PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3114
Administrative Law Judge Division
June 5, 2003

R E S O L U T I O N

RESOLUTION ALJ 176-3114. 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 _____, the following Commissioners voting favorably thereon:

_____

WILLIAM AHERN
Executive Director

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3114 (6/5/03)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A03-05-030 NATIONAL ACCESS LONG DISTANCE, INC., for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A03-05-031 INMATE CALLING SOLUTIONS, LLC, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A03-05-032 PACIFIC GAS AND ELECTRIC COMPANY, (U 39-M), for authorization pursuant to Public Utilities Code Section 851 to Approve an existing Lease and Proposed Lease Amendment with Johns Manville to allow it to upgrade its existing electrical system.	Ratesetting	Ratesetting	NO
A03-05-033 THRESHOLD COMMUNICATIONS, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A03-05-034 ELLIOTT, DOUGLAS F. AND CATHERINE J., WATERTEK, INC., Application authorizing the sale and purchase of certain assets of Grand View Gardens, East Plano and Metropolitan Water Systems from Watertek, Inc. to Douglas F. Elliott and Catherine J. Elliott, husband and wife; and related relief.	Ratesetting	Ratesetting	YES
A03-05-035 SAN JOSE WATER COMPANY, (U 168-W) for an Order authorizing it to increase rates charged for water service by $25,793,000 or 18.20% in 2004; by $5,434,000 or 3.24% in 2005; and by $5,210,000 or 3.01% in 2006. [N03-05-026]	Ratesetting	Ratesetting	YES
A03-05-036 TELEMEX INTERNATIONAL, for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3114 (6/5/03)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A03-05-037 SACRAMENTO REGIONAL TRANSIT DISTRICT, for an order authorizing District to construct, modify, maintain and operate a light rail passenger system and Union Pacific Railroad tracks across Mercantile Drive, Mine Shaft Lane, New County Road, Nimbus Road, Aerojet Road, Alabama Avenue, Natoma Station Drive, Blue Ravine Road, Parkshore Drive, Glenn Drive, Natoma Street, Bidwill Street and Sutter Street in the City of Folsom and the County of Sacramento.	Ratesetting	Ratesetting	NO
A03-05-038 PACIFIC GAS AND ELECTRIC COMPANY, STARLINK LOGISTICS INC., for an Order authorizing the sale and conveyance of a certain parcel of land in San Mateo County pursuant to Public Utilities Code Section 851.	Ratesetting	Ratesetting	NO
A03-05-039 ALAN AND GEN SANDERSON, dba LINDAN HOT AIR SERVICE CENTER, BOB ALLEN, dba CALISTOGA BALLOONS, BOB BARBARICK, dba BALLOONS ABOVE THE VALLEY, BOB SCHAIBEL, dba PROFESSOR MULDOONS HOT AIR BALLOON, CAROL ANN AND NIELSEN ROGERS, dba NAPA VALLEY ALOFT, INC., CLOTAIRE AND SUSAN CASTANIER, dba BALLOON ABOVE THE DESERT, DON SURPLUS, dba NAPA VALLEY BALLOONS, ED STEELE, dba SHASTA VALLEY BALLOONS, ELISE OSNER, dba SYRNIX BALLOON, ERICK AND SYLVIE MOORE, dba GREAT AMERICAN BALLOON COMPANY, JEANNE ANSON AND TOM SHARPEE, dba AEROSTATION CONSULTING, JOYCE BOWEN, dba BONAVENTURA BALLOON COMPANY, MARK BOULET, dba BALLOONS OVER LAKE TAHOE, MIKE KIJAK, dba UP AND AWAY BALLOONING, INC., PROFESSIONAL BALLOON PILOTS ASSOCIATION OF NAPA COUNTY, INC., RUSTY AND CHERISE MANNING, dba A GRAPE ESCAPE, TERRY BULMAN, dba NAPA VALLEY DRIFTERS, TIEMO AND CONNI VON ZWECK., dba A SKYSURFER BALLOON COMPANY, W. SCOTT VAN DER HORST, dba SONOMA THUNDER, INC., for Ex Parte Approval of an Interim Alternative Plan for Protection of the Public pursuant to General Order 120-C, Sections 3(E) and 6.	Ratesetting	Ratesetting	YES