

# **APPENDIX A**

## **SECTION 851 PILOT PROGRAM REGULATIONS**

## SECTION 851 PILOT PROGRAM

### ALJ Division

#### I. Summary

We extend the pilot program adopted in Resolution ALJ-186 (August 2005) to test procedures for expediting Commission consideration of certain categories of Section 851<sup>1</sup> transactions for an additional 36 months, until August 23, 2010. If successful, the pilot program may result in a decision or a new general order (GO) providing a permanent, expedited process for approving these Section 851 transactions. We also amend the pilot program in order to comply with amendments to Sections 851 and 853 and so that the pilot program will conform to recently adopted GO 96-B.

Participation in the pilot program is optional. Applicants may choose to submit a regular application under Section 851 for transactions that qualify for this pilot project.

#### II. Eligible Section 851 Transactions

**Criteria:** The advice letter pilot program will apply to proposed transactions that meet the following conditions:

1. The activity proposed in the transaction will not require environmental review by the CPUC as a lead agency or responsible agency under the California Environmental Quality Act (CEQA), either because a statutory or categorical exemption applies (the applicant must provide a notice of exemption from the lead agency or explain why an exemption applies), or because the transaction is not a project under CEQA (the applicant must explain the reasons why it believes that the transaction is not a project);
2. The transaction will not have an adverse effect on the public interest or on the ability of the utility to provide safe and reliable service to customers at reasonable rates;
3. Any financial proceeds from the transaction either will be (a) booked to a memorandum account for distribution between shareholders and ratepayers during the next general rate case or other applicable proceeding for that utility, or (b) immediately divided between

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<sup>1</sup> All Code citations are to the Public Utilities Code, unless otherwise stated.

shareholders and ratepayers based on a specific distribution formula previously approved by the Commission for that utility.

4. If the transaction results in a fee interest transfer of real property, the property does not have a fair market value in excess of \$5 million.
5. If the transaction results in a sale of a building or buildings (without an accompanying fee interest transfer of the underlying land), the building(s) does not have a fair market value in excess of \$5 million.
6. If the transaction is for the sale of depreciable assets (other than a building or buildings), the assets do not have a fair market value in excess of \$5 million. If the transfer is a lease or a lease-equivalent, the total net present value of the lease payments, including any purchase option, does not have a fair market value in excess of \$5 million, and the term of the lease will not exceed 25 years.
7. If the transaction conveys an easement, right-of-way, or other interest in real property, the value of the easement, right-of-way, or other interest in the property does not exceed \$5 million.
8. The transaction will not materially impact the ratebase of the utility. (This requirement does not apply to telecommunications providers subject to the Uniform Regulatory Framework (URF) or which are not subject to rate of return regulation.)
9. If the transaction involves a transfer or change in ownership of facilities currently used in regulated utility operations, the transaction will not result in a significant physical or operational change in the facility other than in the normal course of business.
10. The transaction does not warrant a more comprehensive review that would be provided through a formal Section 851 application.

### **III. Applicability of GO 96-B**

Advice letters filed pursuant to this pilot program shall be processed as Tier III advice letters under GO 96-B, and shall comply with all applicable requirements under GO 96-B, except as otherwise specified herein or as required by law.

### **IV. Contents of Advice Letters**

**Required Contents for Advice Letters:** In addition to other information required by GO 96-B, advice letters shall include the following:

1. Identity and addresses of all parties to the proposed transaction;
2. A complete description of the property, including its present location, condition, and use.

3. Transferee's intended use of the property;
4. A complete description of the financial terms of the proposed transaction;
5. A description of how the financial proceeds of the transaction will be distributed;
6. A statement of the impact of the transaction on ratebase and any effect on the ability of the utility to serve customers and the public (This requirement does not apply to telecommunications providers subject to URF or which are not subject to rate of return regulation.);
7. For sales of real property and depreciable assets, the original cost, present book value, and present fair market value, and a detailed description of how the fair market value was determined (e.g., appraisal).
8. For leases of real property, the fair market rental value, and a detailed description of how the fair market rental value was determined;
9. For easements or rights-of-way, the fair market value of the easement or right-of-way and a detailed description of how the fair market value was determined;
10. A complete description of any recent past (within the prior two years) or anticipated future transactions that may appear to be related to the present transaction, such as sales or leases of real property that are located near the property at issue or that are being transferred to the same transferee; or for depreciable assets, sales of similar assets or sales to the same transferee;
11. Sufficient information and documentation (including environmental documentation) to show that all of the eligibility criteria stated in Section II.A. above have been met;
12. The filing utility may submit additional information to assist in the review of the advice letter, including recent photographs, scaled maps, drawings, etc.
13. Environmental Information:
  - a. If the Applicant believes that the transaction is exempt from review under CEQA: If the applicant believes that the transaction is exempt from environmental review under a statutory or categorical exemption from CEQA, the applicant shall provide the following information:
    - (1) Has the proposed transaction been found exempt from CEQA by another government agency?

- (a) If yes, the applicant shall attach the Notice of Exemption to the advice letter and shall state the name of applicable public agency, the date of the Notice of Exemption, and State Clearinghouse #.
  - (b) If no, the applicant shall state the specific CEQA exemption or exemptions that the applicant claims apply to the transaction, including citations to the applicable State CEQA Guideline(s) and/or statutes.
- b. If the Applicant Believes That the Transaction Is Not a Project under CEQA: If the applicant believes that the transaction is not a project under CEQA, the applicant shall include an explanation of its position.

## V. Notice and Service of Advice Letters

Notification and service of the advice letter shall be made in accordance with GO 96-B. In all cases, the advice letter shall be noticed in the *Daily Calendar* and a copy served on the appropriate Industry Division, the Commission Division of Ratepayer Advocates (DRA), and the Commission CEQA team, the relevant departments of the city and county in which any real property involved in a transaction is located, and persons and organizations on the utility's advice letter service list, as required by GO 96-B.

## VI. Protests to Advice Letters

- A. Protests to an advice letter shall be filed with the Industry Division and served on the utility within 20 days of the filing of the advice letter. All protests and replies shall comply with the requirements of GO 96-B.
- B. All protests shall be processed and addressed pursuant to the procedures stated in GO 96-B.

## VII. Review Process for Advice Letters

### A. Industry Division Review

- 1. Submittal of Advice Letters: Proposed advice letter filings that are eligible to for the pilot program shall be submitted to the appropriate Industry Division to be processed as a Tier III advice letter in accordance with GO 96-B.

2. Initial 30-Day Review Period: The filing of an advice letter triggers a 30-day review period by the Industry Division. At the end of the initial 30-day review period, staff shall notify the utility that the advice letter has been automatically suspended pursuant to General Rule 7.5.2 of GO 96-B (unless the advice letter has already been rejected). The Industry Division may also notify the utility that additional information or documentation is required.
3. Grounds for Rejection of Advice Letter by Industry Division: For any of the following reasons, an Industry Division may determine that the approval of an advice letter filing under the pilot program is inappropriate:
  - a. The proposed transaction does not satisfy the criteria for the pilot program;
  - b. The proposed transaction presents unusual issues of fact or law that require more complete fact-finding and informed decisionmaking, or otherwise warrants a more comprehensive review;
  - c. The proposed transaction is inappropriate for advice letter consideration because it involves the exercise of discretion or is otherwise barred by GO 96-B;
  - d. The monetary value of the transaction will materially impact the ratebase of the utility;
  - e. The transaction involves the division of a single asset that the utility proposes to transfer into smaller parts valued at less than \$5 million in order to avoid a formal application under Section 851;
  - f. The transaction warrants a more comprehensive review or may require an evidentiary hearing based on issues raised in a timely protest.
  - g. The utility has failed to respond in a timely manner to a request by the Industry Division for additional information or documentation.
4. Rejection of Advice Letter by Industry Division: Having stated the reasons for determining that an advice letter filing is inappropriate for the pilot program in writing, the Industry Division may reject the advice letter filing pursuant to GO 96-B, without prejudice to the applicant to refile the request as a formal proceeding. In the case of a rejection pursuant to 3.g, the rejection shall be without prejudice to the

refiling of the advice letter accompanied by the necessary information or documentation.

5. Preparation of Commission Resolution: If an advice letter is not rejected for any of the reasons stated above, the Industry Division shall prepare a resolution, which recommends either granting, modifying, or denying the advice letter, for consideration by the Commission at a regular or special business meeting. The Resolution shall include the recommendation of the Industry Division and a supporting analysis.

**B. Commission Action on Advice Letter**

Unless a timely protest has been filed or an advice letter contains incomplete information, as determined by the Industry Division, the Commission shall act upon the Advice Letter by no later than 120 days after its filing. In acting, the Commission may approve, modify, or deny the advice letter.

**VIII. Appeal or Review of Commission Action on Advice Letters**

**A. Commission Resolutions Regarding Advice Letters:**

Commission resolutions granting, modifying, or denying advice letters may be reviewed or reconsidered through timely filed applications for rehearing or in appropriate circumstances, petitions for modification, as authorized in GO 96-B and the Commission Rules of Practice and Procedure.

**B. Industry Division Action on Advice Letters:**

The utility, persons or entities that filed a protest to the advice letter, or other persons or entities (to the extent authorized by GO 96-B) may request Commission review of an Industry Division's disposition of an advice letter, pursuant to GO 96-B.

**(END OF APPENDIX A)**