



**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA**

**FILED**

05-09-11  
04:59 PM

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)

**COMMENTS OF CALIFORNIA PACIFIC ELECTRIC COMPANY, LLC  
(U 933-E) ON ORDER INSTITUTING RULEMAKING**

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May 9, 2011

**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)

**COMMENTS OF CALIFORNIA PACIFIC ELECTRIC COMPANY, LLC  
(U 933-E) ON ORDER INSTITUTING RULEMAKING**

Pursuant to Rule 6.2 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), California Pacific Electric Company, LLC (U 933-E) ("CalPeco")<sup>1</sup> submits these initial comments to the questions posed in the *Order Instituting 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* ("OIR").

CalPeco began operating as a utility in California in the beginning of 2011. Since then, it has not issued any debt and thus it has limited experience with the Competitive Bidding Rule ("Rule"). Nonetheless, CalPeco anticipates that it will likely need at some point to issue debt and thus appreciates this opportunity to comment on the Rule and its associated impacts.

As will be explained below, CalPeco believes that the Rule is outdated, no longer useful, and should be abolished. However, to the extent that the Commission determines to maintain some vestige of the Rule, and for the reasons described below, the Commission should revise the Rule to raise the threshold for debt issuances which trigger the application of the Rule from the current \$20 million to \$100 million.

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<sup>1</sup> CalPeco also does business in California as "Liberty Energy - California Pacific Electric Company."

**Question 1 – Is the Rule still applicable in light of current financial and economic conditions?**

**Question 2 – Is it necessary or desirable to have a Rule?**

**Question 3 – Should the Commission strictly enforce the Rule?**

**Question 4 – What are the advantages and disadvantages of competitive bidding for these types of financial products?**

**Question 5 – What are the advantages and disadvantages of negotiated bidding?**

**Question 6 – What specific changes should be made to the Rule if it remains in effect and why?**

The Rule does not fit current financial and economic conditions. While the goals of the Rule are laudable, the economic reality is that they tend to limit the flexibility and options of utilities, particularly in the current financial landscape, and thus ultimately disadvantage ratepayers. In granting utilities various exemptions from the Rule, the Commission has appropriately recognized some of the major disadvantages and limitations of the Rule. For example, in Decision 08-10-013, the Commission exempted PG&E from the Rule with the objective to provide it with advantageous flexibility:

- “1. To shorten the time between the issuance of an invitation for bids and the scheduled receipt of bids to a period which is the shortest time reasonably required to obtaining a sufficient number of bids from underwriters or purchasers or groups thereof (which time period may be as short as a few hours).
2. To accelerate, postpone, or cancel the scheduled date and time for receipt of bids.
3. To reject all bids submitted.
4. To request the resubmission of bids.
5. To reschedule subsequent receipt of bids.
6. To vary the amount, terms, and conditions of the Debt Securities submitted for bids.
7. To waive the requirement for newspaper publication of the above items.”<sup>2</sup>

Similarly, in Decision 09-09-046, the Commission recognized that the Rule should not be applied to the issuance of certain types of securities such as tax-exempt pollution control bonds

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<sup>2</sup> D.08-10-013, mimeo at 11.

or variable interest rate debt.<sup>3</sup> The Commission accordingly exempted the proposed debt issuance from the Rule “to provide [the issuing utility] with added flexibility to take advantage of market opportunities.”<sup>4</sup>

Furthermore, the Commission recognizes that significant changes in the financial markets raise serious questions about whether, from a policy perspective, competitive bidding should continue to be assumed to present the preferred ratepayer option for utilities to obtain financing. For instance, the Commission granted SCE’s request for an exemption in part in recognition of the “considerable consolidation in the financial services sector resulting in the existence of fewer investment and commercial banks remaining both domestically and globally” and because “competitive bidding may leave SCE limited and undesirable options for obtaining needed financing.”<sup>5</sup>

Similarly, CalPeco questions whether in today’s economic world the Rule is either necessary or beneficial and thus requests that the Commission considers withdrawing the Rule. However, to the extent that the Commission deems that the imposition of competitive bidding regulations continues to benefit California consumers of utility services, CalPeco believes that the minimum amount of any securities issuance which should be subject to any remaining competitive bidding regulation be raised from the current trigger of \$20 million to \$100 million.

Competitive bidding has the best opportunity to provide the issuing utility, and ultimately utility customers, benefits when the size of the offering attracts multiple bidders and a competition ensues which causes financing costs to be reduced. However, as the Commission

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<sup>3</sup> D.09-09-046, mimeo at 10-11.

<sup>4</sup> D.09-09-046, mimeo at 11.

<sup>5</sup> D.07-08-012, mimeo at 8-9.

has long recognized, if the size of the offering is insufficient to attract the necessary number of bidders to trigger a competition, the imposition of competitive bidding rules may not provide any benefits and may actually serve to increase costs. This reasoning has caused the Commission in somewhat regular intervals to raise the minimum threshold for the imposition of competitive bidding requirements to better correspond to market conditions.

Since its earliest years, the Commission has appropriately recognized the de minimis benefit of imposing competitive bidding rules on utility financings at dollar levels below the financing community's "radar screen." For instance, in increasing the level of financings to be exempt from the competitive bidding rules from the then \$1 million to \$3 million in 1954, the Commission explained:

"It appears that in general security underwriters have shown little interest in competitive bidding proceedings involving financing of less than \$3,000,000 and that sales of securities in that amount which were made by private placement or by negotiated underwriting were consummated under reasonable terms."<sup>6</sup>

The Commission increased that level from \$3 million to \$ 5 million in 1973.<sup>7</sup> By 1986, the Commission increased the minimum level of financing to be subject to the competitive bidding rules from \$5 million to \$20 million in Resolution F-616. The Report that accompanied the Commission's decision in F-616 explained, "it is difficult to generate sufficient interest among investment bankers to form bidding syndicates" for small issues.<sup>8</sup>

Twenty-five years have passed since the Commission raised the amount of financings exempt from the competitive bidding rules from \$5 million to the current \$20 million.<sup>9</sup> Here

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<sup>6</sup> D. 49941, at 199 (raising the floor from \$1 million to \$3 million in 1954).

<sup>7</sup> D. 81908.

<sup>8</sup> Resolution F-616, Exhibit A, mimeo at 7.

<sup>9</sup> Resolution F-616.

again, should the Commission determine that the Rule continues to be necessary, it should raise the debt threshold to \$100 million for the same reasons it has historically raised the debt floor – lack of market interest in bidding for sales of securities lower than that debt floor. In today’s world where billion dollar and more financings are routine, offerings at \$100 million and below are often not able to attract the bidder interest necessary to enable competitive pressures to decrease costs.

**Question 7 – Should financing approval be based on a utility’s financing needs for a specific period of time, such as the next one, two three or more years?**

**Question 8 – Is it more advantageous to the utilities and ratepayers if a large financing offer is put out to bid instead of a series of smaller offerings?**

**Question 9 – Should financing approval expire if not exercised within a specific period of time after being approved?**

**Question 10 – Is the Rule favoring a class of large money center financial institutions to the detriment of ratepayers?**

CalPeco has no comment on these questions at this time, but reserves the right to comment on these issues at a later date.

**Question 11– Should exemptions be allowed? Why or why not?**

**Question 12 – Which exemptions are obsolete and why?**

**Question 13 – What circumstances justify exemptions and why? What about government funded loans such as the Safe Drinking State revolving Fund and the Rural Utilities Service funds?**

To the extent that the Commission deems it necessary to continue to impose competitive bidding requirements on any class of utility financings, it absolutely must continue to allow the financing utility the opportunity to seek an exemption. First, the Rule can never be narrowly tailored enough to account for continuing innovations and new debt financing products that may

fall outside the Rule's scope. Second, allowing utilities to request exemptions from the Rule imposes no cost or risk on ratepayers. If the Commission determines based on the facts and circumstances then existing that the best interests of the utility's customers are served by requiring competitive bidding, it can simply deny the request. On the other hand, arbitrarily denying a utility even the opportunity to request an exemption may harm customers by *per se* denying the utility the flexibility necessary to pursue the most desirable options for debt financing that will ultimately provide the most benefit to ratepayers.

**Question 14 – Identify types of debt financing which do not lend themselves to competitive bidding and explain why.**

**Question 15 – What type of compelling showing should be made to justify an exemption?**

**Question 16 -- Should there be an automatic dollar amount floor and/or ceiling exemption from competitive bidding? If so, what should those amounts be and why?**

Please see answers to questions above.

**Question 17 – Should the Rule include General Order 156 requirements? If so, how?**

**Question 18 – Should the utilities be required to disclose their efforts and results of encourage DBE procurement of competitive and negotiated bids in each debt financing application?**

CalPeco has no comment on these questions at this time, but reserves the right to comment on these issues at a later date.

**Question 19 – What is your experience in seeking and obtaining DBE competitive and negotiated bids? For the past two financing approvals, identify by year the percentage of debt issued through the competitive bidding process and the percentage of debt issues through the negotiated**

**bidding process that was awarded to DBEs. In this response please include fees paid to non-DBE firms compared to DBEs.**

As explained in its introductory comments, CalPeco began operating as a utility in California at the beginning of 2011 and has not yet sought to issue debt.

**Question 20 – What limits, if any do DBE underwriters face in participating in competitive and negotiated bids? What can be done to mitigate those limits?**

CalPeco has no comment on these questions at this time, but reserves the right to comment on these issues at a later date.

**Question 21 – Identify your current General Order 156 plan and goals to advance DBEs as underwriters to serve as lead and/or co-managers of debt issuances?**

**Question 22- Identify and define the long-term debt enhancements that you requested and were authorized to use in your past two financing applications?**

**Question 23 – Identify which of those authorized long-term debt enhancement identified in your prior answer that you actually used and reason for use.**

**Question 24 – Identify known risks associated with the long-term debt enhancements you have used and means used to reduce that risk.**

**Question 25 – Identify which of the authorized long-term debt enhancements you requested and were authorized in your past two financing applications that you have not used and reason for not using.**

As explained in its introductory comments, CalPeco began operating as a utility in California at the beginning of 2011 and has not yet sought to issue debt.

**Question 26 – Is Appendix B still applicable and should it be applied on a uniform basis?**

**Question 27 – Should swap and hedging activities be excluded from consideration as separate debt for the purposes of calculating a utility’s financing authorization?**

**Question 28 – Identify and define the swap and hedging enhancements that you requested and were authorized in your past two financing applications.**

**Question 29 – Identify which of these authorized swap and hedging enhancement identified in your prior answer that you actually used and reason for use.**

**Question 30 – Identify risk associated with the swap and hedging enhancements that you have used and means used to reduce that risk.**

**Question 31 – Identify which of the authorized swap and hedging enhancements you requested and were authorized in your past two financing applications that you have not used and reason for not using.**

**Question 32 – If you were authorized swap and hedging enhancements you requested but do not use them, why do you continue to request authorization for their use?**

**Question 33 – Are the swap and hedging conditions set forth in Appendix B still valid? If not, why not?**

**Question 34 – Should a utility swap and hedging transactions be limited to a specified percentage of its outstanding long-term debt? If so, what percentage and why? If not, why not?**

**Question 35 – Does General Order 24-B need to be modified? If so, what should the modification be and why?**

CalPeco has no comment on these questions at this time, but reserves the right to comment on these issues at a later date.

Respectfully submitted,

/s/ \_\_\_\_\_  
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May 9, 2011

**CERTIFICATE OF SERVICE**

I, Judy Pau, certify:

I am employed in the City and County of San Francisco, California, am over eighteen years of age and am not a party to the within entitled cause. My business address is 505 Montgomery Street, Suite 800, San Francisco, California 94111-6533.

On May 9, 2011, I caused the following to be served:

**COMMENTS OF CALIFORNIA PACIFIC ELECTRIC COMPANY, LLC  
(U 933-E)ON ORDER INSTITUTING RULEMAKING**

via electronic mail to all parties on the service list R.11-03-007 who have provided the Commission with an electronic mail address and by First class mail on the parties listed as “Parties” and “State Service” on the attached service list who have not provided an electronic mail address.

Executed on May 9, 2011 at San Francisco, California

\_\_\_\_\_  
/s/  
Judy Pau

**VIA EMAIL and US MAIL**

Commissioner Timothy Alan Simon  
California Public Utilities Commission  
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