

**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.

Rulemaking 11-03-007
(Issued March 16, 2011)

**PRE-WORKSHOP STATEMENT OF THE CALIFORNIA ASSOCIATION
OF COMPETITIVE TELECOMMUNICATIONS COMPANIES ON
THE ADMINISTRATIVE LAW JUDGE'S OCTOBER 14, 2011, NOVEMBER 28,
2011, AND DECEMBER 15, 2011 RULINGS SETTING A WORKSHOP
FOR JANUARY 9 AND 10, 2012 AND INVITING COMMENTS ON DRAFT
REVISED COMPETITIVE BIDDING RULES AND DRAFT REVISED
GENERAL ORDER 24-B**

JANUARY 4, 2012

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Pursuant to the Administrative Law Judge’s October 14, 2011, November 28, 2011 and December 15, 2011 Rulings (Rulings) in this proceeding, the California Association of Competitive Telecommunications Companies (CALTEL) respectfully submits the following pre-workshop statement. As provided for in these Rulings, CALTEL’s statement includes as Attachment A “a red-line version of the rules and exemptions”¹ contained in the Draft Revised Competitive Bidding Rules (Draft Revised Rules) attached to the November 28 Ruling.²

I. INTRODUCTION

As CALTEL noted in its opening comments,³ the Commission initiated this proceeding to “determine the effectiveness and adequacy of the Competitive Bidding Rule (Rule) for issuance of debt and equity securities (securities) and to consider the associated impacts of General Order 156, debt enhancement features, and General Order 24-B.”⁴ Although the OIR notes that the “outcome of this OIR will be applicable to all investor owned utilities that are required to obtain Commission approval for their long-

¹ *Administrative Law Judge’s Ruling Setting a Workshop*, dated October 14, 2011, Attachment A, Question 1.

² *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*, dated November 28, 2011, at page 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 *Comments of the California Association of Competitive Telecommunications Companies on Order Instituting Rulemaking on the Competitive Bidding Rule for Issuance of Debt and Equity Securities*, dated May 9, 2011.

⁴ OIR at page 1.

term financing needs,”⁵ the OIR incorrectly included all “Local Exchange Telephone Companies” (LECs) as “named respondents.”⁶

CALTEL further explained that its members are Commission-certificated competitive Local Exchange Carriers (CLECs). Many CALTEL members are privately held and are not investor-owned, but even those CLECs that are public and/or investor-owned are exempt from the provisions of Public Utility Code §§ 816-818, which are the statutes mandating Commission approval of long-term debt for public utilities.⁷ CALTEL therefore has attached a red-line revision of the Draft Revised Rules that explicitly adds this statutory exemption and further clarifies that Draft Revised Rule Number 3 only applies to those public utilities which are required to seek Commission approval for the issuance of “stocks and stock certificates, or other evidence of interest or ownership, or bonds, notes, or other evidences of indebtedness.”⁸

II. DISCUSSION

The Commission’s authority to regulate public utility issuance of debt and equity securities, including the authority underlying the Competitive Bidding Rule (Rule) that is a focus of this OIR – arises from Public Utilities Code §§816-818.⁹ Public Utilities Code §829(b)(1), however, exempts all but rate-of-return telephone corporations from the provisions of §§816-818 by providing that “Except for Section 828, a telephone corporation that is not regulated under a rate-of-return regulatory structure is exempt

⁵ Id. at page 2.

⁶ Id at pp. 1, 14, Ordering Paragraph #2.

⁷ See Public Utilities Code §829(b)(1) (“except for Section 828, a telephone corporation that is not regulated under a rate-of-return regulatory structure is exempt from this article”, i.e. the provisions of §§ 816-830).

⁸ Public Utilities Code § 818.

⁹ See, e.g., D.10-09-026, D.10-08-002.

from this article.” The “article” to which §829(b)(1) refers includes Public Utilities Code §§816-830. Accordingly, the Commission has no legal jurisdiction to regulate debt and security issuances by telephone corporations not regulated under a rate-of-return regulatory structure; a group that includes all CLECs.¹⁰

Recognizing this, the Commission specifically calls out CLEC exemption from Public Utilities Code §§ 816-830 in the “Requirements Applicable to Competitive Local Exchange Carriers” that the Commission attaches to each decision approving a CPCN application for a new CLEC.¹¹

As CALTEL described previously, the OIR did not appear to recognize this limitation and made “Local Exchange Telephone Companies [without limitation] ... are named respondents.”¹² The Draft Revised Rules, while containing a number of exemptions, do not explicitly identify the categories of public utilities to which the proposed rules would apply. In order to avoid further confusion, CALTEL recommends adding an exemption to the Draft Revised Rules that explicitly references the statutory exemption that applies to non-rate-of-return Local Exchange Carriers, and has included such an exemption in its redline version of the Draft Revised Rules attached.¹³

CALTEL also recommends that Rule 3 of the Draft Revised Rules be modified that utilities “requesting financing authority” are those utilities that are subject to Public

¹⁰ See D.06-08-030 (Uniform Regulatory Framework, or URF, Decision), throughout.

¹¹ See, e.g., D.10-03-018, Attachment B, Requirement # 18.

¹² OIR, at pp. 1, 14, Ordering Paragraph #2.

¹³ Even if the Commission could assert some basis for a claim of jurisdiction to apply Public Utilities Code §§ 816-830 to CLECs and to change its long-standing exemption of CLECs from these sections, such an application would be beyond the issues announced by the Commission in its Scoping Memo and Ruling of November 15, 2011, and would be without any basis or support in fact or policy.

Utilities Code §§ 816-830. CALTEL has therefore included this proposed change in its redline of the Draft Revised Rules.

III. CONCLUSION

CALTEL member companies are *Competitive* Local Exchange Carriers, many of which are privately owned and all of which are exempt from the provisions of Public Utilities Code §§ 816-830 under Public Utilities Code §829(b)(1) and prior Commission decisions. In order to recognize this statutory exemption, CALTEL recommends adding an exemption to the Draft Revised Rules that explicitly references the statutory exemption that applies to non-rate-of-return Local Exchange Carriers, and has included such an exemption in its redline version of the Draft Revised Rules attached.

January 4, 2012

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