

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

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

R. 11-03-007
(Filed March 10, 2011)

**COMMENTS OF
CALIFORNIA WATER ASSOCIATION
AND ITS CLASS A WATER COMPANY MEMBERS
ON PROPOSED DECISION OF COMMISSIONER SIMON**

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Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, California Water Association and its Class A water company members¹ (together, "CWA") hereby submit their comments on the Proposed Decision of Commissioner Simon ("Proposed Decision" or "PD") issued April 27, 2012, in the above-captioned rulemaking. CWA is a statewide association that represents the interests of investor-owned water utilities regulated by the Commission, including, especially, the Respondent Class A water utilities (the "Water Companies") that are, like other classes of investor-owned utilities, required to obtain Commission approval for the issuance of securities to meet their long-

¹ Class A water companies joining in these Comments include Apple Valley Ranchos Water Company (U-346-W), California American Water Company (U-210-W), California Water Service Company (U-60-W), Golden State Water Company (U-133-W) (including Bear Valley Electric Service (U-913-E), Park Water Company (U-314-W), San Gabriel Valley Water Company (U-337-W), San Jose Water Company (U-168-W), Suburban Water Systems (U-339-W), and Valencia Water Company (U-342-W).

term financing needs, The procedures for issuing such securities are the subject of this Rulemaking.

I. Introduction and Summary of Comments

Following a workshop held in this rulemaking on January 9, 2012, Southern California Edison Company, Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas & Electric Company, and Southwest Gas Corporation (the “Energy Utilities”) jointly submitted a Workshop Report on January 20, 2012. The Workshop Report reported a consensus among workshop participants in favor of replacing the longstanding Competitive Bidding Rule with a new Financing Rule that “reflects current financial market best practices and conditions.” The Workshop Report also noted the parties’ general agreement that the reporting requirements of General Order (“GO”) 24-B should be revised to reflect current financial reporting and cash management standards and practices. In Appendix A to the Workshop Report, the Energy Utilities presented a new Utility Long-Term Debt Financing Rule to replace the Competitive Bidding Rule, as well as a revised GO 24-B reflecting proposals discussed at the workshop.

CWA was among several workshop participants to file comments on the Workshop Report on or about February 3, 2012. CWA’s comments strongly endorsed the Energy Utilities’ proposed Financing Rule and their proposed changes to GO 24-B, subject to a few suggestions for clarifications and further revisions.

The Proposed Decision clearly intends to implement the consensus that was evident at the February 9 workshop, favoring adoption of a Financing Rule and a revised GO 24-C that reflect current best practices and standards for financial transactions, reporting, and cash management. The key provisions of the Energy Utilities’ proposed Financing Rule, numbered paragraphs 1 through 4, are carried over to the Proposed

Decision almost unchanged, and the revisions listed in the Summary at page 2 of the Proposed Decision indicate an intention to revise GO 24-B in ways consistent with the Workshop Report’s recommendations. However, the list of exemptions included in the proposed Financing Rule does not fit neatly with the Rule’s four key paragraphs, and the proposed GO 24-C is inconsistent with the Summary’s description of it in important respects.

CWA proposes changes to the exemptions section of the proposed Financing Rule in order to streamline application of the new Rule. CWA also proposes a few clarifying revisions to the four key paragraphs of the new Rule. Finally, CWA proposes changes to GO 24-C to implement the intentions indicated in the Summary introduction to the Proposed Decision and to clarify when GO 24-C’s reporting requirements will apply.

II. CWA’s Proposed Revisions to the Utility Long-Term Debt Financing Rule

The Proposed Decision explains that while the new Financing Rule will allow a utility to choose the method by which it will issue debt, it includes requirements regarding Women, Minority, and Disabled Veteran Owned Business Enterprises (“WMDVBES”) and debt enhancements that should not apply to some types of utilities due to their size or the type of debt they issue. This is the basis for the exemption provisions included in the proposed Rule. PD, at 21.

A. The Initial Amount of the Small Issuance Exemption Should Be Set at No Less Than \$42 Million.

Of the grounds for exemption stated in the proposed Financing Rule, the one of greatest interest to CWA and its members is the exemption of bond issues of \$20 million or less, to be adjusted each year for changes in the Consumer Price Index (“CPI”). PD at 22 and Att. A, at 6, ¶2. As indicated in the Workshop Report, at 15, CWA urged that the

current exemption threshold of \$20 million, set in 1986, was outdated, and that the “small issuance exemption” should be increased to \$200 million. The Proposed Decision notes that the CPI has increased by approximately 107% from 1986 through 2011, “which would equate to an increase in the exemption [to] approximately \$42 million dollars.” However, the PD would retain the \$20 million baseline and apply the CPI only from that baseline. PD, at 21.

There is no evidence that there have been any unfortunate or negative effects from the \$20 million small issuance exemption that has been in effect since 1986. The Proposed Decision applies the CPI as an appropriate adjustment to that exemption amount on a going-forward basis. No reason appears why the CPI should not be applied as of the 1986 adoption of the \$20 million threshold. Thus, consistency dictates that the exemption threshold in the new Financing Rule be set no lower than \$42 million, subject to future adjustments each year by the percentage change in the CPI.

B. The Required Showing to Justify Any Exemption From the New Financing Rule Should Be Clarified.

The new Financing Rule would condition the granting of any exemption upon a “compelling showing by a utility in an application for financing authority.” PD, at 22 and Att. A, at 6. This condition appears more onerous than the Commission may intend. A “compelling showing” may be appropriate for an exemption for which an exercise of judgment is required – such as the first listed exemption, for debt issues for which competitive bidding is “not viable or available.” For the “small issuance” exemption – whether the threshold is \$20 million or \$42 million or some other figure – a “compelling showing” would appear to require only an averment that the requested authorization is for no more than the threshold amount.

Most of the proposed exemptions will not require qualitative judgments – a debt issuance either will qualify for the exemption or it will not. The only exemption for which a “compelling showing “ might properly be required is Exemption No.1, which refers to debt issues “for which competitive bidding are not viable or available, or due to the size of the issue.” Since the new Financing Rule no longer requires competitive bidding and since Exemption No. 2 specifically provides an exemption based on “the size of the issue,” there seems to be no need for Exemption No. 1, and CWA proposes to eliminate it.

With this change, CWA suggests that the introduction to the list of exemptions be revised to make clear that the “showing” the Rule requires is simply a showing that the terms of a particular exemption are met. To achieve this clarification, CWA proposes that the introductory clause to the list of exemptions be revised to read as follows (with the word “compelling” deleted and with additional wording in italics): “The exemptions listed below will only be granted upon a showing by a utility in an application for financing authority *that the terms of such exemption apply to the proposed debt issuance.*”

C. Minor Changes to the Financing Rule Are Appropriate to Help Avoid Unnecessary Issues and Disputes in Applying the New Rule.

CWA also suggests a few changes to the numbered paragraphs of the proposed Utility Long-Term Debt Financing Rule. These proposals track key aspects of CWA’s previously filed comments on the Energy Utilities’ Workshop Report and are intended to avoid the creation of unnecessary issues and disputes in the application of the new Rule. CWA’s proposals are as follow:

1) In the fourth line of Paragraph 1, insert the words, “the utility and its”, before the word, “ratepayers”. This proposed change would reflect the mutual benefit to the utility and its ratepayers of achieving low long-term financing costs.

2) In the first line of Paragraph 2, insert the phrase, “to the best of their ability”, before the word, “determine”. This proposed change would recognize the real-world limits on public utilities’ ability to control the terms of their debt financings.

3) In the second line of Sub-paragraph 3.c, delete the word, “legitimate”, before the term, “business judgment”, in order to avoid adding a value-laden qualifier, likely to generate disputes, to a standard contractual term.

III. CWA’s Proposed Revisions to General Order 24-B

The description of intended changes to GO 24-B in the summary introduction to the Proposed Decision reflects discussion at the February 9 workshop, the reporting of such discussion in the Energy Utilities’ Workshop Report, and the subsequently filed comments of the parties. But the terms of GO 24-C set forth in Attachment B to the Proposed Decision unfortunately fail to comport with those intentions in two important respects: the frequency of required reporting and the requirement of a separate bank account for financing proceeds.

A. Proposed GO 24-C Should Be Revised to Implement the Intentions Indicated in the Summary Introduction to the Proposed Decision.

The summary introduction to the Proposed Decision states that revisions to GO 24-B provide for the filing of GO 24-C reports “on an annual instead of a monthly basis” and for the “elimination of the requirement that a utility maintain a separate bank account to record securities proceeds.” PD, at 2. These changes to GO 24-B are responsive to proposals made at the workshop or included in the Workshop Report, but unfortunately

were not carried forward to the proposed GO 24-C itself. Instead, the new general order would require quarterly reporting in the first year and semi-annual reporting thereafter, and would continue to require that receipts and disbursements of funds derived from the sale of securities be charged or credited to a special, separate bank account. PD, Att. A, Draft GO 24-C, ¶¶I, II, and C.

The Energy Utilities' Workshop Report relates the statement by one of PG&E's representatives that PG&E's primary concern about GO 24-B was the requirement that utilities maintain a separate bank account for financing proceeds. As stated in the Workshop Report,

From PG&E's perspective, this requirement does not reflect current banking and liquidity practices and would lead to increased costs for ratepayers. PG&E's current internal controls and accounting systems can track the source and use of funds and can demonstrate that disbursements were consistent with Public Utilities Code Section 817 purposes.

Workshop Report, at 16. Another PG&E representative added that "cash is fungible," and

[U]tilities don't put a billion dollars into a bank account and let it sit. Typically, proceeds are used to repay commercial paper and new commercial paper is issued at the time funds are needed for purposes such as capital expenditures. This has proven to be far more cost-effective than maintaining the funds in a segregated account.

Id. at 17. The Workshop Report goes on to note Commissioner Simon's statement that "it is the goal of the Commission to focus on how to make the rule going-forward reflect current conditions and best practices." *Id.*

The provisions of the Summary introduction to the Proposed Decision and the proposed GO 24-C should be made consistent. CWA respectfully urges that this be accomplished by carrying the Commission's evident intentions, as indicated in the Summary and in the Workshop Report, over to the new GO 24-C by requiring no more

than annual reporting and by eliminating the unjustified and inefficient requirement that financing proceeds be sequestered in a separate bank account.

B. In Addition to Annual Reporting, GO 24-C Should Not Require Utilities to File Reports For Periods During Which No Reportable Financing Activity Occurred.

In its comments on the Energy Utilities' Workshop Report, CWA presented an alternative to annual reporting pursuant to GO 24-B. CWA proposed to excuse the filing of periodic reports for periods when no reportable financing activity occurred. CWA noted that the larger Class A water utilities typically conduct financings no more than once a year, and smaller Class A companies typically do so only once in every three to five years. Financings are even rarer for the much smaller Class B, C, and D water companies – all of which are obliged to report under the general order if they have any authorized securities outstanding. For water utilities to be required to file semi-annual reports of inactivity would be a waste of employee time, office materials, and postage for both the utilities and the Commission.

Accordingly, whether or not the Commission provides for annual GO 24-D reporting, CWA proposes that the phrase, “during which one or more reportable issuance, receipt, or disbursement has occurred,” be inserted after the word, “quarter”, in the second line of Paragraph I of GO 24-C, and that the phrase, “if during the preceding six months one or more reportable issuance, receipt, or disbursement has occurred,” be inserted after the word, “year”, in the third line of Paragraph II of GO 24-C. This minor revision will not eliminate any presently required reporting of financing activity, but will simply excuse the filing of “no activity” reports.

IV. Conclusion

CWA appreciates the attention that Commissioner Simon and ALJ Wilson have given to the concerns of the parties about the traditional Competitive Bidding Rule and the burdensome filing requirements of GO 24-B. CWA and its member utilities respectfully urge the Commission to approve the Proposed Decision subject to the changes proposed in these comments.

The attached Appendix A includes suggested revisions to the Proposed Decision's conclusions of law and to the proposed Financing Rule and GO 24-C consistent with these comments.

Respectfully submitted,

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APPENDIX A

Proposed Conclusions of Law and Revisions to the Proposed Financing Rule and Proposed General Order 24-C

Conclusions of Law

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4. Bond issues of \$~~20~~42 million or less, adjusted each year for the CPI should be exempt from the Financing Rule.

...

Attachment A: Financing Rule

...

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 of for the utility and its ratepayers.
2. Public utilities shall to the best of their ability determine the financing terms of their debt issues with due regard for their financial condition and requirements, and current and anticipated market conditions.
3. ...
 - a. ...
 - b. ...

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.

...

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 apply to the proposed debt issuance:

1. ~~Debt issues for which competitive bidding are not viable or available, or due to the size of the issue, are exempt.~~

~~2.~~—Bond issues of \$~~20~~42 million or less, adjusted each year for the CPI, are exempt from the Financing Rule. Therefore, the current baseline of \$~~20~~42 million in 2012 must be increased each year by the most recent CPI.

...

Attachment B: General Order 24-C

...

I. ~~For the first year after authorization of this General Order, o~~On or before 60 days following each calendar ~~quarter~~year during which one or more reportable issuance, receipt, or disbursement has occurred, the information required by Sections A and B in the preceding periods, 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.

~~H. For the second year after authorization of this General Order 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.~~

...

~~**C. FUNDS TO BE PLACED IN SPECIAL BANK ACCOUNT**~~

~~A separate bank account must be opened with a state or national bank, to which shall be charged or credited all receipts and disbursements of money derived from the sale of stocks, bonds, and other evidence of indebtedness.~~

...