

ALJ/BAR/mrj

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Resolution ALJ-176-2987  
Administrative Law Judge Division  
February 19, 1998

**RESOLUTION**

**RESOLUTION ALJ-176-2987.** Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

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The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

**The Categories**

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is

categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

### **Mixed or Unclear Category Proceedings**

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

### **Next Steps**

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

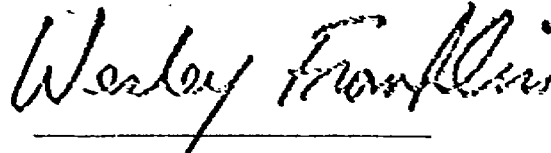
### **Conclusion**

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

**IT IS ORDERED** that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

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I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on February 19, 1998, the following Commissioners voting favorably thereon:



WESLEY M. FRANKLIN  
Executive Director

RICHARD A. BILAS  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners

## PRELIMINARY DETERMINATION SCHEDULES

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NUMBER	SHORT TITLE	PROPOSED CATEGORY	PRELIMINARY DETERMINATION	HEARING EXPECTED
A98-01-002	Payless Communications, Inc., for registration as an interexchange carrier telephone corporation	*RATESETTING	RATESETTING	NO
A98-01-030	LDI Solutions, Inc., for registration as an interexchange carrier telephone corporation	*RATESETTING	RATESETTING	NO
A98-02-005	National Collegiate, Inc., for registration as an interexchange carrier telephone corporation	*RATESETTING	RATESETTING	NO
A98-02-006	Sierra Pacific Power Company, for approval of its proposals to implement Direct Access Billing Options and Separate Cost for Revenue Cycles Services	ADJUDICATORY	RATESETTING	YES
A98-02-007	State of California, Department of Transportation, for an order authorizing it to construct the widening project at the Redlands Loop Overhead, Bridge Number 54-489, over the tracks and right of way of the Burlington Northern and Santa Fe Railway Company in the City of San Bernardino	ADJUDICATORY	RATESETTING	NO

## PRELIMINARY DETERMINATION SCHEDULES

ALJ 176-2987 (2/1998)

NUMBER	SHORT TITLE	PROPOSED CATEGORY	PRELIMINARY DETERMINATION	HEARING EXPECTED
A98-02-008	Sacramento Regional Transit District, for an order authorizing it to construct, maintain and operate a light rail passenger system and a Union Pacific Railroad freight line on a structure over Power Inn Road in the City of Sacramento, County of Sacramento	RATESETTING	RATESETTING	NO
A98-02-009	PacifiCorp, for authority to implement revenue cycle services credits	RATESETTING	RATESETTING	YES
A98-02-010	In Touch Communication Systems, Inc., for a certificate of public convenience and necessity to offer local exchange, access and interexchange services	RATESETTING	RATESETTING	NO
A98-02-011	GTE California Incorporated, for Petition for Modification of Resolution T-16090	QUASI-LEGISLATIVE	RATESETTING	NO
A98-02-012	San Diego Gas & Electric Company and City of Poway, for an order to sell and convey a streetlight system of SDG&E to City of Poway	RATESETTING	RATESETTING	NO
A98-02-013	Southern California Water Company, dba Bear Valley Electric Service	RATESETTING	RATESETTING	YES

## PRELIMINARY DETERMINATION SCHEDULES

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NUMBER	SHORT TITLE	PROPOSED CATEGORY	PRELIMINARY DETERMINATION	HEARING EXPECTED
A98-02-015	City of Escondido, for an order to construct Escondido Creek Channel path, a Class I public bikeway, across the railroad track, at-grade, of the North County Transit District in the City of Escondido	ADJUDICATORY	RATESETTING	NO
A98-02-016	Transamerican Telephone, Inc., for a certificate of public convenience and necessity to provide competitive local exchange and interexchange telecommunications services	RATESETTING	RATESETTING	NO
A98-02-017	Pacific Bell, for authority to categorize business inside wire repair, interexchange carrier directory assistance, operator assistance service and inmate cell control service as Category III services	RATESETTING	RATESETTING	YES

## PRELIMINARY DETERMINATION SCHEDULES

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NUMBER	SHORT TITLE	PROPOSED CATEGORY	PRELIMINARY DETERMINATION	HEARING EXPECTED
A98-02-018	City of Livermore, for an order authorizing construction of a crossing at separated grades between an extension of Isabel Avenue and tracks of the Union Pacific Railroad Company, sometimes referred to as "Isabel Avenue Underpass"	RATESETTING	RATESETTING	NO
A98-02-019	State of California, Department of Transportation, State of California, Department of Transportation, for an order authorizing the Department to construct two new overhead structures over the existing tracks and right-of-way of the Union Pacific Railroad Company, to widen the railroad crossing of Beach Boulevard with signal relocation and upgrade, all in connection with the reconstruction of the State Route 91/Interstate 5 Interexchange as part of the I-5 widening project in Orange County	ADJUDICATORY	RATESETTING	NO
A98-02-021	Software America, Inc., for registration as an interexchange carrier telephone corporation	*RATESETTING	RATESETTING	NO



## PRELIMINARY DETERMINATION SCHEDULES

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NUMBER	SHORT TITLE	PROPOSED CATEGORY	PRELIMINARY DETERMINATION	HEARING EXPECTED
A98-02-022	MTM Holdings Corporation and Axces, Inc. dba Long Distance Axces, for authority to transfer the stock of Axces, Inc. to MTM Holdings Corporation	RATESETTING	RATESETTING	NO