

Decision **DRAFT ALTERNATE DECISION OF COMMISSIONER CARL WOOD**  
**(Mailed 3/2 /2004)**

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

Application of Pacific Gas and Electric Company  
(U 39 M) for an Order Under PUC Section 851  
Approving the Leases and Licenses of Certain  
Public Utility Properties.

Application 03-05-012  
(Filed May 8, 2003)

**OPINION**

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**OPINION****1. Summary**

Pacific Gas and Electric Company (PG&E) seeks Commission approval pursuant to Pub. Util. Code § 851 of certain licenses and leases of PG&E property already in effect (the “agreements” or “transactions”). In total, PG&E seeks approval of 256 transactions. Most of these agreements were entered into several years ago. Each permits various uses of PG&E property by third parties. The transactions did not have prior approval of the Commission pursuant to Pub. Util. Code § 851. PG&E states that it discovered many of these agreements in various branch office files while conducting an extensive search in the PG&E bankruptcy proceeding. Because the 256 transactions may implicate environmental review or may not meet the criteria for General Order (GO) 69-C transactions, PG&E states that it decided it would be prudent to seek formal approval of the transactions under Section 851. In addition, PG&E asserts that Commission environmental review under the California Environmental Quality Act (CEQA) is unnecessary because the majority of the transactions fit within CEQA exemptions, nine received adequate local CEQA review, and six pre-date CEQA and are thus not subject to its requirements. This decision grants Section 851 approval for 255 of the transactions on a prospective basis. We note one of the transactions fits within recent Commission decisions finding agreements allowing floating boat docks as appropriate under GO 69-C. Therefore, our approval here is not required. We decline to impose a penalty for failure to obtain prior approval of the transactions. With respect to CEQA, we note that because all of the agreements are several years old, any activity which may have warranted our environmental review has long since occurred. The Office of Ratepayer Advocates (ORA) concluded that PG&E’s allocation of the

transactions' revenues to ratepayers and shareholders is appropriate. This proceeding is closed.

## **2. Factual and Procedural Background**

On June 1, 2000, PG&E filed Application (A.) 00-06-010 seeking Section 851 approval of 110 lease transactions. In the application, PG&E stated that it had not obtained Commission approval before entering into the leases – some of which were several years old – because the company in good faith believed that Section 851 approval was not required if the lease was for an adjunct use that did not affect the utility's use of the property. PG&E acknowledged that Commission decisions that recently had preceded its application prompted a change in the company's approach to Section 851 issues.

In A.00-06-010, PG&E stated that identifying the lease transactions required a significant amount of time and effort. PG&E owns almost 200,000 acres of land in 49 counties in California. PG&E states that it routinely receives requests from third parties to use utility property for various purposes. Until recent years, such requests were handled by PG&E land personnel located in the local offices responsible for the property in question. If granted, the documents evidencing the property grants would often be kept in the local offices, and local personnel would handle all communications regarding the transaction.

PG&E states that it has since instituted new policies requiring that all leases and licenses must be reviewed by the Law Department or the Corporate Real Estate Department in San Francisco to ensure compliance with Section 851. The new policies include weekly Section 851 meetings, presentations to the land agents on requirements of Section 851, and review and approval of all proposed encumbrances by PG&E's Land Department in San Francisco.

PG&E states that at the time it filed A.00-06-010, it believed that the central database maintained by its Land Department in San Francisco included records of all encumbrances of utility land, and that the leases and licenses for which approval was sought were limited to the 110 set forth in the application.

In addition to those 110 leases, PG&E in A.00-06-010 identified a number of other transactions that would require Section 851 approval later. These were leases or licenses for recreational use of PG&E property located on lands subject to Federal Energy Regulatory Commission (FERC) hydro-generation licenses. PG&E stated that it did not include these transactions in A.00-06-010 because it intended to include them in a later Section 851 application to be filed in connection with the utility's hydro-generation asset divestiture application. The hydro divestiture proceedings did not go forward. As indicated below, more than 70% of the transactions included in this application relate to lands subject to FERC licenses.

In A.00-06-010, PG&E was required to amend the application to provide specific information on each of the leases, and it was required to submit a brief addressing whether the leases in question should be deemed void and whether PG&E should be sanctioned for its failure to seek prior approval of the leases. PG&E filed the amendments and brief, and in this application it has filed six three-ring binders with copies of the 256 transactions for which approval is sought. A.00-06-010 remains pending, in part to consider a workshop report on utility license requirements now being developed by Commission staff.

### **3. Transactions Subject to This Proceeding**

On April 6, 2001, PG&E filed for bankruptcy. Under the Bankruptcy Code, PG&E was required to compile a list of all executory contracts, including leases and licenses of its property, and to decide whether to assume or reject each

contract. PG&E assigned a team of employees to locate and identify all its executory contracts. After more than a year of effort, the team compiled a 500-page list of these contracts. In order to compile the list, PG&E required all land agents in local offices to search for and identify any and all leases or licenses of property in their local areas.

PG&E states that while the great majority of leases and licenses were included in PG&E's central database, it became clear that others had been filed in local offices without being entered in the central database. As a result, PG&E identified additional transactions that should have been included in A.00-06-010. Accordingly, PG&E has filed this application, A.03-05-012, seeking approval of the recently identified transactions along with the previously identified leases and licenses involving hydro-generation lands.

The 256 transactions for which approval is sought are set forth in Exhibit A of this decision. Also included in Exhibit A are the exemptions to environmental assessment that PG&E asserts are applicable to most of the transactions. PG&E asserts that environmental review either has taken place or does not apply to the other transactions.

#### **4. Descriptions of the Transactions**

Of the transactions included in this application, more than 70% allow third parties to use hydro-generation land for recreational purposes. These are the transactions originally referenced in A.00-06-010. The remainder involve various other uses of PG&E property. PG&E has organized the 256 transactions into five broad categories and we will address them in that manner.

#### **4.1. Category 1 - Recreational Sites on Hydro-Generation Lands**

Category 1 includes leases and licenses of recreational sites on hydro-generation property. PG&E has entered into 186 agreements allowing recreational use of its FERC-licensed properties. These transactions include 131 Category 1a agreements involving individual recreational uses, primarily use of recreation sites, cottages and boating docks. For example, Transaction 34 is a 10-year lease to individuals for a cabin with a boat dock at Buck's Lake in Plumas County. Transaction 119 is a 10-year lease to individuals for a cottage at Philbrook Reservoir in Butte County. An additional 55 Category 1b agreements permit group recreational uses such as camping, boating, or hiking on PG&E property. Transactions 138 and 177 are leases for campgrounds used by the Boy Scouts and Girl Scouts, respectively. Transaction 136 is a lease to Bass Lake Enterprises for the operation of a marina on Bass Lake in Madera County. Transaction 179 is a license to Sigor Corporation to operate the Lake Haven Resort, which includes campsites, a store and boating facilities.

PG&E states that FERC strongly encourages the use of FERC-licensed lands for recreational purposes, citing 18 C.F.R. § 2.7 (2001) ("The [FERC] will evaluate the recreational resources of all projects under Federal license...and seek, within its authority, the ultimate development of these resources...").

#### **4.2. Category 2 – Telecommunications**

Category 2 involves licenses and leases with telecommunications companies. There are eight such agreements. For example, in Transaction 189, PG&E in 1983 leased property to Pacific Telephone and Telegraph Company "for the purpose of installing, maintaining, and using a microwave antenna tower together with microwave equipment and associated buildings...."

PG&E states it has also has entered into several transactions (unidentified number) allowing third parties to install telecommunications equipment on existing PG&E poles or in existing communication vaults. PG&E states that these transactions meet the Commission's current requirements for utility licenses under GO 69-C and thus are not included in this application. PG&E states that the Commission has held that such transactions are properly treated as licenses permissible under GO 69-C so long as the license is (1) for limited uses; (2) revocable either upon order of the Commission or upon the utility's determination that revocation is necessary in customers' interest, and (3) not interfering with the utility's operations, practices or service to customers. Prior Commission approval of such license agreements is not required. (*Application of Pacific Gas and Electric Company for Section 851 Approval of Agreements Allowing Access to Electric Distribution Facilities* (2002) D.02-12-018.)

Similarly, according to PG&E, revocable transactions involving minor, removable installations such as communications antennas, monopoles, and overhead or underground coaxial cable have been deemed by the Commission to be "limited uses" of utility property within the meaning of GO 69-C. (*Application of Pacific Gas and Electric Company for Approval of a Lease for AT&T Wireless Services of California, Inc.'s Use of Certain Pacific Gas and Electric Company Structures for Communication Antennas and Related Equipment* (2002) D.02-03-059, at 5.) Accordingly, PG&E states, licenses that permit telecommunications companies to use existing PG&E facilities and property to attach their equipment or to construct certain removable installations have not been included in this application.

#### **4.3. Category 3 - Vehicle Parking**

Category 3 involves licenses or leases that allow individuals to construct or maintain parking lots on PG&E property. Fifteen such leases or licenses are included in this application. PG&E states that the agreements generally allow only minor improvements, such as installation of pavement, gravel, gates or fences. For example, in Transaction 207, PG&E gives permission to the Valley Baptist Church to use PG&E property for a parking lot and to install gravel and gates.

PG&E states that a limited number of additional transactions that permit use of PG&E property for parking are not included in this application because they do not permit any construction. Instead, they merely allow individuals to park cars on existing PG&E lots. Because the transactions do not permit construction and are fully revocable, PG&E states that the transactions are permissible under recent Commission decisions involving GO 69-C and do not require Commission approval.

#### **4.4. Category 4 - Storage**

Category 4 involves licenses or leases that permit parties to use PG&E property for storage purposes. PG&E seeks approval of six such transactions. These leases and licenses permit limited improvements, such as fence construction or paving. The storage agreements do not allow the operation of self-storage businesses but rather permit the temporary storage of items such as equipment, vehicles, or containers. For example, PG&E in Transaction 214 has allowed the San Jose Conservation Corps to store vans and tool containers on PG&E property and to install fencing on the property.

In addition, PG&E states it has entered into a limited number of licenses (unidentified number) that simply permit third parties to store items on its

property without any associated construction activity. PG&E states that to the extent these licenses are fully revocable and comply with the other requirements of GO 69-C, they are not included in this application.

#### **4.5. Category 5 - Miscellaneous**

Category 5 involves transactions that PG&E terms a catch-all category for agreements that do not fall into any of the categories identified above. There are 41 transactions in this miscellaneous category, including the following:

- Licenses for the construction of barns, corrals and riding areas. (Transactions 216-217.)
- Licenses or leases for the operation of fish hatcheries on utility land. (Transactions 218-222.)
- Licenses or leases that permit the use and/or maintenance of infrastructure for public and private uses, such as roads, water or septic system pipelines, small electrical substations or fire stations. (Transactions 223-233.)
- Licenses and leases that permit mining operations on PG&E land. (Transactions 234-235.)
- A license granting permission for an existing encroachment on utility property. (Transaction 236.)
- Licenses for use of PG&E office space. (Transactions 237-238.)
- A license allowing plant nursery operations on utility land. (Transaction 239.)
- Licenses or leases for recreational uses of land other than hydro-generation lands. (Transactions 240-244.)
- Licenses or leases that permit the construction and maintenance of signs, such as advertising billboards, on PG&E property. (Transactions 245-252.)
- Licenses that permit the construction and maintenance of small accessory structures on PG&E land, such as fencing, stairways, weather equipment or a structure to house an emergency generator. (Transactions 253-256.)

#### **4.6. Transactions for Which Environmental Review Was Performed**

Within the five broad categories, PG&E states that environmental review under CEQA was performed for nine of the transactions. Copies of the local environmental review documents for each of the transactions were submitted with the Application as part of Exhibit B. (Transactions 180, 224, 225, 227, 231, 232, 234, 235, and 243.)

#### **4.7. Transactions That Pre-Date CEQA**

Within the five broad categories, PG&E states that six of the transactions were entered into before the enactment of CEQA in 1970. Accordingly, PG&E states that no environmental review is necessary because the transactions preceded the environmental review requirement. (Transactions 178, 218, 226, 229, 230, and 252.)

### **5. Ratemaking Treatment**

In the past, revenues from leases and licenses like the transactions in this application have been treated as other operating revenue and credited above-the-line to PG&E's ratepayers in the company's general rate cases. In the company's 2003 general rate case, PG&E has proposed continuing this ratemaking treatment for the lease and license revenues. With electric industry restructuring, however, jurisdiction over the company's electric transmission facilities with respect to rates and service has vested exclusively with FERC. PG&E anticipates that for FERC jurisdictional electric transmission property, revenues from miscellaneous leases in the future would be assigned to transmission and would be subject to applicable FERC accounting and ratemaking treatment. Lease and license revenues from the company's non-nuclear generation property would continue

to be credited to the Transition Cost Balancing Account until such time as the Commission identifies an appropriate replacement.

In its review of this application, ORA states that the allocation of revenues under the licenses and leases that PG&E claims are FERC-jurisdictional would, under FERC accounting rules, be split 50-50 between shareholders and ratepayers. ORA states that it does not intend to challenge this proposed revenue allocation. ORA states that the proposal to treat revenues from other leases and licenses as other operating revenue is dealt with as part of an incentive mechanism in PG&E's general rate case. Under these circumstances, ORA states that it does not take issue with PG&E's revenue proposals. ORA has not participated further in this proceeding.

## **6. Environmental Review**

The CEQA requires the Commission to consider the environmental consequences of its discretionary decisions, such as Section 851 approvals. (Pub. Res. Code § 21000, et seq.) Because most of the agreements submitted for approval as part of this application are several years old, any activity which would have required our timely environmental review has already occurred. Consequently, for practical purposes meaningful CEQA review at this time would have no effect because we are unable to conduct the review prior to any project or construction activity. Thus, it can be seen with certainty that approval of this application will not result in a significant impact on the environment.

## **7. Discussion**

### **7.1. Do the Leases and Licenses Serve the Public Interest?**

Section 851 requires a utility to obtain approval from the Commission before selling, leasing or encumbering utility property

that is “necessary or useful in the performance of its duties to the public....”

In addition to providing revenue that benefits ratepayers, the transactions serve the public interest in several ways. First, the Commission has consistently recognized that it is in the public interest to permit compatible uses of utility property. (*See*, D.02-01-058, *supra* (“The public interest is served when utility property is used for other productive purposes without interfering with the utility’s operation or affecting service to utility customers.”).); *In re Southern California Edison Co.* (1993) D.93-04-019 (same); *In re Southern California Edison Co.* (1994) D.94-06-017 (same); *In re Pacific Gas and Electric Company* (1992) D.92-07-007 (same).) The transactions at issue here maintain the use of the property for PG&E while making the property available for other productive uses.

Second, the licenses to various telecommunications companies allow those companies to improve the telecommunication infrastructure of the state. The Commission has held that it is in the public interest to use existing utility property for the siting of telecommunications equipment. (*See*, *In re Pacific Gas and Electric Company* (2002) D.02-12-026; *Investigation on the Commission’s Own Motion for Local Exchange Service* (1998) D.98-10-058, as modified by D.00-03-055 (regarding access to poles, ducts, conduits, and rights-of-way).)

Third, the transactions provide an indirect benefit to ratepayers because they shift burdens of property ownership from the company to the lessee or licensee. The transactions often shift the burden of maintaining the property, require the lessee or licensee to maintain insurance, and require the lessee or licensee to indemnify PG&E for any claims that arise from use of the property. By shifting the management burden, PG&E is able to avoid expenses usually associated with property ownership.

Fourth, many of the licenses provide valuable recreational opportunities to the public. One agreement permits the operation of a horse corral that provides riding opportunities to handicapped children. (Transaction 217.) There are also agreements with the Girl Scouts and Boy Scouts for use of utility property as campgrounds (Transactions 138 and 177). A license agreement with the East Bay Regional Park District permits the District to maintain a hiking trail on PG&E property. (Transaction 240.)

Finally, several of the transactions provide public services to the community. Two leases permit the use of PG&E property for fire stations. (Transactions 224 and 231.) Another agreement allows the operation of a public library in a PG&E building. (Transaction 237.) Another agreement permits the California Department of Fish & Game to operate a fish hatchery on utility property. (Transaction 218.)

Finally, the transactions included in this application do not impair PG&E's ability to serve its customers, and a review of the transactions in Attachment A (along with the supporting lease and license data contained in Exhibit B) makes it clear that the transactions are not adverse to the public interest. Indeed, most of the transactions either clearly benefit the public (children's camp sites, walking paths, boat docks, parking space, a fire station) or allow for benefits to existing uses (septic tank improvements, new or renovated recreation cottages).

A review of Exhibit B shows that, in all cases, the transactions reserve to PG&E the rights necessary for PG&E to fulfill its public utility functions. The numerous recreational use agreements expressly state that the licensee "shall not in any way interfere with PG&E's use of the premises for its public utility purposes." A significant number of the transaction documents expressly state that PG&E may revoke the transaction whenever it appears necessary or

desirable for PG&E to resume the use of the property to fulfill its public utility purposes.

In summary, PG&E has met its burden of showing that the transactions at issue serve the public interest.

## **7.2. Applicability of GO 69-C Requirements**

License agreements are generally governed by GO 69-C. The GO provides an exception to the § 851 requirement for prior Commission approval of an encumbrance of utility property. The GO provides that a utility may convey licenses, easements, permits or other limited uses of land to third parties without prior Commission approval. The GO establishes three key criteria for permitting a utility to grant minor interests in utility property. These are:

- (1) The interest granted must not interfere with the utility's operations, practices, and service to its customers;
- (2) The interest granted must be revocable either upon the order of the Commission or upon the utility's determination that revocation is desirable or necessary to serve its patrons or consumer; and
- (3) The interest granted must be for a "limited use" of utility property.<sup>1</sup>

In several instances throughout the application, PG&E briefly states that agreements for certain uses of its property have not been included for review and approval because PG&E considers them to properly fall under GO 69-C. We are unable to agree or disagree with the applicability of the GO based solely on brief statements and cursory characterization representing that any particular

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<sup>1</sup> See, e.g., *Pacific Gas and Electric Company* (2003) D.03-04-010; *Pacific Gas and Electric Company* (2003) D.03-01-030; *Pacific Gas and Electric Company* (2002) D.02-10-047; *Pacific Gas and Electric Company* (2002) D.02-12-018.

agreement in fact meets the GO's criteria. For purposes of this decision we simply note PG&E's view of the transactions that have not been submitted. This decision also does not assess whether any individual license agreement may have been outside the Commission's recent more clearly articulated expectations for license and GO 69-C treatment. PG&E has requested Section 851 approval as to all the transactions and that approval is granted in this decision, prospectively.

## **8. Conclusions**

Based on our analysis, we conclude that we should grant PG&E's request that 255 of the 256 transactions at issue be approved as meeting the requirements of Section 851. As discussed herein, the remaining transaction does not require our approval. First, the leases and licenses are not adverse to the public interest and in most cases clearly benefit the public. Second, the leases and licenses do not impair PG&E's ability to serve its customers and in most cases are revocable if the public interest so requires. As we determined in D.03-05-033 and in D.03-06-069, the authority that we grant should apply prospectively, and not on a retroactive basis. The purpose of Section 851 is to enable the Commission to review a proposed encumbrance on utility property before it takes place, in order to take such action as the public interest may require. Granting this application on a retroactive basis would thwart the purpose of Section 851.

While we do not grant retroactive authority, we have in our order exempted the 255 transactions from Section 851 approval for the period of time prior to the effective date of this decision. We note that forecasts of revenues from leases and licenses have always been included in past general rate cases for PG&E as other operating revenues. Consequently, it is not unreasonable for PG&E to have concluded that the Commission and its staff were aware of the

existence of these miscellaneous leases and licenses of PG&E property and permitted the practice to continue without objection.

We find that a penalty is not appropriate in this case. The company's failure to seek Section 851 approvals for the agreements at issue here caused neither physical nor economic harm to customers or competitors. The company has not benefited from the omission to seek advance Section 851 approval for the agreements, since the pecuniary benefits accrue mainly to ratepayers. To the extent Section 851 was not observed, such noncompliance did not affect any persons adversely.<sup>2</sup>

We also are cognizant of the fact that we soon will be reviewing Commission practices as to GO 69-C and Section 851 as a result of the industry workshop that we ordered in D.02-10-057. We ordered the workshop to determine whether changes to GO 69-C would be worthwhile. It would be inappropriate to assess a penalty in this application before we have considered staff recommendations on our interpretation of GO 69-C and Section 851.

PG&E in its application asks that we grant authority for the utility to enter into extensions and minor modifications of the transactions in this application without applying to the Commission for approval of the changes. We grant this

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<sup>2</sup> In the *Final Opinion Adopting Enforcement Rules* (1998) D.98-12-075, the Commission established factors it would use in determining the level of penalty for violation of the Commission's rules. A key factor is "severity of the offense," including actual physical harm, economic harm, competitive harm, and harm to the regulatory processes, as well as the number of violations and number of persons affected. A second key factor is "conduct of the utility," including conduct in preventing, detecting, disclosing and rectifying the violation. (*Id.*, pp. 36-39.) The severity of the offense here is not substantial, and PG&E has disclosed the transactions soon after identifying them and has taken steps to prevent violations in the future.

request for extensions or modifications of agreements which do not allow for or result in additional construction and may therefore warrant an amended Section 851 approval and environmental review.

Notice of this application appeared in the Commission's Daily Calendar on May 23, 2003. The Commission has received no protests.

In Resolution ALJ 176-3113, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. We confirm those determinations. As no hearing is required, pursuant to Rule 6.6 of the Rules of Practice and Procedure, Article 2.5 of the Rules ceases to apply to this proceeding.

#### **9. Comments on Alternate Draft Decision**

The alternate draft decision of the Commissioner Carl Wood was mailed on March 7, 2004 to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. No comments were filed.

#### **10. Assignment of Proceeding**

Susan P. Kennedy is the Assigned Commissioner and Glen Walker is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. In A.00-06-010, PG&E sought approval under Section 851 of 110 lease transactions.
2. In that application, PG&E stated that it would later seek approval of a number of leases and licenses for recreational use of PG&E property subject to FERC hydro-generation leases.
3. As part of its bankruptcy proceeding, PG&E was required to do an extensive search in order to list all outstanding leases and licenses.
4. In A.03-05-012, PG&E seeks Section 851 approvals of 256 transactions.

5. Nine of the transactions received environmental review under CEQA by local agencies.
6. Six of transactions pre-date the enactment of CEQA in 1970.
7. All of the 256 transactions involve licenses or leases that permit various uses of PG&E property by third parties.
8. Many of the transactions allow both the use of existing facilities and structures and also allow some construction or improvement on PG&E property.
9. The transactions are categorized into those that involve recreational uses on hydro-generation lands, telecommunications, vehicle parking, storage, and miscellaneous.
10. All of the transactions are several years old and any activities which took place that required CEQA review are already completed.
11. In GO 159-A, the Commission delegated its authority to regulate the location and design of cellular facilities to local agencies, while retaining oversight and jurisdiction in cases of conflict with the Commission's goals and/or statewide interests.
12. Agreements which meet the criteria of GO 69-C do not require Commission approval.
13. An unidentified number of transactions which may qualify for GO 69-C treatment were not submitted as part of this application.
14. In D.02-10-047, the Commission found that specified floating boat dock agreements are within GO 69-C and do not require Commission approval.
15. Much of the revenue from the licenses and leases will be treated as other operating revenue for the benefit of ratepayers on PG&E's general rate case.
16. Revenue from uses of FERC jurisdictional transmission property will be subject to FERC accounting and ratemaking treatment.

17. ORA does not challenge PG&E's proposed revenue allocation.

**Conclusions of Law**

1. It can be seen with certainty that approval of this application will not have a significant impact on the environment.

2. We make no finding regarding the applicability of GO 69-C to transactions that were not submitted as part of this application.

3. The transactions included in this application do not impair PG&E's ability to serve its customers.

4. The transactions reserve to PG&E the rights necessary for PG&E to fulfill its public utility functions.

5. The public interest is served when utility property is used for other productive purposes without interfering with the utility's service.

6. PG&E has met its burden of showing that the transactions at issue are in the public interest.

7. PG&E's application for approval of 255 of the 256 transactions at issue should be granted.

8. Transaction 132 is consistent with D.02-10-047 and GO 69-C and does not require Commission approval.

9. The authority granted should apply prospectively, and not on a retroactive basis.

10. The 255 transactions approved today should be exempted from Section 851 approval pursuant to Section 853(b) for the period of time that they were in effect prior to the date of this decision.

11. No penalty should be assessed for PG&E's failure to obtain prior approval of the transactions under Section 851.

12. Our order should grant PG&E authority to enter into extensions and minor modifications of the transaction in this application without applying to the Commission for approval of the changes.

**O R D E R**

**IT IS ORDERED** that:

1. The application of Pacific Gas and Electric Company (PG&E) for approval under Pub. Util. Code § 851 of 256 transactions set forth in Exhibit A of this decision is approved.
2. The 255 of the 256 transactions set forth in Exhibit A of this decision are approved prospectively from the date of this decision.
3. The 255 transactions approved today are exempted from Section 851 approval pursuant to Section 853(b) for the period of time that they were in effect prior to the date of this section.
4. PG&E is authorized to enter into extensions and minor modifications of the transactions set forth in Exhibit A without applying to the Commission for approval of the changes
5. No penalty is assessed against PG&E for failure to obtain advance approval of the Commission before executing the 256 transactions set forth in Exhibit A of this decision.
6. Application 03-05-012 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.