

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3024
Administrative Law Judge Division
October 7, 1999

RESOLUTION

RESOLUTION ALJ 176-3024. 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/epg

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 October 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

JOEL Z. HYATT

CARL W. WOOD

Commissioners

**PRELIMINARY DETERMINATION
SCHEDULES**

Resolution ALJ 176-3024 (10/07/99)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM CATEGORY	HEARING
A99-09-027 CITIZENS TELECOMMUNICATIONS CO. OF CA., GTB CALIFORNIA, INC. for authority and approval under Public Utilities Code Section 851 for GTB California to sell and transfer assets to CTC-California	Ratesetting	Ratesetting	NO
A99-09-028 GARY SKOWRON AND PATRICIA SKOWRON for an exemption from the Moratorium on new water service connections in the Montara-Moss Beach District as set out in D86-05-078	Ratesetting	Ratesetting	YES
A99-09-029 PACIFIC GAS & ELECTRIC COMPANY for a certificate of public convenience and necessity authorizing the construction of the Northeast San Jose Transmission Reinforcement Project	Ratesetting	Ratesetting	YES
A99-09-030 DIALTEK, LLC for a certificate of Public Convenience and Necessity to offer local exchange, access and interexchange services	Ratesetting	Ratesetting	NO
A99-09-031 CITIZENS TELECOMMUNICATIONS CO. - GOLDEN, GTB WEST COAST, INCORPORATED for GTB West Coast to sell and transfer assets to CTC-Golden State	Ratesetting	Ratesetting	NO
A99-09-032 XE DO HOANG TRANSPORTATION, LLC to operate an on-call, inter-city passenger stage and baggage express service between points in Orange, Los Angeles and Santa Clara Counties, on the one hand, and to establish a Zone of Rate Freedom, on the other hand	Ratesetting	Ratesetting	NO

**PRELIMINARY DETERMINATION
SCHEDULES**

Resolution ALJ 176-3024 (10/07/99)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A99-09-033 CITY OF NOVATO to convert one private grade-separated crossing to a public grade-separated crossing of the Golden Gate Bridge, Highway, and Transportation District's Marin County Rail Line at Main Gate Road within the former Hamilton Army Airfield in the City of Novato	Ratesetting	Ratesetting	NO
A99-09-034 CITY OF NOVATO to construct one at-grade crossing of the Golden Gate Bridge, Highway, and Transportation District's Marin County Rail Line at North Hamilton Parkway within the former Hamilton Army Airfield in the City of Novato	Ratesetting	Ratesetting	NO
A99-09-035 SOUTHERN CALIFORNIA EDISON COMPANY for Rehearing of Resolution E-3606	*	*	*
A99-09-036 ELECTRIC LIGHTWAVE, PACIFIC GAS AND ELECTRIC COMPANY for approval to permit Electric Lightwave, Inc. to use certain PG&E transmission facilities for fiber optic communication equipment	Ratesetting	Ratesetting	NO
A99-09-037 SENTRB 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
A99-09-038 BETHUNE, PHILIP A., COMMUNICATIONS BILLING, INC., COUGHLIN, THOMAS M. to transfer control of communications billing to Thomas Coughlin and Philip Bethune	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.

PRELIMINARY DETERMINATION
SCHEDULES

Resolution ALJ 176-3024 (10/07/99)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A99-09-039 LCI INTERNATIONAL TELECOM CORP., dba QWEST COMMUNICATIONS SERVICES, PHOENIX NETWORK, INC., QWEST COMMUNICATIONS CORPORATION, US WEST INTERPRISE AMERICA, INC., US WEST LONG DISTANCE, INC., USLD COMMUNICATIONS, INC. for approval of proposed merger of Qwest Inc. and US West, Inc.	Ratesetting	Ratesetting	NO
A99-09-043 PONDEROSA COMMUNITY SERVICES DISTRICT, ROSELLA WATER COMPANY for Rosella, through its receiver, Ponderosa, to sell water system in Tulare County	Ratesetting	Ratesetting	NO
A99-09-044 CAL-ORB TELEPHONE COMPANY, CALAVERAS TELEPHONE COMPANY, DUCOR TELEPHONE COMPANY, EVANS TELEPHONE COMPANY, FORESTHILL TELEPHONE COMPANY, HAPPY VALLEY TELEPHONE COMPANY, HORNITOS TELEPHONE COMPANY, KERMAN TELEPHONE COMPANY, PACIFIC BELL, PINNACLES TELEPHONE COMPANY, SIERRA TELEPHONE COMPANY, INC., THE PONDEROSA TELEPHONE COMPANY, THE SISKIYOU TELEPHONE COMPANY, THE VOLCANO TELEPHONE COMPANY for approval of settlement transition agreement and implementation of replacement funding for small local exchange carriers	Quasi-legislative	Ratesetting	NO
A99-09-045 ECONOPHONE SERVICES, VIATEL, INC. for approval of agreement and plan of merger	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION
SCHEDULES

Resolution ALJ 176-3024 (10/07/99)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A99-09-046 TRANS NATIONAL COMMUNICATIONS INTERNATIO for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013	Ratesetting NDIEC Registration Application	Ratesetting	NO
A99-09-047 MAINNET, 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
A99-09-048 CITY OF HAYWARD for an order authorizing construction of a temporary crossing (D21.66) of the Union Pacific Railroad Company tracks in conjunction with the construction of the Harder Road Grade Separation Project in the City of Hayward, County of Alameda	Ratesetting	Ratesetting	NO
A99-09-049 SOUTHERN CALIFORNIA EDISON COMPANY for approval of program year 2000 and 2001 energy efficiency program plans, budgets and performance award mechanism	Ratesetting	Ratesetting	YES
A99-09-050 PACIFIC GAS AND ELECTRIC COMPANY for approval of program year 2000 and 2001 energy efficiency programs	Quasi-legislative	Ratesetting	YES
A99-09-051 AVTEL COMMUNICATINOS, INC., MATRIX ACQUISITION HOLDINGS CORP., MATRIX TELECOM. INC. for approval of a stock purchase agreement and related transactions	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION
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NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A99-09-052 SOUTHERN CALIFORNIA EDISON COMPANY for confirmation of the appointment of William E. B. Siart to the committees of its nuclear decommissioning trust funds	Ratesetting	Ratesetting	NO
A99-09-053 PACIFIC GAS AND ELECTRIC COMPANY to market value hydroelectric generating plants and related assets pursuant to Public Utilities Code Section 367(b) and 851	Ratesetting	Ratesetting	YES
A99-09-054 S.P.A.C.B. SHUTTLE INC. for authority to establish a zone of rate freedom for passenger stage corporation service, and authority to expand license to include Pleasanton, San Ramon and surrounding areas	Ratesetting	Ratesetting	NO
A99-09-055 PACIFIC GAS AND ELECTRIC COMPANY Petition for Modification of Resolution E-3479	**	Ratesetting	NO
A99-09-057 SAN DIEGO GAS & ELECTRIC COMPANY for approval of 2000 and 2001 energy efficiency programs	Ratesetting	Ratesetting	YES
A99-09-058 SOUTHERN CALIFORNIA GAS COMPANY for approval of 2000 and 2001 energy efficiency programs, budgets, performance incentive mechanism	Ratesetting	Ratesetting	YES
A99-10-001 LISTING SERVICES SOLUTIONS, 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

** No category was proposed.