

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

REPORT

Public Utility Deregulation

June 1997

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

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State of California

Pete Wilson, Governor

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June 12, 1997

To: The Honorable Pete Wilson
Governor of California, and
The Legislature of California

Enclosed is the California Law Revision Commission's report on its consultation with the Public Utilities Commission concerning needed revisions of the Public Utilities Code that result from the restructuring of the electrical, gas, transportation, and telecommunications industries. The consultation was mandated by Section 12 of Chapter 856 of the Statutes of 1996.

Because the Law Revision Commission's statutory role is limited to consultation, this report does not recommend specific revisions of the Public Utilities Code. Specific revisions that have been suggested by stakeholders are compiled in the Appendix to this report. The tables may be updated to reflect the Public Utilities Commission's position on the specific revisions, after it develops a position. We understand that the Public Utilities Commission also will suggest specific revisions in its report to the Legislature.

The Law Revision Commission believes that its consultation on this matter has been helpful to the interested parties in advancing the Code revision process.

Respectfully submitted,

Allan L. Fink
Chairperson

Public Utility Deregulation

SUMMARY OF REPORT

Section 12 of Chapter 856 of the Statutes of 1996 (SB 960) requires the Public Utilities Commission “in consultation with the Law Revision Commission” to report to the Legislature by June 30, 1997, on needed revisions of the Public Utilities Code that result from the restructuring of the electrical, gas, transportation, and telecommunications industries.

This report presents the results of the Law Revision Commission’s consultation. It should be noted that this report is based on preliminary information from the Public Utilities Commission and stakeholders. It is anticipated that the Public Utilities Commission’s June 30, 1997, report to the Legislature will reflect both the results of this consultation and additional work performed by the Commission at the time of issuance of its report. This report does not include draft legislation; the Law Revision Commission’s mandate for this study is limited to “consultation.”

After receiving preliminary input from the Public Utilities Commission and from stakeholders in the affected industries that have participated in this process, the Law Revision Commission concludes:

Code Revision Process

The Public Utilities Commission’s effort to revise the Code to date is preliminary, and only a limited number of the potentially interested parties have participated. Industry participants have suggested a variety of techniques to expedite review, including sunseting. The Commission indicates that it will take a more active role in the future, but at present its resources have been taxed to open the affected industries to competition.

Major Policy Dispute

The major policy issue that pervades each of the affected industries (except transportation) is whether sufficient competition exists to permit Code revision to dismantle the existing monopoly regulatory system.

Categorization of Issues

To a significant degree, the Public Utilities Commission and industry participants can identify areas of agreement and disagreement over proposed Code revisions. This report attempts to categorize the areas. The Commission intends to sponsor legislation on matters about which there is agreement that Code revisions are appropriate.

Electrical Industry

In the electrical industry, there are substantial areas of disagreement. Even in areas where there is agreement in concept, drafting may prove to be difficult. Electrical industry participants also urge reform of Public Utilities Commission organization and procedures; recent and pending legislation addresses these matters to some extent.

Natural Gas Industry

Restructuring is further along in the natural gas industry than in the electrical industry. The Public Utilities Commission will approve a strategic plan for the natural gas industry in the summer of 1997. Natural gas industry participants plan to address Code revisions through that process. Both electrical and gas industry participants and the Commission agree that in order to promote competition, the Code should be revised to eliminate price parity requirements for gas used in cogeneration.

Transportation Industry

The dominant feature of deregulation in the transportation industry is federal preemption. The transportation industry

participants agree that significant portions of the transportation regulation statutes in the Code are obsolete and should be revised or repealed. This appears to be a drafting matter. The Public Utilities Commission indicates its intent to take an active role in developing cleanup legislation. There is disagreement between the Commission and railroad industry participants about the effect of federal preemption on a handful of statutes that could affect the Commission's regulatory authority over transportation safety and a few other matters.

Telecommunications Industry

The question whether monopoly regulation must continue until full competition flourishes is particularly intense in the local telephone service sector. The Law Revision Commission recommends that a timetable, rationally based on appropriate criteria, be established for deregulation.

Public Utility Deregulation

CONSULTATION BY LAW REVISION COMMISSION

Section 12 of Chapter 856 of the Statutes of 1996 (SB 960) provides:

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

The premise of this legislation is that restructuring of the public utility industries for competition may render parts of the Public Utilities 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 regulatory responsibilities of the Public Utilities Commission may be antiquated and unnecessary.

The statute imposes primary responsibility for the Code revision report on the Public Utilities Commission. The Law Revision Commission has executed its consultative role by reviewing materials prepared by the Public Utilities Commission (focusing on procedural and substantive problem areas identified by industry participants) and reporting its findings to the Legislature.¹ This report is also provided to the Public

1. This report was approved by the Law Revision Commission at its June 12, 1997, meeting and submitted to the Legislature the following week, before the statutory deadline. This printed edition of the June report contains some

Utilities Commission to assist it in reporting to the Legislature on Code revisions.

STRUCTURE OF THIS REPORT

This report first addresses the procedure followed by the Public Utilities Commission in reporting to the Legislature on needed Code revisions.

This report next addresses each of the utility industries referred to the Law Revision Commission for consultation — electrical, gas, transportation, and telecommunications. The report summarizes the current status of restructuring in each industry, and summarizes the positions of stakeholders and the Public Utilities Commission on deregulation in that industry. The report states the perspective of the Law Revision Commission on Code revision to implement deregulation in each of the industries. The report does not include draft legislation; the Law Revision Commission’s mandate for this study is limited to “consultation.”

This report does not reproduce material provided in Public Utilities Commission reports on this matter or original communications from stakeholders. That material is available from the Public Utilities Commission.

It should be noted that this report is based on preliminary information from the Public Utilities Commission and stakeholders. It is anticipated that the Commission’s June 30, 1997, report to the Legislature on Code revisions will reflect both the results of this consultation and additional work performed by the Commission² up to the time of issuance of its report.

minor editorial changes, but the perspective of the report is based on information received through mid-June. Updated commentary from the Public Utilities Commission has been incorporated into the Appendix. See *infra* p. 485.

2. Throughout this report “Commission” refers to the Public Utilities Commission. When reference is made to the Law Revision Commission, this report uses the complete phrase.

Procedural Issues in Public UTILITIES CODE REVISION

Public Utilities Commission's Status Update on Code Revision Efforts

The Public Utilities Commission began its efforts in November 1996 by requesting interested persons (particularly participants in the legislative restructuring process) for their comments on needed Code revisions. In January 1997, the comments received were recirculated for response. The Commission on March 31, 1997, issued a status update that included its preliminary reactions. The preliminary reactions were generated from review by the staff of the Commission's industry, legal, and administrative law judge divisions.

The Public Utilities Commission's March 31, 1997, status update indicates that the Commission 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."

Public Utilities Commission's Working Relationship with Law Revision Commission

The Public Utilities Commission has been cooperative in keeping the Law Revision Commission informed of Public Utilities Commission activities for this consultation, and promptly providing the Law Revision Commission with copies of materials when requested.

The procedure followed by the Public Utilities Commission leaves the Law Revision Commission a limited time to perform its consultative role. However, this is not critical, since the role is basically reactive — reporting on identified problems, rather than drafting legislation.

Involvement of Stakeholders

Stakeholder involvement in the effort to identify needed Code revisions has been limited. Of the four industries included in this report, only the telecommunications industry shows active participation, and that participation is limited to telecommunications providers and does not include telecommunications users.

The reasons for this limited involvement are not clear. They may include:

(1) Inadequate resources to review Code regulatory revisions due to the pressures of preparing for competition.

(2) Reluctance to challenge the Public Utilities Commission for fear of unfavorable treatment in the regulatory process.

Text of Code Revisions

Senate Bill 960 requires a report on needed revisions by June 30, 1997. The Public Utilities Commission's status report indicates that, apart from consensus changes that may be made during 1997, it is the Commission's desire to continue the discussions into the 1998 legislative session "when more detailed conversations may take place." During the course of the Law Revision Commission's consultation, a number of consensus areas were identified; it is anticipated that the Public Utilities Commission's June 30 report will include Code revision text on some of these matters.

Future Code Revision Efforts

For its March 31, 1997, status update, the Public Utilities Commission solicited proposed changes from others and reacted to the changes identified. The Commission indicates that it is also actively searching the Code for needed revisions and that its June 30 report will include specific recommended revisions it has identified as a result of this effort.

Industry participants have expressed dissatisfaction with the pace of Code reform, stating that it is urgently needed now. Some have perceived a reluctance of Public Utilities Commission staff to initiate Code reforms, and have suggested active Commissioner involvement in the process. Industry participants have also suggested sunseting the regulatory statutes, with the burden on the Commission to demonstrate the need for their continuance; this would ensure the Commission's prompt review of the statutes. And industry participants have requested the Law Revision Commission's continued assistance to the parties to draft specific Code language for the Legislature to consider.

The Public Utilities Commission indicates that it expects to take a much more active role in identifying needed Code revisions for all industry areas in the future. The effort to open the various industries to competition, particularly implementation of AB 1890 (1996 Cal. Stat. ch. 854), has taxed the Commission's resources available to simultaneously review the Code for needed revisions.

Conclusion of Law Revision Commission

Initial materials from the Public Utilities Commission indicated very few areas of agreement on Code revisions between the Commission and stakeholders. However, closer examination by the Law Revision Commission reveals greater agreement below the surface. Many of the issues or concerns appear to be matters of drafting rather than matters of policy. The consultation of the Law Revision Commission may have been of some help in this respect.

The Law Revision Commission recommends that the parties continue to communicate with each other on these matters in a constructive rather than adversarial manner. In addition, the policy categorization suggested below may help focus on fundamental areas of agreement and disagreement. To the

extent this process reveals areas of agreement, the parties should proceed to implementing legislation, in consultation with each other.

The Law Revision Commission notes that this revision effort does not include a number of potentially interested parties, such as consumers. The Public Utilities Commission has invited all interested parties to participate in this process. The Law Revision Commission recommends that the Public Utilities Commission make a renewed effort to get the input of affected parties.

Although it has been suggested that the Law Revision Commission continue its involvement to assist in the preparation of draft legislation, this is beyond the scope of authority given to the Law Revision Commission by SB 960.

CATEGORIZATION OF POLICY ISSUES IN PUBLIC UTILITIES CODE REVISION

The Law Revision Commission believes the Code revision process will be advanced by summarizing categories or areas of agreement and disagreement. To this end, the Law Revision Commission in this report uses the following categorization of policy issues. The importance of an issue may vary with the particular industry.

(1) Direct Regulation of Service Providers

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- planning for the future — expansion, facilities, markets
- audits and inspections
- new entrants (certification)

(2) Rates and Pricing

Is there a need to continue traditional regulation in the areas of:

- retail, wholesale
- antitrust matters

(3) Consumer Protection

Should the law continue to regulate such matters as:

- fraud
- information and misinformation
- access (universal service)

(4) Safety of Public

Is continuing protection needed for physical safety of the public, e.g.:

- gas pipelines
- railroad crossings

(5) Transitional Issues

Does the deregulation process itself require interim regulation for such matters as:

- stranded costs
- equal footing
- wheeling

(6) Organization and Procedures

Due to the emerging competitive marketplace, should changes to regulatory processes and organization be considered?

- agency organization
- administrative procedures
- judicial review

(7) Miscellaneous Issues

ELECTRICAL INDUSTRY

Current Status of Restructuring and Deregulation

Electrical energy has historically been sold to retail customers by regulated utilities with exclusive service monopolies. This regulatory framework is believed to be partially responsible for California's electricity rates being some 50 percent higher than the national average. The electric utilities were vertically integrated monopolies responsible for the generation, transmission, and distribution of electricity and electrical services. Retail customers had no choice but to purchase power from the local monopoly.

Congress began encouraging competition in the industry in 1978 with the passage of the Public Utilities Regulatory Poli-

cies Act, which effectively created competition among independent and public utility generators. Congress pushed the industry closer to full-scale competition in 1992 by enacting the Energy Policy Act, which promoted greater wholesale competition by lowering the threshold for new producers to enter the market and allowing greater access to the transmission lines owned by monopoly utilities. The Act also allowed states to create a market where individual customers could buy power from independent producers.

The California Public Utilities Commission began investigating new approaches to regulating the supply and distribution of electricity in 1993. In 1996, the Legislature passed AB 1890, which provides a legislative framework for the restructuring of California's electrical industry. The goal of the bill was to restructure California's electrical services industry in order to move to competitive markets by December 31, 2001, lower the cost of electricity, retain and attract jobs, and reduce power outages.

In the restructured electrical industry, there will be competition in the generation of electricity. Thus, in the future, electricity consumers may choose among competing providers of electricity. The transmission and distribution of electricity, however, will continue to be handled by regulated franchise monopolies.

Delivery of a third party's power to customers over the local distributor's lines is commonly referred to as "retail wheeling." In order to implement retail wheeling, two new public benefit, nonprofit market institutions were created: the Power Exchange and the Independent Service Operator. Both entities must be approved by the Federal Energy Regulatory Commission. The Power Exchange is required to provide an efficient, competitive electric energy auction, open on a non-discriminatory basis to all providers, to meet the electricity loads of exchange customers. The Power Exchange must

provide results of its auction to the Independent Service Operator. The Independent Service Operator is responsible for providing centralized control of the statewide transmission grid and for ensuring efficient use and reliable operation of the transmission system. In order to ensure reliability, the Independent Service Operator is required to adopt standards for maintenance of the transmission facilities, and to conduct reviews of power failures affecting more than 10 percent of a service area. The Independent Service Operator has authority to levy sanctions where appropriate. Both publicly-owned and investor-owned electric utilities are required to commit control of their transmission facilities to the Independent Service Operator until the end of 2001.

The move to a competitive generation market will result in transition (or stranded) costs. These costs consist primarily of continuing obligations for past utility power plant investments and power purchase contracts that will not be recovered in a competitive generation market. Investor-owned utilities have through December 31, 2001, to recover most of these costs through an accelerated recovery system. The Legislature found that these costs should be recovered because the costs were imposed by regulations and were then included in utility rates.

Once the restructuring of California's electrical industry is complete, electricity consumers will have the opportunity to choose among competing providers of electricity and to negotiate the purchase terms. Although customers will be able to choose a new electrical services company, they can also choose to remain traditional utility customers.

The Public Utilities Commission will still have regulatory responsibilities to ensure that consumers are protected from fraud and misinformation. The Commission will be required to provide electricity consumers with information necessary to compare electric service offerings. In addition, because

many aspects of electric service will remain monopoly-based, the Commission will continue to be responsible for protecting consumers where services are provided by monopoly suppliers.

The Public Utilities Commission indicates a commitment to developing alternatives to the historical cost-of-service methods of regulation in an effort to encourage efficient and least-cost service. The Commission is currently investigating regulatory reforms that will provide stronger incentives for efficient utility operation and investment, simplify complex rate proceedings, and reduce administrative burdens.

Positions of Stakeholders and Public Utilities Commission

In the electrical industry, the underlying issue appears to be whether deregulation is timely. Existing utilities take the position that the industry will be open to competition beginning January 1, 1998, and therefore deregulation is necessary to allow all parties to compete in the open market — monopoly-style regulation will no longer be appropriate. The Public Utilities Commission, on the other hand, believes transitional regulation is necessary to allow new entrants to establish a foothold to promote effective competition.

The Public Utilities Commission believes it is too early to contemplate broad revision of the Code, at least during 1997. Industry participants have suggested that at least specific language on Code changes that can be agreed upon should be enacted now, along with a suggested path and timeline for completing work. They suggest that sunset provisions of the Code would force the process.

Categorization of Policy Issues

Policy issues in deregulation in the electrical industry are summarized by category below. Detailed references to spe-

cific Code sections may be found in the Appendix to this report (see *infra* pp. 487-93).

Direct Regulation of Service Providers

Planning for the future — expansion, facilities, markets. Resource planning statutes in both the Public Utilities Code and the Public Resources Code (including provisions involving the California Energy Commission's Electricity Report), may be obsolete and overly prescriptive. Industry participants suggest the provisions should be deleted, revised, or subjected to sunset review. The Public Utilities Commission agrees in concept that the resource planning statutes should be revised.

New entrants — certification. The parties disagree over the continued need for certification of public convenience and necessity. Industry participants suggest these provisions should be revised to ensure regulatory streamlining — the public interest in the construction of electric plants will be protected by competition, rather than by a finding of future public convenience and necessity. The Public Utilities Commission disagrees — while some revisions may be necessary in light of a competitive electricity market, some facilities may continue to require certificate approval; deletion of these provisions may be premature, especially for distribution utility projects.

Rates and Pricing

Retail, wholesale. There is agreement of the parties that statutes prescribing the method of establishing the costs of new construction additions are outdated and overly-prescriptive, based on cost-of-service ratemaking. The parties will work on amendatory language.

There is agreement of both electrical and gas industry participants and the Public Utilities Commission that mandatory cogeneration rate parity with rates for gas used as fuel in an

electric plant is inconsistent with a competitive market. The parties will work on amendatory language.

Antitrust matters. Industry participants suggest amending the Public Utilities Code and the Cartwright Act to draw a “bright line” between those activities subject to regulation and those subject to state antitrust laws. While the Public Utilities Commission agrees that a “bright line” division is conceptually desirable, it believes such a division is likely to be extremely difficult to make until the competitive evolution of the electrical industry has progressed further. In the electrical industry, the competition AB 1890 envisions will not exist before 1998. The Commission is concerned that all market participants have a fair opportunity to compete during the transitional period, and as an interim measure is reviewing appropriate rules to govern the relationship between a regulated utility and any unregulated affiliates that provide energy or energy-related services.

Consumer Protection

Assembly Bill 1890 addressed some aspects of consumer protection affecting electrical industry deregulation. Other areas of the Code may need to be changed or reorganized to better define the Public Utilities Commission’s consumer protection mandate in a competitive environment. The Commission anticipates that legislation pending in the 1997-98 session, such as SB 524 and AB 581, will be vehicles for enactment of additional consumer protection reforms and will supplement AB 1890’s consumer protection mandates.

Industry participants suggest modifying the Code to eliminate punitive damages for breach of a qualified facility contract — state policy is against punitive damages for breach of a commercial contract. The Public Utilities Commission is opposed to this change.

Safety of Public

The parties agree that the Public Utilities Commission should continue its safety-related regulation in the electrical industry and no Code changes are proposed.

Transitional Issues

Transitional issues for the electrical industry are addressed in AB 1890. No changes have been suggested in these provisions.

Organization and Procedures

Industry participants believe changes should be made to streamline the Public Utilities Commission's processes and make them more accountable, including subjecting the Commission's actions to the Administrative Procedure Act and to standard judicial review procedures.

The Public Utilities Commission believes it is inappropriate to revisit these issues in this report, pointing out that the Law Revision Commission has recently studied the areas of administrative adjudication and judicial review and recommended exemption of the Public Utilities Commission. Legislation enacted in 1996 deals with Public Utilities Commission procedure (SB 960, 1996 Cal. Stat. ch. 856) and judicial review (SB 1322, 1996 Cal. Stat. ch. 855).

Industry participants also suggest that a new statute be enacted to permit parties to petition the Public Utilities Commission to repeal or modify obsolete regulations. The Commission believes such legislation is unnecessary, since under existing law parties can file a petition to modify a Commission decision and achieve the same result.

Conclusion of Law Revision Commission

The policy disagreements in the electrical industry are substantial. This report highlights major areas of substantive disagreement. There are also substantial areas of agreement

between the parties, at least in concept. Whether the areas of agreement in concept may be readily expressed in statutory language is not clear. The participants agree that in order to promote competition, the Code should be revised now to eliminate price parity requirements for gas used in cogeneration.

NATURAL GAS INDUSTRY

Current Status of Restructuring and Deregulation

Deregulation of the natural gas industry began in 1978 with the Natural Gas Policy Act. This resulted in federal decontrol of wellhead prices by 1985. The Federal Energy Regulatory Commission then began the process of providing wholesale access to natural gas transmission systems on a nondiscriminatory basis, thus providing the opportunity for competition.

Between 1984 and 1993, the California Public Utilities Commission instituted reforms to restructure the natural gas industry at the state level. The Commission unbundled (or separated) gas sales from gas transportation services, reformed gas purchase contracts, and opened up access to interstate pipeline transportation capacity to promote gas supply competition. The Commission also developed a pricing framework for a new gas transportation and distribution market by unbundling interstate pipeline charges from intrastate transportation rates, establishing intrastate rates, implementing rules for brokering the utilities' interstate pipeline capacity rights, and establishing pricing policy for new facilities. These regulatory steps have allowed a diversity of competing natural gas suppliers and transporters.

Today, the natural gas industry is moving toward an increasingly competitive market structure. It exhibits both competitive and monopoly characteristics.

Large consumers may now choose to purchase unbundled gas from non-utility suppliers, with price governed by market

forces. Residential and small commercial consumers may access non-utility supplies through aggregation or pooling purchasing. Further refinement of small consumers' direct access to non-utility supplies will be addressed in the strategic plan for natural gas being developed by the Public Utilities Commission. For these consumers, the role of the Commission is to protect consumers from fraud and misinformation, and to ensure that competitors do not circumvent or distort market forces. Consumers who elect not to participate in competitive gas procurement and transportation markets (generally residential and small businesses), retain the option of remaining with a regulated provider. Because gas distribution is likely to remain monopolistic, the Commission plans to regulate it to protect customers from monopoly abuses. However, rather than basing rates on the cost of service, the Commission is exploring a system that will provide enhanced efficiency incentives to providers.

Although many of the reforms of the natural gas industry are already in place, the Public Utilities Commission believes a number of issues remain: maintaining clear standards for regulated utilities that want to participate in unregulated gas procurement and transportation markets; removing alleged market distortions in transportation; ensuring equal, adequate access to market information; and addressing conflicts of interest. In addition, the Commission would continue to fulfill its traditional duty to protect consumers from monopoly abuses and ensure "just and reasonable" rates for monopoly services.

Positions of Stakeholders and Public Utilities Commission

Restructuring of the natural gas industry is further along than restructuring in the electrical industry. The Public Utilities Commission is currently engaged in an intensive review of the regulatory statutes, in the process of developing a natu-

ral gas strategy. The Commission expects to complete its report on this matter in the summer of 1997. The report will detail the status of deregulation and what needs to be done next.

Industry participants have identified a number of problem areas in the Code they believe need to be addressed to implement deregulation. However, they believe all parties would be best served by addressing these issues in the context of the Public Utilities Commission's development of its strategic plan for natural gas, with one exception. Electrical and gas industry participants and the Commission believe that Code provisions should be repealed immediately that require parity of rates for gas used in cogeneration with rates for gas used as fuel by an electric plant — this is an artificial subsidy that is no longer appropriate in competitive gas and electricity markets.

Categorization of Policy Issues

Policy issues in deregulation in the natural gas industry are summarized by category below. Detailed references to specific Code sections may be found in the Appendix to this report (see *infra* pp. 494-98).

Direct Regulation of Service Providers

Planning for the future — expansion, facilities, markets. Industry participants note that current law generally recognizes the obligation to serve as a legal duty that requires public utilities to provide “reasonable” service to the public, regardless of a customer's service arrangements or market conditions. They suggest revising the applicable Code sections to refine the utility's service obligation to allow flexibility in response to the competitive implications of the new gas market where customers have more choice of service providers and different levels of utility service. The Public

Utilities Commission agrees in concept, but believes Code revision may be premature.

Rates and Pricing

Retail, wholesale. Industry participants note that current law on residential rates and the low-income customer program (CARE) creates imbalances in how costs are allocated within and between customer classes. In a competitive market, baseline rates creates competitive issues that result in inequities in ratemaking because it rewards low consumption and penalizes high consumption without regard to the customers' circumstances. In light of the competitive market faced by natural gas utilities, participants believe it no longer makes sense for the costs of the program to be borne significantly by a class of customers that cannot benefit from it. They argue the law should provide that the competitive market is driven by cost causation, economic efficiency, and competitive forces, balanced with the policies of affordability and conservation. The statutes governing baseline rates and CARE should be modified to minimize ratemaking inequities. The Public Utilities Commission would support some revision.

There is agreement of both electrical and gas industry participants and the Public Utilities Commission that mandatory cogeneration rate parity with rates for gas used as fuel in an electric plant is inconsistent with a competitive market. The parties will work on amendatory language.

Antitrust matters. Industry participants suggest amending the Public Utilities Code and the Cartwright Act to draw a "bright line" between those activities subject to regulation and those subject to state antitrust laws. While the Public Utilities Commission agrees that a "bright line" division is conceptually desirable, it believes such a division is likely to be extremely difficult to make until the competitive evolution of the natural gas industry has progressed further. In the natural gas industry, competition in the procurement of natural gas

supplies is still unavailable for all but the largest customers. The Commission is concerned that all market participants have a fair opportunity to compete during the transitional period.

Consumer Protection

No issues have been raised in connection with this category in the natural gas industry.

Safety of Public

The parties agree that the Public Utilities Commission should continue its safety-related regulation in the natural gas industry and no Code changes are proposed.

Transitional Issues

Industry participants propose that statutory law be enacted concerning transitional issues for the natural gas industry, such as:

- recovery for uneconomic assets acquired to satisfy the monopoly obligation-to-serve utility requirements
- public purpose program financing
- establishing rules for competition to ensure competitive equity between utility (including municipal utilities) and non-utility providers
- aggregation rules for small customers

The Public Utilities Commission has taken no position on these matters, but is expected to address them in the strategic plan for natural gas.

Organization and Procedures

No issues have been raised in connection with this category in the natural gas industry.

Conclusion of Law Revision Commission

The policy disagreements in the natural gas industry are substantial, but the few parties that have entered into this pro-

cess are in agreement that it is appropriate to use the forthcoming strategic plan of the Public Utilities Commission as a forum for working out Code revisions. This procedure appears appropriate to the Law Revision Commission. The participants agree that in order to promote competition, the Code should be revised now to eliminate price parity requirements for gas used in cogeneration.

TRANSPORTATION INDUSTRY

Current Status of Restructuring and Deregulation

Railroad and Rail Transit

The California Public Utilities Commission began regulating railroads when they had a de facto monopoly on transportation and the public demanded that it be protected from industry abuses. As the railroad monopoly was eroded with the development of trucking, passenger buses, and airlines, Congress recognized that railroads do business in a competitive environment and preempted the states from economic regulation of most of the railroad industry. The Commission retains a minor advisory role in economic oversight by making recommendations to the federal Surface Transportation Board in response to railroad mergers and track abandonments, and economic regulatory authority over railroads that are not interconnected to the interstate network.

Today, the federal government has primacy on nearly all matters concerning nongovernment railroads. The Public Utilities Commission's rail-related role is primarily limited to ensuring freight and passenger safety, transit system safety, and grade crossing safety. The Commission conducts inspections of all railroads in accordance with federal and state regulations, investigates railroad accidents, and participates in educational rail safety programs. The Commission also oversees the design, construction, operation, and maintenance of

rail transit systems; investigates accidents and potentially hazardous conditions; reviews and approves corrective action plans and schedules; and performs triennial, on-site safety audits at rail transit agencies. In addition, the Commission is responsible for ensuring that rail-highway at-grade crossings and separations are designed, constructed, and maintained in accordance with public safety standards.

Motor Carriers of Property, Household Goods, and Passengers

Until recently, the Public Utilities Commission was authorized to regulate the activities of motor carriers of property, household goods, and passengers. Motor carriers of property, also referred to as motor freight carriers, are primarily trucking firms that move goods such as general freight, agricultural products, livestock, and automobiles. Household goods carriers move used household goods and other personal effects from or to a residence within California. Passenger carriers include buses, shuttle vans, and limousines. The regulatory scheme included control of prices, routes and areas of service, as well as other elements of the motor carrier business.

The Federal Aviation Administration Authorization Act of 1994 generally preempted the states' authority to regulate prices, routes, or the services of motor carriers that transport property. It did not preempt states' authority to regulate passenger carriers and household goods carriers.

In response to federal preemption, the Legislature in 1996 removed all provisions in state law that authorized the Public Utilities Commission to regulate rates, routes, and services of motor freight carriers. The Legislature also transferred authority for regulation of motor freight carriers from the Public Utilities Commission to the California Highway Patrol, with the Department of Motor Vehicles carrying out the licensing liability, and workers' compensation functions previously performed by the Public Utilities Commission. To ensure a smooth regulatory transition, the Department of

Motor Vehicles contracted with the Public Utilities Commission to continue performing licensing activities for motor freight carriers until the Department of Motor Vehicles is ready to assume full regulatory control. However, the Commission will probably cease performing licensing functions by the end of 1997.

The Public Utilities Commission continues to be responsible for the regulatory oversight of the passenger carrier industry. This includes ensuring that firms maintain adequate liability and workers' compensation insurance coverage, comply with driver and vehicle safety programs, and adhere to service and pricing requirements. The objective of the regulation of these carriers is to ensure safety and promote consumer interests.

The Public Utilities Commission will also continue its regulatory program for the household goods carrier industry. This regulatory program includes licensing, updating maximum rates, and enforcing consumer protection rules and responding to consumer complaints.

Positions of Stakeholders and Public Utilities Commission

The main factor in Public Utilities Commission regulation or deregulation of the transportation industry has been federal preemption. The Commission agrees that many of the statutes in the Public Utilities Code are ripe for review to reflect this trend. Work is ongoing to review existing statutes. The Commission hopes to identify a number of statutes for reform in its June 30, 1997, report to the Legislature.

Railroads

The Public Utilities Commission's economic regulatory authority is limited to intrastate railroads that have no interstate connection. Railroad industry participants have proposed Code revisions to reflect this. The Commission is concerned that the specific language proposed could affect its general

regulatory authority over safety issues and its economic regulatory authority over intrastate railroads that have no interstate connection. Further inquiry indicates a substantial amount of agreement in principle among the parties, but some disagreement about the full impact of federal preemption on the Commission's regulatory authority over transportation safety and a few other matters. There is also a question whether a few small intrastate railroads in fact have an interstate connection; the answer to this question could affect the drafting approach to Code revision.

Highway Property Carriers

The Public Utilities Commission's role in this field is terminating. The main statutes have been revised accordingly. However, there are a few missed provisions and cleanup legislation is desirable.

Household Goods Carriers

Moving and storage industry input indicates existing statutes are satisfactory. The Public Utilities Commission believes some adjustment is needed to reflect further federal preemption in some areas.

Passenger Carriers

There is full Public Utilities Commission regulatory authority in this area. The Commission does not see a need for statutory change here.

Water Vessel Carriers

No significant issues have been identified in this area.

Airlines

Federal preemption in this area has made large segments of the Public Utilities Code ripe for review, and the Public Utilities Commission plans to address this in its June 30, 1997, report to the Legislature. However the Commission also has

state law authority to receive proofs of insurance of air carriers; the Commission plans to review this matter to determine the extent to which this authority is still necessary.

Categorization of Policy Issues

The critical factor in the transportation industry is federal preemption rather than state deregulation. For this reason, a summary by category of policy issues for this industry is not particularly helpful. The disagreements relate primarily to drafting questions rather than policy issues. Detailed references to specific Code sections may be found in the Appendix to this report (see *infra* pp. 499-507).

Conclusion of Law Revision Commission

It appears to the Law Revision Commission that there are substantial areas of agreement over policy among the parties. All sides acknowledge the pervasive effect of federal preemption. There is some disagreement between the Public Utilities Commission and railroad industry participants about the effect of federal preemption on a handful of statutes that could affect the Commission's regulatory authority over transportation safety and a few other matters.

The Law Revision Commission perceives that it is essentially a drafting matter to overhaul the transportation portions of the Code in a way that does not adversely affect the remaining regulatory authority of the Public Utilities Commission. There is an opportunity here for a substantial cleanup of large portions of the Code. It should be a fairly straightforward process for the parties to circulate drafts and reach agreement on statutory language.

Telecommunications Industry

Current Status of Restructuring and Deregulation

Competition was virtually non-existent in the telecommunications industry until the 1984 federal divestiture case broke up the AT&T monopoly on local and long distance telephone service. The divestiture occurred because AT&T had the power, by virtue of its control of the local exchanges, to prevent competition in the long distance market.³ The consent decree (known as the Modification of Final Judgment, or MFJ) allowed for competition in the long-distance market and left the regulation — and deregulation — of local companies to the states.

The MFJ prohibited the local exchange carriers (LECs) that were created out of the divestiture, including Pacific Bell in California, from providing long-distance service between service areas known as Local Access and Transport Areas (LATAs). LECs provide local exchange services and intraLATA toll services. Local exchange services include: access line, dial tone, local calling, directory assistance, 911 emergency service, white page listing, and access to Interexchange Carriers. The MFJ also prevented the LECs from providing video-programming services. Although the LECs originally had monopolies on local exchange service in certain service areas, this service has now been opened to competition.

In 1994, the Legislature passed several bills designed to open all telecommunication markets under the regulation of the Public Utilities Commission to competition by January 1, 1997. Assembly Bill 3720 (1994 Cal. Stat. ch. 934) directed the Public Utilities Commission to authorize fully open competition in the intrastate, interLATA telecommunications

3. See *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131, 162 (D.D.C. 1982).

market, provided such competition was authorized by federal law or court order. Before the LECs created out of the divestiture could compete in intraLATA markets, the MFJ needed to be amended, Congress needed to pass legislation authorizing such competition, or the LEC needed to obtain a waiver from the D.C. District Court. One of the goals of AB 3720 was to allow Pacific Bell into the intrastate long-distance market. In order to prevent Pacific Bell from unfairly using its position as a LEC, AB 3720 required that the opening of interLATA long-distance markets to Pacific Bell not precede the opening of competition within the local exchange markets.

Competition in the local exchange markets raises difficult issues regarding the provision and subsidy of universal service: Competition makes the mechanisms to ensure universal service less functional because the profits available for the cross-subsidization of residential telephone service shrink. In addition, when a LEC operates as a monopoly, only the LEC is eligible for universal service support. But under a competitive scenario, multiple, competing providers of residential local telephone service should all be eligible for universal service support. Thus, AB 3643 (1994 Cal. Stat. ch. 278) directed the Public Utilities Commission to study the definition and provision of universal service to ensure the feasibility of competition in the local exchange markets.

The Legislature also passed AB 3606 (1994 Cal. Stat. ch. 1260), which directed the Public Utilities Commission to permit any cable television corporation or telecommunications corporation to enter local telecommunications markets in the service territory of a local exchange telephone corporation once that local exchange telephone corporation obtains the right to offer cable television or video dial tone service within its service territory.

Congress replicated much of this legislation in the federal Telecommunications Act of 1996. The Act was intended to effect competition in the telecommunications market throughout the country. It opened all local exchange markets to competition and removed the MFJ restrictions from companies such as Pacific Bell that were created out of the divestiture, allowing those companies to provide interLATA services under specified conditions. It also removed the video-programming restrictions from the divestiture companies, enabling them to enter the cable business, and directed the FCC to redefine universal service. The Public Utilities Commission is currently reviewing its policies to ensure compliance with the Act.

California's telecommunication industry has undergone rapid change since enactment of state and federal legislation and adoption of Public Utilities Commission policies. Carriers are now authorized to compete in the local exchange and to compete for intraLATA toll calls. But competition is only now developing in local telephone markets. And although California's second largest LEC (GTE) now offers interLATA services, California's largest LEC (Pacific Bell) has to date not requested this authority.

Despite the steps that have been taken toward a competitive market, the Public Utilities Commission still retains a major regulatory role in the telecommunications industry. Its primary functions include setting rates for monopoly services, implementing public purpose programs, enforcing market place fairness, and resolving customer complaints. In addition, the Commission is currently examining the technical, legal, and financial issues that must be resolved before new entrants into the market can compete. Among the legal issues the Commission must resolve are those involving the sale and resale of telephone services. Among the technical issues are

how to provide equal access to switching equipment and implementing new area codes.

Positions of Stakeholders and Public Utilities Commission

The principal area of contention in the telecommunications industry is competition and deregulation involving local telephone service. Incumbent carriers note that, since the Public Utilities Code was written, both state and federal laws have opened local service telephone markets to competition. Over 80 local carriers have received authority to compete in the provision of local exchange service in California, more than in any other state. Many players are huge, all are sophisticated, and some plan to enter all lines of business, including local service, long distance, wireless, Internet, and cable TV.

The incumbent carriers state that there is a need for comprehensive revision of many Code provisions designed originally to apply to monopolies. They would purge obsolete Code sections that include unnecessary statutory constraints preventing the Commission from reducing regulation in the competitive environment. The Commission must also enforce a full set of competitive protections now required by Congress, increasing the need to remove unnecessary regulatory burdens. Code revision would permit the Commission to focus more on consumer protection to ensure quality service from all competitors.

The Public Utilities Commission points out that it has been active in revising the Code to reflect restructuring in the telecommunications industry, which has been going on for some years. There is pending legislation to eliminate obsolete reporting requirements. The Commission currently has an internal group actively studying the Code, and expects to have affirmative recommendations for its June 30, 1997, report to the Legislature on needed Code revisions. The Commission

anticipates meetings with interested persons in the fall of 1997 to seek out areas of consensus on Code changes.

The Public Utilities Commission sees the need for continuing regulation in the local telephone service sector until a fully competitive environment is established. During this transitional phase, it believes regulation is still necessary to promote competition by new entrants in the market with the large former monopolies that still dominate the market. The Commission views itself as the rational middle between contending parties in this area, with the purpose of fostering competition by an appropriate transitional level of regulation.

The Public Utilities Commission indicates that it is moving in the direction of competition and away from heavy-handed regulation. However, it believes this whole area is very complex, and any deregulation must be instituted with great care. For example, factors that influence the direction of deregulation include market share, type of market (facilities-based v. resale), ability of competitors to cross-subsidize. The Commission has issued decisions that depend on the competitive environment, and these are very difficult and lengthy cases.

The Public Utilities Commission's approach is supported by new entrants. They point to experience in moving from a monopolistic environment to a competitive environment in the long distance sector. They believe deregulation is not appropriate until the regulated monopolies lose market share and real choices are available to consumers of local telephone services.

The incumbent carriers disagree with this assessment, noting that the local telephone service sector is open to competition right now. While actual competition is not as great in the residential sector as it is in the business sector, the Public Utilities Commission is moving much too slowly. They believe that telecommunications should be exempted from

Commission economic regulation now. The companies now entering the local telephone service market are large and fiercely competitive corporations, and do not need special protection by the Commission.

The incumbent carriers indicate that heavy-handed regulation by the Public Utilities Commission is still in place in the Code. They distinguish between Commission oversight in the wholesale market, which may still be appropriate, and the retail market, where Commission regulation should be eliminated. They recognize a continuing need for Commission regulation in the area of consumer protection, but believe this should apply to all carriers equally, not just to the former monopolies. They have suggested sunseting existing regulatory provisions to precipitate a thorough review.

Categorization of Policy Issues

Policy issues in deregulation in the telecommunications industry are summarized by category below. Detailed references to specific Code sections may be found in the Appendix to this report (see *infra* pp. 508-29).

Direct Regulation of Service Providers

There are many statutes providing for direct regulation of telecommunication carriers, such as the terms and conditions of service, and many other aspects of the telecommunication business. The incumbent carriers generally believe this sort of direct regulation should end — services provided are market differentiators in a competitive environment. The Public Utilities Commission and new entrants generally disagree; they would maintain many of these forms of regulation, at least until competition is more extensive.

Planning for the future — expansion, facilities, markets. The Public Utilities Commission and industry participants agree that in a fully competitive market, the Commission's

direct regulation of many business activities (including day to day operations, sales, administration, investment, future planning, expansion, and market entry plans) should end. The Commission views its role as not to protect monopoly markets or former monopoly providers, but to foster fair competition in markets that have been monopolistic until recently.

The Public Utilities Commission and the new entrants into the market believe that during the transition to a fully competitive market, the interests of the competitors must be balanced, and the Commission should retain discretion for this purpose. The incumbent carriers believe that in reality the markets are now open to competition, and all competitors should be treated equally. The Code permits disparate treatment of companies providing the same services; the incumbents would repeal the provisions that allow unequal treatment in a competitive market.

Audits and inspections. The Public Utilities Commission and incumbent carriers agree that the Commission should no longer conduct triennial comprehensive audits of incumbents' operations. The new entrants disagree, arguing that audits should be required, since local markets are not yet competitive.

The Public Utilities Commission and new entrants believe the Commission must retain authority to conduct narrowly-targeted audits, such as those to review affiliate transactions to protect against inappropriate revenue transfers. The incumbent carriers disagree — open markets and competition in combination with the competitive protections required by federal law will protect against inappropriate revenue transfers and should replace other pricing mechanisms imposed by the Commission.

New entrants (certification). The Public Utilities Commission and industry participants agree that basic network standards and standards of service quality and reliability should

be maintained. They agree the Commission should continue to certify or register new market entrants to ensure this, in the near term. Incumbent carriers also believe the level of regulatory oversight should decrease as markets take over the role of defining service quality and reliability requirements. They believe any regulatory-mandated service quality and reliability standards that remain should apply equally to all service providers.

Rates and Pricing

Retail, wholesale. The Public Utilities Commission and new entrants into the market believe that the Commission should regulate rates in retail service offerings, and differential rates may be appropriate to encourage development of competition between incumbent carriers and new entrants. The incumbent carriers disagree, noting that competition exists now — in a competitive environment, no retail service offered directly to end-users by any provider should be regulated. Code sections that allow the Commission to restrict retail pricing in markets where competition is permitted should be eliminated.

With respect to wholesale service offerings, the Public Utilities Commission is required to set prices that conform to the Telecommunications Act of 1996. The incumbent carriers argue that wholesale services and network elements provided to interconnecting carriers should be subject to Commission oversight only when interconnecting carriers cannot reach an interconnection or switched access agreement, consistent with the Telecommunications Act. Any oversight should be limited to effecting an agreement and resolving possible disputes or complaints among signatories that may occur.

The Public Utilities Commission takes the position that increased regulatory flexibility — e.g., tariff and pricing flexibility rules — depends on whether service is provided by an incumbent carrier or a new entrant and whether the carrier offering the service has market power.

The incumbent carriers argue that basic local exchange service, whether categorized as a retail service or as wholesale service on an interim basis, should be authorized at a price that covers the cost of service, plus a reasonable profit, with the single exception of any costs explicitly recovered from the state or federal universal service funds.

Antitrust matters. The Public Utilities Commission, supported by the new market entrants, believes it has a continuing role in monitoring anticompetitive behavior and cross-subsidization by incumbents as long as they have market power. The incumbent carriers disagree — the role of the Commission should be to implement state and federal laws promoting competition, not to enforce antitrust laws. They point out that the Attorney General can vindicate antitrust policies, and that the state unfair business practices laws provide for both public and private enforcement. They suggest that the current regulatory framework (under which, for example, there are price ceilings and floors) should be reassessed to determine whether it is appropriate as competition grows and intensifies in California.

The incumbent carriers also argue that, in any case, all competitors should be held to the same standards. They urge that antitrust investigative actions should be taken only on sufficient and substantial grounds (to minimize competitive “gaming”) and that any action should recognize the competitive urgency for resolving matters expeditiously.

Consumer Protection

There appears to be general agreement that existing Public Utilities Code consumer protection statutes should remain in place as the markets open to competition. The Public Utilities Commission needs to be able to establish or modify specifics in response to the changing competitive environment, and also to forbear from regulation where appropriate. Industry participants emphasize that providers should be equally obli-

gated and consumers should have equal basic protections; the law should not discriminate in the area of consumer protection.

Fraud. Both the Public Utilities Commission and industry participants agree that continuing oversight of marketing practices is necessary. Certain types of marketing practices peculiar to the telecommunications industry — e.g., “slamming” (unauthorized transfer of a customer’s long distance service from one carrier to another) — are likely to grow as competition develops in the intraLATA toll market and local exchange market. A related concern is consumer privacy (telemarketing).

Information and misinformation. Both the Public Utilities Commission and industry participants see an ongoing role for the Commission in the area of consumer information. Types of issues that have been identified include notification and distribution of information about marketing practices, available services, the range of providers, area code splits, reasonable rates and charges, and billing details.

Access (universal service). The Public Utilities Commission must implement universal service and consumer access to the telecommunications network pursuant to the Telecommunications Act of 1996 (FCC’s Universal Service program) and pursuant to Commission rules governing access to the network of local exchange companies by competitors and long-distance companies. Industry participants agree on the importance of availability of universal service and consumer access. Revision of Commission rules will be required during the move from monopoly to competitive markets; the existing access structure is premised on a monopoly local exchange market.

Safety of Public

In the telecommunications industry, safety of the public relates primarily to network reliability (e.g., 911, alarm services). The parties indicate that existing statutes and regulations are effective for this purpose and should be maintained. Incumbent carriers note that, with competition, the Public Utilities Commission should hold all providers to the same standards to ensure that public safety is not compromised.

Transitional Issues

Incumbent carriers argue that local markets are now open to all competitors. Incumbent carriers have made interconnection agreements with new entrants, enabling them to offer consumers a competitive choice. Barriers to entry have been removed and competition is underway with customer choices available today. Incumbent carriers argue that regardless of the transitional mechanisms to a deregulated marketplace, the Public Utilities Commission should treat all competitors equally.

The new entrants into the local market disagree with this basic assessment, believing that the incumbent carriers must be restrained until competition is fully established.

Stranded costs. There is substantial disagreement over stranded costs and the need to maintain fair rates of return until those costs are recovered. The incumbent carriers argue that competitive pricing should reflect the full recovery of an incumbent provider's actual costs incurred during monopoly regulation; this must be accomplished before deregulation is implemented or the marketplace effects of competition become widespread. The Public Utilities Commission notes that it has denied a request of the incumbent carriers for compensation under the Takings Clause of the United States Constitution for failure to provide a fair rate of return. The Commission found that the carriers' quantitative evidence was too speculative, but left open the opportunity to reapply.

Equal footing. The incumbent carriers argue that, if state public policy determines a transitional period is necessary before full deregulation, all competitors should be treated equally. The critical issues include costing and pricing associated with interconnection, universal service, and access charges. There must also be sufficient and competitively neutral funding of universal service. Correct universal service and universal service funding must be accomplished expeditiously — before deregulation and widespread competition.

Organization and Procedures

In 1996, the Legislature enacted bills dealing with Public Utilities Commission procedure (SB 960) and with judicial review of the Commission (SB 1322).

Conclusion of Law Revision Commission

The Law Revision Commission has concluded that several actions would be helpful. A timetable should be established for deregulation of the telecommunications industry. The timetable should be rationally based on appropriate criteria. It would also be helpful to establish the Public Utilities Commission's role in telecommunications when deregulation is complete — for example, licensing or certifying entrants into the market and ensuring consumer protection.

APPENDIX

SPECIFIC REVISIONS OF PUBLIC UTILITIES CODE SUGGESTED BY INDUSTRY PARTICIPANTS

WITH UPDATED COMMENTARY FROM CPUC

This Appendix lists specific Code sections that have been identified by industry participants for possible revision.¹ This information has been provided by the participants; the Law Revision Commission takes no position as to its accuracy. The California Public Utilities Commission's (CPUC) positions on the suggested revisions are drawn from a recent memorandum.²

ELECTRICAL INDUSTRY	487
NATURAL GAS	494
TRANSPORTATION	499
TELECOMMUNICATIONS	508

The Code sections in each industry discussion (except Transportation) are grouped in the following categories:

(1) Direct Regulation of Service Providers

Is there a need for continuing traditional regulation of how a utility runs its business with respect to:

- planning for the future — expansion, facilities, markets
- audits and inspections
- new entrants (certification)

1. Industry participants are those who expressed their views in writing or orally at Law Revision Commission meetings. For additional information, see files on Study B-800 (Public Utility Deregulation).

Unless otherwise indicated, "Code" refers to the Public Utilities Code.

2. Memorandum from Jean Vieth, Legal Division, CPUC, "Update to LRC's report, Public Utility Deregulation" (October 28, 1997) (on file with California Law Revision Commission). Some editorial revisions have been made in this material.

(2) Rates and Pricing

Is there a need to continue traditional regulation in the areas of:

- retail, wholesale
- antitrust matters

(3) Consumer Protection

Should the law continue to regulate such matters as:

- fraud
- information and misinformation
- access (universal service)

(4) Safety of Public

Is continuing protection needed for physical safety of the public, e.g.:

- gas pipelines
- railroad crossings

(5) Transitional Issues

Does the deregulation process itself require interim regulation for such matters as:

- stranded investments
- equal footing
- wheeling

(6) Organization and Procedures

Due to the emerging competitive marketplace, should changes to regulatory processes and organization be considered?

- agency organization
- administrative procedures
- judicial review

(7) Miscellaneous Issues

ELECTRICAL INDUSTRY

Category (1): Direct Regulation of Service Providers

§ 454.8. Requires that in any decision establishing rates reflecting the costs of new construction or additions to the corporation's plant, the CPUC shall consider a method in which recovery of costs would be constant in real economic terms over the useful life of the facilities.

- **Suggested Action:** Delete. Edison suggests deleting this section.
- **Rationale:** Section is an outdated, overly prescriptive procedure based on cost-of-service ratemaking.
- **CPUC:** Delete. This section imposes a cost-of-service ratemaking procedure, which is at odds with incentive ratemaking and the increasingly competitive energy market.

§ 701.3. Requires the CPUC to direct that a specific portion of future electrical generating capacity needed in California be reserved or set aside for renewable resources.

- **Suggested Action:** Delete. Edison suggests deleting this section.
- **Rationale:** No need for the CPUC to perform long-run resource planning for the electric utilities.
- **CPUC:** Sunset in 1998 may be appropriate. State electric restructuring policy (AB 1890, 1996 Cal. Stat. ch. 854) subsumes prior policy on electric resource planning. Any proposed sunset should coincide with AB 1890's implementation.

§ 701.4. Requires electric resource acquisition programs to recognize and include a value for the resource diversity provided by renewable resources.

- **Suggested Action:** Delete. Edison suggests deleting this section.
- **Rationale:** No need for the CPUC to perform long-run resource planning for the electric utilities.
- **CPUC:** Sunset in 1998 may be appropriate. State electric restructuring policy (AB 1890) subsumes prior policy on electric resource planning. Any proposed sunset should coincide with AB 1890's implementation.

§ 1001. Requires some public utilities to obtain a certificate of public convenience and necessity (CPCN) from the CPUC prior to commencement of construction.

Direct Regulation of Service Providers (continued)

- **Suggested Action:** Amend. Edison suggests modifying to revise requirement for CPUC approval prior to construction. This provision should be subject to periodic review to encourage regulatory streamlining.
- **Rationale:** The interests of the general public will be protected by competition, rather than by a finding by a regulatory agency of future public convenience and necessity. Note that utilities are still required to get permit from the proper county, city, or other public authority. Also, these statutes do not apply to municipally-owned public utilities.

§ 1003. States information that must be included in application for certificate authorizing new construction by an electrical or gas corporation not regulated by the Public Resources Code.

- **Suggested Action:** Amend. Edison suggests revising or deleting the detailed requirements for engineering information, cost estimates of the financial impact of the plant on ratepayers, and a construction management plan for power plant construction.
- **Rationale:** This section was designed to allow the CPUC to establish fair rates to cover prudent and reasonable costs for the construction of electric plants.
- **CPUC:** Possibly amend. Some of the detailed requirements for an electric utility CPCN application may no longer be necessary in light of the increasingly competitive markets for electric utility services.

§ 1003.5. States information that must be included in application for certificate authorizing new construction by electrical or gas corporation regulated by the Public Resources Code.

- **Suggested Action:** Amend. Edison suggests revising or deleting the detailed requirements for engineering information, cost estimates of the financial impact of the plant on ratepayers, and a construction management plan for power plant construction.
- **Rationale:** This section was designed to allow the CPUC to establish fair rates to cover prudent and reasonable costs for the construction of electric plants.

§ 1005. Permits the CPUC to issue or refuse to issue certificates for new construction. If a certificate for new construction is granted, requires the CPUC to specify the operating and cost characteristics of the plant, line, or extension for which the certificate was granted.

- **Suggested Action:** Unclear. Edison does not specify how it would like this section changed.
- **CPUC:** Amend to delete provision that hearing must be held on request on “any person entitled to be heard.” Existing law appears to have been designed for an era of monopoly provision of utility services.

Direct Regulation of Service Providers (continued)

§ **1005.5.** Requires the CPUC to specify in the certificate a maximum reasonable cost of new construction.

- **Suggested Action:** Delete. Edison suggests deleting this section.
- **Rationale:** Should no longer be necessary for the CPUC to establish a maximum cost to be reasonable and prudent for any new construction or addition.

§ _____. Proposed revisions to Public Resources Code §§ 25300-25309.1. Sections are related to the long-run resource planning in the public utilities.

- **Suggested Action:** Amend. Edison suggests that these sections should be deleted or subject to a sunset statute.

Category (2): Rates and Pricing

§ **211 et seq.** Provide definitions for terms used in the Code.

- **Suggested Action:** Amend. Edison states that this section should be revised, and periodically reviewed for regulatory streamlining purposes. Union Pacific also suggests amending § 211. See Transportation discussion *infra* p. 499.
- **Rationale:** The CPUC is now pre-empted by federal law from regulating rates for railroads and trucks, although it still sets rates for some carriers, such as shuttle services, household movers, and limousine companies.
- **CPUC:** The CPUC's *Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries* (June 30, 1997) proposes, instead, a new section defining a "network railroad" as a railroad that is part of the "interstate rail network" as the latter term is used in 49 U.S.C. § 10501(a)(2)(A).

§ **454.4.** Requires the CPUC to set rates for gas used in cogeneration technology projects no higher than rates for gas used as fuel by an electric plant.

- **Suggested Action:** Delete. Edison suggests deleting this section. SoCal Gas also suggests amending this section. See Natural Gas category (2) discussion *infra* p. 495.
- **Rationale:** Section is obsolete because of gas deregulation, i.e. there is no longer a single UEG rate for electric utilities. It is also obsolete as a result of the changing competitive environment in which regulated and unregulated entities are competitors.
- **CPUC:** Continue to review with objective of developing appropriate amendment to sunset. Mandatory cogeneration rate parity with UEG rates is inconsistent with a competitive energy market and should be phased out; however, continued regulation may be necessary to protect consumers and developing competition as California proceeds through the transition from a monopoly to a competitive market for energy services. In addition, the CPUC's Natural Gas

Rates & Pricing (continued)

Strategy will consider necessary “next steps” to further gas competition in California.

§ 454.6. Requires the CPUC to set rates for gas in solar electric generation station projects no higher than the rates for gas used as fuel by an electric plant. In effect until January 1, 2001.

- **Suggested Action:** Delete. Edison suggests deleting this section.
- **Rationale:** Section is obsolete because of gas deregulation, i.e., there is no longer a single UEG rate for electric utilities. It is also obsolete as a result of the changing competitive environment in which regulated and unregulated entities are competitors.
- **CPUC:** Delete in 2001. Mandatory cogeneration rate parity with UEG rates is inconsistent with a competitive energy market. This section does not affect solar plants placed in operation after January 1, 1995, and sunsets in 2001.

§ 454.7. Requires the CPUC, to the extent permitted by federal law, to provide cogeneration technology projects with the highest possible priority for the purchase of natural gas.

- **Suggested Action:** Delete. Edison suggests deleting this section.
- **Rationale:** Section is obsolete because of gas deregulation, i.e., there is no longer a single UEG rate for electric utilities. It is also obsolete as a result of the changing competitive environment in which regulated and unregulated entities are competitors.
- **CPUC:** Possibly amend. This section may be inconsistent with the evolution of competitive markets for energy services and requires further review. The CPUC’s Natural Gas Strategy will consider necessary “next steps” to further gas competition in California.

§ 454.8. Discussed in Electrical Industry category (1) *supra* p. 487.

§ 701.3. Discussed in Electrical Industry category (1) *supra* p. 487.

§ _____. Proposed new section.

- **Suggested Action:** Add. Edison suggest amending the Code and the Cartwright Act to draw a “bright line” between those activities subject to regulation and those subject to state antitrust laws.
- **Rationale:** The California Supreme Court recently held that the CPUC’s authority over the regulated rates did not immunize PacTel and US West against claims for price fixing under the Cartwright Act. *Cellular Plus, Inc. v. Superior Ct.*, 14 Cal. App. 4th 1224, 18 Cal. Rptr. 2d 308 (1993). As the energy market moves to a competitive framework, Cellular Plus creates the opportunity for duplicative litigation. Law should provide for one litigation

Rates & Pricing (continued)

before the regulatory agency to set rates, or before the courts for unregulated conduct, but not both.

- **CPUC:** The CPUC agrees that a “bright line” division is conceptually desirable, but suggests such a division is likely to be extremely difficult to make until the competitive evolution of the electric industries has progressed further (the competition AB 1890 envisions will not exist before 1998). The CPUC is concerned that all market participants will have a fair opportunity to compete during the transitional period, and as an interim measure is currently reviewing appropriate rules to govern the relationship between a regulated utility and any unregulated affiliates that provide energy or energy-related services (see R.97-04-011, I.97-04-012).

Category (3): Consumer Protection

§ 2106. Permits court to impose punitive damages on public utilities for willful violations of law.

- **Suggested Action:** Amend. Edison suggests modifying to eliminate the potential for punitive damages for alleged breach of qualified facilities (QF) contracts.
- **Rationale:** (1) Equity — QFs cannot be sued for punitives under the Civil Code. See Civ. Code § 3294. (2) State policy against awarding punitives for breach of commercial contracts. See *Foley v. Interactive Data Corp.*, 47 Cal. 3d 654, 765 P.2d 373; 254 Cal. Rptr. 211 (1988).

Category (6): Organization and Procedures

§ 3. Grandfathers provisions for commissioners in office in 1951 when Code was adopted.

- **Suggested Action:** Delete. Edison suggests deleting this section.
- **Rationale:** Obsolete.

§ 303. Prohibits a person who holds an office or is pecuniarily interested in a regulated corporation from being appointed a commissioner, or being employed by the CPUC.

- **Suggested Action:** Delete. Edison suggests deleting this section.
- **Rationale:** Uses archaic “pecuniarily interested” standard. Superseded by the Fair Political Practices Act.
- **CPUC:** Amend so that prohibitions apply only to commissioners. Give the CPUC authority to apply its Statement of Incompatibility to gubernatorial appointees. The CPUC supports SB 595 (Burton) (1997 Cal. Stat. ch. 195), which addresses this issue.

Organization & Procedures (continued)

§ 310. States that no vacancy in the CPUC shall impair the right of the remaining commissioners to exercise all powers of the CPUC. A majority of the commissioners constitutes a quorum.

- **Suggested Action:** Amend. Edison suggests amending to provide that a majority of the then-sitting commissioners constitutes a quorum.
- **Rationale:** To clarify the CPUC's power to act when there are vacant seats.
- **CPUC:** Amend to clarify validity of actions taken when there are only three sitting commissioners (i.e., when two vacancies exist).

§§ 1801-1812. Provide rules for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers for participation or intervention in any proceeding of the CPUC.

- **Suggested Action:** Amend. Edison suggests revising intervenor compensation rules. For example, large agricultural groups and other industry groups, whose members cannot show financial hardship, should not be made eligible by special interest statute (§ 1812).
- **CPUC:** Continue to review with the objective of developing appropriate amendment. The CPUC has opened a Rulemaking and Investigation (R.97-01-009, I.97-01-010) to review the Intervenor program.

§§ 1821-1824. Rules regarding use of computer models for forecasting. Sections require computer models that are used as the basis for any testimony or exhibit in a hearing or proceeding before the CPUC be available to the CPUC and parties for review and verification. Also require the CPUC to periodically review and monitor the development and use of any operations model used by any public utility.

- **Suggested Action:** Delete. Edison suggests deleting this provision.
- **Rationale:** No need for the CPUC to perform long-run resource planning for the utilities. The computer model requirements for economic forecasting and need analysis are overly complex, unduly burdensome, and outdated. These rules heavily contributed to over a decade of wasteful and expensive modeling wars between the CEC and the CPUC in the Biennial Resource Plan Update. At a minimum, they should not be set in statute, but addressed by CPUC rules so there is flexibility.
- **CPUC:** Delete §§ 1823 and 1824. These sections are unnecessary in light of the CPUC's general authority.

§ _____. Proposed new sections: § 1700 *et seq.*

- **Suggested Action:** Add. Edison suggests adding provisions that require disclosure of CPUC material in a manner similar to the Federal APA under 5 U.S.C. § 552(c), including disclosure of all statements of formal and informal

Organization & Procedures (continued)

procedure, staff manuals and instructions that affect members of the public, statements of policy interpretation and common use, and rules of general applicability.

§ _____. Proposed new section or amendment to Gov't Code § 11126.

- **Suggested Action:** Add. Edison suggests adding a section requiring the CPUC to conduct rulemaking under the rulemaking provisions of the APA. Edison sees no reason to exempt the CPUC's Rules of Procedure from parts of the APA.
- **Rationale:** Ideally, Edison would prefer that the "ratesetting" category be eliminated, and that cases where policy is made to be categorized as quasi-legislative because this would lower regulatory barriers to public participation. If the "ratesetting" category is retained, Edison would like the ex parte rules that sometimes subject members of the public to significant and expensive filing and mailing requirements removed. If the ex parte requirement is retained, Edison thinks the CPUC should follow procedures allowed for ratemaking proceedings in the APA to make the process less burdensome.
- **CPUC:** The LRC has recently addressed the issue of administrative procedure and voted to exempt the CPUC from its proposals on this topic. Recently enacted legislation on administrative procedure proposed by the LRC became operative July 1, 1997.

§ _____. Proposed new section: similar to Gov't Code § 11340.6.

- **Suggested Action:** Add. Edison suggests adding a new section that would provide that parties may petition the CPUC to repeal or modify obsolete regulations. Gov't Code § 11340.6 provides such a mechanism for state agencies that operate under the APA.
- **CPUC:** The CPUC's *Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries* (June 30, 1997) does not propose amendment of this section. The CPUC's Rules of Practice and Procedure already permit such petitions.

NATURAL GAS

Category (1): Direct Regulation of Service Providers

§ 851. Requires CPUC approval for the transfer, sale, merger, or other disposition of all necessary or useful public utility property.

- **Suggested Action:** Amend. SoCal Gas suggests modifying to restrict the CPUC’s authority to regulate only the disposition of utility property that is exclusively necessary and useful in the provision of the utility service. Suggests that the utility should be given flexibility to transfer, without prior CPUC authorization, utility property not used exclusively in the provision of utility service in the regulated sector.
- **Rationale:** Current law does not distinguish between property used in providing utility services from property serving the competitive market. Minimal regulatory review is necessary for conveyances of property not used for core utility purposes.
- **CPUC:** At a minimum, this section should be amended to clarify the concept of “necessary and useful” property (and remove the circularity between first and second paragraphs). Additional amendment may be warranted to eliminate the need for CPUC approval of certain kinds of activities by utilities in competitive markets.

Category (2): Rates and Pricing

§§ 451, 453, 454. Section 451 requires public utilities to charge just and reasonable rates for services. Section 453 prohibits public utilities from providing preferential rates or services to any customer. Section 454 prohibits public utilities from changing rates, except upon showing to the CPUC that the new rate is justified.

- **Suggested Action:** Amend. SoCal Gas suggests amending these sections to refine utility obligation to serve to allow flexibility to reflect the competitive implications of the new gas market in which customers have more choice for service providers and different levels of utility service.
- **Rationale:** These sections generally recognize the obligation to serve as a legal duty that requires public utilities to provide “reasonable” service to the public, regardless of a customer’s service arrangements. The law should be refined to reflect the competitive energy marketplace and changing customer service options. A utility’s obligation to serve should be linked to a customer’s obligation to take that service. As the competitive market evolves, utility’s

Rates & Pricing (continued)

obligation to provide the service and products, and therefore invest capital, should reflect the character of service and product.

- **CPUC:** As to § 451, competition may warrant flexible application of the obligation to serve; however, continued regulation is necessary to protect consumers and the competitive process as California proceeds through the transition from a monopoly to a competitive market for energy services.

As to § 453(a) & (c), competition may warrant flexible application of the obligation to serve and reconsideration of other provisions. Major revision now is premature, since retail competition does not exist for residential and small commercial natural gas customers.

As to § 454, amendment is warranted to (1) delete the reference in subdivision (a) to § 454.1, which was repealed in 1996, and (2) reflect increasingly competitive energy markets and changing customer service options.

§ 454.4. Requires the CPUC to set rates for gas used in cogeneration technology projects no higher than rates for gas used as fuel by an electric plant.

- **Suggested Action:** Delete. SoCal Gas suggests eliminating the parity mandate.
- **Rationale:** The statutory mandate to achieve “parity” is out of place in the emerging market-driven electric generation market. In competitive industries, any artificial pricing destroys the benefits of competition. Moreover, the policy results in a cross subsidy that favors cogenerators at the expense of UEGs, sends the wrong price signals to the market, and unnecessarily increases retail electricity prices. Parity creates market distortions whereby natural gas rates to some cogenerators do not reflect the marginal cost of providing service, and could result in some generators bidding artificially lower-priced electricity into the power pool.
- **CPUC:** Continue to review with objective of developing appropriate amendment to sunset. Mandatory cogeneration rate parity with UEG rates is inconsistent with a competitive energy market and should be phased out; however, continued regulation may be necessary to protect consumers and developing competition as California proceeds through the transition from a monopoly to a competitive market for energy services. In addition, the CPUC’s Natural Gas Strategy will consider necessary “next steps” to further gas competition.

§ 489. Requires the CPUC to order public utilities to file schedules containing rates, charges, classifications, rules, etc.

- **Suggested Action:** Amend. SoCal Gas suggests amending these sections to refine utility obligation to serve to allow flexibility to reflect the competitive implications of the new gas market in which customers have more choice for service providers and different levels of utility service.
- **Rationale:** The law should be refined to reflect the competitive energy marketplace and changing customer service options. A utility’s obligation to serve

Rates & Pricing (continued)

should be linked to a customer's obligation to take that service. As the competitive market evolves, utility's obligation to provide the service and products, and therefore invest capital, should reflect the character of service and product.

- **CPUC:** Possibly amend § 489(a) in light of increasing competition; however, continued regulation is necessary to protect consumers and developing competition as California proceeds through the transition from a monopoly to a competitive market for energy and telecommunications services.

§ 491. Requires 30 days' notice for rate, rule, and classification changes unless the CPUC approves less.

- **Suggested Action:** Amend. SoCal Gas suggests amending these sections to refine utility obligation to serve to allow flexibility to reflect the competitive implications of the new gas market in which customers have more choice for service providers and different levels of utility service.
- **Rationale:** The law should be refined to reflect the competitive energy marketplace and changing customer service options. A utility's obligation to serve should be linked to a customer's obligation to take that service. As the competitive market evolves, utility's obligation to provide the service and products, and therefore invest capital, should reflect the character of service and product.
- **CPUC:** This section already provides for exceptions to 30-day notice requirement, but should be amended to expressly state that the CPUC has discretion to authorize exemptions for classes of utilities or when market conditions warrant.

§ 739. Requires the CPUC to designate a baseline quantity of gas and electricity that is necessary to supply a significant portion of the reasonable energy needs of the average residential customer; requires electrical and gas corporations to file a schedule of rates and charges providing baseline rates.

- **Suggested Action:** Amend. SoCal Gas suggests that the statutory provisions governing baseline should be modified so as to minimize rate making inequities. Also suggests that the law be clarified to provide that the drivers in the competitive market are cost causation, economic efficiency, and competitive forces, balanced with the policies of affordability and conservation.
- **Rationale:** The inverted rate structure (baseline) creates imbalances in how costs are allocated within and between customer classes. Baseline was established to help implement the public policy principle of energy conservation. Yet, in a competitive market, baseline creates competitive issues that result in inequities in ratemaking because it rewards low consumption and penalized high consumption without regard to the customers' circumstances. A "yuppie" couple with no children and a new, energy-efficient home is rewarded; a large

Rates & Pricing (continued)

family with some members home during the day in an older, less-efficient home is punished.

- **CPUC:** Continue to review with objective of amending to minimize ratemaking inequities. The system of baseline rates and allowances may need substantial revision in light of deregulation in some markets.

§ **739.1.** Requires the CPUC to establish an assistance program for low-income electric and gas customers, the cost of which shall not be borne solely by any single class of customer. (CARE program).

- **Suggested Action:** Amend. SoCal Gas suggests that the statutory provisions governing CARE should be modified so as to minimize rate making inequities. Also suggests that the law be clarified to provide that the drivers in the competitive market are cost causation, economic efficiency and competitive forces, balanced with the policies of affordability and conservation.
- **Rationale:** The provision that the costs of the CARE program shall not be borne solely by any single class of customer imposes allocation discrepancies. CARE was created to provide low income utility customers with affordable energy, and requires utilities to levy the cost of the CARE program on all customer classes. Because businesses cannot receive the benefits of the CARE program, it is inconsistent with a competitive market that they be responsible for these costs.
- **CPUC:** Continue to review with objective of amending to minimize ratemaking inequities. The system of baseline rates and allowances may need substantial revision in light of deregulation in some markets.

§ _____. Proposed new section.

- **Suggested Action:** Add. Industry participants suggest amending the Code and the Cartwright Act to draw a “bright line” between those activities subject to regulation and those subject to state antitrust laws.
- **Rationale:** The California Supreme Court recently held that the CPUC’s authority over the regulated rates did not immunize PacTel and US West against claims for price fixing under the Cartwright Act. *Cellular Plus, Inc. v. Superior Ct.*, 14 Cal. App. 4th 1224, 18 Cal. Rptr. 2d 308 (1993). As the energy market moves to a competitive framework, Cellular Plus creates the opportunity for duplicative litigation. Law should provide for one litigation before the regulatory agency to set rates, or before the courts for unregulated conduct, but not both.
- **CPUC:** The CPUC agrees that a “bright line” division is conceptually desirable, but suggests such a division is likely to be extremely difficult to make until the competitive evolution of the electric industries has progressed further (the competition AB 1890 envisions will not exist before 1998). The CPUC is concerned that all market participants will have a fair opportunity to compete during the transitional period, and as an interim measure is currently review-

Rates & Pricing (continued)

ing appropriate rules to govern the relationship between a regulated utility and any unregulated affiliates that provide energy or energy-related services (see R.97-04-011, I.97-04-012).

Category (5): Transitional Issues

§ _____. Proposed new section dealing with stranded cost recovery. (Non-Bypassable Competitive Transition Charge (CTC)).

- **Suggested Action:** Add. SoCal Gas suggests enacting a new section that specifies that prudently incurred stranded costs to gas customers be recovered — similar to §§ 367-368 (added by AB 1890).
- **Rationale:** Current statutory law allows only electric utilities to recover stranded costs. Gas utilities also have stranded costs that were incurred to respond to the needs of the regulated market. (Limited stranded cost recovery has been authorized for natural gas utilities by regulatory decisions.)
- **CPUC:** The CPUC’s Natural Gas Strategy will consider necessary “next steps” to further gas competition in California.

§ _____. Proposed new section regarding gas aggregation.

- **Suggested Action:** Add. SoCal Gas suggests enacting a new section that affirms a gas utility customers’ right to consent to be aggregated, and to identify the utility as the default provider if an aggregator is not identified. Such a provision would mirror what was provided to electric utility customers in § 366 (added by AB 1890).
- **Rationale:** Existing law defines the ability of market participants to aggregate individual customers and provide retail electric services. It also provides customer choice such that no party can aggregate electric customers without their consent, and that the serving electric utility is the default provider to any customer that does not agree to be aggregated. But existing law makes no provisions for aggregation of natural gas customer, and aggregation will be available to gas consumers. (It is already available to some consumers under a CPUC pilot program.)
- **CPUC:** The CPUC’s Natural Gas Strategy will consider necessary “next steps” to further gas competition in California.

TRANSPORTATION

§ 211. Defines common carrier.

- **Suggested Action:** Amend. Union Pacific suggests amending to exclude railroads and rail corporations from the definition of common carrier.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress. This can best be accomplished by excluding “railroads” and “rail corporations” from the definition of “common carrier.”

§ 216. Defines public utility.

- **Suggested Action:** Amend. Union Pacific suggests amending to exclude railroads and rail corporations from the definition of public utility.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.

§ 216.5. Excludes motor carrier of property from the definition of a public utility.

- **Suggested Action:** Amend. Union Pacific suggests amending to also exclude a “common carrier of freight by railroad” from the definition of a public utility.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.

§ 314.5. Requires the CPUC to inspect and audit books and records of utility corporations for regulatory and tax purposes every three or five years depending on number of customers corporation serves.

- **Suggested Action:** Amend. Union Pacific suggests modifying to exclude railroad and rail corporations from this provision.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.
- **CPUC:** Amend to (1) delete the reference to railroad passenger commuter operations, since currently there are no railroad commuter operations that are subject to CPUC rate regulations and (2) eliminate the requirement to audit utilities every three or five years.

§ 458. Prohibits common carrier transportation at rates below those filed.

- **Suggested Action:** Amend. Union Pacific suggests modifying so that provision only applies to common carriers as defined in § 211 — thus, railroads and rail corporations would be excluded from the section.

- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.
- **CPUC:** Amend to clarify that section does not apply to most railroad corporations — due to federal preemption, this section should not apply to “network railroads.”

§ 459. Prohibits fraudulent rebates.

- **Suggested Action:** Amend. Union Pacific suggests modifying so that provision only applies to common carriers as defined in § 211 — thus, railroads and rail corporations would be excluded from the section.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.
- **CPUC:** See comment to § 458 *supra*.

§ 460. Prohibits common carriers from charging higher rates for transportation of persons for a shorter than for a longer distance over the same line or route in the same direction.

- **Suggested Action:** Delete. Union Pacific suggests deleting provision.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.

§ 461.5. Prohibits railroad and transportation companies from discriminating in transportation rates.

- **Suggested Action:** Delete. Union Pacific suggests deleting provision.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.
- **CPUC:** Amend to clarify that section does not apply to most railroad corporations and to streamline procedures. Due to federal preemption, the only railroads to which this section should apply are those that are not part of the interstate network. To streamline procedural requirements, delete the words “in special cases, after investigation” in the first sentence of the second paragraph.

§ 486. Requires common carriers to file tariffs with the CPUC and to keep their rates open to public inspection.

- **Suggested Action:** Amend. Union Pacific suggests modifying so that provision only applies to common carriers as defined in § 211 — thus, railroads and rail corporations would be excluded from the section.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.
- **CPUC:** See comment to § 458 *supra*. Also, amend to allow the CPUC flexibility to waive tariff requirements for passenger stage corporations when market conditions warrant.

§ 488. Requires that schedules of common carriers be available for public inspection.

- **Suggested Action:** Amend. Union Pacific suggests modifying so that provision only applies to common carriers as defined in § 211 — thus, railroads and rail corporations would be excluded from the section.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.
- **CPUC:** See comment to § 458 *supra*. Also, references to the Interstate Commerce Act (now repealed) and to the Interstate Commerce Commission (now terminated) should be updated.

§ 493. Prohibits common carriers from operating until their rates are filed and published in accordance with rules created in Code.

- **Suggested Action:** Amend. Union Pacific suggests modifying so that provision only applies to common carriers as defined in § 211 — thus, railroads and rail corporations would be excluded from the section.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.
- **CPUC:** See comment to § 486 *supra*.

§ 494. Prohibits common carriers from charging rates other than those on file with the CPUC.

- **Suggested Action:** Amend. Union Pacific suggests modifying so that provision only applies to common carriers as defined in § 211 — thus, railroads and rail corporations would be excluded from the section.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.
- **CPUC:** See comment to § 458 *supra*.

§ 496. Carrier antitrust provisions.

- **Suggested Action:** Amend. Union Pacific suggests modifying so that provision only applies to common carriers as defined in § 211 — thus, railroads and rail corporations would be excluded from the section.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.

§ 556. Requires every common carriers to have adequate facilities to offer services, including efficient interchange, between its own lines and the lines owned by other common carriers.

- **Suggested Action:** Delete. Union Pacific suggests deleting provision.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.

- **CPUC:** Amend to delete references to freight. The CPUC no longer has regulatory authority over common carrier truckers, and generally lacks authority to regulate the service of most railroads.

§ 557. Requires railroads to receive and haul freight cars from other railroads.

- **Suggested Action:** Delete. Union Pacific suggests deleting provision
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.

§ 559. States duty of common carriers to establish joint rates for transportation over the lines it owns and the lines of other common carriers.

- **Suggested Action:** Delete. Union Pacific suggests deleting provision
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.
- **CPUC:** Amend to exempt railroad corporations. Due to federal preemption, the CPUC generally lacks authority to regulate the service of most railroads.

§ 560. Requires railroads to make certain connections or provide switches at the request of any shipper or receiver if certain conditions are met.

- **Suggested Action:** Delete. Union Pacific suggests deleting provision.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.

§ 610. Applies eminent domain power to public utilities.

- **Suggested Action:** Amend. Union Pacific suggests modifying to also apply eminent domain power to railroad corporations.
- **Rationale:** If § 211 is amended to exclude railroad corporations from being common carriers, railroad corporations will lose their power of eminent domain. This amendment would give railroad corporations the power of eminent domain without being a public utility.

§ 611. Permits railroad corporations to condemn any property necessary for the construction and maintenance of its railroad.

- **Suggested Action:** Amend. Union Pacific suggests modifying to make clear that this provision would apply to a railroad corporation whether or not it is a common carrier as defined in § 211.
- **Rationale:** If § 211 is amended to exclude railroad corporations from being common carriers, railroad corporations will lose their power of eminent domain. This amendment would give railroad corporations the power of eminent domain without being a public utility.

§ 703. Permits the CPUC to investigate all existing or proposed rates, classifications, etc., for the transportation of persons or property or the transmission of messages when the CPUC believes they are excessive, discriminatory, or otherwise improper.

- **Suggested Action:** Amend. Union Pacific suggests modifying so that the CPUC will not have authority to investigate rates for the transportation of persons or property.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.
- **CPUC:** Amend to update references to federal law. The references to the Interstate Commerce Act (which has been repealed), to the Interstate Commerce Commission (which has been terminated), and to “excessive or discriminatory” rates should be replaced by more general references to federal law and federal agencies.

§ 706. Permits railroad corporations to connect at the state line with railroads of other states.

- **Suggested Action:** Delete. Union Pacific suggests deleting provision.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.

§ 707. States procedures for the CPUC to follow in establishing rates charged by railroads for interurban passenger service.

- **Suggested Action:** Delete. Union Pacific suggests deleting provision.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.

§ 728.5. Permits the CPUC to establish rates for, examine the books of, and hear and determine complaints against railroads and other transportation companies.

- **Suggested Action:** Amend. Union Pacific suggests modifying so that provision only applies to common carriers as defined in § 211 — thus, railroads and rail corporations would be excluded from the section.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.
- **CPUC:** See comment to § 458 *supra*.

§ 730. Requires the CPUC to determine facilities needed for services furnished by common carriers and to establish fees for such services.

- **Suggested Action:** Amend. Union Pacific suggests modifying so that provision only applies to common carriers as defined in § 211 — thus, railroads and rail corporations would be excluded from the section.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.
- **CPUC:** See comment to § 458 *supra*.

§ 730.5. Requires the CPUC's order approving rate increases for the passenger transportation services of any railroad or passenger stage corporation to include certain findings and considerations.

- **Suggested Action:** Amend. Union Pacific suggests modifying so that provision does not apply to railroad corporations.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.

§ 731. Requires the CPUC to prescribe rates of transportation carriers if it finds that the rates being charged are below cost of service.

- **Suggested Action:** Delete. Union Pacific suggests deleting provision.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.

§ 732. Permits the CPUC to establish through route and joint rates that will be fair, just, reasonable, and sufficient if the CPUC finds that no such route exists or that the fare is unreasonable.

- **Suggested Action:** Delete. Union Pacific suggests deleting provision.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.
- **CPUC:** See comment to § 559 *supra*.

§ 733. Permits the CPUC to establish the division of joint rates between common carriers if they do not agree upon the division.

- **Suggested Action:** Delete. Union Pacific suggests deleting provision.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.

§ 763. Permits the CPUC to direct any railroad or street railroad corporation to increase the number of trains it operates, to change its schedule, or to take any other action the CPUC finds necessary to accommodate and transport the traffic, passenger or freight, transported or offered for transportation.

- **Suggested Action:** Amend. Union Pacific suggests amending to eliminate the authority of the CPUC to order railroad corporations to provide service.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.
- **CPUC:** Amend to clarify that section does not apply to most railroad corporations. Portions of this section relate to safety. Nevertheless, this section could be made generally inapplicable to railroad corporations, so long as that safety authority is adequately provided elsewhere. This section should continue to apply to street railroad corporations and those railroads that are not part of the interstate rail network.

§ 763.1. Permits cities and counties to petition the CPUC for new and additional rail passenger services.

- **Suggested Action:** Delete. Union Pacific suggests deleting provision.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.

§ 764. Permits the CPUC to order connection of tracks of two or more railroad or street railroad corporations.

- **Suggested Action:** Delete. Union Pacific suggests deleting provision.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.

§ 765. Permits the CPUC to order railroad corporation to provide certain connections or spurs.

- **Suggested Action:** Delete. Union Pacific suggests deleting provision.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.

§ 767. Permits the CPUC to order the use of one public utility's facilities by another public utility; if the CPUC makes such an order, it shall prescribe a reasonable compensation and reasonable terms for joint use.

- **Suggested Action:** Amend. Union Pacific suggests modifying so the CPUC can order the use of the facilities of one public utility or railroad corporation by another.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.
- **CPUC:** Possibly amend. The FCC is expected to issue rules pertaining to access to utility rights-of-way soon, and it would be inefficient to modify this section before the FCC acts.

§ 768. Permits the CPUC to order public utilities to operate and maintain equipment in a safe manner. Permits the CPUC to prescribe use of certain safety devices.

- **Suggested Action:** Amend. Union Pacific suggests deleting clause in statute that lists “interlocking and other protective devices at grade crossings or junctions and block or other systems of signaling” as examples of the safety devices the CPUC can prescribe.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.

§ 769. Permits the CPUC to provide rules prescribing time within which freight and express packages shall be handled by railroad corporations and consignors or persons to whom freight is consigned.

- **Suggested Action:** Delete. Union Pacific suggests deleting provision.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.

§ 769.5. Prohibits railroad corporations from disposing of passenger cars without the approval of the CPUC.

- **Suggested Action:** Delete. Union Pacific suggests deleting provision.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.

§ 7531.5. Requires the CPUC to forward application to abandon a line of railroad to the State Transportation Board.

- **Suggested Action:** Delete. Union Pacific suggests deleting provision.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.
- **CPUC:** This section should be amended to update references to state and federal agencies and procedures.

§ 7532. Permits the CPUC to authorize discontinuance of operation of railroad line without forfeiture of the right to operate the railroad.

- **Suggested Action:** Delete. Union Pacific suggests deleting provision.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.

§ 7532.5. Requires railroad corporation that intends to abandon line or discontinue service to file an application with the CPUC and provide 90 days’ notice of its intent to the affected community and shippers.

- **Suggested Action:** Delete. Union Pacific suggests deleting provision.
- **Rationale:** Code should be revised to recognize the intrastate and interstate deregulation of the rail industry mandated by Congress.

TELECOMMUNICATIONS

Category (1): Direct Regulation of Service Providers

§ 314(a). Allows any person employed by the CPUC to examine under oath any employee of a public utility and, at any time, to inspect the accounts, books, papers, and documents of any public utility.

- **Suggested Action:** Amend. GTE suggests modifying this provision to exclude telecommunications carriers.
- **Rationale:** To remove an inappropriate level of oversight in a competitive environment.
- **Other Parties:** Coalition and CalTel feel that, since local exchange and local access markets are not yet competitive, the CPUC must retain this authority to investigate service quality and consumer complaints and conduct audits.

§ 314(b). Applies subdivision (a) (power to inspect utility documents) to an affiliate of a public utility.

- **Suggested Action:** Amend. GTE suggests modifying this provision to exclude telecommunications carriers.
- **Rationale:** To remove an inappropriate level of oversight in a competitive environment.
- **Other Parties:** Coalition and CalTel feel that the CPUC must retain the authority to examine affiliates to prevent cross-subsidization.

§ 314.5. Requires the CPUC to inspect and audit books and records for regulatory and tax purposes every three or five years depending on number of customers corporation serves.

- **Suggested Action:** Amend. GTE and PacBell suggest modifying this provision to exclude telecommunications carriers. Union Pacific also suggests amending this section. See Transportation discussion *supra* p. 499.
- **Rationale:** To remove an inappropriate level of oversight in a competitive environment. Section was based on the old regulatory scheme that envisioned monopoly companies providing service. Different situation now exists in telecommunications; competition will protect the consumer and ensure fair prices.
- **Other Parties:** Coalition and CalTel feel the CPUC should be required to conduct these audits, since local markets are not yet competitive.

§ 587. Requires electric, gas, and telephone corporations to report significant transactions between the corporation and subsidiary affiliates.

Direct Regulation of Service Providers (continued)

- **Suggested Action:** Amend. GTE suggests modifying section to limit the reporting of affiliated transactions associated with the provisioning of wholesale services. Also suggest that section should apply to all telecommunications carriers.
- **Rationale:** The CPUC monitoring of affiliate transactions made sense in a cost-of-service regulatory scheme where single profits could be hidden and investment improperly charged to a regulated utility. This now represents an unwarranted burden on the industry and the CPUC staff.
- **Other Parties:** Coalition and CalTel feel that this change is inconsistent with § 272 of the Telecommunications Act of 1996. Also feel that it is still necessary for the CPUC to examine transactions between affiliate given the nascent stage of local competition.

§ 701.5. Prohibits corporations whose rates are set by the CPUC on a cost-of-service basis from issuing any indebtedness that pledges the utility assets or credits for or on behalf of any subsidiary or affiliate of, or corporation holding a controlling interest in the utility.

- **Suggested Action:** Amend. GTE suggests modifying to expressly state that the entire statute refers only to cost-of-service regulated telecommunications carriers.
- **Rationale:** To clarify and ensure that his statute only applies to cost-of-service regulated communications carriers, because it would be unnecessary regulation for a non-cost-of-service carrier.
- **Other Parties:** Coalition feels that revision would undermine the CPUC's authority to ensure that shareholders bear the responsibility for business decisions made by cost-of-service regulated companies. Also notes that the CPUC must retain its authority to regulate the financing arrangements of regulated companies.

§ 708.3. Requires certain utilities to provide reasonable, nonbusiness hour alternatives to customers for business transactions.

- **Suggested Action:** Amend. GTE suggests modifying section to remove references to telephone corporations.
- **Rationale:** State law has declared this market competitive and as such this requirement becomes a differentiator in a competitive market.
- **Other Parties:** Coalition feels requirement remains an important customer protection and that a minimum level of customer service must be regulated and mandated by the CPUC, even in a completely developed competitive environment.

§ 728.2. Limits the CPUC's jurisdiction over directory publication with the exception of rates and charges for commercial directory advertising and impact of those revenues on other rates.

Direct Regulation of Service Providers (continued)

- **Suggested Action:** Amend. GTE and PacBell suggest modifying section to limit application to cost-of-service regulated telecommunications carriers.
- **Rationale:** Directory publishing is a highly competitive, market-driven business, and should not be regulated. The CPUC regulation is inappropriate for non-cost-of-service regulated telecommunications carriers. Section was initially enacted to counter a court decision holding that all utility services must be regulated.
- **Other Parties:** Coalition and CalTel feel that incumbent local exchange carriers (“LECs”) have a near monopoly over directories, and these revenues remain available to support the LECs’ basic service. Also, competitive local carriers will be dependent on LECs for listings.
- **CPUC:** This section should be amended to delete all subdivisions except (a); language in subdivision (a) that refers to other sections should also be deleted.

§ 786. Requires telephone corporations to provide a listing of services and associated charges to every residential subscriber annually. Also requires FCC charges be separately identified on the bill for residential and business subscribers.

- **Suggested Action:** Delete. GTE suggests deleting this section.
- **Rationale:** Requirement to provide list of rates and services is inappropriate in a competitive environment. Universal Service requirements are set forth in Article 8 of the Code.

§ 792. Grants the CPUC authority to establish its own system of accounts.

- **Suggested Action:** Delete. GTE suggests deleting this section.
- **Rationale:** For consistency across all telecommunications and jurisdictions, this section should require all telecommunications carriers to maintain their books of account in conformance with the FCC’s Part 32 uniform system of accounts.
- **Other Parties:** Coalition feels the CPUC should continue to oversee the accounting of regulated companies until California enjoys a fully developed competitive market.

§ 795. Requires that depreciation be carried on in accordance with CPUC rules

- **Suggested Action:** Amend. GTE suggests amending to remove telecommunications carriers from this section.
- **Rationale:** In a competitive environment, telecommunications carriers should have the ability to set depreciation lives at market rates.
- **Other Parties:** Coalition feels that interconnection rates are still based on cost; competitive carriers are buying a monopoly service. Until there is a ubiquitous connection, the “bottleneck” problem remains.

Direct Regulation of Service Providers (continued)

§ 797. Requires the CPUC to periodically audit all significant transactions between an electrical, gas, or telephone corporation and every subsidiary or affiliate of, or corporation holding a controlling interest in the electrical, gas, or telephone corporation.

- **Suggested Action:** Amend. GTE and PacBell suggest modifying to limit audits of non-cost-of-service telecommunications carriers to transactions associated with provisioning of wholesale services.
- **Rationale:** Section is inappropriate for telephone corporations that are subject to incentive regulation. There is no longer any opportunity to use affiliates to skew rates-of-return, so this kind of oversight is unnecessary and a waste of industry and CPUC resources.
- **Other Parties:** Coalition and CalTel feel that revision would be inconsistent with the Telecommunications Act of 1996, and that at this point, it is still important to have CPUC oversight of transactions involving regulated providers.

§§ 816-830. Upon an application for an order to issue stock or debt, allows the CPUC to approve the terms and conditions of such issuance and exchange and the fairness of the terms and conditions.

- **Suggested Action:** Amend. GTE suggests modifying to exclude telecommunications carriers from the provisions of this chapter. PacBell agrees with regard to §§ 816-827 and 830.
- **Rationale:** Section impairs a company's ability to raise capital on favorable terms available in the financial markets. Additionally, in a competitive market, access to capital will require shorter turnaround period or risk losing growth opportunities. No reason to continue CPUC review of this kind of business decision, when non-utility competitors will not face this kind of restraint on their financing decisions.
- **Other Parties:** Coalition and CalTel feel that revision would be inconsistent with the Telecommunications Act of 1996, and that at this point, it is still important to have CPUC oversight of transactions involving regulated providers.
- **CPUC:** These sections are under review. Some amendments or deletions may be warranted to recognize the development of competition and CPUC decisions exempting certain classes of providers from these sections.

§§ 851-856. Establishes criteria the CPUC must consider before authorizing a merger or acquisition of any utility with gross annual California revenues exceeding \$500 million.

- **Suggested Action:** Amend. GTE suggests modifying to exclude telecommunications carriers from the provisions of this chapter. PacBell agrees with

Direct Regulation of Service Providers (continued)

regard to §§ 851, 852, and 854. SoCal Gas also suggests amending § 851. See Natural Gas category (1) discussion *supra* p. 494.

- **Rationale:** Inappropriate level of oversight in a competitive environment. Transfer issues and consumer safeguards are already reviewed by other agencies. There should not be micro-management of ordinary business decisions that competing businesses can make without such unwarranted regulatory burdens and hurdles. New entrants to the market will not have this restraint on their ability to make and implement business decisions.
- **Other Parties:** Coalition and CalTel feel that revision would be inconsistent with the Telecommunications Act of 1996, and that at this point, it is still important to have CPUC oversight of transactions involving regulated providers.
- **CPUC:** As to § 851, at a minimum, this section should be amended to clarify the concept of “necessary and useful” property (and remove the circularity between first and second paragraphs). Additional amendment may be warranted to eliminate the need for CPUC approval of certain kinds of activities by utilities in competitive markets.

As to § 854(b)-(h), within the telecommunications industry, these provisions should be limited to local service providers subject to CPUC rate-setting jurisdiction.

§ **2882.5.** Requires the CPUC to investigate billing in increments of less than one minute.

- **Suggested Action:** Delete. GTE suggests deleting this section.
- **Rationale:** Section is no longer necessary because the investigation was completed December 31, 1995.
- **Other Parties:** Coalition feels that instead of being deleted, this section should be updated to reflect the CPUC’s task force report.

§ **2889.8.** Directs the CPUC to assess network reliability and report to the Legislature by December 31, 1993.

- **Suggested Action:** Delete. GTE suggests deleting this section.
- **Rationale:** This action was completed in 1993 and the section should therefore be deleted.
- **Other Parties:** Coalition feels that the CPUC should maintain the responsibility of overseeing network availability and reliability, and that this section provides the avenue for recourse if “reliability” fails and becomes an issue.
- **CPUC:** This section should be amended to delete subdivision (d) and to provide for periodic review of network reliability.

§ **7902.** Permits a telephone corporation to sell, transfer, assign, etc., any property rights or privileges, except its corporate franchise, on consent of two-thirds of the shareholders.

Direct Regulation of Service Providers (continued)

- **Suggested Action:** Delete. GTE suggests deleting this section.
- **Rationale:** The conditions governing the sale or transfer of property by any telecommunications carrier should be the same for all carriers and should be governed by state corporations law.
- **Other Parties:** Coalition feels that revision would be inconsistent with the Telecommunications Act of 1996, and that at this point, it is still important to have CPUC oversight of transactions involving regulated providers.
- **CPUC:** This section should be deleted as it is not clear why a telecom corporation sale should require approval of 2/3 of stockholders, versus a simple majority.

§ 7902.5. Requires every telephone corporation to file a report with the CPUC by May 1, 1984, indicating its existing as well as future lines of business.

- **Suggested Action:** Delete. GTE suggests deleting this section.
- **Rationale:** Section is outdated by its own provisions.
- **Other Parties:** Coalition feels that, since this issue is currently being considered by the FCC, it would be premature for the Legislature to modify these provisions, which could result in California law being at variance with federal mandates. Coalition feels that unreasonable differences in rates must be prohibited as long as any incumbent carrier retains monopoly power.

Category (2): Rates and Pricing

§ 451. Requires public utilities to charge just and reasonable rates for services.

- **Suggested Action:** Amend. PacBell suggests telephone companies be exempted from rate regulation. SoCal Gas also suggests amending this section. See Natural Gas category (2) discussion *supra* pp. 494-95.
- **Rationale:** This section is based on monopoly public utility service, not the new competitive and streamlined regulatory environment of today. The CPUC should not regulate rates in a competitive environment.
- **Other Parties:** Coalition feels that the CPUC should continue to monitor rates and safeguard consumers' level of service and their voice in determining rates until a truly competitive environment is achieved.
- **CPUC:** Continue to review obligation to serve with objective of developing timetable for appropriate amendment. Competition may warrant flexible application of the obligation to serve; however, continued regulation is necessary to protect consumers and the competitive process as California proceeds through the transition from a monopoly to a competitive market for energy and telecommunications services.

*Rates & Pricing (continued)***§ 453(a) & (c).** Prohibits public utilities from providing preferential rates or services to any customer.

- **Suggested Action:** Amend. PacBell suggests telephone companies be exempted from rate regulation. SoCal Gas also suggests amending this section. See Natural Gas category (2) discussion *supra* pp. 494-95.
- **Rationale:** Based on a subsidy-laden monopoly situation that cannot survive in a competitive environment. The CPUC must be able to allow communications providers to change rates to meet competition or major market segments will be seriously disadvantaged.
- **Other Parties:** Coalition feels that, since this issue is currently being considered by the FCC, it would be premature for the Legislature to modify these provisions, which could result in California law being at variance with federal mandates. Coalition feels that unreasonable differences in rates must be prohibited as long as any incumbent carrier retains monopoly power.
- **CPUC:** Possibly amend. Competition may warrant flexible application of the obligation to serve and reconsideration of other provisions. Major revision now is premature, since retail competition for local telephone service is just beginning, does not exist for residential and small commercial natural gas customers, and will not exist for electricity customers before January 1, 1998.

§ 454. Prohibits public utilities from changing rates, except upon showing to the CPUC that the new rate is justified. The CPUC may adopt rules regarding the showing required and shall permit customers affected by the proposed rate change to testify at any hearing on the proposed change.

- **Suggested Action:** Amend. PacBell suggests telephone companies be exempted from rate regulation. SoCal Gas also suggests amending this section. See Natural Gas category (2) discussion *supra* pp. 494-95.
- **Rationale:** Imposes detailed and cumbersome requirements, disadvantaging some providers who are not able to change or lower rates to meet competition. New competitors are not slowed by these restrictions. This section is consistent with competitive environment.
- **Other Parties:** Coalition feels that, since this issue is currently being considered by the FCC, it would be premature for the Legislature to modify these provisions, which could result in California law being at variance with federal mandates. Coalition feels that unreasonable differences in rates must be prohibited as long as any incumbent carrier retains monopoly power.
- **CPUC:** Amendment is warranted to (1) delete the reference in subdivision (a) to Code § 454.1 which was repealed in 1996, (2) reflect increasingly competitive energy and telecommunications markets and changing customer service options, and (3) to allow the CPUC to grant passenger stage corporations greater ratesetting flexibility.

§ 455. Rules for implementing rate change after CPUC action.

Rates & Pricing (continued)

- **Suggested Action:** Amend. PacBell suggests telephone companies be exempted from rate regulation.
- **Rationale:** Burdens competition and complicates rate changes with requirements that have no place in today's communications market.
- **Other Parties:** Coalition feels that the CPUC should continue to monitor rates and safeguard consumers' level of service and their voice in determining rates until a truly competitive environment is achieved.
- **CPUC:** Increasing competition may warrant amendment; however, continued regulation is necessary to protect consumers and developing competition as California proceeds through the transition from a monopoly to a competitive market for energy and telecommunications services.

§ 457. Permits establishment of sliding scale of charges if schedule has been filed with and approved by the CPUC. Permits the CPUC to revoke approval at any time.

- **Suggested Action:** Amend. PacBell suggests telephone companies be exempted from rate regulation.
- **Rationale:** The market, a better and more efficient determinant of rates, should replace this detailed rate oversight. The CPUC's role should be to resolve disputes over rates rather than determine rates.
- **Other Parties:** Coalition feels that the CPUC should continue to monitor rates and safeguard consumers' level of service and their voice in determining rates until a truly competitive environment is achieved.
- **CPUC:** Delete. The purpose of this section is unclear and duplicative of authority, contained in other sections, for the CPUC to set rates and require the filing of tariffs.

§ 461. Prohibits greater aggregate charges or compensation from short distance calls compared to longer distance calls on same route without CPUC authorization.

- **Suggested Action:** Delete. GTE and PacBell suggest eliminating this section.
- **Rationale:** Section is antiquated and inappropriate for any class of services provided (wholesale or retail). Section restricts competitive pricing. Prices in the competitive marketplace are moving to a non-distance sensitive rate structure and market driven rates.
- **Other Parties:** Coalition feels that, since this issue is currently being considered by the FCC, it would be premature for the Legislature to modify these provisions, which could result in California law being at variance with federal mandates. Coalition feels that unreasonable differences in rates must be prohibited as long as any incumbent carrier retains monopoly power.

§ 461.2. Requires that revenues and expenses associated with simple inside wire be included for establishing rates.

Rates & Pricing (continued)

- **Suggested Action:** Amend. GTE and PacBell suggest modifying this section so that it applies only to those utilities subject to cost-of-service regulation.
- **Rationale:** To remove an inappropriate requirement for utilities subject to incentive regulation.
- **Other Parties:** Coalition feels that, since this issue is currently being considered by the FCC, it would be premature for the Legislature to modify these provisions, which could result in California law being at variance with federal mandates. Coalition feels that unreasonable differences in rates must be prohibited as long as any incumbent carrier retains monopoly power.

§ 489(a). Requires the CPUC to order public utilities to file schedules containing rates, charges, classifications, rules, etc.

- **Suggested Action:** Amend. GTE and PacBell suggest modifying this section to exempt telecommunications retail services from tariffing requirements.
- **Rationale:** Section currently makes no distinction between the tariffs required of telecommunications carriers and other utilities. It also fails to recognize differences between classes of telecommunications providers or the types of service (wholesale or retail) offered. Detailed tariff schedules and instructions on customer info. are acceptable in a monopoly utility situation, but are unproductive and unnecessary burdens in a competitive market.
- **Other Parties:** Coalition and CalTel feel that tariffs should remain a necessary part of regulation and doing business in the state as they inform and protect consumers, and provide the only way for competitive carriers to compare access charges.
- **CPUC:** Increasing competition may warrant amendment; however, continued regulation is necessary to protect consumers and developing competition as California proceeds through the transition from a monopoly to a competitive market for energy and telecommunications services.

§ 491. Requires 30-day notice for rate, rule, and classification changes unless the CPUC approves less.

- **Suggested Action:** Amend. GTE and PacBell suggest modifying this section to provide that notice requirements for non cost-of-service telecommunications carriers is applicable to only those services provided on a wholesale basis, lifeline, Deaf and Disabled Telecommunications Program (“DDTP”), and basic services. In addition, they suggest that the notification period for such carriers should be reduced to be equal to the notification requirements imposed on CLCs, and that other retail services should be exempt from any customer notification requirements.
- **Rationale:** Section makes no distinction between the customer notification required of telephone companies and other utilities. Section also fails to recognize any differences between classes of telecommunications providers or the types of services (wholesale or retail) offered. Prevents communications providers from responding in a timely manner to market forces and competi-

Rates & Pricing (continued)

tion. Only competitors benefit from this unreasonable restraint and the delay it imposes.

- **Other Parties:** Coalition feels that until a truly competitive environment is achieved, Code section should remain in place so the CPUC will be able to continue safeguarding consumers level of service and their voice in determining rates. Coalition also notes that rate structures and regulation are currently being considered by the CPUC in the OANAD proceeding (open access and network architecture development).
- **CPUC:** This section already provides for exceptions to 30-day notice requirement, but should be amended to expressly state that the CPUC has discretion to authorize exemptions for classes of utilities or when market conditions warrant.

§ 495. Requires telephone corporations to file rate and classification schedules for intra and interstate routes.

- **Suggested Action:** Amend. GTE and PacBell suggest modifying this section so it applies only to those services provided on a wholesale basis, lifeline, DDTP, and basic services. Other retail service should not be subject to tariff regulation.
- **Rationale:** This section makes no distinction between classes of telecommunications providers or the types of service (wholesale or retail) offered. This section also duplicates § 489. The CPUC and industry can find better and more efficient ways to utilize resources than to file and store material resulting from this requirement.
- **Other Parties:** Coalition and CalTel feel that tariffs should remain a necessary part of regulation and doing business in the state as they inform and protect consumers, and provide the only way for competitive carriers to compare access charges.
- **CPUC:** Increasing competition may warrant amendment; however, continued regulation is necessary to protect consumers and developing competition as California proceeds through the transition from a monopoly to a competitive market for telecommunications services.

§ 495.7. Allows the CPUC to exempt certain services from tariffing requirements if competitive alternatives exist and the service complies with rules promulgated by the CPUC with respect to consumer protection.

- **Suggested Action:** Delete. GTE and PacBell suggest deleting this section.
- **Rationale:** This section is unnecessary if retail services are detariffed. The CPUC should be able to designate services as competitive under the new regulatory framework, and allow those services to be offered with no tariff requirements.
- **Other Parties:** Coalition feels that, since retail services should not be detariffed, section remains necessary.

Rates & Pricing (continued)

§ 529(b). Allows discounted travel and mail services on common carriers by telephone companies.

- **Suggested Action:** Delete. GTE suggests deleting this section.
- **Rationale:** Express authority to grant passes or franking privileges is no longer relevant or necessary in a competitive environment.
- **Other Parties:** Coalition feels that section should remain in place until real competition has matured as it provides important protections for competitors.

§ 530. Allows common carriers to enter into contracts with telephone corporations for exchange of service.

- **Suggested Action:** Delete subdivision (c). GTE suggests deleting this section.
- **Rationale:** Section is antiquated: express authority granted in section is unnecessary.
- **Other Parties:** Coalition feels that section should remain in place until real competition has matured as it provides important protections for competitors. Also notes that proposing to eliminate a law that gives parties the freedom to contract is contrary to GTE's position that we live in a vibrantly competitive market.
- **CPUC:** Delete in part. Delete subdivision (b) and the last paragraph of subdivision (c) to reflect that the CPUC for the most part has no jurisdiction over common carriers of property.

§ 532. Prohibits public utilities from charging rates different from those specified in its schedule on file. Permits the CPUC to establish exceptions to section by rule or order.

- **Suggested Action:** Amend. PacBell suggests exemption of telephone companies from this section.
- **Rationale:** Unnecessary if retail services are detariffed. Outmoded 1915 provision was appropriate for monopoly utility service, but tariff schedules should have no role for competitive services in a competitive market.
- **Other Parties:** Coalition feels that the CPUC should continue to monitor rates and safeguard consumers' level of service and their voice in determining rates until a truly competitive environment is achieved.
- **CPUC:** Continue to review with the objective of developing appropriate amendment. The emergence of increasingly competitive energy and telecommunications markets may warrant more flexibility than existing law provides.

§ 585. At any rate proceeding, requires public utilities to provide the CPUC with access to all computer models used by the public utility to substantiate their showing.

- **Suggested Action:** Amend. PacBell suggests exemption of telephone companies from this section.

Rates & Pricing (continued)

- **Rationale:** Not appropriate for telecommunications, since modeling is not an industry standard.
- **Other Parties:** Coalition feels that the CPUC should continue to monitor rates and safeguard consumers' level of service and their voice in determining rates until a truly competitive environment is achieved.

§ 587. Discussed in Telecommunications category (1) *supra* pp. 508-09.

§ 728. Requires the CPUC to evaluate rates and service quality in adjacent territories when setting rates.

- **Suggested Action:** Amend. GTE and PacBell suggest modifying to eliminate requirements for telecommunications carriers.
- **Rationale:** Section is unnecessary for either wholesale or retail services with multiple service providers competing within the same territory. Section was based on close CPUC scrutiny of rates and service level, no longer justified in the new communications environment. Consumer choice will be the incentive to provide quality service at competitive rates.
- **Other Parties:** Coalition feels the CPUC should take quality into consideration when setting rates.
- **CPUC:** This section should be modified commensurate with the change in markets, but major revision now is premature, since retail competition for local telephone service is just beginning.

§ 728.2. Discussed in Telecommunications category (1) *supra* pp. 509-10.

§ 728.7. Requires customer notification of rate or surcharge changes that result from changes in intercompany payments.

- **Suggested Action:** Delete. GTE and PacBell suggest eliminating this provision for non-cost-of-service telecommunications carriers.
- **Rationale:** This regulation is inappropriate in a competitive market. Sufficient customer service requirements are set forth in § 491. Enacted shortly after the AT&T divestiture amid alarm over potential increases in local service rates. The fears proved unfounded, and the requirements of this section now serve no purpose.
- **Other Parties:** Coalition feels that in this volatile and emerging competitive market, notice to customers of proposed rate changes is vitally important.

§ 729. Permits the CPUC, upon a hearing, to investigate rates, practices, etc., of a public utility and to establish new rates, practices, etc.

Rates & Pricing (continued)

- **Suggested Action:** Amend. PacBell suggests exemption of telephone companies from this section.
- **Rationale:** Not appropriate for communications services in a competitive environment.
- **Other Parties:** Coalition feels that, since local competition is nonexistent and the LECs are entrenched monopolists, the CPUC should retain its regulatory authority until total rate freedom becomes possible through true competition.
- **CPUC:** The CPUC's *Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries* (June 30, 1997) does not propose amendment of this section.

§ 729.5. Prohibits a public utility from changing a group of customers from one rate schedule to another without first notifying customer if change would result in an increase of more than 10 percent. Permits the CPUC to hold hearing on request of affected customer.

- **Suggested Action:** Amend. PacBell suggests exemption of telephone companies from this section.
- **Rationale:** Not appropriate for communications services in a competitive environment.
- **Other Parties:** Coalition feels that in this volatile and emerging competitive market, notice to customers of proposed rate changes is vitally important.
- **CPUC:** The CPUC's *Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries* (June 30, 1997) does not propose amendment of this section.

§ 740. Allows the CPUC to include research and development costs when setting rates.

- **Suggested Action:** Amend. GTE suggests modifying to exclude non-cost-of-service regulated telecommunications providers.
- **Rationale:** R&D costs are appropriately recoverable costs; however, expressed authority is no longer relevant or necessary in a competitive environment.
- **Other Parties:** Coalition feels that until a truly competitive environment is achieved, Code section should remain in place so the CPUC will be able to continue safeguarding consumers level of service and their voice in determining rates. Coalition also notes that rate structures and regulation are currently being considered by the CPUC in the OANAD proceeding.
- **CPUC:** Utilities subject to incentive regulation should be excluded from this provision.

Rates & Pricing (continued)

§ 767.5. Requires public utilities to provide surplus pole space and excess conduit capacity to cable television corporations at an annual recurring fee that is computed in the statute.

- **Suggested Action:** Delete. GTE suggests deleting this provision.
- **Rationale:** Under the Telecommunications Act of 1996, regulations concerning pole attachment and conduit occupancy must be applicable to all telecommunications carriers, not merely cable TV, and the current statutory rates are grossly non-compensatory in a competitive market. Under 47 U.S.C. § 224(c), the CPUC may regulate such rates, terms, and conditions, and the CPUC is in the process of promulgating such regulations in the Local Competition Docket.
- **Other Parties:** Coalition feels that until a truly competitive environment is achieved, Code section should remain in place so the CPUC will be able to continue safeguarding consumers level of service and their voice in determining rates. Coalition also notes that rate structures and regulation are currently being considered by the CPUC in the OANAD proceeding.
- **CPUC:** The FCC is expected to issue rules pertaining to access to utility rights-of-way soon, and it would be inefficient to modify this section before the FCC acts.

§ 798. Establishes a penalty that the CPUC can levy against a corporation if a finding is made that a payment was made or received by the corporation for the purpose of benefiting its subsidiary, affiliate, or holding company.

- **Suggested Action:** Amend. GTE suggests modifying to limit penalties to transactions involving wholesale services. Also suggest that the section be made applicable to all telecommunications carriers.
- **Rationale:** Section is inappropriate for telephone corporations that are subject to incentive regulation.
- **Other Parties:** Coalition and CalTel feel that, since there is no real competition in GTE's and PacBell's monopoly markets, it is vitally important for the CPUC to continue to regulate against cross subsidy and discrimination.
- **CPUC:** The CPUC's *Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries* (June 30, 1997) does not propose amendment of this section.

§ 1807. Requires intervenor awards be paid by the public utility that is the subject of the hearing; authorizes recovery of any payment through rates the utility charges.

- **Suggested Action:** Amend. GTE suggests modifying to add provision requiring the CPUC to equitably allocate payment to intervenors among all participants.

Rates & Pricing (continued)

- **Rationale:** In a competitive proceeding, the intervenor funding requirement should be borne equally by all participants in the proceeding.
- **Other Parties:** Coalition feels that no change is necessary as participation and alignment of intervenors should be encouraged. Also notes that the CPUC has requested comments on this issue.
- **CPUC:** Continue to review with the objective of developing appropriate amendment. The CPUC has opened a Rulemaking and Investigation (R.97-01-009, I.97-01-010) to review the Intervenor program found in §§ 1801-1812.

§§ 1821-1824. Rules regarding use of computer models for forecasting. Sections require computer models that are used as the basis for any testimony or exhibit in a hearing or proceeding before the CPUC be available to the CPUC and parties for review and verification. Also require the CPUC to periodically review and monitor the development and use of any operations model used by any public utility.

- **Suggested Action:** Amend. PacBell suggests exemption of telephone companies from this section. Edison also suggests amending this section. See Electrical Industry category (6) discussion *supra* p. 492.
- **Rationale:** Computer models, a mechanism used in energy regulation, are inappropriate for telecommunications. No need for the CPUC to access computer systems in a competitive market. Elimination of these provisions is consistent with the elimination of detailed rate oversight by the CPUC.
- **Other Parties:** Coalition feels that modifying or eliminating §§ 1821-1824, concerning the use of computer models in proceedings before the CPUC, would introduce an unacceptable element of confusion to an already complicated situation, since the decisions in the OANAD and universal service proceedings both rely upon computer models.

§ 2893(b). Prohibits telephone corporations from charging customers for blocking caller ID.

- **Suggested Action:** Amend. GTE suggests modifying to allow for assessing resellers charges for blocking functions after the initial order.
- **Rationale:** Costs incurred by the facility-based carrier should be borne by the reseller receiving the economic benefit of the customer.
- **Other Parties:** Coalition and CalTel feel that the revision would be inconsistent with the Telecommunications Act of 1996.

Category (3): Consumer Protection

§ 708. Requires employees of electric, gas, and telephone corporations who enter customer premises to have photo ID cards.

Consumer Protection (continued)

- **Suggested Action:** Amend. GTE suggests modifying section so it applies to employees of all telecommunications carriers.
- **Rationale:** Section provides protection for consumers and its effectiveness would be compromised if it did not apply to all carriers.

§ 728.3. Requires telephone corporations to provide 30 days' notice prior to removal of a public telephone unless removed for public safety or public nuisance purposes or at request of property owner.

- **Suggested Action:** Delete. GTE suggests deleting this section.
- **Rationale:** Requirement is inappropriate, since the pay phone business is highly competitive with many service alternatives. Additionally, no similar requirement exists for competing pay telephone providers.
- **Other Parties:** Coalition feels the notice requirement should remain until telephone penetration levels have reached their objective. Notes that public pay phones affect access for many customers who don't have phone service.
- **CPUC:** This section may need to be amended in light of the FCC's recent payphone order, currently on appeal, which largely deregulated the payphone industry.

§ 728.4. Prohibits a telephone corporation from listing a telephone number as the number for a fax machine in its directory unless requested to do so by the subscriber.

- **Suggested Action:** Delete. GTE suggests deleting this section.
- **Rationale:** Inclusion of customers' fax numbers in directories should be a competitive differentiator.
- **Other Parties:** Coalition feels that statute comports with customer expectations, since it is the customer's choice to list a fax number in a directory.

§ 739.3. Requires the CPUC to establish a transfer program to promote Universal Service and discourage rate disparity.

- **Suggested Action:** Amend. Coalition and GTE suggest incorporating this section with § 871 *et seq.*
- **Rationale:** All Universal Service requirements should be addressed in a single section.

§ 742(b). Requires telephone corporations to include instructions for public telephones in its telephone books.

- **Suggested Action:** Delete. GTE suggests deleting this provision.
- **Rationale:** Determination of contents of customer information pages in telephone books should not be mandated by the CPUC.

Consumer Protection (continued)

- **Other Parties:** Coalition argues that the CPUC recently issued certain requirements regarding customer information pages. Current section is not inconsistent with this recent order and should be maintained.

§ 742.1(a). Prohibits Operator Assisted Services (OAS) by other than a telephone corporation unless the CPUC finds the services in public interest. Requires OAS information in telephone books.

- **Suggested Action:** Delete. GTE suggests deleting this provision.
- **Rationale:** Section is outdated because OAS service has already been approved by the CPUC.
- **Other Parties:** Coalition and CalTel argue that statute must remain, since OAS services are provided by companies who are not telecommunications providers and this section provides the CPUC with authority to regulate these non-telephone company providers.

§ 779.2. Prohibits a telephone corporation from disconnecting service for nonpayment under certain conditions.

- **Suggested Action:** Amend. GTE suggests modifying to exclude telecommunications carriers.
- **Rationale:** This section is unduly burdensome when operating in a competitive market. Consumers who are disconnected for nonpayment may obtain service from other carriers with less stringent credit and/or payment requirements.
- **Other Parties:** Coalition feels statute would be important, even if competition were fully developed because the CPUC needs the authority to regulate when and how a provider can terminate service. Notes that regulation is important to prevent disconnection of service to a reseller and to protect consumers from being terminated without notice and without adequate safeguards.

§ 779.5. States that the decision to require a deposit for a new residential applicant shall be based solely upon the credit worthiness of the applicant as determined by the corporation.

- **Suggested Action:** Amend. GTE suggests modifying to exclude telecommunications carriers.
- **Rationale:** Deposit requirements should be a business decision determined at the discretion of each telecommunications carrier.
- **Other Parties:** Coalition feels deposit requirements are another important consumer protection safeguard. Coalition sees no reason to eliminate the application of this provision to telecommunications providers.

Consumer Protection (continued)

§ 788. Requires telephone corporations to provide annual notification to subscribers detailing inside wire responsibilities and options.

- **Suggested Action:** Delete. GTE suggests deleting this section.
- **Rationale:** Inside wire has been deregulated and/or detariffed for more than 13 years, and consistent with the CPUC's goal of fostering a competitive market, this requirement should be lifted.
- **Other Parties:** Coalition feels this requirement remains an important consumer protection safeguard. Coalition notes that notice to consumers has nothing to do with GTE's alleged competitive market place.
- **CPUC:** Amend. This provision should apply only to providers of service, not to all telephone corporations.

§ 879.5. Provides instructions for the CPUC for adopting required rates and initial surcharges for Universal Service.

- **Suggested Action:** Delete. GTE suggests deleting this section.
- **Rationale:** Section is no longer necessary because the surcharge process required by the section has been implemented.
- **Other Parties:** Coalition feels that although many implementation issues will soon be resolved as a result of the Universal Service Order, this section should not be eliminated until new competitors have entered the local market and all parties have complied with the Universal Service Order.

§ 882. Requires the CPUC to initiate an investigation on the availability of advanced telecommunication service and to submit a report to the Legislature.

- **Suggested Action:** Delete. GTE suggests deleting this section.
- **Rationale:** Section is no longer necessary because this requirement has been completed and the CPUC has issued its Universal Service Decision.
- **Other Parties:** Coalition feels that although many implementation issues will soon be resolved as a result of the Universal Service Order, this section should not be eliminated until new competitors have entered the local market and all parties have complied with the Universal Service Order.
- **CPUC:** This section should be deleted, since the CPUC has developed Universal Service rules. Although the Universal Service proceeding remains open to disburse funds, the purpose of the statute has been met.

§ 1802.5. Provides that participation by a customer that materially contributes to the presentation of another party, including the CPUC staff, may be fully eligible for competition if the participation makes a substantial contribution to a CPUC order or decision.

Consumer Protection (continued)

- **Suggested Action:** Amend. GTE suggests modifying to add that when said participation results in jointly filed comments, any intervenor compensation award should be borne by the aligned telecommunications carrier.
- **Rationale:** Significant contribution of the intervenor is difficult to isolate when they align themselves with a particular telecommunications carrier(s).
- **Other Parties:** Coalition feels that no change is necessary as participation and alignment of intervenors should be encouraged. Also notes that the CPUC has requested comments on this issue.
- **CPUC:** The CPUC's *Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries* (June 30, 1997) does not propose amendment of this section.

§§ 2881, 2881.1. Requires the CPUC to establish a program whereby each telephone corporation will provide access to the telephone network for deaf, hearing impaired and disabled subscribers (DDTP) for free or at discounted rates. Establishes a rate recovery mechanism through a surcharge.

- **Suggested Action:** Amend. GTE suggests modifying to remove reference to telephone corporation as entity that physically provides telecommunications devices.
- **Rationale:** Allows the CPUC to design the DDTP program in the most cost-effective and efficient manner in today's competitive environment.

§ 2885. Requires the CPUC to determine before July 1, 1987, if a cellular telephone call notification system should be enacted to be placed on cellular calls to notify recipients that the conversation may not be totally private.

- **Suggested Action:** Delete. GTE suggests deleting this section.
- **Rationale:** Requirements of the statute are no longer timely, since the CPUC action was required approximately 10 years ago.
- **Other Parties:** Coalition feels that privacy issues surrounding wireless services remain important within the industry and that this section should be updated to reflect the current feasibility of the program.
- **CPUC:** This section should be deleted, as it required a one-time study that was completed and submitted.

Category (5): Transitional Issues

§ 2882.3. Prohibits LECs from cross-subsidizing enhanced services with non-competitive services. Prohibits anti-competitive behavior by LECs with respect to enhanced services

- **Suggested Action:** Delete. GTE suggests deleting this section.

Transitional Issues (continued)

- **Rationale:** Section will be repealed as of January 1, 1998, by its own provisions.
- **Other Parties:** Coalition and CalTel feel that this section is necessary to maintain consumer protection and to ensure fair competition. Also feel that provision should be extended beyond 1998 sunset date.
- **CPUC:** This section sunsets on January 1, 1998, but should be extended until the CPUC determines the state of competition in relevant markets.

§ _____. Proposed new section regarding forbearance.

- **Suggested Action:** Add. GTE suggests adding a new section that will establish regulatory benchmarks or “forbearance goals” and enable the CPUC to “forbear” or stand aside in the presence of competition.
- **Rationale:** This section would facilitate the growth of competition and ensure that regulation was relevant, while at the same time ensure the basic standards that customers should expect.
- **Other Parties:** Coalition feels that section would make forbearance the norm, and regulation the exception and that a forbearance statute should not even be considered until effective competition in the local exchange and local access markets has developed. Coalition opposes the effort to define prices based upon historical costs, the selective application of the statute to portions of the Code, and the imposition of the burden of proof on the party opposing the request for forbearance rather than on the telephone company requesting the forbearance.
- **CPUC:** The CPUC’s *Report to the Legislature on Revisions of the Public Utilities Code Resulting from Restructuring of Regulated Industries* (June 30, 1997) proposes legislation to grant the CPUC authority to waive certain statutory requirements as markets develop.

Category (7): Miscellaneous Issues

§ 216. Defines a public utility. Includes a “telephone corporation” within the definition of a public utility.

- **Suggested Action:** Amend. GTE suggests substituting the definition of a “telecommunications carrier” under § 153(49) of the Telecommunications Act of 1996 for that of a “telephone corporation.” Union Pacific also suggests amending section. See Transportation discussion *supra* p. 499.
- **Rationale:** To achieve consistency between state and federal definitions.
- **Other Parties:** Coalition feels change would allow LECs to discriminate against competitive local carriers and would jeopardize the CPUC’s jurisdiction over ancillary business operations such as voice mail, enhanced services, and yellow pages.

Miscellaneous Issues (continued)

§ 230.3. Defines service areas as the local access and transport areas (LATAs) defined by the MFJ in the AT&T case.

- **Suggested Action:** Amend. GTE suggests revising this section so that it will be consistent with § 153(43) of the Telecommunications Act of 1996.
- **Rationale:** To achieve consistency between state and federal definitions.

§ 234. Defines telephone corporation.

- **Suggested Action:** Amend. GTE suggests substituting the definition of a “telecommunications carrier” under § 153(49) of the Telecommunications Act of 1996 for that of a “telephone corporation.”
- **Rationale:** To achieve consistency between state and federal definitions.
- **Other Parties:** Coalition feels change would allow LECs to discriminate against competitive local carriers and would jeopardize the CPUC’s jurisdiction over ancillary business operations, such as voice mail, enhanced services, and yellow pages.
- **CPUC:** The definition of a telephone corporation should be modified to include resellers. This section was enacted before resale of telecommunications services was contemplated.

§ 709.5. States intent of Legislature that all telecommunications markets be opened to competition by Jan. 1, 1997; provides some direction on how to accomplish this.

- **Suggested Action:** Delete. GTE suggests deleting this section.
- **Rationale:** Section may be eliminated, since the CPUC has completed requirement of opening telecommunications markets to competition.
- **Other Parties:** Coalition and CalTel feel that, since the CPUC has not completed this requirement, the section should remain.

§ 2884.2. Requires the CPUC to report to the Legislature regarding information access services (“900” and “976” numbers).

- **Suggested Action:** Delete. GTE suggests deleting this section.
- **Rationale:** Section repealed January 1, 1996, by its own provisions.
- **Other Parties:** Coalition feels that instead of being deleted, this section should be updated to reflect the CPUC’s task force report.

§ 2884.3. Requires the CPUC to assemble task force to evaluate the telecommunications network infrastructure.

- **Suggested Action:** Delete. GTE suggests deleting this section.
- **Rationale:** Repealed January 1, 1995.
- **Other Parties:** Coalition feels that instead of being deleted, this section should be updated to reflect the CPUC’s task force report.

Miscellaneous Issues (continued)

- § 7930. States required notice schedule for area code changes. Requires 24 months' advance notification; at least three public meetings held within six months after giving notice; written notice of the specific geographic area to be included in the new area code to all affected subscribers at least 15 months prior to the new code going into effect.
- **Suggested Action:** Amend. Coalition & GTE suggest modifying to reduce the 24-month advance notification to 12 months due to accelerated pace of number exhaustion. Suggest eliminating requirement for three public meetings and reducing the 15-month notice requirement to six months prior to new code going into effect.
 - **Rationale:** Notification needs to be compressed due to accelerated pace of number exhaustion.
 - **CPUC:** In light of rapid number exhaustion, this provision should be amended to reduce the advance notice period to 18 months and the final notice to 12 months, while maintaining the requirement for three public participation hearings to be held within six months of the initial notice.
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