

HORSE RACING BOARD

Secretary: Leonard Foote
(916) 920-7178

The California Horse Racing Board (CHRB) is an independent regulatory board consisting of seven members. The Board is established pursuant to the Horse Racing Law, Business and Professions Code section 19400 *et seq.* Its regulations appear in Chapter 4, Title 4 of the California Code of Regulations (CCR).

The Board has jurisdiction and power to supervise all things and people having to do with horse racing upon which wagering takes place. The Board licenses horse racing tracks and allocates racing dates. It also has regulatory power over wagering and horse care. 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. (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.)

Each Board member serves a four-year term and receives no compensation other than expenses incurred for Board activities. 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. 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.

MAJOR PROJECTS:

Wagering Prohibition Adopted. At its November 17 meeting, CHRB formally adopted an amendment to section 1969, Title 4 of the CCR, which adds satellite

wagering facility supervisors and assistant satellite wagering facility supervisors to the list of persons prohibited from wagering on the result of a race while on duty at a race meeting or satellite wagering facility. The Board had previously discussed the language of this proposal at its August 25 meeting (see CRLR Vol. 9, No. 4 (Fall 1989) p. 130 for background information). This regulatory amendment awaits approval by the Office of Administrative Law (OAL).

OAL Rejects Three Rulemaking Packages. Within a three-day period during October, OAL rejected three sets of CHRB-approved regulatory actions.

On October 16, OAL rejected the Board's adoption of new section 1472, Title 4 of the CCR, which would have provided that each guest association seeking approval to conduct simulcast wagering at its facility shall employ one or more licensed satellite facility supervisors, and established the duties of these supervisors. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 114 and Vol. 9, No. 1 (Winter 1989) p. 100 for background information.) OAL found that the regulation failed to meet the clarity and consistency requirements of Government Code section 11349.1.

Also on October 16, OAL rejected the Board's amendments to sections 2056, 2057, and 2058; its repeal of sections 2059 and 2060; and its adoption of new sections 2059 and 2060, Title 4 of the CCR, governing satellite wagering. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 121; Vol. 9, No. 2 (Spring 1989) p. 144; and Vol. 9, No. 1 (Winter 1989) pp. 100-01 for background information.) OAL ruled that the regulatory action failed to satisfy the necessity, clarity, and consistency requirements of Government Code section 11349.1, and that CHRB failed to include several required documents in its rulemaking file.

On October 19, OAL rejected the Board's amendment to section 2061, Title 4 of the CCR, which would set forth conditions which a racing association must meet in order to use satellite (simulcast) wagering either to accept wagers on the results of out-of-state races or for interstate wagering on California horse races by out-of-state betting systems. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 130 for detailed background on this proposed amendment.) OAL ruled that the regulatory changes failed to meet the clarity, necessity, and nonduplication standards in Government Code section 11349.1; and the Board