



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

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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  
(April 15, 2011)

**OPPOSITION OF LAKE ALPINE WATER COMPANY AND  
ASPEN FOREST INVESTMENT CO. TO MOTION OF  
RATEPAYERS OF LAKE ALPINE WATER COMPANY TO  
COMPEL RESPONSES**

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Dated: July 12, 2012

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Pursuant to Rule 11.3(b) of the Commission’s Rules of Practice and Procedure and the email ruling of Administrative Law Judge Wilson on July 5, 2012, Lake Alpine Water Company (“LAWC”) and Aspen Forest Investment Company, LLC (“Aspen”) hereby respond to the “Motion of Ratepayers of Lake Alpine Water Company to Compel Responses ...” (“Motion”) filed July 3, 2012. Judge Wilson’s Ruling directed that this opposition be filed on or before July 12, 2012; this Opposition is timely filed.

For the reasons set forth below, the motion should be denied.

**I. INTRODUCTION**

The Motion opens with a completely inaccurate description of the emails sent to the Legal Division.<sup>1</sup> It then wades through what is largely “old news”, a rehashing

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<sup>1</sup> As we note at III.A *infra*, the Motion (p.1) asserts that the emails produced to RLAWC (Exhibits 4 and 6 to the Motion) show that Aspen/LAWC’s counsel sought “legal interpretations regarding two substantive material issues in this proceeding...[the motion to disqualify counsel and whether the stock purchase required advance Commission

of RLAWC's position on the issue of whether Aspen should have sought authority under Section 854 of the Public Utilities Code<sup>2</sup> prior to acquiring 5000 shares of LAWC stock from James and Marianne Orvis.<sup>3</sup> The Motion concludes by seeking an order re-writing Sections 1701.1-1701.4 and Article 8 of the Commission's Rules of Practice and Procedure ('Rules') by requiring:

- "Aspen/LAWC to provide supplemental responses ... that provide all communications (whether written or a summary of verbal<sup>4</sup> discussions) with any Commission employee that proceeded or followed the emails produced"<sup>5</sup>; and
- "Aspen/LAWC" and their counsel... to discontinue any ex parte communications with Commission employees regarding the substantive issues in this proceeding."

To the best of our knowledge, the latter request falls into the same category as the fervently advanced but fatally flawed motions to (1) disqualify Aspen/LAWC's counsel ["Motion to Disqualify"] and (2) deny LAWC the right to participate as a party in a docket in which control of LAWC was at issue. The relief requested has never, to our knowledge, been granted by either the Commission itself or an Administrative Law

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approval]. At page 6, the Motion states that, "Mr. MacBride also sought further interpretations on the state of the Commission's view regarding transfers of control for public utilities under Section 854." As Exhibits 4 and 6 to the Motion (the actual emails) show, the characterization of them as requests for "legal interpretations" or "further interpretations on the state of the Commission's view regarding transfers of control for public utilities under Section 854" is flatly inaccurate. Indeed, the whole point of Exhibit 6 was to confirm that the Legal Division does not normally render legal opinions on issues in pending Commission proceedings. The "Commission's view with regard to transfers of control for public utilities under Section 854" is already a matter of public record. *Joint Application of Warburg Pincus Private Equity IX, LP, et al.* D.08-12-021; Cal. PUC Lexis 469\*8.

<sup>2</sup> Motion pp.2-4. All statutory references herein are to the California Public Utilities Code unless otherwise indicated.

<sup>3</sup> For ease of reference, we refer hereto Aspen, the successor in interest of the original purchaser. In essence, the Motion restates RLAWC's position, with which Aspen/LAWC disagrees, that that Aspen was required to file an application prior to acquiring 5000 shares of stock in LAWC from James and Marianne Orvis. Many of the Exhibits (Exhibit 1 (letter from Tatiana Cherkas), Exhibit 2 (email from Joel Perlstein) and Exhibit 3 (email from Martin Nakahara)) accompanied the Prepared Direct Testimony of Gloria Dralla served five months ago. Each is addressed in the Prepared Direct Testimony of Charles Toeniskoetter served in early April. (See, e.g., Questions and Answers 97, 98, 145 and 146.)

<sup>4</sup> We presume RLAWC means "oral" discussions.

<sup>5</sup> Motion, p. 10.

Judge. Accordingly, the instant response will principally address RLAWC's first request, that Aspen/LAWC be required to produce documentation or a description of communications to persons who are not "decisionmakers" within the meaning of Rule 8.1(b).<sup>6</sup>

The motion should be denied because it is hopelessly untimely and seeks information that is neither subject to Rule 10.1 nor Article 8 of the Commission's Rules of Practice and Procedure. It asks for information which has no bearing on whether it is in the public interest to approve the sale of 5000 shares of LAWG stock to Aspen.<sup>7</sup> All of the sound and fury attendant to the motion is with respect to (1) an inquiry to the Legal Division with regard to its policy on the issuance of legal opinions- a question to which no answer (written or oral) was received, and (2) a transmittal of the "Motion to Disqualify."<sup>8</sup> As we note below, the former communication was simply in response to the prepared testimony of Gloria Dralla which asserted that a 2010 email from the Legal Division presented a "legal opinion." The latter communication was based on the undersigned's belief (to which he still adheres) that neither the Commission nor an Administrative Law Judge would actually grant a motion disqualifying a counsel (and thereby denying a party the rights afforded to it under Section 1706) without first consulting the Legal Division.<sup>9</sup>

Nothing in the e-mails (Exhibits 4 and 6 to the Motion) addresses any issue identified in the August 12, 2011 Scoping Memorandum. Accordingly, the Motion serves no purpose other than its intended purpose, to burden Aspen and LAWG as they prepare for hearing.

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<sup>6</sup> Nor any of the individuals of interest to RLAWG Commissioners' Advisors with respect to which communications are subject to Rule 8.2.

<sup>7</sup> The August 12, 2011 Scoping Memo states that "This proceeding will examine, pursuant to Pub. Util. Code §§ 851-854, whether the Commission should authorize the sale of 50% of the outstanding shares of Lake Alpine Water Company, Inc. from J&M Orvis to Aspen."

<sup>8</sup> The motion to disqualify was denied long ago and a motion to reconsider that ruling was denied even in advance of a responsive pleading.

<sup>9</sup> Such order is without precedent in the Commission's century-old history.

## II. THE MOTION IS HIGHLY UNTIMELY

At the April 26, 2012 prehearing conference (“PHC”), Judge Wilson set a discovery cutoff date of May 31, 2012. Judge Wilson did permit parties to propound “follow-up questions” with regard to discovery propounded earlier than May 31, 2012. Judge Wilson asked the propounding party, however to act promptly in seeking clarification.

MS. TAFF-RICE: And your Honor, just for clarification, if we propound a question and the response comes back and it seems not to be fully sufficient, that doesn't preclude me from asking a follow-up.

ALJ WILSON: No. Follow-up would be fine. And I think what it might be -- what might be helpful is when you do have further questions that you meet when you receive the response so that you can go through things or maybe meet shortly after receiving the response in case there's any need for clarification. (TR 2:43)

RLAWC embarked on a far different course than that charted above.

### A. Fourth Set of Data Requests

Aspen/LAWC responded to the Fourth Set of Data Requests on May 15, 2012. As the Motion indicates (p. 5) RLAWC sent a deficiency notice to Aspen/LAWC on May 18<sup>th</sup> 2012. Aspen/LAWC responded on May 25, 2012. Between May 25, 2012 and June 25, 2012 Aspen/LAWC heard nothing from RLAWC with regard to the May 25, 2012 response to the notice of deficiencies. Rather than “meet shortly after”, RLAWC waited a month to request a “meet and confer”. It contacted Aspen/LAWC with less than four weeks remaining before the start of hearings, a period of time already constrained by the scheduling challenges that attend the Summer.

The course adopted by RLAWC with regard to the Fourth Set of Data Requests is consistent with that RLAWC employed with respect to the Fifth, Sixth, Seventh and Eighth Data Requests.

**B. Carpet Bombing in May**

Between May 7 and May 31, RLAWC propounded weekly lengthy data requests to which Aspen/LAWC responded promptly. The prompt responses were not matched by a prompt request for clarification as mandated by Judge Wilson at the PHC.

**1. Fifth Set of Data Requests**

The Fifth Set of Data Requests was served on May 7, 2012. It was comprised of 19 questions, many with multiple subparts (counting subparts, 35 questions in all.) As requested, Applicants responded on May 17, 2012. RLAWC did not serve its notice of “deficiencies” “shortly after receiving the response.” Instead, it waited six weeks and served the notice on June 28, 2012, almost a full month after the May 31, 2012 cutoff date.

**2. Sixth Set of Data Requests**

The Sixth Set of Data Requests was served on May 16, 2012. It was comprised of 20 questions, two with multiple subparts (counting subparts, 33 questions in all.) Aspen/LAWC responded on May 31, 2012. Again, RLAWC did not serve its notice of “deficiencies” “shortly after receiving the response.” Instead, it waited five weeks and served the notice on July 3, 2012, over a month after the May 31, 2012 discovery cutoff date.

**3. Seventh Set of Data Requests**

The Seventh Set of Data Requests (“7DR”) was served on May 25, 2012. It was comprised of five questions, four with multiple subparts (counting subparts, 28

questions in all.) As requested, Applicants responded on June 8, 2012. Again, RLAWC did not serve its notice of “deficiencies” “shortly after receiving the response.” Instead, it waited four weeks and served the notice on late on July 6, 2012, over a month after the May 31, 2012 discovery cutoff date.

#### 4. Eighth Set of Data Requests

The Eighth Set of Data Requests was served on May 31, 2012, in theory the last day of the discovery period. RLAWC saved the best for last. The Eighth Set of Data Requests was comprised of 38 questions, many with multiple subparts (counting subparts, 68 questions in all.) As requested, Applicants responded on June 18, 2012. Again, RLAWC did not serve its notice of “deficiencies” “shortly after receiving the response.” Instead, it waited three weeks and served the notice late on July 6, 2012, over a month after the May 31, 2012 discovery cutoff date.

#### C. Burden on Aspen/LAWC Resulting From RLAWC Timing of “Deficiencies”

As is the case with the Motion, RLAWC timed the “deficiency” notices so that all four (and the Motion) were served within an eight day period (June 28, 2012-July 6, 2012), a period falling roughly seven to fifteen working days before the start of the hearings. By ignoring Judge Wilson’s admonition to raise questions “shortly after receiving the response”, RLAWC has asked Aspen/LAWC to devote its limited time and resources to responding to “deficiencies” (and this Motion) rather than preparing for hearing.<sup>10</sup>

In a July 6, 2012 email to the ALJ and the parties, RLAWC explains these delays by claiming that it “often had to wait for responses to a subsequent set of Data

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<sup>10</sup> Paula Orvis has now offered her contribution to this effort through her MOTION TO REINSTATE TESTIMONY OF PAULA D. ORVIS served on July 11, 2011. The sole justification for the Motion is Mr. Toeniskoetter’s Prepared Direct Testimony which was served on Ms. Orvis of April 4, 2012, over three months ago. She offers no explanation for why she waited until 12 days before the beginning of the hearings to seek reinstatement of testimony stricken by the ALJ in late March.

Requests to determine whether there is a deficiency in a prior set.” Aspen/LAWC can find nothing in the rather detailed responses to the Fifth, Sixth, Seventh and Eighth data requests that have anything to do with (1) the Motion to Disqualify denied January 24, 2012 or (2) Legal Division policy on the issuance of legal opinions.<sup>11</sup>

**D. The Untimeliness of RLAWC Motion- A Motion Filed In Concert With Its Strategy of Moving Myriad Discovery Disputes Into Early July- Warrants Denial of the Motion**

While Aspen/LAWC will object to the currently pending “deficiencies” as untimely (and to a large degree pointless), Aspen/LAWC will provide responses to the lion’s share of the “deficiency” questions without waiving its objections to them. (This is the course we have followed throughout the long march of responding to RLAWC’s eight sets of data requests.) We should not, however, be required to spend any further time on Data Request Four.

**III. THE SUBJECT MATTER OF THE MOTION IS IRRELEVANT TO WHETHER THE SALE OF SHARES BY JAMES AND MARIANNE ORVIS TO ASPEN IS IN THE PUBLIC INTEREST.**

The Motion seeks an order requiring Aspen/LAWC to produce written communications or summaries or oral communications that “preceded or followed” the emails referenced in the motion. The Motion, however, never states how the record would be assisted one iota by Aspen/LAWC taking the time to do so. The emails at issue are not solicitations of “legal interpretations” as stated in the Motion. (One would even have to reach to characterize them as “discussions”.<sup>12</sup>) Moreover, the emails cannot possibly bear on whether the sale of shares by James and Marianne Orvis to Aspen is in the public interest.

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<sup>11</sup> RLAWC’s July 6, 2012 email also suggests that the flood of discovery in May was the price Aspen/RLAWC was required to pay for opposing depositions. (“This may be a somewhat cumbersome process, but Mr. MacBride’s clients stated a strong preference for written Data Requests rather than sitting for depositions.”) The level of minutia in the data requests, however, makes it fairly obvious that any depositions would simply form the platform for myriad “record requests” bringing the parties back to square one.

<sup>12</sup> Motion pp. 1,5.)

A. **The Emails Are Not Solicitations of “Legal Interpretations”**

The Motion (p,1) states that:

The partial response to this question revealed email communications from Aspen/LAWC counsel (Mr. MacBride) to a high level Commission employee discussing and seeking legal interpretations regarding two substantive, material issues in this proceeding: a motion to disqualify Mr. MacBride on the basis of conflict of interest, and RLAWC testimony on the primary issue in this proceeding -- whether Aspen’s purchase of half of LAWAC constitutes the level of control that triggers the need for prior approval from the Commission.

In fact, the emails do not seek “legal interpretations”. They state as follows:

**1. December 22, 2011 Email to Legal Division related to Motion to Disqualify (Exhibit 4 to Motion)**

The email stated:

*These may be headed your way.*

*Motion*

<http://docs.cpuc.ca.gov/efile/MOTION/143246.pdf>

*Supporting Response*

<http://docs.cpuc.ca.gov/efile/RESP/144820.pdf>

That’s it.

Both the forwarded documents (Motion and Supporting Response) were public records and, as the links indicate, had already been filed. As we have already explained to RLAWC (in our response to the deficiency):

***Without waiving these objections, Aspen and LAWAC state that (1) it is far from “clear that some documents or communications must have preceded Mr. MacBride’s email to [legal division official]” and (2) that we have no such documents or communications. As is abundantly clear from the text of the December 23, 2011 email to RLAWC, the predictions set forth in it were obviously advanced to note the unreasonableness of RLAWC’s claim***

*(in its email to Judge Wilson of December 21, 2011) that RLAWC's need to reschedule depositions (from the January 3, 2012 date to which RLAWC had previously agreed) was predicated on (1) RLAWC's absence of "comfort" with Mr. MacBride's presence at the deposition while the motion to disqualify was pending and (2) RLAWC's apparent belief that a ruling granting the motion might be forthcoming by January 9, 2012. Mr. MacBride's email of December 23, 2012 noted that substantial jurisdictional (and precedential) questions were posed by any prospective grant of the motion which would logically prompt an internal inquiry to the Legal Division. Ultimately, however, the motion was deemed substantively baseless and we have no knowledge with regard to whether anyone at the Commission contacted the Legal Division with regard the motion.*

As our December 23, 2012 email to RLAWC's counsel (Exhibit 7 to Motion) makes clear, Aspen/LAWC found it hard to accept RLAWC claim that moving previously scheduled depositions (of Roma Orvis and David Ritchie) by a week or so to wait for a ruling on the Motion to Disqualify would alleviate RLAWC's concerns with respect to an alleged conflict of interest. If, as was ultimately the case, the motion were denied, present counsel would attend the deposition. If the motion were to be granted, however, it was highly unlikely that an order doing so would be issued in early January, 2013, given the unprecedented nature of the relief sought.<sup>13</sup> We believed then and believe now that the Commission would deliberate at some length and consult its counsel prior to removing an attorney from a pending proceeding.

2. March 2-3, 2012 Emails to Legal Division related to Use of Email from Legal Division Attorney in RLAWC Prepared Direct Testimony (Exhibit 6 to Motion)
  - a. Ms. Dralla's Testimony

In Answer 22 of her prepared direct testimony, Gloria Dralla states:

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<sup>13</sup> We do not know if such a motion has been denied in the past. We were unable to find any instance in which either the Commission or an Administrative Law Judge ever granted such a motion, one implicating Aspen/LAWC's rights under Section 1706.

“This correspondence is what lead to Mr. Perlstein offering his legal opinion that an application was necessary because a purchase of 50% of a regulated utility constitutes control.”

Later, in A 28, Ms. Dralla states:

“(A)n attorney in the Commission’s legal division (Joel Perlstein) concluded the sale of 50 percent of the stock of a regulated utility does require prior approval under state law. ....I am attaching a copy of Mr. Perlstein’s opinion as Exhibit 4 to my testimony....”

b. Commission and Legal Division Policy Regarding the Issuance of Legal Opinions by the Legal Division

The Legal Division does not frequently issue public legal opinions and those that are issued are not binding on the Commission.<sup>14</sup> We sought confirmation that nothing even approximating an “opinion” had been issued by the Legal Division and that it would providing its opinion on an internal basis only.<sup>15</sup> Hence, our March 3, 2012 email (Exhibit 6 to the Motion) stated that:

*We are taking the view that:*

*(1) Whether (under the specific facts of this case) an 854 application was required in 2003 is a legal issue that should be briefed by the parties;*

*(2) The Commission’s Legal Division has taken no position in A.11-04-013 with regard to whether (under the specific facts of this case) an 854 application was required in 2003.*

*(3) Any advice by the Legal Division on the legal question in (1) and (2) will be provided directly to the ALJ or the Commission as either may request.*

*I think (2) and (3) reflect current policy. Is there some way to confirm that for the parties?*

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<sup>14</sup> *Application of SuperShuttle of San Francisco Inc*, D. 96-09-091, 1996 LEXIS Cal. PUC 964; 68 CPUC 2d 254.

<sup>15</sup> As we advised RLAWC in response its “deficiency notice re Data Request 4:

*Aspen and LAWC state that to the best of Mr. MacBride’s recollection, the emails followed a call to [Legal Division official] calling his attention to the fact that an email from an attorney in the Legal Division was being cited as a legal “conclusion” in a pending matter. The “parties” to which the March 3, 2012 e-mail refers are the parties to A.11-04-013.*

Remarkably, the Motion (p.6), states that, somewhere in the above referenced text. “Mr. MacBride also sought further interpretations on the state of the Commission’s view regarding transfers of control for public utilities under Section 854.”

Where does any such request appear?

The email is pretty straightforward. Rather than seeking anyone’s view with regard to Section 854 it simply noted that the issue *should be briefed by the parties* and sought to confirm that the *Legal Division has taken no position...with regard to whether (under the specific facts of this case) an 854 application was required in 2003 and* that the Legal Division would reserve its advice for *the ALJ or the Commission as either may request*. Rather than seeking a “legal interpretation” the email sought to confirm that no such interpretation would be provided by the Legal Division except to *the ALJ or the Commission as either may request*.

The brief March 2, 2012 emails (the balance of Exhibit 6) simply forwarded the testimony to the Legal Division and asked to discuss the matter further. No subsequent substantive discussion, however, occurred and the March 3, 2012 email (set forth above) may have obviated the need for any. We do not know how that matter was reviewed further in the Legal Division.<sup>16</sup>

**B. The Matters Addressed in The Emails Have No Bearing on Whether the Sale of 5000 Shares of LAWC Stock to Aspen is in the Public Interest.**

The emails at issue forwarded a copy of the Motion to Disqualify and sought affirmation that the Legal Division had not rendered a “legal interpretation”

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<sup>16</sup> The Motion (p.6) asserts that some communication with the Legal Division simply must form the basis for the statement ascribed to Aspen/LAWC’s counsel in Paragraph 33 of Ms. Taff-Rice’s declaration, that he “knows how the Commission is thinking about this proceeding.” Aspen/LAWC’s counsel has no recollection of that specific statement and Ms. Taff-Rice’s declaration offers no detail. It would be surprising, however, for an attorney who has practiced before the Commission for 37 years and handled myriad transfer of control proceedings (including contested proceedings) to disclaim any ability to offer a view as to the likely outcome of a current proceeding. Why would a party to a Commission proceeding retain an attorney who was unable to venture a view as to “how the Commission is thinking about this proceeding.”?

(Motion p.1 ) in this case and would do so only internally. Neither email embraces facts relevant to the question of whether the sale of 5000 shares of LAWC stock from James and Marianne Orvis to Aspen is on the public interest.

#### **IV. GRANTING THE MOTION WOULD ABROGATE CRITICAL PROVISIONS OF ARTICLE 8 OF THE COMMISSION’S RULES.**

RLAWC states that “Mr. MacBride has engaged in behind the scenes communications with Commission employees” (Motion, p.6) but never offers authority for its assertion that the communications were in any fashion improper. Because they are not improper (and are not even unusual), we have opposed, and still oppose, spending any more time on burdensome (and frequently less than reliable) email searches

The Commission and the Legislature have spent countless hours developing rules regarding communications between (1) parties to Commission proceedings and (2) the Commission and its employees. In adjudicatory matters, parties may communicate on an ex parte (“behind the scenes”) basis with Commission employees as long as the employee is not a “decisionmaker”; parties may not engage in such communications with “decisionmakers.”<sup>17</sup> In rate setting matters, such as A. 11-04-013, there are no restrictions on ex parte communications with Commission employees unless the employee is a “decisionmaker” in which case the communication must be disclosed to the other parties through a notice filed with the Commission.<sup>18</sup> The rules governing notices expressly provide that any communication by the “decisionmaker” is not to be included in the notice.<sup>19</sup>

The Legislature left it to the Commission to determine who is a “decisionmaker.”<sup>20</sup> The Commission has done so.<sup>21</sup> The adopted definition does not include any of the Commission employees referenced in RLAWC’s “deficiencies” regarding the responses to the Fourth Data Request. Accordingly communications with

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<sup>17</sup> Section 1701.2(b).Rule 8.3(b)

<sup>18</sup> Section 1701.3(c); Rules 8.3(b), 8.4. See also Ordering Paragraph 4 of the August 12, 2011 Scoping Memo.

<sup>19</sup> Rule 8.4(c).

<sup>20</sup> Section 1701.1

<sup>21</sup> Rule 8.1(b).

those employees are permitted and no notice of any such communication is required. The only limitation on such communications is the employee's willingness to participate in it.<sup>22</sup>

This statutory/regulatory scheme has been in effect for the roughly fifteen years that followed the enactment of SB 960.<sup>23</sup> It has generally operated well. Under it, (1) none of the communications described in the Motion need be disclosed and (2) RLAWC's request that ex parte communications with any Commission employee be barred cannot even be seriously entertained.

V. **RLAWC MAY NOT CIRCUMVENT ARTICLE 8 THROUGH THE DISCOVERY PROCESS**

RLAWC, however, seeks to circumvent the statutory/regulatory scheme described above by invoking the discovery process. It should not be permitted to do so here.

Aspen/LAWC have sought to avoid unnecessary discovery disputes. We also recognize that LAWAC's past interplay with the Commission staff may inform the evidentiary record with regard to how LAWAC has been operated since the stock purchase. Accordingly, LAWAC has provided communications with Commission staff members requested by RLAWC. Prior to the filing of RLAWC's Motion, therefore, there was no occasion to examine the circumstances under which the discovery process could be employed to abrogate the statutory/regulatory scheme described in IV *supra*.

Nor is it necessary to do so now. RLAWC does not seek to discover facts that could be introduced to develop an evidentiary record confined to the issue set forth

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<sup>22</sup> *UCAN v AT&T* (D.08-06-023, 2008 Cal. PUC LEXIS 228 (Cal. PUC 2008)) cited by RLAWC at footnote 8 of the Motion offers no assistance to RLAWC. First, the matter at issue had been categorized at adjudicatory. Second, the communications at issue were with two Commissioner Advisors with respect to whom most of the Rules governing communications with "decisionmakers" apply (see Rule 8.2). A.11-04-013 is a rate setting matter and none of the communications described in the Motion involve "decisionmakers (Rule 8.1(b) or Advisors (Rule 8.2)).

<sup>23</sup> Stats. 1998, c. 886.

in the Scoping Memo.<sup>24</sup> Instead, RLAWC, quite simply, seeks to learn what Aspen/LAWC's counsel has been doing to further his client's case. That is not the purpose of discovery.

In its Motion, RLAWC asserts cites a standard for relevance that is no standard at all. In the cases it cites in support, however, (*Gonzalez v. Sup. Ct. (City of San Francisco)*, 33 Cal. App. 4th 1539, 1546 (1995) and *Colonial Life & Acc. Ins. Co. v. Sup. Ct.*, 31 Cal. 3d 785, 790 (1982)) the relevance of the sought material was so beyond question that the cases offer little of guidance here.<sup>25</sup> By contrast, it is very difficult to glean why the communications described in the motion bear on whether the stock sale by James and Marianne Orvis is in the public interest.

## VI. CONCLUSION

The Motion is untimely and the relief it seeks will contribute nothing to this matter and only serve to further burden Aspen and LAWAC as they prepare for hearings that begin in eleven days.

The Motion should be denied.

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<sup>24</sup> Rule 10.1. (Discovery from Parties.) states:

Without limitation to the rights of the Commission or its staff under Pub. Util. Code Sections 309.5 and 314, any party may obtain discovery from any other party regarding any matter, not privileged, that is relevant to the subject matter involved in the pending proceeding, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence, unless the burden, expense, or - 59 - 6/8/2011 intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701, Public Utilities Code. 10.2.

<sup>25</sup> In *Gonzales*, the plaintiff in a sexual harassment claim was required to provide the defendants with the identity of the person who provided her with copies of photographs which formed the principal basis for her claim. In *Colonial*, the defendant insurance company was required to provide plaintiff-insured with the name of other insured persons whose claims had been handled by the adjuster whose conduct was at issue in the suit.

Respectfully submitted this 12<sup>th</sup> day of July, 2012 at San Francisco, California.

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