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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Revisions to the California Advanced Services Fund.	Rulemaking 20-08-021

ASSIGNED COMMISSIONER'S RULING INVITING COMMENTS ON STAFF PROPOSAL FOR BROADBAND LOAN LOSS RESERVE FUND PROGRAM

Pursuant to the *Assigned Commissioner's Second Amended Scoping Memo and Ruling* issued March 1, 2022 (Second Amended Scoping Memo), this ruling provides notice and opportunity to comment on California Public Utilities Commission (CPUC or Commission) staff's proposal for the Broadband Loan Loss Reserve Fund Program (Loan Loss Program) Guidelines.

Staff proposes program guidelines in the Loan Loss Program to implement Senate Bill (SB) 156 (Stats. 2021, Chap. 112) Section 8, which added Public Utilities (Pub. Util.) Code Section 281.2, and Assembly Bill 164 (Stats. 2021, Chap. 84) Section 34, Item 8860-062-0001.

The proposal includes definitions, eligibility, supported financing instruments, project information, financing terms and conditions, Loan Loss Program guidelines, implementation, outreach and reporting requirements for broadband infrastructure projects deployed using financing supported in whole or in part by the Loan Loss Program.

To implement the Loan Loss Program, the CPUC will enter into an agreement with a financing contractor to develop the administrative procedures, financing structures, and legal agreements necessary to fund infrastructure projects as authorized by SB 156.

Parties are invited to provide comments addressing any part of the staff proposal, included with this ruling as Attachment 1, and to address the specific questions included in this ruling. Parties with suggested modifications or alternative proposals are encouraged to provide redlines to the staff proposal as an attachment to their opening comments for consideration by the Commission. Comments may be filed no later than October 14, 2022, and reply comments no later than October 24, 2022.

1. Section 3 - Definitions

Staff proposes to specify a number of definitions that will apply to the operation of the Loan Loss Program.

1. Are the Loan Loss Program definitions proposed in Attachment 1 reasonable? What modifications or additional definitions are needed and why?

2. Section 4 – Responsible Entities

Staff proposes to specify certain parties' roles and responsibilities for the administration of the Loan Loss Program.

2. Do the entities and associated roles and responsibilities proposed in Attachment 1 encompass all responsible entities for effective administration of the Loan Loss Program? What modifications or additions are needed and why?

3. Section 5 – Eligible Entities

Staff proposes to make nonprofits, and local government agencies as defined by Government Code Section 53167(e) (which includes tribes), eligible to apply to the Loan Loss Program.

3. Are the entity eligibility guidelines regarding financial and management experience proposed in Attachment 1

reasonable? What modifications or additions are needed and why?

4. If a for-profit enterprise enters into a partnership agreement with eligible entities as defined in Pub. Util. Code Section 281.2, would that partnership be eligible for the Loan Loss Program?

4. Section 6 – Supported Financing Instruments

To promote the construction of high-quality broadband services and improve the standards of living for California residents, local government agencies and non-profits may benefit from access to credit enhancements to support financing of broadband infrastructure. However, eligible entities in California may lack the creditworthiness to obtain reasonable financing terms to build cost-effective broadband infrastructure due to insufficient capital requirements, unpredictable or low government revenues, lack of population growth or lack of franchise taxes.

Through the Loan Loss Program and its credit enhancement options, local government agencies and non-profits may improve their credit risk profile and financing terms for loan or bond products with new or existing lenders to develop broadband infrastructure.

Staff proposes that credit enhancements in the Loan Loss Program consist of a Loan Loss Reserve and a Debt Service Reserve Fund. Staff proposes that the Loan Loss Reserve include principal coverage between five and twenty percent of the total project loan amount, dependent on the perceived risk of the proposed project.

Staff proposes that the Debt Service Reserve Fund cover costs associated with payment of principal and interest on debt that does not exceed twenty percent of the total debt amount. Additionally, the Debt Service Reserve

Fund will cover costs as long as they do not exceed two years' worth of debt service payments.

In addition to the two forms of credit enhancements staff proposes to offer, staff further proposes that Loan Loss Program funds be used to reimburse eligible entities for the costs of issuing debt not to exceed five percent of the total debt issued.

Loan Loss Reserve

5. Are the proposed guidelines in Attachment 1, for the Loan Loss Reserve Fund to cover only costs associated with the principal, reasonable?
6. What percentage of the debt instrument should the Loan Loss Reserve Fund guarantee? If partially funded, what proportion of reserves should be kept per debt guarantee? What timeframe is reasonable for the guarantee to be in effect?
7. Should the reserves in the Loan Loss Reserve Fund fully fund or partially fund loan or bond guarantees? If partially funded, what proportion of reserves should be kept per loan guarantee?
8. Should an applicant have the option to pool Loan Loss Reserve across debt issuances, or should each debt issuance have a specific Loan Loss Reserve award attached to it?
9. Should there be a cap on the total amount of Loan Loss Reserve protection awarded to an applicant?

Debt Service Reserve

10. Staff proposes the Debt Service Reserve Fund cover principal and interest payments on a debt issuance, not to exceed twenty percent of the total debt amount in addition to a two-year limit on coverage. Is this reasonable? What timeframe is reasonable for the Debt Service Reserve support to be in effect?

11. Should there be a cap on the total amount of Debt Service Reserve awarded per applicant?

<u>General Questions Regarding Credit Enhancements</u>

12. Are there additional types of credit enhancement tools the Loan Loss Program should support beyond those identified in Attachment 1?
13. Should the credit enhancements be applicable to both loans and bonds?
14. What further issues should be addressed related to financing instruments for eligible entities?

<u>Cost Reimbursement</u>

15. Staff proposes a cap of five percent cap of total debt issued on the amount of reimbursable costs of debt issuance under a given award in the Loan Loss Program. Is this reasonable?
16. Costs for obtaining credit enhancement include bond counsel work, and costs of the guarantor to issue. Is it reasonable for the Commission to reimburse eligible applicants for such costs? What other costs for obtaining credit enhancement, if any, should be included as reimbursable?
17. What additional costs are associated with a credit enhancement after issuance? Will there be any ongoing annual fees? Is it reasonable for these fees to be covered by the Loan Loss Program?

With respect to financing for non-profit organizations, staff will work with its Financing Contractor to enable the issuance of tax-exempt revenue bonds or other financial instruments described in Attachment 1.

Non-profit organizations may require the participation of a conduit bond issuer, including but not limited to the Financing Contractor, to issue tax-exempt financial instruments under the Loan Loss Program, due to the fact that non-profit debt is generally considered riskier than municipal debt and tends to carry a higher interest rate and non-profit organizations are unable to issue tax-exempt bonds. A nonprofit entity working on a broadband deployment project will likely rely on 501(c)(3) bonds with a conduit bond issuer. Local government agencies may issue tax-exempt financial instruments under the Loan Loss Program without a conduit bond issuer.

18. Are there additional guidelines the Commission should consider to enable conduit bond issuances for non-profits?

5. Section 7 – Loan Loss Program Guidelines

Staff proposes the Loan Loss Fund Balance be deposited in an escrow account with a financial institution or partner and moved from the escrow account to a reserve account as credit enhancements are earmarked for broadband projects.

19. If funds are kept in the reserve or escrow account of the trustee, what mechanisms should be established in the account to ensure efficient operations of the portfolio?

Staff proposes that the loan loss agreement specify the process for Loan Loss Reserve Fund disbursement in the event the lender has exhausted all remedies with the borrower and the borrower has defaulted on their debt repayments and is unwilling or unable to pay the lender.

Staff further proposes that interest earned in either the escrow or reserve accounts be returned to the Fund Balance in order to be used to expand fund capacity, replace funds, cover loan losses or other support outlays, as determined by the CPUC.

20. How should the reinvestment of funds be defined in the loan loss agreement, and how should that process function?

In comments to the Second Amended Scoping Memo, Rural County Representatives of California (RCRC) suggest that the CPUC enable recipients to reuse funds for multiple bond issuances if a covenant exists within the loan loss agreement or the bond matures, which would allow encumbered funds to become once again available for a credit guarantee with the applicant.[1] Instead of approving Loan Loss support on a project-by-project basis, RCRC proposes a long-term program approval that would allow funds to be rolled over from one project to another without review by the CPUC. This structure would leverage the ability to roll over the allocated Loan Loss Program moneys to support multiple bond issues over a period of years.

Allowing Loan Loss Program to be "re-used" is an important mechanism for maximizing program impact. However, requiring applicants to submit a new application when they plan to issue new bonds with support from a released bond security seems reasonable and would allow the CPUC to ensure proper utilization of the Loan Loss Fund Balance.

21. Staff proposes to award funds on a per-application and per-project basis, and to require a new application for re-use of loan loss funds at this time. Is this reasonable?
22. What methodology should the Commission consider to ensure that encumbered funds are able to be released efficiently after the maturity of the loan/bond?

With respect to timing of funding allocations, setting reasonable project timeframes for sustainability is critical. Timelines that are too short will not enable local government, Tribal or non-profit networks to scale and become profitable. For a project to become profitable, it must not only build and operate the network but increase the number of subscribers. This may take additional years. However, there is a tradeoff: while financing for longer periods allows

[1] *Opening Comments of the Rural County Representatives of California on Phase 2A Issues Regarding Broadband Loan Loss Reserve Fund* filed April 1, 2022, at 6.

recipients time for the network to become profitable, encumbering funds over longer periods will decrease the availability of overall funding in the Loan Loss Program. Shorter times are preferable so that funding can be released, returned to the fund, and redistributed to support other projects. Staff proposes applicants have the ability to encumber funds in the Loan Loss Program up to 30 years.

Staff proposes that the Loan Loss Program not require local government agencies, Tribes, or non-profits to provide matching funds in their applications.

23. The Loan Loss Program guidelines allow for supported debt instruments to be payable over a period of up to 30 years. Is this reasonable? What other debt repayment timelines might be appropriate and why?
24. Should the Commission consider incentives for applications that provide for matching funds? What types of incentives should the CPUC offer and how might they work to lower rates or fees?

6. Section 8 – Application Eligibility Criteria

The staff proposal requires applicants to demonstrate certain financial qualifications. Proposed required information includes audited financial statements for the last three years, a five-year financial forecast, schedule of all outstanding and planned debt, additional sources of outside funding, project budget and timeline and a binding term sheet that outlines the proposed financing deal.

Staff also proposes that applicants provide documentation related to the broadband project, demonstrating administrative capability, assigned entities' responsibilities, expertise in evaluating and deploying broadband infrastructure and expertise in bond financing, debt management and financial administration.

25. Are the proposed project and financing details required reasonable? What other project or finance criteria should the Commission consider in the development of the Loan

Loss Program? What modifications or additions should be considered?

26. How should a term sheet that outlines the proposed financing deal be structured? Should the borrower be required to suggest a proposed guarantee structure?
27. Should the Commission require specific elements in a Loan Loss Program term sheet proposed by an applicant? If so, what elements should be required?

7. Section 9 – Application Information

Staff proposes minimum service standards such that broadband projects are designed to, upon completion, reliably offer symmetrical speeds at or above 100 Megabits per second (Mbps) download and upload. In cases where it is determined to be impractical, lower speeds of 100 Mbps and 20 Mbps may be considered.

Staff proposes that applicants offer low-cost broadband plans as defined in the Federal Funding Account Program, participation in the Affordable Connectivity Program or a successor program as identified by the CPUC, and open access middle-mile infrastructure requirements.

Staff proposes application details that describe the entity, project summary, project data, deployment schedule, revenue and expense details, other project information, government and community support and proposed funding sources. Section 9.2 of Attachment 1 provides additional information on these sections.

In addition to project details, staff proposes that applicants provide information on financing (bond or loan) details, legal matters, expected bond rating, municipal advisor and the underwriting team. Section 9.3 of Attachment 1 provides additional information on these sections.

Staff proposes a prioritization methodology for applicants if at any time the Loan Loss Fund encumbers eighty percent of its original funding amount ($600 million) or the Fund Balance drops below seventy percent ($225 million), at which point staff would transition from accepting applications on a rolling basis and begin to consider applications submitted quarterly in order to prioritize remaining funding.

28. Are the proposed guidelines and fund thresholds for prioritization in Attachment 1 for the Loan Loss Program reasonable? What modifications or additions should be considered?
29. What forms of government and community support should be required from applicants, and in what circumstances? What entities should local agency, non-profit, and tribal applicants be required to consult with to gain support for the proposed project?

8. Section 10 – Implementation

Staff proposes, at minimum, that an application should demonstrate the financial, technical, and operational capacity to execute the project successfully and completely in the timeframe established. Further, the application should demonstrate a well-planned project with a reasonable budget that shows it will deliver the speeds and service proposed and be sufficiently robust to meet the increasing demand for bandwidth.

Staff proposes a two-part rolling application timeframe between one and two months for review by the CPUC and the Financing Contractor, and a quarterly application review if the Loan Loss Fund encumbers eighty percent of its original funding amount ($600 million) or the Fund Balance drops below seventy percent of its funding amount ($225 million).

Staff proposes guidelines on the loan loss agreement, environmental permitting, loan or bond adjustment and execution and performance of the proposed project. Staff proposes that broadband projects be completed within 24 months after the project start date.

Staff proposes that, in the event of loan or bond default, the CPUC will pay the amount pledged to the applicant under the Loan Loss Program and any amount above the pledged amount shall be borne by the lender.

30. Are the topics addressed in Section 10 of Attachment 1 reasonable? What further topics should the Commission consider when developing the structure for application review and acceptance into the Loan Loss Program?
31. Should the Loan Loss Program include permitting guidance beyond the provisions related to the California Environmental Quality Act? If so, what provisions and why?
32. In the event of a need for modifications to the loan loss agreement, what guidelines are necessary or reasonable to ensure successful broadband deployment?
33. If funds are kept in the reserve or escrow account of the trustee, what mechanisms should be established in the account to ensure efficient operations of the portfolio?
34. Is the two-step approval process and review timeline for the Loan Loss Program reasonable? What modifications, if any, are necessary or reasonable?
35. What are the benefits and disadvantages of requiring bond issuance prior to the beginning of a project construction?
36. The staff proposal requires projects to be completed within 24 months after their project start date. Is this reasonable? Should project start date be defined? Should the Commission consider other aspects or processes related to the project timeline, including changes to project schedules or timelines?
37. Is it reasonable for staff to begin quarterly application reviews if the Fund Balance becomes encumbered by eighty percent or reaches seventy percent of its original

balance? What modifications or additional conditions or criteria should be considered?

38. With regards to the prioritization criteria related to serving unserved locations, what proportion of project locations should be unserved for this criterion to be met?

39. How long should a Loan Loss Agreement be considered viable: 30, 60, 90 days? What processes should the Commission consider regarding Loan Loss Agreements and to provide certainty to potential Loan Loss Agreement users and financial markets that the agreement terms will be available on a reasonable timeline?

40. In the event of default, what specific mechanisms should be included in the loan loss agreement (initial delinquency, cure period, default notices, *etc.*)?

    a. What minimum amount of time should be established between when a notice of default is issued and when a claim is paid?

9. Section 11 – Outreach

Staff proposes to work with and leverage the expertise of other state agencies and partners to better coordinate outreach to eligible entities within the state as well as monitor and evaluate outreach efforts to better align with the CPUC's Environmental and Social Justice Action Plan.

Staff proposes that applicants provide a marketing and outreach plan that encourages subscription of service in their proposed project locations, including letters of support from communities affected by the proposed broadband projects.

41. What state agencies should be consulted in order to optimize outreach?

42. What other factors should the Commission consider in proposing what forms of marketing and outreach applicants should pursue?

10. Section 12 – Reporting

Staff proposes to have applicants file progress reports on a bi-annual basis, to be due on March 1 and September 1 of each year. Additionally, applicants will file completion reports upon completion of the broadband infrastructure project and financial and incident reports annually for a duration in line with the number of years the funds from the Loan Loss Program are encumbered by the applicant.

43. Are the reporting guidelines in Attachment 1 reasonable? What modifications or additions to reporting or monitoring are needed and why?
44. What kind of incident reporting framework should be considered to prevent the default of a bond issuance? What specific triggers should be considered?

IT IS SO RULED.

Dated September 26, 2022, at Sacramento, California.

/s/ DARCIE L. HOUCK
Darcie L. Houck
Assigned Commissioner

ATTACHMENT 1