

Decision \_\_\_\_\_

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

Application of PARK WATER COMPANY (U314W) for authority to issue evidence of indebtedness and other related requests.

Application 14-01-026  
(Filed January 31, 2014)

**ORDER AUTHORIZING PARK WATER COMPANY  
TO ISSUE UP TO \$30 MILLION OF NEW DEBT SECURITIES****1. Summary**

This decision grants Park Water Company (Park) the authority to issue new debt securities not exceeding \$30 million, pursuant to Public Utilities Code §§ 816 *et seq.* and 851. This decision also exempts Park from the New Financing Rule, and authorizes Park to: 1) guarantee its new debt securities; and 2) execute and deliver supplemental indentures.

**2. Background**

Park Water Company (Park) is a public utility under the jurisdiction of this Commission that provides water service in the southeastern and northeastern sections of Los Angeles County (Central Basin Division of Park). Park also has two wholly-owned public utility water subsidiaries: 1) in California, Apple Valley Ranchos Water Company (AVR) operates in and near the Town of Apple Valley in San Bernardino County; and 2) in the state of Montana, Mountain Water Company (Mountain) operates within and around Missoula, Montana.

On January 31, 2014, Park filed Application (A.) 14-01-026 requesting authorization to issue new debt securities (debt) not exceeding the aggregate amount of \$30 million, and other related requests.

### **3. Request**

Park proposes to issue up to \$30 million of new debt, and use such new debt for proper purposes, pursuant to Public Utilities (Pub. Util.) Code § 816, *et seq.* Park also seeks authorization to: 1) execute and deliver supplemental indentures; 2) guarantee its new secured debt pursuant to Pub. Util. Code §851; and 3) be exempt from the New Financing Rule. Park also request that it be granted such other and further relief as the Commission may deem appropriate in this matter.

#### **3.1. Requested New Debt Securities**

Park anticipates that its new debt would be privately placed, and that its First Mortgage Bonds (secured) be issued and secured by its Original and supplemental indentures. Park requests that its new secured and unsecured bonds would be secured by Park's property and assets pursuant to Pub. Util. Code § 851. Park's new debt would have a term of greater than one year.

Park plans to privately place its new First Mortgage Bonds, issued under and secured by its Original Indenture, dated November 1, 1973, between Park and certain Trustees, as supplemented, amended and restated by various indentures issued since 1973. Such new First Mortgage Bonds would be similar to the form of bond included in its Thirteenth Supplemental Indentures, dated June 4, 2013, with such changes or additions deemed necessary or appropriate in order to meet current market demands. The Thirteenth Supplemental Indentures were entered into, in connection with Park's most recent executed issuance of bonds authorized by us in Decision (D.) 13-02-007.

New unsecured debt would be issued subject to a note purchase agreement at terms and conditions consistent with market condition and market practices.

Park states that it is in compliance with affiliate rules set out in D.04-06-018, D.06-01-019, and D.10-10-019 that apply to the issuance of new debt.

### **3.2. Use of Proceeds from New Debt**

Park would use the proceeds from the sale of the new debt for purposes permitted by Pub. Util. Code § 817, including to reimburse moneys already expended from Park's treasury for the construction, completion, extension, or improvement of its facilities from September 1, 2001 through November 30, 2004; and for the retirement of or in exchange for one or more outstanding stocks or stock certificates or other evidence of interest or ownership of such public utility, or bonds, notes, or other evidence of indebtedness. In Park's last financing authorization, D.13-02-007, we granted Park authority to refinance an existing bond and reimburse its treasury for previous capital expenditures funded by earnings and its treasury, incurred between January 1, 2000 through August 31, 2001. Instead of estimating how much it will need in the future for proper purposes pursuant to Pub. Util. Code § 817, it expends the funds first, then requests financing when it depleted its cash reserves. Park states that this depletion of its cash reserves is exacerbated by funds totaling over \$11 million being "tied up" in regulatory assets, primarily associated with un-recovered balances of approximately \$6.5 million in its Water Rate Adjustment Mechanism (WRAM) and Modified Cost Balancing Account (MCBA) accounts, \$1 million due to CARW discounts in excess of the funding surcharge, \$4 million in Interim Rate Memorandum Accounts due to the delay in implementation of recent

General Rate Cases (GRC), and Mountain Water GRC before the Montana Commission.

Park borrows funds required by both its California and Montana public utility operations, and transfers capital as needed to its division and subsidiaries through inter-company transactions. Park posits that this allows its subsidiaries to benefit from Park's greater borrowing power and obtain debt at a lower cost. In Park's most recent financing authorization, we authorized Park to issue new debt to reimburse its treasury for having paid off selected notes, and for reimbursement of its previous capital expenditures incurred by both its California and Montana public utility operations.<sup>1</sup>

### **3.3. Request for Exemption from the New Financing Rule**

The New Financing Rule (Rule) set forth in D.12-06-015, replaced the Competitive Bidding Rule (CBR) authorized in Resolution F-616 in 1986. The Rule provides for exemptions based on a compelling showing by the utility that it qualifies for one of the exemptions listed in Attachment A, page A-6 of D.12-06-015. In the current application, Park requests that it be exempted from the Rule because its request for new debt of \$30 million is much less than the baseline dollar amount for applicability of the Rule of more than \$42 million.

## **4. Discussion**

### **4.1. Public Utilities Code Requirements for Issuance of Securities**

Park's request is subject to Pub. Util. Code §§ 816, *et seq.*, and 851. The Commission has broad discretion under § 816, *et seq.*, to determine if a utility

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<sup>1</sup> See D.13-02-007.

should be authorized to issue debt securities. Where necessary and appropriate, the Commission may attach conditions to the issuance of debt securities and stock to protect and promote the public interest.

In part, pursuant to Pub. Util. Code § 816, the Commission, as vested by the state, may prescribe regulations and restrictions on the issuance of debt and equity securities issues by public utilities, and supervise and control their issuance.

Pursuant to Pub. Util. Code § 817, a public utility may only issue and use financing for selected purposes.<sup>2</sup> Those purposes not listed in Pub. Util. Code § 817 may only be paid for with funds from normal utility operations.

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<sup>2</sup> Pub. Util. Code §817. A public utility may issue stocks and stock certificates or other evidence of interest or ownership, and bonds, notes, and other evidences of indebtedness payable at periods of more than 12 months after the date thereof, for any one or more of the following purposes and no others:

- a) For the acquisition of property.
- b) For the construction, completion, extension, or improvement of its facilities.
- c) For the improvement or maintenance of its service.
- d) For the discharge or lawful refunding of its obligations.
- e) For the financing of the acquisition and installation of electrical and plumbing appliances and agricultural equipment which are sold by other than a public utility, for use within the service area of the public utility.
- f) For the reorganization or readjustment of its indebtedness or capitalization upon a merger, consolidation, or other reorganization.
- g) For the retirement of or in exchange for one or more outstanding stocks or stock certificates or other evidence of interest or ownership of such public utility, or bonds, notes, or

*Footnote continued on next page*

Pub. Util. Code § 818 states that no public utility may issue notes or other evidences of indebtedness payable at periods of more than 12 months unless, in addition to the other requirements of law, it shall first have secured an order from the Commission authorizing the issue, stating the amount thereof and the purposes to which the issue or the proceeds thereof are to be applied. Pub. Util. Code § 818 also requires that the Commission, in issuing such an order, find that the money, property, or labor to be procured or paid for with the proceeds of the debt securities authorized is reasonably required for the purposes specified in the order and, unless expressly permitted in an order authorizing debt securities, that those purposes are not, in whole or in part, reasonably chargeable to expenses or to income. Park has substantiated its need for issuance of new debt securities and that the proceeds would be used for proper purposes.

Since Park's request for issuance of new debt is in compliance with Pub. Util. Code § 816 *et seq.*, we grant it authority to issue up to \$30 million of new debt for proper purposes.

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other evidence of indebtedness of such public utility, with or without the payment of cash.

- h) For the reimbursement of moneys actually expended from income or from any other money in the treasury of the public utility not secured by or obtained from the issue of stocks or stock certificates or other evidence of interest or ownership, or bonds, notes, or other evidences of indebtedness of the public utility, for any of the aforesaid purposes except maintenance of service and replacements, in cases where the applicant has kept its accounts and vouchers for such expenditures in such manner as to enable the commission to ascertain the amount of money so expended and the purposes for which such expenditure was made.

As we did in D.13-02-007, we authorize Park borrows funds required by both its California and Montana public utility operations, and remind it that it must remain in compliance with all applicable affiliate transaction rules with regards to its relationships with affiliates and subsidiaries, including but not limited to those enumerated in D.04-06-018, D.06-01-019, and D.10-10-019.

Pursuant to Pub. Util. Code § 824, the Commission may require, in part, that public utilities account for the disposition of the proceeds of all sales of stock and debt. Pursuant to this code section, the Commission may also establish rules to insure the disposition of such proceeds are for the purposes required by the authorizing order. General Order (GO) 24-C, discussed below, addresses our requirements regarding how public utilities must account for the proceeds from debt securities.

Pub. Util. Code § 851 requires, in part, that a public utility must first secure Commission authority before it may mortgage or encumber its used and useful assets. We discuss this requirement in Section 4.3 below.

#### **4.2. Uses for New Debt**

Park's application seeks authority to issue securities is based, in part, on how much it needs to reimburse its treasury for capital expenditures that have already occurred and the refinancing of existing bonds, for both its California and Montana utility operations. These needs comply with Pub. Util. Code § 817 (See Table 1 below). Also, given its depleted cash reserves, it is in need of funds to reimburse its treasury for proper expenditures that have already been incurred. Park has no outstanding financing authorization to offset its current need. As discussed in Section 3.2 above, we authorized this method for determining the reasonableness of the requested funding for Park's California and Montana operations in D.13-02-007, and do so again here.

Table 1

<b>Division/ Subsidiary</b>	<b>Reimbursement of Treasury for Capital Expenditures</b>	<b>Total</b>
Payment of Principal and Interest on Notes		\$2,000.00
<b>California</b>		
Park - Corporate Division	\$1,681,000	
Park - Central Basin Division	\$6,493,000	
Apple Valley Ranchos Water Company	\$10,578,000	
<b>Montana</b>		
Montana Water Company	\$9,694,000	
<b>Total</b>	<b>\$28,446,000</b>	<b>\$2,000,000</b>

Even though Park shows a need of almost \$30.5 million, it requests \$30 million of new debt. Given that the net need for funds exceeds the request, it is reasonable to authorize Park to issue up to \$30 million of new debt. This new debt will allow Park to reimburse its treasury and refinance existing bonds, to the extent authorized by Pub. Util. Code § 816 *et seq.* We find Park's request to be reasonable and supported by the record.

Granting of financing authority to a utility does not obligate the Commission to approve any capital projects. This financing authority provides Park with sufficient liquid resources to reimburse its treasury and retire

outstanding long-term debt. Review of the reasonableness of capital projects occurs as needed through the regulatory process applicable to each capital project. Therefore, any approval of this financing request does not prejudice any of Park's capital expenditures.

As Park has requested our authority to issue debt that may be utilized by an affiliate, it complies with applicable affiliate rules.

#### **4.3. Types of Debt Securities to be Issued**

The types of debt requested by Park in the current application (secured First Mortgage Bonds and unsecured bonds), are similar to those types of debt authorized in D.13-02-007. Therefore, we authorize Park to issue the types of debt securities under the terms and conditions detailed in Section 3 of this decision and enumerated in the order herein. Park may secure such new debt by its property and assets pursuant to Pub. Util. Code §851.

#### **4.4. Exemption from New Financing Rule**

Given the amount of its requested new debt securities, we find that Park qualifies for and is therefore granted an exemption from the Rule.

### **5. General Order 24-C**

We remind Park to comply with all of the requirements of GO 24-C, including but not limited to the filing of a GO 24-C report on a quarterly then semi-annual instead of a monthly basis.<sup>3</sup>

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<sup>3</sup> See D.12-06-015, Attachment B. For the first year after authorization of the new GO, the GO 24-C report will be filed quarterly. For the second year after authorization of the new GO and for every year thereafter.

**6. Women-Minority-Disabled Veteran Business Enterprises**

Pursuant to GO 156, Park states that it obtained the services of a Women-, Minority-, Disabled Veteran-Owned Business Enterprises (WMDVBE) co-manager the its most recent bond issuance in 2013; and will continue to make efforts to encourage, assist, and recruit WMDVBE in being appointed as lead underwriter, book runner, co-manager, or in other roles in the issuance of its proposed debt offerings, and will report on its efforts in its GO 156 Annual Report.

**7. Fee**

Whenever the Commission authorizes a utility to issue new securities, the Commission is required to charge and collect a fee pursuant to Pub. Util. Code §§ 1904(b) and 1904.1. The fee is calculated as follows:

\$30 Million of new debt	\$1,000,000	\$2 per \$1,000	\$2,000
	\$9,000,000	\$1 per \$1,000	\$9,000
	\$20,000,000	\$0.50 per \$1,000	\$1,000
Total			\$12,000

**8. Financial Information**

We place Park on notice that the reasonableness of any resulting interest rate and cost of money arising from the issuance of securities as well as capital structures, is subject to review in the appropriate cost of capital or general rate case proceeding. Therefore, we will not make a finding in this decision of the reasonableness of the projected capital ratios for ratemaking purposes or the appropriate cost of money. We do not make a finding in this decision on the reasonableness of Park's proposed construction program. Construction expenditures and the resulting plant balances in rate base are issues that are

normally addressed in a general rate case or specific application. The authority to issue new debt herein is distinct from the authority to undertake construction or the right to recover the cost of capital in rates.

### **9. California Environmental Quality Act**

The California Environmental Quality Act (CEQA) applies to projects that require discretionary approval from a governmental agency, unless exempted by statute or regulation. It is long established that the act of ratemaking by the Commission is exempt from CEQA review. As stated in the California Public Resources Code, the “establishment, modification, structuring, restructuring or approval of rates, tolls, fares, or other charges by public agencies” is exempt from CEQA.<sup>4</sup> Likewise, the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant impact on the environment is not a “project” subject to CEQA.<sup>5</sup>

This decision does not authorize any capital expenditures or construction projects. Construction projects which Park may finance via this application must undergo CEQA review as required by CEQA Guidelines Section 30004(b).

### **10. Category and Need for Hearings**

By Resolution ALJ 176-3331, dated February 27, 2014, the Commission preliminarily determined that this was a ratesetting proceeding and that a hearing would be necessary. No protests were filed. We affirm that this is a ratesetting proceeding, and, since no protests were filed, change the preliminary determination of a need for hearings to no hearings necessary.

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<sup>4</sup> Public Resource Code Section 21080(b)(8).

**11. Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code §311(g)(2) and Rule 14.69(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

**12. Assignment of Proceeding**

Catherine J.K. Sandoval is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this proceeding.

**Findings of Fact**

1. In its application, Park requested authority for new debt in the amount of \$30 million to reimburse its treasury and refinance existing debt as follows:

- a. Payment of principal and interest on Notes equals approximately \$2 million;
- b. Reimbursement of Park's Treasury for capital expenditures from September 1, 2001 - November 30, 2004 equals approximately \$28.5 million; and
- c. Total need for funds equals approximately \$30.5 million.

2. Park has no outstanding financing authority available to offset its need for new debt.

3. The Commission has broad discretion under § 816, *et seq.*, to determine if a utility should be authorized to issue debt securities. Where necessary and appropriate, the Commission may attach conditions to the issuance of debt securities and stock to protect and promote the public interest.

4. In part, pursuant to Pub. Util. Code § 816, the Commission, as vested by the state, may prescribe regulations and restrictions on the issuance of debt and

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<sup>5</sup> CEQA Guidelines Section 15378(b)(4).

equity securities issues by public utilities, and supervise and control their issuance.

5. The proper term for securities issued pursuant to Pub Util. Code § 817 is greater than 12 months. Pursuant to Pub. Util. Code § 817, a public utility may only issue and use financing for selected purposes. Those purposes not listed in Pub. Util. Code § 817 may only be paid for with funds from normal utility operations.

6. Pub. Util. Code § 818 requires that long-term debt (term of greater than 12 months) be used for proper purposes, such as purchase of regulatory assets, unless expressly permitted in an order authorizing debt securities.

7. Pursuant to Pub. Util. Code § 824, the Commission may require, in part, that public utilities account for the disposition of the proceeds of all sales of stock and debt. Pursuant to this code section, the Commission may also establish rules to insure the disposition of such proceeds are for the purposes required by the authorizing order.

8. General Order 24-C addresses requirements regarding how public utilities must account for the proceeds from debt securities.

9. Pub. Util. Code § 851 requires, in part, that a public utility must first secure Commission authority before it may mortgage or encumber its used and useful assets.

10. The requested authority for new debt of up to \$30 million of is necessary to provide the funding required to reimburse moneys already expended from Park's treasury for the construction, completion, extension, or improvement of its facilities from September 1, 2001 through November 30, 2004; and for the retirement of one or more outstanding bonds, notes, or other evidence of indebtedness.

11. The proposed new debt requested by Park is, pursuant to Pub. Util. Code §§ 817 and 818, reasonably required for proper purposes.

12. Park borrows funds required by both its California and Montana public utility operations, and transfers capital as needed to its division and subsidiaries through inter-company transactions.

13. Park's new debt will have a term of greater than one year.

14. In D.13-02-007, we authorized Park to issue new debt to reimburse its treasury for having paid off notes, and to reimburse its treasury for its previous capital expenditures funded by earnings and its treasury, incurred between January 1, 2000 through August 31, 2001, for both its California and Montana public utility operations.

15. Park states that it is in compliance with all applicable affiliate rules, including those in D.04-06-018, 06-01-019, and 10-10-019, that apply to the issuance of new debt.

16. Park's cash reserves are depleted, in part due to \$11 million being "tied up" in regulatory assets, primarily associated with un-recovered balances in its WRAM and MCBA accounts.

17. Granting of financing authority to a utility does not obligate the Commission to approve any capital projects. Review of the reasonableness of capital projects occurs as needed through the regulatory process applicable to each capital project.

18. The necessity or reasonableness of Park's construction budget, cash requirements forecast, and capital structure, are normally reviewed and authorized in general rate cases or cost of capital proceedings.

19. The New Financing Rule set forth in D.12-06-030 replaced the CBR authorized in Resolution F-616 in 1986.

20. A public utility whose requested new financing is \$42 million or less may be granted an exemption from the New Financing Rule upon a compelling showing by the utility.

21. Pursuant to GO 156, public utilities must make an effort to encourage, assist, and recruit WMDVBE, by appointing a WMDVBE as lead underwriter, book runner, co-manager, or in other roles in the issuance of its proposed debt offerings, and report on its efforts in its GO 156 Annual Report.

22. Park states that it will comply with GO 156.

23. CEQA applies to projects that require discretionary approval from a governmental agency, unless exempted by statute or regulation.

24. It is long established that the act of ratemaking by the Commission is exempt from CEQA review.

25. As stated in the California Public Resources Code, Public Resource Code § 21080(b)(8), the “establishment, modification, structuring, restructuring or approval of rates, tolls, fares, or other charges by public agencies” is exempt from CEQA.

26. The creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant impact on the environment is not a “project” subject to CEQA (See CEQA Guidelines §30378(b)(4)).

### **Conclusions of Law**

1. Park should be authorized to issue up to \$30 million of new debt, all of which are for proper purposes and consistent with the requirement of Pub. Util. Code §§ 816 et seq. and 851.

2. Park should be authorized to issue new debt including secured First Mortgage Bonds and unsecured debt.

3. Park should be authorized to enter into supplemental indentures. Park should be authorized to issue new secured First Mortgage Bonds in accordance with the provisions of its indentures.

4. Park may secure such new debt by its property and assets pursuant to Public Utilities Code §851.

5. Park should be authorized to issue new debt via private placement.

6. Since Park's compelling showing that the amount of its requested new debt complies with the exemption requirements detailed in the Rule, we should grant Park an exemption from the Rule.

7. The order herein should not be a finding of the reasonableness of Park's construction expenditures, the resulting plant balances in rate base, the capital structure, or the cost of money, nor should it indicate approval of matters subject to review in a general rate case or other proceedings.

8. Park should remit a check for \$12,000, as required by Pub. Util. Code §§ 1904(b) and 1904.1.

9. The authority granted by this order should not become effective until Park has paid the fees prescribed by Pub. Util. Code §§ 1904(b) and 1904.1.

10. Park should not use the proceeds from the new debt authorized by this order to fund its capital projects until Park has obtained all required approvals for the projects, including any required environmental review under CEQA.

11. The order herein does not involve any commitment to any specific project which may result in a potentially significant impact on the environment; thus it is not a project subject to CEQA.

12. A.14-01-026 should be closed.

**O R D E R**

**IT IS ORDERED** that:

1. Park Water Company is authorized to issue up to \$30 million of new debt securities, all of which are for proper purposes and consistent with the requirement of Public Utilities Code §§ 816 et seq. and 851.

2. Park Water Company is authorized to issue new debt securities including secured First Mortgage Bonds and unsecured debt, in accordance with the provisions of its indentures.

3. Park Water Company is authorized to encumber its new secured debt securities pursuant to Public Utilities Code § 851.

4. Park Water Company is authorized to issue new debt securities through private placement.

5. Park Water Company is authorized to enter into supplemental indentures.

6. Park Water Company is granted an exemption from the New Financing Rule.

7. The order herein is not a finding of the reasonableness of Park Water Company's construction expenditures, the resulting plant balances in rate base, the capital structure, or the cost of money, nor does it indicate approval of matters subject to review in a general rate case or other proceedings.

8. Park Water Company must remit a check for \$12,000, as required by Public Utilities Code §§ 1904(b) and 1904.1.

9. The authority granted by this order does not become effective until Park Water Company has paid the fees prescribed by Public Utilities Code §§ 1904(b) and 1904.1, to the California Public Utilities Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. The number of this Decision must appear on the face of the check. The authority granted by this

decision is effective once Park Water Company has paid the fees prescribed by Public Utilities Code § 1904(b).

10. Park Water Company may not use the proceeds from the new debt securities authorized by this order to fund its capital projects until Park Water Company has obtained all required approvals for the projects, including any required environmental review under the California Environmental Quality Act.

11. The order herein does not involve any commitment to any specific project which may result in a potentially significant impact on the environment; thus it is not a project subject to California Environmental Quality Act.

12. Application 14-01-026 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.