

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-176-3007
Administrative Law Judge Division
January 7, 1999

RESOLUTION

RESOLUTION ALJ-176-3007. 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.)

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.

ALJ/eap

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 January 7, 1999, the following Commissioners voting favorably thereon:

Wesley Franklin

WESLEY M. FRANKLIN
Executive Director

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

ALJ/cap

**PRELIMINARY DETERMINATION
SCHEDULES**

Resolution ALJ 176-3007 (1/7/99)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A98-12-009 CITY OF EL PASO DIB ROBLES for rehearing of resolution E-3573 ordering dismissal of protests to advice letter 1791-B	*	*	*
A98-12-016 PRE-PAID PHONES, LTD. for a certificate of public convenience and necessity to offer resold local exchange, access and interexchange services	Ratesetting	Ratesetting	NO
A98-12-017 CITY OF SAN CARLOS for an order to construct a new crossing at separated grades to be known as Arroyo Avenue Pedestrian Undercrossing under the tracks of Peninsula Corridor Joint Powers Board Commuter service main line at Railroad Mile Post E-23.6 south of Arroyo Avenue in	Ratesetting	Ratesetting	NO
A98-12-018 TELECOMMUNICATIONS COOP. NETWORK, INC., dba TCN, INC. for registration as an interexchange carrier telephone corporation pursuant to the provisions of PU Code section 1013	Ratesetting NDIEC Registration Application	Ratesetting	NO
A98-12-019 WEST SAN MARTIN WATER WORKS, INC. for authority under Public Utilities Code Section 851 to sell a portion of its public utility water system in San Martin, Santa Clara County to the San Martin County Water District	Ratesetting	Ratesetting	NO
A98-12-020 LITICHEVSKY, DMITRY, QUAKE CITY SHUTTLE, INC., SHAPIRO, VLADIMIR, VAKSMAN, NAUM to transfer and Quake City Shuttle, Inc., Kogen, Aleksandr, Nudelman, Aleksandr, and Kravetski, Felix, to acquire their stock interests and all other assets in Quake City Shuttle, Inc., pursuant to Section 851 of the Cal. Public Utilities Code	Ratesetting	Ratesetting	NO

*Application for Rehearing of Resolution assigned to Legal Division. Categorization/Need for Hearing will be addressed as necessary if the Commission subsequently grants rehearing.

**PRELIMINARY DETERMINATION
SCHEDULES**

Resolution ALJ 176-3007 (1/7/99)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A98-12-021 SOUTHERN CALIFORNIA EDISON COMPANY for an order approving termination agreement for termination of a negotiated power purchase agreement between Southern California Edison Company and O'Brien California Cogen Limited	Ratesetting	Ratesetting	YES
A98-12-022 GTE CALIFORNIA INCORPORATED for approval to lease assets pursuant to Section 851 of the Public Utilities Code	Ratesetting	Ratesetting	YES
A98-12-023 SAN DIEGO GAS & ELECTRIC COMPANY for a permit to construct the Pico Substation	Ratesetting	Ratesetting	YES
A98-12-024 MOHAVE COOPERATIVE SERVICES, INC. for a certificate of public convenience and necessity to provide resold competitive local exchange services and interexchange services	Ratesetting	Ratesetting	NO
A98-12-026 ROSEVILLE TELEPHONE COMPANY to approve annual rate depreciation	Ratesetting	Ratesetting	NO
A98-12-027 ASIA ACCESS TELECOM, INC. for registration as an interexchange carrier telephone corporation pursuant to the provisions of the Public Utilities Code Section 1013	Ratesetting	Ratesetting	NO
A98-12-028 ELK GROVE WATER WORKS for an order authorizing it to increase rates for water service for its total service area, and approving its planned water filtration plant installation (N9811028)	Ratesetting	Ratesetting	YES
A98-12-029 ATN COMMUNICATIONS, INC. 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