Decision 04-02-041 February 26, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) for Authority to Lease Antenna Equipment Locations to Pacific Bell Wireless, LLC, d / b / a Cingular Wireless.	Application 02-07-031 (Filed July 7, 2002)

OPINION APPROVING LEASE AGREEMENTS

I. Summary

In this unopposed application, Southern California Edison Company (Edison) asks the Commission to approve under Pub. Util. Code § 851[1] two master agreements and associated standard agreements by which Edison proposes to lease antenna equipment locations to Pacific Bell Wireless, LLC, dba Cingular Wireless (Cingular). Each of the master agreements sets forth a framework for the licensing and subsequent leasing by Edison to Cingular of property suitable for use as attachments for telecommunications antennas and antenna equipment. Consistent with this framework, the specific attachments are identified in the standard agreements.

We approve the application, authorizing 23 proposed leases and approving Edison's request to use one of the master agreements for future leases to Cingular of additional antenna equipment locations. However, before it

[1] All statutory references are to the Pub. Util. Code unless otherwise noted.

makes any substantive amendments to the master agreements or associated standard agreements in the future, we require Edison to file an application to obtain our approval under § 851. Finally, consistent with precedent, we resolve Edison's motion to file certain confidential terms in the agreements under seal.

II. Background

Edison is a public utility and holds certificates of public convenience and necessity to provide both electric and telecommunications services in California. Previously, in Decision (D.) 00-07-010, the Commission granted Edison authority to lease to Pacific Bell Mobile Services (PBMS) communication facility sites and communication equipment placements. PBMS merged with Pacific Bell Wireless on July 31, 1999 and thereafter ceased to operate as a separate corporation. The merged entity is now doing business in California as a wireless provider under the name Cingular.[2]

This application proposes to expand upon the types of Edison property that Cingular may use for expansion of its wireless network. The additional sites would include towers, poles, buildings and other structures. Edison states it "will not lease any site or attachment that it expects to need for electric utility purposes during the term of the lease." (Application, p. 2.)

III. The Agreements

Edison has included with the application, as Exhibit 1 and Exhibit 2, respectively, the two master attachment agreements, and standard agreements

[2] For ease of reference, we will use the name "Cingular" to refer both to the entity now doing business in California and to its corporate predecessor, unless the context requires greater specificity.

associated with them, that memorialize the terms and conditions governing the licenses and the proposed leases.

A. First Master Attachment Agreement and Standard Agreement

The First Master Attachment Agreement[3], which took effect on September 15, 1998, and was used until supplanted on October 11, 2001 by the Second Master Attachment Agreement[4], sets out the license process by which Edison provided PBMS a list of available attachment sites and PBMS completed a Tower Location Application for those sites it wished to use. The First Master Attachment Agreement did not give PBMS a right of first refusal on any of the locations but acknowledged Edison's right to license them on a first come/first served basis. The First Master Attachment Agreement establishes the annual rent due for use of Edison's property on an on-going basis and provides that the cellular provider will pay any increase in property taxes resulting from the new use.

Pursuant to the First Master Attachment Agreement, after approving a Tower Location Application, Edison then prepared a Standard Agreement[5] for

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[3] This document is entitled "Master Agreement, Southern California Edison Company and Pacific Bell Mobile Services, Personal Communication Services & Cellular Antenna Equipment Location License/Lease Agreement."

[4] This document is entitled "Master Tower Agreement Between Southern California Edison Company and Cingular Wireless LLC, a Delaware Limited Liability Company, on behalf of Pacific Bell Wireless, LLC, A Nevada Limited Liability Company, d/b/a Cingular Wireless, Antenna Equipment Site License/Lease Agreement."

[5] This document, Exhibit F to the First Master Attachment Agreement, is entitled "Standard Agreement No._, Southern California Edison Company and Pacific Bell Mobile Services, Personal Communication Services and Cellular Antenna Equipment Location License/Lease Agreement."

use of the location, which, once executed, created a revocable license, consistent with General Order (GO) 69-C.[6] Between March 1999 and October 2001, thirteen

[6] GO 69-C authorizes public utilities subject to § 851 to grant revocable licenses for limited uses of their property, without further authorization of the Commission, as long as the licensed use does not interfere with the provision of utility service.

such standard agreements were executed under the First Master Attachment Agreement. By this application Edison is undertaking its further obligation under the First Master Attachment Agreement to file and process a request to convert the thirteen revocable licenses into leases.

If the leases are approved, Edison will continue to reserve the right to use the property for the purposes necessary to its electric utility business. The Standard Agreement provides that each lease will run for a five-year term and that Cingular, at its option, may renew each lease for three additional five-year terms. Annual rent adjustments will be calculated each term based on the change in the Consumer Price Index during the prior term. If there is any conflict between the First Master Attachment Agreement and the Standard Agreement, the First Master Attachment Agreement prevails.

B. Second Master Attachment Agreement and Standard Agreement

The Second Master Attachment Agreement, executed on October 11, 2001, also includes a Standard Agreement[7]. The content of the two agreements has been reorganized somewhat to make the umbrella and subsidiary relationship between them clearer. The Second Master Attachment Agreement refines the license process and formalizes each party's respective obligations for obtaining and maintaining governmental approvals and for obtaining property access rights from third parties. Provisions governing Edison's continued rights in the property remain essentially the same. The Standard Agreement specifies

[7] This document, Exhibit C to the Second Master Attachment Agreement, is entitled "Standard Tower Agreement No._, Southern California Edison Company and Cingular Wireless LLC, a Delaware Limited Liability Company, on behalf of Pacific Bell Wireless, LLC, A Nevada Limited Liability Company, d/b/a Cingular Wireless, Antenna Equipment License/Lease Agreement."

license / lease terms, provides options to renew for additional terms, and provides for the recalculation of rents every five years. It also includes express acknowledgement by Cingular that GO 69-C applies until the Commission approves conversion of the license to a lease. If there is any conflict between the Second Master Attachment Agreement and the Standard Agreement, the Second Master Attachment Agreement prevails.

Between October 2001 and May 2002, the parties executed ten standard agreements under the Second Master Attachment Agreement, resulting in revocable licenses for the use of the property by Cingular. Edison now seeks to convert these ten licenses to leases. Edison also seeks authority to continue to use the Second Master Attachment Agreement and associated Standard Agreement to process future, additional license / lease arrangements with Cingular. The application explains that Edison seeks advance § 851 approval in order to "avoid redundancies inherent in filing a new application each time [Edison] and Cingular agree on a specific new attachment." (Application, pp. 3-4.)

IV. Discussion

The application identifies 23 licenses, which permit Cingular to attach its antennas and antenna equipment to Edison property at the following locations:

First Master Attachment Agreement		*Second Master Attachment Agreement*	
Site ID	**Site Location**	**Site ID**	**Site Location**
LA605	Southgate Nursery – Southgate	SM050	La Fresa Substation-Redondo
CM336	Crown Valley-Mission Viejo	SM081	Lincoln Ave-Anaheim
CM383	405 Fwy & Culver-Irvine	SM080	Valley View-La Palma
LA596	YMCA-1000 Oaks	SM082	Audre Drive-Anaheim
CM537	Alicia Pkwy-Laguna Hills	CM377	Olympiad-Mission Viejo
CM358	Highland-Rancho Cucamonga	SM026	Claretta Ave-Cerritos
LA654	Lakewood / Woodruff-Lakewood	CM255	Canyon Rim Rd-Pomona
CM415	Universe & Edinger-Huntington Beach	CM152	Yale Ave-Irvine
LA374	Alamitos Center-Bellflower	VY-061	90th Street-Lancaster
LA594	Grissom-1000 Oaks	CM-102	North Ranch Rd / Canyon Rim-Anaheim
LA 996	Portrero Grande-Monterey Park	/	/
CM294	Ellis-Huntington Beach	/	/
LA605	Southgate Nursery-Southgate	/	/

The conversion of a license to a more durable lease requires Commission approval under § 851, since (1) GO 69-C does not apply to any arrangement that is not revocable within the terms prescribed in that general order, and (2) § 851 requires a public utility to secure Commission authority before, among other things, leasing any property that is "necessary or useful in the performance of its duties to the public."

Prior Commission decisions address the license / lease of antenna and antenna equipment attachment locations, as well as other types of telecommunications infrastructure. As noted above, in D.00-07-010 the Commission authorized use by Edison and PBMS of a similar master attachment agreement for the license / lease of attachment locations for wireless antenna equipment. In D.02-12-023, D.02-12-024, and D.02-12-025 the Commission approved master agreements and associated standard agreements for the license and subsequent lease of Edison antenna equipment locations, and excess space at telecommunications facility sites, to Nextel of California, Inc., Sprint PCS Assets, L.L.C. (Sprint), and AT&T Wireless Services of California, L.L.C. (AT&T Wireless).

Edison is not the only energy utility to ask for such approvals. In March 2002, in D.02-03-059, we reviewed and approved a license / lease arrangement between Pacific Gas and Electric Company (PG&E) and AT&T Wireless and there have been other such decisions. D.02-03-059 is important because it expressly notes the significant difference between the licenses PG&E issued to AT&T Wireless for attachment of removable antenna equipment and other licenses, the subject of a pair of 2001 decisions, that PG&E issued in connection with permanent construction to interconnect two electric generation plants with its system.[8] While we approved the license / lease agreement between PG&E and AT&T Wireless, we did so with some reservations, stating:

[8] In those 2001 decisions, D.01-08-069 (*Calpine Delta*) and D.01-08-070 (*CalPeak*), we concluded that PG&E's licenses exceeded the scope of authority granted by GO 69-C and we ordered PG&E to show cause why it should not be sanctioned for violation of § 851 and GO 69-C.

> The Applicants in this case negotiated a single "Master License/Lease Agreement" which covers both the license and lease of the property. Under this single agreement, the Applicants have agreed that, upon Commission approval of the §851 application, the provision of the agreement that renders the entire agreement revocable becomes inoperative, which has the effect of transforming a fully revocable arrangement to a more durable lease arrangement.
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> Our reservations arise from the fact that, by virtue of the single agreement, it appears that the Applicants contemplated that they would eventually be seeking §851 approval. If parties anticipate that they will be entering into an agreement that will require such approval, they should file an application seeking such approval. When parties use the same agreement to convert a license to a lease, our concerns increase that the parties may be attempting to bootstrap upon a GO 69-C license to undermine our analysis of environmental and other factors in the § 851 application.
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> …
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> We give notice that single agreements that provide for the conversion of a license to a lease may not be approved in the future. (D.02-03-059, p.7. slip op.)

Like PG&E's licenses to AT&T Wireless and Edison's licenses to Sprint and to AT&T Wireless, this application concerns licenses to locate wireless communications antennas and antenna equipment on utility property. The antennas and associated antenna equipment can be removed readily, if necessary, and constitute a limited use of utility property under GO 69-C. Both the First Master Attachment Agreement and the Second Master Attachment Agreement contemplate, in a single agreement, a license-to-lease conversion, and in this respect resemble the AT&T Wireless and the Sprint licenses, as well.

Also like the AT&T Wireless and Sprint license / lease situations, those presented by this application do not appear to be structured to avoid the

environmental review that may be required when, pursuant to § 851, the Commission considers whether to authorize a lease of public utility property.[9] As we discuss below, conversion of these licenses into leases does not occasion additional environmental review by the Commission.

We rely upon GO 159-A, which delegates authority to regulate the location and design of cellular facilities to local agencies, though the Commission retains oversight jurisdiction in cases of conflict with Commission goals and / or statewide interests.[10] The First Master Attachment Agreement and the Second Master Attachment Agreement properly require Cingular to apply for all required governmental permits and approvals, which is consistent with GO 159-A. Further, as required by GO 159-A, Cingular must notify the Commission if the permits or approvals are granted or if none are necessary because the proposed construction is minor. We believe these conditions in the master attachment agreements provide that environmental review will occur at the appropriate time.

Edison states that the parties entered into the licenses with the intention to convert them into leases once Commission approval to do so had been obtained. Proceeding in this manner enabled Cingular "to secure locations for the development of its telecommunications network as quickly as possible."

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[9] As discussed in *Calpine Delta* and *CalPeak*, supra, and reiterated in D.02-03-059, we reject the argument, raised in the proceedings underlying those decisions, that conversion of a license to a lease necessarily will have no effect on the environment and, thus, requires no environmental review. The implication of such an argument is that parties may evade environmental review, which, under some fact patterns, would be applicable to a lease by first entering into a license and then applying to convert it to a lease.

[10] See D.96-05-035 (66 CPUC2d 257).

(Application, p.7.) Though we disfavor license / lease arrangements generally, since issuing D.02-03-059 we have approved other license-to-lease conversions for wireless equipment attachments.

Edison also states that the license / lease arrangements are examples of its "ongoing effort to pursue opportunities to generate additional revenues from utility assets, while also ensuring that its electrical ratepayers receive substantial benefits without risk." (*Id.*, at p. 4.) Edison proposes to treat the revenues received from Cingular in accordance with the gross revenue sharing mechanism for other operating revenues, known as "OOR," which the Commission adopted in D.99-09-070. Edison states that the two master attachment agreements and associated standard agreements fall within the non-tariff products and services category, or "NTP&S," identified as *Use of Communications and Computing Systems,* which is subject to a 90% / 10% shareholder / ratepayer revenue sharing allocation. In D.02-12-023 and D.02-12-024 the Commission adopted the agreement between Edison and the Commission's Office of Ratepayer Advocates (ORA) that revenues associated with attachment agreements are to be shared between shareholders and ratepayers on a 90 / 10 basis. The same revenue sharing allocation is appropriate here.

In D.02-03-059 we determined that the PG&E and AT&T Wireless attachment agreements made "good sense from several perspectives" and we quoted D.00-07-010, our earlier decision approving the agreements between Edison and Cingular's corporate predecessor:

> It is sensible for California's energy utilities, with their extensive easements, rights-of-way, and cable facilities, to cooperate in this manner with telecommunications utilities that are seeking to build an updated telecommunications network.

> Joint use of utility facilities has obvious economic and environmental benefits. 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. (D.02-03-059 at p. 9, slip op. quoting D.00-07-010, p. 6.)

We conclude that the attachment agreements at issue in this application likewise make productive joint use of available space, do not interfere with Edison's obligations to its electric utility customers and permit improved service to Cingular's customers. We are also favorably influenced by Edison's commitment to notify the Commission of changed circumstances in connection with these master attachment agreements. We adopt these notification requirements, with one modification, as a condition of our approval. Edison shall:

- Notify ORA and the Commission's Energy Division of all new lases and all substantive extensions or terminations of these attachment agreements.
- Notify ORA and the Energy Division assistant directors for energy, in writing, of any substantive changes to plant in service resulting from implementation of the attachment agreements, within 60 days of the change.
- Notify ORA and the Energy Division assistant directors for energy, in writing, if any right-of-way which is the subject of these attachment agreements ceases to be used and useful for the provision of electric service or if there are any substantive changes in the right-of-way segments which are the subject of these attachment agreements, within 30 days of any such event.

However, we do not accept Edison's proposal to notify ORA and the Energy Division of substantive amendments to the agreements. Instead,

consistent with our direction to PG&E in D.02-03-059, Edison shall file an application under § 851 for approval of any such proposed changes to either

master attachment agreement or to its subsidiary standard agreement. Our approval of these 23 leases, and for additional antenna equipment leases executed under the Second Master Attachment Agreement, is based upon the terms in the documents submitted for our review. We do not think it prudent, or consistent with our responsibilities under § 851, to give Edison advance authority to negotiate substantive amendments to these agreements.

V. Request for Confidentiality

By motion filed concurrently with the application on July 12, 2002, Edison requests leave to file under seal certain information contained in the agreements, which it states is confidential and commercially sensitive for Cingular. The information includes: the terms of the compensation between Edison and Cingular; certain terms governing the length of the leases; and the monetary amounts for liquidated damages.[11] Edison filed narrowly redacted versions of the First Master Attachment Agreement, including its Standard Agreement as Exhibit 1 to the application, and the Second Master Attachment Agreement, and its Standard Agreement as Exhibit 2; Edison tendered the full text of the agreements under seal with its motion.

[11] By letter dated October 28, 2003, Edison acknowledges a mismatch between the contents of the application (at pages 8, 9, and 13) and the motion, and states that Cingular joins Edison in expressly waiving any claim of confidentiality in the terms publicly disclosed in the application. The following terms have been publicly disclosed: (1) pursuant to the Standard Agreement, executed under the First Master Attachment Agreement, each license / lease will run for five years with options to renew for three additional terms of five years; rent is due annually for the first five years and the annual rent is adjusted every five years thereafter, and (2) pursuant to the Standard Agreement, executed under the Second Master Attachment Agreement, the annual rent for each license / lease will be adjusted every five years throughout the term of the lease.

As Edison's motion argues, commercially sensitive information regarding the financial terms and conditions of the lease, if revealed to competing carriers, could disadvantage Cingular vis a vis such carriers. Public disclosure of the information also could disadvantage Edison in negotiations with other carriers over similar agreements. We have granted similar requests for confidential treatment in the past and will do so here, as further detailed in the ordering paragraphs of today's decision.

VI. Categorization of Proceeding

In Resolution ALJ 176-3092 dated August 8, 2002, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not necessary. Based on the record in this matter, public hearing is not necessary, and we affirm the preliminary determinations made in Resolution ALJ 176-3092.

VII. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Edison did not file comments but submitted a letter pointing out a ministerial omission, which we have corrected.

VIII. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner. The Administrative Law Judge (ALJ) originally assigned to this proceeding was Myra J. Prestidge. The proceeding was subsequently reassigned to ALJ Karl J. Bemesderfer and now is assigned to ALJ Jean Vieth.

Findings of Fact

1. Cingular's use of Edison's property pursuant to the 23 licenses is neither permanent nor significant because it involves cellular antennas and antenna equipment that can be removed easily.

2. The 23 licenses entered into between Edison and Cingular under the First Master Attachment Agreement and the Second Master Attachment Agreement are structured to convert from a revocable license to a lease if Commission approval is granted.

3. The master attachment agreements incorporate the environmental review and notification requirements of GO 159-A.

4. The master attachment agreements make productive utility use of available space, allow improved service to Cingular's customers, and do not interfere with utility service to Edison's customers.

5. A 90% / 10% shareholder / ratepayer revenue sharing allocation of the rents received under the master attachment agreements complies with Commission precedent for Edison's NTP&S category.

6. Edison has made appropriate, narrow redactions to the versions of Exhibits 1 and 2 filed publicly as part of A.02-07-031.

7. Public disclosure of the pricing and other specific terms in Exhibits 1 and 2 of A.02-07-031 would disadvantage Cingular and Edison in the marketplace.

Conclusions of Law

1. No public hearing is necessary.

2. The use of Edison property by Cingular under the master attachment agreements is a permissible "limited use" under GO 69-C.

3. No further environmental review of this application is required by the Commission.

4. The 23 proposed leases are in the public interest and should be approved, subject to the notifications that Edison proposes and upon the condition that Edison file under Section 851 for Commission approval of any substantive amendments to the master attachment agreements and the standard agreements associated with them.

5. Edison's request for authority to enter into additional future leases with Cingular under the Second Master Attachment Agreement is in the public interest and should be approved, subject to the notifications that Edison proposes and upon the condition that Edison file under Section 851 for Commission approval of any substantive amendments to the Second Master Attachment Agreement and its associated Standard agreement.

6. Edison's request to file under seal certain information in Exhibits 1 and 2 to the applications should be granted for two years.

7. To promote certainty in the parties' business dealings, today's decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Application (A.) 02-07-031 is approved to:
   a. Convert to leases the 23 separate antenna equipment location licenses enumerated in the body of this decision;
   b. Authorize Southern California Edison Company (Edison) to enter into additional leases for antenna equipment locations with Pacific Bell Wireless, LLC, dba Cingular Wireless, pursuant to the Second Master Attachment Agreement and associated Standard Agreement (Exhibit 2 to A.02-07-031).
2. The authority granted in Ordering Paragraph 1 is conditioned upon the following notifications by Edison:

a. To the Office of Ratepayer Advocates (ORA) and the Commission's Energy Division of all new leases and all extensions or terminations of leases executed pursuant to the First Master Attachment Agreement and associated Standard Agreement (Exhibit 1 to A.02-07-031), or the Second Master Attachment Agreement and associated Standard Agreement.

b. To ORA and the Energy Division assistant directors for energy, in writing, of any substantive changes to plant in service resulting from implementation of the leases, within 60 days of the change.

c. To ORA and the Energy Division assistant directors for energy, in writing, if any right-of-way, which is the subject of these leases, ceases to be used and useful for the provision of electric service or if there are any substantive changes in the right-of-way segments, which are the subject of these licenses, within 30 days of any such event.

3. Edison shall file an application under § 851 for approval of any substantive amendment of the First Master Attachment Agreement and associated Standard Agreement or the Second Master Attachment Agreement and associated Standard Agreement.

4. Edison's July 12, 2002, motion for leave to file under seal certain information in Exhibits 1 and 2 to A.02-07-031, a copy of which was submitted under seal with the motion, is granted, in part, and denied in part, as further provided in Ordering Paragraph 5. The following terms, which are disclosed in the application at pages 8, 9 and 13, have been publicly disclosed:

a. Pursuant to the Standard Agreement, executed under the First Master Attachment Agreement, each license / lease will run for five years with options to renew for three additional terms of five years; rent is due annually for the first five years and the annual rent is adjusted every five years thereafter, and

b. Pursuant to the Standard Agreement, executed under the Second Master Attachment Agreement, the annual rent for each license/lease will be adjusted every five years throughout the term of the lease.

5. The following provisions shall apply to the protective order granted by Ordering Paragraph 4:

a. The information shall be filed under seal for two years from the effective date of this decision. During that period, the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the Assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

b. If Edison believes that additional protection is needed beyond that ordered in Ordering Paragraph 4(a), it may file a motion stating the justification for further withholding of the information from public inspection, or for such other belief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

6. This proceeding is closed.

This order is effective today.

Dated February 26, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

I dissent.

/s/ CARL W. WOOD
Commissioner

I reserve the right to join Commissioner Wood's dissent.

/s/ LORETTA M. LYNCH
Commissioner

A.02-07-031
D.04-02-041

Dissenting Opinion of Commissioners Carl Wood and Loretta Lynch
(Southern Edison Company Agenda Item #1, February 26, 2004)

We dissent because we believe that, in part, this decision is unlawful. The leases at issue, here, involve cellular towers. The proposed decision concludes that the Commission will not consider any potential environmental impacts before approving the leases, as is required by CEQA. The order compounds this problem by approving Master Lease Agreements for future cellular facilities in yet-unspecified locations. The justification provided for all of this is that pursuant to General Order 159-A, the Commission elects not to consider the environmental implications of siting cellular towers.

We disagree with this interpretation. First, the General Order does not address the current situation. The General Order and the implementing decision address the issue of the Commission exercising its jurisdiction over cellular providers to control the siting of towers. That is not what we are doing here – we are considering an electric utility's request to lease right-of-way space to cellular providers pursuant to Section 851. Nowhere in the General Order or the implementing decision will you find a reference to electric utilities, the implications of building in utility rights-of-way, or Section 851. These issues are not considered.

Regardless, we think it is entirely consistent with the General Order for the Commission to comply with its legal obligations under CEQA. The Commission can defer to a local agency as Lead Agency, and then rely on

any resulting environmental analysis as a Responsible Agency. This is what the law envisions. This is our obligation.

CEQA places an obligation on public agencies. An agency cannot decline to comply simply because it feels like it, no matter how sound its policy rationale might seem.

We have raised this issue before. No one has ever suggested that this interpretation of our legal obligation under CEQA is wrong, yet the Commission continues to compound the violation. If our understanding is incorrect, and if CEQA empowers the Commission to decline to consider the environmental impacts of these decisions, then our attorneys ought to be able to make the case.

Our obligation is clear. The California Supreme Court has declared that the purpose of CEQA is to compel government at all levels to make decisions with environmental consequences in mind (Bozung v. LAFCO (1975) 13 Cal.3d 263). When the Commission issues an order such as this that declines to consider environmental consequences, it is defying that obligation. We invite our colleagues to show us where the law allows us to sidestep that responsibility.

/s/ CARL WOOD
Carl Wood
Commissioner

/s/ LORETTA LYNCH
Loretta Lynch
Commissioner

San Francisco, California
February 26, 2004