

PRACTITIONERS' GUIDE TO: ***Determinations of Category and Need for Hearing***

What is this?

By statute, the Commission must categorize every proceeding as either “adjudicatory,” “ratesetting,” or “quasi-legislative,” and determine whether it will require an evidentiary hearing. (Pub. Util. Code § 1701.1 et seq.)

What is the significance of the determination of category?

The category of a proceeding determines the applicable ex parte rules (Rules of Practice and Procedure, Article 8):

- *Ex parte communications are prohibited in adjudicatory proceedings.*
- *Ex parte communications are permitted in ratesetting proceedings, subject to restrictions and reporting requirements.*
- *Ex parte communications are permitted in quasi-legislative proceedings without restrictions or reporting requirements.*

What is the significance of the determination of need for hearing?

There are several different requirements for proceedings in which hearings are conducted than for proceedings which do not involve hearings, for example:

- *The time for public review and comment on a decision may be waived or reduced where public necessity requires it, if no hearings were conducted in the proceeding. (Rule 14.6(c)(9))*
- *A prehearing conference will be conducted and a scoping memo will issue in proceedings where there is a preliminary determination that hearings will be needed (or a party requests hearings); they are discretionary otherwise. (Rules 7.2 and 7.3)*

How are determinations made?

The procedure for determining the category and need for hearing depends on the type of proceeding, as summarized in the following table (Rule 7.1):

	CATEGORY		NEED FOR HEARING	
	preliminary	final	preliminary	final
Application	Res. ALJ-176 *	Scoping Memo	Res. ALJ-176 *	Scoping Memo
Complaint	n/a	Instructions to Answer	Instructions to Answer	Scoping Memo
Investigation	n/a	Order Instituting Investigation	Order Instituting Investigation	Scoping Memo
Rulemaking	Order Instituting Rulemaking	Scoping Memo	Order Instituting Rulemaking	Scoping Memo

* By Resolution ALJ-176, at each Commission business meeting, the Commission preliminarily determines the category and need for hearing for each application filed on or after the prior business meeting. (Rule 7.1(a))

Can I participate in the determinations?

Parties may propose or comment on all determinations of category and need for hearing (except that respondents do not have an opportunity to propose or comment on the determination of category in complaints and investigations):

- *In applications (Rule 2.1(c) and any protests or responses thereto (Rule 2.6(d));*
- *In complaints (Rule 4.2(a)) and any answers thereto (Rule 4.4, with respect to need for hearing only);*
- *In responses to Orders Instituting Investigations (Rule 5.2, with respect to need for hearing only); and*
- *In comments in response to Orders Instituting Rulemakings (Rule 6.2).*

The assigned Commissioner will consider the comments in making the final determinations in the Scoping Memo. (Rule 7.3)

Can I appeal a final determination?

Parties may appeal final determinations of category to the Commission pursuant to Rule 7.6. There is no appeal to the Commission regarding final determinations of need for hearing.