

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3075
Administrative Law Judge Division
November 8, 2001

R E S O L U T I O N

RESOLUTION ALJ 176-3075. 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.

ALJ/hkr

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 November 8, 2001, the following Commissioners voting favorably thereon:

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN
Executive Director

LORETTA M. LYNCH
President

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN
Commissioners

Commissioner Henry M. Duque, being necessarily absent, did not participate.

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3075 (11/08/01)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-10-020 NORTH GUALALA WATER COMPANY, for Authority to Implement a Water Rate Surcharge to Recover Costs Associated with the Extraordinary Events Memorandum Account (Source of Supply Study)	Ratesetting	Ratesetting	NO
A01-10-021 CITY OF SAN JOSE, for Rehearing of Resolution No. W-4287	*	*	*
A01-10-022 8X8, INC., for a Certificate of Public Convenience and Necessity to Provide Facilities-Based InterLATA and IntraLATA Toll Authority and Competitive Local Exchange Services as a Reseller	Ratesetting	Ratesetting	NO
A01-10-023 COUNTY OF SAN BERNARDINO, for an Order authorizing the construction of a public crossing at separated grade across a proposed privately owned spur track to be operated over by the Union Pacific Railroad within the County of San Bernardino, C.P.U.C. Crossing No.1B-528.6A, D.O.T. No. 921-147-T	Ratesetting	Ratesetting	NO
A01-10-025 ECI COMMUNICATIONS/INTEGRATED TELESER., dba ITS NETWORK SERVICES, INTEGRATED TELESERVICES, INC., Joint; under Public Utilities Code Section 851 for Approval of the Acquisition of the Interexchange and Local Resale Telecommunications Operating Authorities and Other Assets	Ratesetting	Ratesetting	NO
A01-10-026 EMERITUS COMMUNICATIONS, INC., EXCEL TELECOMMUNICATIONS, INC., LONG DISTANCE WHOLESALE CLUB, INC., TELEGLOBE HOLDINGS (U.S.) CORPORATION, VARTEC TELECOM HOLDING COMPANY, VARTEC TELECOM INC., for Authority for Transfers of Control	Ratesetting	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 176-3075 (11/08/01)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-10-027 CITY OF SAN MARCOS, for an order authorizing construction to contract a Class I Bikeway within the North County Transit District (NCTD) right-of-way in the City of San Marcos, the City of Escondido in the County of San Diego, referred to as the ESCONDIDO-OCEANSIDE BIKEWAY PROJECT (PHASE 1A)	Ratesetting	Ratesetting	NO
A01-10-028 SAN GABRIEL VALLEY WATER COMPANY, (U 337-W), for Authority to Increase Rates Charged for Water Service in its Los Angeles County Division revenues by \$9,526,800 or 30.4% in 2002, \$7,276,100 or 17.8% in 2003, \$2,668,600 or 5.5% in 2004, and \$2,668,500 or 5.2% in 2005 (N.01-10-017)	Ratesetting	Ratesetting	YES
A01-10-029 COUNTY OF SACRAMENTO, for an order authorizing the Construction of the Elkhorn Boulevard Overhead Widening Project over Union Pacific Railroad (UPRR) and Roseville Road in the County of Sacramento	Ratesetting	Ratesetting	NO
A01-10-030 CALIFORNIA POWER EXCHANGE CORPORATION, PACIFIC GAS AND ELECTRIC COMPANY, PX RESTRUCTURING TRUST, SAN DIEGO GAS & ELECTRIC COMPANY, SOUTHERN CALIFORNIA EDISON COMPANY, for an Ex Parte Order Approving the Wind-down and Dissolution of the PX Restructuring Trust	Quasi-legislative	Quasi-legislative	NO
A01-10-031 SACRAMENTO REGIONAL TRANSIT DISTRICT, for an order authorizing it to construct, maintain and operate a light rail passenger system on a structure over 19th Street, Union Pacific Railroad mainline, 20th Street, RT Spur Track, 21st Street and 22nd Street in the City of Sacramento, State of California	Ratesetting	Ratesetting	NO
A01-10-038 ADIR INTERNATIONAL EXPORT LTD., dba LA CURACAO, 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 176-3075 (11/08/01)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-10-042 LIGHTDIAL CORP., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provision of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A01-10-043 TDI 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
A01-10-044 CITY OF FONTANA, to install pre-signals and interconnect steel sleeving under and at the tracks of the Southern California Regional Rail Authority/Burlington Northern and Santa Fe Railway Company in the City of Fontana	Ratesetting	Ratesetting	NO
A01-11-001 FRANZ, INC., dba TELELIGHT INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO