

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 Debt and Equity 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
SOUTHWEST GAS CORPORATION
(U 905 G)**

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9 24-B

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14 On March 10, 2011, the California Public Utilities Commission ("Commission")
15 issued an Order Instituting Rulemaking ("OIR") on the Commission's Own Motion to
16 Consider the Effectiveness and Adequacy of the Competitive Bidding Rule ("Rule") for
17 Issuance of Debt and Equity Securities and the Associated Impacts of General Order 156,
18 Debt Enhancement Features, and General Order 24-B. The Commission requested that
19 parties file opening comments on or before May 9, 2011. Southwest Gas Corporation
20 ("Southwest Gas") and other parties filed opening comments. The Commission requested
21 that parties file reply comments, if any, by May 27, 2011. Southwest Gas and other
22 parties also filed reply comments. On November 15, 2011, the Assigned Commissioner
23 issued a Ruling Setting a Workshop ("Ruling"), which scheduled a workshop for January
24 9-10, 2012, and requested that pre-workshop statements, if any, be filed by January 4,
25 2012. The Ruling included 5 questions for the parties to address in their pre-workshop
26 statements and at the January workshops. On December 21, 2011, the Administrative
27 Law Judge issued a Ruling Adding Items for Discussion at the January 9 and 10, 2012
28 Workshop, and Adding an Evidentiary Hearing on January 10, 2012 ("Second Ruling").
The Second Ruling scheduled an evidentiary hearing and provided draft revisions to the
Competitive Bidding Rule and General Order 24-B for the parties to comment on.

1 Attached hereto as Exhibit 1 is Southwest Gas' Pre-Workshop Statement, which
2 addresses the questions raised in both the Ruling and the Second Ruling.

3 Southwest Gas appreciates the opportunity to provide its Pre-Workshop Statement
4 and looks forward to continuing to actively work with the Commission and other parties to
5 address the topics identified in this proceeding.

6 Dated this 4th day of January, 2012, at Las Vegas, Nevada.

7 SOUTHWEST GAS CORPORATION

8
9 /s/ Catherine M. Mazzeo

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Exhibit A

1 EXHIBIT 1

2 PRE-WORKSHOP STATEMENT

3 I. RESPONSES TO PRE-WORKSHOP QUESTIONS

4 **Question 1. Provide a red-line version of the rules and exemptions listed in**
5 **Appendix A to R.11-03-007, with your proposed revisions.**

6 As stated in its opening comments filed on May 9, 2011, and its reply comments
7 filed on May 27, 2011, Southwest Gas' position is that the Competitive Bidding Rule
8 ("Rule") is no longer the optimal method to issue securities. Therefore, utilities should be
9 allowed to determine the most advantageous method which best serves the public interest
10 when issuing securities, subject to review by the Commission. The evidence provided by
11 Southwest Gas and the other parties to this proceeding supports the conclusion that
12 compulsory competitive bidding no longer serves the public interest. In addition,
13 Southwest Gas supports the position shared by other parties that eliminating the Rule will
14 be beneficial for diverse business enterprise firms to participate in negotiated transactions
15 for underwriting larger debt issuances. For these reasons, Southwest Gas is not providing
16 a red-line version with proposed revisions to the existing Rule and continues to
17 respectively request the Commission eliminate the Rule entirely.

18
19 **Question 2. When requesting authority to include long-term debt enhancements,**
20 **swap, and hedges with the issuance of Debt Securities, should an applicant provide**
21 **a cost benefit of such items? Explain.**

22 No. Southwest Gas believes a utility should provide a description and rationale for
23 the potential use of a debt enhancement or the risk management properties associated
24 with the potential use of a derivative instrument to hedge risk exposures. It would be
25 impractical and/or impossible to provide a cost benefit analysis for each debt
26 enhancement or hedging instrument requested by a utility. Further, the use of debt
27 enhancements and hedging instruments will not always result in a lower all-in capital cost,
28 as many of these instruments are used to mitigate existing interest rate risk associated

1 with adverse or unexpected changes in capital market conditions in the future. Debt
2 hedging instruments are analogous to purchasing insurance in that the cost of that
3 insurance may not result in lower cost to the insured, but having the insurance coverage
4 reduces the possible adverse financial outcome that could result from the events that the
5 insurance covers. As such, a cost benefit analysis is not the appropriate criterion to
6 evaluate the use of a hedging instrument. Southwest Gas believes the appropriate
7 criterion for evaluating hedging is prudence, with the key question being, "Is the use of the
8 hedging instrument appropriate as part of a sound financial risk management practice?"
9 The choice and use of a particular debt enhancement or hedging instrument will depend
10 on the utility's financial condition, the terms and characteristics of the debt instrument to
11 be issued, the cost and liquidity of alternative instruments and overall capital market
12 conditions.

13
14 **Question 3. Should the authority granted a utility regarding the issuance of Debt**
15 **Securities or Stock have an expiration date? Explain.**

16 No. As stated in its opening comments filed on May 9, 2011, Southwest Gas does
17 not believe financing authority should expire. The expiration of financing authority would
18 result in higher administrative costs to both the utilities and the Commission and additional
19 financing authority fees paid by the utilities, which are ultimately passed on to customers
20 as part of the utilities' capital costs. The expiration of financing authority could also add
21 delays and thereby reduce financial flexibility for utilities to maintain their capital structure
22 and bond ratings. The position that financing authority should not expire was also
23 supported in the opening comments filed on May 9, 2011, by both the Joint Utilities¹ and
24 the California Water Association.

25
26
27
28 ¹ Pacific Gas & Electric Company(PG&E), San Diego Gas & Electric Company(SDG&E), Southern California Gas
Company (SoCalGas and collectively with SDG&E, Sempra Energy Utilities or SEU), and Southern California Edison
Company (SCE, and collectively with SEU and PG&E, the Joint Utilities).

1 **Question 4. Since General Order 156 does not specifically address Women-,**
2 **Minority-and Disabled Veteran-Owned Business Activity regarding issuance of Debt**
3 **Securities or Stock, how can the tenets of General Order 156 be applied to the**
4 **authority to issue Debt Securities or Stock? Explain.**

5 **a. For example, should rules be added to the Competitive Bidding Rule that**
6 **addresses the tenets of General Order 156?**

7 Southwest Gas supports the spirit of General Order 156 ("GO 156") not only for
8 securities underwriting, but for the broader group of financial services, which includes
9 securities underwriting, lease financing, asset management, and other services.
10 However, Southwest Gas does not believe that any additional rules should be added to
11 the Competitive Bidding Rule nor should GO 156 goals be imposed on utilities to receive
12 financing authority. For financial services, imposing uniform GO 156 goals may not be
13 productive, as the capacity to utilize diversified business entities ("DBEs") for financial
14 services is affected by the utility's business model, financial practices, financial condition,
15 banking relationships and the level of its financial services requirements. Therefore, a
16 utility's performance in utilizing DBEs for financial services should be based on the utility's
17 specific circumstances. Utilities should voluntarily report their activities and achievements
18 to utilize DBE firms for financial services in their annual GO 156 reports. Southwest Gas
19 has utilized DBEs as debt underwriters in the past and is currently cultivating relationships
20 with several DBEs and will look to employ one or more DBEs in its next public debt
21 offering. In addition, Southwest Gas continues to employ and seeks to employ DBEs for
22 lease financing opportunities and investment management for employee benefit plan
23 assets.

24
25 **Question 5. Should General Order 24-B revised?**

26 **a. If so, how often would you propose that a report be issued?**

27 Yes. Consistent with its opening comments filed on May 9, 2011, Southwest Gas
28 believes General Order 24-B ("GO 24-B") should be modified. There are two primary

1 facets that should be changed. The first is the frequency and timing of the reports
2 required by GO 24-B. The second is the information required to be reported.

3 Southwest Gas agrees with the Draft Revised GO 24-B (provided in the
4 Administrative Law Judge's Second Ruling) that a quarterly reporting requirement is
5 sufficient. A more important question has to do with the date by which the required
6 reporting is due to the Commission. The Draft Revised GO 24-B states that reports are to
7 be filed with the Commission on or before the 25th day of the month following the quarter.
8 This date precedes the quarterly and annual SEC reporting deadlines by 15 to 35 days.
9 Thus, it may be impossible for utilities to file the reports required by GO 24-B in the stated
10 time frame without adding significant administrative costs. In addition, the financial
11 information is subject to change until SEC documents are filed. Southwest Gas believes
12 the report date required by GO 24-B should be at least consistent with the applicable SEC
13 reporting date. Therefore, Southwest Gas recommends that the Draft Revised GO 24-B
14 be modified to require the report on or before 60 days following the end of the quarter.

15 The next modification relates to the content of the periodic reports required by the
16 Draft Revised GO 24-B. Southwest Gas believes the level of detail expected by the Draft
17 Revised GO 24-B for stock issuances is outdated and unnecessary. Most new shares are
18 not issued with stock certificates, and are instead tracked via electronic book entry. In
19 addition, the requirement to identify to whom the shares were issued would be
20 burdensome and result in unnecessary cost of reporting. Going forward, it should be
21 sufficient to provide the amount of shares issued during the previous quarter, the total
22 amount of shares outstanding at the end of the quarter, the total authority remaining at the
23 end of the quarter and why the shares were issued. The same reporting requirements
24 would also be applicable for debt.

25 One final modification involves the Draft Revised GO 24-B requirement to provide
26 a periodic statement for the separate bank account the utility is required to maintain for
27 the receipts and disbursements of money obtained from the issuance of debt and shares.
28 Southwest Gas believes the level of sophistication in most companies' accounting

1 systems renders this requirement unnecessary. Therefore, Southwest Gas recommends
2 deleting this requirement.

3
4 **II. COMMENTS AND PROPOSED CHANGES TO DRAFT REVISED**
5 **COMPETITIVE BIDDING RULE**

6 Although Southwest Gas did not provide a redline draft of the Rule, Attachment A
7 to this Pre-Workshop Statement reflects its proposed changes to the Draft Revised Rule
8 provided in the Administrative Law Judge's Second Ruling. As discussed in response to
9 Question No. 1, the position of Southwest Gas is that the Rule is no longer an optimal
10 method when issuing securities. Southwest Gas therefore continues to respectively
11 request the Commission eliminate the Rule entirely. The Draft Revised Rule includes
12 uniform language governing the authority for the use of debt enhancements, swaps, and
13 hedging transactions which historically has been incorporated into an individual utility's
14 financing authority decision. Southwest Gas suggests eliminating the requirement for a
15 utility to demonstrate the cost effectiveness for each debt enhancement requested. In its
16 place should be a requirement to provide a brief description and rationale for each debt
17 enhancement requested, which would be subject to prudence review. The rationale for
18 this proposed change is discussed in response to Question No. 2.

19
20 **III. COMMENTS AND PROPOSED CHANGES TO DRAFT REVISED GENERAL**
21 **ORDER NO. 24-B**

22 Attachment B to this Pre-Workshop Statement reflects Southwest Gas' proposed
23 changes to the Draft Revised GO 24-B. The rationale for the proposed changes is
24 discussed in response to Question No. 5.

ATTACHMENT A

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 its 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)⁴~~

⁴ 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 these 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 these 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.

Footnote continued on next page

~~in being appointed as lead underwriter or co-manager of debt securities issuance offerings.~~

~~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. For each All Debt Enhancement Features requested, a utility will provide a brief description and rationale for the potential use of a debt enhancement or the risk management properties associated with the potential use of a derivative instrument to hedge risk exposures 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.~~

~~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 Islands, in particular, American Indians, Eskimos, Aleuts, and Native Hawaiians.~~

~~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.~~

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.
- 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 affiliate's 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.

ATTACHMENT B

Draft Revised
GENERAL ORDER NO. 24-B
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~~ 60 days 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 ~~sharecertificates~~ of stock issued during the quarter under the authority of the Commission, which shall show:
 - a. The numbers of the ~~sharecertificates~~ issued;
 - b. ~~To whom it was issued;~~
 - c. ~~Number of shares represented by each certificate;~~
 - d. The par value, if any, of each ~~sharecertificate~~;
 - e. The brokerage or commissions if any, paid for sale of stock represented by each ~~sharecertificate~~;
 - f. The consideration received for each ~~sharecertificate~~ 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 ~~sharecertificates~~ 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 ~~sharecertificates~~ 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 preceding quarter.~~