



paths with substance abuse and alcohol problems. The traditional response to such problems is referral to a treatment program and/or disciplinary action, which may ultimately result in revocation of the doctor's license. Recognizing the need to provide an alternative, non-punitive method of helping its licensees, the Board is considering the establishment of a standardized drug diversion program.

Under the proposed plan, any osteopath suspected of needing assistance would be reported to Occupational Health Services (OHS), an independent agency which is already administering a similar program for dentists and pharmacists. An evaluation committee, comprised of at least three osteopathic physicians, one public member, and one doctor of medicine, would conduct an initial investigation to identify the problem. OHS would then contact the doctor and, if necessary, conduct formal intervention. If necessary, the doctor would be referred to a treatment center, either on an inpatient or an outpatient basis.

The Board will pursue legislation to establish the necessary authority to implement the program.

## LEGISLATION:

At its December 11 meeting, the Board discussed two bills which BOE hopes to pursue during the current session. The first would define an "unconscionable fee" and would establish that the charging or obtaining of such a fee for professional services constitutes unprofessional conduct. The second legislative proposal deals with cost recovery for licensees found guilty of unprofessional conduct. Under the proposed bill, a board may request an administrative law judge "to direct any licensee found guilty of unprofessional conduct to pay the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case."

As of this writing, BOE has not found a sponsor for either piece of legislation.

## FUTURE MEETINGS:

To be announced.

## PUBLIC UTILITIES COMMISSION

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The California Public Utilities Commission (PUC) was created in 1911 and strengthened in 1946 to regulate privately-

owned utilities and ensure reasonable rates and service for the public. The Commission oversees more than 1,500 utility and transport companies, including electric, gas, water, telephone, railroads, buses, trucks, freight services and numerous smaller services. More than 19,000 highway carriers fall under its jurisdiction.

Overseeing this effort are five commissioners appointed by the Governor with Senate approval. The commissioners serve staggered six-year terms in an increasingly complex full-time endeavor.

The Commission has responded to public criticism that it is biased in favor of utilities by (1) setting up a Public Staff Division which is structurally distinct from the Commission "to represent the public," with an annual budget of \$9.2 million; (2) creating the position of "public advisor" to serve as a kind of ombudsperson assisting the public; (3) creating a system of intervenor compensation to pay the fees of advocates who intervene or appear and contribute to results benefiting ratepayers; and (4) authorizing enclosures in billing envelopes by groups representing ratepayers.

## MAJOR PROJECTS:

*Order Instituting Investigation to Consider New Regulatory Alternatives for Local Telephone Companies.* On November 25, the PUC issued an Order Instituting Investigation (OII) No. 87-11-033 to consider alternatives and options in regulating local telephone companies such as Pacific Bell and General Telephone Company of California. These companies provide local calling and toll calling within local access and transport areas (LATAs) in California. The proceeding, which is assigned to Administrative Law Judge Charlotte Ford, is expected to last at least eighteen months.

In commencing the investigation, the Commission cited changes in technology and the telecommunications market since the 1984 breakup of American Telephone and Telegraph Company (AT&T). These changes and other issues were discussed at a special *en banc* hearing on telecommunications last September 24-25. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 105.) The views expressed by various groups at the *en banc* hearing played a major role in shaping the procedural framework of the OII. The Commission's order and investigation address concerns about increased competition now facing all telecommunications companies in the current environment. (For detailed discussion of this issue, see *supra* FEATURE ARTICLE.)

The PUC's November 25 order details the three phases in which the Commission will conduct its investigation. Phase I, which is scheduled to begin with a prehearing conference on January 29, will address issues of pricing flexibility for services subject to competition. This initial phase will focus on several local telephone company services to determine whether they are sufficiently competitive to warrant some price flexibility. These services include custom calling features, private line services, and special access services.

The PUC seeks testimony on methods by which it should determine whether there is sufficient competition to justify granting pricing flexibility. Then the Commission will determine the appropriate degree of pricing flexibility; how the range of pricing flexibility should be established; and whether there are any reasons why the PUC should not lift its current ban on competition within the local calling area for the services in question.

The Commission will also consider formal guidelines for special contracts between the local telephone companies and individual customers for custom-tailored telecommunications offerings as an approach to pricing flexibility. The Commission hopes to conclude the pricing flexibility hearings in the spring of 1988.

Phase II will consider alternative approaches to ratemaking and the setting of rates for services not subject to competition. These alternatives may involve changing the basic method of rate-making, or refinements to the existing cost-of-service approach. The PUC encourages parties to submit proposals for improved incentive-based regulation, whether based on cost-of-service regulation or so-called "social contracts."

The questions to be addressed in Phase II include the following:

-What should be the basis for rate-making? Should cost-of-service regulation continue, or would some alternative form of regulation be more effective in meeting PUC goals?

-If the Commission continues to use cost-of-service regulation, should modifications be made to make the ratemaking process more effective?

-How can the Commission allocate costs between regulated and deregulated services to ensure that regulated rates do not cross-subsidize competitive services?

-Should rates, revenue requirements, and earnings continue to be reviewed on a regular schedule, or should the timing



of reviews be based on utility/PUC request or performance criteria established in advance?

-What distinctions should be made among local telephone companies in designing ratemaking approaches?

Phase III of the investigation will concentrate on reconsideration of the current ban on competition for intraLATA message toll service. Phase III will also consider extending the long distance carrier access charge scheme currently applied to carriers which provide service between the local calling areas (interLATA) to the intraLATA realm. Questions to be considered in Phase III include:

-Should the PUC institute some type of intraLATA access charges if the ban on intraLATA competition is lifted for any or all of these services?

-How can and should inter-company settlement arrangements be modified or replaced to provide flexibility and better management incentives for individual carriers while avoiding serious financial impacts on small independents?

Phase III and the hearings on intraLATA message toll service competition are expected to extend into 1989.

*En Banc Hearing on Trucking Regulation.* On December 22, the Commission announced an *en banc* hearing on a wide range of trucking regulation issues. Hearings are scheduled for March 10-11 in San Francisco, and March 18 in Pasadena. The Commission seeks written comments from interested parties by February 17.

In its Notice of Hearing, the PUC outlined the three general approaches to regulation of the sectors of the trucking industry under its jurisdiction: minimum rate regulation (currently applied to dump trucks, livestock carriers, and household goods carriers); individually filed tariffs (applied to general freight carriers); and general rate deregulation (applied to fruit and vegetable carriers, petroleum tank trucks, hay and grain carriers, and carriers of hundreds of other commodities).

At the *en banc* hearing, the Commission seeks to evaluate each of these approaches in light of several possible policy objectives, including economic efficiency, effects on pricing, provision of adequate service to the public, safety, and labor issues.

*Diablo Canyon Nuclear Power Plant.* On October 16, the PUC denied Pacific Gas & Electric Company's (PG&E) request for a further increase in electric rates to cover the costs of operating Diablo Canyon Nuclear Power Plant.

However, the decision did allow the utility to book for later recovery reasonable non-investment expenses up to \$197 million annually for the plant. Non-investment expenses include production, administrative, general and payroll expenses, one refueling per year, and business taxes. (See CRLR Vol. 7, No. 3 (Summer 1987) p. 130, Vol. 7, No. 2 (Spring 1987) p. 105 and Vol. 7, No. 1 (Winter 1987) p. 95.)

As a safeguard for ratepayers and an incentive for PG&E to operate Diablo Canyon efficiently, the Commission established as part of its decision a Target Capacity Factor (TCF) mechanism. The capacity factor is the ratio of average electrical output capacity of the unit. It is designed to equitably allocate the risk involved in the operation of a large plant between the utility and ratepayers, and provide an incentive to the utility for superior performance.

The Commission set a TCF band for Diablo of 55-75% over a three-fuel-cycle period. If the plant is operated within that band, the TCF mechanism is not triggered. If Diablo operates below 55% capacity, PG&E is penalized part of the cost of replacement fuel to generate the extra power required as a result of operating below 55%. If the plant operates above 75%, PG&E will be rewarded with part of the fuel savings resulting from the extra power generated by the plant by operating above 75% capacity.

*San Onofre Nuclear Generating Station.* On November 25, the PUC approved trust funds established to collect funds to be used for the decommissioning of San Onofre Nuclear Generating Station (SONGS) and Palo Verde Nuclear Generating Station, located about fifty miles west of Phoenix. Southern California Edison's trust agreement covers its SONGS and Palo Verde interests; San Diego Gas & Electric Company's agreement covers its share of the SONGS units.

Under state law and prior PUC decisions, the utilities regulated by the Commission are required to establish trust accounts to collect the funds necessary to decommission the nuclear power plants they own. The PUC determined the amounts necessary to pay for decommissioning in previous decisions. These amounts are currently being collected in electric rates. This treatment of final dismantling costs was adopted so that present customers—who benefit from the plant's operation—pay for decommissioning, rather than future customers who will not benefit once the plant is shut down.

The funds must be segregated from other utility assets and externally managed. If specific Internal Revenue Service requirements are met, the annual contributions to the funds are exempt from the utilities' income. Thus, the utility's income is reduced by the amount of the decommissioning contributions, the utility is liable for less income tax, and rates may be lowered to reflect that reduced tax liability.

*Inquiry to Revise Rate Case and Fuel Offset Proceeding Schedules.* On November 13, the PUC asked its staff and the six major energy and telephone utilities in California to submit recommendations by January 11 on how to modify the filing/revision dates and time schedules for general rate case and fuel offset proceedings. Energy and telephone utilities not included in the rate case plan and other interested parties may also submit recommendations.

The PUC took this action because recent legislation requires the Commission to release decisions proposed by its administrative law judges thirty days prior to issuance of final decisions by the Commission. This requirement affects the time schedules in general rate case and fuel offset proceedings and makes it difficult for the parties to cases to meet the filing deadlines.

A prehearing conference on this matter was scheduled for January 19.

*976 Calls.* On December 9, the PUC approved the blocking of 976 Information Access Service (IAS) calls for a fee of \$2 for residential customers, \$5 for business customers, and free for Universal Lifeline customers. On written notice, customers may have blocking removed free of charge; a fee of \$5 will be charged to have the service reinstated.

This interim decision directs local telephone companies to proceed with central office blocking no later than February 1, 1988. The companies offering residential customers 976 service must provide advance notice to all residential customers of the availability of blocking within ninety days. The notification by the companies must include a special mailing to those customers who can be served by blocking-capable offices, explaining the offering of optional blocking. Residential customers who want to block 976 calls but who are served by central offices not capable of blocking can request a change of telephone numbers, so as to be served by an office which has blocking capability. Residential customers who cannot be offered blocking are provided two additional adjustment periods.



The local telephone companies may block access to 976 calls for customers who fail or refuse to pay 976 charges (except for charges for which an adjustment is granted).

The PUC began its investigation of 976 services after irate parents complained of misleading advertisements which induced their children to call 976 numbers without knowing of the charges involved. In previous interim decisions, the PUC adopted rules regarding fair advertising and made available a one-time adjustment to customers' phone bills where the caller was a child or was unaware of the 976 charge; and ruled that 976 service is in the public interest and should be continued as a tariffed service by the telephone utilities, but that the blocking issue should be resolved.

The PUC first authorized the 976 IAS program in 1983. It consists of tariffed offerings by a telephone utility of services which allow many telephone callers to simultaneously call and hear a selected pre-recorded message. IAS providers lease the utilities' phone lines over which they make their programs available to the public; they pay the utilities a fee for this use.

In a separate decision on December 9, the PUC dismissed cross complaints involving Carlin Communications, Inc., Sable Communications of California, Inc., and Pacific Bell over the issue of "live" 976 IAS programs, offered by the parent company, Carlin, through its subsidiary, Sable.

Carlin offers 976 services which include pre-recorded messages and "live" programs in which a caller can talk to a Carlin employee following a brief pre-recorded message, and two callers who dial the service at about the same time can talk to each other after a brief pre-recorded message. PacBell provides transport, billing, and collection services for the information providers according to a rate schedule on file with the PUC.

On January 4, 1985, Carlin and Sable filed a complaint against PacBell, claiming that PacBell proposed to disconnect Carlin's service because it did not conform with the phone company's tariff which defines pre-recorded and live communications. In its response filed in February 1985, PacBell stated that it had twice advised Carlin by letter that Carlin's "live" offerings were in violation of Pacific's filed tariffs and service would be disconnected if such offerings did not cease. However, PacBell stated that Carlin's service would not be disconnected pending the PUC's decision.

The PUC concluded that "live" 976

programs are not within the tariff definition of interactive programs and that the tariff provisions are unambiguous. According to the decision, "the 976 caller is to receive the information from the IAS provider's equipment via a recorded message, not from a person responding to an inquiry. There is no reference to live conversation or communication." The decision also concluded that first amendment principles do not require PacBell to offer to transport live programming.

*PUC President Testifies Before Congressional Committee.* In testimony before the House Subcommittee on Energy and Power, PUC President Stan Hulett urged caution in considering proposals by the Federal Energy Regulatory Commission (FERC) to modify regulations under the Public Utility Regulatory Policies Act of 1978.

The Act was passed to encourage non-utility generation of electricity to supplement traditional sources of electricity in the wake of the OPEC oil embargo. Since the Act was implemented, changes such as decentralization of electric generation due to cost-ineffectiveness of traditional sources have prompted FERC to consider possibly expanding competitive opportunities in electric generation.

The cautious approach suggested by Hulett is based on the perception that "FERC seems to be moving too quickly on some of the proposals." Hulett also testified that states should continue to maintain regulatory control over electric generation, but should be allowed to experiment with new and different programs. FERC's role, he suggested, should be to nurture these individual programs and avoid the risks that a uniform nationwide experiment might involve.

#### LEGISLATION:

*AB 321 (Moore)*, regarding PUC issuance of a certificate to an electrical or gas corporation to provide telecommunications service for the public already within the service area of a telephone corporation, is a two-year bill pending in the Senate Energy and Public Utilities Committee. The sponsor's office reports that AB 321 will be amended and pursued.

*AB 1234 (Moore)*, regarding a revised definition of the term "electrical corporation," is pending in the Assembly Ways and Means Committee and will be pursued by its author.

The following bills, discussed in detail in CRLR Vol. 7, No. 3 (Summer

1987) pp. 131-33 and Vol. 7, No. 2 (Spring 1987) pp. 106-07, have been dropped by their respective authors: *SB 1350, 1351, 1352 (Russell)*, *SB 727 (Morgan)*, *AB 481, 459, 1236, 198, 319, 322, 359 (Moore)*, *ACR 13 (Moore)*, *AJR 28 (Moore)*, *SB 1061 (Alquist)*, *SB 242, 664, 437, 153 (Rosenthal)*, *AB 1452, 2411 (Peace)*, *AB 2565 (Felando)*, and *AB 2357 (Allen)*.

#### LITIGATION:

The Ninth Circuit Court of Appeals has ruled in favor of the PUC in *Air Transport Association of America (ATA) v. California PUC*, Nos. 86-2885 and 86-2906 (November 30, 1987). ATA and thirteen airlines sued the Commission after it adopted General Order 107-B to regulate the monitoring of telephone conversations by customers who own their own equipment. The plaintiff airlines had telephone reservation facilities in the state which allowed them to monitor calls between their reservation agents and customers, which monitoring violated General Order 107-B. Although the trial court ruled in favor of ATA on grounds the PUC exceeded its jurisdiction under state law, the Ninth Circuit reversed on grounds of lack of federal court jurisdiction over ATA's claims.

#### RECENT MEETINGS:

On October 28, the PUC issued an interim order which establishes new procedures for continued funding of Universal Lifeline telephone service. The Lifeline program was established to ensure basic telephone service for low-income, invalid, elderly, and rural customers who pay 50% of the cost of their service. Legislation rescinded the tax which had been used to subsidize Universal Lifeline service, and instead provided for a 4% interim surcharge on service rates, subject to refund, to subsidize the Lifeline service. In July 1987, the PUC applied the surcharge to long distance telephone companies providing service within the state. This interim order extends the 4% surcharge to toll telephone service within calling areas, effective January 1, 1988.

At its November 5 meeting, the PUC announced the renaming of three of its organizational units to clarify their roles and responsibilities to the public. The present Evaluation and Compliance Division, which implements Commission decisions, monitors utility compliance with Commission orders, and advises the Commission on utility matters, will be renamed the Commission Advisory and Compliance Division. The Public Staff Division, which is charged with



representing the long-term interests of all utility ratepayers, will be renamed the Division of Ratepayer Advocates. The Policy and Planning Division will be renamed the Division of Strategic Planning to emphasize its role in designing and leading PUC investigations into restructuring the regulation of utilities as they move from monopoly to more competitive environments.

At its November 25 meeting, the PUC announced plans to temporarily increase the monthly surcharge for Centrex and Airport InterCommunications Services subscriber lines from one cent to ten cents and apply a monthly ten-cent surcharge to private lines and WATS/800 service. The increase will offset a projected deficit in the state's Deaf and Disabled Telecommunications Program. The deficit resulted from added services and increasing participation in the program. (For background information, see CRLR Vol. 7, No. 4 (Fall 1987) p. 106.)

The revenue base presently used to fund the Deaf and Disabled Telecommunications Program grows by only 3% per year. In contrast, the program's expenses grew by 230% in the first six months of 1987, due to legislative action which expanded the program. The PUC's Commission Advisory and Compliance Division recommended replacing the monthly flat-rate surcharge with a percentage surcharge so that revenues to fund the program can be readily adjusted to respond to expenses. In response, the PUC will seek urgency legislation to replace the flat-rate surcharge with a percentage surcharge applied to local telephone companies' intrastate revenues, effective July 1, 1988.

#### FUTURE MEETINGS:

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

#### STATE BAR OF CALIFORNIA

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The State Bar of California was created by legislative act in 1927 and codified in the California Constitution by 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 110,000 members, more than one-seventh of the nation's population of lawyers.

The State Bar Act designates the Board of Governors to run the State Bar. The Board consists of 22 members: fifteen licensed attorneys elected by lawyers in nine geographic districts; six public members variously appointed by the Governor, Assembly Speaker, and Senate Rules Committee and confirmed by the state Senate; and a representative of the California Young Lawyers Association (CYLA) appointed by that organization's Board of Directors. With the exception of the CYLA representative, who serves for one year, each Board member serves a three-year term. The terms are staggered to provide for the selection of five attorneys and two public members each year.

The State Bar includes 22 standing committees, 16 sections in 14 substantive areas of law, three regulatory boards, Bar service programs, and the Conference of Delegates, which gives a representative voice to the 113 local bar associations throughout the state.

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 professional standards and enhancing competence; (3) supporting legal services delivery and access; (4) educating the public; (5) improving the administration of justice; and (6) providing member services.

#### MAJOR PROJECTS:

*First Progress Report of the State Bar Discipline Monitor.* In his 239-page progress report released November 2, State Bar Discipline Monitor Robert C. Fellmeth stated that although the Bar has made several constructive changes to its discipline system, it is still defective in five major respects. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 108 and Vol. 7, No. 3 (Summer 1987) pp. 1 and 133 for background information about the Monitor's June 1987 Initial Report.)

According to the progress report, reforms which have yet to be made include (1) the hiring of six to ten administrative law judges to replace the volunteer hearing referees (448 practicing attorneys and 80 public members) who currently hear attorney discipline cases; (2) replacement of the Bar's eighteen-member appellate Review Department with a panel of three appellate judges; (3) the addition of investigative resources to the Office of Trial Counsel in order to facilitate the handling of complex cases; (4) the addition of a sufficient number of investigators at competitive salaries to reduce the 2,500-case backlog

of consumer complaints; and (5) the initiation of approximately ten statutory and rule changes in areas such as confidentiality of pending investigations, and proactive monitoring by the Bar of contempt orders issued against attorneys, legal malpractice filings, and arrests of attorneys.

At its December 12 meeting, the Board of Governors voted to replace its system of volunteer hearing referees with a new system of paid, full-time professional State Bar Court judges. The judge applicants will be screened and rated by the Board of Governors, and appointed by the Chief Justice of the California Supreme Court. Although the Bar had previously indicated a desire to phase in this panel over a three- to five-year period, the Board voted to implement the system as soon as possible. The Board also voted to replace the Review Department with a three-member appellate body which will review only contested matters. One member will be a public member, and the members will be nominated by the Board of Governors and appointed by the state Supreme Court. The Board referred these reforms back to its Discipline and Administration and Finance Committees in order to work out the details.

In Business and Professions Code section 6140.2, the legislature gave the Bar until December 31, 1987, to reduce by 80% the number of complaints pending since March 31, 1985, which had not resulted in dismissal, admonition, or filing of formal charges; and further instructed the Bar to improve its disciplinary system so that no more than six months elapse between receipt of the complaint and dismissal, admonition, or filing of formal charges. After the number of cases peaked at about 4,000 in March 1986, the Office of Investigations reduced the backlog (defined as complaints pending for six months or longer) to under 3,000. The backlog, however, has remained at 2,500 for the last ten months, and the Bar announced in December that it would not meet the December 31 backlog reduction deadline. The backlog was reduced to 1,800 in January 1988, but that reduction required the use of Office of Trial Counsel (OTC) resources, exacerbating an OTC backlog which itself reached 300 by February 1988.

At its November 16 and December 12 meetings, the Board voted to immediately spend a total of \$754,000 to reduce its backlog of complaints within ninety days. The funds are supplemental appropriations to a balanced budget and