

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3141
Administrative Law Judge Division
October 28, 2004

R E S O L U T I O N

RESOLUTION ALJ 176-3141. 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/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 October 28, 2004, the following Commissioners voting favorably thereon:

/s/ STEVE LARSON

STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3141 (10/28/04)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A04-10-009 SAN DIEGO GAS & ELECTRIC COMPANY, for Public Utilities Code Section 851 approval to lease a portion of real property to Ramco for the construction of a 46 MW combustion turbine.	Ratesetting	Ratesetting	NO
A04-10-011 CITY OF SAN JOSE, for order authorizing the relocation of existing at-grade crossing of Old Autumn Street at California Public Utilities Commission Crossing No. 001DA-47.15-CX from approximate Mile Post 17.39 of the Union Pacific Rail Road Company to a location 480 ft. northeast of its present site.	Ratesetting	Ratesetting	NO
A04-10-012 COMMUNICATION IMPACT, INC., for a certificate of public convenience and necessity to provide interLATA and intraLATA interexchange services and competitive local exchange services as a reseller.	Ratesetting	Ratesetting	NO
A04-10-013 HISPANIC 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
A04-10-014 VOLUME TELECOM, LLC, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A04-10-015 WTI COMMUNICATIONS, INC., for a Certificate of Public Convenience and Necessity to operate as a Provider of resold local exchange telecommunication services within the State of California.	Ratesetting	Ratesetting	NO
A04-10-017 UNION PIPELINE COMPANY (CALIFORNIA), for authorization to remove Line #352 from public utility service and to reflect such removal by deleting certain receipt and delivery points from its tariff.	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3141 (10/28/04)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A04-10-018 DEL ORO WATER COMPANY, INC. (U 61-W), for authority to borrow approximately \$500,000 and to issue evidence of indebtedness in connection therewith in order to make certain capital improvements and contract engineering studies and for authority to recover all such costs and advances by increases in the respective water rates of customers in its Pine Flat District and Pine Mountain District in the vicinity of Pine Flat, Tulare County, California.	Ratesetting	Ratesetting	NO
A04-10-019 HANY N. GERGIS, dba 24/7 AIRPORT SERVICE, for authority to operate as a Passenger Stage Corporation between points within the Counties of San Bernardino, Riverside, Orange and Los Angeles, on the one hand, and the Ontario Airport, the John Wayne Airport and the Long Beach Airport, on the other hand.	Ratesetting	Ratesetting	NO
A04-10-021 NATIONWIDE PROFESSIONAL TELESERVICES, LLC, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A04-10-022 GREGORY LOUIS, dba FAMILY TO FAMILY TRANSPORTATION SERVICE, for authority to operate as an on-call Passenger Stage Corporation between points in the Counties of Contra Costa, Alameda, San Francisco, Marin, Solano and Sacramento, on the one hand, and on weekdays, to the Kirkland, Flynn and Woods Maintenance Division of the San Francisco Municipal Railway located in the City of San Francisco, and on weekends, to San Quentin State Prison, California State Prison Solano and Folsom State Prison; and to establish a Zone of Rate Freedom.	Ratesetting	Ratesetting	NO
A04-10-026 BRIGHT HOUSE NETWORKS INFORMATION SERVICES (CALIFORNIA), LLC, for a certificate of public convenience and necessity to provide limited facilities-based and resale competitive local interLATA and interLATA telecommunications service.	Ratesetting	Ratesetting	NO

**PRELIMINARY DETERMINATION
SCHEDULE**

Resolution ALJ 176-3141 (10/28/04)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A04-10-028 CITY OF DINUBA, to construct a new at-grade crossing at Ventura Street across the tracks of San Joaquin Valley Railroad Company and the removal of the at-grade crossing at Mono Street in the City of Dinuba, County of Tulare, State of California.	Ratesetting	Ratesetting	NO
A04-10-029 WESTERN TELEPHONE, INC., for a Certificate of Public Convenience and Necessity to Offer Resold Local Exchange Telephone Service.	Ratesetting	Ratesetting	NO