

Decision 12-07-003 July 11, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Consider Effectiveness and Adequacy of the Competitive Bidding Rule for Issuance of Securities and Associated Impacts of General Order 156, Debt Enhancement Features, and General Order 24-B.

Rulemaking 11-03-007
(Filed March 10, 2011)

ORDER CORRECTING ERRORS IN DECISION 12-06-015

This order corrects certain non-substantive errors in Decision (D.) 12-06-015 which adopted a new Financing Rule which replaced the Competitive Bidding Rule authorized in Resolution F-616 revisions to General Order 24. This order also corrects certain wording errors regarding Rule 6.c.i of the new Financing Rule and related text of the decision.

Pursuant to Commission Resolution A-4661 and Rule 16.5 of the Commission's Rules of Practice and Procedure, the Commission's Executive Director is authorized to sign, on behalf of the Commission, orders involving the correction of clerical and other obvious inadvertent errors and omissions in Commission decisions. On this basis, these corrections to D.12-06-015 are hereby adopted.

Corrections

Attachment A to this order includes the corrected pages of the decision and attachments. In particular, the corrections to the typographical errors in D.12-06-015 are as follows:

1. Page 16 – The sentence “Both suggest language that clarifies the statutory exemption applicable to them, referencing Public Utilities (Pub. Util.) Code § 829(b)(1)” at the end of the first partial paragraph should read “They suggest language that clarifies the statutory exemption applicable to them, referencing Public Utilities (Pub. Util.) Code § 829(b)(1)” in order to coordinate with the number of parties (more than two) being referred to in the previous sentence;
2. Page 29 – Rule 6 subheadings should be a, b, and c; not d, e, and f, in order to match the rule in Attachment A to the decision;
3. Page 34, Finding of Fact 7 – Item 5 should be changed to “permit competitive bidding via electronic means, such as e-mail, in lieu of telephonic bidding,” in order to match the text in the body of the decision;
4. Page 37, Conclusion of Law 5 – Should be changed to “Since government loans and tax-exempt debt are governed by their own set of rules and regulations, and may not be bid at all, we should exempt these forms of debt.” in order to be grammatically correct; and
5. The title page of Attachment A should read “Attachment A Final Financing Rules” in order to accurately identify the new name of the rule.

We also correct certain wording errors regarding Financing Rule 6.c.i, which requires a utility to provide a report on all interest income and expense related to swaps and hedging transactions in its General Order 24 report. The language in Financing Rule 6.c.i must match that of the new General Order 24-C with regards to the timing of the reports. D.12-06-015 is therefore corrected as follows:

1. Page 29 – The rule identified as 6.c.i. should be changed to “Utilities shall separately report any interest income and expense arising from all swaps and hedging transactions in their General Order 24-C reports for the applicable period, to the Commission.” in order to match the requirements of the new General Order 24-C; and
2. Attachment A, page A5 - The rule identified as 6.c.i. should be changed to “Utilities shall separately report any interest

income and expense arising from all swaps and hedging transactions in their General Order 24-C reports for the applicable period, to the Commission.” in order to match the requirements of the new General Order 24-C.

IT IS ORDERED that:

1. The amended Decision 12-06-015, which contains non-substantive corrections of errors in the original decision, are hereby adopted pursuant to Commission Resolution A-4661 and Rule 16.5 of the Commission’s Rules of Practice and Procedure.

2. At the end of the first partial paragraph on page 16 of Decision 12-06-015, the sentence “Both suggest language that clarifies the statutory exemption applicable to them, referencing Public Utilities (Pub. Util.) Code §829(b)(1)” is changed to “They suggest language that clarifies the statutory exemption applicable to them, referencing Public Utilities (Pub. Util.) Code §829(b)(1)” in order to coordinate with the number of parties (more than two) being referred to in the previous sentence.

3. At page 29, the subheadings in Rule 6 should be a, b, and c; not d, e, and f, in order to match the rule in Attachment A to the decision.

4. At Finding of Fact 7 on page 34 of Decision 12-06-015, item 5 should be changed to “permit competitive bidding via electronic means, such as e-mail, in lieu of telephonic bidding,” in order to match the text in the body of the decision.

5. Conclusion of Law 5 on page 37 of Decision 12-06-015 is changed to “Since government loans and tax-exempt debt are governed by their own set of rules and regulations, and may not be bid at all, we should exempt these forms of debt.” in order to be grammatically correct.

6. The title page of Attachment A is changed to “Attachment A Final Financing Rules” in order to accurately identify the new name of the rule.

7. We also correct certain wording errors regarding Financing Rule 6.c.i, which requires a utility to provide a report on all interest income and expense

related to swaps and hedging transactions in its General Order 24 report. The language in Financing Rule 6.c.i must match that of the new General Order 24-C with regards to the timing of the reports. D.12-06-016 is therefore corrected as follows:

- a. On page 29 – The rule identified as 6.c.i. should be changed to “Utilities shall separately report any interest income and expense arising from all swaps and hedging transactions in their General Order 24-C reports for the applicable period, to the Commission.” In order to match the requirements of the new General Order 24-C; and
- b. Attachment A, page A5 – The rule identified as 6.c.i. should be changed to “Utilities shall separately report any interest income and expense arising from all swaps and hedging transactions in their General Order 24-C reports for the applicable period, to the Commission.” In order to match the requirements of the new General Order 24-C.

This order is effective today.

Dated July 11, 2012, at San Francisco, California.

/s/ PAUL CLANON

PAUL CLANON
Executive Director

Attachment A
Amended Pages of
Decision 12-06-015

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applicable to them. They 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."

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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:

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 General Order 24-C reports for the applicable period, 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.

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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 electronic 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

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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 these forms of debt.

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

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Attachment A

Final Financing Rules

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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 GO 24-C reports for the applicable period, 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

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(END OF ATTACHMENT A)