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<br>(Filed March 10, 2011) |

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

**Table of Contents**

**Title** **Page**

DECISION ADOPTING A NEW FINANCING RULE AND GENERAL ORDER 24-C ..... 1
1. Summary ..... 2
2. Background ..... 2
   2.1. History of the Competitive Bidding Rule ..... 2
   2.2. Procedural Matters ..... 4
3. The Current Competitive Bidding Rule and Other Rules and Orders Applicable to Financing Applications ..... 6
   3.1. The Competitive Bidding Rule and Exemptions ..... 6
   3.2. Women, Minority, and Disabled Veterans Business Enterprises ..... 8
   3.3. Debt Enhancement Features Regularly Requested by Applicants ..... 8
   3.4. General Order 24-B ..... 11
4. Competitive Bidding, Negotiated Bid, and Other Manner of Issuing Debt Securities ..... 12
5. New Financing Rule ..... 13
   5.1. Financing Rule ..... 14
      5.1.1. Parties Positions ..... 14
      5.1.2. Discussion ..... 18
   5.2. Exemptions from the Financing Rule ..... 20
      5.2.1. Parties Positions ..... 20
      5.2.2. Discussion ..... 21
   5.3. Women, Minority, and Disabled Veterans Business Enterprises ..... 24
      5.3.1. Parties Positions ..... 24
      5.3.2. Discussion ..... 25
   5.4. Debt Enhancement Features ..... 27
      5.4.1. Parties Positions ..... 27
      5.4.2. Discussion ..... 28
6. General Order 24-B ..... 30
   6.1. Parties Positions ..... 30
   6.2. Discussion ..... 31
7. Comments on Proposed Decision ..... 32
8. Assignment of Proceeding ..... 33
Findings of Fact ..... 33

**Table of Contents**

**Title** **Page**

Conclusions of Law ..... 37
ORDER ..... 40

Attachment A – Utility Long-Term Debt Financing Rule
Attachment B – Final General Order 24-C
Attachment C – Glossary of Selected Financing Terms

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

## 1. Summary

By today's decision, we authorize a Financing Rule as ordered herein (*see* Attachment A), which replaces the current Competitive Bidding Rule (CBR) authorized in Resolution F-616 in 1986. We authorize the new Financing Rule to account for current market conditions and Commission policies enacted since our last review of the CBR in 1986. These revisions include but are not limited to: 1) allowing utilities to choose whether to issue debt via competitive or negotiated bid, as long as the basis for the method is chosen to achieve the lowest cost of capital; 2) requiring utilities with $25 million or more of operating revenues to make every effort to encourage, assist, and recruit Women-, Minority-, Disabled Veteran-Owned Business Enterprises in being appointed as lead underwriter, book runner or co-manager of debt offerings; 3) eliminating the notification and form of communication requirement for the solicitation of bids; 4) requirements for the use of Debt Enhancement Features; and 5) providing additional exemptions applicable to use of the Financing Rule. Revisions to General Order 24-B include: 1) the filing of a General Order 24-C report on a quarterly then semi-annual instead of a monthly basis; 2) revisions to the type of information provided in such reports; and 3) the elimination of the requirement that a utility maintain a separate bank account to record securities proceeds except as required by the Commission as discussed herein.

## 2. Background

### 2.1. History of the Competitive Bidding Rule

On January 15, 1946, the Commission issued Decision (D.) 38614 in response to its investigation into whether public utilities should be required to

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.

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

---

[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,

---

[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

*Footnote continued on next page*

and TCG San Francisco (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, 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, 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

---

Ponderosa Telephone Co., The Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company.

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 enhancements. A Workshop Report, written by the Joint Energy Utilities, was filed on January 20, 2012. On February 2, 2012, Small LECs filed comments to the Workshop Report. On February 3, 2012, comments to the Workshop Report were filed by CALTEL, CWA and Class A water, the Joint Energy Utilities, PacifiCorp, and jointly by AT&T, Verizon, and SureWest. Parties that filed comments are supportive of the Workshop Report, as well as the rule and GO proposed by the Joint Energy Utilities, but each party also provided minor revisions to the text of the report as well as the rule and GO, which we have considered in our order herein.

A glossary of terms is attached to this decision as Attachment C for reference purposes only. Attachment C is not a part of the new Financing Rule or GO.

## 3. The Current Competitive Bidding Rule and Other Rules and Orders Applicable to Financing Applications

### 3.1. The Competitive Bidding Rule and Exemptions

The purpose of the CBR is to ensure that utilities incur the lowest financing cost available, which is then passed on to ratepayers. The current CBR is mandatory for all domestic debt issues of debentures and first mortgage bonds of $200 million or less, and sets forth specific criteria that need to be satisfied in order to obtain an exemption from the CBR. The Commission determines whether a requested exemption is authorized on a case-by-case basis. Current CBR authorized exemptions include: 1) 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; 2) Debt issues for which competitive bidding is 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 of approximately $42 million dollars.[6]

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 electrical means, such as e-mail, in lieu of telephonic bidding; and 5) waive one-day notification requirement of a competitively bid offer.

---

[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

---

[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 lock, 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.

---

[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.

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 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;

---

[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.

iii. estimated costs for the "alternative" or un-hedged transactions; and

iv. copy of the swap and hedge agreements and associated documentation.

### 3.4. General Order 24-B

GO 24-B, requires utilities to submit a monthly report to the Commission that contains, among other things:

a. the amount of debt and stock issued by the utility during the previous month;

b. the total amount of debt and stock outstanding at the end of the prior month;

c. the purpose for which the utility expended the proceeds realized from the issuance of debt and stock during the prior month; and

d. 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.[12] However, the utilities are required to report this information on a monthly basis if directed to do so by the Commission staff.

---

[12] *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.

## 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

[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

time requirement for issuance of bids and require only that a utility use the most efficient form of communication.

The Financing Rule we adopt today will also encourage the development of a broader pool of underwriters and investors, which will be reflective of the population served by our regulated utilities as well as the financial market as a whole.

The Financing Rule also provides a more detailed list of exemptions, providing utilities with more guidance and certainty for their financial planning and a detailed list of requirements by which utilities may utilize debt enhancement features.

Finally, the Financing Rule will also lay the foundation for the engagement of WMDVBE firms to maintain access to utility debt and preferred stock financing opportunities. Fortunately, this access is supported by an established record of competitive performance for California's investor-owned utilities. Introducing a broader class of investors, record low coupon and dividend rates, moves utility financing activities towards a more accurate reflection of California's growing diverse ratepayer base.

## 5.1. Financing Rule

### 5.1.1. Parties' Positions

Initially, the Joint Energy Utilities, Southwest Gas, and CWA and Class A water, supported the position that no rule regarding the issuance of securities was necessary, given current market conditions.

The Joint Energy Utilities stated that the CBR should not be retained because it is outdated. The Joint Energy Utilities believe that negotiated bidding is now the market standard and the method by which they are able to achieve low cost financing for ratepayers while at the same time increasing their use of

WMDVBE firms in financing transactions.[14] The Joint Utilities assert that competitive bidding is not the most cost-effective means of issuing debt securities and is even less effective in times of market volatility.

The Joint Energy Utilities also reference a J.P. Morgan study, that nearly all debt issuances are currently accomplished using negotiated bids.[15] This study shows that for the period 2008-2010, only five out of 5,663 debt issues (across all industries) in the United States investment grade corporate bond market were competitively bid. None of these competitive bid issues were done by utilities. AT&T, Verizon, and SureWest, as well as CALTEL,[16] state that any revisions to

---

[14] *See* May 9, 2011 Joint Response Of Southern California Edison Company (U338E), Pacific Gas and Electric Company (U39M), San Diego Gas & Electric Company (U902M), and Southern California Gas Company (U904G) at 7-8. ("Issuing securities in challenging market conditions requires the ability to have discussions with investors and to pre-market the securities, adjusting the transaction size, structure and other elements, as necessary. Such discussions are not possible in competitive bids; there is no opportunity to test investors' appetite for the securities in advance of the actual offering. In challenging markets, competitive bidders are likely to add an even higher risk premium to yields for the issuer's existing securities (secondary market levels) or other comparable issues than under normal market conditions in order to avoid potential losses. This would increase the cost of financing for the utilities and their ratepayers. It is even possible that investment banks may opt not to bid at all given the uncertainty and risk of mispricing the securities, resulting in a potentially large loss to the bank.")

[15] *See* May 9, 2011 Joint Response of Southern California Edison Company (U338E), Pacific Gas and Electric Company (U39M), San Diego Gas & Electric Company (U902M), and Southern California Gas Company (U904G) at 5, which references the study titled Competitively Bid Transactions 2008-2010, dated April 15, 2011.

[16] In its comments to the Workshop Report, CALTEL also requested that revisions be made to the Workshop Report to provide more detail of the comments made by its representative at the workshop. Since CALTEL's comments to the Workshop Report were filed, and are therefore part of the record of this proceeding, we find no need to include this information in the Workshop Report.

the CBR should make clear that the revised rule is subject to statutory exceptions applicable to them. Both 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

---

[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."

selling the securities,"[18] while in 1985, the Interstate Commerce Commission (ICC) repealed its competitive bidding requirement, finding that "the need for our oversight of railroad securities has decreased as a result of changed circumstances and recent Congressional action."[19] In 1994, the Securities and Exchange Commission (SEC) rescinded its Rule 50, which required competitive bidding for the issuance of securities by a registered holding company or its subsidiary. Originally, the SEC instituted this rule to prevent abuses in the issue and sale of securities.[20] The SEC found that Rule 50 was "no longer necessary in view of the extensive reporting requirements imposed by the Act [Public Utility

---

[18] 1984 N.Y. PUC LEXIS 227 * 8 (May 18, 1984). *See also* 1985 N.Y. PUC LEXIS 784 * 9 (January 14, 1985) ("Considering Niagara Mohawk's current financial posture, the company should be given flexibility in selecting the method of selling the securities.")

[19] Exemption of Railroads from Securities Regulation under 49 U.S.C 11301, 1985 ICC LEXIS 492, at *2 (April 1, 1985). The ICC determined that rescission of the competitive bidding requirement was warranted in order to promote the Congressional policies to increase the attractiveness of investing in railroads, and in light of the fact that many of the government regulations affecting railroads had become unnecessary and inefficient.

[20] Pursuant to Public Utility Holding Company Act Rules, File No. S7-35-92, Securities and Exchange Commission, Release No. 35-25668; 17 CFR Parts 250 and 259; RIN: 3235-AF68, 1992 SEC LEXIS 2849, November 4, 1992 "Rule 50, adopted in 1941 under sections 6(b), 7, 12(d) and 20, imposes a general requirement of competitive bidding with respect to the issuance or sale of securities by a registered [*17] holding company or its subsidiary. n31. The rule was intended to ensure the maintenance of competitive conditions, the receipt of adequate consideration, and the reasonableness of fees or commissions to be paid in connection with the issuance or sale of securities by a registered holding company or its subsidiary." And "As we recently noted in another context, companies in a registered holding company system should have the flexibility to access the capital markets by the use of competitive bids, negotiated sales, or private placements." For the information of the reader, subsequent to the SEC's actions, in September of 2005, the Public Utility Holding Act of 1935 was repealed and replaced with the Public Utility Holding Act of 2005.

Holding Act of 1935] and the other federal securities laws."[21] By rescinding Rule 50, the SEC gave companies the independence to choose the marketing method with the most advantageous terms. In 1995, the Federal Energy Regulatory Commission amended its policies to permit public utilities to "issue securities by either a competitive bid or negotiated placement."[22]

#### 5.1.2. Discussion

We recognize the various studies referenced by parties, the revisions by other regulatory agencies, as well as the utilities' use of negotiated bids, private placement, and government loans, but are concerned that given the volatility of the financial markets, financial trends could change at any time. Since we cannot know for sure what the economy and financial market will be like over the next several years, let alone the next decade or more, we must retain some form of a rule that governs the issuance of securities.

We therefore find that allowing utilities to choose between competitive and negotiated bidding with the goal of achieving the lowest long-term cost of capital for ratepayers, as proposed by the Joint Energy Utilities, provides the utilities with the independence to manage how to issue their own debt, while ensuring that ratepayers pay the lowest cost of capital.

---

[21] Utility Holding Company Act Rules, File No. S7-35-92, Securities and Exchange Commission, Release No. 35-26031; 17 CFR Parts 250 and 259; RIN 3235-AF68, 1994 SEC LEXIS 1176, April 20, 1994.

[22] Code of Federal Regulations Title 18: Conservation of Power and Water Resources; Part 34 - Application for Authorization of the Issuance of Securities or the Assumption of Liabilities; Section 34.2 – Placement of Securities. Pursuant to Federal Energy Regulatory Commission Order 575, 60 FR 4853, January 25, 1995.

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

---

[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.

authorized to issue debt through their regulated affiliates.[24] Since the utility and 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.

[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).

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 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 CPI found on the California Department of Finances' 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. Bond issues of $42 million or less, adjusted each year for the CPI found on the California Department of Finance's website or its successor, are exempt from the Financing Rule;
2. Tax exempt or government debt issues are exempt from the Financing Rule;
3. Debt issues, such as the Safe Drinking Water Bond Act loans, Rural Utility Service loans, and pollution control loans, are exempt from the Financing Rule;
4. Debt issues made through an affiliate that provides debt issuance services to all affiliates of the same parent are exempt from the Financing Rule if such debt accounts for less than five percent (5%) of the financing affiliate's annual issuances; and
5. For multi-state utilities operating in California, if the operating revenues from California operations represent less than five percent (5%) of the entire utility's total operating revenues for the most current calendar year, the utility is exempt from the Financing Rule.

In D.88-04-062, we authorized an exemption 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.

Pursuant to Pub. Util. Code § 829(b), debt issues for telephone utilities whose rates are subject to the Uniform Regulatory Framework (URF),[25] and whose rates are therefore not subject to rate of return regulation, are exempt from 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 their best efforts to engage WMDVBE booking 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

[25] See D.06-08-030.

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 being appointed as lead underwriter, co-manager, or in other roles in the issuance of debt security offerings.

---

[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, Hispanic Americans, Native Americans, Asian Pacific Americans, and other groups, as defined herein.

1.3.4. ”WMDVBE” means a Women-, Minority-, Disabled Veteran-Owned Business Enterprises; under these rules, the women and/or minorities owning such an enterprise must be either U.S. citizens or legal aliens with permanent residence status in the United States.

1.3.5. Black Americans - persons having origins in any black racial groups of Africa.

1.3.6. Hispanic Americans - all persons of Mexican, Puerto Rican, Cuban, South or Central American, Caribbean, and other Spanish culture or origin.

1.3.7. Native Americans - persons having origin in any of the original peoples of North America or the Hawaiian Islands, in particular, American Indians, Eskimos, Aleuts, and Native Hawaiians.

1.3.8. Asian Pacific Americans-persons having origins in Asia or the Indian subcontinent, including, but not limited to, persons from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, India, Pakistan, and Bangladesh.

*Footnote continued on next page*

a. Utilities shall report on their efforts in their GO 156 Annual Report, 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 report 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 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

---

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.

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.

#### 5.4.2. Discussion

As discussed earlier, utilities regularly request and receive authority for the inclusion of Debt Enhancement Features in their financing requests, which are supposed to improve the terms and conditions of debt securities and reduce the overall cost of money. Until now, we have never required a showing by the utilities as to whether they have used the authorized features, or whether their use has lowered the cost of debt securities issued.

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 proceeding provides an opportunity for ratepayers and interested parties to

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

determine the reasonableness of all debt related costs. 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, and would result in more work for the Commission and all parties involved.

Therefore, we include a section in the Financing Rule that addresses requests for debt enhancement features that does not require a cost benefit study, but instead requires a description of and rationale for the potential debt enhancement feature being requested.

We also place the restrictions on the use of swaps and hedges by utilities. We have authorized such restrictions for over a dozen years (*see* Section 3.3. above), and find them effective in controlling the risk of swap and hedge transactions.

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 General Order 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 agreement, all costs associated with the termination are subject to review in a utility's next regulatory proceeding addressing its cost of capital.

vi. Utilities shall provide the following to Commission Staff within 30 days of receiving any written request: (i) all terms, conditions, and other details of swap and hedge transactions; (ii) rationale(s) for the swap and hedge transactions; (iii) estimated costs for the "alternative" or un-hedged transactions; and (iv) copy of the swap and hedge agreements and associated documentation.

## 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 semi-annual basis (instead of a monthly) thereafter, unless Commission staff requests a report more often. If a utility has no reportable transactions for the applicable period (quarterly/semi-annually), it may state such as its report for that period. We adopt this revision to GO 24-B in order to save both utilities and Commission staff resources.

We also eliminate the requirement that a utility maintain a separate bank account to record money derived from the sale of securities, except as discussed below. Such an account was required to ensure that utilities used the proceeds from securities for proper purposes pursuant to Pub. Util. Code §817. In their Workshop Report, the Joint Energy Utilities gave the Commission information on current banking practices, which provides the assurance the Commission requires to ensure funds are used for proper purposes and therefore a separate bank account is no longer required.

In instances where the Commission specifically designates what the proceeds can be used for, such as for a specific construction project, a separate bank account will make it easier for the Commission to track these funds, preserve a strong audit trail, and the additional record keeping is not burdensome. In addition, the California Department of Water Resources requires utility recipients of Safe Drinking Water State Revolving Fund loans, which are repaid via a surcharge, to maintain separate bank accounts for these funds. Therefore, in instances where the Commission specifically designates what the proceeds can be used for, or in the instances where the loan will be repaid by surcharge, we continue to require those utilities to maintain a separate bank account for recording of the proceeds.

We also adopt the updated list of information required in the GO 24-B report, given the manner in which securities transactions are now recorded by utilities as required by other regulatory entities, such as the Depository Trust Corporation.

We therefore adopt General Order 24-C incorporating these revisions, as shown in Attachment B to this decision.

## 7. Comments on Proposed Decision

As provided by Rule 14.3 of our Rules of Practice and Procedure and Pub. Util. Code § 311 (g)(1), the draft decision of Commissioner Timothy Alan Simon in this matter was mailed to the parties on April 27, 2012. Opening Comments were filed by the Joint Energy Utilities and CWA and Class A water on May 16, 2012; and by PacifiCorp and jointly by AT&T and Verizon California, Inc. on May 17, 2012. No reply Comments were filed. We have considered the comments in our final order.

## 8. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this petition for rulemaking.

## Findings of Fact

1. On January 15, 1946, the Commission issued D.38614 in response to its investigation into whether public utilities should be required to sell their debt and equity securities through a competitive bidding process. 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 CBR for utilities issuing new securities, with certain exemptions. Since this CBR was established in 1946 it has been amended five times. The period between reviews has ranged from four to 25 years, and averaging 13 years.

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. The Joint Energy Utilities filed a Workshop Report on January 20, 2012, which included a summary of the discussion at the January 9, 2012 workshop as well as a suggested rule for governing the issuance of long-term debt securities by utilities.

4. Various parties to R.11-03-007 filed comments to the questions posed in the rulemaking, participated in a PHC, filed Pre-Workshop Statements,

participated in workshops and evidentiary hearings, and filed comments to the Workshop Report.

5. The purpose of the CBR and now the Financing Rule is to ensure that utilities incur the lowest financing cost available, which is then passed on to ratepayers.

6. Utilities have regularly 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 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; 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.

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. By rescinding Rule 50, the SEC gave companies the independence to choose the marketing method with the most advantageous terms.

21. In 1995, the Federal Energy Regulatory Commission amended its policies to permit public utilities to "issue securities by either a competitive bid or negotiated placement."

22. In. D.88-04-062, we authorized an exemption for PacifiCorp from the provisions of the Public Utilities Code relating to stocks and securities transactions, and the encumbrance of utility property.

23. Pursuant to Pub. Util. Code § 829(b), debt issues for telephone utilities whose rates are subject to the URF, and whose rates are therefore not subject to rate of return regulation, are exempt from all other applicable provisions of Pub. Util. Code §§ 816-830.

24. The California Department of Water Resources requires utility recipients of Safe Drinking Water State Revolving Fund loans, which are repaid via a surcharge, to maintain separate bank accounts for these funds.

## Conclusions of Law

1. Allowing utilities to choose between competitive and negotiated bidding with the goal of achieving the lowest long-term cost of debt for ratepayers provides the utilities with the independence to manage how to issue their own debt, while ensuring that ratepayers pay the lowest cost of debt.

2. Since the cost of debt is reviewed as part of the utility cost of capital proceedings, the performance of 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.

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 Finances' 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 .

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 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 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 manner in which securities transactions are now recorded by utilities as required by other regulatory entities, such as the Depository Trust Corporation.

16. Except as discussed herein, we should eliminate the requirement in GO 24 that a utility maintain a separate bank account to record money derived from the sale of securities. Utilities should continue to ensure that proceeds from securities issued by them are used for proper purposes pursuant to Pub. Util. Code §817.

17. In instances where the Commission specifically designates what the proceeds can be used for, such as for a specific construction project, we should require a utility to maintain a separate bank account to record money derived from the sale of such securities, in order to make it easier for the Commission to track these funds and preserve a strong audit trail.

18. Since the California Department of Water Resources requires utility recipients of Safe Drinking Water State Revolving Fund loans, which are repaid via a surcharge, to maintain a separate bank accounts for these funds, we should

require a utility to maintain a separate bank account to record money derived from the sale of such securities.

19. The Financing Rule attached to this decision (Attachment A) should be adopted, and replace the existing CBR adopted in Resolution F-616.

20. The new GO 24-C attached to this decision (Attachment B) should be adopted, and replace the existing GO 24-B.

21. We should confirm all rulings made by the assigned ALJ.

22. R.11-03-007 should be closed.

## O R D E R

**IT IS ORDERED** that:

1. The Financing Rule attached to this decision (Attachment A) is adopted and replaces the Competitive Bidding Rule adopted in Resolution F-616.

2. The new General Order 24-C attached to this decision (Attachment B) is adopted, and replaces the existing General order 24-B.

3. We confirm all rulings made by the assigned Administrative Law Judge in the current proceeding.

4. Rulemaking 11-03-007 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

# Attachment A

# Final Competitive Bidding Rules

# Financing Rule

## Preamble

In Decision (D.) 38614, dated January 15, 1946, the California Public Utilities Commission (Commission) adopted the Competitive Bidding Rule (CBR), which required California public utilities to issue security debt using competitive bids. The Commission's goal in adopting the CBR was to reduce the cost of debt for utilities, and ultimately reduce costs to utility ratepayers.[28] From time to time, the Commission has reviewed its policy regarding the CBR based on prevailing circumstances and has subsequently amended the CBR in D.49941 (1954), D.75556 (1969), D.81908 (1973), Resolution No. F-591 (1981), and Resolution No. F-616 (1986). On March 10, 2011, the Commission initiated a rulemaking to reexamine its policy regarding competitive bidding to determine the effectiveness and adequacy of the CBR for issuance of debt and equity securities and to consider the associated impacts on General Order (GO) 24-B.

---

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

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

Pursuant to D._____ in R.11-03-007, the Commission adopted a revised Financing Rule which replaces the existing CBR, as well as an updated GO 24. The new Financing Rule 1) reflects current market practices and standards, 2) provides utilities flexibility to take advantage of market opportunities and adjust pricing, in order to obtain low-cost debt financing, 3) allows utilities to take better advantage of market competition, and 4) facilitates utility efforts to provide WMDVBEs with meaningful opportunities to participate in utility financing transactions. The new Financing Rule also reflects advances in information technology. The new GO 24 reporting requirements: 1) extends the time by which utilities must file GO 24 statements with the Commission to coincide with the utilities' SEC disclosure filings; 2) modifies language to reflect current market terms, practices and standards; and 3) modifies language to reflect current utility record maintenance practices.

**Utility Long-Term Debt Financing Rule**

1. Public utility long-term debt issues shall be conducted in a prudent manner consistent with market standards that encompass competition and transparency, with the goal of achieving the lowest long-term cost of capital for ratepayers.

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.

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-, Disabled Veteran-Owned Business Enterprises (WMDVBE)[29] in being appointed as lead underwriter, book

---

[29] Pursuant to General Order 156 and Decision 11-05-019, definitions of Women, Minority, and Disabled Veterans Owned Business Enterprises are as follows:

1.3.2. "Women-owned business" means (1) a business enterprise (a) that is at least 51% owned by a woman or women or (b) if a publicly owned business, at least 51% of the stock of which is owned by one or more women; and (2) whose management and daily business operations are controlled by one or more of those individuals.

1.3.3. "Minority-owned business" means (1) a business enterprise (a) that is at least 51% owned by a minority individual or group(s) or (b) if a publicly owned business, at least 51 % of the stock of which is owned by one or more minority groups, and (2) whose management and daily business operations are controlled by one or more of those individuals. The contracting utility shall presume that minority includes, but is not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other groups, as defined herein.

1.3.4. "WMBE" means a women-owned or minority-owned business enterprise; under these rules, the women and/or minorities owning such an enterprise must be either U.S. citizens or legal aliens with permanent residence status in the United States.

1.3.5. Black Americans - persons having origins in any black racial groups of Africa.

1.3.6. Hispanic Americans - all persons of Mexican, Puerto Rican, Cuban, South or Central American, Caribbean, and other Spanish culture or origin.

1.3.7. Native Americans - persons having origin in any of the original peoples of North America or the Hawaiian Islands, in particular, American Indians, Eskimos, Aleuts, and Native Hawaiians.

*Footnote continued on next page*

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

---

1.3.8. Asian Pacific Americans - persons having origins in Asia or the Indian subcontinent, including, but not limited to, persons from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, India, Pakistan, and Bangladesh.

1.3.9. Other groups, or individuals, found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of Small Business Act as amended (15 U.S.C. 637 (a)), or the Secretary of Commerce pursuant to Section 5 of Executive Order 11625.

1.3.10. Disabled Veteran - a veteran of the military, naval or air service of the United States with a service-connected disability who is a resident of the State of California.

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

156, these utilities are encouraged to make best efforts to engage WMDVBE booking firms.

5. In D. 88-04-062, we authorized an exemption 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 agreement, all costs associated with the termination are subject to review in a utility's next regulatory proceeding addressing its cost of capital.

   Utilities shall provide the following to Commission Staff within 30 days of receiving any written request: (i) all terms, conditions, and other details of swap and hedge transactions; (ii) rationale(s) for the swap and hedge transactions; (iii) estimated costs for the "alternative" or un-hedged transactions; and (iv) copy of the swap and hedge agreements and associated documentation

**Exemptions:**

The exemptions listed below will only be granted upon a compelling showing by a utility in an application for financing authority, that the terms of such exemption are applicable to the utility, for the proposed debt issuance:

1. Bond issues of $42 million or less, adjusted each year for the Consumer Price Index (CPI) found on the California Department of Finances' website or its successor, are exempt from the Financing Rule. Therefore, the current baseline of $42 million in 2012 must be increased each year by the most recent CPI.
2. Tax exempt or government debt issues are exempt from the Financing Rule
3. Debt issues, such as the Safe Drinking Water Bond Act loans, Rural Utility Service loans, and pollution control loans, are exempt from the Financing Rule.
4. Debt issues made through an affiliate that provides debt issuance services to all affiliates of the same parent are exempt from the Financing Rule if such debt accounts for less than five percent (5%) of the financing affiliate's annual issuances.
5. For multi-state utilities operating in California, if the operating revenues from California operations represent less than five percent (5%) of the entire utility's total operating revenues for the most current calendar year, the utility is exempt from the Financing Rule.

# (End of Attachment A)

# Attachment B

# General Order 24-C

GENERAL ORDER No. 24-C
Public Utilities Commission of the
State of California

IN THE MATTER OF THE PREPARATION OF REPORTS SHOWING RECEIPTS AND DISBURSEMENTS FROM THE SALE OF STOCKS, BONDS AND OTHER EVIDENCES OF INDEBTEDNESS OF PUBLIC UTILITIES, WHICH HAVE BEEN AUTHORIZED TO BE ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, UNDER SECTION 824 OF THE PUBLIC UTILITIES CODE.

I. For the first year after authorization of this General Order (GO), on or before 60 days following each calendar quarter, the information required by Sections A and B in the preceding period, certified by an authorized representative of the corporation issuing stocks, bonds or other evidences of indebtedness, or by the partnership or individual authorized to issue bonds or other evidences of indebtedness shall be filed with the Commission.

II. For the second year after authorization of this GO and for every year thereafter, on or before 60 days following June and December of that year, the information required by Sections A and B in the preceding period, certified by an authorized representative of the corporation issuing stocks, bonds or other evidences of indebtedness, or by the partnership or individual authorized to issue bonds or other evidences of indebtedness shall be filed with the Commission.

III. If a utility has no reportable transactions for the applicable period (quarterly/semi-annually), it may state such as its GO 24 C report for that period.

The Commission Staff may request such information on a monthly basis.

**A. RECEIPTS**

1. A description of the stock issued during the period detailed above under the authority of the Commission, including:

a. The principal amount of the issuance;
b. The number of shares issued;
d. The par value, if any, of each share;
e. The commissions paid; and
f. The total proceeds received.

2. The total amount of stock issued under the order of the Commission and outstanding at the end of the period detailed above, which shall show:
a. The total number of shares issued; and
c. The total par value, if any, of such shares.

3. A description of the bonds or other evidences of indebtedness, issued during the period detailed above, under the authority of the Commission, including:
a. The principal amount of the issuance;
b. The commissions paid; and
c. The total proceeds received.

4. The total bonds or other evidences of indebtedness issued under the order of the Commission and outstanding at the end of the period detailed above, which shall show the principal amount of such bonds or other evidences of indebtedness issued.

**B. DISBURSEMENTS**

Each utility authorized to issue stock, bonds or other evidences of indebtedness shall file a report for the period detailed above, showing the purposes for which it expended the proceeds realized from the sale of said stock, bonds or other evidences of indebtedness. The expenditures shall be set forth in such manner as will enable the Commission to ascertain the utility's compliance with Public Utilities Code § 817 and with the related authorizing decision.

**C.**

**C. MAINTENANCE OF RECORDS**

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

## D. SPECIFIC REQUIREMENT FOR SEPARATE BANK ACCOUNT

In instances where the Commission specifically designates what the proceeds can be used for, such as for a specific construction project, a separate bank account will make it easier for the Commission to track these funds, preserve a strong audit trail, and the additional record keeping is not burdensome. In addition, the California Department of Water Resources requires utility recipients of Safe Drinking Water State Revolving Fund loans, which are repaid via a surcharge, to maintain separate bank accounts for these funds. Therefore, in instances where the Commission specifically designates what the proceeds can be used for, or in the instances where the loan will be repaid by surcharge, we continue to require those utilities to maintain a separate bank account for recording of the proceeds.

## E. INCORPORATION BY REFERENCE

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

**(End of Attachment B)**

# Attachment C

# Glossary of Selected Financing Terms

**Glossary of Selected Terms**

1. **Call Options:** From time to time a utility may retain the right to partially or fully retire a debt security before the scheduled maturity date. This is commonly referred to as "calling" the security. The chief benefit of such a feature is that it permits a utility, should market rates fall, to replace the security with a lower-cost issue, thus producing a positive net benefit to ratepayers.
2. **Capital Replacement:** A utility may specify that it intends to replace a debt security when redeemed with replacement securities having either similar, or more equity-like, characteristics. Capital replacement refers to an issuer's (utility's) declaration of intent, or in some cases its covenant, to replace a debt security with new securities that receive a similar or better equity rating from a credit rating agency.
3. **Caps and Collars:** In order to reduce ratepayers' exposure to interest rate risk on variable-rate securities, a utility may negotiate some type of maximum rate, usually called a cap. In that case, even if variable rates increase above the cap (or ceiling) rate, the utility would only pay the ceiling rate. In addition to the ceiling rate, sometimes a counterparty will desire a "floor" rate. In the event that the variable rate falls below the floor rate, a utility would pay the floor rate. The combination of a floor and a ceiling rate is called an interest-rate "collar" because the utility's interest expense is restricted to a band negotiated by the utility and the counterparty.
4. **Counterparty:** A counterparty is the other party to a financial transaction; for example, when a utility issues (or sells) debt securities, the buyer of the debt securities would be considered the counterparty to that transaction.
5. **Credit Enhancements:** A utility may obtain credit enhancements for debt securities, such as letters of credit, standby bond purchase agreements, surety bonds or insurance policies, or other credit support arrangements. Such credit enhancements may be included to reduce interest costs or improve other credit terms; and the cost of such credit enhancements would be included in the cost of the authorized debt securities.
6. **Currency Swaps:** Currency swaps are useful in the management of

exchange risk and are used to hedge exposures created by debt securities denominated in a foreign currency. A currency swap is an arrangement between two parties, in which one party agrees to make periodic payments on a debt security in its domestic currency, based on either fixed or floating interest rates, to a counterparty, who in turn makes periodic payments to the first party in a different currency. The payments are based on notional principal amounts that are fixed at the initiation of the swap.

7. **Delayed Drawdown:** A utility may enter long-term loans or issue debt securities where the full principal amount is not borrowed immediately, but over time in a series of disbursements which drawdown the funding over a period of time.
8. **Encumbrance of Accounts Receivables:** A utility may issue debt securities secured by a pledge, sale or assignment of its accounts receivable, as opposed to securing a loan through the encumbrance of utility assets.
9. **Hedging Strategies:** Hedging strategies gives a utility the ability to enter financial markets at times when interest rates or other circumstances appear most favorable.
10. **Interest Deferral:** A utility may issue subordinated debt securities that permit discretionary interest payment deferral during an extension period. The extension period may specify a period wherein the issuer is not required to take any action. The deferral period would not extend beyond the maturity date of the series of debt securities. A utility may be obligated to pay any such accrued interest at the end of the extension period; however, in certain cases, claims for deferred payments may be waived in part or in whole.
11. **Letters of Credit:** A letter issued by a financial institution that serves as a guarantee for payments made by a specified entity.
12. **Long Hedges:** A utility establishes a long hedge by issuing securities today and investing the proceeds in United States Treasury securities (Treasury) of a comparable maturity. If interest rates subsequently decline, the gain in the value of the Treasury portfolio will compensate the utility for the lost opportunity to finance at lower rates. On the other hand, if rates rise, the interest expense savings realized by issuing immediately will be offset by

the decline in value of the Treasury portfolio. Thus, the Treasury component of the utility's effective borrowing cost will be determined by the Treasury rates prevailing when it chooses to unwind the hedge; the credit spread is determined at the time of issuance.

13. **Put Options:** Grants the owner of a debt security the right to require the borrower to repurchase all or a portion of the securities issued by that borrower. Owners of a debt security would be willing to accept a lower interest rate in exchange for the protection against rising interest rates offered by a put option.

14. **Redemption Provisions:** An issue of debt securities may contain a provision allowing it to be redeemed or repaid prior to maturity. An early redemption provision may allow the debt securities to be redeemed or repaid at any time, or only after a certain period. In either case, the debt securities would be redeemable at par, at a premium over par, or at a stated price.

15. **Sinking Funds:** The cost of debt securities may be reduced by the use of a sinking fund. A sinking fund normally operates in one of two ways: (1) a utility may set aside a sum of money periodically so that, at the maturity date of the bond issue, there is a pool of cash available to redeem the issue, or (2) a utility may periodically redeem a specified portion of the bond issue.

16. **Special-Purpose Entity Transactions:** A special-purpose entity is a regulated affiliate or subsidiary of a utility that issues securities and commits the proceeds from the issuance of such to a utility. These securities may be guaranteed by a utility.

17. **Standby Bond Purchase Agreements:** An agreement between the issuer of a debt security (utility) and its underwriter, in which the underwriter agrees to purchase any unsold new debt security that it has not been able to place with investors. By this agreement, the issuer of a security transfers the risk of any unsold new debt securities to the underwriter. To account for this transfer of risk, the underwriter normally charges a fee for participating in the Standby Bond Purchase Agreement

18. **Surety Bonds**: A bond issued by an entity on behalf of an issuer of debt securities (utility), guarantees that the utility will discharge its

obligation pursuant to the debt security to the investor that has purchased the debt security. In the event that the obligations are not met, the investor holding the utility's debt security will recover its losses from the entity that issued the Surety Bond.

19. **Swaptions:** Option of the borrower to enter into a swap.

20. **Tax Exemption:** The cost of debt securities may be reduced by issuing them through a governmental body, political subdivision, or other conduit issuer, thereby obtaining tax-exempt status for the securities. A utility would normally use this tax-exempt option whenever its facilities, such as pollution control, sanitary, solid waste disposal, or other eligible facilities qualify for tax-exempt financing under federal law and it can obtain the necessary State approvals for the issuance of tax-exempt debt.

21. **Treasury Lock:** This feature locks in the Treasury component of a utility's borrowing cost. A utility can delay securities issuance and capture the current Treasury yield by selling short Treasury securities (i.e., selling Treasury securities that it does not own) of a maturity comparable to that of the contemplated debt security. If interest rates rise, the utility will cover its short Treasury position at a profit, which will be offset by the higher interest cost of the newly issued securities. If interest rates decline, the utility will cover its short Treasury position at a loss, but this will be offset by the lower cost on the newly-issued securities.

22. **Various Types of Interest Rate Swaps:** An interest rate swap is a contractual agreement between two parties to exchange a series of payments for a stated period. In a typical interest rate swap, one party issues fixed-rate debt while another issues floating rate debt, and the two swap interest payment obligations are based on a notional principal amount (the principal itself is not exchanged). Swaps are generally used to reduce either fixed-rate or floating-rate costs, or to convert fixed-rate borrowing to floating.

    a. **Fixed Rate Payer Swap:** A forward-starting interest rate swap allows a utility to delay a securities issuance and capture current yields. As the fixed-rate payer in an interest rate swap, the utility hedges its borrowing cost: if interest rates rise, unwinding the swap at a profit offsets higher borrowing costs. Conversely, if rates decline, lower

borrowing costs offset the loss caused by unwinding the swap.

b. **Floating-Rate Payer Swap:** A forward-starting interest rate swap allows a utility to issue securities immediately and benefit from a subsequent fall in interest rates. As the floating-rate payer in an interest rate swap, a utility hedges its borrowing cost: if interest rates decline, unwinding the swap at a profit will compensate a utility for the lost opportunity to finance at lower rates. Conversely, if rates rise, the interest expense savings realized by issuing immediately will be offset by the loss caused by unwinding the swap.

23. **Various Types of Treasury Options:**

a. **Treasury Put Options:** The purchase of Treasury put options is an alternative to the Treasury lock. In this transaction, a utility would purchase put options entitling it to sell Treasury securities of a maturity comparable to that of the contemplated security issuance at a specified yield (the "strike yield") at any time before the option's expiration date. If interest rates rise above the put's strike yield, the utility will exercise the put and the resulting profit offsets the increased cost of borrowing. If interest rates decline, the utility will let the option expire as worthless and issue securities at prevailing lower rates.

b. **Treasury Call Options:** The purchase of Treasury call options is an alternative to the long hedge. With this approach, the utility would issue securities today and purchase call options on Treasury securities of a comparable maturity. Such a call option allows the holder to purchase Treasury securities at a specified yield (the "strike yield") anytime before the expiration date. If rates decline below the strike yield, exercising the option produces a gain used to offset the interest cost of the securities issued today. If interest rates rise above the strike yield, the option will expire unexercised. In this case, the utility benefits from the lower borrowing rate.

24. **Warrants:** The cost of debt may be reduced by attaching warrants to

such securities. Each warrant would entitle the holder to purchase an additional bond, note or debenture or a share of capital stock. The debt security to be issued upon exercise of a debt warrant would bear interest at a pre-established rate and would mature at a pre-established time.

**(End of Attachment C)**