

WATER/KPC/FLC/KOK/DLW/RHG

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**WATER DIVISION
AUDIT AND COMPLIANCE BRANCH**

**RESOLUTION W-4572
NOVEMBER 18, 2005**

R E S O L U T I O N

RESOLUTION W-4572. RIO PLAZA WATER COMPANY, INC. (RIO PLAZA). REQUEST FOR AUTHORITY TO REFINANCE THE SAFE DRINKING WATER BOND ACT (SDWBA) LOAN AUTHORIZED BY DECISION (D.) 88834 AND TO CONTINUE THE EXISTING SURCHARGE RATES TO PAY OFF THE NEW LOAN.

By Advice Letter (AL) No. 40-W filed on September 29, 2005.

SUMMARY

This Resolution grants Rio Plaza the authority requested in AL No. 40-W.

Rio Plaza requests authority, pursuant to §§ 816 to 818 of the Pub. Util. Code¹ and General Order 96-A to obtain an unsecured loan not exceeding \$84,000 from John Chris Nickel, principal stockholder of Rio Plaza. The proceeds of the loan will be used to refinance the SDWBA loan procured in 1978 and to free the encumbrance on utility assets. Rio Plaza also requests that the current surcharge rates related to the SDWBA loan be continued in order to repay the new loan.

Notice of AL No. 40-W was made by publication in the Commission's Daily Calendar of September, 30, 2005. No protests have been received.

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

BACKGROUND

By D.88834, dated May 16, 1978, in Application (A.) 57461, the Commission authorized Rio Plaza to enter into a loan agreement with the Department of Water Resources (DWR) and to encumber Rio Plaza's assets for the purpose of borrowing \$360,500 under SDWBA to be used to replace over 13,000 feet of old 6-, 8-, and 10-inch mains and 90 cross-street main laterals. The loan principal is to be repaid over 30 years, with a 5.5% annual interest rate. In addition to a two-step adjustment in the quantity rate, the Commission, in D.88834, also authorized Rio Plaza to impose an interim customer service charge of \$6.00 per month.

In D.90058, dated March 13, 1979, the Commission approved the substitution of the interim rates with a quantity surcharge of \$0.23 per hundred cubic feet to generate approximately \$25,000 in yearly surcharge revenues.

In D.90787, dated September 12, 1979, the Commission authorized Rio Plaza an additional financing of \$5,150 under SDWBA to be used for a water storage facility. The total loan amount increased to \$365,650. The quantity surcharge remained the same.

By D.92512, dated December 16, 1980, in A.60052, the Commission authorized surcharge rates by meter size in lieu of the quantity surcharge. The annual revenue requirements remained at \$25,000.

On March 18, 1994, DWR adjusted its interest rate from 5.5% to 8.1%. By Resolution (Res.) W-3892, dated November 22, 1994, the Commission modified the surcharge rates in accordance with the increase in the annual interest rate. The revised surcharge rates were expected to generate total yearly surcharge revenues of approximately \$39,075. The surcharge rates became effective November 27, 1994.

The Commission, in Res. W-3892, stated that, in December, 1993, Rio Plaza withdrew \$27,000 from the SDWBA trust bank account, without DWR or Commission approval, and utilized the amount for plant improvements. Because this transaction is in direct violation of D.88834, Rio Plaza was directed to book the \$27,000 withdrawal as a contribution-in-aid-of construction to eliminate any monetary impact to the customers.

In Res. W-3892 (issued November 22, 1994), the Commission directed Rio Plaza to establish and maintain a separate balancing account for the SDWBA loan account and reminded the utility that the trust account funds are to be used solely for the purpose of repaying the SDWBA loan and is not to be accessed unless specifically authorized by the Commission.

Rio Plaza has an interest bearing trust account with Merrill Lynch, where all surcharge revenues are deposited and all DWR payments are drawn upon. Rio Plaza's trust account with Merrill Lynch had a balance of \$31,920.56, as of December 31, 1995.

We note herein that due to a settlement between the State and a group of thirty-one agencies, the SDWBA loan interest rate was adjusted on December 1, 1996, from 8.1% to 7.4%, retroactively from January 1, 1989, forward.

The loan balance, as of August 31, 2005, is \$110,785.13, with a remaining term of 3 years or 36 months.

DISCUSSION

Rio Plaza proposes to refinance the SDWBA loan balance by an unsecured loan from John Chris Nickel at an annual interest rate of 6.5%. Rio Plaza proposes also that the new loan will be paid through the existing surcharge rates authorized by Res. W-3892.

Based on information recently provided by Rio Plaza, the trust account balance, as of August 31, 2005, is \$23,659.60². In addition, Rio Plaza, in AL 40-W, states that another \$3,156.50 will be deposited to the account that was in transit at the time the filing was submitted. Further, since Rio Plaza bills its customers on a monthly basis, additional surcharge revenues will be billed, collected or deposited to the trust account between the filing date and when this resolution is approved.

² For purposes of this Resolution, we have reviewed available records and facts as stated in Res. W-3892 and have estimated that the trust account balance, as of December 31, 2004 is \$23,075.91. Based on our review, the trust account balance of \$23,659.60 indicated in AL 40-W and shown above appears to be proper. However this account may be subject to further Commission review at a later date.

Based on the funds available at the time of filing, the SDWBA loan will be refinanced and paid for as follows:

Current principal Balance	\$110,785.13
From trust account	(<u>26,816.10</u>)
Loan from John Chris Nickel	<u>\$ 83,969.03³</u>

The existing surcharge rates authorized by Res. W-3892 are as follows:

<u>Meter Size</u>	<u>Surcharge Per Month</u>
3/4-inch meter	\$ 6.00
1-inch meter	8.10
1-1/2-inch meter	10.80
2-inch meter	14.60
3-inch meter	27.00
4-inch meter	36.80

Based on the current number of 520 customers, the SDWBA surcharge rates will produce monthly revenue of approximately \$3,157 or an annual amount of \$37,884. Rio Plaza estimates that the SDWBA surcharge rates will pay off the new loan within 30 months.

Article 5, of Chapter 4 of the Public Utilities Act (which is Part 1 of Division 1 of the Pub. Util. Code), sets forth conditions a public utility must satisfy to issue debt. One condition is that the debt be for a permitted purpose listed in §817. That Section states, in relevant part, as follows:

Section 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,

³ The actual loan amount will be reduced by the additional surcharge revenues received from customers by the effective date of this Resolution. In addition, the loan amount will be reduced by any payment made to DWR between the filing date of AL 40-W and the effective date of this Resolution.

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for any one or more of the following purposes and no others.

(d) For the discharge or lawful refunding of its obligations.

Rio Plaza's proposed financing transaction will (1) not increase rates; (2) produce a savings in interest expense of approximately \$1,100 over a period of 30 months; (3) facilitate the accumulation of funds in the trust account that will pay off the debt in 3 years instead of 3.5 years; (4) facilitate the early termination of the surcharge rates; and (5) result in the removal of the encumbrance on utility assets. Therefore, the proposed financing transaction is in the public interest and should be approved.

We will authorize Rio Plaza's refinancing pursuant to § 818 and §817(d) with the following conditions:

1. The loan repayment surcharge shall remain separately identified on customers' bills.
2. Rio Plaza shall continue to use the established balancing account to be credited with revenues collected through the surcharge and to be charged with payments of principal and interest on the loan.
3. The surcharge will offset Rio Plaza's new loan repayments and not contribute to an increased rate of return.
4. Rio Plaza shall continue to deposit all surcharge revenues collected within 30 days to the separate bank account. The surcharge revenues shall not be commingled with other utility charges.
5. The surcharge rates to repay the loan shall last for approximately 30 months, until the loan is fully paid.
6. Any surplus accrued in the bank account shall be refunded or applied on behalf of the customers when ordered by the Commission.

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7. Changes in future surcharge rates shall be accomplished by normal advice letter procedure subject to review and approval.

8. The plant originally financed by DWR shall remain excluded from ratebase.

The Audit and Compliance Branch of the Water Division may, in its periodic audit of Rio Plaza's books, look further into the surcharge remittances and the activities of the SDWBA trust account with Merrill Lynch. Our action in this Resolution is one of expediency and does not prevent or prejudice whatever further action the Commission may establish or require of Rio Plaza pertaining to the Merrill Lynch trust account. Accordingly, Rio Plaza should preserve all records pertaining to its surcharge collections and the Merrill Lynch trust account.

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).

Section 1904(b) states in part that a fee need not be paid on such portion of any such issue as may be used to guarantee, take over, refund, discharge or retire any note or other evidence of indebtedness on which a fee has been paid to the Commission.

Our records indicate that a fee has not been assessed and paid to the Commission in relation to the \$360,500 debt authorized by D.88834. However, when D.90787 granted additional financing of \$5,150, Rio Plaza paid a fee of \$12 related to that new portion of the financing.

Rio Plaza should be assessed for this refinancing transaction because a fee was not previously paid on the original loan amount. Pursuant to § 1904(b), Rio Plaza should pay the fee of \$168⁴ applicable to the refinancing transaction that we are granting in this order.

⁴ The amount subject to the fee is \$84,000. The fee is determined as follows: $(\$2 \times (84,000/1000)) = \168 .

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COMMENTS

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. Rio Plaza, a California corporation, is a Class C water utility subject to the jurisdiction of this Commission.
2. The proposed borrowing is for proper purposes.
3. The existing surcharge rates will generate approximately \$37,878 annually. Surcharge revenues will not be commingled with other utility charges.
4. The plant financed by the SDWBA loan is not included in ratebase.
5. Section 817(d) provides that debt issues may be used for the discharge or lawful refunding of obligations.
6. Section 818 requires Commission authorization for the issue of stocks, bonds, notes, or other evidences of indebtedness payable at periods of more than 12 months.
7. The reasonableness of any resulting interest rate and cost of money arising from debt capital are normally subject to review in cost of capital or general rate case proceedings.
8. Rio Plaza should maintain its balancing account to be credited with revenue collected through the surcharge rates, investment tax credits if applicable, and reduced by payments of principal and interest on the loan.
9. The continuance of a separate bank account by Rio Plaza is required to ensure adequate accountability of surcharge revenues, interest earned, and loan amortization payments.

10. Rio Plaza should annually review the surcharge rates and adjust as necessary, by the advice letter procedure, to reflect changes resulting in overages and shortages in the balancing account.

11. Rio Plaza should pay the fee determined in accordance with § 1904(b).

THEREFORE, IT IS ORDERED that:

1. Rio Plaza Water Company, Inc. is authorized, pursuant to § 816 et seq. of the Public Utilities Code, to obtain an unsecured loan not exceeding \$84,000 for the purpose of refinancing its Safe Drinking Water Bond Act (SDWBA) loan based upon terms and conditions substantially consistent with those set forth or contemplated in Advice Letter No. (AL) 40-W.
2. The actual amount of the loan shall not exceed the balance of the SDWBA loan at the time of refinancing, less the surcharge revenue on deposit in the trust account and any surcharge revenue collected but not yet deposited in the trust account.
3. Rio Plaza Water Company, Inc. shall file a copy of the promissory note with the Water Division within 15 days after execution. To be included in this filing are copies of the last check drawn against the Merrill Lynch trust account, the most recent bank statement for this account, and official receipts for the full payment of the SDWBA loan.
4. Rio Plaza Water Company, Inc. shall preserve all records pertaining to the Merrill Lynch trust account and the surcharge remittances because they may be subject to further review.
5. Rio Plaza Water Company, Inc. shall record all billed surcharge and the accrued interest on the revenues in its balancing account. The balancing account shall be reduced by payment of principal and interest, and any trust account fees.
6. A separate line pertaining to the surcharge shall continue to appear on each customer's water bill.

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7. The plant financed through this refinancing shall be permanently excluded from rate base for ratemaking purposes.

8. Rio Plaza Water Company, Inc. shall deposit all surcharge revenues collected in its separate bank account established for this purpose. Such deposits shall be made within 30 days after the surcharges are collected from customers.

9. Rio Plaza Water Company, Inc. is authorized, pursuant to this Resolution, to file, in accordance with General Order No. 96-A, an advice letter changing the caption "SDWBA Yearly Surcharge" to "Yearly Surcharge" in its Schedule No. 1 Metered Service. In addition, Special Condition No. 1 of Schedule No. 1 shall be changed to read as follows:

 "The surcharge is in addition to the water bill. This surcharge must be identified on each bill. The surcharge is specifically for the repayment of the loan authorized by Resolution No. W-xxxx."

- The filing shall become effective on five days' notice.

10. Rio Plaza Water Company, Inc. shall, by the advice letter procedure, terminate the surcharge rates within 30 days of full payment of the loan and shall be responsible for refunding or applying on behalf of the customers any surplus accrued in the balancing account when ordered by the Commission.

11. On or before July 31, 2006, and yearly thereafter, for as long as the surcharge is imposed, Rio Plaza Water Company, Inc. shall send a copy of the latest bank statement and a comparative report to the Water Division stating the changes in the number of connections by type of customer and by size of connection, the amount of surcharge collected, the amount of repayments made, the outstanding balance of the loan, and the overages and shortages in the utility's balancing account. Any changes in the rate surcharges shall be done by advice letter.

12. The authority granted by this Resolution shall become effective when Rio Plaza Water Company, Inc. pays \$168 as required by Public Utilities 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 November 18, 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