

Date of Hearing: April 23, 2025

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY

Cottie Petrie-Norris, Chair

AB 420 (Petrie-Norris) – As Amended April 9, 2025

SUBJECT: Public utilities: property, franchises, and permits: exemption

SUMMARY: Allows certain real estate transactions, as specified, undertaken by investor owned utilities (IOUs) that have a value of \$100,000 or less to bypass California Public Utilities Commission (CPUC) review and approval. Authorizes the value threshold to increase with the cost of inflation.

EXISTING LAW:

- 1) Establishes the CPUC has regulatory authority over public utilities, including electrical corporations and gas corporations. (California Constitution Article 12)
- 2) Prohibits a public utility, other than certain common carriers, from selling, leasing, assigning, mortgaging, or otherwise disposing of, or encumbering its assets over \$5 million that are necessary or useful in the performance of its duties to the public, unless the public utility has secured an order from the CPUC. For a qualified transaction at or below \$5 million, approval from the CPUC can be obtained through an advice letter. (Public Utilities Code § 851)
- 3) Prohibits a person or corporation from merging, acquiring, or controlling, any public utility organized and doing business in this state without first securing authorization from the CPUC. Before authorizing the merger, acquisition, or control of any electrical, gas, or telephone corporation organized, existing law requires the CPUC to consider specified criteria and that the transaction is in the public interest. (Public Utilities Code § 854)
- 4) Defines a change of control to include the voluntary or involuntary change in ownership of assets from an electrical or gas corporation to a public entity. Requires specified workforce protections when a change of control occurs. (Public Utilities Code § 854.2)
- 5) Authorizing the use of the advice letter process by water utilities on matters related to "service of recycled water." (Public Utilities Code § 455.1)
- 6) Authorizes the use of advice letters by oil pipelines in seeking rate changes. (Public Utilities Code § 455.3)

FISCAL EFFECT: Unknown. This bill is keyed fiscal, and will be referred to the Assembly Committee on Appropriations for its review.

CONSUMER COST IMPACTS: Unknown.

BACKGROUND:

The History of PUC § 851 – The CPUC must review any transactions involving the selling, buying, merging, or otherwise changing control of a public utility's assets. These duties of the

CPUC are outlined in Public Utilities Code § 851. Section 851 is a broad rule that generally prohibits utilities from allowing other uses or disposal of their property without first obtaining authorization from the CPUC. The original enactment of this statute made no exceptions – any and all transactions needed to go through a formalized ruling of the CPUC.

AB 736 (Horton, Chapter 370, Statutes of 2005), authorized the CPUC to allow the sale or disposal of public utility property through an advice letter process for transactions valued at \$5 million or less. Prior to this change, California law required the CPUC to issue an order before a public utility could engage in such a transaction, regardless of value. The intent of AB 736 was to create in statute an expedited review process for low-value transactions and was modeled after an existing CPUC pilot program.

Reduced approval timelines is the main benefit of the advice letter process over the order. The advice letter process allows for approval in less than 120 days. The procedures for issuing an order can take the CPUC up to 18 months. AB 736 was amended to disallow certain low-value transactions from being eligible for the expedited review. Specifically, transactions that trigger any CPUC review under CEQA and transactions that result in a "material impact" on the utility's ratebase were not eligible. Subsequent legislation by Assemblywoman Skinner (AB 698, Skinner, Chapter 370, Statutes of 2009) narrowed these prohibitions to projects where the CPUC is lead agency under CEQA. AB 698 also authorized the CPUC Executive Director to approve the advice letter-qualifying transactions; i.e., uncontested transactions valued at or less than \$5 million, not subject to CEQA.

The CPUC Advice Letter Process – An advice letter according to the CPUC is an informal request by a utility for Commission approval, authorization, or other relief, including an informal request for approval for rates, charges, terms or conditions. The advice letter process is dictated by CPUC General Order 96-B and General Order 173. The goal of the process is to provide a quick and simplified review of utility requests that are expected neither to be controversial nor to raise important policy questions. The advice letter process does not provide for an evidentiary hearing. One of the primary uses of the advice letter process is to review a utility's request to change its tariffs in a manner previously authorized by statute or Commission order. Some transactions that fall under Section 851 are also eligible for the advice letter process. The criteria for transactions that qualify for the advice letter process can be seen in the text box below.

CPUC General Order 173 Outlining § 851 Transactions Eligible for the Advice Letter Process

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.

Typical PUC § 851 Advice Letter Transactions – There is a relatively low number of real estate transactions that are included in the Section 851 advice letter process. All Pacific Gas and Electric (PG&E) transactions since 2023 that fall under this process are described in the table below.¹

PG&E Advice Letters under Section 851 Since 2023

Year	Date Filed	Effective Date	Subject
2025	March 28th, 2025	Pending	Grant of Easement to the City of Santa Rosa for a Sidewalk - Request for Approval Under Section 851 and General Order 173
2025	February 28th, 2025	Pending	Former Potrero Power Plant, Water Line Grant of Easement - Request for Approval Under Section 851 and General Order 173
2025	February 4th, 2025	Pending	Levee Construction in the City of Oakley - Request for Approval Under Section 851 and General Order 173
2024	July 25th, 2024	August 24th, 2024	Quitclaim of a Gas and Electric Distribution Easement in the City of Fresno - Request for Approval Under Section 851 and General Order 173
2023	October 16th, 2023	November 8th, 2023	Donation of Unimproved Land in the City of Novato - Request for Approval Under Section 851 and General Order 173
2023	September 20th, 2023	October 20th, 2023	Quitclaim of a Gas and Electric Distribution Easement in the City of Fresno - Request for Approval Under Section 851 and General Order 173
2023	August 18th, 2023	September 19th, 2023	Quitclaim of a Gas and Electric Distribution Easement in the City of Fresno - Request for Approval Under Section 851 and General Order 173
2023	April 6th, 2023	May 6th, 2023	Easement Conveyance to Placer County Water Agency Affecting a PG&E Land in the City of Auburn (Placer County) - Request for Approval Under Section 851 and General Order 173

However, these transactions are also known to occur in bursts. One of the principal motivators of AB 698, mentioned above, was PG&E’s large submittal of (potentially hundreds of) applications for conservation easements on its watershed lands to fulfill its first bankruptcy settlement.² PG&E was concerned that those applications, which it expected to be non-controversial, would have suffered significant delays if a vote of the CPUC was required for each one.

COMMENTS:

- 1) *Author’s Statement.* According to the author, “California has some of the most robust utility customer protections in the nation. Unfortunately, some of the processes within the CPUC have become overly time consuming, and seem to favor process over outcomes. AB 420 identifies and streamlines a subset of minor land transactions that are delaying projects like new housing and interconnections to renewables. These delays can add 6-12 months to projects for transactions that are rarely questioned or controversial.”
- 2) *Purpose of the Bill.* Californians are struggling under the high cost of living in the state.³ One proposed reason for sky rocketing costs has been attributed to barriers to development in the state.⁴ Bureaucracy and permitting is often blamed as a source of

¹ <https://www.pge.com/tariffs/en/advice-letter.html>, Accessed April 19, 2025

² See Senate Floor Analysis; AB 698 (Skinner); August 17, 2009; <https://lis.caegis.net/LISWeb/faces/bills/billxmlxslasamend.xhtml;jsessionid=AVhXZe0Jh0RiLIWn5cARHG6oJqMRLWv1vImJt5aNVc9SmaTA9NX-!1841777440!-1579391847#>

³ Robin Rothstein, Chris Jennings, “Examining the Cost of Living By State”, *Forbes*, July 15, 2024.

⁴ Ben Christopher and Manuela Tobias, “Californians: Here’s why your housing costs are so high,” *CalMatters*, October 15, 2024.

these barriers. The goal of this bill is to remove the current requirement for utilities to gain CPUC approval for certain types of real estate transactions under \$100,000. This would include, but not be limited to, the transfer of easements required for building housing developments or the granting of conservation easements as was desired by AB 698 (Skinner, Chapter 370, Statutes of 2009). The CPUC's approval for these real estate transactions is almost always granted; however, it can take from a month to several months to process even the advice letter filings. The goal of this bill is to alleviate one of the barriers to expanded development in the state.

- 3) *Opening Loopholes.* The main purpose of PUC § 851 is to ensure property and assets bought with ratepayer dollars, continue to serve ratepayer interests, even at their sale. The CPUC is charged with determining whether the transaction serves the public interest, and prevents utilities from selling or leasing crucial infrastructure that could jeopardize service reliability or increase costs to ratepayers. The CPUC also assesses whether the sale delivers fair market value to provide the greatest benefit to ratepayers. For instance, PG&E's recent application to transfer nearly all of its hydroelectric assets weighed these factors; an application the CPUC denied due to the transfer being found to not be in the public interest.⁵

By exempting specific transactions from review, this bill opens potential loopholes that could provide an opportunity for utilities to bypass such oversight. While this bill does have appropriate limitations – in applying to only easement transfers or relocation agreements, and to only those at \$100,000 or less; not something of the magnitude of PG&E's hydro asset transfer – some potential consequences and concerns may persist, as noted below.

- a. As written, the types of real estate transactions that qualify for this exemption are unknown to committee, nor well-known within public utility regulation. However, the CPUC has not raised concern with these terms during conversations with the committee; instead, the CPUC notes they are common in real estate or property law.
- b. The exemptions in the bill could allow utilities to repeatedly sell portions of property valued over \$100,000, as long as each individual sale is under \$100,000. This is called “daisy chaining” and is currently statutorily forbidden in the advice letter process. No such protection is included in this measure.
- c. It provides the opportunity for utilities to transfer ownership of depreciated assets. This could include beneficial or substantial assets that now may be worth very little. This type of property ownership transfer may be best performed with CPUC oversight, even if the monetary value is minimal.
- d. This proposed exemption would lead to the loss of real-time oversight of the transactions; any review would occur in the general rate case after the transaction was complete. As a result, the opportunity to protest a transaction would be

⁵ CPUC Decision 24-05-004, *Decision Denying Application*, A.22-09-018, May 10, 2024; <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M531/K375/531375060.PDF>

significantly diminished. This bill seeks to limit this consequence by constraining the exemption to smaller-value transactions.

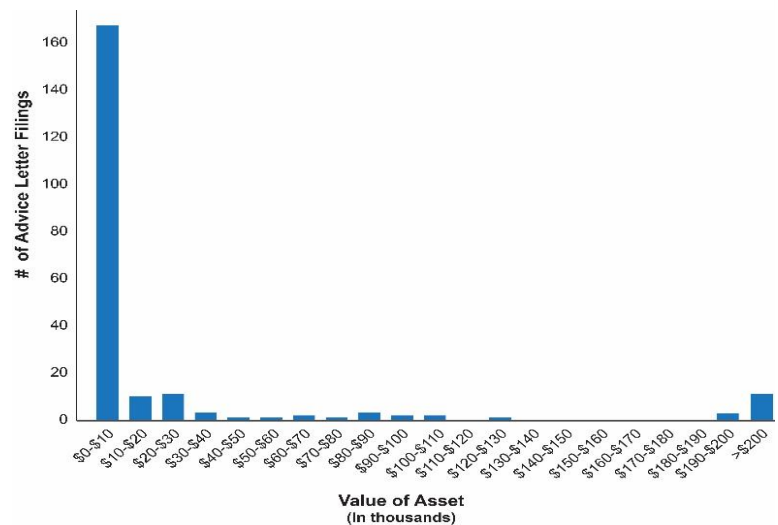
- e. San Diego Gas & Electric (SDG&E) reports that no Section 851 Advice Letter has been denied over the last five years.⁶ This suggests that these transactions are uncontroversial and that the advice letter process for Section 851 real estate transactions is essentially a rubber stamp that only adds delays. This may be a fair assertion for the current process; however, if this process transforms to have no oversight, this may no longer be accurate. It may be that the CPUC review is still performing a function by ensuring the banality of these transactions. If oversight is lost and the nature of the real estate transactions change, eventually this will be reported in the General Rate Case of the utility. However delays in acquiring this information and the density of the information provided in the GRC could make it difficult for the CPUC to hold utilities accountable if they begin to use this mechanism in creative or undesirable ways.

In order to address some of these concerns and to promote greater transparency and opportunity for corrective action, while balancing the benefits of the bill in removing administrative barriers when arbitrary or unnecessary, the committee recommends that the bill be amended to require utilities to report each exempted transaction in their General Rate Case.

This requirement is in alignment with what occurs under the advice letter process, mentioned above, where financial proceeds from the transactions may be booked to a memorandum account for distribution between shareholders and ratepayers during the next general rate case or other applicable proceeding for that utility.

- 4) *The \$100,000 Question.* This bill exempts specific real estate transactions under \$100,000 from any CPUC review, even the more expedited advice letter process. Looking at the number of advice letters relative to the value of the transaction, it appears that the vast majority of qualifying real estate transactions conducted by SDG&E in the last five years fall under \$10,000 (Figure 1).⁷ It is unclear to the committee the distribution of advice letter filings from the other utilities subject to this bill – i.e., those with gross annual California revenues of five hundred

Figure 1: The number of Advice Letter filings for Section 851 transactions from January 1, 2019, September 1, 2024 by SDG&E (Advice Letters with no value stated are not included).¹



⁶ Personal Communication, SDG&E, February 27, 2025

⁷ Personal Communication, SDG&E, February 27, 2025

million dollars, which includes PG&E, Southern California Edison, SDG&E, Southern California Gas, and (potentially) California Water.⁸ Given the lack of clarity in what would be captured by the monetary threshold in the bill, the author may wish to consider lowering the threshold to \$10,000, where the majority of past projects, at least for SDG&E, would have received the benefits of this measure.

5) *Prior Legislation.*

SB 550 (Hill) requires the CPUC to review specified safety elements for any proposed merger, acquisition or change in control of an electrical or gas IOU. It conditions approval of the transaction on whether it is in the public interest. This bill also clarifies the reviews required by the CPUC for any other asset transactions with a public utility. Status: Chapter 409, Statutes of 2019.

AB 1054 (Holden), among its many provisions, expanded the definition of change of control to include the voluntary or involuntary transfer of an IOU's assets to a public entity and made changes to the definition for change of control that included specified criteria and thresholds related to the treatment of the workforce. Status: Chapter 79, Statutes of 2019.

AB 698 (Skinner) relaxes that requirement by allowing the CPUC staff to approve the transfer without a vote of the commissioners if the proposal is valued at less than \$5 million and is uncontested. Status: Chapter 370, Statutes of 2009.

AB 735 (Horton) Modifies the California Public Utilities Commission's (PUC's) approval process for the sale or transfer of public utility assets by allowing public utilities to sell, or otherwise transfer property valued at less than \$5 million if the transfer is approved by PUC through a 120-day advice letter process rather than through a formal proceeding. Status: Chapter 370, Statutes of 2005

SB 52 (Rosenthal) established criteria that the CPUC must consider in reviewing a merger, acquisition, or change of control related to an IOU. Status: Chapter 484, Statutes of 1989.

REGISTERED SUPPORT / OPPOSITION:

Support

California Building Industry Association

Support If Amended

San Diego Gas and Electric Company

⁸ California Water Service Group, SEC 2024 *Summary Annual Report*, <https://www.calwatergroup.com/investors/financials-filings-reports/sec-filings/content/0001104659-25-035520/0001104659-25-035520.pdf>

Opposition

None on file.

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