

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Resolution ALJ 176-3027  
Administrative Law Judge Division  
November 18, 1999

**RESOLUTION**

**RESOLUTION ALJ 176-3027. 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/epg

### **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 November 18, 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  
JOEL Z. HYATT  
CARL W. WOOD  
Commissioners

**PRELIMINARY DETERMINATION  
SCHEDULES  
Resolution ALJ 176-3027 (11/18/99)**

<b>NUMBER TITLE</b>	<b>PROPOSED CATEGORY</b>	<b>PRELIM CATEGORY</b>	<b>HEARING</b>
<b>A99-11-003</b> <b>PACIFIC GAS AND ELECTRIC COMPANY</b> for authority to establish its authorized rates of return on common equity for electric distribution and gas distribution, and establish its unbundled rates of return for year 2000 for electric distribution and gas distribution	Ratesetting	Ratesetting	YES
<b>A99-11-006</b> <b>PACIFIC GAS AND ELECTRIC COMPANY</b> for authorization to sell and convey to Duke Energy Moss Landing, LLC, certain emission reduction credits issued by the Bay Area Quality Management District or Monterey Bay Unified Air Pollution Control District, pursuant to PU Code Section 851	Ratesetting	Ratesetting	NO
<b>A99-11-007</b> <b>PACIFIC GAS AND ELECTRIC COMPANY</b> for authorization to sell and convey to Southern Energy, Inc. certain Emission Reduction Credits issued by the Bay Area Air Quality Management District or Monterey Bay Unified Air Pollution Control District pursuant to PU Code Section 851	Ratesetting	Ratesetting	NO
<b>A99-11-008</b> <b>PACIFIC GAS AND ELECTRIC COMPANY</b> for authorization to sell and convey to Calpine Corporation, certain Emission Reduction Credits issued by the Bay Area Air Quality Management District or Monterey Bay Unified Air Pollution Control District pursuant to PU Code Section 851	Ratesetting	Ratesetting	NO
<b>A99-11-009</b> <b>AMERICAN FIBER NETWORK, INC.</b> for a certificate of public convenience and necessity to offer local exchange, access and interexchange services	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION  
SCHEDULES

Resolution ALJ 176-3027 (11/18/99)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
<p>A99-11-010 INTERMEDIA COMMUNICATIONS, INC. for reinstatement of its lapsed certificate of public convenience and necessity to operate as a facilities-based competitive local exchange carrier and to offer resale of local exchange services</p>	Ratesetting	Ratesetting	NO
<p>A99-11-011 KERN COUNTY ROADS DEPARTMENT to convert a private at grade crossing at the tracks of the Union Pacific Railroad Company (operated by the San Joaquin Valley Railroad) to a public at grade crossing in the County of Kern</p>	Ratesetting	Ratesetting	NO
<p>A99-11-012 ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY for an order authorizing the alteration of the Downey Road grade separation structure California Public Utilities Commission number 2-144.5-B in the City of Vernon</p>	Ratesetting	Ratesetting	NO
<p>A99-11-014 BROWN, LAMAR, HUMBEL, NAN for an exemption from the moratorium on new water service connections in the Montara-Moss Beach District as set out in Ordering Paragraph 1 of D86-05-078</p>	Ratesetting	Ratesetting	YES
<p>A99-11-015 DEMEKU-OUSMAN, GETACHEW, dba AND D AIRPORTER, TELILA, ALEMAYEHU TEKILU, dba A AND D AIRPORTER for a certificate of public convenience and necessity to operate as a passenger stage corporation between all points in Alameda, Contra Costa, San Francisco and Solano Counties and certain points in Napa and Sonoma Counties on the one hand and Oakland, Sacramento and San Francisco International Airports on the other hand</p>	Ratesetting	Ratesetting	NO

**PRELIMINARY DETERMINATION  
SCHEDULES  
Resolution ALJ 176-3027 (11/18/99)**

<b>NUMBER TITLE</b>	<b>PROPOSED CATEGORY</b>	<b>PRELIM. CATEGORY</b>	<b>HEARING</b>
<b>A99-11-016</b> OPENPOP.COM, INC., dba ASIANATELECOM for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013	Ratesetting NDIEC Registration Application	Ratesetting	NO
<b>A99-11-018</b> UNITED COMMUNICATIONS HUB, 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
<b>A99-11-020</b> HOTEL CONNECT MANAGEMENT, 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