

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Resolution ALJ 176-3118  
Administrative Law Judge Division  
September 4, 2003

**R E S O L U T I O N**

RESOLUTION ALJ 176-3118. 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.)

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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/hl2

### **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/hl2

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 September 4, 2003, the following Commissioners voting favorably thereon:

/s/ WILLIAM AHERN

WILLIAM AHERN  
Executive Director

MICHAEL R. PEEVEY  
President

CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners

## PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3118 (9/4/03)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
<b>A03-08-009</b> CALIFORNIA-AMERICAN WATER COMPANY, for authority to establish a memorandum account to track costs associated with Federal or State Legislation for the purpose of increasing security measures or preventing acts of terrorism.	Ratesetting	Ratesetting	NO
<b>A03-08-014</b> LENNAR CORPORATION, LNR NWHL HOLDINGS, INC., LNR PROPERTY CORPORATION, NWHL ACQUISITION, L.P., NWHL GP LLC, NWHL INVESTMENT LLC, THE NEWHALL LAND AND FARMING COMPANY, VALENCIA WATER COMPANY, for authorization for Lennar Corporation, LNR Property Corporation, LNR NWHL Holdings, Inc., NWHL Investment LLC, and NWHL GP LLC, to acquire control over Valencia Water Company.	Ratesetting	Ratesetting	NO
<b>A03-08-015</b> SYMTELCO, LLC, a Georgia Limited Liability Company, for a Certificate of Public Convenience and Necessity to provide Facilities-Based and Resale Competitive Local Exchange Telecommunications Services and intrastate Interexchange Telecommunications Services within the State of California.	Ratesetting	Ratesetting	NO
<b>A03-08-016</b> WORLDCOM, INC., pursuant to Public Utilities Code Section 853(b) for exemption from the requirements of Sections 851 and 854 of the Public Utilities Code with respect to its bankruptcy reorganization.	Ratesetting	Ratesetting	NO
<b>A03-08-020</b> ADIR INTERNATIONAL EXPORT LTD., dba LA CURACAO, for a Certificate of Public Convenience and Necessity to provide limited facilities-based and resold competitive local exchange and interexchange service in the State of California.	Ratesetting	Ratesetting	NO
<b>A03-08-021</b> CITY OF SACRAMENTO, for authority to convert a private at-grade railroad crossing to a public at-grade railroad crossing for the Freeport Shores Multi-Purpose Trail Project, located in the City and County of Sacramento, State of California.	Ratesetting	Ratesetting	NO

## PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3118 (9/4/03)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
<b>A03-08-022</b> TRANSWORLD NETWORK, CORP., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
<b>A03-08-023</b> HAPPY SUNSHINE BUS, LLC, KOEHLER, BRETT R., WILES, SARAH E., for authorization to operate as an on-call passenger stage corporation for children within the areas of Los Angeles County between locations as requested by the child's parent(s) or guardian(s), and to establish a zone of rate freedom.	Adjudicatory	Ratesetting	NO
<b>A03-08-025</b> LSSI CORP., WARBURG PINCUS PRIVATE EQUITY VIII, L.P., for expedited approval of the transfer of control of LSSi Corp. to Warburg Pincus Private Equity VIII, L.P. pursuant to Public Utilities Code Sections 851-854.	Ratesetting	Ratesetting	NO
<b>A03-08-026</b> GRANITE TELECOMMUNICATIONS, LLC, for a certificate of public convenience and necessity to offer local exchange and interexchange service.	Ratesetting	Ratesetting	NO
<b>A03-08-027</b> AA DIVERSIFIED SYSTEMS, INC., dba PALM SPRINGS, ONTARIO, LAX AIRLINK, for authorization to operate as a passenger stage corporation between the Palm Springs Airport, and the Ontario Airport and the Los Angeles International Airport, serving the Counties of Riverside, San Bernardino and Los Angeles.	Ratesetting	Ratesetting	NO
<b>A03-08-028</b> SIERRA PACIFIC POWER COMPANY, for exemption from the requirements of California Public Utilities Code Section 454.5.	Ratesetting	Ratesetting	NO
<b>A03-08-029</b> NATIONAL COMTEL NETWORK, INC., (U 5341-C), for a Certificate of Public Convenience and Necessity to provide (i) resold and limited facilities-based competitive local exchange service throughout the service territories of SBC California, Inc., Verizon California, Inc., Roseville Telephone Company, and Citizens Telecommunications Company of California, Inc.; and (2) facilities-based interexchange service statewide.	Ratesetting	Ratesetting	NO

## PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3118 (9/4/03)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
<b>A03-09-002</b> LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, for an order authorizing the construction of a two-track grade separated crossing for the Eastside Corridor Light Rail Transit Line above and across Santa Fe Avenue and above and across Meyers Street on the existing First Street Bridge to be widened in the City of Los Angeles.	Ratesetting	Ratesetting	NO
<b>A03-09-003</b> COOPERATIVE 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