

L/bjk

Decision 91-03-069 MARCH 22 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
BD Technology, Inc. for declaratory
relief finding operations to be
exempt pursuant to Section 3549 of
the Public Utilities Code and not
subject to regulation under the
Public Utilities Code.

ORIGINAL

Application 90-08-002
(Filed August 2, 1990)

ORDER DENYING REHEARING

BD Technology, Inc. ("Applicant") has filed an application for rehearing of Decision (D.) 90-12-017. We have considered all the allegations of error in the application and are of the opinion that good cause for rehearing has not been shown.

In its rehearing application, Applicant makes references to a declaration from its company president for evidentiary support. This declaration, which is attached to the rehearing application, contains additional evidence which is not in the record the Commission considered in reaching its decision. If Applicant wanted the Commission to consider additional evidence, it should have filed a motion requesting the Commission reopen the proceeding in light of new evidence, and justifying why this new evidence was not available for the Commission consideration at the time of its decision. However, this should have occurred prior to the Commission's issuance of D.90-12-017. While we understand the desire to ensure that the Commission has all relevant information when it makes its decision, we must point out that attempts to introduce new evidence by attaching a declaration to the rehearing application are inappropriate. (Re Minimum Rate Tariff 7-A (1989) 32 Cal.P.U.C.2d 535,536.) Therefore, the submission of this declaration now is untimely,

and unjustified. Accordingly, in reaching our decision to deny rehearing we give no consideration of the additional evidence presented in the declaration.

Even if we were to consider this additional evidence, it would not affect our determination that Applicant's operations are not exempted from Commission regulation under Section 3549 of the Public Utilities Code. This determination is based upon the controlling case law discussed in D.90-12-017.

IT IS ORDERED that rehearing of Decision 90-12-017 is hereby denied.

This order is effective today.

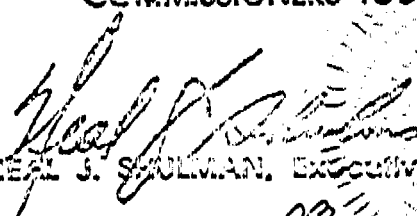
Dated March 22, 1991, at San Francisco, California.

PATRICIA M. ECKERT
PRESIDENT

G. MITCHELL WILK
JOHN B. OHANIAN
NORMAN D. SHUMWAY
Commissioners

Commissioner Daniel Wm. Fessler,
being necessarily absent, did
not participate

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


NEAL J. SHULMAN, Executive Director