Minor Nits noted on pps. i, 3, 4, 5, 7, 8, 9, 10, 12, 13, 16, 19, 21, 22, 24, 25, 27, 29, 34, 35, 37, 38, A-2, A-4, A-5, 20, and 30

~~R.10-06-002 ALJ/SMW~~

COM/TAS/jt2 **DRAFT** Agenda ID #11297 (Rev. ~~1~~2)

Quasi-legislative

6/7/2012 Item #32

Decision **PROPOSED DECISION OF COMMISSIONER SIMON**
(Mailed 4/27/2012)

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)

DECISION ADOPTING A NEW FINANCING RULE AND GENERAL ORDER 24-C

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sell their debt and equity securities through a competitive bidding process.[1] During the mid 1940s, the issuance of utility debt securities was transitioning from a negotiated basis to a competitive bidding basis. Testimony in that proceeding substantiated that while negotiated bids in extraordinary circumstances can be favorable, the public interest is best served when more than one investment banker is offered an opportunity to underwrite securities. Therefore, the ~~Commission established a Competitive Bidding Rule~~ (CBR) for utilities issuing new securities, with certain exemptions. Since this CBR was established in 1946 it has been amended five times.[2] The period between reviews has ranged from four to 25 years and averaged 13 years.

(defined on p. 2)

The CBR was last amended by a Commission vote on October 1, 1986 in Resolution F-616. Since that time, the Commission has authorized individual utilities to deviate from the CBR so that the utilities could take advantage of market opportunities.[3]

Utilities have also requested authority to enter into debt enhancement arrangements in order to improve the terms and conditions of new issuances of debt securities and to lower the overall cost of money for the benefit of ratepayers. In particular, utilities have requested debt enhancements such as: put options, call options, sinking funds, swaptions, caps, collars, currency swaps, credit enhancements, capital replacement, interest deferral, special-purpose

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[1] 46 RRC 281-290 (1946).

[2] Amendments were adopted by D.49941 in 1954, D.75556 in 1969, D.81908 in 1973, and Resolution Numbers F-591 in 1981 and F-616 in 1986.

[3] For example, see D.10-08-002 (2010), D.09-09-046 (2009), D.08-10-013 (2008), D.07-08-012 (2007), D.06-07-012 (2006), D.05-08-008 (2005), D.04-10-037 (2004), and D.03-07-008 (2003).

entity transactions, delayed drawdown, hedging strategies, treasury lock, various types of treasury options, various types of interest rate swaps, and long hedges. A Glossary of Selected Financing Terms is attached as Attachment C to this decision.

2.2. Procedural Matters

Order Instituting Rulemaking (R.) 11-03-007, was issued on March 10, 2011, in order to address concerns regarding the CBR and General Order (GO) 24-B. On May 6, 9, and 10, 2011, Opening Comments were filed by: Castle Oak Securities; L.P.; jointly by Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE), and Southern California Gas Company (SoCal Gas),[4] PacifiCorp; Southwest Gas Corporation (Southwest Gas); The Greenlining Institute; California Pacific Electric Company, LLC; RBS Global Banking and Markets; jointly by MCE Metro Access Transmission Services LLC and Verizon California Inc.; California Water Association and its Class A Water Company Members (CWA and Class A water); California Association of Competitive Telecommunications Companies (CALTEL); Jointly by the Small Local Exchange Carriers (LECs);[5] jointly by AT&T Communications of California, Inc., AT&T Corp, Pacific Bell Telephone Company, TCG Los Angeles, Inc., TCG San Diego, and TCG San Francisco

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[4] PG&E, SDG&E, SCE, and SoCal Gas are collectively referred to as "Joint Energy Utilities" for the remainder of this decision.

[5] The Small LECs includes Cal-Ore Telephone Co., Calaveras Telephone Co., Calaveras Telephone Company, Ducor Telephone Company, Foresthill Telephone Co., Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Co., and Sierra Telephone Company, Inc., The Ponderosa Telephone Co., The Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company.

(AT&T); SureWest Telephone~~,~~ Southwest Gas; the Williams Capital Group, L.P.~~,~~ Loop Capital Markets LLC~~,~~ and Samuel A. Ramirez & Company, Inc. Reply Comments were filed on May 17 and 27, ~~2011,~~2011 !!!, by Aladdin Capital LLC; The Greenlining Institute; Southwest Gas; the Joint Energy Utilities; and the Small LECs.

A prehearing conference (PHC) was held in San Francisco on October 4, 2011 to establish the service list for this proceeding and develop a procedural timetable. On October 14, 2011, the assigned Administrative Law Judge (ALJ) issued a ruling via electronic mail (e-mail), set January 9 and 10, 2012 as dates for a workshop to discuss the issues in this proceeding, stated that Pre-Workshop Statements were due January 4, 2012, and provided a list of questions to guide the discussions. On November 15, 2011, the assigned Commissioner and ALJ issued a *Revised Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge*, which confirmed the assigned ALJ's October 14, 2011 ruling and set a schedule for the balance of this proceeding. On November 28, 2011, the assigned ALJ issued a ruling via e-mail, adding issues for discussion in the Pre-Workshop Statements and at the workshop, and set an evidentiary hearing for the afternoon of January 10, 2012. This was confirmed by formal ruling on December 15, ~~2011.~~2012. Evidentiary hearings were not necessary. The January 10, 2012 ruling also included a draft revised CBR for parties to use as a platform for discussion of specific changes to the CBR.

Pre-Workshop Statements were filed by CWA and Class A water~~,~~ CALTEL~~,~~ jointly by AT&T, Verizon, and SureWest~~,~~ PacifiCorp~~,~~ Joint Energy Utilities~~,~~ Southwest Gas~~,~~ and the Small LECs. A workshop was held on January 9, 2012, in which parties discussed opinions and alternatives to the CBR, and other concerns regarding revisions to the CBR, GO 156, GO 24-B, and debt

not viable or available are exempt; 3) The notification requirement to solicit bids is shortened to one day; 4) Telephonic competitive bidding is allowable; 5) The rule is only applicable to utilities with bond ratings of "A" or higher; and 6) Bond issues of $20 million or less are exempt. We note that the California Consumer Price Index (CPI) increased approximately 107% from 1986 through 2011, which would equate to an increase in the exemption ~~to~~of approximately $42 million dollars.[6]

to → the total is 42, not an increase of 42 over previous amount

In recent years, modifications requested and received by individual utilities have included, but have not been limited to, authority to: 1) issue debt securities in excess of $200 million via a means other than competitive bid, because the size or type of issuance does not lend itself to competitive bidding; 2) issue debt securities such as tax-exempt financing, foreign debt, government debt, privately placed debt, or debt issued through an affiliate, via means other than competitive bid; 3) be exempt from the CBR if the utility is a multi-state utility whose California operating revenue is 5% or less ~~than~~ the entire utility's total operating revenue; 4) permit competitive bidding via ~~electronic~~electrical means, such as e-mail, in lieu of telephonic bidding; and 5) waive one-day notification requirement of a competitively bid offer.

electronic

of

[6] See California Department of Financing website at http://www.dof.ca.gov/HTML/FS_DATE/LatestEconData/FIS_Price.htm.

3.2. Women, Minority, and Disabled Veterans Business Enterprises

GO 156, which was originally adopted in 1988,[7] governs the development, implementation, and reporting of programs to encourage, recruit, and increase the participation of Women, Minority, Disabled Veteran Owned Business Enterprises (WMDVBE) in procurement of contracts from electric, gas, telephone, and water utilities with gross annual revenues exceeding $25 million and their Commission-regulated subsidiaries. The Commission's September 2010 Report to the Legislature on Diverse Business Enterprise (DBE) procurement for the year 2009 showed that, although utility procurement of financial services from WMDVBEs shows steady and continuing improvements, the percentage of total procurement directed to diverse financial service firms lags behind traditional procurement areas.[8] Neither the CBR nor GO 156 addresses the use of WMDVBE firms as underwriters or co-managers in the issuance of debt.

3.3. Debt Enhancement Features Regularly Requested by Applicants

The utilities' use of discretionary debt enhancement has substantially increased since 1986, ~~and~~ has ~~also increased~~ their use of swap and hedging

(as) (e)

[7] *See* D.88-04-057. *See also* Pub. Util. Code §8281, which is one of the code sections on which GO 156 is based. § 8281, in part states, that it is the policy of the state to "to aid the interests of women, minority, and disabled veteran business enterprises in order to preserve reasonable and just prices and a free competitive enterprise, to ensure that a fair proportion of the total purchases and contracts or subcontracts for commodities, supplies, technology, property, and services for regulated public utilities...are awarded to women, minority, and disable veteran business enterprises. ..."

[8] California Public Utilities Commission 2009 Report to the Legislature on Utility Procurement of Goods, Services and Fuel from Women-, Minority-, and Disabled Veteran-Owned Business Enterprises, dated September 2010.

transactions to manage their interest rate risk. Debt enhancements are used by the utilities to improve the terms and conditions of their long-term debt securities and to lower the overall cost of money which, in turn, benefits the ratepayers.

Some of the more recent types of approved debt enhancements included put options, call options, sinking funds, swaptions, caps, collars, currency swaps, credit enhancements, capital replacement, letters of credit, standby bond purchase agreements, surety bonds and insurance policies, delayed drawdown, redemption provisions, tax exemption, warrants, encumbrance of accounts receivables interest deferral, special-purpose entity transactions, hedging strategies, treasury locks, various types of treasury options, various types of interest rate swaps, and long hedges.[9]

However, it is not clear that all of the enhancements being requested by the utilities and being approved actually are being used by the utilities, or whether the enhancements being used result in added risks to ratepayers that should be mitigated.

Even though swaps and hedges are meant to reduce exposure of the issuer to interest rate risk, such features carry their own risks, for example, counterparty

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[9] Swaps and hedges authorized by this Commission are normally excluded from consideration as separate debt for purposes of calculating a utility's financing authorization. For example, in D.08-10-013 the Commission stated that swaps or hedges will not count against a utility's authorized debt to the extent the swaps and hedges both are recorded as a liability in accordance with generally accepted accounting principles (GAAP), and deemed effective under GAAP in offsetting changes to the fair value or cash flows of the risks being swapped or hedged. On the other hand, swaps and hedges will be counted against a utility's authorized debt to the extent they are recorded as a liability in accordance with GAAP, but are not deemed effective under GAAP in offsetting changes to the fair value or cash flows associated with the risks being swapped or hedged.

risk.[10] Over the past dozen years or so, we have authorized restrictions on the use of swaps and hedges in an effort to reduce the risks these features could carry with them.[11] These restrictions require that:

a. A utility must separately report all interest income and expense arising from all swaps and hedging transactions in its regular ~~annual~~ report to the Commission;

b. Swap and hedging transactions will not exceed 20% at any time, of a utility's total long-term debt outstanding;

c. All costs associated with hedging transactions are subject to review in a utility's next cost of capital proceeding;

d. Hedging transactions carrying potential counterparty risk must have counterparties with investment grade credit ratings;

e. 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; and

f. 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.

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[10] Counterparty Risk is defined as the risk that the other party to an agreement will not perform or will default on their part of the agreement.

[11] *See* D.10-08-002, Ordering Paragraph 13. *See* also D.07-08-012 at 7; D.05-08-008 at 15-18; D.00-10-063 and 6-7; and D.98-02-104 at 8-12.

4. Competitive Bidding, Negotiated Bid, and Other Manner of Issuing Debt Securities

Competitive bidding in the financial markets refers to a process whereby an issuer (a utility) solicits bids from a pre-selected group of underwriters[13] for a proposed securities offering. The terms of the financing, such as denomination, maturity, transaction size, timing, and other provisions of the competitively bid solicitation, are all dictated in advance by the issuer. At an appointed time, each bidder submits a bid to the issuer with a committed price or interest rate at which it will purchase the securities. The bidder providing the lowest cost of funds is awarded the transaction, ~~underwrites the entire issue~~, and is obligated to underwrite (purchase) the entire offering, whether or not it is able to ultimately sell the securities to investors. Thus, the bidder in a competitive bid takes all the sales risk. To compensate for this risk, the bidders normally include a risk premium in their bids.

When debt securities are issued via a negotiated bid, the issuer selects one or more underwriters in advance of the financing and works with those firms to design, structure, size and otherwise determine the optimal financing terms. The underwriters provide advice on market conditions and potential investor demand based on prices, interest rates, credit risk levels, timing of the issue, expertise and market knowledge of the issuer's existing securities and other recent offerings. Based on these discussions, the issuer is able to determine the terms of the issuance and market the issuance based on current market

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[13] Entity that administers the issuance and distribution of debt securities from a utility. An underwriter buys the debt securities from the issuer and sells them to investors ~~via the underwriter's group of potential investors~~.

conditions. Communication between the underwriters and investors helps the issuer determine if changes need to be made to the issuance. The underwriters then develop an "order book" of the investor demand. The greater the investor demand (a large order book), the lower the cost to the issuer.

The Private Placement of debt securities occurs when a utility issues debt securities directly to ~~a lender~~. This ~~lender~~ could be an individual investor, a bank, an insurance company, a government entity, or other entity ~~with which the utility has a direct relationship~~. Private placement of debt normally occurs when the issuance amount is smaller than those normally put out for bid or access to the competitive market by the issuer is limited.

Loans received through government entities, such as Safe Drinking Water Act loans and pollution control bonds, and Rural Utilities Service loans, are governed by their own sets of rules and regulations, and therefore do not lend themselves to either competitive or negotiated bids. These types of loans may be issued by local, state, or federal agencies to the various types of utilities.

5. New Financing Rule

We adopt the Financing Rule attached to this decision as Attachment A. In replacing the CBR with this Financing Rule, we considered input of the parties, the extended time periods between reviews of the rule, and interests of the ratepayers. The Financing Rule provides utilities with the freedom to choose whether to use competitive or negotiated bidding, while protecting the ratepayers by requiring that the utility's bidding choice results in the lowest cost of debt to the ratepayers.

With the ever-changing means of communication, which have changed from the more time consuming written method when we first adopted a CBR to the now immediate forms of electronic communications, we have eliminated any

the CBR should make clear that the revised rule is subject to statutory exceptions applicable to them. ~~Both~~ They (since there are more than 2) suggest language that clarifies the statutory exemption applicable to them, referencing Public Utilities (Pub. Util.) Code §829(b)(1).[17]

In their Workshop Report, however, the Joint Energy Utilities propose a rule in place of the current CBR that addresses the concerns of utilities and other parties. In particular, the Joint Energy Utilities' proposed rule would: 1) provide utilities with the freedom to choose the method by which it issues debt, while still requiring such issuance to achieve the lowest long-term cost to ratepayers; 2) include reporting of utilities' efforts towards the use of WMDVBE firms; and 3) include what type of information to provide when requesting debt enhancement features and rules governing such features. In their opening comments, the Joint Energy Utilities reiterate support for their proposed new rule, which they believe will enable utilities to access cost effective capital and be in the best interest of the ratepayers.

In support of their proposed revised rule, the Joint Energy Utilities also reference revisions to the rules governing the issuance of long-term debt financing by other regulatory agencies. For example, in 1984, the New York Department of Public Service gave utilities "flexibility in selecting the method of

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[17] Pub. Util. 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. This subdivision does not exempt a telephone corporation that is also an electrical corporation or a gas corporation, unless the commission determines the telephone corporation is exempt pursuant to subdivision (c). As used in this subdivision, a 'rate-of-return regulatory structure' means a system under which the rates and charges of the telephone corporation are limited by a maximum permissible price that may be charged for a specific service. Telephone corporations regulated by a framework under which they may exercise pricing flexibility for all or most of the services offered are not regulated under a rate-of-return regulatory structure."

We also want to ensure that ratepayers are charged the most cost effective price in the rates they pay. Given the state of the economy, more and more ratepayers are finding it difficult to pay their bills.[23] It is therefore essential to require utilities to demonstrate the cost effectiveness of the method they use to issue debt securities.

Since the utilities must still request authority to include their specific costs of debt in rates as part of the cost of capital proceeding, we find that a cost benefit study to determine whether the method of bidding and the use of debt enhancements is cost effective when the utility requests financing authority is not necessary. We find the review performed as part of the utility cost of capital proceedings provides an opportunity for ratepayers and interested parties to assess the reasonableness of all debt related costs and for the Commission to determine such reasonableness. Performing a cost benefit study as part of a utility's request for financing authority would be duplicative of the review performed in the cost of capital proceedings, in which the reasonableness of each component of the cost of capital, including common equity, preferred equity, and long-term debt is assessed for reasonableness. This duplication of effort would result in more work for the Commission and all parties involved.

We reject AT&T's, Verizon's, and SureWest's suggestions that the new rule only apply to utilities and not their affiliates. On a regular basis, utilities are authorized to issue debt through their regulated affiliates.[24] Since the utility and

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[23] United States Census Bureau, "Poverty: 2009 and 2010, American Community Survey Briefs." http://www.census.gov/prod/2011pubs/acsbr10-01.pdf. In 2010, 15.8% of California's population was below the poverty level.

[24] For example, *see* D.10-08-002 at Ordering Paragraph 7 (SCE); D.10-10-022 at Ordering Paragraph 4 (Southwest Gas); and D.10-10-023 at Ordering Paragraph 6 (SDG&E).

ultimately the ratepayer is responsible for paying for this debt, and the affiliate is acting for the utility, we must ensure that the affiliate performs their duties in the same manner as the utility.

We therefore adopt the following rules:

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 ratepayers; and
2. Public utilities shall determine the financing terms of their debt issues with due regard for their financial condition and requirements, and current and anticipated market conditions.

5.2. Exemptions from the Financing Rule

5.2.1. Parties' Positions

In their Workshop Report, the Joint Energy Utilities did not include any exemptions to their proposed version of the Financing Rule. In its Pre-Workshop Statement and opening comments to the Workshop Report, PacifiCorp states that it wants the Commission to retain an existing exemption from the CBR for multi-state utilities with less than 5% California revenues. In its Opening Comments, PacifiCorp reiterates that it has been granted an exemption (See D.88-04-062) from the provisions of the Public Utilities Code relating to stocks and securities transactions and the encumbrance of utility property, and therefore should not be required to provide proof of such exemption when it issues debt.

CWA and Class A water support exemptions for small issues, government debt, and private placement debt. CWA and Class A water originally proposed that the limit for small issues be raised to $200 million from $20 million. In their Opening Comments to the Proposed Decision, CWA and Class A water instead support an increase of this limit for small issues to $42 million, adjusted each year pursuant to the CPI.

The Small LECs support an exemption for small debt issuances, as well as those issuances for which telecommunications utilities are already exempted. In particular, the Small LECs suggest new language that would specifically identify the code section that exempts them from Pub. Util. Code §§ 816-830. In their joint Opening Comments, AT&T and Verizon California Inc. reiterate that, pursuant to Pub. Util. Code § 829(b), certain telecommunications utilities are statutorily exempt from applicable sections of the Public Utilities Code regarding the issuance of debt, and therefore should not be required to prove such exemption from the Financing Rule.

5.2.2. Discussion

Even though the new Financing Rule adopted herein allows a utility to choose the method by which it will issue debt, it includes other requirements regarding WMDVBEs and debt enhancements. Some types of utilities should not be subject to these requirements due to their size or the type of debt they issue, which is consistent with historical exemptions from the CBR. We therefore include the exemptions discussed below.

These exemptions address a number of the concerns raised by the utilities, such as the size of recent debt security issuances, as well as the types of debt securities that do not lend themselves to a specific type of bidding.

We also continue to allow an exemption for smaller issues of debt securities. The current CBR allows exemption for issues of $20 million or less. Given the CPI increase of approximately 107% from 1986 through 2011 (discussed in Section 3.1 above), which would equate to an increase in the exemption ~~to~~of approximately $42 million, and since revisions to the CBR are infrequent, we require that the current exemption baseline of $20 million be increased to $42 million for 2012, and be adjusted each year by the most recent

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CPI found on the California Department of Finance's website or its successor. Since government loans and tax-exempt debt are governed by their own set of rules and regulations, and may not be bid at all, we should exempt such debt from the Financing Rule adopted herein.

As discussed in Section 4 above, government loans are governed by their own set of rules and regulations, may not be bid at all, either competitively or through a negotiated bid (unless required by the government entity issuing the debt securities). Along these same lines, a tax exempt debt security, which is also normally issued by a government entity, is governed by its own rules and regulations. We also find it reasonable to exempt a utility from the Financing Rule if its California operations account for a small percentage of its total operations. Similarly, we find it reasonable that if an affiliate provides debt issuance services to the utility, and the utility's debt accounts for less than five percent (5%) of the affiliate's annual debt issuances, such issuances are exempt from the Financing Rule.

These exemptions provide more specific guidance to the utilities than is provided in the current CBR. For example, when a utility plans to obtain a government loan, there is no specific exemption in the current CBR that addresses this requested exemption. In the future, a utility will have certainty that if it provides the support for such a requested exemption, such exemption is available.

We therefore adopt the following exemptions, which will only be granted upon a compelling showing by a utility in its financing application, that the terms of such exemption are applicable to the utility, for the proposed debt issuance:

~~1.~~

1. ~~2.~~ Bond issues of $42 million or less, adjusted each year for the CPI found on the California Department of Finance's website or

exemption from the Financing Rule. However, in accordance with GO 156, these utilities are encouraged to make their best efforts to engage WMDVBE ~~booking~~ banking firms.

5.3. Women, Minority, and Disabled Veterans Business Enterprises

5.3.1. Parties' Positions

Initially, the Joint Energy Utilities did not think any extra GO 156 rules were necessary, since they are already proactively utilizing WMDVBEs in their financing activities and did not see the need for further rules governing such activities. Subsequently, in their Workshop Report, the Joint Energy Utilities propose that utilities with $25 million or more of annual operating revenues from California operations shall use their best efforts to encourage, assist, and recruit WMDVBE for financing issuances and that the utilities report on such activity as part of their GO156 Annual Report. They go on to propose that such actions regarding WMDVBEs be cost effective, and be consistent with Section 6 of GO 156. In their Pre-Workshop Statement, CWA and Class A water stated that any rules regarding GO 156 should be separate from the Financing Rule. In their Pre-Workshop Statement as well as their comments to the Workshop Report, AT&T, Verizon, and SureWest initially stated that GO 156 is sufficient, and there is no reason to add a requirement in a financing related rule.

5.3.2. Discussion

GO 156 sets forth the Commission's policy statement on utility utilization of resources from WMDVBEs. To the extent this decision comports with and compliments GO 156, we encourage utilities to follow those principles in their issuance of long-term debt.

We appreciate the efforts made by Commission regulated utilities to include WMDVBEs as underwriters, leads, and co-managers of debt they have issued in recent years. We find that, in order to officially encourage the use of these firms we must apply the tenets of GO 156 to the issuance of debt. Therefore, we add a section to the Financing Rule which would promote additional opportunities for WMDVBE and emerging firms, to the ultimate benefit of the utilities' ratepayers and shareholders. With the inclusion of WMDVBE firms in the available pool of underwriters, we also encourage healthy competition, which should result in lower costs to the ratepayers.

Such a requirement is consistent with promoting the goals of GO 156 and does not conflict with GO 156, which takes precedence over the Financing Rule requirement.

We therefore adopt the following:

3. Utilities with $25 million or more of annual California operating revenues, requesting financing authority, shall use their best efforts to encourage, assist, and recruit Women-, Minority-, and Disabled-Veteran Owned Business Enterprises (WMDVBE)[26] in

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[26] Pursuant to GO 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,

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2. The percentage of each debt issue allocated to each WMDVBE firm.
3. The dollar amount of these debt securities issuances.

b. Appointment of a WMDVBE as lead underwriter, book runner, co-manager, or other role shall be evaluated on a cost effective basis.

c. Consistent with Section 6 of GO 156, utilities shall retain the authority to use their legitimate business judgment in selecting firms for a particular debt securities offering.

5.4. Debt Enhancement Features

5.4.1. Parties' Positions

In their Pre-Workshop Statements, the Joint Energy Utilities and Southwest Gas recommended that no cost benefit study should be required to receive authority for debt enhancement features. In particular, the Joint Energy Utilities stated that: "A cost/benefit study is neither necessary nor feasible, and would lack any meaningful value if required as part of a request for financing authority, because the existing market conditions at the time a financing opportunity is identified cannot be accurately or timely analyzed in advance when a financing application is filed and reviewed by the Commission."[27] Southwest Gas suggested as an alternative, that utilities provide a description and rationale for their debt enhancement choices, as well as being subject to a prudency review.

In their Workshop Report, though, the Joint Energy Utilities presented a rule addressing Debt Enhancement Features that removed a cost effectiveness requirement but required utilities to provide a brief description and rationale for their proposed debt enhancements, and included certain restrictions commonly authorized by us with regards to the use of swap and ~~heading~~ transactions.

hedging

[27] Pre-Workshop Statement of Joint Energy Utilities at 3.

We therefore adopt the following:

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 ~~annual~~ regular General Order 24-C reports to the Commission. → they are initially ~~quarterly~~ semi-annual
        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

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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.

6. General Order 24-B

6.1. Parties' Positions

In their Workshop Report, the Joint Energy Utilities suggest that reporting be on a quarterly instead of a monthly basis. The Joint Energy Utilities also state that, given the current banking system utilized by the major utilities, they should no longer be required to keep funds derived from the sale of securities in a separate bank account, but instead, maintain records and accounts that demonstrate the appropriate use of funds in compliance with Public Utilities (Pub. Util.) Code § 817. The Joint Energy Utilities reiterate this point in their Opening Comments to the Proposed Decision.

In their Pre-Workshop Statement, CWA and Class A water suggest that if GO 24-B is retained, then reporting should be on an annual basis, stating that since the water utilities issue debt on such an infrequent basis, there is no need to issue a report any more often, and such monthly or quarterly reports would be burdensome and costly for the water utilities to produce.

6.2. Discussion

Revisions to GO 24-B include: 1) the filing of a GO 24 report on a quarterly instead of a monthly basis for the first year of the Financing Rule. Commencing in the second year, reports will be filed semi-annually (June and December); and 2) revisions to the type of information provided in such reports;

We streamline and update the GO 24-B reporting process, requiring utilities to report on a quarterly basis in the first year after this decision and on a

credit enhancements, capital replacement, interest deferral, special-purpose entity transactions, delayed drawdown, hedging strategies, treasury lock, various types of treasury options, and various types of interest rate swaps.

7. Utilities are regularly granted exemptions from the CBR, including but not limited to authority to: 1) issue debt securities in excess of $200 million via a means other than competitive bid, because the size or type of issuance does not lend itself to competitive bidding; 2) issue debt securities such as tax-exempt financing, foreign debt, government debt, privately placed debt, or debt issued through an affiliate, via means other than competitive bid; 3) be exempt from the Rule if the utility is a multi-state utility whose California operating revenue is 5% or less ~~than~~ the entire utility's total operating revenue; 4) be exempt from the CBR if the debt issues are $20 million or less; 5) permit competitive bidding via ~~electrical~~ means, such as e-mail, in lieu of ~~telephonic bidding~~ electronic; and 6) waive the one day notification requirement of competitively bid offers.

8. When the increase in the CPI from 1986 through 2011 of 107% is applied to $20 million, it results in a figure of approximately $42 million.

9. GO 156 was established in 1988, subsequent to our last review of the CBR.

10. GO 156 governs the development, implementation, and reporting of programs to encourage, recruit, and increase the participation of WMDVBE in procurement of contracts from electric, gas, telephone, and water utilities with gross annual revenues exceeding $25 million.

11. Pursuant to Pub. Util. Code §8281, which is one of the code sections on which GO 156 is based, it is the policy of the state to aid the interests of WMDVBEs and to ensure that a fair proportion of the total purchases and contracts or subcontracts for regulated public utilities are awarded to WMDVBEs.

12. Utilities are regularly granted authority to use requested debt enhancement features, including but not limited to put options, call options, sinking funds, swaptions, caps, collars, currency swaps, credit enhancements, capital replacement, letters of credit, standby bond purchase agreements, surety bonds and insurance policies; delayed drawdown; redemption provisions; tax exemption, warrants; encumbrance of accounts receivables interest deferral, special-purpose entity transactions, treasury lock, various types of treasury options, and various types of interest rate swaps.

13. Utilities are regularly granted authority to report on a quarterly instead of a monthly basis, as required by GO 24-B.

14. Competitive bidding in the financial markets refers to a process whereby an issuer solicits bids from a pre-selected group of underwriters for a proposed securities offering.

15. When debt securities are issued via a negotiated bid, the issuer selects one or more underwriters in advance of the financing and works with those firms to design, structure, size and otherwise determine the optimal financing terms.

16. The Private Placement of debt securities occurs when a utility issues debt securities directly to ~~a lender~~ an investor.

17. Loans received through government entities, such as Safe Drinking Water Act loans and pollution control bonds, and Rural Utilities Service loans, are governed by their own sets of rules and regulations.

18. In 1984, the New York Department of Public Service gave utilities flexibility in selecting the method for issuing securities.

19. In 1985, the ICC repealed its competitive bidding requirement.

20. In 1994, the SEC rescinded its Rule 50, which required competitive bidding for the issuance of securities by a registered holding company or its subsidiary.

assessed for reasonableness. This duplication of effort would result in more work for the Commission and all parties involved.

3. Even though the new Financing Rule adopted herein allows a utility to choose the method by which it will issue debt, it includes other requirements regarding WMDVBEs and debt enhancements. Some types of utilities should not be subject to these requirements due to their size or the type of debt they issue, consistent with historical exemptions, however, such utilities are encouraged to employ GO 156.

4. Bond issues of $42 million or less in 2012, adjusted each year for the CPI found on the California Department of ~~Finance~~Finances~~'s~~ website or its successor, should be exempt from the Financing Rule.

5. Since government loans and tax-exempt debt are governed by their own set of rules and regulations, and may not be bid at all, we should exempt these.

6. A utility whose California operations account for a small percentage of its total operations should be exempt from the Financing Rule adopted herein.

7. An affiliate of a utility that provides debt issuance services to the utility, where the utility's debt accounts for less than five percent (5%) of the affiliate's annual debt issuances, should be exempt from the Financing Rule adopted herein.

8. Given the authority granted to PacifiCorp in D.88-04-062 regarding exemption from the provisions of the Public Utilities Code relating to stocks and securities transactions and the encumbrance of utility property, we should not require PacifiCorp to provide proof of the applicability of such exemption from the Financing Rule.

9. Given ~~thedebttheat~~that debt issuances governed by Pub. Util. Code § 829(b) are exempt from all other applicable provisions of Pub. Util. Code §§ 816-

830, we should not require the affected telephone utilities to provide proof of the applicability of such exemption from the Financing Rule.

10. To the extent this decision comports with and compliments GO 156, we should encourage utilities to follow those ~~principals~~ Principles in their issuance of long-term debt.

11. In order to officially encourage the use of WMDVBE firms we must apply the tenets of GO 156 to the issuance of debt. We should add a section to the Financing Rule adopted herein, which would promote additional opportunities for WMDVBE and emerging firms, to the ultimate benefit of the utilities' ratepayers and shareholders.

12. Since debt enhancements are regularly requested by utilities in their financing applications, and we currently do not keep track of the use of such debt enhancement features, we should include a section in the Financing Rule adopted herein, that addresses requests for debt enhancement features by requiring a description of and rationale for the potential debt enhancement feature being requested.

13. We should place the restrictions detailed in Section 5.4.2 of this decision on the use of swaps and hedges by utilities. We have authorized such restrictions for over a dozen years, and find them effective in controlling the risk of swap and hedge transactions.

14. We should streamline and update the GO 24-B reporting process in order to save both utility and Commission staff work, and to consider current banking practices.

15. We should adopt the updated list of information (Attachment B to this decision), which utilities are required to report pursuant to GO 24, given the

Attachment A

Final Competitive Bidding Rules

runner, co-manager, or in other roles in the issuance of debt securities offerings.

a. Utilities shall report on their efforts in their General Order (GO) 156 Annual Reports, including but not limited to:

i. 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 firm.

3. The dollar amount of these debt securities issuances.

b. Appointment of WMDVBE as lead underwriter, book runner, co-manager, or other role shall be evaluated on a cost effective basis.

c. Consistent with Section 6 of GO 156, utilities shall retain the authority to use their legitimate business judgment in selecting firms for a particular debt securities offering.

4. Pursuant Public Utilities (Pub. Util). Code § 829(b), debt issues for telephone utilities whose rates are subject to the Uniform Regulatory Framework (URF),[30] and whose rates are therefore not subject to rate of return regulation, are exempt from the Financing Rule, and all other applicable provisions of Pub. Util. Code §§ 816-830. Given that such debt issuances are governed by Public Utilities Code, we do not require the affected telephone utilities to provide proof of the applicability of such exemption from the Financing Rule. However, in accordance with GO 156, these utilities are encouraged to make best efforts to engage WMDVBE booking firms.

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.

[30] *See* D.06-08-030.

5. In D. 88-04-062, we authorized an exemption ~~of~~for PacifiCorp from the provisions of the Public Utilities Code relating to stocks and securities transactions and the encumbrance of utility property. Given this authority, we do not require PacifiCorp to provide proof of the applicability of such exemption from the Financing Rule.

6. 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 ~~annual~~ GO 24-C 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