

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-176-3008
Administrative Law Judge Division
January 20, 1999

RESOLUTION

RESOLUTION ALJ-176-3008. 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.

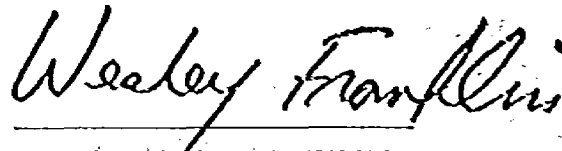
Conclusion

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/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 January 20, 1999, the following Commissioners voting favorably thereon:



WESLEY M. FRANKLIN
Executive Director

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

**PRELIMINARY DETERMINATION
SCHEDULES**

Resolution ALJ 176-3008 (01/20/99)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A98-12-025 SAN DIEGO GAS & ELECTRIC COMPANY, SOUTHERN CALIFORNIA EDISON COMPANY for the nuclear decommissioning cost triennial proceeding to set contribution levels for the companies' nuclear decommissioning trust funds and address other related issues	Ratesetting	Ratesetting	YES
A98-12-030 SPECIAL ACCOUNTS BILLING GROUP, INC. for registration as an interexchange carrier telephone corporation pursuant to the provisions of the Public Utilities Code Section 1013 and D97-06-107	Ratesetting NDIEC Registration Application	Ratesetting	NO
A98-12-031 SHUBARALYN, DANIEL, dba DANI'S SHUTTLE to transfer and Dani Shuttle, Inc., to acquire a certificate of public convenience and necessity and all other assets	Ratesetting	Ratesetting	NO
A98-12-032 EXECUTIVE TELECARD, LTD., dba EGLOBE for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013	Ratesetting NDIEC Registration Application	Ratesetting	NO
A98-12-033 U.S. OPERATORS, INC. for registration as an interexchange carrier telephone corporation pursuant to the provisions of the Public Utilities Code Section 1013 and D97-06-107	Ratesetting NDIEC Registration Application	Ratesetting	NO
A98-12-035 PROMISE-NET INTERNATIONAL, LTD. for registration as an interexchange carrier telephone corporation pursuant to the Public Utilities Code Section 1013	Ratesetting NDIEC Registration Application	Ratesetting	NO

**PRELIMINARY DETERMINATION
SCHEDULES**

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NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A98-12-036 SOUTHERN CALIFORNIA WATER COMPANY for approval pursuant to Public Utilities Code Sections 454 and 851 of a settlement agreement delineating water rights in the six basins and for authority to effect related rate-making changes in its Claremont District	Ratesetting	Ratesetting	NO
A98-12-037 WILLIAMS COMMUNICATIONS, INC., dba DBA VYVX, INC. for a certificate of public convenience and necessity to provide interLATA and intralATA resold and facilities-based telecommunications services	Ratesetting	Ratesetting	NO
A98-12-038 SOUTHERN CALIFORNIA EDISON COMPANY for order approving Amendment No. 2 to power purchase agreement between Edison and Colmac Energy, Inc.	Ratesetting	Ratesetting	YES
A99-01-001 PACIFIC GAS AND ELECTRIC COMPANY for an order under Section 853 of the California Public Utilities Code for an exemption from the requirements of PUC Section 851 or, alternatively for an order approving 73 sales transactions for certain public utility properties (redacted)	Ratesetting	Ratesetting	NO
A99-01-002 AFFORDABLE SEDAN AND VAN SERVICE, PRIES, SUE AND BARRY for a certificate of public convenience and necessity to establish and operate a passenger stage corporation to carry passengers from the TRI Valley area to the airports of San Jose, Oakland and San Francisco	Ratesetting	Ratesetting	NO
A99-01-003 HORNBLOWER MARINE SERV. EAST BAY EXPRESS for a certificate of public convenience and necessity to establish and operate a scheduled vessel common carrier service between Alameda and Oakland, on the one hand, and, on the other, San Francisco Ferry Terminal and Fisherman's Wharf area	Ratesetting	Ratesetting	NO

**PRELIMINARY DETERMINATION
SCHEDULES**

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NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A99-01-004 CITY OF HAYWARD for an order authorizing the construction of at-grade and overhead crossings at the tracks of the Union Pacific Railroad Company	Ratesetting	Ratesetting	NO
A99-01-006 WOSICK, MARIA AVELAR, dba BOTTOM LINE RESULTS MOVING, WOSICK, TIMOTHY ALLEN, dba BOTTOM LINE RESULTS MOVING for a household goods carrier permit	Adjudicatory	Adjudicatory	YES
A99-01-007 INTERNATIONAL ECONOMIC TELECOM., INC. for registration as an interexchange carrier telephone corporation pursuant to the provisions of the Public Utilities Code Section 1013	Ratesetting NDIEC Registration Application	Ratesetting	NO
A99-01-008 PALOMAR LIMOUSINE AVIARA TRANSPORTATION, dba THE PAL SHUTTLE for authority to operate as a passenger stage service throughout San Diego County and the Cities of Oceanside and Carlsbad	Ratesetting	Ratesetting	NO
A99-01-009 KERCHENKO, BRIAN to sell and Russian River County Water District to acquire the water system in Sonoma County	Adjudicatory	Ratesetting	NO
A99-01-010 CLARICOM HOLDINGS, INC., CLARICOM NETWORKS, INC., SIGMA ACQUISITION CORP. for approval of an indirect change in control over Claricom Networks, Inc. from Claricom Holdings, Inc. to Sigma Acquisition Corp.	Ratesetting	Ratesetting	NO

**PRELIMINARY DETERMINATION
SCHEDULES**

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NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A99-01-011 PACIFIC GAS AND ELECTRIC COMPANY to recover costs recorded in the catastrophic event memorandum account effective January 1, 2000	Ratesetting	Ratesetting	YES
A99-01-012 DIRECT AMERICAN MARKETERS, INC., dba DIRECT ONE for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013	Ratesetting NDIEC Registration Application	Ratesetting	NO
A99-01-013 UNIVERSAL INFORMATION SERVICES, 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