PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3158
Administrative Law Judge Division
September 8, 2005

R E S O L U T I O N

RESOLUTION ALJ 176-3158. 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.
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> "'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).
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> "'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.

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.

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 _____, the following Commissioners voting favorably thereon:

_____

STEVE LARSON
Executive Director

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3158 (9/8/05)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A05-08-026 INTERMETRO 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
A05-08-027 INTERMETRO COMMUNICATIONS, INC., for a Certificate of Public Convenience and Necessity to provide Facilities-Based and Resold Local Exchange Services within the local service territories of Pacific Bell Telephone Company, Verizon California, Inc., SureWest Telephone and Citizens Telecommunications Company of California, Inc.	Ratesetting	Ratesetting	NO
A05-08-028 AMERICANS' SHUTTLE 4 LESS, L.L.C., for Passenger Stage authorization pursuant to Public Utilities Code Sections 226 and 1031 to conduct an on-call shuttle service between various communities located in the County of Los Angeles, on the one hand, and the Los Angeles International Airport (LAX), the Bob Hope Airport (BUR), the Ontario Airport (ONT), the Long Beach Airport (LGB), the Harbors and the AMTRAC Terminal, on the other hand; and to establish a Zone of Rate Freedom pursuant to P.U. Code Section 454.2.	Ratesetting	Ratesetting	NO
A05-08-030 LODI GAS STORAGE, L.L.C. (U 912 G), for approval of Long-Term Financing pursuant to Public Utilities Code Section 851.	Ratesetting	Ratesetting	NO
A05-08-031 LODI GAS STORAGE, L.L.C., WESTERN HUB PROPERTIES, L.L.C., WHP ACQUISITION COMPANY II, L.L.C., for expedited Ex Parte authorization to transfer Western Hub Properties' control of Lodi Gas Storage, L.L.C., to WHP Acquisition Company II, L.L.C. through the sale of Western Hub Properties' 50% interest in Lodi Holdings, L.L.C. to WHP Acquisition Company II, L.L.C. pursuant to Public Utilities Code Section 854(a).	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3158 (9/8/05)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A05-08-033 PACIFIC GAS AND ELECTRIC COMPANY (U 39 E), PENINSULA CORRIDOR JOINT POWERS BOARD, for an Expedited Order (1) confirming that a Proposed Agreement for Encroachment on a certain easement in San Mateo County is exempt from Commission Approval under Public Utilities Code Section 853(b), or, in the alternative, (2) confirming that the Agreement is exempt from Commission approval under General Order 69-C, or (3) authorizing PG&E under Public Utilities Code Section 851 to enter into the Proposed Agreement.	Ratesetting	Ratesetting	NO
A05-08-034 SUBURBAN WATER SYSTEMS (U 339 W), for authority to increase rates charged for Water Service by $5,633,937 or 12.1% in fiscal 2006 - 2007; by $1,640,549 or 3.1% in fiscal 2007 - 2008; and by $1,364,551 or 2.5% in fiscal 2008 - 2009. (TEND1105)	Ratesetting	Ratesetting	YES
A05-08-035 SAN CARLOS TELECOM, INC. (U 5443 C), WAVE EXCHANGE LLC, for Approval of Transfer of Control of San Carlos Telecom, Inc. (U 5443 C) to Wave eXchange LLC; and Request for Expedited Ex Parte Treatment.	Ratesetting	Ratesetting	NO
A05-08-036 HARBOR BAY MARITIME, INC. (VCC-69), for rate relief and a general passenger fare increase on its Vessel Common Carrier Service on San Francisco Bay between the Harbor Bay Ferry Terminal in Alameda and authorized points in San Francisco.	Ratesetting	Ratesetting	NO
A05-08-037 X-5 SOLUTIONS, INC., for a Certificate of Public Convenience and Necessity to provide Facilities-Based and Resold Local Exchange and Interexchange Service within the State of California.	Ratesetting	Ratesetting	NO
A05-08-038 ALISAL WATER CORPORATION, for authority to issue Notes in the principal amount of $8,500,000.	Ratesetting	Ratesetting	NO
A05-08-039 MICHAEL TRAN, THIEN NGUYEN AND TONY TRAN, A GENERAL PARTNERSHIP, dba CALI-XEDO, for authority to operate as a point-to-point Passenger Stage Company between points in the Counties of Alameda, Santa Clara and Los Angeles; and to establish a Zone of Rate Freedom.	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3158 (9/8/05)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A05-08-040 SOUTHERN CALIFORNIA EDISON COMPANY, for authority to lease available land on the Center-Mesa Right of Way to RHC Communities, LLC.	Ratesetting	Ratesetting	NO
A05-09-001 PACIFIC GAS AND ELECTRIC COMPANY (U 39 E), to recover additional costs related to the 1997 New Year's Flood and 1998 February Storms recorded in the Catastrophic Event Memorandum Account (CEMA) pursuant to Ordering Paragraph 1 of Decision 04-09-020.	Ratesetting	Ratesetting	YES
A05-09-002 CITY AND COUNTY OF SAN FRANCISCO, acting by and through the San Francisco Port Commission, for an order authorizing construction of at-grade crossings at the intersection of Amador, Cargo Way and Illinois Street, Illinois Street south of Marin Street and the reconstruction of an existing at-grade crossing at the intersection of Illinois Street and Marin Street for the Illinois Street Intermodal Bridge Project in the City and County of San Francisco.	Ratesetting	Ratesetting	NO
A05-09-003 CITY OF LOMA LINDA, pursuant to General Order 88-B for authority to widen the existing Mountain View Avenue Overpass from three lanes to four lanes in the City of Loma Linda, California, CPUC Crossing No.001B-543.60-A, D.O.T. No. 747172Y.	Ratesetting	Ratesetting	NO