

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3092
Administrative Law Judge Division
August 8, 2002

R E S O L U T I O N

RESOLUTION ALJ 176-3092. 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 August 8, 2002, the following Commissioners voting favorably thereon:

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN
Executive Director

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
MICHAEL R. PEEVEY
Commissioners

Commissioner Geoffrey F. Brown, being necessarily absent, did not participate.

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3092 (8/8/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-06-055 LOCAL EXCHANGE TECHNOLOGIES, LLC, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A02-06-056 ALAMEDA CORRIDOR - EAST CONSTRUCTION AUTHORITY (ACE), for an order authorizing the modification of a grade separated crossing (roadway overpass) at Humane Way, over the Union Pacific Railroad Company's (UPRR) existing Alhambra Subdivision main line through an addition of a storage track crossing under the Humane Way Bridge, as part of the Temple Avenue Track Diversion Project eliminating two at grade crossings, in the City of Pomona, County of Los Angeles.	Ratesetting	Ratesetting	NO
A02-07-013 PACIFICORP (U 901-E), for Approval of Post-2002 Low Income Energy Efficiency Program and CARE Program Funding.	Ratesetting	Ratesetting	YES
A02-07-016 SIERRA PACIFIC POWER COMPANY, for an Order approving its Low-Income Public Purpose Program Plans and Budget.	Ratesetting	Ratesetting	YES
A02-07-017 SOUTHERN CALIFORNIA WATER COMPANY, Regarding Low Income Assistance Programs for its Bear Valley Electric Service Customers for Program Year 2003.	Ratesetting	Ratesetting	YES
A02-07-018 AVISTA CORPORATION, dba AVISTA UTILITIES, regarding its 2003 Program Year Plan and Budgets for C.A.R.E and L.I.E.E.	Ratesetting	Ratesetting	YES
A02-07-019 ANTONE SYLVESTER TUG SERVICE, INC., PACIFIC MARITIME FREIGHT, INC., SAN DIEGO TOWING AND MARINE SERVICES, INC., Antone Sylvester Tug Service, Inc., for authorization to sell and transfer Common Carrier by Vessel operating authority and property; and of Pacific Maritime Freight, Inc. to purchase and acquire operating authority; and of San Diego Towing and Marine Services, Inc. to purchase and acquire, and to encumber, public utility property.	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3092 (8/8/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-07-021 SOUTHERN CALIFORNIA WATER COMPANY, for an Order pursuant to Public Utilities Code Section 851 approving a Settlement Agreement that will convey water rights in the Culver City Customer Service Area.	Ratesetting	Ratesetting	NO
A02-07-022 SAN DIEGO GAS & ELECTRIC COMPANY, for a Certificate of Public Convenience and Necessity for the Miguel – Mission 230 kV #2 Project.	Ratesetting	Ratesetting	YES
A02-07-023 TRICOM USA, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A02-07-024 DAVIS AIRPORTER, LLC, MITTOW, DANIEL O. AND JANE SCHAFER MITTOW, dba DAVIS AIRPORTER, to Transfer the existing Passenger Stage Corporation Certificate No. 9708 and Zone of Rate Freedom authorization from Daniel O. Mittow and Jane Schaffer Mittow, dba Davis Airporter to Davis Airporter, LLC.	Ratesetting	Ratesetting	NO
A02-07-025 BAKMAN WATER COMPANY, for Authority (1) to remove the proceeds of Water Contamination lawsuits from Contributions-in-Aid-of-Construction; (2) to increase Rate Base; and (3) to Recover Increased Revenue Requirements in Rates.	Ratesetting	Ratesetting	NO
A02-07-026 FONES4ALL CORP., for a Certificate of Public Convenience and Necessity to Provide Competitive Local Exchange Services on a Limited Facilities Basis in the State of California.	Ratesetting	Ratesetting	NO
A02-07-027 MOHAMMAD SHAHEIB MOJADDADI, dba UNITED EXPRESS AIRPORT SHUTTLE, for Authority to Operate as a Passenger Stage Operations between points in the Counties of Alameda, Santa Clara and San Mateo, on the one hand, and the Oakland, San Francisco and San Jose International Airports, on the other hand.	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3092 (8/8/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-07-028 SAN BERNARDINO ASSOCIATED GOVERNMENTS, for an Order Authorizing construction of a crossing at separated grades between State Street/University Parkway and the tracks of the Burlington Northern Santa Fe Railway Company, sometimes referred to as the State Street/University Parkway Overhead [PUC Crossing No. 2-76.6].	Ratesetting	Ratesetting	NO
A02-07-029 VIZABILITY 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
A02-07-031 SOUTHERN CALIFORNIA EDISON COMPANY, (U 338-E) for Authority to Lease Antenna Equipment Locations to Pacific Bell Wireless, LLC, dba Cingular Wireless.	Ratesetting	Ratesetting	NO
A02-07-032 INNOSYS COMPUTING, INC., which will do business in California as CallSave Telecom, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A02-07-033 PACIFIC GAS AND ELECTRIC COMPANY, for an Order Authorizing Pacific Gas and Electric Company (U 39-M) to sell and convey to Signature Properties, Inc., a certain parcel of land in Marin County pursuant to Public Utilities Code Section 851.	Ratesetting	Ratesetting	NO
A02-07-034 SAN DIEGO GAS & ELECTRIC COMPANY, (U 902-E), for Approval of Power Purchase Agreement.	Ratesetting	Ratesetting	NO
A02-07-035 CITY OF LIVERMORE, for an Order authorizing construction and reconstruction of a crossing at separated grades between Greenville Road and the tracks of the Union Pacific Railroad at Railroad Milepost 52.06 in the City of Livermore (PUC No. 4-52.0).	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3092 (8/8/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-07-036 ADVANCED TELCOM, INC., dba ADVANCED TELCOM GROUP, AKA DELAWARE ADVA, GE BUSINESS PRODUCTIVITY SOLUTIONS, INC., Joint, for Expedited Approval of (i) the Transfer of Certain Assets and Customers of Advanced to GE Business; (ii) the Transfer of the Existing Telecommunications Authority of Advanced to GE Business; and (iii) the Discontinuance of Telecommunications Service by Advanced in the State of California.	Ratesetting	Ratesetting	NO
A02-07-037 GRACE A. HUGHES, President, Marin Airporter, PSC No. 990, requesting Authority to obtain a new Zone of Rate Freedom [ZORF] in its Local Tariff No. CA P.U.C. No. 3 containing rates and fares of this common carrier for the transportation of passengers and their baggage and the performance of specified services related thereto, as authorized by Section 452.2 of the Public Utilities Code; and, for Authority to depart from the terms of the provisions of Section 491 of said Code when accomplishing such publication.	Ratesetting	Ratesetting	NO
A02-07-041 NEVADA TELEPHONE, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A02-07-043 C-TELCO, LLC, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A02-07-046 EPHONE 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

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3092 (8/8/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-07-047 PHUONG TRANSPORTATION, INC., for Authority to operate as a passenger stage corporation between points in Pomona, Westminster, San Gabriel, San Jose and Oakland, California; and to establish a Zone of Rate Freedom.	Ratesetting	Ratesetting	NO
A02-07-048 PAKZADIAN, MOHAMAD B., dba AIRWAY ONE-AIRPORT SHUTTLE, for a Passenger Stage Certificate consistent with Public Utilities Code Sections 226 and 1031 to conduct on-call airport shuttle service between points in Orange County, on the one hand, and the John Wayne Airport (SNA), on the other hand; and for a Zone of Rate Freedom pursuant to Public Utilities Code Section 454.2.	Ratesetting	Ratesetting	NO
A02-07-049 BAYPORTER EXPRESS, INC., (PSC #1442), to Establish a Zone of Rate Freedom from its current tariff rates pursuant to the provisions of Section 454.2 of the Public Utilities Code.	Ratesetting	Ratesetting	NO