

General Order 173

Public Utilities Code Section 851 Advice Letters

Rule 1. Statement of Purpose

This General Order (GO) modifies and makes permanent the former pilot program regulations for Section 851 advice letters, as adopted in Resolution ALJ-186 (adopted August 2005), amended by Resolution ALJ-202 (adopted August 2007) and Resolution ALJ- 244 (adopted March 2010), and extended by Resolution ALJ-272 (adopted October 18, 2011). These regulations authorize regulated utilities to request Commission approval pursuant to Public Utilities Code Section 851¹ of certain transactions transferring interests in utility property valued at \$5 million or less by advice letter.

Rule 2. General Rules

Rule 2.1. Who May File

Except as otherwise provided by state law or Commission order, any public utility may file an advice letter to seek Commission approval of any transaction involving the transfer or disposition of utility property valued at \$5 million or less which meets the requirements for advice letter treatment specified in Section 851 and this GO. Approval of transactions involving proposed transfers of interests in Pacific Gas and Electric Company's watershed lands may be requested by advice letter subject to the procedures approved in Decision (D.) 10-08-004 or by subsequent order of the Commission. Public utilities exempted from the requirements of Section 851 by the Commission or state law need not file such advice letters for transactions otherwise subject to Section 851.

Rule 2.2. Right of the Commission to Require a Formal Section 851 Application for Certain Transactions Valued at \$5 Million or Less

Notwithstanding the foregoing, the Commission's Executive Director or the appropriate Industry Division Director may require the utility to file a formal Section 851 application, rather than an advice letter, for certain transactions, based on the reasons stated in Rule 7.a.(3) below.

Rule 2.3. Right of Utilities to File Formal Section 851 Applications in Lieu of Advice Letters

Regulated utilities may choose to submit formal applications under Section 851 for transactions that qualify for advice letter treatment pursuant to this GO.

¹ All Code references are to the Public Utilities Code, unless otherwise stated.

Rule 2.4. Applicability of GO 96-B/Conflicting Regulations

Advice letters filed pursuant to this order shall generally be processed pursuant to GO 96-B or its successor regulation, and shall comply with all applicable requirements under GO 96-B or its successor regulation, except as otherwise specified herein or as required by law.

Rule 2.5. Section 851 Advice Letters Shall Not be Deemed Approved by the Passage of Time or Without Express Action by the Commission, the Executive Director, or the Appropriate Division Director

Notwithstanding Rule 2.4 above or Rule 8 below, no advice letter filed pursuant to this GO shall be deemed approved due to the passage of time or unless the Commission, the Executive Director, or the appropriate Industry Division Director takes express action by approving, denying, or modifying the advice letter.

Rule 2.6. Compliance with Applicable Laws and Commission Requirements

Regulated utilities shall comply with all laws and Commission rules, regulations, and orders that apply to transactions for which advice letters are submitted pursuant to this GO.

Rule 3. Section 851 Transactions Eligible for Advice Letter Treatment

Regulated utilities may file advice letters for transactions which require Commission approval under Section 851 and meet the following criteria:

- a. The activity proposed in the transaction will not require environmental review by the Commission as a Lead Agency under the California Environmental Quality Act (CEQA), either because:
 - (1) A statutory or categorical exemption applies (the applicant must provide a Notice of Exemption from the Lead Agency or explain why it believes that an exemption applies), or
 - (2) 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
 - (3) Another public agency, acting as the Lead Agency under CEQA, has completed environmental review of the project, and the Commission is required to perform environmental review of the project only as a Responsible Agency under CEQA.
- b. 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.

- c. Any financial proceeds from the transaction will be either:
 - (1) 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
 - (2) Immediately divided between shareholders and ratepayers based on a specific distribution formula previously approved by the Commission for that utility.
- d. 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.
- e. 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.
- f. 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.
- g. 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.
- h. If the transaction conveys an easement, right-of-way, or other less than fee interest in real property, the fair market value of the easement, right-of-way, or other interest in the property does not exceed \$5 million.
- i. The transaction will not materially impact the ratebase of the utility. (This requirement does not apply to telephone corporations subject to the Uniform Regulatory Framework (URF) or which are not subject to rate of return regulation.)
- j. If the transaction is 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.
- k. The transaction does not warrant a more comprehensive review that would be provided through a formal Section 851 application.

Rule 4. Contents of Advice Letters

In addition to other information required by GO 96-B or its successor regulation, advice letters shall include the following:

- a. Identity and addresses of all parties to the proposed transaction;
- b. A complete description of the property, including its present location, condition, and use;

- c. The transferee's intended use of the property;
- d. A complete description of the financial terms of the proposed transaction;
- e. A description of how the financial proceeds of the transaction will be distributed;
- f. A statement of the impact of the transaction on ratebase (except for advice letter applications filed by telephone corporations 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;
- g. 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);
- h. 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 Rule 3 (g) above;
- i. 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;
- j. 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 interests in the same real property or real property that is located near the property at issue or that are being transferred to the same transferee; or for depreciable assets, sales of the same or similar assets or sales to the same transferee;
- k. Sufficient information and documentation (including environmental documentation) to show that all of the eligibility criteria stated in Rule 3 above have been met;
- l. The filing utility may submit additional information to assist in the review of the advice letter, including recent photographs, scaled maps, drawings, etc;
- m. Environmental Information:

(1) 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:

- (a) Has the proposed transaction been found exempt from CEQA by another government agency?
 - (i) 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 the State Clearinghouse number.

- (ii) 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.

(2) 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.

(3) 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 staff handling CEQA issues:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) An explanation of any aspect of the project or its environmental setting which has changed since the issuance of the prior CEQA document; and
- (e) 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.

Rule 5. Notice and Service of Advice Letters

Notification and service of the advice letter shall be made in accordance with GO 96-B or its successor regulation. In all cases, the advice letter shall be noticed in the Commission's *Daily Calendar*. A copy of the advice letter shall be served on the appropriate Industry Division, the Commission Division of Ratepayer Advocates (DRA), the Commission Energy Division staff handling CEQA issues, 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 or its successor regulation. If the CEQA documents filed with the advice letter pursuant to Rule 4. (m) above exceed 15 pages in length, the regulated utility may serve a notice of availability for the CEQA documents, in lieu of the CEQA documents themselves, on persons and organizations on the utility's advice letter service list, except that a full copy of the CEQA documents shall be served on the appropriate Commission Industry Division, DRA, the Commission Energy Division staff handling CEQA issues, and the relevant departments of the city and county in which any real property involved in the transaction is located (unless the city or county prepared the CEQA documents as the Lead Agency under CEQA.)

Rule 6. Protests to Advice Letters

- a. Protests to an advice letter shall be filed with the appropriate 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 or its successor regulation.
- b. All protests shall be processed and addressed pursuant to the procedures stated in GO 96-B or its successor regulation.

Rule 7. Review Process for Advice Letters

a. Industry Division Review

(1) Submittal of Advice Letters: Advice letter filings that are eligible for filing pursuant to this GO shall be submitted to the appropriate Industry Division for processing.

(2) Initial 30-Day Review Period: The filing of an advice letter triggers a 30-day review period by the appropriate Industry Division. At the end of the initial 30-day review period, Industry Division staff shall notify the utility that the advice letter has been automatically suspended pursuant to General Rule 7.5.2 of GO 96-B or a successor regulation (unless the advice letter has already been rejected or approved). Industry Division staff may also notify the utility that additional information or documentation is required.

(3) Grounds for Rejection of Advice Letter by Appropriate Industry

Division: For any of the following reasons, the appropriate Industry Division may determine that the approval of an advice letter filing under this GO is inappropriate:

- (a) The proposed transaction does not satisfy the criteria for this GO;
- (b) The proposed transaction presents unusual issues of fact or law that require more complete fact-finding and informed decision-making, 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 or its successor regulation;
- (d) The monetary value of the transaction will materially impact the ratebase of the utility (except when the applicant is a telecommunications corporation subject to the Uniform Regulatory Framework (URF) or which is not subject to rate of return regulation);
- (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 appropriate Industry Division for additional information or documentation.

(4) Rejection of Advice Letter by Appropriate Industry Division: Having stated the reasons for determining that an advice letter filing is inappropriate for this GO program in writing, the appropriate Industry Division may reject the advice letter pursuant to GO 96-B or its successor regulation, without prejudice to the applicant to refile the request as a formal application. In the case of a rejection pursuant to Rule 7. a. (3) (g) above or its successor regulation (due to the utility's failure to respond to a request from the appropriate Industry Division for additional information or documentation), the rejection may be without prejudice to the refiling of the advice letter accompanied by the necessary information or documentation.

(5) Executive Director/Division Director Disposition of 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 appropriate Commission Industry Division 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 appropriate 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 appropriate 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 appropriate Industry Division recommends approval or modification of the project, the Resolution shall include the appropriate findings under CEQA.

Rule 8. 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 appropriate Industry Division, the Commission or in appropriate cases, the Executive Director or Director of the appropriate Industry Division, shall act upon the advice letter by no later than 120 days after its filing, by either approving, modifying, or denying the advice letter.

Rule 9. Appeal or Review of Commission Action on Advice Letters

Rule 9.1. Appeal or Review of 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 or its successor regulation and the Commission Rules of Practice and Procedure.

Rule 9.2. Appeal or Review of Executive Director or 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 or its successor regulation) 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 (or a successor regulation).

Rule 10. 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 appropriate Industry Division 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 the Section 851 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) a short summary of the utility's efforts to comply with GO 156 in the transaction addressed in the advice letter, f) the date on which the advice letter was approved or denied, and g) if the advice letter was not approved, a brief statement of the reason.