

# Cal. Pub. Util. Code § 851

## Section 851 - Sale, lease, assignment, mortgage, etc. of public utility property

- (a) **Subject to Subdivision (c) below**, a public utility, other than a common carrier by railroad subject to Part A of the Interstate Commerce Act (49 U.S.C. Sec. 10101 et seq.), shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, or by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, without first having either secured an order from the commission authorizing it to do so for qualified transactions valued above five million dollars (\$5,000,000), or for qualified transactions valued at five million dollars (\$5,000,000) or less, filed an advice letter and obtained approval from the commission authorizing it to do so. If the advice letter is uncontested, approval may be given by the executive director or the director of the division of the commission having regulatory jurisdiction over the utility. The commission shall determine the types of transactions valued at five million dollars (\$5,000,000) or less, that qualify for advice letter handling. For a qualified transaction valued at five million dollars (\$5,000,000) or less, the commission may designate a procedure different than the advice letter procedure if it determines that the transaction warrants a more comprehensive review. Absent protest or incomplete documentation, the commission shall approve or deny the advice letter within 120 days of its filing by the applicant public utility. The commission shall reject any advice letter that seeks to circumvent the five million dollar (\$5,000,000) threshold by dividing a single asset with a value of more than five million dollars (\$5,000,000), into component parts, each valued at less than five million dollars (\$5,000,000). Every sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the advice letter and approval from the commission authorizing it is void. The permission and approval of the commission to the exercise of a franchise or permit under Article 1 (commencing with Section 1001) of Chapter 5, or the sale, lease, assignment, mortgage, or other disposition or encumbrance of a franchise or permit under this article shall not revive or validate any lapsed or invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture.
- (b) (1) Subdivision (a) shall apply to any transaction described in subparagraph (F) of paragraph (1) of subdivision (b) of Section 854.2.
- (2) For any transaction described in subparagraph (F) of paragraph (1) of subdivision (b) of Section 854.2, as part of its review under subdivision (a), the commission shall determine whether the transaction is fair and reasonable to affected public utility employees, including both union and nonunion employees.
- (c) Subdivision (a) shall not apply to qualified transactions that have a ratepayer financial impact valued at or less than one hundred thousand dollars (\$100,000) when the utility that is a party to the transaction has gross annual California revenues exceeding five hundred million dollars (\$500,000,000).
- (d) Beginning on January 1, 2030, the threshold values specified in Subdivision (c) shall be adjusted every five (5) years to reflect any increase in inflation as measured by the Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Bureau of Labor Statistics.
- (e) This section does not prevent the sale, lease, encumbrance, or other disposition by any public utility of property that is not necessary or useful in the performance of its duties to the public, and any disposition of property by a public utility shall be conclusively presumed to be of property that is not useful or necessary in the performance of its duties to the public, as to any purchaser, lessee, or encumbrancer dealing with that property in good faith for value, provided that this section does not apply to the interchange of equipment in the regular course of transportation between connecting common carriers.

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Amended by Stats 2019 ch 409 (SB 550),s 1, eff. 1/1/2020.

Amended by Stats 2010 ch 328 (SB 1330),s 202, eff. 1/1/2011.

Amended by Stats 2009 ch 370 (AB 698),s 1, eff. 1/1/2010.

Amended by Stats 2005 ch 370 (AB 736),s 1, eff. 1/1/2006