

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

Resolution ALJ 176-3005  
Administrative Law Judge Division  
December 3, 1998

**RESOLUTION**

**RESOLUTION ALJ 176-3005. 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.

ALJ/tcg

### **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.

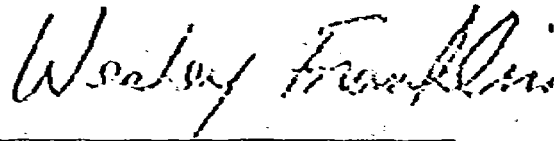
### **Conclusion**

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.

ALJ/tcg

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 December 3, 1998, the following Commissioners voting favorably thereon:



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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**

Resolution ALJ 176-3005 (12/3/98)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
<b>A98-11-010</b>  <b>ALAMEDA CORRIDOR TRANSPORT AUTHORITY</b> for an order authorizing the relocation of 17 single track highway grade crossings of two single track separated highway crossings and one single track grade separated railroad crossing located between Firestone Boulevard, PUC crossing No. BG-489.50 and Auto Drive South, PUC crossing number BG-495.09, inclusive in the County of Los Angeles, City of South Gate, City of Lynwood and City of Compton	Ratesetting	Ratesetting	NO
<b>A98-11-011</b>  <b>RED AND WHITE FERRIES, INC.</b> for a certificate of public convenience and necessity to establish and operate vessel common carrier service between San Francisco, on the one hand, and the Alameda Gateway area and the Port of Oakland, on the other hand	Ratesetting	Ratesetting	YES
<b>A98-11-012</b>  <b>LODI GAS STORAGE, LLC</b> for a certificate of public convenience and necessity for construction and operation of gas storage facilities	Ratesetting	Ratesetting	YES
<b>A98-11-014</b>  <b>PACIFIC GAS AND ELECTRIC COMPANY</b> for an order under section 851 of the PU Code to sell and convey streetlight systems to the City of Clearlake, City of Fortuna, City of Marysville and Community Services District of McKinleyville	Ratesetting	Ratesetting	YES
<b>A98-11-015</b>  <b>SOUTHERN CALIFORNIA WATER COMPANY</b> for a certificate of public convenience and necessity pursuant to California Public Utilities Code Section 1001 to operate and maintain a wastewater system to provide service to the Bolsa Chica Planned Community	Ratesetting	Ratesetting	YES

**PRELIMINARY DETERMINATION  
SCHEDULES**

Resolution ALJ 176-3005 (12/3/98)

<b>NUMBER TITLE</b>	<b>PROPOSED CATEGORY</b>	<b>PRELIM. CATEGORY</b>	<b>HEARING</b>
A98-11-017 PACIFIC BELL for authority pursuant to Public Utilities Code Section 851 to lease space to affiliates	Ratesetting	Ratesetting	YES
A98-11-018 THE FURST GROUP, INC. for certificate of public convenience and necessity to offer resold local exchange services	Ratesetting	Ratesetting	NO
A98-11-019 MAIN STREET TELEPHONE COMPANY for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013 and D97-06-107	Ratesetting NDIEC Registration Application	Ratesetting	NO
A98-11-020 CANNECT COMMUNICATIONS, INC. for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013 and D97-06-107 Address: 885 West Georgia Street, Suite 1490 Vancouver, British Columbia, Canada V6C3E8	Ratesetting NDIEC Registration Application	Ratesetting	NO
A98-11-021 MCDONOGH, MILTON, dba ANGEL ISLAND - TIBURON FERRY to transfer and Angel Island - Tiburon Ferry, Inc. to acquire a certificate of public convenience and necessity and all other assets related to the business of common carriage by vessel between Tiburon and Angel Island State Park	Ratesetting	Ratesetting	NO
A98-11-022 DEPARTMENT OF TRANSPORTATION for an order authorizing the Contra Costa Transportation Authority to: construct a crossing of separated grades between westbound Route 4 and the tracks of the Burlington Northern and Santa Fe Railway, sometimes referred to as the "Christie Overhead," PUC No.2-1176.25A (Bridge No. 28-036OR) in the County of Contra Costa	Ratesetting	Ratesetting	NO

**PRELIMINARY DETERMINATION  
SCHEDULES**

Resolution ALJ 176-3005 (12/3/98)

<b>NUMBER TITLE</b>	<b>PROPOSED CATEGORY</b>	<b>PRELIM. CATEGORY</b>	<b>HEARING</b>
A98-11-023  PACIFIC GAS AND ELECTRIC COMPANY to establish performance-based ratemaking for electric and gas utility distribution service effective January 1, 2000	Ratesetting	Ratesetting	YES
A98-11-026  NET2000 GROUP, INC., dba NET2K for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013	Ratesetting NDIEC Registration Application	Ratesetting	NO
A98-11-029  KOAMEX COMMUNICATIONS CORPORATION for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013	Ratesetting NDIEC Registration Application	Ratesetting	NO
A98-12-001  LONG DISTANCE AMERICA, INC. for registration as an interexchange carrier telephone corporation pursuant to the provisions of PU Code Section 1013	Ratesetting NDIEC Registration Application	Ratesetting	NO