

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3057
Administrative Law Judge Division
February 8, 2001

R E S O L U T I O N

RESOLUTION ALJ 176-3057. 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/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 February 8, 2001, the following Commissioners voting favorably thereon:

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN
Executive Director

LORETTA M. LYNCH
President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3057 (02/08/2001)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-01-020 DOMINO NETWORKS COMMUNICATIONS, INC., for a Certificate of Public Convenience and Necessity to Provide Limited Facilities-Based and Resold Local Exchange Service and Limited Resold and Limited Facilities-Based and Resold Interexchange Service in California	Ratesetting	Ratesetting	NO
A01-01-021 SAN DIEGO GAS & ELECTRIC COMPANY, SOUTHERN CALIFORNIA GAS COMPANY, Application of Southern California Gas Company in compliance with Resolution G-3304 and of Southern California Gas Company and San Diego Gas & Electric Company to consolidate their gas supply portfolios	Ratesetting	Ratesetting	YES
A01-01-022 EVOICE TELECOM, INC., dba DELAWARE EVOICE TELECOM, INC., for a Certificate of Public Convenience and Necessity for Authority to Provide Local Exchange Services as a Competitive Local Carrier	Ratesetting	Ratesetting	NO
A01-01-023 NXGEN NETWORKS, INC., for a Certificate of Public Convenience and Necessity to Operate as a Provider of Facilities-Based Local Exchange Telecommunications Service within the State of California	Ratesetting	Ratesetting	NO
A01-01-024 PACIFIC GAS & ELECTRIC COMPANY, for an immediate finding of a gas supply emergency and an order directing Southern California Gas Company to provide mutual assistance	Quasi-legislative	Ratesetting	YES
A01-01-025 POLYTECH ENTERPRISES, LLC, PROTOTYPE ENGINEERING, INC., Prototype Engineering, Inc. to transfer control of its Passenger Stage Authority PSC-9025, pursuant to the provisions of Section 851 et seq., of the California Public Utilities Code to Polytech Enterprises, LLC; and to establish a Zone of Rate Freedom (ZORF) under the provisions of Section 454.2 of the Public Utilities Code	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3057 (02/08/2001)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-01-026 BIDWELL WATER COMPANY, for rehearing of resolution W-4243 requiring a fifty percent decrease in the Safe Drinking Water Bond Act surcharge and suspending Bidwell Water Company's Advice Letter 36W	*	*	*
A01-01-027 EL PASO NETWORKS, LLC, for a Certificate of Public Convenience and Necessity to Provide Limited Facilities-Based and Resold Local Exchange and Interexchange Telecommunications Services in California	Ratesetting	Ratesetting	NO
A01-01-028 AMERICATEL CORPORATION, OLIVETTI S.P.A., for Acquisition of Indirect Control of Americatel Corporation by Olivetti S.P.A. and Subsidiaries	Ratesetting	Ratesetting	NO
A01-01-030 AMERICAN AIRPORTER SHUTTLE, for extension of authority to operate as a passenger stage corporation between points in San Francisco, Alameda, Contra Costa, Santa Clara, San Mateo, Napa, Sonoma, Marin and Solano counties and the San Francisco, Oakland and San Jose International Airports and to establish a zone of rate freedom	Ratesetting	Ratesetting	NO
A01-01-033 RGT UTILITIES OF CALIFORNIA, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013 and D.97-06-107	NDIEC Registration Application	Ratesetting	NO
A01-01-034 SISKIYOU LONG DISTANCE COMPANY, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013 and D.97-06-107	NDIEC Registration Application	Ratesetting	NO

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

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3057 (02/08/2001)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-01-035 SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, for an order authorizing construction of an at-grade crossing of the Amtrak/JPB Maintenance Access (82D-3.6) by the light rail transit line of the Vasona Light Rail Project in the City of San Jose, County of Santa Clara	Ratesetting	Ratesetting	NO
A01-01-036 EMERSON TRIPOLI, dba ALTA NETWORKS, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A01-01-037 CITY OF YUBA CITY, PACIFIC GAS AND ELECTRIC COMPANY, for an order under Section 851 of the California Public Utilities Code to Sell and Convey Streetlight Facilities	Ratesetting	Ratesetting	NO
A01-01-038 CITY OF SANTA ROSA, PACIFIC GAS AND ELECTRIC COMPANY, for an order under Section 851 of the California Public Utilities Code to Sell and Convey Streetlight Facilities	Ratesetting	Ratesetting	NO
A01-01-039 LOS OSOS COMMUNITY SERVICE DISTRICT, PACIFIC GAS AND ELECTRIC COMPANY, for an order under Section 851 of the California Public Utilities Code to Sell and Convey Streetlight Facilities	Ratesetting	Ratesetting	NO
A01-01-040 LONG DISTANCE BILLING SERVICES, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013 and D.96-07-107	NDIEC Registration Application	Ratesetting	NO
A01-01-041 MAXTEL USA, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013 and D.96-07-107	NDIEC Registration Application	Ratesetting	NO
A01-01-042 AVTAR SINGH, dba AIR LINK, for the authority to operate as a Passenger Stage Operation between points in Alameda, Santa Clara, and San Mateo Counties, and the Oakland, San Francisco and San Jose International Airports	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3057 (02/08/2001)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-01-044 SAN DIEGO GAS & ELECTRIC COMPANY, for Authority to Implement an Electric Rate Surcharge to Manage the Balance in the Energy Rate Ceiling Revenue Shortfall Account.	Ratesetting	Ratesetting	YES
A01-01-045 XTENSION SERVICES, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A01-01-046 CAL TEL LONG DISTANCE, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A01-01-048 PARE COMMUNICATIONS, INC., for a Certificate of Public Convenience and Necessity to Operate as a Provider of Facilities-Based Local Exchange Telecommunications Service within the State of California	Ratesetting	Ratesetting	NO
A01-01-049 PACIFIC GAS AND ELECTRIC COMPANY, to Modify Departing Customer Procedures	Ratesetting	Ratesetting	YES
A01-01-050 SAN DIEGO GAS & ELECTRIC COMPANY, for a Permit to Construct the Pala Substation Expansion	Ratesetting	Ratesetting	YES
A01-01-052 COMMUNICATION BRIDGE USA, INC., for a Certificate of Public Convenience and Necessity to Provide Competitive Local Exchange, IntraLATA and InterLATA Telephone Service including Hi-Speed Data Service	Ratesetting	Ratesetting	NO
A01-01-053 SIGNAL TELECOM CORP., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A01-02-001 SANTA CLARA VALLEY TRANSPORTATION AUTHORIZATION, for an order authorizing to widen Old Bayshore Highway Overhead over the spur track #42 and right of way of the Union Pacific Railroad Company in the City of San Jose, Santa Clara County	Ratesetting	Ratesetting	NO

**PRELIMINARY DETERMINATION
SCHEDULE**

Resolution ALJ 176-3057 (02/08/2001)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-02-002 NEWSOUTH COMMUNICATIONS CORP., NEWSOUTH HOLDINGS, INC., NSHI VENTURES LLC, for authority to transfer ownership and control of NewSouth Holdings, Inc. and its utility subsidiary, NewSouth Communications Corp. (U-6349-C), to an existing shareholder, NSHI Ventures LLC, through the issuance of additional voting stock	Ratesetting	Ratesetting	NO
A01-02-003 SIGNAL TELECOM CORP., for a Certificate of Public Convenience and Necessity to Provide Facilities-Based and Resale Competitive Local Exchange Services within the California Service Areas of Pacific Bell and GTE California, Inc.	Ratesetting	Ratesetting	NO