

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3081
Administrative Law Judge Division
February 7, 2002

R E S O L U T I O N

RESOLUTION ALJ 176-3081. 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 February 7, 2002, 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 176-3081 (2/7/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-01-023 MCGRAW COMMUNICATIONS, INC., for a Certificate of Public Convenience and Necessity to Provide Limited Facilities-Based and Resold Local Exchange and Limited Facilities-Based Interexchange Service in California	Ratesetting	Ratesetting	NO
A02-01-026 CITY OF MANTECA, PACIFIC GAS AND ELECTRIC COMPANY, (U 39-E) and the City of Manteca, for an Order under Section 851 of the California Public Utilities Code to Sell and Convey Streetlight Facilities	Ratesetting	Ratesetting	NO
A02-01-027 VCOM SOLUTIONS, INC., (U-6601-C), for a Certificate of Public Convenience and Necessity to Provide Resold Local Exchange Services within California	Ratesetting	Ratesetting	NO
A02-01-028 WINSTAR COMMUNICATIONS, LLC, WINSTAR WIRELESS, INC. (U 5531-C), Emergency Joint, for Expedited Ex Parte Approval of the Assignment of Assets and Authorization to Provide Telecommunications Service	Ratesetting	Ratesetting	NO
A02-01-030 WESTON TELECOMMUNICATIONS, LLC, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A02-01-031 SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, for an order approving safety appliances to be used at the at-grade crossing of Sunol Street (82D-4.1) and Auzerais Avenue (82D-4.2) 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
A02-01-032 NUI TELECOM, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A02-01-033 CAT COMMUNICATIONS INTERNATIONAL, INC, for a Certificate of Public Convenience and Necessity to Offer Local Exchange Services	Quasi- legislative	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3081 (2/7/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-01-034 X2 COMM, INC., dba DIRECT CONNECT COMMUNICATIONS, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A02-01-035 SOUTHERN CALIFORNIA EDISON COMPANY, (U 338-E), for an Order Approving Proposed Qualifying Facility Contract Amendments, Agreements and Certain Amendments thereof Executed after July 31, 2001; and Authorizing [Edison's] Recovery of Payments under the Proposed Contract Agreements and Amendments	Ratesetting	Ratesetting	YES
A02-01-037 ROSEVILLE TELEPHONE COMPANY, dba SUREWEST BROADBAND, WILLIAMS COMMUNICATIONS, LLC, for authority to transfer interests in utility property, pursuant to the Provisions of Section 851 Public Utilities Code	Ratesetting	Ratesetting	NO
A02-01-038 ALAMEDA CORRIDOR - EAST CONSTRUCTION AUTHORITY (ACE), for an order authorizing elimination of an existing at-grade crossing through construction of a grade separated crossing (roadway underpass) at Nogales Street, under Union Pacific Railroad Company's adjacent Alhambra Subdivision main line, in the City of Industry, County of Los Angeles	Ratesetting	Ratesetting	NO
A02-02-001 DEL ORO WATER CO., INC. (U 61-W), for a Certificate of Public Convenience and Necessity to install a Transmission Main (and associated facilities) to transport water from Lake Oroville in Butte County, California, to customers for water service in its Lime Saddle, Paradise Pines and Maglia Districts in order to provide a long term regional solution to the needs of such customers; for authority to incur indebtedness in the approximate amount of \$7,500,000 for such capital expenditures; and for authority to recover all present and future costs in connection with such improvements by appropriate increases in the respective water rates of such customers	Ratesetting	Ratesetting	YES

**PRELIMINARY DETERMINATION
SCHEDULE**

Resolution ALJ 176-3081 (2/7/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-02-002 CATALINA CHANNEL EXPRESS, INC., for Authority to increase the baseline rate for its Zone of Rate Freedom authority to the level of its current rates and to establish a new Zone of Rate Freedom for its vessel common carrier service	Ratesetting	Ratesetting	NO