

Section 852 Exemption Terms

Attachment 4

The California Public Utilities Commission's (Commission) Division of Ratepayer Advocates (DRA) takes no position on whether or not the Commission should grant the applications in A.06-09-016 and A.06-09-021, but if the Commission chooses to do so, DRA and the captioned Applicants in A.06-09-021 (the Applicants) agree that the order granting the exemption should contain the following terms and conditions:

Definitions

For purposes of this Exemption, the following definitions shall apply:

For purposes of A.06-09-021 and its Applicants only, the term "affiliate of . . . a public utility," as used in CAL. PUB. UTIL. § 852 shall be assumed to encompass only the Applicants and entities Controlled by the Applicants, which Control the Applicants, which are under the joint Control of the Applicants, or which are under common Control with the Applicants. These entities will hereinafter be referred to as a "Covered Entity" or "Covered Entities," [except that DRA and Applicants have not reached an agreement that Applicants Carlyle Partners IV, L.P., Carlyle/Riverstone Global Energy and Power Fund III, L.P. or their affiliates should be Covered Entities and the Commission should address this issue based upon the briefs and oral argument].

"Control", "Controlled", and "Controlling Interest" shall be defined on a case by case basis consistent with Commission precedent.

"Energy Sector" includes the following California public utilities, and their holding companies: electrical corporations, gas corporations, and pipeline corporations, as defined under CAL. PUB. UTIL. §§ 218, 222 and 228, respectively.

"Reportable Holdings" include a 5% or greater voting stake in any California public utility or its holding company in the Energy Sector, and, if reportable, must specify the percentage and name of the California utility or its holding company

Notwithstanding the transfer of Control of SFPP, L.P. and Calnev Pipeline, L.L.C., each Covered Entity shall be and remain exempt from CAL. PUB. UTIL. § 852, subject to the following conditions:

1. If, after whatever potential outcome of A.09-06-016 and A.09-06-021, a Covered Entity acquires a Controlling Interest in a California public utility, the exemption granted herein shall no longer apply to that entity, without prejudice to that entity's right to seek another exemption.¹
2. The Commission may consider concerted action among entities in determining whether such actions taken together constitute a change of Control. Such an acquisition would subject an entity to CAL. PUB. UTIL. §§ 852 and 854.

¹ DRA and Investor Applicants have not agreed on the exact wording of this one term.

3. Each Applicant shall file a report semiannually with the Commission's Energy Division and the DRA listing Reportable Holdings by Covered Entities as of the end of each reporting period. The report will identify which entity or entities' ownership interest(s) qualified as Reportable Holdings. Each report shall include the Reportable Holdings of each Applicant and its Covered Entities on an aggregate basis. Each report shall also parse out and specify the relative contributions of each Covered Entity towards the aggregate, even if such contributions are under the 5% threshold. Each report shall be due 45 days after the end of the each six-month period. Each report shall list the California public utilities and/or holding companies considered when preparing it; the Commission and DRA may add to this list. The reports shall be subject to the protections of CAL. PUB. UTIL. § 583 and all similar Commission rules, orders, and precedent protecting similar documents.

4. Each Applicant shall prepare a list of Covered Entities. The initial list of such entities shall be provided on or before May 1, 2007. An officer of each applicant shall certify that he or she has used best, good faith efforts to provide an accurate and complete list. Applicants shall update this list, if necessary and applicable, in their semiannual reports, and an officer of each applicant shall certify that he or she has used best, good faith efforts to provide an accurate and complete report.

5. The Commission shall have authority to revisit, re-examine, modify or otherwise change this exemption at any time, subject to the Applicants having notice and an opportunity to be heard.

6. For purposes of verifying the accuracy of the list of Covered Entities and whether certain entities should be included in, excluded from, or added to the list, the following discovery rules shall apply:

A. Applicants shall respond to any data requests from the Commission, its staff (including DRA), or its authorized agents concerning the identity of Covered Entities.

B. Applicants shall ensure that the Commission has access to books and records of the Applicants, their holding companies, and each of their affiliates and joint ventures, concerning the identity of Covered Entities.

C. Applicants shall acknowledge that there are broad discovery rights concerning the identity of Covered Entities.

D. Administratively, requests for such books and records made by the Commission, its staff (including DRA), or its authorized agents, pertaining to the identity of Covered Entities, shall be deemed presumptively valid, material, and relevant.

E. Any objections to such requests shall be timely raised before the administrative law judge, or assigned commissioner. In order to sustain an objection to such a request, Applicants shall have the burden of showing that the request is not reasonably related to ascertaining the identity of Covered Entities.

7. The preceding enumerated rights of discovery do not affect in any way any other discovery rights that may exist under California law. Applicants and the Covered Entities shall comply with the otherwise applicable discovery requirements under California law. In addition, the officers and employees of the Applicants and their Covered Entities shall cooperate with, appear, and testify in proceedings relevant to and within the Commission's jurisdiction, as necessary or required.

(END OF ATTACHMENT 4)