

**WATER/RSK/KOK/DLW/RHG**

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

**DIVISION OF WATER AND AUDITS  
UTILITY AUDIT, FINANCE AND  
COMPLIANCE BRANCH**

**RESOLUTION W-4766  
JUNE 4, 2009**

**R E S O L U T I O N**

**RESOLUTION W-4766. RESOLUTION GRANTING LAKE ALPINE WATER COMPANY'S (LAWC) REQUEST FOR AUTHORIZATION TO ENTER INTO AN UNSECURED NOTE WITH CALIFORNIA BANK AND TRUST (BANK), REPLACING A VOID UNSECURED NOTE EXECUTED WITHOUT PRIOR COMMISSION APPROVAL, THE PROCEEDS OF WHICH WERE USED FOR SYSTEM IMPROVEMENTS.**

**By Advice Letter (AL) No. 87, filed on April 20, 2009.**

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**SUMMARY**

This Resolution authorizes LAWC to execute an unsecured note with the Bank.

By this filing, LAWC wishes to rectify its unintentional omission and requests authority pursuant to §§ 816 through 851 of the Public Utilities Code, for the long-term debt in the amount of \$361,500, entered into with the Bank without the approval of the Commission.<sup>1</sup> Pursuant to § 825, the unauthorized debt is void.

**BACKGROUND**

LAWC, a California corporation, is a Class D water utility subject to the jurisdiction of this Commission. LAWC provides service to 19 metered and

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<sup>1</sup> All statutory references are to the Public Utilities Code unless otherwise indicated.

507 flat-rate customers in Bear Valley area, and vicinity located about three miles west of Lake Alpine, adjacent to State Highway 4, Alpine County.

Pursuant to its Year 2008 Annual Report, LAWC reported that it generated total operating revenues of \$493,244 and a net loss of \$29,286.

The company's balance sheet is summarized below:

<u>Assets</u>	<u>Amount</u>
Net Utility Plant	\$3,242,777
Current Assets	451,085
Other Current Assets	62
Deferred Charges	<u>379,939</u>
Total Assets	<u>\$4,073,863</u>
<u>Liabilities &amp; Equity</u>	
Common Stock	\$ 100,000
Other Paid-in Capital	156,480
Retained Earnings	382,971
Long-Term Debt	2,644,955
Current Liabilities	25,050
Other Deferred Credits	355,119
Net Contributions in Aid of Construction	<u>409,288</u>
Total Liabilities & Equity	<u>\$4,073,863</u>

LAWC's capital structure, as of December 31, 2008 consisted of 80.5% debt and 19.5% equity.

Capital structures are normally subject to review in cost of capital or general rate case proceedings. We will not make a finding in this Resolution on the reasonableness of LAWC's capital structure for ratemaking purposes.

**A. Revolving Line of Credit**

On September 10, 2005, LAWC secured a 12-month revolving line of credit of \$350,000 from the Bank, with an 8.5% interest rate. LAWC states in its filing, that the utility was a co-applicant with Alpine County (County) for 395 additional acre feet of water rights. These rights were deemed necessary by LAWC and the County, as part of the approved master plan for the development of Bear Valley.

The Bank and LAWC subsequently extended the revolving line of credit to December 31, 2006. LAWC did not obtain approval from the Commission for the renewal or extension of the revolving line of credit.

Pursuant to § 823(d), a utility may not refund a note payable, at a period of not more than 12 months after the date of issuance of such note, in whole or in part, by any issue of stocks or stock certificates or other evidence of interest or ownership, or bonds, notes of any term or character, or any other evidence of indebtedness, without the consent of the Commission.

**B. Long-Term Debt**

On January 9, 2007, LAWC converted the revolving line of credit with the Bank to an unsecured note, with a principal amount of \$361,500, at an interest rate of 4.75 – 8.5%, and a maturity date of September 10, 2012. LAWC did not secure approval from the Commission for this long-term debt. LAWC indicates that as of March 31, 2009, the outstanding balance of the Bank loan is \$216,514.

LAWC used the funds obtained from the Bank for the following expenses:

Field research, analysis and hydrology studies	\$ 69,150
Environmental Impact Report	55,000
Legal fees for CEQA, EIR, protests and SWRCB Hearings	234,750
Incidental costs	<u>2,600</u>
Total	<u>\$361,500</u>

Pursuant to § 818, a public utility may not issue bonds, 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 from the Commission, an order authorizing the issue.

### **NOTICE AND PROTESTS**

Notice of AL No. 87 was made by publication in the Commission's Daily Calendar of May 1, 2009. No protests have been received.

### **DISCUSSION**

LAWC is in violation of the provisions of Article 5, Stocks and Security Transactions, of the Pub. Util. Code, for its failure to obtain Commission authorization prior to incurring the indebtedness discussed above.

LAWC violated the Public Utility Code and the offending transaction is thereby void under § 825, which states in part:

All stock and every stock certificate or other evidence of interest or ownership, and every bond, note, or other evidence of indebtedness, of a public utility, issued without an order of the commission authorizing the issue thereof then in effect or not conforming in its provisions to any of the provisions which it is required by the order of authorization to contain, is void.

While we are concerned when a utility executes debt without first obtaining Commission authorization as the Code requires, we do recognize that by this filing, LAWC wishes to rectify its omission. The Commission has authorized the execution of a new debt instrument in lieu of the void and unauthorized debt, where it is in the public interest to do so.

In Decision (D.) 92-10-024, dated October 6, 1992, and D.94-09-025, dated September 1, 1994, the Commission denied Alco Water Service retroactive approval of certain unauthorized borrowings and required it to make arrangements for the issuance of new promissory notes to rectify several previously negotiated long-term loans and stock repurchases done without Commission approval. In D.87-08-017, dated August 12, 1987, the

Commission directed Southern California Water Company to execute a new note, even though the utility had already executed a note without authority and expended the funds for a steel water reservoir, land rights and appurtenant equipment. In addition, Resolution W-4557, dated August 25, 2005, authorized Warring Water Service to execute new debt instruments in lieu of void and unauthorized debts issued without Commission approval.

LAWC used the proceeds of the unauthorized debt for capital costs associated with acquiring additional water rights, which is an allowable purpose for issuing debt under § 817. LAW C's acquisition of the water rights is in the public interest because it is for the acquisition of property and improvement of its service. Consequently, we will require LAW C to execute a replacement promissory note. The outstanding balance will be the principal amount and the term will be for the remaining years.

Our authorization is not to be construed as a finding of the value of LAW C's capital projects nor as indicative of the amounts to be included in proceedings for the determination of just and reasonable rates. The interest rate on the debt, the capital expenditures, and the resulting assets are normally addressed in cost of capital or general rate case proceedings.

LAWC is put on notice by this Resolution that the Commission does not permit a utility, either through carelessness or design, to disobey the provisions of the Public Utility Code and Commission orders, either in letter or in spirit. If in the future, the Commission becomes convinced that any of its orders are being knowingly violated, LAW C will find us less accommodating. We will not impose a penalty at this time.

We remind LAW C of the provision of § 856:

Every officer, agent or employee of a public utility, or of a subsidiary or affiliate of, or a corporation holding a controlling interest in, a public utility, and every other person subject to the requirements of this article, who violates or fails to comply with, or procures, aids, or abets any violation of, this article is guilty of a misdemeanor.

The fee for this financing authority as set forth by § 1904(b) is \$434<sup>2</sup>.

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<sup>2</sup> The amount subject to the fee is \$216,154, which is the current balance of the loan. The fee is determined as follows:  $(\$2 \times (216,154/1000)) = \$434$ .

## **COMMENTS**

Section 311(g) (1) generally requires that draft resolutions be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission.

LAWC, the only party in this filing, has informed the Division of Water and Audits that it has no objection to the required execution and issuance of a new debt instrument to replace the unauthorized transaction, and that it is waiving its right to the 30-day public review and comment period.

Accordingly, pursuant to § 311(g) (2), the otherwise applicable 30-day period for public review and comment is being waived.

## **FINDINGS**

1. On January 9, 2007, LAWC executed an unsecured note with the Bank without the authorization of the Commission.
2. LAWC is presently carrying an unauthorized debt obligation, and by this filing requests to rectify its omission.
3. The execution and issuance of a new debt instrument to replace the unauthorized transaction would not be adverse to the public interest.
4. The Commission does not by this Resolution determine that LAWC's cost of debt or expenditures are necessary or reasonable for ratemaking purposes. This issue is normally addressed in a general rate case.
5. The Commission does not by this Resolution determine that LAWC's capital structure is necessary or reasonable for ratemaking purposes. This issue is normally addressed in a general rate case.
6. There is no known opposition, and there is no reason to delay granting the authority requested.

## **THEREFORE, IT IS ORDERED THAT:**

1. Lake Alpine Water Company is authorized to execute a loan contract with California Bank and Trust, using the amount of the outstanding balance of the void loan as the principal amount, and the remaining years and months as the term.

2. Lake Alpine Water Company shall file with the Division of Water and Audits a copy of the loan documents within 15 days of execution, and not later than 60 days from the effective date of this Resolution.
3. The Division of Water and Audits is directed to mail a copy of this Resolution to:
  - a. California Bank and Trust  
P.O. Box 3042  
Milwaukee, WI 54301-3042
4. The authority granted by this order shall become effective when Lake Alpine Water Company pays \$434, the fee set forth by Public Utility Code § 1904(b).
5. This Resolution is effective today.

I certify that the foregoing Resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on June 4, 2009. The following Commissioners approved it:

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PAUL CLANON  
Executive Director

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners