

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. _____

**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**

1. Summary

By this Order Instituting Rulemaking (OIR), the Commission initiates a proceeding to determine the effectiveness and adequacy of the Competitive Bidding Rule (Rule) for issuance of debt and equity securities (securities) and to consider the associated impacts of General Order 156, debt enhancement features, and General Order 24-B.

Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, Southern California Gas Company, Southwest Gas Company, PacifiCorp, Local Exchange Telephone Companies, and all Class A Water Utilities are named respondents to this OIR. These named respondents shall provide a copy of this OIR to the Diverse Business Enterprises

(DBE) with which they transact financial business and invite those DBE to participate in this OIR.¹

All other jurisdictional gas and electric utilities, all Class B, C, and D Water Utilities, and all other investor owned utilities that are required to obtain Commission approval for their long-term financing needs are being served with this OIR. The outcome of this OIR will be applicable to all investor owned utilities that are required to obtain Commission approval for their long-term financing needs. The Division of Ratepayer Advocates is also a named party to this OIR. Entities on the service list of OIR 09-07-027² and other interested persons are invited to participate in this OIR.

Named respondents are required, and all other entities are invited, to file comments and reply comments to the specific questions in this OIR.

Subsequent to the receipt and review of filed comments and reply comments, the assigned Administrative Law Judge, in consultation with the assigned Commissioner, may establish a workshop schedule to address issues and to seek a consensus on the future of the Rule and reporting requirements. Any changes made to the Rule shall be applicable to all investor owned utilities that are required to obtain Commission approval for their long-term financing needs.

¹ DBEs consist of emerging firms, including women, minority, and disabled service veterans as defined in the Commission's General Order 156.

² A Commission's review and consideration of amending General Order 156 for gas, electric, and telephone utilities having gross annual revenues exceeding \$25 million and their Commission-regulated subsidiaries and affiliates.

2. Background

This Order Instituting Rulemaking (OIR) is initiated in response to Commissioner Simon's dissenting opinions to Pacific Gas and Electric Company's Decision (D.) 08-10-013 and Southern California Edison Company's D.08-10-014, and D.08-10-015 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 Competitive Bidding Rule (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 General Order 156 program goals.

This OIR also is initiated in response to the Commission's D.09-09-046 concern 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 our Rule.

3. Competitive Bidding Rule

On January 15, 1946, the Commission issued D.38614 in response to its investigation into whether public utilities (utilities) should be required to sell their debt and equity securities through a competitive bidding process.³ During this time period, 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

³ 46 RRC 281-290 (1946)

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 for utilities issuing new securities, with certain exemptions. Since this Rule was established in 1946 it has been amended five times between 1954 and 1986.⁴ The latest version of the Rule and exemptions is set forth in Appendix A to this OIR

3.1. Effectiveness and Adequacy

The Rule last was reexamined and amended by a Commission vote on October 1, 1986. Since that time, the Commission has authorized individual utilities to deviate from the Rule in those instances where an exemption is not permitted so that the utilities may take advantage of market opportunities.⁵

Individual utility modifications have included authority to: (1) shorten time period (as short as a few hours) between the issuance of an invitation for bids and the scheduled receipt of bids to a period reasonably required to obtaining a sufficient number of bids, (2) accelerate, postpone, or cancel the scheduled date and time for receipt of bids, (3) reschedule subsequent receipt of bids, (4) vary the amount, terms, and conditions of debt securities submitted for bids, (5) permit electrical means, such as e-mail, in lieu of newspaper publication of an invitation for bids and the submission and opening of sealed written bids, and, (6) waive the newspaper publication requirement.

⁴ Amendments were adopted by D.49941 in 1954, D.75556 in 1969, D.81908 in 1973, and Resolution Nos. F-591 in 1981 and F-616 in 1986.

⁵ 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).

The regularity of individual utilities requesting and receiving authorization to deviate from the Rule raises questions regarding the effectiveness and adequacy of the Rule, as set forth in Appendix A.

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?

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?⁶

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

⁶ For example, see Southern California Edison’s Exhibit A to Application 07-05-018 which shows that in 2007 it had \$471 million of unexercised financing authority granted in 2003, \$2.4 billion of unexercised financing authority granted in 2005, and \$1.4 billion of unexercised financing authority granted in 2006.

3.2. Exemptions

The current Rule sets forth specific criteria that need to be satisfied in order to obtain an exemption from the Rule, which has not changed since 1986. These criteria are set forth in their entirety in Section B of Appendix A to this OIR. Exemptions from the Rule are granted on a routine basis,⁷ and at times without a compelling showing by a utility that an exemption is warranted or that the exemption is in the ratepayers' best interest. This leads us to question whether the exemption criteria have become obsolete.

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?

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?

3.3. General Order 156 Impact

General Order 156 governs the development, implementation, and reporting of programs to encourage, recruit, and increase participation of DBEs in procurement of contracts from electric, gas, and telephone corporations with

⁷ See Footnote 3.

gross annual revenues exceeding \$25 million and their Commission regulated subsidiaries. Effective January 1, 2009, water corporations with gross annual revenues of \$25 million also became subject to the General Order and each electrical, gas, water, and telephone corporations exempted from the General Order was encouraged to voluntarily adopt a plan for increasing DBE procurement in all categories.⁸

Since General Order 156 was established in 1988, two years after the Rule was last updated, the Rule does not reflect the impact of General Order 156 or include any conditions to encourage participation by DBEs. A review of financing decisions issued since 2000 disclosed very limited evidence of whether DBEs are partnering with or are in competition with large investment banks and insurance companies to underwrite the utilities financing offerings through either competitive bidding or negotiated financing offerings. The Commission's September 2010 Report to the Legislature on DBE procurement for the year 2009 showed that, although utility procurement of financial services from DBEs shows steady and continuing improvements, the percentage of total procurement directed to diverse financial service firms lags behind traditional procurement areas.⁹

As stated in D.09-09-042, we believe that in view of the currently distressed state of our financial markets that greater opportunities exist for DBE underwriters to serve as lead and/or co-lead managers of debt, which would promote healthy competition in our financial marketplace and provide

⁸ Stats 2008, Ch 316, Sec. 2.

⁹ Year 2009 Utility Procurement of Goods, Services and Fuel from Women-, Minority-, and Disabled Veteran-owned Business Enterprises, dated September 2010.

additional opportunities to strengthen emerging firms, to the ultimate benefit of the utilities ratepayers and shareholders. We are considering whether it is appropriate to proactively encourage such competition in the Rule.

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 encouraging DBE procurement of competitive and negotiated bids in each debt financing application?

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.

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?

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?

3.4. Debt Enhancement Features

The utilities have increased their use of debt enhancement features to improve financing terms and conditions to lower their overall cost of money, and increased their use of swap and hedging transactions to manage their interest rate risk.

3.4.1. Lower Overall Cost of Money

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.

The utilities' use of discretionary debt enhancement has substantially increased since 1986. Some of the more recent types of approved debt enhancements included (a) put and call options; (b) sinking funds; (c) swaps and hedges; (d) caps and collars; (e) credit enhancements such as letters of credit, standby bond purchase agreements, surety bonds and insurance policies; (f) capital replacement; (g) interest deferral; (h) special-purpose entity transactions; (i) delayed drawdown; (j) redemption provisions; (k) tax exemption, (l) warrants; (m) encumber accounts receivables; and (n) capital replacement.

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.

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.

3.4.2. Interest Rate Risk Management

The utilities' discretionary dependency on types of swap and hedging arrangements to manage interest rate risk, as well as their terms and conditions, have increased over the past ten years.¹⁰ Although we have approved specific types of swap and hedging arrangements for the utilities to use on an as needed basis, the utilities have also requested blanket authority to use any non-specified other swap and hedging arrangements that may exist at the time they exercise their authority to issue debt securities.

We have expressed our concern about the level of transparency with regard to the volume of hedging (and swap) transactions in D.09-09-046. In an attempt to limit swap and hedging risk we have conditioned our approval, at times, upon the utilities complying with specific conditions, as set forth in Appendix B.

We also have authorized those swaps and hedging to be 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

¹⁰ For example, *see* D.08-10-013 (2008); D.07-08-012 (2007); D.06-07-012 (2006); and D.03-12-004 (2003).

are not deemed effective under GAAP in offsetting changes to the fair value or cash flows associated with the risks being swapped or hedged.

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 those 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 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’s 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?

4. General Order 24-B Reporting Requirement

General Order 24-B requires utilities to submit a monthly report to the Commission that contains, among other things: (i) the amount of debt and stock issued by the utility during the previous month; (ii) the total amount of debt and

stock outstanding at the end of the prior month; (iii) the purpose for which the utility expended the proceeds realized from the issuance of debt and stock during the prior month; and (iv) a monthly statement of the separate bank account that the utility is required to maintain for all receipts and disbursements of money obtained from the issuance of debt and stock.

In order to reduce the utilities' administrative cost of complying with the GO and to conform to past practice, the Commission has routinely modified the monthly reporting requirement to quarterly, which has been considered adequate to receive timely information.¹¹ However, the utilities are required to report this information on a monthly basis if directed to do so by the Commission staff.

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

5. Scope

The issues identified above are best resolved by formal OIR. The results of this OIR proceeding may have important effects on some or all of California's financial community. Accordingly, we desire that this order be distributed to a wide range of potentially interested parties. We seek comments from all parties on the above questions.

After initial service of this order, interested parties shall advise the Commission's Process Office of their interest in participating so a new service list

¹¹ See, for example: D.10-08-002 (2010) *mimeo*, at 20; D.09-09-046 (2009) *mimeo*, at 12; D.08-10-015 (2008) *mimeo*, at 7; D.07-08-012 (2007) *mimeo*, at 12; D.06-05-015 (2006) *mimeo*, at 22; D.05-08-008 (2005) *mimeo*, at 36; D.04-10-037 (2004) *mimeo*, at 51; and, D.03-12-052 (2003) *mimeo* at 11-12.

can be developed for the proceeding. The assigned Commissioner, and the assigned Administrative Law Judge acting with the assigned Commissioner’s concurrence, will have ongoing oversight of the service list and may institute changes to the list or the procedures governing it as necessary.

6. Preliminary Scoping Memo

This OIR will be conducted in accordance with Article 6 of the Commission's Rules of Practice and Procedure. As required by Rule 7.3, this order includes a preliminary scoping memo as set forth below.

6.1. Issues

The issues to be considered in this proceeding are fully described earlier in this OIR.

6.2. Category of Proceeding and Need for Hearing

Pursuant to Rule 7.1(d), we preliminarily determine the category of this OIR to be quasi-legislative as the term is defined in Rule 1.3(d).

Workshops may be held. However, we do not anticipate that evidentiary hearings will be required. We do not intend to hold public participation hearings to gather input from the general public. If parties believe either is necessary they should so indicate in their comments, describing specifically the reasons evidentiary and/or public participation hearings are needed and, in the case of evidentiary hearings, describing the facts the party would present.

6.3. Schedule

For purposes of meeting the scoping memo requirements and to expedite the proceeding, we establish the following schedule:

- March 10, 2011.....Order Instituting Rulemaking issued
- April 11, 2011.....Deadline for requests to be on service list
- May 9, 2011Initial Comments filed and served

May 27, 2011Reply Comments filed and served
 To be determined.....Workshops Held, if appropriate
 To be determined.....Workshop Report
 To be determined.....Comments filed on Workshop Report
 To be determined.....Reply Comments filed on Workshop Report
 November 1, 2011Proposed decision issued
 November 21, 2011Comments on proposed decision filed & served
 November 28, 2011Reply comments filed & served
 December 1, 2011Proposed decision on Commission agenda

6.4. Modification Process

Any person filing comments on this OIR shall state any objections to the preliminary scoping memo regarding the category, need for hearing, issues to be considered or schedule. (Rule 6.2.)

The assigned Commissioner through his/her ruling on the scoping memo and subsequent rulings, and the assigned Administrative Law Judge (ALJ) by ruling with the assigned Commissioner’s concurrence, may modify the schedule as necessary during the course of the proceeding. In no event do we anticipate this proceeding to require longer than 18 months from the issuance of the scoping memo to complete.

7. Parties, Service List, and Subscription Service

Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, Southern California Gas Company, Local Exchange Telephone Companies, and all Class A Water Utilities are named respondents to this OIR and are required to provide a copy of this OIR to the DBEs which they transact financial business with. The Division of Ratepayer Advocates is also named a party to this OIR.

All other jurisdictional gas and electric utilities, all Class B, C, and D Water Utilities, and all other investor owned utilities that are required to obtain Commission approval for their long-term financing needs are being served with this OIR. Entities on the service list of OIR 09-07-027 and other interested persons are invited to participate in this OIR. The outcome of this OIR will be applicable to all investor-owned utilities that are required to obtain Commission approval of their long-term financing needs, even if they do not participate.

Within 30 days of the date of issuance of this order, each respondent and party shall inform the Commission's Process Office of the contact information for a single representative for party status, although other representatives and persons affiliated with the parties may be placed on the Information Only service list.

Within 15 days of the date of issuance of this order, any person or representative of an entity other than named respondents or parties seeking to become a party (i.e., actively participate in the proceeding by filing comments or appearing at workshops) to this OIR should send a request to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, California, 94102 (or ALJ_Process@cpuc.ca.gov) to be placed on the official service list for this proceeding. Individuals seeking only to monitor the proceeding (i.e., but not participate as an active party may request to be added to the service list as "Information Only." Include the following information:

- Docket Number of the OIR;
- Name and party represented, if applicable;
- Postal Address;
- Telephone Number;
- E-mail Address; and,

- Desired Status (Party or Information Only)

The service list will be posted on the Commission's website, www.cpuc.ca.gov soon thereafter.

Any party interested in participating in this OIR who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in Los Angeles at (213) 649-4782 or in San Francisco at (415) 703-7074, (866) 836-7875 (TTY - toll free) or (415) 703-5282 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

The Commission has adopted rules for the electronic service of documents related to its proceedings, Commission Rule 1.10, available on our website at http://www.cpuc.ca.gov/PUBLISHED/RULES_PRAC_PROC/44887.htm. We will follow the electronic service protocols adopted by the Commission in Rule 1.10 for all documents, whether formally filed or just served.

This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by United States mail. In this proceeding, concurrent e-mail service to all persons on the service list for whom an e-mail address is available will be required, including those listed under "Information Only." Parties are expected to provide paper copies of served documents upon request.

E-mail communication about this OIR proceeding should include, at a minimum, the following information on the subject line of the e-mail: *R. [xx-xx-xxx] - OIR on the Competitive Bidding Rule, debt enhancement features and interest rate risk*. In addition, the party sending the e-mail should briefly describe the attached communication; for example, "*Comments*." Paper format copies, in

addition to electronic copies, shall be served on the assigned Commissioner and the ALJ.

This OIR can also be monitored by subscribing in order to receive electronic copies of documents in this OIR that are published on the Commission's website. There is no need to be on the service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission's website at <http://subscribecpuc.cpuc.ca.gov/>.

8. Public Advisor

Any person or entity interested in participating in this OIR who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in San Francisco at (415) 703-2074 or (866) 849-8390 or e-mail public.advisor@cpuc.ca.gov; or in Los Angeles at (213) 576-7055 or (866) 849-8391, or e-mail public.advisr.la@cpuc.ca.gov. The TTY number is (866) 836-7825.

9. Intervenor Compensation

Any party that expects to request intervenor compensation for its participation in this OIR shall file its notice of intent to claim intervenor compensation in accordance with Rule 17.1 of the Commission's Rules of Practice and Procedure within 30 days of the mailing of this OIR.

10. Ex Parte Communications

Pursuant to Rule 8.2(a) of the Commission's Rules of Practice and Procedure, *ex parte* communications are allowed without restriction or reporting in any quasi-legislative proceeding. Therefore, there are no restrictions or reporting requirements applied to this proceeding.

Findings of Fact

1. It has been twenty-four years since the Rule, established in 1946, has been reexamined.
2. General Order 156 was established subsequent to a reexamination of the Rule.
3. The Commission has identified a concern about the level of transparency with regard to the volume of debt enhancement features being used by utilities.

Conclusion of Law

The Commission should initiate a new OIR to consider the effectiveness and adequacy of the Rule and associated impacts of General Orders and debt enhancement features.

Therefore, **IT IS ORDERED** that:

1. An Order Instituting Rulemaking is instituted on the Commission's own motion for the purpose of determining the effectiveness and adequacy of the Competitive Bidding Rule for issuance of securities and to consider the associated impacts of General Order 156, debt enhancement features, and General Order 24-B.
2. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, Southern California Gas Company, Southwest Gas Company, PacifiCorp, Local Exchange Telephone Companies, and all Class A Water Utilities are named respondents to this Order Instituting Rulemaking. These named respondents shall provide a copy of this Order Instituting Rulemaking to the Diverse Business Enterprises which they transact financial business with and invite those Diverse Business Enterprises to participate in this Order Instituting Rulemaking.

3. All other jurisdictional gas and electric utilities, all Class B, C, and D Water Utilities, and all other investor owned utilities that are required to obtain Commission approval for their long-term financing needs shall be served with a copy of this Order Instituting Rulemaking.

4. The Division of Ratepayer Advocates is also a named party to this Order Instituting Rulemaking.

5. Entities on the service list of Order Instituting Investigation 09-07-027 and other interested persons are invited to participate in this Order Instituting Rulemaking.

6. Named respondents are required, and all other persons are invited, to file comments and reply comments to the specific questions in this Order Instituting Rulemaking.

7. The outcome of this Order Instituting Rulemaking shall be applicable to all investor owned utilities that are required to obtain Commission approval for their long-term financing needs.

8. The Executive Director shall cause copies of this order to be served on named respondents to this Order Instituting Rulemaking. The Executive Director shall also notify all jurisdictional gas and electric utilities not named as parties; all Class B, C, and D Water Utilities; Local Exchange Telephone Companies under cost-of-service regulation; and on the service list to Order Instituting Investigation 09-07-027 by serving copies of this order on them.

9. The category of this Order Instituting Rulemaking is preliminarily determined to be a quasi-legislative, as that term is defined in the Commission's Rules of Practice and Procedure, Rule 1.3(d).

10. This proceeding is preliminarily determined not to require evidentiary hearings.

11. The schedule for this proceeding is as set forth in the body of this order. The assigned Commissioner through his/her scoping memo and subsequent rulings, and the assigned Administrative Law Judge by ruling with the assigned Commissioner's concurrence, may modify the schedule as necessary during the course of the proceeding, provided that we do not anticipate this proceeding to require longer than 18 months to complete.

12. The issues to be considered in this Order Instituting Rulemaking are those set forth in the body of this order.

13. All named parties are required to the extent applicable and interested parties are invited to file comments and reply comments to the specific questions listed in this Order Instituting Rulemaking.

14. Comments and reply comments shall conform to the requirements of the Commission's Rules of Practice and Procedure. Opening comments must be filed on or before May 9, 2011 and reply comments on or before May 27, 2011.

15. Any changes made to the Competitive Bidding Rule in this Order Instituting Rulemaking shall be applicable to all investor owned utilities that are required to obtain Commission approval for their long-term financing needs.

16. Any persons objecting to the preliminary categorization of this Order Instituting Rulemaking as "quasi-legislative" or to the preliminary determination that evidentiary hearings are not necessary, issues to be considered, or schedule shall state their objections in their opening comments of this Order Instituting Rulemaking.

17. The assigned Administrative Law Judge, in consultation with the assigned Commissioner, shall determine a need for scheduling a workshop after reviewing the filed comments and reply comments to this Order Instituting

Rulemaking. Any Workshop notice will be issued at least 10 days prior to the date of the workshop.

18. Within 15 days of the date of issuance of this order, any person or representative of an entity seeking to become a party to this Order Instituting Rulemaking should send a request to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, California, 94102 (or ALJ_Process@cpuc.ca.gov) to be placed on the official service list for this proceeding. Individuals seeking only to monitor the proceeding, but not participate as an active party may request to be added to the service list as "Information Only."

19. After initial service of this order, a new service list for the proceeding shall be established following procedures set forth in this order. The Commission's Process Office will publish the official service list on the Commission's website (www.cpuc.ca.gov) as soon as practical. Parties may also obtain the service list by contacting the Process Office at (415) 703-2021. The assigned Commissioner, and the assigned Administrative Law Judge acting with the assigned Commissioner's concurrence, shall have ongoing oversight of the service list and may institute changes to the list or the procedures governing it as necessary.

20. Any party that expects to claim intervenor compensation for its participation in this Order Instituting Rulemaking shall file its notice of intent to claim intervenor compensation in accordance with Rule 17.1 of the Commission's Rules of Practice and Procedure, within 30 days of the mailing of this Order Instituting Rulemaking.

This order is effective today.

Dated _____, 2010 at San Francisco, California.

APPENDIX A

**Competitive Bidding Rule
Decision (D.) 38614 as Modified by D.49941, D.75556, D.81908,
and Resolution Nos. F-591 and F-616**

A. Requirements

1. Mandatory for all domestic debt issues of debentures and first mortgage bonds of \$200 million or less.¹
2. Only applicable to utilities with bond ratings of "A" or higher.²
3. Provide newspaper publication notice to invite the submission, at a stated date, hour and place, of sealed, written bids for the purchase of the specified security.
4. Provide a notice for invitation to bid not less than one day.³
5. State in the invitation the name and address of the person from whom information regarding the utility and the proposed issue may be obtained.
6. Entitle the duly authorized representative of any person submitting a bid to be present at the opening of the bids and to examine each bid submitted.
7. Permit telephonic competitive bidding.⁴
8. Reserve the right to reject any or all bids.
9. Not accept any bid from any person who has received or is to receive, directly or indirectly, any fee for services rendered to it, directly or indirectly, in connection

¹ Added to the Rule by Resolution No. F-616.

² Id.

³ Reduced to five days from ten days by D.81908, and further reduced to one day by Resolution F-616.

⁴ Added to the Rule by Resolution No. F-616.

with or relating to the issuance and proposed sale of a security, or the issuance or proposed sale of a security.

10. Reserve the right for the Commission to require competitive bidding with respect to equity securities in individual instances when the Commission deems such procedure justified.⁵

B. Exemptions

1. The issuance of any debt security by a utility in exchange for outstanding debt securities where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange.
2. The issuance of any debt security offered pro rata to existing debt security holders pursuant to any pre-emptive right or privilege.
3. Any debt security issued by a utility in exchange for an outstanding debt security in connection with a reorganization or financial adjustment pursuant to the decree of a court of competent jurisdiction.
4. Any note or conditional sale contract issued by a utility and payable within five years after date provided no fee or remuneration is to be paid for negotiating the loan represented by said note or conditional sale contract.
5. Any debt security issued and sold where the total consideration received by the issuing public utility is \$20,000,000 or less.⁶
6. Debt issues for which competitive bidding is not viable or available.⁷
7. Any security as to which the Commission shall find, upon due showing by a public utility that the sale thereof at competitive bidding should not be required.

⁵ Added to the Rule by D.75556.

⁶ Increased to \$3 million from \$1 million by D.49941, and further increased to \$5 million by D.81908 and to \$20 million by Resolution F-616.

⁷ Added to the Rule by Resolution No. F-616.

8. Requests for exemption from the Rule, will only be entertained for debt issues in excess of \$200 million, and will only be granted upon a compelling showing by a utility that because of the size of the issues an exemption is warranted.⁸
9. Any decision granting an exemption from the Rule shall also grant the utility authority to proceed on a competitive bid basis, so as to provide for maximum financial flexibility under the then prevailing economic conditions.⁹

(End of Appendix A)

⁸ Id.

⁹ Added to the Rule by Resolution No. F-591.

APPENDIX B

Swap and Hedging Conditions

To limit risk associated with swap and hedging we have previously required some utilities to:

1. Separately report all interest income and expense (as recorded for ratemaking purposes) arising from all swaps and hedging transactions in its regular report to the Commission.
2. Limit swap and hedging transactions to a specified percentage of the utility's total long-term debt outstanding.
3. Require all costs associated with swap and hedging transactions subject to review in cost of capital proceedings.
4. Swap and hedging transactions carrying potential counterparty risk must have counterparties with investment grade credit ratings.
5. Limiting swap [and hedging] transactions to those involving counterparties based on the utility's and counterparty's credit rating.¹
6. Utilities that 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 will be subject to review in the utility's next cost of capital proceeding.
7. Utilities shall provide to Commission staff within 30 days of a request: (a) all terms, conditions, and other details of swap and hedging transactions; (b) rationale for the swap and hedging transactions; (c) estimated costs for the "alternative" or un-hedged transactions; and, (d) copy of the swap and hedging agreements and associated documents.

(End of Appendix B)

¹ For example, see D.08-10-013, D.05-08-008, and D.03-12-004.