

APPENDIX B
SECTION 851 PILOT PROGRAM

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ALJ Division

I. Summary

We initiate a 24-month pilot program to test procedures for expediting Commission consideration of certain categories of Section 851 transactions. If successful, the pilot program will likely result in a decision or a new general order providing a more expeditious process for approving these Section 851 transactions.

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 meeting the following conditions:
1. The activity proposed in the transaction will not require environmental review by the CPUC as a lead agency under the California Environmental Quality Act (CEQA) because a statutory or categorical exemption applies (the applicant must provide a notice of exemption or explain why an exemption applies), or an environmental document has already been prepared by another entity acting as lead agency.
 2. The transaction will not have an adverse effect on the public interest.
 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 real property), the property 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 property does not have a fair market value in excess of \$250,000.
7. 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.
8. 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.

III. Review Process

A. Industry Division Review

1. Proposed section 851 filings that are eligible for the pilot program will be submitted to the appropriate Industry Division as an advice letter in accordance with General Order 96-A or its successor.
 - a. By the time the pilot program commences, certain provisions of General Order 96-A may have been superseded as the result of the Third Interim Opinion in *Rulemaking for Purposes of Revising General Order 96-A Regarding Informal Filings at the Commission*, R.98-07-038.
 - b. For transactions subject to a statutory or categorical exemption from CEQA, under proposed advice letter procedures, the filing of an advice letter commences a 45-day review period by staff. Before the end of the initial 45-day period, staff may notify utility that review will be extended for another 60 days (or longer if the utility agrees). If the staff does not suspend effectiveness within initial 45 days, the advice letter becomes effective at end of 45 days. At the end of the 105-day period (45 + 60), the Industry Division must either issue its disposition or prepare an appropriate resolution for the Commission.
 - c. For transactions where the Commission is a responsible agency under CEQA, automatic approval without express Commission action is not allowed. Under proposed advice letter procedures, the filing of an advice letter commences a 45-day review period by staff. That review period is automatically extended for another 60 days to allow staff to review the environmental documents. Before the end of the initial 45-day period, staff should, as a courtesy, notify utility that review will be extended for another 60 days (or longer if the utility agrees). At the end of the

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105-day period (45 + 60), the Industry Division must either reject the advice letter or prepare an appropriate resolution for the Commission.

2. 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.
 - c. The proposed transaction is inappropriate for advice letter consideration because it involves the exercise of discretion or is otherwise barred by General Order 96-A or its successor.
3. Having stated the reasons for determining that an advice letter filing is inappropriate for the pilot program, the Industry Division may reject the advice letter filing pursuant to General Order 96-A or its successor, without prejudice to the applicant to refile the request as a formal proceeding.

B. Contents of Advice Letters

1. In addition to other information required by General Order 96-A or its successor, the advice letter will include the following information:
 - a. Identity of all parties to the proposed transaction.
 - b. Complete description of the property including present location, condition, and use.
 - c. Buyer's or lessee's intended use of the property.
 - d. Complete description of the financial terms of the proposed transaction.
 - e. Indication of how the financial proceeds of the transaction will be distributed.
 - f. Sufficient information and documentation (including environmental review information) to indicate that all criteria set forth in section II(A), *above*, are satisfied.
 - g. 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 recipient, or for depreciable assets, sales of similar assets or sales to the same recipient.

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- h. For sales of real property and depreciable assets, the advice letter shall include 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).
- i. For leases of real property, the advice letter shall include the fair market rental value, and a detailed description of how the fair market rental value was determined.
- j. The filing utility may submit additional information to assist in the review of the advice letter, including recent photographs, scaled maps, drawings, etc.
- k. For all transactions, the advice letter shall include the following CEQA checklist:

CEQA checklist:

Exemption

- (1) Has the proposed transaction been found exempt from CEQA by a government agency?
 - (a) If yes, please attach notice of exemption. Please provide name of agency, date of exemption, and state clearinghouse #.
 - (b) If no, does the applicant contend that the project is exempt from CEQA? If yes, please identify the specific exemption or exemptions that apply, citing to the applicable CEQA guideline(s).

Prior or Subsequent CEQA review

- (1) Has the project undergone CEQA review by another government agency? If yes, please identify the agency, the CEQA document that was prepared (EIR, MND, etc.) and its date, and provide one copy of any and all CEQA documents to the Director of the relevant Industry Division with a copy of the advice letter. Be prepared to provide additional copies upon request.
- (2) Identify any aspects of the project or its environment that have changed since the issuance of the prior CEQA document.
- (3) Identify and provide section and page numbers for the environmental impacts, mitigation measures, and findings in the prior CEQA document that relate to the approval sought from the CPUC.
- (4) Does the project require approval by governmental agencies other than the CPUC? If so, please identify all such agencies, and the type of approval that is required from each agency.

Need CEQA?

If no exemption is applicable, and no prior review has occurred, please identify what applicant believes is the correct level of CEQA review.

2. Notification and service of the advice letter will be in accordance with General Order 96-A or its successor. In all cases, a copy of the advice letter will be noticed in the *Daily Calendar* and served on the appropriate Industry Division, ORA, and the CPUC CEQA team, plus the relevant departments of the city and county where any real property involved in a transaction is located, and shall also be served electronically on Lynn Carew and Peter V. Allen at lrc@cpuc.ca.gov and pva@cpuc.ca.gov.
3. The approval or disapproval of an advice letter may be reconsidered or appealed as provided by General Order 96-A or its successor or by other applicable provisions of law.

(END OF APPENDIX B)