

WATER/KPC/FLC/KOK/RHG

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WATER DIVISION
AUDIT AND COMPLIANCE BRANCH

RESOLUTION W-4535
May 26, 2005

R E S O L U T I O N

RESOLUTION W-4535. GRAEAGLE WATER COMPANY, INC. (GRAEAGLE). REQUEST FOR AUTHORITY TO SECURE A \$250,000 LOAN, THE PROCEEDS OF WHICH WILL BE USED FOR SYSTEM IMPROVEMENTS.

By Advice Letter (AL) No. 42 filed on April 18, 2005.

SUMMARY

This Resolution grants in part and denies in part the authority requested by Graeagle in AL No. 42.

Graeagle requests authority pursuant to §§ 816 and 851 of the Pub. Util. Code¹ for a \$250,000 credit facility secured from Plumas Bank that the utility is currently using to finance the cost associated with storage capacity.

Notice of AL No. 42 was made by publication in the Commission's Daily Calendar of April 20, 2005. No protests have been received.

PARTIAL DENIAL OF ADVICE LETTER

Graeagle is in violation of the provisions of § 825 for its failure to secure Commission authorization prior to incurring the indebtedness that it seeks in this filing. We cannot grant a retroactive approval.

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

BACKGROUND

Graeagle, a California corporation, is a Class C water utility subject to the jurisdiction of this Commission. Graeagle provides service to residential, commercial and industrial customers.

Pursuant to its Year 2003 Annual Report, Graeagle reported that it generated total operating revenues of \$361,905 and net income of \$65,611.

The company's balance sheet is summarized below:

<u>Assets</u>	<u>Amount</u>
Net Utility Plant	\$ 785,170
Other Investments	0
Current Assets	279,791
Other Current Assets	<u>5,186</u>
Total Assets	<u>\$1,070,147</u>
<u>Liabilities & Equity</u>	
Common Stock	\$ 168,730
Other Paid-in Capital	117,488
Retained Earnings	719,024
Long-Term Debt	0
Current and Accrued Liabilities	0
Net Contributions in Aid of Construction	<u>64,905</u>
Total Liabilities & Equity	<u>\$1,070,147</u>

DISCUSSION

Graeagle states in the filing that with the establishment of the new California Department of Health Services' Enhanced Surface Treatment Rules, it became imperative for the company to increase its storage capacity. Because of the need to meet the new regulations and to save on the rising cost of steel, Graeagle decided to construct a new water tank. A 784,000 gallon welded steel water tank was constructed and placed into service on November 12, 2004. This summer, the interior of the installation will be coated and an external paint is to be applied outside the tank.

Graeagle's estimated construction costs are as follows:

Tank site preparation	\$ 21,663
Geotechnical engineering	
Investigation, testing	3,184
Forms for footings, concrete	11,204
Dig footings, valves, piping, etc.	4,688
Cost of rock for base	1,652
Materials for tank construction	71,355
Others	477
Labor	<u>127,415</u>
 Total	 <u>\$241,638</u>

On May 21, 2004, Graeagle secured a \$250,000 line of credit with Plumas Bank. Of this credit facility, Graeagle has used approximately \$200,000 to construct the new water tank. Once the \$250,000 is fully availed of, the line of credit will be converted to a variable rate nondisclosable loan. The loan will carry a 6.5% interest rate for fifteen years, with a monthly payment of approximately \$2,178. The interest rate on this loan is subject to change based on changes in the 5 year treasury security, adjusted to constant maturities (monthly average) (the "Index"). The Index currently is 3.5% per annum. A 3.0% margin is also applied, resulting in an initial interest rate of 6.5%.

As mentioned earlier, Graeagle claims that because of the need to meet the new regulations of DHS and to save on the rising cost of steel, it acted immediately to construct a new water tank and financed the project with a

\$250,000 line of credit from Plumas Bank. Graeagle acknowledges that it may have unintentionally violated Commission requirements by failing to seek authorization. The project is not completely finished and the total amount of the credit line has not been fully availed of.

Graeagle has indeed violated the Pub. Util. 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.

The Commission has no power to validate debt which, under the Pub. Util. Code, is *void ab initio*. A debt for which the Commission's authorization is necessary is void unless such authorization has been secured, and the Commission has no power to make valid an act which is void.

However, the Commission may direct the cancellation of such debt issued without authority and authorize the execution of new debt instrument in lieu thereof.

Decision (D.) 92-10-024, dated October 6, 1992, and D.94-09-025, dated September 1, 1994, 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. Decision 87-08-017 dated August 12, 1987, 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.

Considering that the proceeds of the loan is intended for the construction, completion, or improvement of the utility's facilities, we will require Graeagle to execute a replacement promissory note to be effective

prospectively, on substantially the same terms and conditions as those set forth in AL No. 42.

Graeagle 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 Pub. Util. 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; Graeagle will find us less accommodating. No penalty will be imposed at this time.

We remind Graeagle 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.

Lastly, we will not make a finding in this Resolution on the reasonableness of Graeagle's improvement program. Construction expenditures and the resulting plant balances in rate base are normally addressed in general rate cases.

The fee for this financing authority as set forth by § 1904(b) is \$500².

This is an uncontested matter in which the Resolution pertains solely to a water company. Accordingly, pursuant to § 311(g)(3), the 30-day period for public review and comment under § 311(g)(1) does not apply.

FINDINGS

1. The additional tank is needed to provide a high quality and reliable water supply.
2. The loan provides capital for the needed water system improvement and is a prudent means of acquiring the necessary \$250,000 capital.

² The amount subject to the fee is \$250,000. The fee is determined as follows: $(\$2 \times (250,000/1000)) = \500.00 .

3. The Commission does not by this Resolution determine that Graeagle's construction program is necessary or reasonable for ratemaking purposes. This issue is normally addressed in a general rate case.
4. Graeagle has violated § 825, and the Plumas Bank debt instrument executed May 21, 2004 without prior Commission authorization is void. Retroactive approval of unauthorized debt cannot be granted.
5. The execution and issuance of a new debt instrument to replace the unauthorized transaction would not be adverse to the public interest.
6. There is no known opposition, and there is no reason to delay granting the authority requested.
7. The following order should be effective today and the authorization to enter into a loan agreement should be effective upon payment of the fee set by § 1904(b).

THEREFORE, IT IS ORDERED THAT:

1. Graeagle Water Company, Inc.'s request by Advice Letter No. 42 dated April 18, 2005 is partially approved. Graeagle Water Company Inc. is authorized to borrow up to \$250,000 for a period of fifteen years at approximately 6.5% interest; to execute and deliver the loan contract with the Plumas Bank to replace the transaction executed without authorization from the Commission; and to use the proceeds for the purposes specified in Advice Letter No. 42.
2. Graeagle Water Company Inc. shall file with the Water Division a copy of the loan documents within 15 days of execution.
3. Graeagle Water Company Inc. shall notify the Water Division when the project has been completed.
4. Graeagle Water Company Inc. shall upon completion of the project provide the Water Division a summary detailing the disbursement amounts related to this financing order.

5. Water Division is directed to mail a copy of this decision to:

Plumas Bank
Portola Branch
120 North Pine Street
Portola, CA 96122

6. The authority granted by this order shall become effective when Graeagle Water Company, Inc. pays \$500.00, the fee set forth by Pub. Util. Code § 1904(b).

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 May 26, 2005. The following Commissioners approved it:

STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners