

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3015  
Administrative Law Judge Division  
May 13, 1999

RESOLUTION

RESOLUTION ALJ 176-3015. 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/hkr

### 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/hkr

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 May 13, 1999, the following Commissioners voting favorably thereon:

*Wesley Franklin*

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WESLEY M. FRANKLIN  
Executive Director

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

**PRELIMINARY DETERMINATION  
SCHEDULES**

Resolution ALJ 176-3015 (05/13/99)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
<b>A99-04-018</b>  <b>ENHANCED COMMUNICATIONS NETWORK, INC.</b> 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
<b>A99-04-019</b>  <b>NOW COMMUNICATIONS, INC., dba NOW COMMUNICATIONS OF MISSISSIPPI, INC.</b> for a certificate of public convenience and necessity to offer local exchange services on a resale basis	Ratesetting	Ratesetting	NO
<b>A99-04-024</b>  <b>SOUTHERN CALIFORNIA EDISON COMPANY</b> for authority to recover capital additions to its fossil generating facilities made between January 1, 1997 and March 31, 1998 or the date of divestiture for those generating facilities divested by July 8, 1998 and related substantive and procedural relief	Ratesetting	Ratesetting	YES
<b>A99-04-025</b>  <b>E &amp; B AIRPORT SHUTTLE, INC., LIMO, LUIS, dba GLENDALE - LA CRESCENTA AIR VAN</b> to transfer and E & B Airport Shuttle, Inc., to acquire the operative authority of Luis Limo, dba Glendale-La Crescenta Air Van and to request an enlargement of such operating authority to include portions of the San Gabriel and San Fernando Valleys and selected points in Los Angeles, Orange, Ventura, San Bernardino and Riverside Counties on the one hand and Burbank Airport, Ontario Airport and Los Angeles International Airport, Long Beach Airport, AMTRAC and L.A. Harbor, on the other hand and establish a zone of rate freedom	Ratesetting	Ratesetting	NO
<b>A99-04-026</b>  <b>LOCAL GATEWAY EXCHANGE, INC.</b> for authority to operate as a resale provider of local exchange and interexchange service	Ratesetting	Ratesetting	NO

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<b>NUMBER TITLE</b>	<b>PROPOSED CATEGORY</b>	<b>PRELIM. CATEGORY</b>	<b>HEARING</b>
A99-04-027 BELLSOUTH BSB, INC. for authority to operate as a resale provider of local exchange and interexchange service	Ratesetting	Ratesetting	NO
A99-04-028 PACIFIC - SOUTH TELECOM, INC. for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013	Ratesetting NDIEC Registration Application	Ratesetting	NO
A99-04-029 SAN DIEGO TELEMANAGEMENT, INC. for registration as an interexchange carrier telephone corporation pursuant to the provisions of Section 1013 of the Public Utilities Code	Ratesetting NDIEC Registration Application	Ratesetting	NO
A99-04-030 UNITED STATES ADVANCED NETWORK, INC. for registration as an interexchange telephone corporation pursuant to the provisions of Public Utilities Code Section 1013 and D97-06-107	Ratesetting NDIEC Registration Application	Ratesetting	NO
A99-04-031 NETWORK ENHANCED TELECOM, LLC for registration as an interexchange carrier telephone corporation pursuant to the provisions of Section 1013 of California Public Utilities Code	Ratesetting NDIEC Registration Application	Ratesetting	NO
A99-04-033 CAL-MEX TOURS for authority to operate as an "on call" PSC carrier between San Ysidro and Salinas	Ratesetting	Ratesetting	NO
A99-04-034 FRONTIER CORPORATION, GLOBAL CROSSING LTD. for approval to transfer control of Frontier Corporation's California operating subsidiaries to Global Crossing Ltd.	Ratesetting	Ratesetting	NO

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A99-04-035 NAVIGATOR TELECOMMUNICATIONS, LLC for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013	Ratesetting NDIEC Registration Application	Ratesetting	NO
A99-04-036 FON DIGITAL NETWORK, INC. for registration as an interexchange carrier telephone corporation pursuant to the provisions of Section 1013 of Public Utilities Code	Ratesetting NDIEC Registration Application	Ratesetting	NO
A99-04-039 AVISTA CORPORATION for an order authorizing the issuance, sale, delivery, and/or guarantee of debt securities, in one or more series, with an aggregate stated value of up to and including \$400,000,000	Ratesetting	Ratesetting	NO
A99-04-040 DSLNET COMMUNICATIONS LLC 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
A99-04-041 CITY OF FREMONT to improve the Nunes Lane crossing of the Union Pacific Railroad Company tracks and designate the improved crossing as an emergency vehicle access to the City of Fremont, County of Alameda	Ratesetting	Ratesetting	NO
A99-04-042 WORLDWIDE TELECOMMUNICATIONS 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
A99-04-043 MARATHON COMMUNICATIONS CORPORATION, dba MARATHON USA for registration as an interexchange carrier telephone corporation pursuant to the provisions of California Public Utilities Code Section 1013	Ratesetting NDIEC Registration Application	Ratesetting	NO

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A99-04-044 GLOBAL-SAT, LLC 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
A99-04-045 SOUTHERN CALIFORNIA EDISON COMPANY pursuant to D98-08-035 for authorization to allow non-discriminatory access to its customer communication center	Ratesetting	Ratesetting	YES
A99-04-048 PACIFIC GAS AND ELECTRIC COMPANY for an order under Section 851 of the California Public Utilities Code to sell and convey certain limited sole-customer public utility facilities	Ratesetting	Ratesetting	YES
A99-04-049 CITY OF MADERA to construct three grade crossings across the Union Pacific Railroad, SP Company Winery Spur and Sealed Air Spur, two crossings for Almond Avenue and one crossing for Massetti Drive in the City of Madera	Quasi- legislative	Ratesetting	NO
A99-05-001 VENTURA COUNTY SHUTTLE, INC., dba VENTURA COUNTY AIRPORTER to establish a zone of rate freedom	Ratesetting	Ratesetting	NO
A99-05-002 SAN DIEGO GAS AND ELECTRIC COMPANY for authority to increase its gas and electric revenue requirements to reflect its accomplishments for demand-side management program years 1994 and 1997, energy efficiency program year 1998, low income program year 1998, and to address policy and procedural issues for future program years 1999 through 2001 in the 1999 annual earnings assessment proceeding	Ratesetting	Ratesetting	YES



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<b>A99-05-003</b>  AMARILLA DEL NORTE, FLECHA to establish and operate a pre-arranged on-call, city-to-city passenger stage service between the Port of Entry at Calexico or San Ysidro, on the one hand, the cities of Los Angeles, San Bernardino and intermediate points, on the other hand, pursuant to Section 1031, et seq., of the Public Utilities Code	Ratesetting	Ratesetting	NO
<b>A99-05-004</b>  PACIFIC GAS AND ELECTRIC COMPANY for rehearing of Resolution E-3592, authorizing 1999 energy efficiency programs	*	*	*
<b>A99-05-005</b>  SOUTHERN CALIFORNIA GAS COMPANY for authority to increase its gas revenue requirements to reflect its accomplishments for demand-side management program years 1994, 1997 and 1998 and to address policy and procedural issues for future program years 1999 through 2001 in the 1999 annual earnings assessment proceeding	Ratesetting	Ratesetting	YES
<b>A99-05-006</b>  SOUTHERN CALIFORNIA EDISON COMPANY for an order approving agreements restructuring the negotiated power purchase agreement between Southern California Edison Company and AES Placerita, Inc. (redacted)	Ratesetting	Ratesetting	YES
<b>A99-05-007</b>  PACIFIC GAS AND ELECTRIC COMPANY for approval of demand-side management shareholder incentives for 1998 program year accomplishments, 1998 accomplishments for pre-1998 programs, second claim for incentives for the 1997 program year accomplishments and third claim for the 1994 program year accomplishments	Ratesetting	Ratesetting	YES

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

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A99-05-008  SOUTHERN CALIFORNIA EDISON COMPANY for approval of energy efficiency performance incentives and demand side management shareholder incentives for 1998 program year accomplishments, the second installment of shareholder incentives for the 1997 program year, and the third installment for the 1994 program year	Ratesetting	Ratesetting	YES
A99-05-009  ATX TELECOMMUNICATIONS SERVICES, LTD. for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Section 1013	Ratesetting NDIEC Registration Application	Ratesetting	NO
A99-05-010  ASIATONE, LLC 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
A99-05-011  L.A. COUNTY METRO. TRANSPORT. AUTHORITY for an order authorizing the construction of a pedestrian grade crossing at Artesia Light Rail Station across a Union Pacific spur track, across the Union Pacific Wilmington Branch track at MP 495.41 and across two light rail tracks at MP 13.22 in the City of Compton, County of Los Angeles	Ratesetting	Ratesetting	NO
A99-05-012  FNET CORP. for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013	Ratesetting NDIEC Registration Application	Ratesetting	NO
A99-05-013  ALISAL WATER CORPORATION for authority to include the area known as Rosehart Industrial Park in its service area, establish rates for service and issue on evidence of indebtedness	Ratesetting	Ratesetting	NO