President Michael Peevey, and Commissioner Dian Grueneich, dissenting:

When presented with the Proposed Decision in this docket, we reviewed it carefully and chose to vote "no". At the Commission meeting where the majority adopted this order, President Peevey provided a very terse explanation of his negative vote, declaring that the policy of allowing ratepayers only 50% of after-tax gains upon sale of non-depreciable utility assets is "too rich for the shareholders". We use the opportunity of this formal dissent to expand on our strong conviction that the majority's opinion on this issue is inconsistent with the applicable law, economic policy, and our own precedents, and provides a split of gains that is unduly generous to the utility's shareholders, and unjustifiably harsh to its ratepayers.

When we instituted our Rulemaking into the appropriate allocation of gain from the sales of utility property, we noted that based on risk allocation theory, the ratepayers should be rewarded most of the gain from sales of utility assets because the regulated utility's financial risk is primarily borne by the ratepayers. Even where the utility shareholders provide the initial capital investment for a non-depreciable asset such as land, the capital is generally fully paid back through the return earned on the initial investment while the asset is held in utility rate base. In addition, of course, it is the ratepayers who provide the revenue to cover all of the operational costs associated by the property.

The record in this case fully supports the award of most of the gain on sale of non-depreciable assets to the ratepayers. The Joint Opening Comments of DRA and TURN clearly explicate the correct use of the risk allocation theory as adopted in the seminal case of Democratic Central Committee v. Washington Metropolitan Area Transit Commission. These parties then point to several examples where ratepayers have paid many times over the original acquisition cost of a non-depreciable asset, as well all of the operating costs, such as maintenance, insurance, and taxes, during the holding period of the asset in rate base, only to have the utility lay claim to all of the gain upon it's disposition. (Joint Opening Comments, pgs 10-12)

The Commission majority pays scant attention to the compelling presentation of DRA and TURN. Having conceded from the outset of our Rulemaking that shareholders were entitled to no more than an amount "between 5% and 50% of the gain under normal circumstances", they rely on an "exercise of discretion" to award utility shareholders the absolute maximum reward of 50% of the net gains on non-depreciable property. The justification for this puzzling outcome is twofold: recognition of the minor risks (emphasis added) faced by shareholders in holding the property, and to provide "...an incentive to utility management to manage its assets wisely." (D.06-05-041, pgs 44-45)

If our utilities were in the property speculation business, perhaps this reasoning would be more persuasive. But, they are not. Their mission is to provide essential utility services to their ratepayers. Thus, the majority has sent exactly the wrong signal to utility management by offering such a rich reward for dealing in non-depreciable assets, perhaps to the detriment of its ratepayers.

DRA and TURN have argued convincingly that ratepayers bear most of the risk associated non-depreciable property such as land and water rights, and therefore deserve much more than an even split of resultant gains upon sale. We hope these parties will present our fellow Commissioners with an opportunity to reconsider this particular feature of D.06-05-041 in the near future.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey, President

/s/ DIAN GRUENEICH

Dian Grueneich, Commissioner

San Francisco, California
May 25, 2006