

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

Resolution ALJ-244  
Administrative Law Judge Division  
February 25, 2010

**RESOLUTION**

RESOLUTION ALJ-244. Extends and Modifies the Pub. Util. Code § 851 Pilot Program Established in Resolution ALJ-186, as modified by Resolution ALJ-202, pursuant to Assembly Bill No. 698 and extends Pub. Util. Code Section 851 Pilot Program for an additional year.

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**Summary**

This resolution modifies the Pub. Util. Code § 851<sup>1</sup> pilot program established in Resolution ALJ-186 (adopted August 25, 2005), as modified by Resolution ALJ-202 (adopted August 23, 2007) (the pilot program), to reflect amendments made to Sections 851 and 853 by Assembly Bill (AB) 698 (effective January 1, 2010). We also extend the pilot program for an additional year, until August 23, 2011, in order to allow time to evaluate the effectiveness of the pilot program as amended pursuant to AB 698 and to obtain comments from interested parties on additional proposed changes and whether the pilot program should be continued, made permanent, or modified without conflicting with the statute itself.

The revised pilot program regulations are attached as Appendix A.

The procedures adopted in this Resolution do not apply to transfers of interests in the Pacific Gas and Electric Company's (PG&E) watershed lands for conservation and outdoor recreational purposes pursuant to PG&E's bankruptcy settlement. These transactions are governed by the specific procedures stated in Decision (D.) 08-11-043.<sup>2</sup>

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

<sup>2</sup> Parties wishing to request amendment of the procedures stated in D.08-11-043 pursuant to AB 698 may file a petition for modification pursuant to Rule 16.4 of the Commission Rules of Practice and Procedure (Rules).

**Background Prior to the Adoption of Assembly Bill 698 (Skinner), Stats. 2009, ch. 370**

On August 25, 2005, the Commission adopted Resolution ALJ-186, which established a two-year pilot program for processing and approving certain transfers of interests in utility property through advice letters, rather than formal applications under Section 851. Section 851 generally requires Commission approval of any sale, lease, encumbrance, mortgage, or other transfer or disposition of an interest in utility property that is necessary or useful in the provision of the utility's services to the public.<sup>2</sup> The purpose of the Commission's review is to ensure that the proposed transaction is not adverse to the public interest, i.e., does not impair the ability of the utility to provide service to customers at reasonable rates.

Before our adoption of the pilot program, utility transactions involving the transfer or disposition of interests in property necessary or useful in the provision of services to the public generally required a formal application and a Commission decision pursuant to Section 851. The purpose of the pilot program was to expedite and simplify the Commission's review and approval of non-controversial transactions involving the transfer or conveyance of interests in utility property that did not require environmental review by the Commission as a Lead Agency under the California Environmental Quality Act (CEQA), and did not warrant more extensive review by the Commission through the formal application process.

Also in 2005, the Legislature adopted Assembly Bill (AB) 736 (Stats. 2005, ch. 370, section 1), effective January 1, 2006, which amended Section 851. These amendments to Section 851 authorized utilities to obtain Commission approval of transactions involving transfers or disposition of property interests that are valued at \$5 million or less by filing an advice letter and obtaining a Commission resolution approving the transaction, rather than filing a formal application and seeking a Commission decision. Under AB 736, utilities were still required to file formal Section 851 applications for transactions valued at over \$5 million.

Under Section 851, as amended by AB 736, the Commission must approve or deny advice letter requests within 120 days of the utility's filing of the advice letter by resolution, unless the advice letter application does not include complete information or a timely protest has been filed.

AB 736 also added Section 853(d), which stated as follows, to the Public Utilities Code:

(d) It is the intent of the Legislature that transactions with monetary values that materially impact a public utility's rate base should not qualify

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<sup>2</sup> Exceptions to this requirement exist if the Commission exempts a utility, class of utility, transaction, or class of transactions from the requirements of Section 851 pursuant to Section 853(b), or if the particular transaction meets the criteria stated in General Order (GO) 69-C. The conditions that must be met in order for such an exception to apply to the grant of an easement, license, or permit are stated in GO 69-C.

for expedited advice letter treatment pursuant to this article. It is the further intent of the Legislature that the Commission maintain all of its oversight and review responsibilities subject to the California Environmental Quality Act, and that public utility transactions that jurisdictionally trigger a review under the act should not qualify for expedited advice letter treatment pursuant to this article.

In August 2007, after obtaining written comments from regulated utilities, the Commission Division of Ratepayer Advocates (DRA), and other interested parties, the Commission adopted Resolution ALJ-202, which amended the pilot program regulations pursuant to AB 736 and GO 96-B, regarding the processing of advice letters filed with the Commission in general. Resolution ALJ-202 requires approval of Section 851 advice letters by Commission resolution pursuant to AB 736. The Resolution also characterizes Section 851 advice letters as Tier 3 advice letters under GO 96-B, because of the requirement for Commission approval of these advice letters by Resolution.

Based on Section 853(d), Resolution ALJ-202 further requires the utilities to file formal applications, rather than advice letters, to seek approval of transactions that require CEQA review by the Commission as either a Lead Agency or a Responsible Agency, or when a transaction will materially impact the ratebase of the utility, whether or not the transaction is valued at \$5 million or less.<sup>3</sup>

We also extended the pilot program for an additional three years, in order to allow sufficient time to consider whether the pilot program should be continued, allowed to

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<sup>3</sup> Based on the plain language of the statute, we interpreted the first sentence of Section 853(d) to mean that if a particular transaction is valued at \$5 million or less but still materially impacts the ratebase of a utility, the transaction does not qualify for review through an advice letter, and the utility must file a formal Section 851 application in order to obtain our approval of the transaction.

As quoted above, before the enactment of AB 698, Section 853(d) further stated that transactions involving transfers of utility property subject to Section 851 may not be approved by advice letter if the transaction “jurisdictionally triggers” environmental review by the Commission under CEQA. We interpreted this language to mean that advice letter treatment of a transaction is not permitted when the Commission is acting as either the Lead Agency or as a Responsible Agency, because even as a Responsible Agency, the Commission has significant duties under CEQA. For example, as a Responsible Agency, the Commission must review the environmental documents prepared by the Lead Agency and make its own findings regarding whether the transaction will have significant environmental impacts, and whether these impacts can be mitigated. State CEQA Guidelines Sections 15096(f) and (h). The Commission may also require additional mitigation measures for significant adverse environmental impacts related to aspects of the project that the Commission decides to carry out, finance, or approve. State CEQA Guidelines Section 15096(g).

expire, or further modified, and to obtain additional comments from interested parties on these issues.

Unless sooner extended, the pilot program is now scheduled to expire on August 23, 2010.

### **Adoption of AB 698**

In 2009, the Legislature adopted AB 698 (Skinner), which further amended Sections 851 and 853(d) in order to expand the types of transactions which the Commission may approve by advice letter. AB 698 became effective on January 1, 2010. AB 698 amends Sections 851 and 853 to provide that:

- Authority for Certain Advice Letters to be Approved by Executive Director or Division Director. The Commission Executive Director or the Director of the Commission Division having regulatory jurisdiction over the utility may approve advice letters proposing certain transfers of utility property, if the transaction is valued at \$5 million or less, if:
  - The advice letter is uncontested;
  - The advice letter does not require CEQA review by the Commission as either the Lead Agency or a Responsible Agency; and
  - The transaction will not materially impact the utility's ratebase.
- Authority for Utilities to Request Commission Approval of Certain Transactions Requiring CEQA Review by the Commission as a Responsible Agency by Advice Letter. If a transaction valued at \$5 million or less requires CEQA review by the Commission as a Responsible Agency only, and the Lead Agency has completed its CEQA review and has certified its environmental documents, the utility may request approval of the transaction by advice letter, and the Commission may approve the advice letter only by a resolution voted on by the full Commission.

Under AB 698, if the proposed transaction would require CEQA review by the Commission as the Lead Agency, the utility is still required to file a formal application for Commission approval pursuant to Section 851.

### **Discussion**

In considering potential amendments to the Section 851 advice letter pilot program regulations, the Commission has two objectives: 1) to promptly implement AB 698 in order to expedite and simplify our procedures for review and approval of proposed transfers of interests in utility property subject the requirements of Section 851, and 2) to further consider additional changes to the pilot program and whether the pilot program should be continued, made permanent, or modified as consistent with the statute, after obtaining comments from interested parties and the public.

We first address implementation of AB 698.

Although AB 698 permits, but does not require, the Commission to authorize its Executive Director or the Director of the Commission Division having regulatory jurisdiction over the utility to approve, modify, or deny uncontested advice letters for qualifying transactions that do not require CEQA review,<sup>4</sup> we believe that implementing this provision will enable the Commission to more expeditiously process and facilitate non-controversial, uncontested transactions. We therefore amend the pilot program regulations (attached as Appendix A) to carry out this provision of AB 698.

We also amend the pilot program regulations to implement the AB 698's amendment of Section 853(d), so that the utilities may file advice letters to seek Section 851 approval of transactions valued at \$5 million or less, in cases that require environmental review by the Commission only as a Responsible Agency under CEQA, when the Lead Agency has completed its appropriate CEQA review. The utilities must continue to file formal Section 851 applications for transactions which require environmental review by the Commission as the Lead Agency under CEQA.

As permitted by AB 698, we retain the current provisions of our pilot program that require the utilities to file formal applications or to follow a procedure other than filing an advice letter as designated by the Commission when a particular transaction valued at \$5 million or less warrants a more extensive review or will materially impact the ratebase of the utility. These provisions ensure that the Commission is able to more thoroughly assess proposed transactions when necessary or appropriate in order to protect the public interest.

We note that our amended pilot program regulations do not apply to transactions involving the transfer of property interests in the Pacific Gas and Electric Company (PG&E) watershed lands to the extent that these transactions are subject to the procedures approved in Decision (D.) 08-11-043. The appropriate procedure for requesting a change to these procedures in view of the legislative changes made in AB 698 is the filing of a petition for modification pursuant to Rule 16.4.

We also note that the Commission is currently considering the implementation of Section 851 as applied to Uniform Regulatory Framework (URF) telecommunications carriers in Rulemaking (R.) 09-05-006. The Commission's decision in that proceeding may affect the applicability of the pilot program to these carriers, and will supersede any conflicting requirements of the pilot program.

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<sup>4</sup> Section 851, as amended by AB 698, states that: "If the advice letter is uncontested, approval may be given by the executive director or the director of the division of the commission having regulatory jurisdiction over the utility." Under the principles of statutory construction, "may" is generally interpreted as permissive language, which does not impose a mandatory obligation. Therefore, we believe that the Commission has discretion to determine whether to grant this authority to the Executive Director and/or the appropriate Division.

In addition, we have amended Section VII.A.3.c. of the pilot program regulations to delete language which stated that an Industry Division may reject an advice letter because its consideration would involve the exercise of discretion by Commission staff. The general rule is that powers conferred upon public agencies and officers that involve the exercise of judgment or discretion are in the nature of public trusts and cannot be delegated to staff in the absence of legislative authority. However, here, AB 698 has amended Section 851 to expressly authorize the Commission to delegate the authority to review and act upon certain qualifying pilot program advice letters to the Executive Director or the Director of the Commission Division having regulatory jurisdiction over the utility. Therefore, the general rule no longer bars the Executive Director or Division Director having subject matter jurisdiction from making discretionary decisions in reviewing and acting on these advice letters. We have retained existing language in Section VII, A.3.c., which authorizes the Industry Division to reject an advice letter because its consideration is otherwise barred by GO 96-B.

Appendix A, which modifies the pilot program regulations as described above in order to implement AB 698 and makes other minor, technical changes, is attached. We approve Appendix A here.

Second, in order to allow for additional time to obtain and consider comments from interested parties and the public on the overall effectiveness of the pilot program, whether additional changes to the program are needed, and whether the pilot program should be continued, made permanent, or modified as consistent with the statute, we extend the pilot program for an additional year, or until August 23, 2011.

Within 90 days of the effective date of this Resolution, the Chief Administrative Law Judge shall request written comments from interested parties on the above issues. A notice of the opportunity to file written comments on the effectiveness of the Section 851 advice letter pilot program, suggested changes to the program, and whether the program should be continued, made permanent, or discontinued, and the deadline for submitting comments shall also be posted on the Commission website, in order to give additional notice to the public. Since the Commission will be addressing the application of Section 851 as applied to URF telecommunications carriers in R.09-05-006, we will not be considering any proposed changes to the pilot program as applied to these carriers until both phases of R.09-05-006 have been completed.

The Commission will then consider these comments and take any appropriate action regarding the Section 851 advice letter pilot program before the expiration of the program on August 23, 2011.

#### **PUBLIC REVIEW AND COMMENT**

The proposed Resolution was mailed to the parties for review and comment on January 26, 2010, pursuant to Section 311(g)(1). Timely comments were received from Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), the Commission Division of Ratepayer Advocates (DRA), and the California

Association of Competitive Telecommunications Companies (CALTEL). A summary of these comments follows:

- SCE - SCE supports the adoption of Resolution ALJ-244.
- PG&E - PG&E also supports the adoption of Resolution ALJ-244, but proposed several changes. First, PG&E proposes a minor technical change to the first paragraph of the draft Resolution, for the purpose of consistency with the statute. We have made this change to the draft Resolution. PG&E also suggests the following revisions: a) the deletion of language in the draft Resolution, which states that the pilot program does not apply to transactions involving proposed transfers of interests in PG&E's watershed lands that are subject to the procedures stated in D.08-11-043; and b) the addition of language to clarify that before the pilot program regulations may apply to transactions involving the transfer of PG&E watershed lands subject to the procedures stated in D.08-11-043, a party to that proceeding must file and receive a Commission ruling on a petition for modification of that decision. We see no reason to make these revisions, because the draft Resolution states that a party may file a petition for modification of D.08-11-043 to reflect the legislative changes made by AB 694, and we do not wish to prejudge any petition for modification that may be filed in the future. We note that PG&E's comments state that PG&E plans to file such a petition for modification within the next few months.
- DRA - DRA supports extension of the pilot program as applied to energy utilities, but comments that extension of the pilot program for Uniform Regulatory Framework Incumbent Local Exchange Carriers (URF ILECS) may not be appropriate at this time, because the Commission is currently considering how to apply Section 851 to these utilities in Rulemaking (R.) 09-05-006. DRA recommends modifications of Resolution ALJ-244 either to exclude the URF ILECS from the pilot program or to clarify that the Commission decision in R.09-05-006 will supersede the pilot program. DRA also recommends modification of the pilot program regulations to require that each utility participating in the pilot program must submit a list of its pilot program advice letters filed under the program to the Industry Division having subject matter jurisdiction each year.
- CALTEL - CALTEL supports the adoption of Resolution ALJ-244 and extension of the pilot program until August 23, 2011. CALTEL recommends modification of the draft Resolution to recognize that the Commission is currently considering changes in the Section 851 procedures applicable to Uniform Regulatory Framework (URF) carriers in R.09-05-006, which could affect whether the pilot program will apply to these carriers. CALTEL also recommends that the Commission delay further consideration of the pilot program as applied to URF carriers until after both phases of R.09-05-006 have been completed, in order to conserve resources for the Commission and the parties.

We have considered the comments of DRA and CALTEL and made changes to the draft Resolution to clarify that since the Commission will address the application of Section 851 program to URF carriers in R.09-05-006, our decision in R.09-05-006 will supersede any conflicting pilot program requirements. The Commission will delay further consideration of the pilot program as applied to URF carriers until after both phases of R.09-05-006 have been completed. We have also amended the pilot program regulations to require utilities to submit a list of pilot project advice letters to the Industry Division having subject matter jurisdiction each year.

We have also made other minor technical changes for the purpose of internal consistency.

**THEREFORE, IT IS RESOLVED** that:

1. In order to implement Assembly Bill No. 698, the pilot program originally adopted in Resolution ALJ-186 and amended in Resolution ALJ-202, which authorizes Commission review and approval of certain transactions involving the transfer or disposition of interests in utility property by advice letter, is amended as stated in Appendix A.
2. The pilot program described above is extended for an additional year and shall expire on August 23, 2011, unless sooner extended or made permanent by the Commission.
3. Within 90 days of the effective date of this Resolution, the Chief Administrative Law Judge shall request written comments from interested parties on the overall effectiveness of the above pilot program, additional proposed changes to the pilot program, and whether the pilot program should be continued, made permanent, or modified as consistent with the statute. A notice of this opportunity to file written comments and the deadline for submitting comments shall also be posted on the Commission website in order to give additional notice to the public.
4. The pilot program regulations stated in Appendix A shall not apply to transfer of interests in the Pacific Gas and Electric Company watershed lands, to the extent that these transactions are subject to the procedures adopted in D.08-11-043.

This resolution is effective today.

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 February 25, 2010, the following Commissioners voting favorably thereon:

/s/ PAUL CLANON

PAUL CLANON  
Executive Director

MICHAEL R. PEEVEY  
President

DIAN M. GRUENEICH

JOHN A. BOHN

TIMOTHY ALAN SIMON

NANCY E. RYAN

Commissioners

# **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) and amended by Resolution ALJ-202 (August 2007), which authorizes regulated utilities to request Commission approval pursuant to Section 851<sup>5</sup> of certain transactions transferring interests in utility property valued at \$5 million or less by advice letter until August 23, 2011. 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 to implement Assembly Bill 698 (Skinner) Stats. 2009, ch. 370, and permit the Executive Director or the Director of the Commission Division having regulatory jurisdiction over the utility to approve advice letters in certain cases and to permit the utilities to request Commission approval of qualifying transactions for which the Commission is a Responsible Agency under the California Environmental Quality Act (CEQA) by advice letter.

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

A. **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 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), or because another public agency, acting as the Lead Agency under CEQA, has completed environmental review of the project, and the Commission is required to perform

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<sup>5</sup> All Code references are to the Public Utilities Code, unless otherwise stated.

environmental review of the project only as a Responsible Agency under CEQA.

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 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 generally be processed pursuant to GO 96-B, and shall comply with all applicable requirements under GO 96-B, except as otherwise specified herein or as required by law. Notwithstanding the foregoing, no advice letter filed pursuant to this pilot program shall be deemed approved due to the passage of time without express action of the Commission, the Executive Director, or the Director of the Commission Division having regulatory jurisdiction over the utility approving, denying, or modifying the advice letter.

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

- A. **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, (This requirement does not apply to telecommunications providers subject to URF or which are not subject to rate of return regulation), and any effect on the ability of the utility to serve customers and the public;
  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, a detailed description of how the fair market rental value was determined, and any additional information necessary to show compliance with Section II. A.6 above;

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; and
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 the 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, and an explanation of why the applicant believes that each exemption applies. The

applicant shall confirm that no exceptions to the claimed CEQA exemption(s) apply.

- 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.
- c. If Another Public Agency, Acting as the Lead Agency, Has Completed Environmental Review of the Project and the Applicant Believes that the Commission is a Responsible Agency under CEQA. If another public agency, acting as the Lead Agency under CEQA, has completed an environmental review of the project and has approved the final CEQA documents, and the Commission is a Responsible Agency under CEQA, the applicant shall submit the following information to the Commission Energy Division CEQA Team:
  - (1) The name, address, and phone number of the Lead Agency, the type of CEQA document that was prepared (Environmental Impact Report, Negative Declaration, Mitigated Negative Declaration), the date on which the Lead Agency approved the CEQA document, the date on which a Notice of Determination was filed;
  - (2) A copy of all CEQA documents prepared by or for the Lead Agency regarding the project and the Lead Agency's resolution or other document approving the CEQA documents;
  - (3) A list of section and page numbers for the environmental impacts, mitigation measures, and findings in the prior CEQA documents that relate to the approval sought from the Commission;
  - (4) An explanation of any aspect of the project or its environmental setting which has changed since the issuance of the prior CEQA document; and
  - (5) A statement of whether the project will require approval by additional public agencies other than the Commission and the Lead Agency, and, if so, the name and address of each agency and the type of approval required.

**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 for the pilot program shall be submitted to the Industry Division which has regulatory jurisdiction over the utility for processing.
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 or approved). 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 such consideration 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; and

- 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 application. 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. Executive Director/Division Director Decision on Advice Letter: If an unprotested advice letter is not rejected for any of the reasons stated above, and does not require environmental review by the Commission as a Responsible Agency under CEQA, the Executive Director or the Director of the Commission Division having regulatory jurisdiction over the utility may issue a disposition letter, which either grants, modifies, or denies the advice letter. The disposition letter shall include a supporting analysis by the Industry Division. A copy of the disposition letter shall be served on all persons on whom the advice letter application was served, and the results of the disposition letter shall be posted on the Commission website. In the alternative, the Industry Division may prepare a resolution which recommends approving, modifying, or denying the advice letter, for consideration by the Commission at a business meeting.
6. Preparation of Commission Resolution for Transactions in which the Commission is a Responsible Agency under CEQA. If an advice letter is not rejected for the reasons stated above, and requires environmental review by the Commission as a Responsible Agency under CEQA, the Industry Division shall prepare a resolution for consideration by the Commission at a business meeting. The Resolution shall recommend granting, denying, or modifying the advice letter and shall include the recommendation of the Industry Division and a supporting analysis. In cases in which the Industry Division recommends approval or modification of the

project, the Resolution shall include the appropriate findings under CEQA.

**B. Timeframe for 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 or, in appropriate cases, the Executive Director or Director of the Commission Division having regulatory jurisdiction over the utility, shall act upon the advice letter by no later than 120 days after its filing, by either approving, modifying, or denying 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 the Executive Director's or Industry Division's disposition of an advice letter, pursuant to GO 96-B, General Rule 7.7.1.

**IX. Annual Report Regarding Advice Letters Filed by Each Utility**

Each utility that has filed one or more advice letters shall submit an annual list of advice letters filed to the Industry Division having subject matter jurisdiction by no later than April 1 of each year, commencing on April 1, 2010. The first list filed pursuant to this provision shall include all advice letters filed between 2005, the year in which this pilot program began, and the date of the list's submission. Subsequent lists shall only include advice letters filed during the preceding year. Each list shall include the following: a) the name of the utility, b) the advice letter number, c) the date on which the advice letter was filed, d) a short summary of each advice letter filed, e) the date on which the advice letter was approved or denied, and f) if the advice letter was not approved, a brief statement of the reason.

**(END OF APPENDIX A)**

**ATTACHMENT**

**UPDATED SERVICE LIST FOR  
LETTER REGARDING RESOLUTION ALJ-244**

Please serve Assistant Chief ALJ Janet A. Econome, [jjj@cpuc.ca.gov](mailto:jjj@cpuc.ca.gov), ALJ Myra J. Prestidge, [tom@cpuc.ca.gov](mailto:tom@cpuc.ca.gov), and Wendy Al-Mukad, [wmp@cpuc.ca.gov](mailto:wmp@cpuc.ca.gov), as well as the following service list:

**R.98-07-038**

[http://www.cpuc.ca.gov/published/service\\_lists/R9807038\\_2198.htm](http://www.cpuc.ca.gov/published/service_lists/R9807038_2198.htm)

**R.04-09-003**

[http://www.cpuc.ca.gov/published/service\\_lists/R0409003\\_66288.htm](http://www.cpuc.ca.gov/published/service_lists/R0409003_66288.htm)

**R.05-04-005**

[http://www.cpuc.ca.gov/published/service\\_lists/R0504005\\_68617.htm](http://www.cpuc.ca.gov/published/service_lists/R0504005_68617.htm)

**R.06-02-012**

[http://www.cpuc.ca.gov/published/service\\_lists/R0602012\\_72126.htm](http://www.cpuc.ca.gov/published/service_lists/R0602012_72126.htm)

**R.06-12-016**

[http://www.cpuc.ca.gov/published/service\\_lists/R0612016\\_75168.htm](http://www.cpuc.ca.gov/published/service_lists/R0612016_75168.htm)

**A.08-02-001**

[http://www.cpuc.ca.gov/published/service\\_lists/A0802001\\_76153.htm](http://www.cpuc.ca.gov/published/service_lists/A0802001_76153.htm)

**R.08-02-007**

[http://www.cpuc.ca.gov/published/service\\_lists/R0802007\\_76232.htm](http://www.cpuc.ca.gov/published/service_lists/R0802007_76232.htm)

**A.09-05-026**

[http://www.cpuc.ca.gov/published/service\\_lists/A0905026\\_78405.htm](http://www.cpuc.ca.gov/published/service_lists/A0905026_78405.htm)

**R.09-06-019**

[http://www.cpuc.ca.gov/published/service\\_lists/R0906019\\_78410.htm](http://www.cpuc.ca.gov/published/service_lists/R0906019_78410.htm)

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