



# REGULATORY AGENCY ACTION

(Fall 1988) p. 112 for background information.)

**Continuing Education Rule Change.** In March, the BCE published notice of proposed amendments to section 356, Chapter 4, Title 16 of the California Code of Regulations (CCR), which establishes course content requirements for continuing education (CE) courses. Current section 356 allows chiropractors to take CE courses at any educational institution recognized by the California Department of Education, thereby allowing doctors of chiropractic to attend seminars which are often unrelated to the practice of chiropractic. The proposed changes would require CE courses to be sponsored by chiropractic colleges having or pursuing status with the Council on Chiropractic Education. Section 356 would also be amended to provide that four out of every twelve hours of CE must be in adjustive technique.

The Board accepted written comments on these proposed changes until April 27.

**No-Out-of-Pocket-Expense (NOOPE) Regulation.** At its January meeting, BCE approved draft language for a future regulatory change which will categorize certain billing practices by chiropractors as unprofessional conduct. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 111 for background information.) Under proposed section 317(u), Chapter 4, Title 16 of the CCR, unprofessional conduct would include billing an insurance company without informing that carrier "on each specific service billed that the chiropractor will accept as full payment that received from the insurance company and will waive the patient's co-payment."

## LITIGATION:

In *California Chapter of the American Physical Therapy Ass'n, et al. v. Board of Chiropractic Examiners et al.*, (consolidated case Nos. 35-44-85 and 35-24-14), the BCE's private counsel filed a petition for writ of mandate in the Third District Court of Appeal, in an attempt to appeal the Sacramento Superior Court's grant of a motion for summary judgment on the proper scope of chiropractic practice filed by intervenors Board of Medical Quality Assurance and Physical Therapy Examining Committee. The Third District denied the writ, finding that BCE's appeal right once the case concludes is an adequate remedy. At this writing, BCE is seeking reconsideration of the summary judgment ruling from the trial court. A status conference in the case was scheduled for May 26. (See CRLR Vol. 9, No. 1 (Win-

ter 1989) p. 97; Vol. 8, No. 3 (Summer 1988) p. 119; and Vol. 8, No. 2 (Spring 1988) p. 30 for background information on this case.)

## RECENT MEETINGS:

At its January 5 meeting in Sacramento, Acting BCE Chair Jackie Bartels announced the resignation of BCE's Executive Director Edward J. Hoefling. Vivian Davis will serve as Acting Executive Director. The Board set a March 1 deadline for applications for the vacant position.

Also at the January meeting, attorney Carol Rader from the Department of General Services spoke to the Board regarding its obligations in reviewing and approving all contracts. Under existing regulations, the Board must consider each contract separately and delegate specific authority for approval at a public meeting. At the meeting, the Board considered and subsequently authorized BCE Chair Bartels to enter into several contracts on its behalf, including the payment of up to \$300,000 to private counsel for purposes of defending BCE in the litigation over section 302 of BCE's regulations (*see supra* LITIGATION).

At the Board's February meeting, Jackie Bartels, Bruce Reyes, and Patricia Quibell were elected BCE Chair, Vice-Chair, and Secretary, respectively.

Also in February, BCE decided that chiropractic examination commissioners must attend at least one training session before serving at an examination.

## FUTURE MEETINGS:

- June 29 in northern California.
- August 17 in northern California.
- October 5 in northern California.
- December 7 in northern California.

## CALIFORNIA ENERGY COMMISSION

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

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 Environmental, 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:

**Data Collection Regulation Amendment Adopted.** Following a public hearing on February 1, the Commission adopted amendments to its regulation for the collection of data on energy use in California. (See CRLR Vol. 7, No. 3 (Summer 1987) p. 127 for background information.) The amendments—the product of over three years of work by the CEC staff—entirely replace existing section 1344, Title 20 of the California Code of Regulations. The new provisions require specified utilities to submit data collection plans for CEC approval; collect detailed and reliable data on energy use by surveying consumers and metering consumption; and analyze and report the data to the CEC in a manner which will be useful for energy demand forecasting.

Under the existing regulation, the CEC has struggled to fulfill its statutory obligation to forecast the state's energy needs. The brief and generalized wording of section 1344 fails to ensure that detailed, reliable, useful, or even accurate data is available to the CEC. Data collection by utilities has not been carefully planned or coordinated with the CEC. As a result, the data presently submitted



to the CEC is often unrefined or unusable while data which would be very useful in improving forecast accuracy and detail often is not collected at all.

Refined energy demand forecasting is extremely important to both the CEC and to the utilities, because overestimating demand can cost ratepayers or utilities hundreds of millions of dollars in unneeded facilities, while underestimating demand can cause serious hardship and economic loss if energy services are curtailed or cut off. The CEC is currently studying the winter and summer 1988 curtailments of natural gas to southern California industrial customers to determine what role inadequate demand forecasting played in those shortages. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 99 for background information.)

The new regulation has four principal sections. Section 1344(a) requires utilities to file an annual data collection plan with the CEC. It also specifies the contents of the plan; that the plan is to be filed by July 1 each year; how the plan is to be reviewed and approved by the CEC; and how requests for confidentiality are to be handled. Section 1344(b) allows utilities to file "customized" data collection plans in lieu of the standards established under 1344(c). Section 1344(b) sets stricter minimum requirements for large utilities' customized plans than those required for medium utilities, while small utilities are completely exempted. Section 1344(c) establishes the standards for the basic data collection plans, including the requirements for metering, surveys, and analysis. These standards constitute the bulk of the new regulations, and establish the foundation for coordinated data collection by the CEC. Section 1344(d) defines terms used in the regulation, and specifically exempts small utilities from the regulation's reporting requirements.

At the February 1 hearing, the full Commission heard comments from two members of its staff and five representatives of the utilities. The utility representatives were generally supportive of the proposed amendments, particularly the provision allowing for customized data collection plans. At this writing, the rulemaking package is pending approval by the Office of Administrative Law.

#### LEGISLATION:

*AB 286 (Assembly Committee on Transportation)* would amend the Katz Safe Schoolbus Clean Efficiency Demonstration Program, which regulates the replacement of schoolbuses which are beyond their useful life. Under current

law, the replacement buses—at least 35% of which must be powered by methanol or other clean-burning fuels—are then monitored for exhaust emissions and fuel economy. This bill would recast eligibility criteria for the schoolbuses and would require that estimates of the cost of replacement buses be made by the Department of General Services. Additionally, AB 286 would delete the requirement that the CEC establish by regulation procedures and requirements for participation in the program, thereby allowing the CEC to establish such procedures by other means. This bill is pending in the Assembly Ways and Means Committee.

*AB 361 (Vasconcellos)* would extend the termination date of a program which encourages third-party financing of energy projects at state-owned sites, and allows for the acceleration of development at such sites where "reasonable incentives" are provided. Specified incentives are established in which annual cash revenues from the projects are shared on an equal basis between the state and the siting institution. The program will terminate on January 1, 1990, but AB 361 would amend section 25008.5 of the Public Resources Code to extend the termination date to January 1, 2000. This bill is pending in the Assembly Natural Resources Committee.

*SB 345 (Torres)* would require the CEC to undertake a study of the benefits of increasing the surface reflectance of buildings, streets, and highways to conserve energy and reduce global warming. "Reflectance" refers to the ratio of the amount of light reflected from a surface to the amount originally striking the surface. The proposed study would also determine whether reflectance criteria should be incorporated into energy standards for buildings. The findings would be reported in the CEC Electricity Report, as well as directly to the Governor and the legislature. This bill is pending in the Senate Energy and Public Utilities Committee.

*SB 1527 (Hart)* 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. This bill would require the Commission to quantify these environmental costs not later than January 1, 1991. SB 1527 is pending in the Senate Energy and Public Utilities Committee.

#### RECENT MEETINGS:

At the February 1 general business meeting, the full Commission saw a slide

show depicting the harm caused by small hydroelectric plants in California presented by Mr. J.V. Henry of the Save Our Streams organization. Henry specifically mentioned the problems of erosion, visual destruction, and the threat of accidents such as the Five Bears concrete spill last September in the Genesee Valley. He praised the CEC's record on environmental conservation issues and urged the Commission to pressure the Water Resources Control Board and the individual electric and gas utilities to reject all proposals which would harm California's streams.

At the February 15 meeting, the CEC approved an award of over \$5 million to eight school districts to provide air conditioning and needed insulation to nineteen year-round schools. This award comes under AB 694 (Hauser), 1986 legislation which provided \$30 million in Petroleum Violation Escrow Account (PVEA) funds for the purchase and installation of air conditioning equipment for qualified schools. In order to qualify for the funds, the schools must certify that they are operating year-round due to overcrowding and that they are in areas where there is a need for air conditioning. Conditional approval was granted for an additional \$2 million to four Los Angeles area schools, subject to their forthcoming certification as eligible schools by the State Allocation Board.

The Commission also approved an award of over \$400,000 to eligible applicants through the Siting and Permit Assistance Grant Program. The Program was established in 1984 to provide grants-in-aid to local agencies to develop or improve their energy project permitting and siting processes through cumulative environmental impact analysis or development of General Plan amendments or siting criteria. The program is intended to encourage effective energy utilization, conservation, and environmental protection where a lack of resources would prevent such measures from being effectively considered in energy planning. Funding for the grants comes in part from the CEC General Fund and in part from PVEA funds.

Additional grants, as well as loans, were approved by the Commission on March 1 as part of the Farm Energy Association Program (FEAP). The FEAP was established under SB 1145 (Mello) in 1986 to "help the agricultural industry in general, and small family farms in particular, to reduce energy costs and aid California farmers in their long-term efforts to remain strong and competitive." The Program includes technical assist-



## REGULATORY AGENCY ACTION

ance for education and support programs, grants for demonstration projects of new and existing conservation tillage and harvesting techniques, and low-interest loans for the purchase of equipment and services for energy conservation and the development of demonstration projects. Applicants for assistance under the program are screened by a selection committee made up of CEC staff, University of California personnel, California Department of Food and Agriculture staff, and independent agricultural experts. Thirty-two grants totalling \$1,575,000 and eighteen loans totaling \$1,428,365 were awarded. Technical assistance is arranged through the University of California, which also co-funds the technical assistance portion of twelve of the projects which are receiving grants.

### 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. 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 percent-

age.) 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:

*Retroactive Approval of PRA Application.* At its February 24 meeting in Monrovia, the Board heard the request of the Pacific Racing Association (PRA) to amend its application to conduct a horse racing meeting to include Sunday racing, pursuant to section 1433, Title 4 of the California Code of Regulations (CCR).

PRA's original application indicated that racing would not occur on Sundays because the Peninsula Horse Racing Association (PHRA) conducts a competing meeting on Sundays. However, because PHRA indicated that it was vacating the dates previously run at the Bay Meadows race track at night, PRA requested to assume that day schedule.

At the February meeting, PRA indicated it wished to amend its license—particularly because it had been racing the last four Sundays without Board approval. PRA claimed that the request had been placed on CHRB's January meeting agenda, but because the meeting was cancelled, the Board could not rule on it. The PRA justified its action because it historically asked to race on Sundays and was consistently turned down because of PHRA's meet. When PHRA vacated its meet, PRA assumed it could race on Sundays and believed that the Board would have allowed the amendment at the January meeting if the meeting had not been cancelled.

Upon hearing this, Commissioner Deats made a motion to fine PRA \$10,000 for racing on Sundays without a license. There was no second and the motion died. PRA's request to race Sunday was then granted by the Board without a fine. Commissioner Deats commented that he did not like the precedent the Board was setting by not fining PRA for its action. The Board justified its action by stating that had there been a January meeting, the amendment to the license would have been allowed at that time.

*Proposed Regulatory Changes.* At the February meeting, the CHRB conducted a public hearing and subsequently adopted new section 1472, Title 4 of the CCR, which would define a new occupa-

tional license classification of Satellite Facility Supervisor. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 100 for further information.) The rulemaking package was submitted to the Office of Administrative Law (OAL), but was withdrawn by the Board for further development.

At the same hearing, the Board received comments on proposed changes to sections 2056-2060 of its regulations in Title 4 of the CCR. (See CRLR Vol. 9, No. 1 (Winter 1989) pp. 100-01 for background information.) At the hearing, many complaints were voiced over the capitalization rate required for satellite companies under proposed section 2059. CHRB decided to delay adoption of the proposed changes until the public comments could be considered by its Parimutuel Operations Committee.

*New Drug Testing Procedure Under Fire.* CHRB recently revealed that horses trained by D. Wayne Lukas and Laz Barrera tested positive for cocaine. Using what it considers improved techniques for detection of illegal substances, CHRB said a urine sample taken from Gene Klein's two-year-old colt Crown Collection—trained by Lukas—was positive for cocaine. The sample had been taken six months earlier and frozen, after Crown Collection won the seventh race on August 29 at Del Mar. The test found approximately one-billionth of one gram of cocaine. CHRB Secretary Leonard Foote announced in a televised interview that the amount was small enough that it could have gotten into the horse through being on the hands of stable workers—implying that the horses were not intentionally drugged by the trainers. Mr. Klein believes that the sample was contaminated. He pointed out that the barns where the post-race testing is conducted are dirty and readily accessible to the public. CHRB plans to conduct a second test on the samples. Formal accusations were filed in March against Lukas and Barrera. As the trainers of record, each is responsible for the condition of the horse at all times under racing's "absolute insurer" rule.

### LEGISLATION:

*AB 82 (Floyd)* would amend existing law which requires CHRB to provide a method to estimate the aggregate handle for each association's proposed meeting and provides that estimates may be revised during the course of a meeting. This bill would authorize an association to revise the estimate for the aggregate handle during a meeting if CHRB determines that the revision is necessary. This bill is pending in the Assembly Govern-