

**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.

R. 11-03-007  
(Filed March 10, 2011)

**OPENING COMMENTS OF  
CALIFORNIA WATER ASSOCIATION  
AND ITS CLASS A WATER COMPANY MEMBERS  
ON WORKSHOP REPORT**

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ON WORKSHOP REPORT**

In accordance with the schedule set by Administrative Law Judge ("ALJ") Wilson at the workshop held January 9, 2012, in the above-captioned proceeding (the "Rulemaking"), California Water Association and its Class A water company members<sup>1</sup> (together, "CWA") hereby submit their opening comments on the Workshop Report submitted for filing January 20, 2012, in this Rulemaking. CWA is a statewide association that represents the interests of investor-owned water utilities regulated by the Commission, including, especially, the Respondent Class A water utilities (the "Water Companies") that are, together with all investor-owned utilities, required to obtain Commission approval for the issuance of securities to meet their long-term financing needs, which is the subject of this Rulemaking.

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<sup>1</sup> Class A water companies joining in these Comments include Apple Valley Ranchos Water Company (U-346-W), California American Water Company (U-210-W), California Water Service Company (U-60-W), Golden State Water Company (U-133-W) (including Bear Valley Electric Service (U-913-E), Park Water Company (U-314-W), San Gabriel Valley Water Company (U-337-W), San Jose Water Company (U-168-W), Suburban Water Systems (U-339-W), and Valencia Water Company (U-342-W).

**I. The Workshop Report**

At the request of Commissioner Simon and ALJ Wilson, the larger energy utility participants in the recent workshop agreed to work together to submit a workshop report that would be subject to comment on the issues presented. Southern California Edison Company, Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas & Electric Company, and Southwest Gas Corporation (the “Energy Utilities”) submitted the Workshop Report for filing on January 20, 2012.

The Workshop Report provides an accurate summary of the procedural background and the discussion at the workshop, including especially the consensus that developed in favor of replacing the longstanding Competitive Bidding Rule, which has come to be subject to numerous exemptions and exceptions, with a new Financing Rule that “reflects current financial market best practices and conditions.” As the Workshop Report notes, the new Financing Rule would be a more general, principles-based rule intended to require utilities to “conduct financings in a competitive and transparent manner that achieves the lowest cost of capital,” while also encouraging the use of Women Minority Disabled Veteran Owned Business Enterprises (“WMDVBES”). The Workshop Report also reports correctly the parties’ general agreement that General Order (“G.O.”) 24-B reporting requirements should be revised to reflect current financial reporting and cash management standards and practices.

In Appendix A to the Workshop Report, the Energy Utilities presents a new Utility Long-Term Debt Financing Rule that they propose to replace the Competitive Bidding Rule, as well as a revised G.O. 24-B reflecting proposals discussed at the recent workshop. Appendix A includes a Preamble that succinctly summarizes the history of the Competitive Bidding Rule, the workshop discussions, and the proposed intent of the new Financing Rule and the revisions to G.O. 24-B.

In the following sections of these opening comments, CWA proposes modest changes to Appendix A both to comport with the positions that CWA has expressed in this Rulemaking and to clarify the intentions of the parties. CWA's proposed changes to Appendix A are indicated in Attachment A to these opening comments, in which CWA's proposed changes are shown in red-lined form.

## **II. CWA's Proposed Revisions to the Preamble to the Proposed Revisions**

In the fifth line of the second paragraph on page 3 of Appendix A, CWA proposes to substitute the word, "rule", for the word, "goal". In the last sentence on page 4 of Appendix A, CWA proposes to insert references to two additional proposed revisions to G.O. 24-B – the first, a reference to CWA's proposal, discussed in Section IV, below, to excuse filings for reporting periods during which no reportable activity occurred, and the second, to re-designate the revised general order as G.O 24-C.

## **III. CWA's Proposed Revisions to the Financing Rule**

CWA recommends several minor revisions to the proposed Financing Rule, mainly for the sake of clarity.

CWA proposes to insert the words, "the utility and its", before the word "ratepayers" in the third line of Paragraph 1. With this change, the statement will more accurately reflect the mutual benefit to the utility and its ratepayers of achieving low long-term financing costs.

In the first line of Paragraph 2, CWA proposes to insert the phrase, "to the best of their ability". This change will recognize the real-world limits on public utilities' ability to control the terms of their debt financings.

In Sub-paragraph 3.a, CWA proposes to insert the term, "WMDVBE", before the word, "efforts", in order to clarify the scope of required reporting. CWA also proposes non-substantive additions to Sub-paragraphs 3.a.i and 3.b for the sake of clarity. In Sub-paragraph

3.c, CWA proposes to delete the word, “legitimate”, before the term, “business judgment”, in order to avoid adding a value-laden qualifier to a standard contractual term.

With these revisions, CWA strongly supports adoption of the proposed Financing Rule as a replacement for the traditional Competitive Bidding Rule.

#### **IV. CWA’s Proposed Revisions to General Order 24-B**

CWA’s principal proposal regarding G.O. 24-B is to excuse the filing of periodic reports with respect to period during which no reportable financing activity has occurred. The justification for this minor amendment to the general order is evident.

The larger Class A water utilities typically conduct financings no more frequently than on an annual basis. Smaller Class A companies typically engage in such activities only once in every three to five years. Financial transactions are even rarer for the much smaller Class B, C, and D water companies – none of which are exempt from reporting under the current general order or under the proposed revisions. For water utilities to be required to file quarterly reports of inactivity is a waste of employee time, office materials, and postage for both the utilities and the Commission.

Accordingly, CWA proposes that the phrase, “during which one or more reportable issuance, receipt, or disbursement has occurred,” be inserted after the word, “quarter”, in the first line of G.O. 24-D. This minor revision will not eliminate any presently required reporting of financing activity, but will simply excuse the filing of “no activity” reports.

CWA also proposes that G.O. 24-B be re-designated as G.O. 24-C, to reflect the adoption of revisions to the general order. With the proposed additions, CWA strongly supports the proposed revisions to G.O. 24-B.

V. Conclusion

CWA appreciates the attention that Commissioner Simon and ALJ Wilson have given to the concerns of the parties about the traditional Competitive Bidding Rule and the burdensome filing requirements of G.O. 24-B. CWA also appreciates the efforts of the Energy Utilities in preparing and submitting the Workshop Report and respectfully vouches for its accuracy. With the revisions and additions noted above and indicated in red-lined form in Attachment A to these opening comments, CWA strongly supports adoption of the proposed Financing Rule and the proposed changes to G.O. 24-B.

Respectfully submitted,

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Dated: February 3, 2012

# ATTACHMENT A

## APPENDIX A

REVISED DRAFT COMPETITIVE BIDDING RULE

AND

REVISED DRAFT GENERAL ORDER 24-B

(With CWA revisions shown in red-lined form)

**UTILITY LONG-TERM DEBT FINANCING RULE**  
**Public Utilities Commission of the**  
**State of California**

Preamble to Proposed Revisions to the Competitive Bidding Rule and G.O. 24-B

In Decision (D.) 38614, dated January 15, 1946, the California Public Utilities Commission (Commission) adopted the Competitive Bidding Rule, which required California public utilities to issue security debt using competitive bids. The Commission's goal in adopting the Competitive Bidding Rule was to reduce the cost of debt for utilities, and ultimately reduce costs to utility ratepayers.<sup>1</sup> From time to time, the Commission has reviewed its policy regarding the Competitive Bidding Rule based on prevailing circumstances and has subsequently amended the Competitive Bidding Rule in D.49941 (1954), D.75556 (1969), D.81908 (1973), Resolution No. F-591 (1981), and Resolution No. F-616 (1986). On March 10, 2011, the Commission initiated a rulemaking to reexamine its policy regarding competitive bidding to determine the effectiveness and adequacy of the Rule for issuance of debt and equity securities and to consider the associated impacts of General Order (G.O.) 156, debt enhancement features, and G.O. 24-B.<sup>2</sup>

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<sup>1</sup> In support of the Rule, the Commission cited *In Re Competitive Bidding in the Sale of Securities*, 257 I.C.C. 129, an Interstate Commerce Commission (ICC) decision, issued on May 8, 1944, which required railroad companies to competitively bid bonds. However, in 1985, the ICC repealed the competitive bidding requirements promulgated in *In Re Competitive Bidding in Sale of Securities*, finding that "the need for our oversight of railroad securities has decreased as a result of changed circumstances and recent Congressional action." *Exemption of Railroads from Securities Regulation under 49 U.S.C 11301*, 1985 ICC LEXIS 492, at \*2 (April 1, 1985). The Commission also cited to Rule U-50 of the Securities and Exchange Commission (SEC) Public Utility Holding Company Act of 1935, adopted April 7, 1941, which required registered holding companies and their subsidiaries to use competitive bidding in the issuance or sale of securities. However, the SEC, in 1994, rescinded Rule U-50 based on its opinion "that the rule is no longer necessary in view of the extensive reporting requirements imposed by the Public Utility Holding Company Act and other federal securities laws." *Public Utility Holding Company Act Rules*, SEC Release No. 35-26031, 1994 SEC LEXIS 1176 at \*20 (April 20, 1994).

<sup>2</sup> "Rulemaking 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 (R.) 11-03-007. The OIR was initiated in response to Commissioner Simon's dissenting opinions to Pacific Gas and Electric Company's D.08-10-013 and Southern California Edison Company's D.08-10-014, and D.08-10-015

*Footnote continued on next page*



Based on opening comments and reply comments filed in the proceeding, as well as statements made at the pre-hearing conference, filed pre-workshop statements, and discussions at the January 9, 2012 workshop, there is a consensus amongst parties that competitive bidding is no longer the market standard and that the Competitive Bidding Rule is outdated and should be replaced with a new rule that reflects current financial market best practices and conditions. In addition, parties present at the workshop agreed that any new rule should promote utility efforts to include the participation of Women Minority Disabled Veteran Owned Business Enterprises (WMDVBE) in financing transactions. Finally, there was general agreement among parties present at the workshop that G.O. 24-B reporting requirements should also be revised to reflect current financial reporting and cash management standards and practices.

Accordingly, and consistent with the consensus of parties to the proceeding, below are proposed revisions to the draft revised rule and draft revised G.O. 24-B that were circulated by Administrative Law Judge (ALJ) Seaneen Wilson on December 15, 2011.<sup>3</sup> The proposed revisions to the draft revised rule replace the outdated competitive bidding process with a more general, principles-based goal-rule to require utilities to conduct financings in a competitive and transparent manner that achieves the lowest cost of capital, while also encouraging the use of WMDVBEs. This approach will: 1) reflect current market practices and standards, 2) provide utility flexibility to take

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which authorized the utilities to issue a total of \$8 billion in debt and preferred stock. The dissenting opinions questioned the effectiveness and adequacy of the Rule in part because of financing approvals based on long-term (three-year) projections of capital expenditure requirements, exemptions from the Rule without any conclusive showings by the utilities that those exemptions were in the ratepayers best interest, and lack of any showing that the utilities financial services procurements are included in their G.O. 156 program goals. The OIR was also initiated in response to Commission concern in D.09-09-046 about the level of transparency with regard to the volume of debt enhancement features being used by the utilities and notice to the utilities that their debt issuance practices may be evaluated in a future review of the Rule.

<sup>3</sup> See 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.

advantage of market opportunities and adjust pricing, in order to obtain low-cost debt financing, 3) allow utilities to take better advantage of market competition, and 4) facilitate utility efforts to provide WMDVBEs with meaningful opportunities to participate in utility financing transactions.

The proposed revisions reflect technological advances in information flow and revise archaic terms in the draft revised rule. The proposed revisions to the G.O. 24-B reporting requirements: 1) extend the time by which utilities must file G.O. 24-B statements with the Commission to coincide with the utilities' SEC disclosure filings, 2) excuse filings for reporting periods during which no reportable activity occurred, 3) modify language to reflect current market terms, practices and standards, and 34) modify language to reflect current utility record maintenance practices, and 5) re-designate the general order as G.O. 24-C.

**Utility Long-Term Debt Financing Rule**

1. Public utility long-term debt issues shall be conducted in a prudent manner consistent with market standards that encompass competition and transparency, with the goal of achieving the lowest long-term cost of capital for the utility and its ratepayers.
2. Public utilities, to the best of their ability, shall determine the financing terms of their debt issues with due regard for their financial condition and requirements and current and anticipated market conditions.
3. Utilities with \$25 million or more of California operations annual operating revenues, requesting financing authority, shall use their best efforts to encourage, assist, and recruit Women Minority Disabled Veteran Owned Business Enterprises (WMDVBE)<sup>4</sup> in being appointed as lead underwriter, co-manager, or in other roles in debt securities offerings.
  - a. Utilities shall report on their WMDVBE efforts in their G.O. 156 Annual Reports, including but not limited to:
    - i. The number of WMDVBE firms that have been appointed as lead underwriter, co-manager, or other roles in debt securities offerings within the reporting period.
      1. The position(s) held by the WMDVBE firms.
      2. The percentage of each debt issue allocated to each WMDVBE firms.
      3. The dollar amount of these debt securities issuances.

<sup>4</sup> Pursuant to G. O. 156 and D.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.

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.

- b. Appointment of a WMDVBE as lead underwriter, co-manager, or other role shall be cost effective, so as not to increase financing costs to the ratepayers.
  - c. Consistent with Section 6 of G.O. 156, utilities shall retain the authority to use their legitimate business judgment in selecting firms for a particular debt securities offering.
4. Debt Enhancement Features shall only be used in connection with debt securities financings, and 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, treasury lock, treasury options, and interest rate swaps.
- a. For each Debt Enhancement Feature requested in a financing application, the utility shall 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.
  - 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. Utilities shall separately report any interest income and expense arising from all swaps and hedging transactions in their quarterly G.O. 24-B reports to the Commission.
    - ii. Swap and hedging transactions shall 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 regulatory proceeding addressing its cost of capital.
    - 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 regulatory proceeding addressing its cost of capital.
    - vi. Utilities shall provide the following to Commission Staff within 30 days of receiving any written request: (i) all terms, conditions, and other details of swap and hedge transactions; (ii) rationale(s) 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.

Draft Revised

GENERAL ORDER No. 24-BC  
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 60th day following each quarter during which one or more reportable issuance, receipt, or disbursement has occurred, the information required by Sections A and B for the preceding quarter, certified by an authorized representative 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 description of the stock issued during the quarter under the authority of the Commission, including:
  - a. The principal amount of the issuance;
  - b. The number of shares issued;
  - c. The par value, if any, of each share;
  - d. The commissions paid; and
  - e. The total proceeds received.
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 shares issued; and
  - b. The total par value, if any, of such shares.
3. A description of the bonds or other evidences of indebtedness, issued during the quarter, under the authority of the Commission, including:
  - a. The principal amount of the issuance;
  - b. The commissions paid; and
  - c. The total proceeds received.
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 the principal amount of such bonds or other evidences of indebtedness issued.

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 related authorizing decision.

**C. MAINTENANCE OF RECORDS**

Utilities shall maintain records and accounts consistent with current accounting and internal control standards in a manner that demonstrates the appropriate use of funds in compliance with Section 817 of the Public Utilities Code and any related financing authorization. Utilities shall make these records available to Commission Staff upon written request.

**D. INCORPORATION BY REFERENCE**

Any of the information required by Sections A, B, or C above may be incorporated by reference to offering documents provided to investors in connection with the relevant securities issuance.