

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

**FILED**9-24-14
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September 24, 2014

Agenda ID #13329
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 11-04-013:

This is the proposed decision of Administrative Law Judge Wilson. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's November 6, 2014, Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ MARYAM EBKE for
Timothy J. Sullivan
Chief Administrative Law Judge (Acting)

TJS:dc3

Attachment

Decision PROPOSED DECISION OF ALJ WILSON (Mailed 9/24/2014)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of James L. and Marianne S. Orvis to sell, and Aspen Forest Investment Co., LLC, to buy, Five Thousand (5,000) Shares of the Common Stock of the water system known as Lake Alpine Water Company, Inc. (U148WTD) Located in Alpine County, California.	Application 11-04-013 (Filed April 15, 2011)
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**DECISION GRANTING COMPENSATION TO THE RATEPAYERS OF LAKE
ALPINE WATER COMPANY FOR SUBSTANTIAL CONTRIBUTION TO
DECISION 13-03-007**

Intervenor: Ratepayers of Lake Alpine Water Company (RLAWC)	For contribution to Decision (D.) D.13-03-007
Claimed: \$209,854.00	Awarded (\$): \$42,517.07 (reduced 79.7%)
Assigned Commissioner: Michael Picker	Assigned ALJ: Seaneen M. Wilson

PART I: PROCEDURAL ISSUES

A. Brief description of Decision:	As described by the RLAWC, "D.13-03-007 finds that Aspen Forest Investment Company ("Aspen") violated Public Utilities Code Section 854, by failing to file an application for advance approval of its acquisition of a controlling interest in Lake Alpine Water Company ("LAWC") in 2003. The Decision voids Aspen's stock transaction back to the date of the purchase in 2003. The Decision approves the stock purchase prospectively but places responsibility on Aspen for any negative consequences of the voided transaction and orders a second penalty phase to determine whether Aspen should be subject to penalties, and if so, the amount of the penalties." See Comment #1 below.
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B. Intervenor must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:

	Intervenor	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference (PHC):	July 8, 2011	Verified
2. Other specified date for NOI:	N/A	Verified
3. Date NOI filed:	August 8, 2011	
4. Was the NOI timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	A.11-04-013	Verified
6. Date of ALJ ruling:	August 18, 2011	Verified
7. Based on another CPUC determination (specify):		
8. Has the Intervenor demonstrated customer or customer-related status?		Yes, see Comment #1
Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	A.11-04-013	Verified
10. Date of ALJ ruling:	August 18, 2011	Verified
11. Based on another CPUC determination (specify):		
12. Has the Intervenor demonstrated significant financial hardship?		Yes, see Comment #1
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.13-03-007	Verified
14. Date of issuance of Final Order or Decision:	March 29, 2013	Verified
15. File date of compensation request:	May 28, 2013	Verified
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I:

#	Intervenor’s Comments	CPUC Discussion
1		On August 30, 2011, the assigned Administrative Law Judge (ALJ) issued a Ruling that affirmed her determination that RLAWC is eligible to claim intervenor compensation. In that Ruling, she appropriately cautioned RLAWC that the \$55,540 estimated intervenor compensation budget “is a very large budget relative to the annual revenues of LAWC, as well as the customer base. I remind the parties that

		when a claim of intervenor compensation is made subsequent to a decision being issued, the claimant must prove that the expenses it has incurred equate to the benefit of its contribution to the proceeding. Even if a party is eligible to make a claim and a substantial contribution has been made, the claimant may not receive the entire amount it request.” (ALJ Ruling of August 30, 2011 at 2).
2		In addition, based on the decision summary, we find that the intervenor somewhat mischaracterized the decision. D.13-03-007, finds that the stock transaction is conditionally approved under Pub. Util. Code § 854 and further determines that purchaser must obtain the requisite permits from the California Department of Public Health and make a compliance filing (since completed) to lift the conditions imposed. It is correct that the transaction is void between 2003 and the date of the decision, that the applications are responsible for any negative consequences thereto, and that there is a second phase of this proceeding to determine if a fine should be imposed on applicants.

PART II: SUBSTANTIAL CONTRIBUTION

A. Did the Intervenor substantially contribute to the final decision (see § 1802(i), § 1803(a), and D.98-04-059).

Intervenor’s Claimed Contribution(s)	Specific References to Intervenor’s Claimed Contribution(s)	CPUC Discussion
1. RLAWC member Gloria Dralla alerted Commission staff that Applicant Aspen Forest Investment Company ("Aspen") had not filed application as required by Cal. Pub. Util. Code Section 854 for approval of its 2003 acquisition half of Lake Alpine Water Company ("LAWC"). RLAWC's notification was a direct catalyst for the Commission staff to direct Aspen to file an application for approval of its acquisition of half of LAWC.	D.13-03-007, at p. 3 ("... Applicants) did not file an application for authority for the February 2003 transaction based on their belief that none was required pursuant to Public Utilities (Pub. Util.) Code §§ 851 through 854. However, based on Commission staff recommendation, Applicants ultimately filed the current application on April 15, 2011."). RLAWC Opening Brief, at p.76. Direct Testimony of Gloria Dralla, at p. 11-12 (Q&A 20-22) (A20 "I asked to review the application TBH had filed in 2003 when it purchased half of LAWC. Much to our surprise, the staff person could not locate any such application.") (A.21"Beginning in the	As set forth in D.13-03-007, Staff recommended that Applicants file a request for the requisite authority.

Intervenor’s Claimed Contribution(s)	Specific References to Intervenor’s Claimed Contribution(s)	CPUC Discussion
	<p>Spring of 2010, I corresponded with the Water Division staff and for several months and asked them to look into the matter to learn the details of the transaction, including the purchase price for LAWC which should be public information.")</p> <p>Direct Testimony of Charles Toeniskoetter, at p. 41-42 (Q&A 95-96), April 4, 2012 ("A95. In mid-2010, I received a number of e-mails from the Commission staff asking about the 2003 stock sale. Apparently these e-mails resulted from Ms. Dralla's inquiries to the staff regarding whether an application had been filed in connection with the 2003 stock sale.) (A96. "... My review of the e-mail correspondence between us and the staff (provided to RLAWC as part of a response to a data request) shows that while we were stating why we thought no application was required, Ms. Dralla was stating a contrary view to the staff (which is her right).")</p>	
<p>2. Aspen would not have filed an application for approval of its 2003 acquisition of half o Lake Alpine Water company as required by Section 854, but for RLAWC member Ms. Dralla’s inquiries to Commission staff. Commission staff directed Aspen to file an application for approval of its purchase of half of LAWC.</p>	<p>D.13-03-007, at p. 3 ("... Applicants) did not file an application for authority for the February 2003 transaction based on their belief that none was required pursuant to Public Utilities (Pub. Util.) Code §§ 851 through 854. However, based on Commission staff recommendation, Applicants ultimately filed the current application on April 15, 2011.").</p> <p>Direct Testimony of Gloria Dralla, at p. 11- 12 (Q&A 21). RLAWC Opening Brief, at p. 76 (citing Direct Testimony of Charles Toeniskoetter at p. 38 (Q&A 86 "... I remain of the view today that no</p>	<p>While Dralla appears to have had some influence in the Staff looking into this matter, Staff makes its own independent assessment as to whether or not a utility is complying with statutory requirements and our Rules of</p>

Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed Contribution(s)	CPUC Discussion
	<p>application was required.")</p> <p>See also testimony responding to RLAWC Direct Testimony:</p> <p>Direct Testimony of Charles Toeniskoetter, at p. 41-42 (Q&A 97-98), April 4, 2012.</p> <p>Direct Testimony of Charles Toeniskoetter, managing member of Aspen, at p. 55-56 (Q&A 140), April 4, 2012 ("While we filed A.11-04-013 at the urging of the CPUC staff, I did not believe then and do not believe now that TBH/Aspen acquired control of LAWC by buying Jim and Marianne Orvis' shares in 2003.")</p>	Practice and Procedure.
<p>3. RLAWC presented evidence and legal arguments that Aspen's acquisition of LAWC was subject to Section 854(a) and therefore Aspen should have filed an application for advance approval from the Commission. The Commission agreed with this analysis.</p>	<p>D.13-03-007, at p. 8-15 ("The transfer of this amount of common stock, therefore, constitutes a change of control pursuant to Pub. Util. Code § 854. Accordingly, we conclude that this application is subject to Pub. Util. Code § 854(a). ")</p> <p>RLAWC Opening Brief, at p. 8-14, 17-24.</p>	Yes.
<p>4. RLAWC presented evidence and legal arguments that Aspen's application for approval of its unauthorized stock purchase should not be exempted from Section 854(a) pursuant to Section 853. The Commission agreed with this analysis.</p>	<p>D.13-03-007, at p. 6 ("Pursuant to Pub. Util. Code § 853, the Commission may exempt a public utility from Public Utilities Code, as long as such transaction is in the public interest. The Commission does not exempt this transaction.</p> <p>RLAWC Opening Brief, at p.11-12.</p> <p>RLAWC Reply Brief, at p. 9-10.</p>	Yes.
<p>5. RLAWC presented evidence</p>	<p>D.13-03-007, at p. 7-10 ("In the current</p>	Yes.

Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed Contribution(s)	CPUC Discussion
and legal arguments that Aspen's acquisition of fifty percent of LAWC stock constituted a change in control. The Commission agreed and clarified that its standard for reviewing Section 854 transactions is that 50 percent ownership alone is sufficient to constitute control because it provides each shareholder block the ability to block one another.	case, a 50% split in ownership of LAWC's common stock means that either party is potentially in control, i.e., can create a stalemate. The transfer of this amount of common stock, therefore, constitutes a change of control pursuant to Pub. Util. Code § 854. Accordingly, we conclude that this application is subject to Pub. Util. Code § 854(a). ") RLAWC Opening Brief, at p. 13, 19-20.	
6. RLAWC presented evidence and legal arguments that the power to control (as set forth in the California Corporations Code), rather than actual exercise of control, is the correct standard for determining whether Aspen acquired control of LAWC. The Commission agreed with this analysis and affirmed that the standard it applies under Section 854 to determine whether a transfer of control has occurred is the purchaser's power to control the utility, not the actual exercise of control.	D.13-03-007, at p.8-10 ("We also look to the California Corporations Code § 160 for guidance, which states in part "a) except as provided in subdivision (b), "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a corporation." ...". As discussed above, the question of control concerns the power to direct actions.). (Emphasis in original) RLAWC Opening Brief, at p. 13-14. RLAWC Reply Brief, at p. 10-11.	Yes.
7. RLAWC presented evidenced and legal arguments that Aspen exercised actual control over LAWC because it controlled the supposedly independent fifth, tie-breaker director. RLAWC's protest lead to the disclosure to the Commission that Mr. Toeniskoetter is a part owner of the local ski area and the tie-breaker director is employed at the ski area. RLAWC also obtained and presented a sworn admission previously unavailable to either the Orvis directors or the	D.13-03-007, at p.7-10. RLAWC Opening Brief, at p. 13-14, 24-37.	No. RLAWC did not make a substantial contribution on this point. The decision reasoned that: "To the contrary, the question of transfer of control does not turn on the individuals who compromise the Board at any

Intervenor’s Claimed Contribution(s)	Specific References to Intervenor’s Claimed Contribution(s)	CPUC Discussion
<p>Commission that the fifth director knowingly and intentionally used his position as president of the Bear Valley sewer district to write an unauthorized letter on official letterhead that mislead Alpine County into approving an Elift for Mr. Toeniskoetter's real estate development project connected to the ski area. The Commission took this evidence into account but ultimately held that it wasn't necessary to determine whether Aspen controlled the board (through the tie-breaker director) due to its analysis that the purchase of 50 percent of the stock, alone, was sufficient to transfer control, and therefore Section 854 is applicable.</p>		<p>one point in time.” D.13-03-007 at 9.</p>
<p>8. RLAWC presented evidence and legal arguments that Aspen acquired control over LAWC despite the continuity of some Orvis management after the acquisition of half of LAWC, in part because the Aspen directors and the fifth director were sole members of a compensation committee created immediately after Aspen's acquisition of half of LAWC through which the Aspen directors controlled the Orvis manager's salaries and benefits. The Commission agreed with the analysis that continuity of managers is not determinative of whether a transfer of control has occurred that triggers Section 854 requirements.</p>	<p>D.13-03-007, at p.9-10 ("We do not agree that the continuity in the day-to-day operation of a corporation is determinative of whether a stock transfer is a change in control.")</p> <p>RLAWC Opening Brief, at p. 38-39. RLAWC Reply Brief, at p.11.</p>	<p>No. RLAWC did not make a substantial contribution on this point.</p>

Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed Contribution(s)	CPUC Discussion
<p>9. RLAWC presented legal argument the 50/50 ownership split created by Aspen's unauthorized acquisition of half of LAWC created a stalemate, in that either of the two equal shareholder groups could block the proposals of the other. The Commission agreed with this argument and clarified that its standard of review for Section 854 is that 50 percent ownership alone is sufficient for acquisition of control.</p>	<p>D.13-03-007, at p. 9 ("As discussed above, the question of control concerns the power to direct actions. Accordingly, it is not necessary for us to determine whether the fifth Board member favors Aspen or not. It is only necessary to determine whether Aspen has the power to direct — or, for example, in the alternative -- to discharge the fifth Board member. As discussed previously, Aspen's acquisition of 50% of the common shares conferred this control.</p> <p>RLAWC Opening Brief, at p.19-24. RLAWC Reply Brief, at p.19. RLAWC Opening Comments on Proposed Decision, at p. 3,4, 9.</p>	<p>No. RLAWC did not make a substantial contribution on this point. RLAWC emphasized control, rather than stalemate.</p>
<p>10. RLAWC presented evidence and legal arguments that Aspen's application for approval of its unauthorized stock purchase should not be corrected nunc pro tunc. The Commission agreed with this analysis.</p>	<p>D.13-03-007, at p. 19-20 ("We deny this Application to the extent it requests nunc pro tunc authority under Pub. Util. Code §854(a). The purpose of Pub. Util. Code § 854(a) is to enable the Commission to review a proposed acquisition, <i>before it takes place</i>, in order to take such action as the public interest may require.¹ Granting this application on a nunc pro tunc, or retroactive basis, would thwart the purpose of Pub. Util. Code § 854(a). "). D.13-03-007, at p. 19.</p> <p>RLAWC Opening Brief, at p. 12.</p>	<p>Yes.</p>
<p>11. RLAWC presented evidence and legal arguments that Aspen's</p>	<p>D.13-03-007, at p. 3,19,20,28,38 ("Since we do not grant retroactive authority,</p>	<p>Yes, but the decision</p>

¹ D.99-02-061, 1999 Cal. PUC LEXIS 56 *12; D.98-07-015, 1998 Cal. PUC LEXIS 526 *7; D.98-02-005, 1998 Cal. PUC LEXIS 320 *8; D.97-12-086, 1997 Cal. PUC LEXIS 1168 *8; and San Jose Water Co. (1916) 10 CRC 56, 63.

Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed Contribution(s)	CPUC Discussion
unauthorized purchase of half of LAWC should be voided. The Commission agreed with this analysis.	Aspen's acquisition of 50% of LAWC's common stock is void under § 854(a) for the period of time prior to the effective date of this decision. .") D.13-03-007, at p. 19, 20. RLAWC Opening Brief, at p. v, 8-9, 40, 71, 93, 100. RLAWC Reply Brief, at p.1, 5, 6.	determined that the transaction was authorized from the effective date of the decision.
12. RLAWC presented legal arguments that if Aspen's purchase of half of LAWC were voided, Aspen should be responsible for any adverse consequences of the voided transaction. The Commission agreed with this analysis.	D.13-03-007, at p.19-20 ("The Applicants are at risk for any adverse consequences that may result from their having completed the transfer without Commission authority.") D.13-03-007, at p. 19, 20. RLAWC Opening Brief, at p. 12. RLAWC Reply Brief, at p. 6	Yes.
13. RLAWC presented legal arguments and evidence requesting the Commission to fine Aspen for its unauthorized acquisition of control of LAWC. RLAWC's argument prompted the Commission to open a second phase of this proceeding to consider whether to fine Aspen and the appropriate amount of such fine.	D.13-03-007, at p. 21-22 ("As Applicants violated Pub. Util. Code § 854(a), we must determine if a fine is applicable to this violation. In order to receive and consider evidence regarding this issue, we direct the assigned Administrative Law Judge (AU) to open a second phase of the current application..") RLAWC Opening Brief, at p. vi recommending fine for Aspen's unauthorized purchase of half of LAWC.	No. This argument is not applicable to this phase of the proceeding.
14. RLAWC presented evidence that Aspen's managing partner Mr. Toeniskoetter engaged in improper self-dealing by awarding a management contract	D.13-03-007, at p. 17 ("... fault for not putting this contract out for bid is shared by both Aspen and Bruce Orvis, Sr. Since both Aspen and an Orvis Family member were involved in this contract,	No. The decision determined that the construction of a new plant was

Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed Contribution(s)	CPUC Discussion
<p>to his partner in Aspen, Mr. Breeding, to manage the construction of LAWC's new water treatment plant. The Commission agreed that awarding the contract to Mr. Breeding rather than using competitive bidding (as specified in Resolution 4480) was self-dealing, but held that Mr. Toeniskoetter was only partly to blame for such self-dealing.</p>	<p>and the contract was discussed at LAWC Board meetings, this lack of putting a contract out for bid does not support a claim of self-dealing by Toeniskoetter alone.") RLAWC Opening Brief, at p. 5, 58, 67-69, 79-80.</p>	<p>required and had been addressed by Previous resolutions.</p>
<p>15. RLAWC presented evidence that Mr. Toeniskoetter controlled LAWC's finances and violated state law by personally arranging a long-term 15 month and then a 50 year) loan without seeking Commission approval as required in Section 823. Further, RLAWC presented evidence that Mr. Toeniskoetter acted without board approval and incorrectly stated that he had a board resolution to obtain a \$300,000 line of credit in the name of LAWC. The evidence showed that the shareholder meeting at which the resolution was supposedly approved did not exist and the bank vice president sent a form resolution for LAWC's secretary to sign a day after Mr. Toeniskoetter had already executed the document for the line of credit. The Commission considered this evidence but determined that the board gave retroactive approval for the long term loans and the Commission corrected the violation by voiding the loan and requiring Mr. Toeniskoetter to replace it with a</p>	<p>D.13-03-007, at p12. RLAWC Opening Brief, at p.69-71, 81-83. RLAWC Reply Brief, at p11-12. and Exhibit 1.</p>	<p>No. This argument was specifically rejected by the Commission. In fact, the Commission determined that the construction of a new water treatment plant, acquisition of water rights, various loans, and treatment of loans were all required and had been addressed by previous Commission resolutions.</p>

Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed Contribution(s)	CPUC Discussion
loan authorized by the Commission.		
16. RLA WC presented evidence that Aspen's business philosophy was to keep the rate base high, and therefore used its control of the board to approve rapid, large capital expenditures, many of which (e.g. meters and water rights) benefitted anticipated customers to be served by Mr. Toeniskoetter's future real estate development, not existing ratepayers. Further, RLAWC presented evidence that Mr. Toeniskoetter's personally worked on a general rate case in which the cost of an enlarged water tank was overstated because LAWC was reimbursed for more than 80 percent of the cost of the tank by a third party, yet the full cost of the tank was put into the rate case. The Commission considered this evidence but determined that the rates were approved by the Commission.	D.13-03-007, at p. 11, 15. RLAWC Opening Brief, at p. 40-53. RLAWC Reply Brief, at p. 15.	No. This argument was specifically rejected by the Commission. In fact, the Commission determined that the construction of a new water treatment plant, acquisition of water rights, various loans, and treatment of loans were all required and had been addressed by previous Commission resolutions.
17. RLAWC presented evidence that water quality has declined since Aspen acquired half of LAWC. The Commission cited this evidence but determined that the number of complaints about water quality were sufficiently low that it did not prove Aspen's management was deficient.	D 13-03-007, at p. 13-14 ("The record of this proceeding therefore contains "complaints" regarding water and service quality by approximately 4% of the customers of LAWC. This represents a very small percentage of the total customers of LAWC. ").	No. This argument was specifically rejected by the Commission.
18. RLAWC presented testimony of four witnesses and cross- examined Aspen's two witnesses to create evidentiary record on Issues 1-17.		Yes, but we have made adjustments as discussed below. RLAWC should be compensated only

Intervenor’s Claimed Contribution(s)	Specific References to Intervenor’s Claimed Contribution(s)	CPUC Discussion
		for its work on Pub. Util. Code § 854 (a).
19. RLAWC prepared briefs, comments on the Proposed Decision and engaged in <i>ex parte</i> meetings with Commissioner’s advisors on Issues 1-17.		Yes, but we have made adjustments as discussed below. RLAWC should be compensated only for its work on Pub. Util. Code § 854 (a).

B. Duplication of Effort (§ 1801.3(f) and § 1802.5):

	Intervenor’s Assertion	CPUC Discussion
a. Was the Office of Ratepayer Advocates (ORA) a party to the proceeding?²	No	Verified
b. Were there other parties to the proceeding with positions similar to yours?	Yes	Verified
c. If so, provide name of other parties: Bruce and Paula Orvis		Verified
<p>d. Intervenor’s claim of non-duplication:</p> <p>RLAWC coordinated with Bruce and Paula Orvis continuously and extensively via phone calls, email correspondence and in-person meetings from the pre-hearing conference through hearings, briefing and comments on the Proposed Decision. In order to effectively exchange information and avoid duplication, RLAWC entered into a Joint Defense Agreement with Bruce and Paula Orvis. While there was a common interest between RLAWC and Bruce and Paula Orvis in opposing Aspen's application for approval of its unauthorized purchase of half of LAWC, there were also differences in interest. RLAWC is a grass roots association representing ratepayers' interests. Bruce and Paula Orvis are shareholders and directors of Lake Alpine Water Company and therefore focused on the effect on shareholders of the unapproved acquisition of LAWC by Aspen, including the dual representation of LAWC and Aspen by the same counsel, which the Orvis’ asserted was an un-waived conflict of interest. Bruce</p>		Verified

² The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013: public resources), which was approved by the Governor on September 26, 2013.

<p>and Paula Orvis appeared <i>pro se</i> until the hearing, when they retained counsel for the hearing. The Orvises did not conduct discovery; RLAWC did so. RLAWC coordinated with the Orvises regarding topics in their testimony to ensure there was no duplication. Once the Orvises retained counsel for the hearing, RLAWC coordinated on topics for cross examination and shared cross examination time. RLAWC took the lead and performed the substantial majority of the work on all joint pleadings prior to Bruce and Paula obtaining counsel for the hearing, and on all post hearing briefs, as Bruce and Paula Orvis' counsel was new to the proceeding and the record was voluminous.</p>	
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C. Additional Comments on Part II :

#	Intervenor’s Comment	CPUC Discussion
<p>A.1 – A.19</p>	<p>In this proceeding RLAWC identified concerns and presented A.19 "voluminous" evidence that Aspen's acquisition of half of LAWC was not in the public interest. The Commission treated all RLAWC's evidence regarding Aspen's purchase and management of LAWC as relevant and instructive and it was introduced into the record. (D.13-03-007, at p. 26- 27). Based on RLAWC's evidence, the Commission agreed that there were management failings and voided Aspen's stock purchase (D.13-03-007, at p. 11). However, the Commission authorized Aspen's purchase of half of LAWC prospectively despite Aspen's management failings and violations. The Decision concluded that Aspen's errors were not attributable solely to Aspen and did not outweigh Aspen's business experience and financial resources as positive factors in allowing Aspen to retain its half ownership of LAWC prospectively. (D.13-03-007, at p. 21 "Aspen has the experience, ability, and financial resources to own 50% of the common stock in LAWC.") Further, the Commission has never required a purchaser violating Section 854 to divest itself of the acquisition of a controlling interest in the utility.</p> <p>The standard for an award of intervenor compensation is whether RLAWC made a substantial contribution to the Commission's</p>	<p>We do not agree with this representation as we discuss below.</p>

<p>decision, not whether RLAWC prevailed on a particular issue. A finding of substantial contribution is based on "whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward" by the party requesting intervenor compensation. (D.12-11-049, at p.____; <i>see</i> also § 1802(i).) For example, the Commission recognized that it "may benefit from an intervenor's participation even where the Commission did not adopt any of the intervenor's positions or recommendations." (D.08-04-004, in A.06-11-007, pages 5-6). In that case TURN's opposition focused on the need for Southern California Edison's contract with Long Beach Generation and the overall cost effectiveness of the resource. The Commission stated that " The opposition presented by TURN and other intervenors gave us important information regarding all issues that needed to be considered in deciding whether to approve SCE's application. As a result, we were able to fully consider the consequences of adopting or rejecting the LBG PPA. Our ability to thoroughly analyze and consider all aspects of the proposed PPA would not have been possible without TURN's participation." (<i>Id.</i> ,at 6.) On this basis the Commission found that TURN had made a substantial contribution even though its positions were not adopted, and awarded TURN intervenor compensation for all of the hours devoted to the proceeding that it requested.</p> <p>The Commission reached a similar conclusion in D.09-04-027, awarding intervenor compensation for TURN's efforts in the SCE AMI proceeding (A.07-07-026). There the Commission found TURN to have made a substantial contribution even on issues where TURN did not prevail, as TURN's efforts "contributed to the inclusion</p>	
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<p>of these issues in the Commission's deliberation" and caused the Commission to "add more discussion on the issue, in part to address TURN's comments." (D.09-04-027, page 4).</p> <p>Further, the Commission has awarded intervenor compensation even when the proceeding was dismissed. For example, last month, the Commission awarded intervenor compensation to Forest Residents Opposed to New Transmission Lines for its participation in an application filed by Nevada Hydro Company for a certificate to operate as a utility even though the application was dismissed with no certificate issued. (D.13-04-029, issued April 18, 2013 granting intervenor compensation; A.10-07-001 dismissed in D.12-05-022).</p> <p>In this proceeding, RLAWC was responsible for alerting the Commission to Aspen's violation of state law by failing to obtain advance approval for its acquisition of LAWC. Further, Aspen's managing member Mr. Toeniskoetter acknowledged that he would not have filed an application for approval of the LAWC purchase absent a directive from Commission staff, which occurred due to concerns raised by RLAWC member Gloria Dralla. No Commission staffer or division participated in the proceeding, and the only other party was Bruce and Paula Orvis who appeared pro se until the hearing. RLAWC was the only party conducting discovery (data requests and depositions), therefore, it is responsible for the vast majority of the record. The Commission acknowledged that RLAWC compiled a "voluminous" record regarding the circumstances of Aspen's acquisition of half of LAWC and its management of the utility thereafter. (D.13-03-007, at p. 26). RLAWC's Opening Brief was 100 pages long, of which 78 pages was a recitation of</p>	
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	<p>the evidence in the record; the Opening Brief contained 396 footnotes, the vast majority of which cited to specific items of evidence in the record.</p> <p>RLAWC did influence the outcome of the Decision in this proceeding, as the Order explicitly recognizes. Even though the Commission decided to approve Aspen's purchase of half of LAWC prospectively, it determined that Aspen's unauthorized purchase in 2003 violated state law and voided the transaction from 2003 to the date of the Order. Further, the Commission recognized the severity of the stalemate created by the 50/50 ownership split arising due to Aspen's unauthorized purchase of half of LAWC stock and mandated that it would appoint a fifth, tie-breaker director if the two evenly divided directors were unable to do so within 60 days of the date of the order. (D.13-03-007, at p. 27, 39, 43). Even though the Decision did not deny Aspen's application or require Aspen to divest itself of its LAWC stock, the Commission should find that RLAWC's participation provided significant value to the decision-making process such that a full award of intervenor compensation is warranted.</p>	
<p>A.1 – A.19</p>	<p>RLAWC's intervenor compensation award should be paid for by Aspen, the entity required by state law to obtain approval of its acquisition of half of LAWC. As discussed in detail in Attachment 1, the Commission has held that Applicants should be required to pay the cost of invoking the Commission's processes in order to seek a benefit, and intervenor compensation is one such cost. D.11-07-036. Please see Attachment 1 for a detailed explanation.</p>	<p>The cited decision is inapposite to the payment of intervenor compensation in this proceeding, as we discuss below.</p>

PART III: REASONABLENESS OF REQUESTED COMPENSATION

A. General Claim of Reasonableness (§ 1801 and § 1806):

<p>a. Concise explanation as to how the cost of Intervenor participation bears a reasonable relationship with benefits realized through participation:</p> <p>As demonstrated in the substantial contribution section, the Commission agreed with and adopted three of RLAWC's primary legal arguments: 1) that Aspen's purchase of half of LAWC constituted an acquisition of control; 2) that Aspen's acquisition of a controlling interest in LAWC without Commission approval was a violation of Section 854; 3) that Aspen's unauthorized purchase of a controlling interest in LAWC should be voided back to the date of the transaction. Further, the Commission benefitted from the voluminous record compiled by RLAWC regarding the circumstances of Aspen's acquisition and management of LAWC, of which the Commission was and would have remained unaware but for RLAWC's efforts. RLAWC's presentation has several benefits.</p> <p>First, RLAWC alerted the Commission to an unaddressed violation of Section 854, thereby enabling the Commission to carry out its statutory mandate to enforce state law and oversee the operation of regulated utilities.</p> <p>Second, the Commission identified management failings on the part of Aspen and indicated that going forward "Aspen will be bound by all Commission decisions, rules, and regulations applicable to the owner of a regulated water utility.</p> <p>Third, by alerting the Commission to the unauthorized acquisition of half of LAWC by a developer with plans for a substantial real estate development that will involve ground disturbing activities, the Commission was able to carry out its statutory duty to determine whether the transfer of half of LAWC to Aspen would result in a material effect on the environment, as required by CEQA.</p> <p>Fourth, RLAWC's contributions will assist the Commission in considering whether to approve future Section 854 applications for acquisition of control. The record evidence developed and compiled by RLAWC provides important precedent that the Commission will not overlook or retroactively authorize utility transfers for purchasers claiming ignorance of the law. The Commission also clarified its standard of review for Section 854 cases; ownership of 50 percent of a</p>	<p style="text-align: center;">CPUC Verified</p> <hr/> <p>No, as we discuss more fully below. <i>See Comment #3.</i></p>
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<p>regulated utility is sufficient to trigger application of Section 854 and may, standing alone, constitute a controlling interest.</p>	
<p>b. Reasonableness of hours claimed:</p> <p>In assessing the reasonableness of hours claimed, the Commission determines whether the hours claimed by the intervenor for its substantial contributions are reasonable compared to when considering the work performed and its necessity for the substantial contribution. The Commission reviews the requested billable rate according to the Commission's approved rates for similar personnel and according to whether multiple personnel billed for similar or same work efforts. Parties demonstrate the reasonableness of their requested rates and hours by providing documentation. (D.12-01-031, at p. 13-24). RLAWC is attaching a list of all pleadings and discovery efforts undertaken as part of this proceeding (Attachment 1). RLAWC's counsel has many years of experience in administrative litigation proceedings and Commission policymaking proceedings. RLAWC is claiming fees only for its counsel, and not for any support staff or expert consultations. RLAWC's counsel had 15 years of experience in legal and administrative practice in 2011 when this proceeding began. The approved range for attorneys with 13+ years of experience in 2011 was \$300-535. The approved range for attorneys with 13+ years of experience in 2012 was \$305-\$545 and the approved range for 13+ years of experience in 2013 is \$310-\$555. RLAWC's attorney is requesting a rate of \$400 per hour, that is well below the highest allowable rate for an attorney of her experience and she is not increasing her rate for 2012 and 2013 even though the Commission approved a cost of living increase of \$10 per hour over 2011 rates for 2012 and 2013. The rate of \$400 per hour is 25% below the top rate for 2011, 27% below the top rate in 2012 and 28% below the top rate for 2013.</p> <p>The amount of RLAWC's intervenor compensation claim is similar to the work effort (910 hours spread primarily across 4 years) compared to (506 hours for RLAWC spread across two years). RLAWC's claimed amount (\$202,780) is comparable to the amount awarded by the Commission in D.13-05-009 to Green Power (\$204,434).</p> <p>RLAWC carefully coordinated with the only other party to the proceeding, Bruce and Paula Orvis, who appeared <i>pro se</i> for the majority of the proceeding. While RLAWC and the Orvis' shared a common interest in opposing Aspen's application for approval of its purchase of half of LAWC, RLAWC was careful to avoid unnecessary duplication and instead to ensure that its participation materially supplemented, complemented, or contributed to the presentation of the Orvis.' (§§ 1801.3(f) and 1802.5.)</p>	<p>No, as we discuss more fully below.</p> <p>See Comment #5 and #6.</p>

<p>c. Allocation of hours by issue:</p> <p>The allocation of RLAWC hours by issue is as follows. Please note that the two largest categories of hearings and briefing encompass all of the issues in Section 9 above, but it was too difficult to separate out what portion of the hearing or briefing should be allocated to one single issue. In addition, due to overlap in some of the issues in Section 9, RLAWC has made a good faith estimate regarding time allocation.</p> <p>Whether Aspen acquired a controlling interest in RLAWC and should have filed an application for advance approval from the Commission: 15%</p> <p>Whether Aspen exercised actual control over LAWC: 8%</p> <p>Aspen's management of LAWC has not been in the public interest: 12%.</p> <p>Hearings: 30%</p> <p>Briefing: 35%</p>	<p>No. RLAWC has not allocated the hours related to briefing and hearing to particular issues.</p> <p><i>See comment #7.</i></p>
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B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
Anita Taff-Rice	2011	74.65	\$400	Res ALJ-267	\$26,860	19	\$300	\$5,700.00
Anita Taff-Rice	2012	396.9	\$400	Res ALJ-281	\$158,760	99	\$305	\$30,195.00
Anita Taff-Rice	2013	35.4	\$400	Res ALJ-287	\$14,160	9	\$310	\$2,750.00
						<i>See Comments 6 and 7</i>		
Subtotal: \$202,780						Subtotal: \$38,645.00		
*Attachment 3 provides a detailed explanation of RLAWC’s request that intervenor compensation be paid by Aspen Forest Investment Company.								

INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
Anita Taff-Rice	2013	20	\$200		\$4,000.00	15	\$155	\$2,325.00 ³
<i>Subtotal: \$4,000.00</i>						<i>Subtotal: \$2,325.00</i>		
COSTS								
#	Item	Detail	Amount	Amount				
1	Copies	2,500 copies at \$.10 per page.	\$250.00					\$135.00
2	Postage	Service copies to ALJ and non-email recipients.	\$120.00					\$60.00
3	Deposition Transcripts	Deposition transcripts for Roma Orvis and David Ritchie	\$1484.80					\$742.40
4	Online Legal Research	Research charges on Lexis	\$1,220.13					\$610.07
Subtotal			\$3,074.93					\$1,547.07
TOTAL REQUEST: \$209,854.00						TOTAL AWARD: \$		\$42,517.07
<p>**We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Intervenors' records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.</p> <p>**Travel and Reasonable Claim preparation time typically compensated at ½ of preparer's normal hourly rate.</p>								
ATTORNEY INFORMATION								
Attorney	Date Admitted to CA BAR ⁴	Member Number	Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation					
Anita Rice Tariff	12/11/1996	#186039	No					

³ See Comments 6 and 7.

⁴ This information may be obtained through the State Bar of California's website at <http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch>.

C. Attachments Documenting Specific Claim and Comments on Part III:

Attachment or Comment #	Description/Comment
1.	List of RLAWC pleadings and other filings
2.	Documentation of Anita Taff-Rice fee, providing task description, number of hours, and correlation with issues set forth in section 9
3.	Detailed explanation of basis for RLAWC's request that intervenor compensation claim be paid by Applicant Aspen
4.	Invoices for deposition transcripts
5.	Certificate of Service

D. CPUC Disallowances and Adjustments:

#	Reason
Comment 3	Ratepayers of Lake Alpine Water Company (RLAWC) contends that the voluminous evidence and contentions should establish that the Intervenor should receive the entire amount requested in intervenor compensation. We have carefully reviewed the record and have determined that RLAWC made a substantial contribution only on the issue of whether Pub. Util. Code § 854(a) was applicable to this matter. Further, the assigned ALJ provided ample guidance that the intervenor should carefully consider its estimated budget for participating in this proceeding, as we discussed in Comment 1. Just because a party prepares voluminous materials does not necessarily entitle that intervenor to full compensation. Decision (D.) 98-05-049, requires that the costs of participation bear a reasonable relationship to the benefits received. We cannot make such a finding for the amount requested and have made adjustments accordingly. Based on our review of the record, we find that RLAWC made a substantial contribution on 25% of the matters addressed in this proceeding.
Comment 4	RLAWC contends that the full amount of compensation award should be awarded and should be paid by Aspen, because that entity was required to obtain approval of its acquisition of half of the utility. While RLAWC cites to D.11-07-036, that decision referred to an applicant seeking certification as a new public utility. Here, Lake Alpine Water Company is intact and operating as a public utility. Pursuant to section 1807 (a), in relevant part, "an award made under this article shall be paid by the public utility that is the subject of the hearing, investigation, or proceeding, as determined by the commission..." RLAWC also suggests that the fund set aside for the intervenor compensation program fund should be used to reimburse this intervenor. However, as established in D.00-01-020, that fund was established specifically as a "fund from which awards in proceedings where the Commission is establishing policy affecting an industry or all regulated industries (general quasi-legislative rulemakings) where no specific respondents are named will be paid."(4 CPUC 3d at 20, 24). This is ratesetting proceeding and, clearly impacts only LAWC, which remains intact. While RLAWC recognizes that payment of the requested amount would be burdensome to ratepayers,

#	Reason
	the fact remains that the utility has the ability to pass on these costs to ratepayers, pursuant to Section 1807.
Comment 5	RLAWC states that the amount of the claimed compensation is similar to the efforts put forth by Green Power that were fully compensated by D.13-05-009 issued in Rulemaking (R.) 10-05-006. However, RLAWC is comparing a lengthy and contentious policy matter, our long-term procurement planning proceeding and the extensive efforts to develop long-term planning assumptions, with a Class D water company transfer of control. The comparison is not apt.
Comment 6	Taff-Rice requests an hourly rate of \$400 for 2011, 2012, and 2013. Although she does not provide information about her education and does not provide her bar number, Taff-Rice was admitted to the Bar in 1996 and received her law degree from Georgetown University. Counsel states that she has 15 years of experience in legal and administrative practice, but does not explain her experience in water issues. We will award an hourly rate of \$300 for 2011, \$305 for 2012, and \$310 for 2013. These rates are commensurate with those awarded for attorneys with over 13 years' experience consistent with Resolutions ALJ-267, 281, and 287.
Comment 7	As set forth by the Intervenor, we find that 25% of the work done by RLAWC related to matters on which it made a substantial contribution. RLAWC did not specifically allocate the many hours to hearing preparation, hearings, and briefings. We find these hours to be excessive and included them in the 25% of hours awarded. We have therefore awarded 25% of the hours requested in 2011, 2012, and 2013.
Comment 8	Counsel has claimed 20 hours to prepare the intervenor compensation request. Again, this is excessive and we reduce the hours awarded for this task to 15 hours.
Comment 9	Based on the extensive filings, RLAWC has requested \$3,074.93 in expenses for copying, service of documents, deposition transcripts, and research charges. Many of these charges are those that would normally be absorbed in overhead; however, we reduce them by half and compensate the reduced expenses.

A. Opposition: Did any party oppose the Claim?	No
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B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(c)(6))?	No
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If not:

Party	Comment	CPUC Discussion

PART IV: OPPOSITIONS AND COMMENTS

FINDINGS OF FACT

1. RLAWC has made a substantial contribution to D.13-03-007.
2. The requested hourly rates for RLAWC's representatives, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses as adjusted herein, are reasonable and commensurate with the work performed.
4. The total of reasonable compensation is \$ 42,517.07.

CONCLUSION OF LAW

1. The claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

ORDER

1. Ratepayers of Lake Alpine Water Company is awarded \$42,517.07.
2. Within 30 days of the effective date of this decision, Lake Alpine Water Company shall pay Ratepayers of Lake Alpine Water Company the total award. Payment of the award shall include interest at the rate earned on prime, three-month non-financial commercial paper as reported in the Federal Reserve Statistical Release H.15, beginning August 11, 2013, the 75th day after the filing of Ratepayers of Lake Alpine Water Company's request and continuing until full payment is made.
3. The comment period for today's decision is not waived.
4. Application 11-04-013 remains open to address Phase 2.

This decision is effective today.

Dated _____, at Bakersfield, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision?	No
Contribution Decision(s):	D1303007		
Proceeding(s):	A1104013		
Author:	ALJ Wilson		
Payer(s):	Lake Alpine Water Company		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Ratepayers of Lake Alpine Water Company	05/28/13	\$209,854.00	\$42,517.07	N/A	See Part III. D, above

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Anita	Taff-Rice	Attorney	Ratepayers of Lake Alpine Water Company	\$400	2011	\$300
Anita	Taff-Rice	Attorney	Ratepayers of Lake Alpine Water Company	\$400	2012	\$305
Anita	Taff-Rice	Attorney	Ratepayers of Lake Alpine Water Company	\$400	2013	\$310

(END OF APPENDIX)