

PROPOSED TEXT OF REGULATIONS

Title 4. Business Regulations

Division 11. ~~California Pollution Control Financing Authority~~Capital Programs and Climate Financing Authority

Article 12. Rate Reduction Bonds

§ 8130. Applicability.

This Article 12 shall apply to the Authority's review of the issuance of Rate Reduction Bonds pursuant to Section 6588.7 of the Government Code. ~~The Authority's review of the issuance of Rate Reduction Bonds shall not apply if the determinations of a Local Agency are subject to review by a ratepayer advocate or similar entity whose function is to provide public independent analysis of a Publicly Owned Utility's actions as they relate to water or wastewater rates.~~

Note: Authority cited: Sections 6588.7(b)(3) and 6588.7(b)(7), Government Code.

Reference: Sections 6588.7(b)(3) ~~and 6588.7(b)(9)~~, Government Code.

§ 8131. Definitions.

The following definitions shall govern construction of this Article 12.

- (a) "Application" means an application submitted by an Issuer Applicant to the Authority for review of its proposed Rate Reduction Bonds issuance.
- (b) "Authority" means the ~~California Pollution Control Financing Authority~~Capital Programs and Climate Financing Authority.
- (c) "Conservation or Reclamation Purposes" is defined in Section 6585, subdivision (d)₁ of the Government Code.
- (d) "Financing Costs" is defined in Section 6585, subdivision (g)₁ of the Government Code.
- (e) "Issuer Applicant" means an entity created pursuant to Article 1, Chapter 5, Division 7, Title 1 of the Government Code (commencing with Section 6500) whose financing activities are limited to financing or refinancing Utility Projects and projects for the use or benefit of public agencies providing public water or, wastewater, or electrical service, ~~agencies and which~~

applies to the Authority for review and approval of an issuance of Rate Reduction Bonds.

- (f) “Legislative Body” is defined in Section 6585, subdivision (i), of the Government Code.
- (g) “Local Agency” is defined in Section 6585, subdivision (j), of the Government Code.
- (h) “Local Agency Applicant” means a Local Agency that owns and operates a Publicly Owned Utility and which applies to an Issuer Applicant to finance or refinance costs of a Utility Project for the Publicly Owned Utility with the proceeds of Rate Reduction Bonds and whose senior lien unenhanced revenue bonds payable from revenues of the Publicly Owned Utility are, or upon issuance would be, rated not lower than Baa3 by Moody’s Investors Service, BBB- by Standard & Poor’s Ratings Services, or BBB- by Fitch Ratings, Inc., as evidenced by a report as described in Section 8134, subdivision (b)(3).
- (i) “Mandate” is defined in Section 6585, subdivision (k), of the Government Code.
- (j) “Mandating Entity” is defined in Section 6585, subdivision (l), of the Government Code.
- (k) “Publicly Owned Utility” is defined in Section 6585, subdivision (o), of the Government Code.
- (l) “Rate Reduction Bonds” mean bonds that are issued by an Issuer Applicant, the proceeds of which are used directly or indirectly to pay or reimburse a Local Agency or its Publicly Owned Utility for the payment of the costs of a Utility Project, to refund ~~rate reduction bonds~~ Rate Reduction Bonds, or to refinance water-~~or~~, wastewater, or electric revenue bonds of a Local Agency or Publicly Owned Utility issued to finance a Utility Project, ~~(6585(p))~~ and that are secured by a pledge of, and are payable from, Utility Project Property as provided in Government Code Section 6588.7.
- (m) “Utility Project” is defined in Section 6585, subdivision (r), of the Government Code.
- (n) “Utility Project Charge” is defined in Section 6585, subdivision (s), of the Government Code.
- (o) “Utility Project Property” is defined in Section 6585, subdivision (t), of the Government Code.

Note: Authority cited: Sections 6588.7(b)(3) and 6588.7(b)(7), Government Code.

Reference: Sections 6585 and 6588.7, Government Code.

§ 8132. Applications for Review.

The Authority will accept Applications from Issuer Applicants for review in a form approved by the Executive Director as prescribed in Section 8134. Application forms may be obtained from the Authority office located in the City of Sacramento. The Authority may also make Applications available on its website at <http://www.treasurer.ca.gov/cpcfa/>.

Note: Authority cited: Sections 6588.7(b)(3) and 6588.7(b)(7), Government Code.

Reference: Section 6588.7(b), Government Code.

§ 8133. Application Fees.

A check or a wire transfer in the amount of \$10,000 shall be made payable to “CPCFA Fund” and shall accompany each Application. The Authority may charge additional fees in an amount equal to the amount of any additional expenses incurred by the Authority in retaining an independent financial advisor to review the ~~application~~Application under circumstances involving the verification of any or all requirements ~~in~~of Section 8134. Such fees provide for review and processing of the Application and are nonrefundable.

Note: Authority cited: Section 6588.7(b)(3), Government Code.

Reference Section 6588.7(b)(3), Government Code.

§ 8134. Application Content.

The Application shall contain all of the following.

(a) Information concerning the Issuer Applicant:

(1) Name, address, phone number and email address of contact person for Issuer Applicant.

(2) Copies of the following documents:

~~(i)~~(A) Issuer Applicant’s joint exercise of powers agreement indicating the provisions therein which qualify the Issuer Applicant to issue Rate Reduction Bonds and certified by the chair, executive director, secretary or other authorized officer of the Issuer Applicant;

~~(ii)~~(B) Issuer Applicant’s by-laws, rules or other similar document certified by the chair, executive director, secretary or other authorized officer of the Issuer Applicant;
and

~~(iii)~~(C) Issuer Applicant's Notice of Agreement and any Notice of Amendment filed with the Secretary of State.

- (3) Certificate from the chair, executive director or other authorized officer of the Issuer Applicant to the effect that the Issuer Applicant's joint exercise of powers agreement limits the financing activities of the Issuer Applicant to financing or refinancing Utility Projects and projects for the use or benefit of public water~~-or~~, wastewater, or electrical service agencies.

(b) Information concerning the Local Agency Applicant:

- (1) Name, address, phone number and email address of contact person for Local Agency Applicant.
- (2) Evidence the Local Agency Applicant is, or owns and operates, a Publicly Owned Utility. Such evidence may consist of:

~~(i)~~(A) Certificate from the chair, mayor, chief executive officer, general manager, assistant general manager, executive director or other authorized officer of the Local Agency Applicant to the effect that the Local Agency Applicant is, or owns and operates, a Publicly Owned Utility furnishing water~~-or~~, wastewater, or electrical service to not less than 25,000 retail customers; or

~~(ii)~~(B) Copy of charter documents establishing that the utility is a Publicly Owned Utility owned and operated by, or is a department or other subdivision of, the Local Agency Applicant certified by the chair, mayor, chief executive officer, general manager, assistant general manager, executive director or other authorized officer of the Local Agency Applicant, as well as the certification of such officer to the effect that such Publicly Owned Utility is furnishing water~~-or~~, wastewater, or electrical service to not less than 25,000 retail customers.

- (3) Evidence that senior lien unenhanced revenue bonds payable from the revenues of the Publicly Owned Utility owned or operated by Local Agency Applicant are, or upon issuance would be, rated not lower than Baa3 by Moody's Investors Service, BBB- by Standard & Poor's Ratings Services, or BBB- by Fitch Ratings, Inc. Such evidence may consist of:

~~(i)~~(A) Current rating reports from one or more of the aforementioned rating agencies;

or

- ~~(ii)~~(B) A report of an independent investment banker or financial consultant concluding, based on an analysis of other Publicly Owned Utilities of comparable size, financial metrics, debt service coverage ratios, management experience and credit quality, that senior lien unenhanced bonds payable from the revenues of the Publicly Owned Utility upon issuance would be rated not lower than Baa3 by Moody's Investors Service, BBB- by Standard & Poor's Ratings Services, or BBB- by Fitch Ratings Inc.
- (4) Resolutions, ordinances or other official actions of the Legislative Body of the Local Agency Applicant, adopted at public meetings held with all proper notice and at which a quorum was present and acting throughout, certified by the chair, president or other presiding officer of such Legislative Body and evidencing the determination by the Legislative Body of the Local Agency Applicant that:
- ~~(i)~~(A) The project to be financed or refinanced with the proceeds of the sale of Rate Reduction Bonds is a Utility Project;
- ~~(ii)~~(B) The Local Agency Applicant is electing to finance or refinance costs of the Utility Project pursuant to Section 6588.7 of the Government Code and the Financing Costs associated with the financing or refinancing are to be paid from Utility Project Property, including the Utility Project Charge for the Rate Reduction Bonds issued for the Utility Project in accordance with Section 6588.7 of the Government Code; and
- ~~(iii)~~(C) Based on information available to, and projections used by, the Legislative Body of the Local Agency Applicant, the rates of the Publicly Owned Utility plus the Utility Project Charge resulting from the financing or refinancing of the Utility Project with Rate Reduction Bonds are expected to be lower than the rates of the Publicly Owned Utility if the Utility Project was financed or refinanced with bonds payable from the revenues of the Publicly Owned Utility.
- ~~(iv)~~(D) A Local Agency Applicant with a Public Utility having 500,000 or more retail customers may, in lieu of providing the evidence described in paragraph ~~(iii)~~(C), provide evidence that the use of Rate Reduction Bonds to finance or refinance Utility Projects provides substantial benefits to the Public Utility. These benefits may include, but are not limited to, lower interest rates on Rate Reduction

Bonds and more favorable capitalization and debt service coverage ratio treatment that results in gross or present value lifetime savings for the Public Utility. (6588.7(c)(4))

(c) Information concerning the Utility Project:

- (1) In support of the conclusion that the Project to be financed or refinanced with the proceeds of the sale of Rate Reduction Bonds is a Utility Project, the ~~reports and materials~~ referred to in Sections 8134(b)(5)(i), (ii), and (iii)(4) must establish that:

~~(i)~~(A) The items to be financed or refinanced with the proceeds of the sale of Rate Reduction Bonds consist of the acquisition, construction, installation, retrofitting, rebuilding, or other addition to, or improvement of, any equipment, device, structure, improvement, process, facility, technology, rights or property, located either within or outside of, the State of California, and that is used, or to be used, in connection with the operations of a Publicly Owned Utility for Conservation ~~or~~, Reclamation, or Electrical Service Purposes or in response to a Mandate; and

~~(ii)~~(B) The use of the items to be financed with the proceeds of the sale of Rate Reduction Bonds will either:

~~a-1.~~ Be designed to reduce the amount of potable water to be supplied by a Publicly Owned Utility; ~~or~~ reduce the amount of water imported by a Publicly Owned Utility; ~~or~~ facilitate the use of wastewater by a Publicly Owned Utility for conservation purposes, including, without limitation, storm water capture and treatment, water and wastewater recycling, development of local groundwater resources, groundwater recharging, and water reclamation; or enable or provide for the generation, transmission, or distribution of electrical service; or

~~b-2.~~ Respond to a requirement, imposed by a Mandating Entity by any means, including without limitation, a statute, rule, regulation, an administrative or judicial order, a building, operating, or licensing requirement or condition, or an agreement with, or license or permit from, the Mandating Entity, on a facility of a Publicly Owned Utility or a facility operated in whole or in part for the benefit of a Publicly Owned Utility, or

on the operations of a Publicly Owned Utility, or on the water or wastewater pumped, acquired, supplied, or treated by the Publicly Owned Utility, or on the electricity generated, acquired, or supplied by the Publicly Owned Utility; or-

3. Serve any other utility purpose designated a “utility project” by a Publicly Owned Utility.

(d) Information concerning the projected Financing Costs for the proposed Rate Reduction Bond financing:

(1) The Application shall provide the Financing Costs projected to be incurred in connection with the proposed Rate Reduction Bond financing, including:

~~(i)~~(A) Anticipated Rate Reduction Bond Scale

~~a.~~1. Not to exceed principal amount

~~b.~~2. Maturities

~~c.~~3. Interest rates

~~1.~~a. Fixed or variable

~~2.~~b. Current interest or capital appreciation bonds

~~d.~~4. Redemption provisions

~~(ii)~~(B) Anticipated Professional Fees

~~a.~~1. Bond counsel fee

~~b.~~2. Financial advisor fee

~~c.~~3. Underwriters counsel fee

~~d.~~4. Trustee counsel fee

~~e.~~5. Accounting fee

~~f.~~6. Engineering fee

~~g.~~7. Other legal fees

~~h.~~8. Other consultants fees

~~(iii)~~(C) Issuance Fees

~~a.~~1. Underwriting or placement fees

~~b.~~2. Trustee fee

~~c.~~3. Rating agency fees

~~(iv)~~(D) Credit or Liquidity Enhancement Fees

- ~~a.~~1. Bond insurance fee
- ~~b.~~2. Bank letter of credit or standby bond purchase agreement fees
- ~~c.~~3. Debt service reserve amount or surety fees
- ~~d.~~4. Other credit or liquidity enhancement fees

~~(v)~~(E) Servicing and Administrative fees

- ~~a.~~1. Publicly Owned Utility servicing fee (bill and collect the Utility Project Charge)
- ~~b.~~2. Annual trustee fees
- ~~c.~~3. Interest rate swap
- ~~d.~~4. Other servicing and administrative fees

- (2) Certificate from an independent financial advisor to the effect that based on information available to them, the projected Financing Costs fall within the normal range of financing costs for comparable types of debt issuance.

Note: Authority cited: Sections 6588.7(b)(3) and 6588.7(b)(7) , Government Code.

Reference: Sections 6585 and 6588.7, Government Code.

§ 8135. Authority Action.

- (a) Within 10 business days of receipt of the Application, the Authority will advise the Issuer Applicant in writing whether the Application is complete and, if not, what additional information or documentation is required.
- (b) Within 7 business days of submission of the additional information, the Authority will advise the Issuer Applicant in writing whether the Application is complete and, if not, ~~describing~~ what additional information or documentation is required.
- (c) The Authority shall take action on any completed Application no later than the next meeting of the Authority that occurs after at least 60 days following determination by the Authority that the Application is complete. During said 60 days, the Authority may request supplemental information in support of the Authority's review of an Application.
- (d) An Issuer Applicant can withdraw an Application at any time without penalty or prejudice;₁

however the ~~application fees~~ paid pursuant to Section 8133 ~~is~~are not refundable. An Issuer Applicant can resubmit a withdrawn Application at any time, but any previous fees will not apply to a resubmitted Application.

Note: Authority cited: Sections 6588.7(b)(3), 6588.7(b)(5) and 6588.7(b)(7), Government Code.

Reference: Section 6588.7(b), Government Code.

§ 8136. Application Approval.

- (a) The Authority shall determine that an issue of Rate Reduction Bonds is qualified for issuance under 6588.7 of the Government Code if the Application establishes to the satisfaction of Authority that:
 - (1) The project to be financed with the proceeds of the sale of Rate Reduction Bonds is a Utility Project;
 - (2) The Local Agency Applicant is electing to finance costs of the Utility Project pursuant to Section 6588.7 of the Government Code and the Financing Costs associated with the financing are to be paid from Utility Project Property, including the Utility Project Charge for the Rate Reduction Bonds issued for the Utility Project in accordance with Section 6588.7 of the Government Code;
 - (3) Based on information available to, and projections used by, the ~~legislative body~~Legislative Body of the Local Agency Applicant, the rates of the Publicly Owned Utility plus the Utility Project Charge resulting from the financing of the Utility Project with Rate Reduction Bonds are expected to be lower than the rates of the Publicly Owned Utility if the Utility Project was financed with bonds payable from the revenues of the Publicly Owned Utility; and
 - (4) The projected Financing Costs fall within the normal range of financing costs for comparable types of debt issuance.
- (b) The Authority shall provide an explanation in writing for any refusal to qualify a proposed issuance but shall not alter or modify any term or condition related to the Utility Project Property.

Note: Authority cited: Sections 6588.7(b)(2), 6588.7(b)(3), 6588.7(b)(4) and 6588.7(b)(7), Government Code.

Reference: Section 6588.7(b), Government Code.

§ 8137. Reports.

- (a) Each Issuer Applicant whose Application is approved shall provide to the Authority, within 10 business days following issuance of any Rate Reduction Bonds, the following information:
- (1) ~~Principal~~The principal amount of Rate Reduction Bonds sold.
 - (2) The maturity dates of Rate Reduction Bonds sold.
 - (3) The interest rate or rates on the Rate Reduction Bonds sold and, if such Rate Reduction Bonds bear interest at a variable rate, how, by whom and how often such rate is determined.
 - (4) The credit ratings assigned to such Rate Reduction Bonds by nationally recognized securities rating organizations.
 - (5) Whether the bonds were sold by competitive bid or negotiated sale.
 - (6) ~~Comparison~~A comparison of interest rates and transactional costs on the Rate Reduction Bonds with other comparable types of debt occurring near the same time.

The Authority shall provide a form for such reports.

- (b) ~~Annually no later than March 31, the Authority shall submit to the Legislature a report of its activities pursuant to Section 6588.7(b) of the Government Code for the preceding calendar year ended December 31.~~ The Authority shall require information from Issuer Applicants to ensure that the necessary data is available to complete ~~this report~~the report required by section 6588.7, subdivision (b), of the Government Code. The report shall include all of the following:
- (1) Listing of Applications received.
 - (2) Listing of proposed issuances qualified under the provisions of Section 6588.7, subdivision (b), of the Government Code.
 - (3) Report of Rate Reduction Bonds sold, the interest rates on the Rate Reduction Bonds, whether the Rate Reduction Bond sales were pursuant to public bid or were negotiated, and any rating given the Rate Reduction Bonds by a nationally recognized securities

rating organization.

- (4) A specification of proposed issuances of Rate Reduction Bonds qualified but not yet issued.
 - (5) A comparison of the interest rates and transactional costs on issuances of Rate Reduction Bonds qualified under Section 6588.7, subdivision (b), of the Government Code with interest rates on comparable types of debt issuance occurring at or near the same time as the Rate Reduction Bond issuances.
- (c) The Executive Director shall be authorized to seek the information required in sections (a)(1) through (56) from the Issuer Applicant concerning any Application submitted to the Authority for review.

Note: Authority cited: Sections 6588.7(b)(3), 6588.7(b)(7) and 6588.7(b)(8), Government Code.

Reference: Section 6588.7(b)(8), Government Code.