

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



January 3rd, 2019

SUBJECT: Guidance Letter for Appropriate Use of General Order 69-C

Staff recently found that some public utilities inappropriately apply General Order (“GO”) 69-C to matters that require GO 173 or Public Utilities Code § 851 approvals, including, but not limited to the lease of utility building space, other real estate transactions, and dark fiber. To learn how public utilities apply GO 69-C, Staff requests that each company that receives a Data Request from Communications Division Staff regarding GO 69-C Transactions provide a report identifying GO 69-C transactions using the attached report template.

Public Utilities Code § 851 requires public utilities to file an application to obtain Commission authorization to sell, lease, assign, mortgage or otherwise dispose of public utility property for transactions that exceed \$5,000,000. For transactions valued at \$5,000,000 or less, GO 173 permits utilities to file an advice letter instead of an application. In addition, General Order 69-C authorizes public utilities subject to section 851 requirements to grant easements, licenses or permits for use or occupancy on, over, or under any portion of utility property for rights of way, private roads, agricultural purposes or other limited uses of utility property without further special authorization by the Commission, so long as said uses do not interfere with the operations of the public utility.

In D.10-05-019, the Commission exempted telephone corporations subject to the Uniform Regulatory Framework (URF Carriers) from PU Code § 851¹ for transactions involving the following assets that fall within the FCC Uniform System of Accounts²:

- 2111 Land,
- 2112 Motor Vehicles,
- 2113 Aircraft,
- 2114 Tools and other work equipment,
- 2121 Buildings (except for portions currently being used to provide collocation services or have space reserved in them to provide collocation services in the future),
- 2122 Furniture,
- 2123 Office equipment,
- 2124 General purpose computers, and
- 2690 Intangibles.

That decision also exempted AT&T California and Verizon California from seeking approval for transactions that fall within account numbers 2681 (capital leases) and 2682 (leasehold improvements). The Commission did not extend the exemption to ILECs still filing GRCs. The exemption granted would last four years, “at the end of which time [the Commission] will reexamine, at the request of any party to this proceeding, whether the exemption has served its purpose and should be continued, or has not achieved its purpose and should be terminated.” The decision states, “If no party requests such examination, then the exemption will continue.”³ Each URF carrier granted an exemption by D.10-05-019 is required to file an annual report by March 31 setting forth the transactions for the preceding calendar year as justification for not filing a § 851 application.⁴ If you believe that your company has been exempted from PU Code § 851, please provide the basis for this belief and provide a citation to the relevant Commission decision(s) that granted the exemption.

¹ D.10-05-019, issued May 11, 2010. Proceeding closed May 6, 2010.

² 47 CFR Part 32 Uniform System of Accounts for Telecommunications Companies.

³ D.10-05-019, p. 22; COL 9.

⁴ *Id.*, COL 5.

The Commission also adopted GO 69-C⁵ on July 10, 1985, which authorized the utilities to grant easements, licenses, and permits for certain limited uses without further seeking specialized approvals from the Commission. GO 69-C gives public utilities covered by PU Code § 851 blanket authority to grant the specified property rights for use or occupancy on, over or under public utility property for certain limited uses, where such uses “will not interfere with public utility operations, practices and services.” The GO generally addresses granting access to utility rights-of-way and the attachment of equipment owned by others on utility property such as utility poles, towers and buildings, and contains no filing or notification requirements. GO 69-C applies to licenses and does not apply to leases.⁶

The Commission has applied general principles that underlie appropriate use of GO 69-C across utility industries:⁷

- Rights in utility property (e.g. licenses, easements) must be revocable,
- The use of the utility property is limited,
- The use of utility property may not interfere with operations, practices and service of the utility,
- Transactions must not require CEQA review,
- Transactions cannot be a license-to-lease, whereby a revocable license is entered into under GO 69-C with the understanding that the same use of utility property will become irrevocable following Commission approval under PU Code § 851.

While utilities may legitimately use GO 69-C for certain transactions regarding easements and access to rights-of-way, this letter provides Staff’s guidance and clarification regarding the transactions that are appropriate for GO 69-C treatment.

Transactions related to the lease of Dark Fiber and Real Estate (land and/or buildings) fall under either § 851 or GO 173, but not GO 69-C. These transactions relate to the use of utility property for the property’s intended purpose (e.g. use a building for office space), and not for the purpose of obtaining an easement or a license for access to rights of way or attachment of equipment to utility facilities (e.g. utility poles or buildings).

Use of GO 69-C should be limited to only the granting of revocable easements, licenses, or permits for access to rights of way or the attachment of facilities on utility property, or other limited use, and should be used when:

- a. The transaction grants an easement or a license for use or occupancy on (e.g. attachments), over or under utility property for rights of way, private roads, agricultural purposes, or other limited uses. The transaction is not for the lease of utility property.
- b. The transaction is revocable.
- c. The easement or license does not interfere with the operations, practices and service of the utility.
- d. The transaction does not require CEQA review.

As Licenses and Leases have been treated synonymously by some utilities, any question that refers to either and/or both types of agreements.

Each public utility that is an addressee to this letter and are covered by P.U. Code § 851 are directed to provide a report to the Communications Division that provides the information shown on the attached report template for transactions that were handled under GO 69-C for calendar year 2019, no later than April 1st 2020 and going forward respond by April 1st for each subsequent calendar year. The report shall be sent to CDcompliance@cpuc.ca.gov pursuant to the instructions herein.

Unless subject to an exemption noted above, public utilities should continue to file § 851 applications for transactions regarding the sale, lease, assignment, mortgage, disposal, or encumbrance of the whole or any part of its utility properties that are necessary or useful in the performance of its duties to the public where the value of the

⁵ Legal Division Resolution L-230

⁶ D.02-03-059, page 6 (mimeo)

⁷ See D. 02-03-059, D.02-10-057

transaction is \$5,000,000 or more. GO 173 advice letters should be filed for the types of transactions identified above, when the value of the transaction is less than \$5,000,000.

For any questions or concerns, please direct your correspondence to Alexander Abramson (415) 703-3664 alexander.abramson@cpuc.ca.gov.

Sincerely,

Cynthia Walker
Communications Division Director