



REGULATORY AGENCY ACTION

facturer's failure to compensate the dealer for tests performed on vehicles is questioned.

The Board consists of four dealer members and five public members. The Board's staff consists of an executive secretary, three legal assistants and two secretaries.

LITIGATION:

In *American Isuzu Motors, Inc. v. NMVB*, 186 Cal. App. 3d 464 (October 16, 1986), the Second District Court of Appeal upheld the California legislature's 1985 amendments to Vehicle Code sections 3050 and 3066, which preclude any Board member who is a new motor vehicle dealer from participating in, hearing, commenting upon, advising other members upon, or deciding any matter before the Board involving a dispute between a franchisee and a franchisor. In this regard, the Second District apparently disagrees with the Fourth District's holding in *University Ford Chrysler-Plymouth, Inc. v. NMVB*, 179 Cal. App. 3d 796 (1986), by equating the 1985 amendments with the Board's voluntary recusal policy, under which it operated prior to the 1985 amendments and when it administratively decided petitioner Fladeboe's protest against American Isuzu. Thus, American Isuzu's challenge to the constitutionality of the NMVB was rejected, and the Board's decision in favor of Mr. Fladeboe was affirmed.

RECENT MEETINGS:

The New Motor Vehicle Board did not meet between February 1986 and the end of the year.

At its January 12, 1987 meeting, the Board considered the administrative law judge's (ALJ) recommendation in a disciplinary matter involving Pittsburg Ford, Inc. In December 1986, the ALJ recommended the assessment of a five-year probation period against Pittsburg, a Bay area dealership, for price misrepresentation to consumers. Mr. Daus, majority shareholder of Pittsburg, expressed concern regarding one of the terms of the probation, which required that a Ford Motor Company employee supervise the dealership on a daily basis. Mr. Daus stated that Ford has refused to provide a manager; he offered to manage the dealership himself and to pay an independent auditor to review all dealership accounts and reimburse any overcharges to customers charged by the dealership. The Department of Motor Vehicles, which had investigated the fraud claim, objected to any amendments to the terms of the recommended

probation, and called for revocation of Pittsburg's license. The Board met in executive session regarding the matter, and plans to issue a decision in the near future.

FUTURE MEETINGS:

To be announced.

BOARD OF OSTEOPATHIC EXAMINERS

Executive Director:

Linda Bergmann
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In 1922, California voters approved a constitutional initiative which created the Board of Osteopathic Examiners (BOE). BOE regulates entry into the osteopathic profession, examines and approves schools and colleges of osteopathic medicine and enforces professional standards. The 1922 initiative, which provided for a five-member Board consisting of practicing osteopaths, was amended in 1982 to include two public members. The Board now consists of seven members, appointed by the Governor, serving staggered three-year terms.

MAJOR PROJECTS:

Regulation Changes. The Board reviewed all of its regulations in accordance with AB 1111 at its November 21 meeting in Sacramento. The Board ratified the regulations, which must now be approved by the Office of Administrative Law. (See CRLR Vol. 6, No. 4 (Fall 1986) p. 88 for details.)

LEGISLATION:

SB 1888 (Stiern) was signed and chaptered on September 29 (Chapter 1274). (See CRLR Vol. 6, No. 4 (Fall 1986) p. 88.)

AB 3033 (Floyd) died in committee. (See CRLR Vol. 6, No. 4 (Fall 1986) p. 89.)

AB 3043 (Tucker), which was supported by the Board, died in committee, and would have specifically prohibited physician's assistants from dispensing drugs.

RECENT MEETINGS:

Under Business and Professions Code section 2185, an applicant for a physicians and surgeons certificate who fails to pass the oral exam or any part of the written exam after two attempts is not eligible to be reexamined until the applicant presents evidence that he/she has completed additional appropriate medical instruction. Two students who failed the licensing exam twice have petitioned

the Board to review their exams and the entire examination process. The Board established a subcommittee to review the current exam, modify and update its sections, prepare study materials for persons who have failed the exam twice, and establish new guidelines for eligibility to retake the exam.

The Board established a committee to investigate the College of Osteopathic Medicine of the Pacific (COMP). On March 19 and 20, the committee will study and review the curriculum and facilities of COMP to ensure the adequacy of its clinical instruction.

The Board discussed physical disability as a condition warranting waiver of CME requirements to maintain an active license. When presented with a dozen hardship cases, the Board reiterated its goal to promote and ensure medical quality while recognizing those examiners who have devoted their lives to the health profession but are unable to fulfill the CME requirements due to a physical condition. The Board plans to develop a policy which would require medical documentation and substantiation when petitioning for a waiver. Each request will be analyzed on a case-by-case basis.

The Board rejected a proposal which would require osteopathic examiners to be subject to drug testing. The Board reasoned that no statute exists which gives a licensing board authority to pass or enforce such a resolution.

FUTURE MEETINGS:

April 11 in Pomona.

June 12 in Pomona.

August 14 in Sacramento.

PUBLIC UTILITIES COMMISSION

Executive Director: Victor Weisser
President: Stanley W. Hulett
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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.

G. Mitchell Wilk has replaced former Commissioner Priscilla Grew, who resigned in November. Wilk, a former member of Governor Deukmejian's staff, was appointed to a six-year term beginning January 1. His appointment creates a 3-2 Commission majority of Deukmejian appointees. The Governor will select his fourth Commissioner to fill retiring Commissioner Victor Calvo's seat.

Don Vial recently stepped down from his position as Commission President; Deukmejian appointee Stan Hulett was selected to replace him.

MAJOR PROJECTS:

San Onofre Nuclear Generating Station. In a 3-2 vote on October 29, the PUC ruled that utility customers will not be required to pay \$344.6 million in cost overruns on the construction of two reactors at the San Onofre facility. Instead, the burden will be shouldered by the stockholders of the companies which built and are operating the facility (Southern California Edison and San Diego Gas and Electric Company). The PUC compromised between a staff recommendation that stockholders be required to pay \$1 billion in cost overruns and Administrative Law Judge Kenji Tomita's recommendation that ratepayers be charged with almost the entire \$4.5 billion cost of building the two reactors. The ruling ended a year-long series of hearings into tenfold construction overruns and is believed to be the largest consumer credit ever ordered stemming from excessive expenditures in the construction of a nuclear power plant.

In making its ruling the PUC relied on two standards: (1) a company should only be required to pay for those excess costs which it has some power to control; and (2) a comparison to the performance of the nuclear power industry as a whole

is irrelevant when fixing the responsibility for a specific error in a project under review.

The Commission's ruling impacts more than the issue of cost overruns at San Onofre. Southern California Edison (the majority owner of San Onofre) is a minority owner of Palo Verde Nuclear Generating Station, located about fifty miles west of Phoenix. On October 1, PUC decided to forego a full review of Palo Verde and instead tie Edison's rates for that project to the San Onofre ruling. Additionally, the San Onofre ruling could become an important precedent if the PUC chooses to follow the same standards in future cases, such as the controversial Diablo Canyon Nuclear Power Plant rate case which is scheduled to begin in 1987.

Diablo Canyon Nuclear Power Plant. In 1987, hearings are expected to begin on what is being labeled the most expensive rate case yet. PUC staff believes that \$5.7 billion in construction costs at the Diablo Canyon Nuclear Power Plant were excessive. Pacific Gas and Electric spent \$18 million last year in preparation for hearings and has allotted \$50 million to be spent during 1987 on persuading the PUC to approve its request that ratepayers pay for the plant's construction.

As of this writing, Administrative Law Judge Porter has not yet decided which evidentiary rules will govern the presentation of evidence in the upcoming proceeding. (See CRLR Vol. 6, No. 4 (Fall 1986) pp. 89-90.)

Incomplete Call Billing. Most of the country's long distance telephone companies bill customers for calls even when no answer is received, charging the caller the usual price per minute rate for the time spent listening to the ringing. A growing number of customer complaints has brought this practice to the PUC's attention, and the Commission intends to conduct an investigation on whether to stop or reduce incomplete call billing. Cellular mobile phone users are the source of the largest number of complaints about incomplete call billing. Last year the state legislature passed a law mandating that, effective January 1, 1987, cellular phone users are required to pay only half the going rate for incomplete calls.

American Telephone and Telegraph. On November 14 the PUC concluded its first examination of AT&T since the 1984 divestiture. The Commission denied a request from the long distance company for a \$101 million intrastate telephone rate increase, and instead

granted an increase of only \$8.3 million. Next year, Commission staff may present evidence for a rate decrease. The PUC ruling also rejected AT&T requests for operating and price flexibility, creation of a discount program whereby customers would pay a monthly fee rather than per call charges, and an increase in the cost of directory assistance calls. The Commission said that AT&T is still the dominant long distance company with 82% of the California market, and thus should continue to be regulated.

Common Carriers. As a result of a study initiated after a charter bus accident which killed 21 people in May 1986, the PUC staff has recommended tighter restrictions on drivers of passenger buses, vans, and limousines. (See CRLR Vol. 6, No. 4 (Fall 1986) p. 90.) The recommendations are designed to close loopholes in licensing procedures and improve the suspension process for violators. The proposals include: a driver certification program which would oust those convicted of serious crimes or major traffic violations; an end to PUC exemptions for common carriers which claim to operate in only one city; a requirement that transportation businesses obtain driving records or a procedure whereby the Department of Motor Vehicles would alert businesses of driver violations; licensing tests conducted in the same type of vehicle to be used by the driver on the job; a requirement that limousines display stickers showing PUC authorization; and increased frequency of safety checks.

Tax Reform Act of 1986. This statute, which represents one of the most comprehensive changes in federal income tax law, phases in a 34% corporate tax rate over a two-year period. The PUC anticipates that many ratepayers will see a drop in their utility bills in the near future as a result of the decreased corporate tax rate. The Commission determines the amount of revenue required by a utility by considering, among other things, its operating costs, taxes, and depreciation. The reduced tax rate will reduce revenue requirements of utilities; however, other provisions in the Act may, to a lesser degree, require revenue increases. On November 14, the Commission ordered an investigation into the effect of the Act on utility requirements. This investigation is expected to be completed in three to four months.

LEGISLATION:

AB 2678 (Moore) directs the PUC and the California Highway Patrol to jointly



conduct a study of safety in the maintenance and operation of heavy trucks and to report to the legislature before June 20, 1987.

AB 3262 (Katz) requires the denial, suspension, or revocation of a permit or certificate of a charter-party carrier for a specified time upon specified violations. The bill also requires bus owners to obtain drivers' traffic violation records on a quarterly basis, and makes it a misdemeanor to employ an unlicensed driver to drive a tour bus.

AB 3678 (Moore) directs the Commission to require every electric, gas, and telephone corporation with gross annual revenues exceeding \$25,000,000 and their Commission-regulated subsidiaries and affiliates to implement a program developed by the Commission to encourage, recruit, and utilize women and minority business enterprises. The Commission must submit an annual report to the legislature on the progress of the program commencing January 1988.

AB 2680 (Moore) prohibits the issuance of a certificate of public convenience to a common carrier unless the applicant certifies that it will maintain its vehicles in safe operating condition and in compliance with the Vehicle Code and motor vehicle safety regulations. The bill would also define "good cause" for purposes of suspension, revocation, alteration, or amendment of a certificate, or the imposition of a fine.

SB 1624 (Rosenthal) directs the Commission to determine the feasibility of a cellular telephone call notification system by July 1, 1987.

AB 3383 (Moore) requires administrative law judges to disclose their advisory rulings within ninety days after a decision has been reached and at least thirty days before the PUC takes final action on the decision. Previously, the PUC has refused to release ALJ recommendations until after it had decided whether to accept or reject that recommendation.

AB 152 (Stirling), introduced December 22, would direct the PUC to require every electrical, gas, telephone, and water corporation to establish and administer a fund to provide assistance to those of its customers who are unable to pay their utility bills, pursuant to standards and qualifications for that assistance approved by the PUC.

AB 227 (Areias), introduced in January, would limit private meetings between PUC members and utility company lobbyists. In certain proceedings, ex parte communications between Commissioners and lobbyists would be prohibited unless the time and substance

of the communication is reported to all other parties within at least three working days of the communication.

LITIGATION

PUC v. Federal Communications Commission, Docket No. 86-1736 (D.C. Circuit Court of Appeals). On December 31, the PUC filed a petition for review, styled as an emergency motion for partial stay pending review, challenging a portion of a recent FCC order. According to the order, effective January 1, 1987, telephone wiring inside homes and small businesses becomes the property of the home or business owners. Thus, telephone users are responsible for maintaining and repairing their own inside wiring.

The PUC believes that newly-created wire repair insurance services provided by telephone companies such as Pacific Bell and General Telephone should be regulated, and that telephone companies should be required to use the revenue from repairs to offset overall customer rates. The PUC objects to the FCC's action as a preemption of the Commission's authority, and seeks to block the portion of the FCC order that allows the telephone companies to keep the revenue from repair services.

The D.C. Circuit initially stayed the challenged portion of FCC's order, but lifted the emergency stay on January 2, thus allowing the companies to keep the repair service revenues. The court held that the PUC had failed to show that it would suffer irreparable harm if the stay were lifted. PUC has warned the companies to keep track of the money, so it can be refunded to ratepayers if the court rules in its favor on the petition for review.

RECENT MEETINGS:

At its October meeting, the PUC awarded TURN (Toward Utility Rate Normalization) \$28,567 for successfully intervening in several energy cases on behalf of consumers. The PUC found that TURN was instrumental in influencing decisions involving rules for Pacific Gas and Electric and San Diego Gas and Electric. TURN qualified for the award under the PUC's intervenor compensation program, which provides that the PUC may award reasonable representation fees if an organization suffers significant financial hardship by participating in the hearing process; if the group represents an interest not otherwise adequately represented; and if the PUC finds that the group has made a substantial contribution to a final PUC decision benefiting the public.

Also at the October meeting, the Commission approved a surcharge which allows Southern Pacific to collect an extra \$.50 from passengers purchasing their tickets on the train. It is hoped that the additional cost will encourage customers to purchase tickets at the ticket office. The decision affects only the passenger routes between San Francisco and San Jose and intermediate points along the route.

In late October, the Public Staff Division (PSD) of the PUC submitted its recommendation on Southern California Gas Company's (SoCal) application for authority to increase rates \$277.3 million per year. The gas company's proposal consists of three parts: a \$304.3 million increase as its semiannual cost-of-gas adjustment, a decrease of \$53.4 million in conservation spending, and a \$27.9 million "cost of living" increase for 1987.

PSD primarily objects to the requested \$304.3 million increase for the cost-of-gas component, and recommends a lesser increase based on projections that natural gas will cost less than the utility estimates. PSD also objects to SoCal's request to recover the entire increase from residential customers. Since January 1, 1986, the contribution from industrial customers to SoCal's fixed costs has dropped from 24% to 12%. Part of PSD's plan calls for establishment of demand charges and customer charges to recover additional revenue from industrial customers. These charges are similar to customer charges paid by residential customers each month whether they use gas or not. PSD contends that such rate restructuring will replace competitive pressures on all gas costs and assign reasonable rates to all customers based on cost responsibility.

The PSD also advocated deferral of SoCal's proposal to lower baseline allowances for residential customers until next year. (Baseline quantities are specific numbers of therms which qualify for the lowest residential rate and vary according to a customer's climatic zone.) PSD contended that changes in baseline quantities must be carefully considered and recommended that the issue be included as part of SoCal's general rate case request in January. The PUC will issue a decision in that case in late 1987.

While PUC and its administrative law judges should base their decisions solely on the record of evidence presented at hearings or filed in writing, concern has been voiced regarding ex parte contacts with Commissioners by private utility lobbyists. No record is made of discussions outside the hearings and, in the



past, the advisory recommendations of administrative law judges were not made public prior to the time the Commission acted upon them. Although AB 3383 (Moore), effective January 1, 1987, now requires that ALJs circulate proposed decisions to all parties to a case prior to the Commission's consideration of a recommendation, the PUC has rejected a proposal which would further discourage off-the-record lobbying of PUC members. The plan would have required the Commissioners to report off-the-record conversations during the early part of a rate case and would have banned off-the-record discussions after the ALJ had rendered his/her initial decision. At an October meeting, the Commission instead took a wait-and-see approach to the proposal, preferring to evaluate the effect of AB 3383 before adopting stricter rules regarding ex parte contacts. The PUC majority stated that the circulation of a judge's recommendation before a final PUC decision would make parties aware of key issues and promote on-the-record comments rather than private lobbying.

Trailways Lines Inc. is a passenger bus company which operates between San Francisco, Los Angeles, and San Diego and travels across California's borders into Oregon, Nevada, and Arizona. At October 21-22 PUC hearings in San Francisco, Trailways requested a rate increase and alleged that it operated at a loss of \$1.1 million during the twelve-month period ending March 31, 1986. The United Transportation Union protested Trailways' rate increase request. On November 17, the Commission authorized the bus company to increase its fares by 13%.

In a recent meeting, the PUC decided to hold an additional year of public hearings on the feasibility of various methods to block calls made to "976" numbers. In response to complaints from parents whose children make unauthorized, repeated, and expensive calls to the 976 numbers, PUC previously established rules governing operation of the lines and ordered telephone companies to cancel (on a one-time-only basis) bills consisting of unauthorized calls. The additional hearings will investigate and review alternative measures to block all calls to "976" numbers, at the customer's option.

FUTURE MEETINGS:

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

STATE BAR OF CALIFORNIA

*President: Orville A. Armstrong
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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 100,000 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 appointed by the Governor of California and confirmed by the state Senate, and a representative of the California Young Lawyers Association (CYLA) appointed by that organization's Board of Directors. Beginning in 1983, the Senate Committee on Rules and the Speaker of the Assembly each appoints one public member every three years. The Governor will continue to fill the remaining four public member seats. 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, 12 sections in ten 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, including publishing the *California Lawyer* magazine.

MAJOR PROJECTS:

Emeritus Attorney Pro Bono Participation Program. The Board of Governors recommended a proposed rule which would allow emeritus attorneys to provide services without compensation to legal service organizations. For purposes of the Emeritus Attorney Pro Bono Participation Program, an "emeritus

attorney" is any person admitted to practice law in California but is retired from the active practice of law. Additionally, to qualify for the program, the attorney must have engaged in the active practice of law for a minimum of ten of the fifteen years immediately preceding application to the program. He/she must also be a member of the State Bar, in good standing, with no record of discipline for professional misconduct within the last fifteen years.

A legal services organization wishing to use emeritus attorneys must file a petition with the Bar certifying that it is a nonprofit organization and must list the types of legal services performed. Under the direction of a supervising attorney, an emeritus attorney may appear in any court or administrative tribunal in California on behalf of a client if the client has consented in writing to that appearance and a supervising attorney has given written approval.

The Board's Committee on Legal Services reviewed the comments on the program on December 19. The Committee decided to redraft the proposal to allow retired attorneys to obtain active, rather than inactive, State Bar status for the purpose of providing pro bono legal services. The active status would eliminate the need to delineate special discipline rules for participants in the program, since the participants would then be subject to the same rules of professional responsibility as are other State Bar members.

The Office of General Counsel is presently redrafting the proposal in accordance with the Committee's recommendations.

Bar Studies Plan for Mandatory Malpractice Insurance. The Board of Governors is studying the possibility of establishing mandatory malpractice insurance for California lawyers. Under the proposal, lawyers who work for state or local governments would be excluded from having to carry malpractice insurance since they do not have clients in the traditional sense.

In September, Governor Deukmejian vetoed a mandatory malpractice bill because it did not expressly exclude government lawyers from its provisions.

The panel in charge of the study will conduct a survey of California lawyers regarding their insurance experience, and will study alternative ways of providing insurance on an affordable basis. Currently, Oregon is the only state which requires lawyers to carry malpractice insurance, so the panel will travel there to study its plan. Oregon excludes gov-