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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3028
Administrative Law Judge Division
December 2, 1999

RESOLUTION

RESOLUTION ALJ 176-3028. 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.
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> "'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).
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> "'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.

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 December 2, 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

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PRELIMINARY DETERMINATION SCHEDULES

Resolution ALJ 176-3028 (12/2/99)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A99-11-019 NORTHERN DISTRICT PENTECOSTAL MINISTRIES, PACIFIC GAS AND ELECTRIC COMPANY for an order authorizing the former to sell and convey to the latter a certain parcel of land in Yuba County pursuant to Public Utilities Code Section 851	Ratesetting	Ratesetting	NO
A99-11-023 SOUTHERN CALIFORNIA EDISON COMPANY, SOUTHERN CALIFORNIA WATER COMPANY for an order modifying the boundary line separating their respective service areas	Ratesetting	Ratesetting	NO
A99-11-024 INTERNATIONAL CALL CENTER, INC., dba ICCI for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013	Ratesetting NDIEC Registration Application	Ratesetting	NO
A99-11-025 PACIFIC GAS & ELECTRIC COMPANY for a certificate of public convenience and necessity authorizing the construction of the Tri Valley 2002 capacity increase project	Ratesetting	Ratesetting	YES
A99-11-026 CITY OF SACRAMENTO for an order authorizing the construction of a grade separated structure of the Union Pacific Railroad at Mile Post D-133.70-B Canyon Subdivision, in the City of Sacramento	Ratesetting	Ratesetting	NO
A99-11-027 PACIFIC PIPELINE SYSTEM LLC for authorization pursuant to Public Utilities Code Section 851 et seq. to permit the use of certain fiber optic telecommunications facilities	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULES

Resolution ALJ 176-3028 (12/02/99)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A99-11-028 AMI TELECOMMUNICATIONS ACQUISITION CORP., FOXTEL, INC. for approval of stock purchase agreement	Ratesetting	Ratesetting	NO
A99-11-029 SOUTHERN CALIFORNIA EDISON COMPANY for authority to lease available land at Santiago Substation to Irvine R. V. Storage, LLC	Ratesetting	Ratesetting	NO
A99-11-030 SOUTHERN CALIFORNIA EDISON COMPANY for approval of negotiated termination of a power purchase contract between Southern California Edison Company and Gas Recovery Systems, Inc.	Ratesetting	Ratesetting	YES
A99-11-031 COUNTRY ESTATES WATER CO., INC., DEL ORO WATER COMPANY, INC. for authority to sell, and Del Oro Water Company, Inc. to buy the Country Estates Water Company, Inc. water system in Kern County	Ratesetting	Ratesetting	NO
A99-11-032 TRC 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
A99-11-033 AMERICAN TELESOURCE INTERNATIONAL, INC.,dba ATI COMMUNICATIONS for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013	Ratesetting NDIEC Registration Application	Ratesetting	NO