

Decision _____

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

Application of Mountain Utilities (U906 E) for Authority to Issue Evidence of Indebtedness and to Grant Security Interest in Assets as Security Therefore In Order to Refinance Existing Debt and to Provide Additional Debt Capital For Investment into Additional Assets.

Application 06-11-004
(Filed November 14, 2006)

**OPINION GRANTING MOUNTAIN UTILITIES AUTHORITY TO
OBTAIN LONG-TERM DEBT AND OTHER LONG-TERM CREDIT****1. Summary**

This decision grants the relief sought to enter into a secured \$4,000,000 long-term loan and secure a \$1,500,000 line of credit to lease equipment, both subject to certain limitations. The authority is exempt from competitive bidding requirements. Mountain Utilities must comply with any applicable environmental and other discretionary permitting processes before proceeding with capital projects financed using the proceeds obtained under this authority. This proceeding is closed.

2. Request

Mountain Utilities is a Delaware LLC providing electrical services to customers in its service territory, which encompasses portions of the counties of El Dorado, Amador and Alpine in California.¹ It filed this application pursuant to Sections (§) 701, 816, 817, 818, and 851 of the Cal. Pub. Util. Code² and pursuant to Rules 2-2.6, 6, 15-17, and 33-36 of the Commission's Rules of Practice and Procedure (Rules). Mountain Utilities requests authority:

- To procure a \$4 million secured loan from Wells Fargo NA to refinance a \$2.8 million existing debt authorized by Decision (D.) 01-04-031, as modified by D.01-09-047, and to use approximately \$1.2 million for system improvements and upgrades.
- To secure a \$1.5 million capital lease credit facility with Wells Fargo NA to acquire new generation assets.
- To execute an agreement with Wells Fargo NA for both the amortizing credit facility and the capital lease line of credit.
- To be exempted from the Commission's competitive bidding rule for the proposed debt facilities.

3. Procedural Background

In Resolution ALJ 176-3183, dated November 30, 2006 the Commission preliminarily categorized this proceeding as ratesetting and

¹ The company changed its name from Kirkwood Gas and Electric to Mountain Utilities, effective by a filing of Certificate of Articles of Incorporation on February 4, 1998 with the California Secretary of State. (Application, p. 2.)

² Unless otherwise stated, all subsequent references to sections (§§) are to sections of the Pub. Util. Code.

preliminarily determined that an evidentiary hearing would not be necessary. Based on the record of this proceeding and pursuant to Rule 7.3, we confirm that this is a ratesetting proceeding, and there is no need for evidentiary hearings.

4. Need to Issue Debt

The Commission has broad discretion under §§ 816, *et seq.*, to determine whether a utility should be authorized to issue debt.³ The primary standard the Commission uses is whether a utility has demonstrated a reasonable need to issue debt for proper purposes. The term “proper purposes” means any outlay necessary or proper to promote legitimate objects of a public utility of the type concerned. The Webster Mfg. Company etc. v. *Byrnes*, 207 Cal. 630, 638-639, (1929).

Mountain Utilities’ request to encumber utility property is subject to § 851 which states, in relevant part:

No [utility]...shall...encumber...any part of its . . . plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or right thereunder . . . without first having . . . secured from the commission an order authorizing it to do so ...

The Commission has broad discretion under § 701 to determine

³ § 816: The power of public utilities to issue stocks and stock certificates or other evidence of interest or ownership and bonds, notes, and other evidences of indebtedness and to create liens on their property situated within this State is a special privilege, the right of supervision, regulation, restriction, and control of which is vested in the State, and such power shall be exercised as provided by law under such rules as the commission prescribes.

whether to authorize an encumbrance of utility property under § 851.⁴ The primary standard used by the Commission is whether the encumbrance will adversely affect the public interest. The Commission may also consider if the encumbrance will serve the public interest.⁵ If necessary and appropriate, the Commission may attach conditions to an encumbrance to protect and promote the public interest.⁶

⁴ § 701: The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

⁵ Examples of this include D.00-06-005, 2000 Cal. PUC LEXIS 281, *4; D.99-04-066, p. 5; D.99-02-036, p. 9; D.97-06-066, 72 CPUC 2d 851, 861; D.95-10-045, 62 CPUC 2d 160, 167; D.94-01-041, 53 CPUC 2d 116, 119; D.93-04-019, 48 CPUC 2d 601, 603; D.86-03-090, 1986 Cal. PUC LEXIS 198 *28 and COL 3; and D.8491, 19 CRC 199, 200.

⁶ Examples of this include D.95-10-045, 62 CPUC 2d 160, 167-68; D.94-01-041, 53 CPUC 2d 116, 119; D.90-07-030, 1990 Cal. PUC LEXIS 612 *5; D.89-07-016, 32 CPUC 2d 233, 242; D.86-03-090, 1986 Cal. PUC LEXIS 198 *84-85 and COL 16; and D.3320, 10 CRC 56, 63.

We first consider the proposed use of funds. Section 817 defines the limits for the use of funds.⁷ Mountain Utilities proposes that it will require \$2,115,579 in net new funds for 2007 – 2009.⁸ As shown below, the net combination of these new funds will retire and refinance \$1,200,000 in existing debt and provide \$2,865,587 for new construction and other capital investments. Mountain Utilities can only provide \$1,950,000 in forecasted internally generated sources to meet its total cash requirement of \$4,065,579.

Requirements for Additional Capital				
	2007	2008	2009	Total
Construction/Investment	\$821,280	\$1,370,799	\$673,500	\$2,865,579
Debt Retirement	400,000	400,000	400,000	1,200,000
Total Cash Requirement	\$1,221,280	\$1,770,799	\$1,073,500	\$4,065,579
Less – Internal Sources	600,000	650,000	700,000	\$1,950,000
Required Additional Capital	\$621,280	\$1,120,799	\$373,500	\$2,115,579

⁷ § 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. ... (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.

⁸ Application, Exhibit D, second unnumbered page.

Mountain Utilities forecasts a capital investment during 2007 – 2009 that totals \$2,865,579, as follows:

Plant and Asset Improvements 2007 -2009	
Generation related	\$1,121,400
Distribution	1,401,939
Propane related	122,000
Property & Systems	\$220,240
Total	\$2,865,579

Mountain Utilities proposes to refinance all outstanding long-term debt and obtain additional capital by entering into a new secured loan provided by Wells Fargo, NA, totaling \$4,000,000.⁹ It would be a 7-year amortizing credit facility secured by all of Mountain Utilities assets. The terms are a variable rate, LIBOR (London Interbank Offered Rate¹⁰) plus an adjustment based on the EBITDA (earnings before interest, taxes, depreciation, and amortization) for both the utility and an affiliate, Kirkwood Mountain Resort, LLC. Mountain Springs LLC, parent of both companies, will guarantee the loan.

Secondly, Mountain Utility will enter into a Capital Lease Line for \$1,200,000 with Wells Fargo NA, to finance leased equipment including diesel generators and maintenance vehicles.

⁹ See Application, pp. 4 - 6 for full descriptions negotiated for the loan and line of credit.

¹⁰ The London Interbank Offered Rate is a daily reference rate based on the interest rates at which banks offer to lend unsecured funds to other banks in the London wholesale (or "interbank") money market.

The loan agreement is applicable to both the utility and an affiliate, Kirkwood Mountain Resort, LLC. Therefore we must consider § 701.5.¹¹ In this instance, it is the parent company that will guarantee the loan, but it will also be secured by Mountain Utilities' assets. As discussed below, we find that there is a utility-related need for the debt and therefore we determine that the proposed financing will benefit the interests of the utility and its ratepayers, thus satisfying the requirements of § 701.5.

The impact of the proposed debt issue, excluding the line of credit, is shown below. The presentation of this pro forma capital structure in no way constitutes Commission authority to use this capital structure to set rates or determine a fair return on equity. The Commission adopts or authorizes capital structure and return on capital in a general rate case or

¹¹ § 701.5: With respect to financing arrangements which are established after January 1, 1988, no electrical, gas, or telephone corporation, whose rates are set by the commission on a cost-of-service basis, shall issue any bond, note, lien, guarantee, or indebtedness of any kind pledging the utility assets or credit for or on behalf of any subsidiary or affiliate of, or corporation holding a controlling interest in, the electrical, gas, or telephone corporation. The commission may, however, authorize an electrical, gas, or telephone corporation to issue any bond, note, lien, guarantee, or indebtedness pledging the utility assets or credits as follows: (a) For or on behalf of a subsidiary if its revenues and expenses are included by the commission in establishing rates for the electrical, gas, or telephone corporation. (b) For or on behalf of a subsidiary if it is engaged in a regulated public utility business in this state or in any other state. (c) For or on behalf of a subsidiary or affiliate if it engages in activities which support the electric, gas, or telephone corporation in its operations or service, these activities are, or will be, regulated either by the commission or a comparable federal agency, and the issuance of the bond, note, lien, guarantee, or indebtedness is specifically approved in advance by the commission. The commission shall not approve the bond, note, lien, guarantee, or indebtedness unless the commission finds and determines that the proposed financing will benefit the interests of the utility and its ratepayers.

other specific-purpose ratesetting application, based on appropriate evidentiary record and persuasive policy recommendations. This new loan will amortize over time. Therefore, future earnings or losses will affect the actual equity balance, which is considered by the Commission before it adopts a capital structure or return on equity for ratemaking purposes.

Pro Forma Impact on Capital Structure					
Recorded - April 30, 2006			Change	Proforma	
Debt	\$2,832,347	47%	\$1,167,653	\$4,000,000	56%
Equity	3,131,111	53%		3,131,111	44%
Total	\$5,963,458	100%		\$7,131,111	100%
<i>After retiring existing debt and issuing all proposed new debt. Ignores the impact of subsequent retained earnings or losses which affect the equity percentage. Reflects no use of the secured line of credit.</i>					

We find, as required by § 818 that Mountain Utilities has reasonable utility uses for the debt, such as financing capital expenses, retiring long-term debt and obtaining lines of credit, and therefore grant authority to encumber its utility assets to secure the debt pursuant to § 851.

Where necessary and appropriate, the Commission may attach conditions to the issuance of debt to protect and promote the public

interest.¹² Consistent with § 824, Mountain Utilities shall maintain records to identify the specific long-term debt issued pursuant to today's decision, and demonstrate that the proceeds are only used for the purposes authorized by this decision.

¹² § 819: To enable it to determine whether it will issue the order, the commission may hold a hearing and may make such additional inquiry or investigation, examine such witnesses, books, papers, documents, and contracts, and require the filing of such data as it deems of assistance. The commission may by its order grant permission for the issue of such stocks or stock certificates or other evidence of interest or ownership, or bonds, notes, or other evidences of indebtedness in the amount applied for, or in a lesser amount, or refuse such permission, or grant it subject to such conditions as it deems reasonable and necessary. The commission may authorize issues of bonds, notes, or other evidences of indebtedness, less than, equivalent to or greater than the authorized or subscribed capital stock of a public utility corporation.

Mountain Utilities does not request, and this decision does not grant, evergreen authority¹³ to issue long-term debt. Accordingly, Mountain Utilities must file an application to obtain Commission authority to issue debt and equity to refinance, refund, redeem, or otherwise replace any long-term debt issued pursuant to this decision.

This decision does not make a finding of reasonableness regarding the interest rates or terms for ratemaking purposes at this time because the Commission considers the reasonableness of the cost of debt in either a general rate case or other specific-purpose ratesetting application.

¹³ Evergreen authority is a term of art that describes authority to refinance the same amount of debt in perpetuity. The authority granted herein, by contrast, lapses with the earlier of the retirement or maturity, etc., of the debt securities issued pursuant to this decision.

5. California Environmental Quality Act

Under the California Environmental Quality Act (CEQA), Cal Pub Resources Code § 21000 *et seq.*, and Rule 2.4,¹⁴ we must consider the environmental consequences of projects that are subject to our discretionary approval.¹⁵ Thus, in deciding whether to approve this application, we must consider if doing so will alter an approved project, result in new projects or change operations, in ways that have an environmental impact.

Mountain Utilities intends to use a portion of long-term debt authorized by this decision to finance capital expenditures.¹⁶ Mountain Utilities estimates that its total capital expenditures in 2007 - 2009 will exceed \$2,865,579.¹⁷ Mountain Utilities did not, however, request construction authority in this application for specific capital expenditures. In fact, by seeking expeditious *ex parte* authority for financing approval, there is neither time nor notice for a request of regulatory authority for specific capital projects. We conclude that it is premature to conduct a CEQA review of the potential projects funded with debt issued pursuant to this decision, because Mountain Utilities did not provide enough detail about the potential projects, and accordingly this decision does not authorize any capital expenditures or construction projects.¹⁸

¹⁴ Formerly Rule 17.1.

¹⁵ Pub. Resources Code § 21080.

¹⁶ Application, p. 6.

¹⁷ Application, Exhibit D, unnumbered p. 1.

¹⁸ Some of the activities being considered by Mountain Utilities may be exempt from CEQA. (See, for example, CEQA Guidelines 15301, Existing facilities; 15302, Replacement or Reconstruction; and 15303, New Construction or Conversion of Small Structures. http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art19.html.)

Therefore, to the extent Mountain Utilities' capital expenditures are financed with the proceeds of the long-term debt issued pursuant to this decision, Mountain Utilities must comply with all state and local permitting processes applicable to each capital project, including any applicable environmental review. CEQA guidelines recognize that the timing of the environmental review involves a balancing of competing factors, and that such review should occur as early as feasible in the planning process to enable environmental considerations to influence project design, yet late enough to provide meaningful information for environmental assessment.¹⁹ Consequently, because there is insufficient information regarding the potential projects at this time, we do not address permitting for any of the proposed uses of the proceeds.

Mountain Utilities shall not use any proceeds from the debt issued pursuant to this decision to begin construction of capital projects until it has obtained the required approvals from the Commission, or other state and local authorities, including any required environmental review pursuant to CEQA.

6. Exemption from the Competitive Bidding Rule

Resolution F-616, issued on October 1, 1986 requires utilities to issue debt using competitive bids. The purpose of the competitive bidding rule, is to reduce the cost of debt. The resolution also states that requests for an exemption from the competitive bidding rule will be "entertained for debt issues in excess of \$200 million, and will only be granted upon a compelling showing by a utility that because of the size of the issues, an exemption is warranted."

Exhibit A of Resolution F-616 exempts debt securities that are issued on a negotiated basis. These exempted debt securities include securities privately

¹⁹ CEQA Guidelines, § 15004.

placed with specific lenders, bank term loans, tax-exempt pollution control bonds, and variable-rate debt.

We find that Mountain Utilities has proposed a transaction that comports with the exemptions allowed by Resolution F-616, and therefore we exempt this transaction from competitive bidding.

7. General Order 24-B

General Order (GO) 24-B requires utilities to submit a monthly report to the Commission that contains, among other things, the following information: (1) the amount of debt issued by the utility during the previous month; (2) the total amount of debt outstanding at the end of the prior month; (3) the purposes for which the utility expended the proceeds realized from the issuance of debt during the prior month; and (4) a monthly statement of the separate bank account that the utility is required to maintain for all receipts and disbursements of money obtained from the issuance of debt. To minimize administrative costs, we grant Mountain Utilities permission to report to the Commission on a quarterly basis all the information required by GO 24-B for any debt issued pursuant to this decision.

8. Fees

Whenever the Commission authorizes a utility to issue debt, the Commission is required to charge and collect a fee in accordance with § 1904(b).²⁰

The following table shows the calculation of the fee that Mountain Utilities is required to pay pursuant to the formula set forth in § 1904(b) for the additional \$1.5 million of increase in its borrowing capacity as authorized by this decision. Mountain Utilities has previous authority for \$4 million in debt, therefore the Wells Fargo loan of \$4 million is not subject to a fee at this time.²¹ The \$1.5 line of credit is an incremental authority and is therefore subject to § 1904(b).

Computation of § 1904(b) Fee	
For \$1.5 Million of Additional Borrowing Capacity	
First \$1 Million (\$2/\$1000)	\$2,000
\$2 Million - \$10 Million (\$1/\$1,000)	500
Total Fee	<u>\$2,500</u>

Mountain Utilities shall remit the required \$2,500 fee to the Commission's Fiscal Office. The authority granted herein shall be effective after the fee is paid.

²⁰ § 1904(b) states in pertinent part: For a certificate authorizing an issue of bonds, notes, or other evidences of indebtedness, two dollars (\$2) for each one thousand dollars (\$1,000) of the face value of the authorized issue or fraction thereof up to one million dollars (\$1,000,000), one dollar (\$1) for each one thousand dollars (\$1,000) over one million dollars (\$1,000,000) and up to ten million dollars (\$10,000,000), and fifty cents (\$0.50) for each one thousand dollars (\$1,000) over ten million dollars (\$10,000,000), with a minimum fee in any case of fifty dollars (\$50). No fee need be paid on such portion of any such issue as may be used to guarantee, take over, refund, discharge, or retire any stock, bond, note or other evidence of indebtedness on which a fee has theretofore been paid to the commission.

²¹ Mountain Utilities was authorized to issue \$3.5 million in D.01-04-031 and a further \$500,000 authority was granted in D.01-09-047. Only \$2.8 million is outstanding currently.

9. Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is waived.

10. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Douglas M. Long is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Mountain Utilities has a reasonable need to issue long-term debt for the following purposes that are not reasonably chargeable to operating expenses or income: (i) finance capital expenditures; (ii) retire long-term debt; and (iii) obtain lines of credit.

2. Mountain Utilities does not request evergreen authority to issue long-term debt.

3. There is no evidence for findings on the reasonableness of the cost of debt or the capital structure for ratemaking purposes. Such findings are made in a general rate case or other appropriate proceeding.

4. Resolution F-616 requires utilities to issue debt using competitive bids. The resolution also provides for exemptions from the competitive bidding rule for debt issues in excess of \$200 million and securities privately placed with specific lenders, bank term loans, tax-exempt pollution control bonds, and variable-rate debt. The proposed securities comply with the exemptions.

5. GO 24-B requires utilities to submit a monthly report to the Commission. It will minimize Mountain Utilities' administrative costs to report to the Commission all the information required by GO 24-B on a quarterly basis.

6. Mountain Utilities intends to use a portion of the long-term debt authorized by this decision to finance capital expenditures. It did not seek discretionary permitting authority to undertake specific capital projects financed with this debt. No discretionary permitting authority is granted in this decision.

7. Mountain Utilities did not provide enough details about the potential projects to support discretionary permitting authority for any projects that may be funded with the secured debt or line of credit authorized by this decision.

Conclusions of Law

1. Mountain Utilities' request to issue the type and amount of debt, identified in this application is subject to Commission approval under §§ 701, 701.5, 816 *et seq.*, and 851. The Commission has broad discretion under these statutes to approve, modify, or reject this application.

2. Pursuant to Pub. Util. Code §§ 701.5, 816 *et seq.*, and 851, it is reasonable to authorize Mountain Utilities to issue secured debt and enter into the proposed line of credit.

3. This decision does not grant evergreen authority to issue long-term debt. Therefore, Mountain Utilities must apply for appropriate authority to issue new debt when the long-term debt issued pursuant to this decision either matures or is retired.

4. Mountain Utilities should be exempted from the Competitive Bidding Rule, because the proposed debt instrument meets the exemption criteria as provided in Resolution F-616.

5. Mountain Utilities is required to pay a fee pursuant to § 1904(b) for the additional borrowing capacity authorized in this decision. The authority granted herein should be effective after the required fee is paid.

6. There is insufficient information at this time to conduct a meaningful CEQA review or determine whether the projects meet CEQA Guideline exemptions.

7. Mountain Utilities should not use the proceeds from the secured debt or line of credit authorized by this decision to fund capital projects until it has obtained any required Commission, or other state and local approvals for the projects, including any required environmental review under CEQA.

8. This application should be categorized as ratesetting and no hearings are necessary.

9. The following order should be effective immediately so that Mountain Utilities may issue the secured debt and enter into the line of credit authorized herein as soon as possible.

O R D E R

IT IS ORDERED that:

1. Pursuant to Pub. Util. Code § 816 *et seq.*, Mountain Utilities LLC may enter into a \$4 million secured loan and secure a \$1.5 million capital lease credit facility (line of credit), as described herein, exempt from the Commission's competitive bidding rule.

2. Mountain Utilities is required to pay a fee of \$2,500 pursuant to Pub. Util. Code § 1904 (b) for the additional borrowing capacity authorized herein. Mountain Utilities shall pay the fee by remitting a check for \$2,500 to the Commission's Fiscal Office, and the decision number shall appear on the face of the check. This authority shall only become effective after Mountain Utilities remits the required fee, and shall expire if the fee is not paid within 180 days of the effective date of this decision.

3. Mountain Utilities shall apply for authority to issue new debt when the long-term debt issued authorized herein either matures or is retired.

4. Mountain Utilities shall report all the information required by General Order (GO) 24-B on a quarterly basis.

5. Mountain Utilities shall not use the proceeds from the secured debt or line of credit authorized by this decision to fund capital projects until it has obtained any required Commission, or other state and local approvals for the projects, including any required environmental review under the California Environmental Quality Act.

6. Application 06-11-004 is closed.

This order is effective today.

Dated _____, at San Francisco, California.