

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Consider Effectiveness and Adequacy of the Competitive Bidding Rule for Issuance of Securities and Associated Impacts of General Order 156, Debt Enhancement Features, and General Order 24-B.

FILED
PUBLIC UTILITIES COMMISSION
MARCH 10, 2011
SAN FRANCISCO, CALIFORNIA
RULEMAKING 11-03-007

**ADMINISTRATIVE LAW JUDGE'S RULING ADDING ITEMS FOR DISCUSSION
AT THE JANUARY 9 AND 10, 2012 WORKSHOP, AND ADDING AN
EVIDENTIARY HEARING ON JANUARY 10, 2012**

This ruling adds the following items (attached to this ruling) for discussion at the January 9 and 10, 2012 workshop, to the items for discussion and comment already provided in my ruling of October 14, 2012:

- a. Draft Revised Competitive Bidding Rules (Rules); and
- b. Draft Revised General Order 24-B (GO).

The Draft Revised Rules and GO are based on the information provided in this proceeding to date, as well as the discussions at the prehearing conference held on October 4, 2011. Parties may include their comments regarding these items as part of their filed Pre-Workshop Statements, in addition to their comments on the other items already listed in my October 14, 2012 ruling.

This ruling also revises the schedule set in my October 14, 2012 ruling. In addition to the workshop, I will hold an evidentiary hearing on January 10, 2012 at 1:30 p.m. (after the workshop has concluded), in order to include summaries of each parties' specific positions and concerns in the record, regarding our discussions in the workshop. This evidentiary hearing will be held in the same location as the workshop.

Therefore, **IT IS RULED** that:

1. The parties shall be prepared to discuss their comments regarding the Draft Revised Competitive Bidding Rules and Draft Revised General Order 24-B (attached to this ruling), at the workshop scheduled for January 9 and 10, 2012.
2. Parties may include their comments to the Draft Revised Competitive Bidding Rules and Draft Revised General Order 24-B (attached to this ruling) in their filed and served Pre-Workshop Statements, which are due by January 4, 2012.
3. An evidentiary hearing in this proceeding will be held on January 10, 2012, at 1:30 p.m., at the California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, in the same location as the workshop.

Dated November 28, 2011 at San Francisco, California.

 /s/ Seaneen M. Wilson
Seaneen M. Wilson
Administrative Law Judge

Draft Revised Competitive Bidding Rule

1. All debt issues must be competitively bid unless:
 - a. Competitive Bidding is inapplicable pursuant to these rules;
 - b. Competitive Bidding is not cost effective;
 - i. In it's financing application, a utility must provide support showing that competitive bidding is not currently cost effective, including but not limited to:
 1. At least three years of the utility's actual coupon rates of debt issued (identify method of issuance), compared to:
 - a. The actual market rate of similarly rated public utilities operating in the United States; and
 - b. The coupon rates of similarly rated public utility debt issuances (identify method of issuance).
 - c. A utility debt issuance is exempted pursuant to the exemptions below;
or
 - d. Competitive Bidding is inapplicable pursuant to another California Public Utilities Commission order, decision, or rule.
2. The Competitive Bidding Rule is only applicable to utilities with an investment grade bond rating or higher.
3. Utilities with \$25 million or more of California operations annual operating revenues, requesting financing authority, must make every effort to encourage, assist, recruit, and pre-qualify Women Minority Disabled Veteran Owned Business Enterprises (WMDVBE)¹ in being appointed as lead underwriter or co-manager of debt securities issuance offerings.

¹ Pursuant to General Order 156 and Decision 11-05-019, definitions of Women, Minority, and Disabled Veterans Owned Business Enterprises are as follows:

1.3.2. "Women-owned business" means (1) a business enterprise (a) that is at least 51% owned by a woman or women or (b) if a publicly owned business, at least 51% of the stock of which is owned by one or more women; and (2) whose management and daily business operations are controlled by one or more of those individuals.

1.3.3. "Minority-owned business" means (1) a business enterprise (a) that is at least 51% owned by a minority individual or group(s) or (b) if a publicly owned business, at least 51 % of the stock of which is owned by one or more minority groups, and (2) whose management and daily business operations are controlled by one or more of those individuals. The contracting utility shall presume that minority includes, but is not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other groups, as defined herein.

1.3.4. "WMBE" means a women-owned or minority-owned business enterprise; under these rules, the women and/or minorities owning such an enterprise must be either U.S. citizens or legal aliens with permanent residence status in the United States.

1.3.5. Black Americans-persons having origins in any black racial groups of Africa.

1.3.6. Hispanic Americans-all persons of Mexican, Puerto Rican, Cuban, South or Central American, Caribbean, and other Spanish culture or origin.

1.3.7. Native Americans-persons having origin in any of the original peoples of North America or the Hawaiian Is-lands, in particular, American Indians, Eskimos, Aleuts, and Native Hawaiians.

- a. Utilities must report on their efforts each time they file an application for financing authority, including but not limited to:
 - i. Number of WMDVBE firms that have been appointed as lead underwriter or co-manager of debt securities issuance offerings since the utility's last financing application.
 1. The position(s) held by the WMDVBE firms.
 2. The dollar amount of these debt securities issuances.
 - b. Appointment of WMDVBE as lead underwriter or co-manager must be cost effective, so as not to increase financing costs to the ratepayers.
4. The notification requirement to solicit bids is shortened to one hour.
5. Any form of electronic communication available to the general public is allowable for competitive bidding.
6. Debt Enhancement Features must be shown to be cost effective. Such features may include but are not limited to: put options, call options, sinking funds, swaptions, caps, collars, currency swaps, credit enhancements, capital replacement, interest deferral, special-purpose entity transactions, delayed drawdown, hedging strategies, treasury lock, treasury options, interest rate swaps, and long hedges.
 - a. All Debt Enhancement Features must lower the cost of financing and benefit the ratepayers.
 - b. Debt Enhancement Features are not considered as separate debt for purposes of calculating a financing authorization.
 - c. Swap and hedging transactions are restricted as follows:
 - i. Utility must separately report all interest income and expense arising from all swaps and hedging transactions in its regular annual report to the Commission.
 - ii. Swap and hedging transactions will not exceed 20% at any time, of a utility's total long-term debt outstanding.

1.3.8. Asian Pacific Americans-persons having origins in Asia or the Indian subcontinent, including, but not limited to, persons from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, India, Pakistan, and Bangladesh.

1.3.9. Other groups, or individuals, found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of Small Business Act as amended (15 U.S.C. 637 (a)), or the Secretary of Commerce pursuant to Section 5 of Executive Order 11625.

1.3.10. Disabled Veteran-a veteran of the military, naval or air service of the United States with a service-connected disability who is a resident of the State of California.

- iii. All costs associated with hedging transactions are subject to review in a utility's next cost of capital proceeding.
- iv. Hedging transactions carrying potential counterparty risk must have counterparties with investment grade credit ratings.
- v. If a utility elects to terminate a swap or hedging transaction before the original maturity or the swap or hedging partner terminates the agreement, all costs associated with the termination are subject to review in a utility's next cost of capital proceeding.
- vi. The utility will provide the following to Commission staff within 30 days of a request: (i) all terms, conditions, and other details of swap and hedge transactions; (ii) rationale for the swap and hedge transactions; (iii) estimated costs for the "alternative" or un-hedged transactions; and (iv) copy of the swap and hedge agreements and associated documentation.

Exemptions:

1. Requests for exemption from the competitive bidding rule will only be granted upon a compelling showing by a utility.
2. Debt issues for which competitive bidding are not viable or available, or due to the size of the issue, are exempt.
3. Bond issues of \$20 million or less are exempt from the competitive bidding rule.
4. Tax exempt or government debt issues are exempt from the competitive bidding rule.
5. Debt issues, such as the Safe Drinking Water Bond Act loans, Rural Utility Service loans, and pollution control loans, are exempt from the competitive bidding rule.
6. Debt issues made through an affiliate that provides debt issuance services to all affiliates of the same parent are exempt from the competitive bidding rule if such debt accounts for less than five percent (5%) of the financing affiliates annual issuances.

7. Debt issues for those utilities with no debt rating are exempt from the competitive bidding rule.
8. For multi-state utilities operating in California, if your operating revenues from California operations represent less than five percent (5%) of the entire utility's total operating revenues for the most current calendar year, the utility is exempt from the competitive bidding rule.

Draft Revised
GENERAL ORDER No. 24-C
Public Utilities Commission of the
State of California

IN THE MATTER OF THE PREPARATION OF QUARTERLY REPORTS SHOWING RECEIPTS AND DISBURSEMENTS FROM THE SALE OF STOCKS, BONDS AND OTHER EVIDENCES OF INDEBTEDNESS OF PUBLIC UTILITIES, WHICH HAVE BEEN AUTHORIZED TO BE ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, UNDER SECTION 824 OF THE PUBLIC UTILITIES CODE.

On or before the 25th day of the month following each quarter, the following statements for the preceding quarter, certified by a responsible officer of the corporation issuing stocks, bonds or other evidences of indebtedness, or by the partnership or individual authorized to issue bonds or other evidences of indebtedness shall be filed with the Commission.

The Commission staff may request such information on a monthly basis.

A. RECEIPTS

1. A list of the certificates of stock issued during the quarter under the authority of the Commission, which shall show:
 - a. The numbers of the certificates issued;
 - b. To whom it was issued;
 - c. Number of shares represented by each certificate;
 - d. The par value, if any, of each certificate;
 - e. The brokerage or commissions if any, paid for sale of stock represented by each certificate;
 - f. The consideration received for each certificate in money, or the cash value of labor or property, if any.
2. The total amount of stock issued under the order of the Commission and outstanding at the end of the quarter, which shall show:
 - a. The total number of certificates so issued;
 - b. The total number of shares represented by such certificates;
 - c. The total par value, if any, of such shares;
 - d. The total brokerage or commissions paid for sale of such shares to date;
 - e. The total consideration received for such certificates in money, and the total cash value of labor or property, if any.
3. A list of the bonus or other evidences of indebtedness, issued during the quarter, under the authority of the Commission, which shall show:

- a. The numbers of such bonds or other evidences of indebtedness issued;
 - b. To whom it was issued;
 - c. The face value of such bonds or other evidences of indebtedness;
 - d. The brokerage or commissions paid on each sale;
 - e. The consideration realized in money on each sale, or the cash value of labor or property, if any.
4. The total bonds or other evidences of indebtedness issued under the order of the Commission and outstanding at the end of the quarter, which shall show:
- a. The total number of such bonds or other evidences of indebtedness issued;
 - b. The total face value thereof;
 - c. The total brokerage or commissions paid thereon to date;
 - d. The total consideration which has been received in money from the sale thereof, and the total cash value of labor or property, if any.

B. DISBURSEMENTS

Each utility authorized to issue stock, bonds or other evidences of indebtedness shall file quarterly reports showing the purposes for which it expended the proceeds realized from the sale of said stock, bonds or other evidences of indebtedness.

The expenditures shall be set forth in such manner as will enable the Commission to ascertain their compliance with Section 817 of the Public Utilities Code and with the authorizing decision.

C. PLACED IN SPECIAL BANK ACCOUNT

A separate bank account shall be opened with a state or national bank, to which shall be charged or credited all receipts and disbursements of money derived from the sale of stocks, bonds or other evidences of indebtedness authorized to be issued by this Commission. A statement of this account shall be furnished the Commission each quarter showing the balance in cash on hand to the credit of the fund at the end of the preceeding quarter.