

## Memorandum 97-28

### Public Utility Deregulation: General Considerations

---

This is the first of a series of memoranda on public utility deregulation. This memorandum presents general information on the public utility deregulation study and its organization. This memorandum will be followed by memoranda dealing with deregulation in the following industries:

- (1) Electrical (Memorandum 97-29)
- (2) Gas (Memorandum 97-30)
- (3) Transportation (Memorandum 97-31)
- (4) Telecommunications (Memorandum 97-32)

#### BACKGROUND

##### **Senate Bill 960**

Senate Bill 960, which was enacted into law as 1996 Cal. Stat. ch. 856, provides:

SEC. 12. On or before June 30, 1997, the Public Utilities Commission in consultation with the Law Revision Commission shall submit a report to the Legislature on needed revisions of the Public Utilities Code that result from the restructuring of the electrical, gas, transportation, and telecommunications industries.

This law is part of the public utilities restructuring package enacted during the 1996 legislative session after extensive conference committee hearings on the matter.

Section 12 of the bill, requiring a report on needed revisions of the Public Utilities Code, assumes that the restructuring of public utility regulation, or deregulation, renders parts of the Code obsolete. The existing Code is based on a model of regulation of monopolies through command and control, whereas the new statutory scheme provides procedures suited to the emerging competitive utility marketplace. In this respect, many of the statutory responsibilities of the Public Utilities Commission may be antiquated and unnecessary.

The concept of Section 12 is that the Public Utilities Code needs to be cleaned up to reflect the new statutory approach. The Public Utilities Commission is the utilities regulation expert, and the Law Revision Commission is the revision of obsolete statutes expert; so the bill requires a report of the PUC in consultation with the CLRC. The conference committee, in coming up with this scheme, also was conscious of the Law Revision Commission's expertise in the area of administrative procedure. The CLRC's administrative procedure work influenced the conference committee in its proposals on PUC hearing and judicial review procedures.

The phrasing of this statutory assignment imposes primary responsibility for the report on the Public Utilities Commission. It is appropriate that the PUC take the lead on this project, based on the subject matter and the time allotted.

### **Consultation**

To our knowledge, the Law Revision Commission has never before been asked by the Legislature to act in a consultative capacity with another agency. CLRC's enabling statute does require CLRC to "confer and cooperate" with any legislative committee on revision of the law, and requires state agencies to give CLRC "full information, and reasonable assistance in any matters of research requiring recourse to them". Gov't Code §§ 8286, 8295. However, we have no models as to how to conduct a consultation on a particular topic.

The Law Revision Commission has decided to execute its consultative role by reviewing materials prepared by the Public Utilities Commission — focusing on procedural and substantive problem areas identified by PUC or by other interested persons — and making recommendations to the Legislature on the problem areas.

### **PUC Status Update on Code Revision Efforts**

The Public Utilities Commission has issued a status update on its efforts to revise the Code, and has forwarded the material to the Law Revision Commission to enable us to provide the necessary consultation for the PUC's June 30 report. The material forwarded consists of (1) a cover letter to members of the Legislature involved in the public utility deregulation effort (see Exhibit pp. 1-2), (2) a copy of stakeholder comments on SB 960 code revisions, (3) a copy of stakeholder *reply* comments on SB 960 code revisions, and (4) a chart organizing this material and giving PUC's preliminary reactions to the

comments. Items (2)-(4) are not attached to this memorandum; we are reorganizing that material for presentation in the memoranda on deregulation of particular industries.

The material included in the Public Utilities Commission's status update was generated by first requesting interested persons (particularly participants in the legislative deregulation process) for their comments. The comments received were then recirculated for response. PUC's industry division, legal, and ALJ staff reviewed the comments and responses in formulating PUC's preliminary reactions.

The Public Utilities Commission indicates that it had hoped to be able to introduce legislation in 1997 to effectuate consensus code changes that arise out of the reporting effort. But, "there were only a few such code changes." Exhibit p. 2.

#### GENERAL OBSERVATIONS

The Law Revision Commission staff has a few general observations on the process to date.

#### **PUC's Working Relationship with CLRC**

The Public Utilities Commission staff has been cooperative in keeping the Law Revision Commission's staff informed of PUC activities on this study, and promptly providing CLRC staff with copies of materials when requested.

We do note that the procedure followed by PUC leaves CLRC some, but not a lot, of time to perform its consultative role. However, this is not critical, since that role is basically reactive — reporting to the Legislature on identified problems.

#### **PUC's Procedure**

SB 960 requests a report on needed revisions by June 30. The Public Utilities Commission apparently has interpreted this directive to require only a general indication of policy and not actual proposed legislation by that date. Their status report indicates that, apart from consensus changes that may be made during 1997, it is their desire to continue the discussions into the 1998 legislative session "when more detailed conversations may take place." Whether this satisfies the Legislature's intent is not clear to CLRC's staff.

The Public Utilities Commission is employing a passive, rather than an active, procedure in response to the statutory directive. That is, PUC is letting others

come up with proposed changes and then reacting, rather than initiating change. We do not know whether the Legislature, in enacting SB 960, intends PUC to take a leadership role in the code revision effort.

The procedure being employed by PUC is consistent with its general position, manifested in its reaction to the comments received, that full competition has not yet developed in the regulated industries, and therefore statutory dismantling of the regulatory structure is premature. This general position will be elaborated in the memoranda on particular industries.

#### **CLRC's Procedure**

The Law Revision Commission staff anticipates a rather brief consultation process. We expect that the matter will be considered at two CLRC meetings. The first meeting will focus on input from interested persons. The second meeting will finalize the CLRC's report to the Legislature. The first meeting is tentatively scheduled for May 2, 1997; the second for June 12, 1997. We have publicized this study to persons on the PUC's mailing list, to other interested persons identified for us by committee staff and by industry representatives, and to the legal community at large by means of a press release. See Exhibit p. 3.

While our intent is to address problem areas for the Legislature, it is already apparent that the differences among the interested persons in basic perspective and approach are so substantial that we will be unable to resolve the myriad of individual issues that are raised in the memoranda on particular industries. Instead, we will need to understand the differing policies reflected in the individual issues so that we can make a useful report on this matter to the Legislature.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

**Public Utilities Commission**

STATE OF CALIFORNIA  
505 VAN NESS AVENUE  
SAN FRANCISCO, CALIFORNIA 94102

**J. Gregory Cullen**  
PRESIDENT

TEL: (415) 763-2440  
FAX: (415) 763-2532

March 31, 1997

The Honorable Steve Peace  
Chair, Senate Energy, Utilities and Communications  
State Capitol  
Sacramento, CA 95814

The Honorable Diane Martinez  
Chair, Assembly Utilities and Commerce  
State Capitol  
Sacramento, CA 95814

The Honorable Jim Brulte  
Vice-Chair Senate Energy, Utilities and Communications  
State Capitol  
Sacramento, CA 95814

The Honorable Bill Leonard  
Member of the State Assembly  
State Capitol  
Sacramento, CA 95814

The Honorable Byron Sher  
Member of the State Senate  
State Capitol  
Sacramento, CA 95814

Dear Members of the State Legislature:


In accordance with directives given in Section 14 of SB 960 (Chpt. 856, Stats of 1996), the California Public Utilities Commission (CPUC) respectfully submits this report on suggested code revisions as a result of the changing nature of the industries under the regulatory purview of the CPUC. In addition to this report, SB 960 also calls for a report by June 30, 1997, in Section 12, on needed revisions to the Public Utilities Code resulting from the restructuring of the various industries. With that second report in mind, we are submitting this report as a status update on the Commission's efforts to revise the Code.

We began our work on code revisions with a letter on November 7, 1996, to numerous parties seeking their comments on these two reports. That letter was followed by a letter on January 10, 1997, to the attached distribution list. After receiving the reply comments at the end of February, the Commission's industry divisions, legal and ALJ staff all reviewed the suggested code changes. Their comments appear in the attached table. In order to save space on the table, we have briefly described what each code section does as well as the proposed change in each section. Due to the fact that some of the proposals have not been fully analyzed, we withhold final judgement on the proposed changes until the June report. For additional details on each proposed revision, we have attached copies of the parties' comments and reply comments.

As you are probably aware, we have begun the task of revising the Code by sponsoring legislation that will be introduced shortly by the Assembly Committee on Utilities and Commerce, which will contain language that would repeal sections or subsections that required one-time reports by the CPUC. It was our hope that such a measure could be used in 1997 to effectuate any consensus code changes that may arise out of this reporting effort. As you will see in the attached table, there were only a few such code changes. If agreed to by the authors of this measure, we will seek to have it amended accordingly. For those revisions on which consensus was not reached, it is our desire to continue the discussions into the second half of the legislative session in 1998 when more detailed conversations may take place.

In addition to providing the information to you, we are forwarding the same to the California Law Revision Commission which will enable them to provide the necessary consultation for our June 30 report. If you have any questions or would like to discuss this or the June report, please feel free to contact me or Kent Kauss in our Office of Governmental Affairs.

Sincerely,



P. Gregory Conlon, President

Attachments (4)

- Stakeholder Comments on SB 960 Code Revisions
- Stakeholder Reply Comments on SB 960 Code Revisions
- Distribution List
- SB 960 Code Revisions Table

cc: Distribution List

(415) 494-1335 Fax: (415) 494-1827  
Email: [addressee@clrc.ca.gov](mailto:addressee@clrc.ca.gov)



Contact: Nathaniel Sterling  
Executive Secretary  
(415) 494-1335

The Legislature has directed the Public Utilities Commission (PUC), in consultation with the California Law Revision Commission, to report on needed revisions of the Public Utilities Code that result from the restructuring of the electrical, gas, transportation, and telecommunications industries. The report is due on or before June 30, 1997.

The PUC has released preliminary report materials. The materials include:

- Stakeholder Comments on SB 960 Code Revisions
- Stakeholder Reply Comments on SB 960 Code Revisions
- SB 960 Code Revisions Table

Copies of these materials are available from the PUC's Office of Governmental Affairs.

The Law Revision Commission solicits comment on the PUC's preliminary report materials. Comments may be made directly to the Law Revision Commission either orally or in writing. The Law Revision Commission has tentatively scheduled a public meeting for this purpose in Sacramento on May 2, 1997, at 9:00 am in Room 3191 of the State Capitol. **Important: The date, time, and place of the meeting are subject to change; if you plan to attend the meeting, please inform the Law Revision Commission at (415) 494-1335.**

Oral comments will be received at the public meeting. Written comments may be delivered at the meeting, or in advance of the meeting at the office of the Law Revision Commission, 4000 Middlefield Road, Room D-1, Palo Alto, California 94303.

555