

**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  
(Filed March 10, 2011)

**PRE-WORKSHOP STATEMENT OF AT&T CALIFORNIA (U 1001 C), VERIZON  
CALIFORNIA INC. (U 1002 C), AND SUREWEST TELEPHONE (U 1015 C)**

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January 4, 2012

Pursuant to the Revised Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge dated November 15, 2011, AT&T California and certain of its regulated affiliates,<sup>1</sup> Verizon California Inc., and Surewest Telephone (“URF ILECs”) hereby submit a joint Pre-Workshop Statement.

**I. THE COMPETITIVE BIDDING RULE IS NOT APPLICABLE TO THE URF ILECS BECAUSE THEY HAVE A STATUTORY EXEMPTION FROM ARTICLE 5 OF THE CALIFORNIA PUBLIC UTILITIES CODE REGARDING STOCKS AND SECURITY TRANSACTIONS.**

The Commission’s authority to issue the Competitive Bidding Rule (“CBR”) is based on statutory authority in Article 5 (sections 816 through 830) of the California Public Utilities Code.<sup>2</sup> In 2007, the California Legislature amended section 829 to grant telephone corporations that are not rate-of-return regulated an exemption from the requirements of Article 5. The URF ILECs are not regulated on a rate-of-return basis, so they are subject to this exemption. The URF companies have no regulated means of recovering their costs for debt issuance from their customers. To the contrary, their shareholders bear the costs and risks of such transactions.

Accordingly, any revisions to the CBR should make clear that the revised rule is subject to statutory exceptions. Specifically, we request that the Draft Revised CBR attached to the Assigned Administrative Law Judge’s Ruling dated November 28, 2011 be revised as follows:

1.d. Competitive Bidding is inapplicable pursuant to another California Public Utilities Commission order, decision or rule, *or by statute contained in the California Public Utilities Code.*

*i. A telephone corporation that is not regulated under a rate-of-return regulatory structure is exempt from the Competitive Bidding Rule.*

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<sup>1</sup>The affiliates participating in these comments are AT&T Communications of California, Inc. (U 5002 C), TCG Los Angeles, Inc. (U 5462 C), TCG San Francisco, Inc. (U 5454 C), and TCG San Diego Inc. (U 5389 C), and AT&T Corp. dba Advanced Solutions (U 6346).

<sup>2</sup> After discussing the statutory grant of authority to regulate debt financing found in then Section 52 of the Public Utilities Act (now section 816), the Commission in D.38614 acknowledged that the competitive bidding rule adopted in that decision is inextricably connected to that authority: “Section 52(b) provides that the Commission may . . . attach to the exercise of its permission [to issue debt] such condition or conditions as it may deem reasonable and necessary. A rule requiring competitive bidding would constitute merely a condition attached to a grant of authority to issue securities.” 46 Reports of the Railroad Commission 281, 286-87 (1946).

**II. THE CBR SHOULD ONLY APPLY TO UTILITIES, NOT THEIR AFFILIATES.**

The CPUC's authority to issue rules regarding financial transactions, including the CBR, is limited in applicability to those utilities subject to the CPUC's jurisdiction. The CPUC lacks jurisdiction to extend its authority to affiliates of utilities operating in California. Thus, the Sixth Exemption to the Draft Revised CBR should be deleted as set forth below:

~~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.~~

**III. GENERAL ORDER 156 APPLIES SUPPLIER DIVERSITY REQUIREMENTS TO FINANCIAL TRANSACTIONS OF UTILITIES, AND, THUS, THERE IS NO REASON TO ADD SUCH REQUIREMENTS TO THE COMPETITIVE BIDDING RULE**

Section 3 of the Draft Revised CBR proposes to add supplier diversity requirements.

This revision is not necessary because the supplier diversity requirements set forth in GO 156 already apply to dollars spent by a utility for financial services. Specifically, these amounts are included in the annual reports required by GO 156. The amounts paid for financial services are reported under Standard Industrial Classification Code 87 (consolidated with amounts paid for Engineering, Accounting, Research, Management, and Related Services). Because the rules in GO 156 already apply to this area, there is no need to include such requirements in the CBR.

IV. **CONCLUSION**

We look forward to addressing the issues above at the workshops scheduled for January.

Dated at San Francisco, California, this 4<sup>th</sup> day of January 2012.

Respectfully submitted,



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