

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-176-3010
Administrative Law Judge Division
February 18, 1999

RESOLUTION

RESOLUTION ALJ-176-3010. 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.

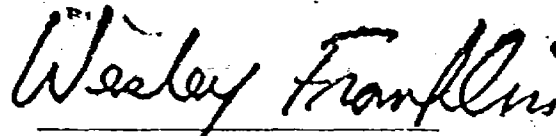
Conclusion

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/naz

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 18, 1999, the following Commissioners voting favorably thereon:



WESLEY M. FRANKLIN
Executive Director

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

ALJ/naz

PRELIMINARY DETERMINATION SCHEDULES

Resolution ALJ 176-3010 (02/18/99)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A99-02-003 DOMINGUEZ WATER COMPANY , HAWKINS WATER SERVICE for approval of the acquisition of the utility assets of Hawkins Water Service by Dominguez Water Company	Ratesetting	Ratesetting	NO
A99-02-004 ANTELOPE VALLEY WATER COMPANY , CALIFORNIA WATER SERVICE COMPANY , DOMINGUEZ WATER COMPANY , KERN RIVER VALLEY WATER COMPANY for approval of a plan of merger	Ratesetting	Ratesetting	NO
A99-02-005 COAST SPRINGS WATER COMPANY , DOMINGUEZ WATER COMPANY for approval of the acquisition of the utility assets of Coast Springs Water Company by Dominguez Water Company	Ratesetting	Ratesetting	NO
A99-02-006 IBRAHIM, YOUSIF A., dba SAFETY AIRPORT EXPRESS for authority to operate as a passenger stage corporation between points in San Francisco, Alameda and Contra Costa Counties and the San Francisco International Airports and to establish a zone of rate freedom	Ratesetting	Ratesetting	NO
A99-02-007 AYALA, THELMA J., dba MONARCA TRANSPORTATION SERVICES for a certificate of public convenience and necessity to operate as a passenger stage corporation between Victorville and San Ysidro with service to and from the intermediate points of San Bernardino and Fontana	Ratesetting	Ratesetting	NO

**PRELIMINARY DETERMINATION
SCHEDULES**

Resolution ALJ 176-3010 (02/18/99)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
<p>A99-02-008 CITY OF MONTCLAIR for an order authorizing construction of a crossing at separated grades between Ramona Avenue and the tracks of the Union Pacific Railway Company, sometimes referred to as the Ramona Overhead (PUC No. B-516.9 and 3-34.5)</p>	Ratesetting	Ratesetting	NO
<p>A99-02-009 NORTH AMERICAN THERMAL SYSTEMS, LLC, NRG ENERGY, INC., SAN FRANCISCO THERMAL, LP, THERMAL VENTURES, INC. for authority to transfer control of North American Thermal Systems, LLC from Thermal Ventures, Inc. to NRG Energy, Inc. (redacted)</p>	Ratesetting	Ratesetting	NO
<p>A99-02-010 STATE COASTAL CONSERVANCY for an order authorizing a public pedestrian/bicycle railroad crossing of the tracks of the Northwestern Pacific Railroad authority near Blackpoint, Sonoma County, Milepost 5-31.2</p>	Ratesetting	Ratesetting	NO
<p>A99-02-012 S.F. BAY AREA RAPID TRANSIT DISTRICT for authority to institute revenue passenger service utilizing the advanced automatic train control system for safety-critical motion control</p>	Ratesetting	Ratesetting	YES
<p>A99-02-013 ALAMEDA CORRIDOR TRANSPORTATION AUTHOR. for an order authorizing the construction of a two track grade separation above a reconstructed intersection of Henry Ford Avenue with the on and off ramps of State Route 103 Freeway and above a Union Pacific connecting track; authorizing the reconstruction of the said intersection across a Union Pacific track and Alameda Corridor Transportation Authority track number 3; authorizing the relocation of the west Basin Lead track across reconstructed and widened Henry Ford Avenue; and authorizing the construction of a Transferred Yard Connecting Track across Henry Ford</p>	Ratesetting	Ratesetting	NO

ALJ/naz

**PRELIMINARY DETERMINATION
SCHEDULES**

Resolution ALJ 176-3010 (02/18/99)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A99-02-014 AFFINITY NETWORK INCORPORATED for authority to provide local exchange service on a resale basis	Ratesetting	Ratesetting	NO