

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Foresthill Telephone Co. (U1009C)
For an Order Authorizing the Issuance of Notes
in an Amount Not Exceeding \$6,560,000 And
Execution of A Related Agreement and
Supplemental Security Agreements.

Application 12-11-020
(Filed November 20, 2012)

**DECISION AUTHORIZING FORESTHILL TELEPHONE COMPANY
TO ISSUE UP TO \$6.56 MILLION OF NEW DEBT****1. Summary**

This decision grants Foresthill Telephone Company (Foresthill) the authority, pursuant to Public Utilities Code Sections 816 - 818, and 851, to enter into a loan agreement with the United States Department of Agriculture, Rural Utilities Service (RUS) and to issue notes in an amount not exceeding \$6.56 million. This decision also: 1) authorizes the loan agreement and supplemental security agreements associated with the RUS notes approved herein; 2) grants Foresthill authority to encumber its utility property to secure its long-term loan from the RUS for proper regulated utility purposes; and 3) grants Foresthill an exemption from the New Financing Rule.

We also grant Foresthill authority to file the confidential version of Application 12-11-020, and its December 21, 2012 and January 16, 2013 responses to requests from the assigned Administrative Law Judge under seal.

2. Background

Foresthill Telephone Company (Foresthill) is a public utility under the jurisdiction of this Commission, providing telecommunications and related service to portions of Placer County in and around the town of Foresthill, California. The property owned by Foresthill and devoted to telecommunications services is comprised of wire, cable, lands, easements, central office equipment, buildings, and other pertinent equipment necessary for the provision of telephone service.

On November 20, 2012, Foresthill filed Application (A.) 12-11-020 requesting authorization to issue notes to the United States Department of Agriculture, Rural Utilities Service (RUS), not exceeding \$6.56 million, and other related requests. The RUS, in part, provides low interest loans that help rural utilities update and institute new services.

On December 21, 2012, January 7, 2013, and January 16, 2013, Foresthill responded to verbal and electronic mail requests for information from the assigned Administrative Law Judge (ALJ).

3. Request

In its application, Foresthill seeks authority to enter into a loan agreement with the RUS and to issue notes in an amount not exceeding \$6.56 million. Foresthill also requests that the Commission: 1) authorize the loan agreement and supplemental security agreements associated with the RUS notes approved herein; and 2) grant Foresthill authority to encumber its utility property to secure its loan from the RUS. The terms and conditions of each advance (discussed in more detail in Section 3.1 below) are determined at the time of such advance from the RUS.

In its responses to the assigned ALJ's request for information, Foresthill provided a summary of its remaining authorized financing and its forecast of sources and uses. Foresthill also requests that its request become effective upon payment of fees prescribed by Public Utilities (Pub. Util.) Code § 1904(b).

3.1. Requested New Debt

As it has done previously, Foresthill proposes to enter into a loan agreement with the RUS for \$6.56 million. The proposed loan would be secured, pursuant to Pub. Util. Code § 851, by previously executed mortgages and supplemental mortgages to the RUS of substantially all of Foresthill's utility property.¹

Foresthill proposes to issue and execute a Loan Agreement, a Mortgage Note, Restated Mortgage, Security Agreement, and Financing Statement as part of the RUS loan process. The RUS would then advance funds to Foresthill after execution of the Mortgage Note. Each advance under the Mortgage Note would bear interest at various rates, which would be determined for each advance by reference to the Rural Electrification Act of 1936 and implementing regulations. There is no stated rate of interest for RUS subsidized loans. The rate is determined on the date of each advance and is essentially equal to the United States Government's cost of money.

3.2. Use of Proceeds from New Securities

Foresthill states that it requires additional capital to fund construction projects in its service territory in order to: 1) maintain reliable, high-quality voice service; and 2) continue to advance the deployment of broadband-capable facilities that it believes can provide improved access to advanced services. In

¹ See Decision (D.) 06-06-068.

particular, Foresthill proposes to: 1) replace cable and wire facilities that it believes are beyond their useful lives; and 2) upgrade facilities through placement of cable, and electronic and fiber facilities.

4. Discussion

4.1. Public Utilities Code Requirements for Issuance of Securities

Foresthill's request is subject to Pub. Util. Code §§ 816 - 818, and 851. The Commission has broad discretion under § 816 et seq. to determine if a utility should be authorized to issue debt securities. Where necessary and appropriate, the Commission may attach conditions to the issuance of debt securities and stock to protect and promote the public interest.

Pursuant to Pub. Util. Code § 817, a public utility may only issue and use financing for selected purposes. Those purposes not listed in Pub. Util. Code § 817 may only be paid for with funds from normal utility operations.

Pub. Util. Code § 818 states that no public utility may issue 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, stating the amount thereof and the purposes to which the issue or the proceeds thereof are to be applied. Pub. Util. Code § 818 also requires the Commission, in issuing such an order, to find that the money, property, or labor to be procured or paid for with the proceeds of the debt securities authorized is reasonably required for the purposes specified in the order and, unless expressly permitted in an order authorizing debt securities, that those purposes are not, in whole or in part, reasonably chargeable to expenses or to income. These purposes are authorized by § 817 and, as required by § 818, are not reasonably chargeable to operating expenses or income. Foresthill has substantiated its need for issuance of new debt and that the

proceeds would be used for proper purposes, such as the construction and upgrade of Foresthill's facilities.

Since Foresthill's request for issuance of new long-term debt is in compliance with Pub. Util. Code § 818 et seq., we grant it authority to issue new debt for the aforementioned proper regulated utility purposes, and for the amount determined in the order of this decision.

Pub. Util. Code § 851 requires, in part, that a public utility must first secure Commission authority before it may mortgage or encumber its used and useful assets. We discuss this requirement in Section 4.3 below.

4.2. Forecast of sources and Uses

Utility applications seeking authority to issue securities are based, in part, on forecasted sources and uses of funds that illustrate a need for the requested funding. As discussed in Section 10.2 below, we grant Foresthill's motion that its forecast be sealed, therefore the details are not provided herein. Based on a review of this information to determine whether it supports Foresthill's need for new financing authority, the assigned ALJ determined that Foresthill's forecasted sources and uses are reasonable to rely on in order to determine Foresthill's need for new financing. Foresthill has no existing financing authority remaining.² Foresthill proposes to use \$6.56 million of RUS financing to offset its need for funding over the next several years.

² Response to Inquiries of Assigned Administrative Law Judge (ALJ) at Response to Question 1 from December 21, 2012.

We therefore find that it is reasonable to authorize Foresthill to issue \$6.56 million of new debt. This new financing will allow Foresthill to fund its future net financing needs over the next several years, to the extent authorized by applicable public utilities code. We find Foresthill's request to be reasonable and supported by the record.

Granting of financing authority to a utility does not obligate the Commission to approve any capital projects. This financing authority provides Foresthill with sufficient liquid resources to timely finance its upcoming public utility projects. Review of the reasonableness of capital projects occurs as needed through the regulatory process applicable to each capital project. Therefore, any approval of this financing request would not prejudice any of Foresthill's forecasted projects.

4.3. Types of Debt to be Issued

The new Mortgage Note with the RUS and associated agreements requested by Foresthill in the current application are similar to those authorized in D.06-06-068. Therefore, we authorize Foresthill to issue the Mortgage Note and associated agreements with RUS under the terms and conditions detailed in Section 3 of this decision and enumerated in the order herein. Foresthill may secure such new debt from the RUS by its property and assets pursuant to Pub. Util. Code §851. Such new debt from the RUS will be used for proper regulated utility purposes, as discussed above.

5. New Financing Rule

The New Financing Rule set forth in D.12-06-015 replaced the Competitive Bidding Rule (CBR) authorized in Resolution F-616 in 1986, in recognition of current market conditions and Commission policies enacted since our last review of the CBR in 1986. The New Financing Rule provides for exemptions based on a

compelling showing by the utility that it qualifies for one of the exemptions listed in Attachment A, at A-6 of D.12-06-015. If a public utility requests authority to issue tax exempt or government debt, it is exempt from the New Financing Rule. The New Financing Rule also provides for an exemption of the new debt requested if it is \$42 million or less. As the RUS is a federal government agency, and Foresthill's request for new debt is much less than \$42 million, we grant Foresthill an exemption from the New Financing Rule.

6. General Order 24-C

Revisions to General Order (GO) 24 set forth in D.12-06-015 include: 1) the filing of a GO 24-C report on a quarterly then semi-annual instead of a monthly basis;³ 2) revisions to the type of information provided in such reports; and 3) the elimination of the requirement that a utility maintain a separate bank account to record securities proceeds except as required by the Commission. We remind Foresthill to comply with the new requirements of GO 24-C.

7. Fee

Whenever the Commission authorizes a utility to issue new securities, the Commission is required to charge and collect a fee pursuant to Pub. Util. Code § 1904(b). The fee for this application is calculated as follows:

\$6.56 Million of new debt	\$1,000,000	\$2 per \$1,000	\$2,000
	\$5,560,000	\$1 per \$1,000	\$5,560
	0	\$0.50 per \$1,000	0
Total			\$7,560

³ See D.12-06-015, Attachment B. For the first year after authorization of the new GO, the GO 24-C report will be filed quarterly. For the second year after authorization of the new GO and for every year thereafter, the report will be filed semi-annually.

8. Financial Information

We place Foresthill on notice that the reasonableness of any resulting interest rate and cost of money arising from the issuance of securities as well as capital structures, is normally subject to review in the appropriate cost of capital or general rate case proceeding. Therefore, we will not make a finding in this decision of the reasonableness of the projected capital ratios for ratemaking purposes or the appropriate cost of money. We do not make a finding in this decision on the reasonableness of Foresthill's proposed construction program. Construction expenditures and the resulting plant balances in rate base are issues that are normally addressed in a general rate case or specific application. The authority to issue securities is distinct from the authority to undertake construction or the right to recover the cost of capital in rates.

9. California Environmental Quality Act

The California Environmental Quality Act (CEQA) applies to projects that require discretionary approval from a governmental agency, unless exempted by statute or regulation. It is long established that the act of ratemaking by the Commission is exempt from CEQA review. As stated in the California Public Resources Code, the "establishment, modification, structuring, restructuring or approval of rates, tolls, fares, or other charges by public agencies" is exempt from CEQA.⁴ Likewise, the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any

⁴ Public Resource Code Section 21080(b)(8).

specific project which may result in a potentially significant impact on the environment is not a “project” subject to CEQA.⁵

This decision does not authorize any capital expenditures or construction projects. New construction projects which Foresthill intends to finance via this application should undergo CEQA review as early as feasible in the planning process, as required by CEQA Guidelines Section 15004(b). To the extent capital expenditures are financed with the proceeds of the long-term debt securities issued pursuant to this decision, ongoing projects have already been subject to any necessary CEQA review undertaken prior to Foresthill receiving a certificate of public convenience and necessity or permit to construct. CEQA review for future projects will occur through the regulatory processes applicable to each capital project when meaningful information necessary for conducting an environmental assessment is available.

10. Procedural Matters

10.1 Category and Need for Hearings

By Resolution ALJ 176-3305, dated November 29, 2012, the Commission preliminarily determined that this was a ratesetting proceeding and that a hearing would not be necessary. No protests were filed. We affirm that this is a ratesetting proceeding and that no hearings are necessary.

10.2. Motions to File Under Seal

On November 20, 2012, Foresthill filed a motion in which it requested, pursuant to Rule 11.4 of the Commission’s Rules of Practice and Procedure,⁶ and

⁵ CEQA Guidelines Section 15378(b)(4).

⁶ All references to a “Rule” for the balance of this decision refers to the Commission’s Rules of Practice and Procedure.

GO 66-C, authority to file confidential material under seal, including Exhibits 2-C, 3-C, 4-C, 5-C, and 6-C, attached to the confidential version of its application. Rule 11.4 addresses a request to seal documents that have been filed, while GO 66-C provides definitions and guidance regarding public and confidential records provided to and requested from the Commission.

Foresthill states that the following exhibits attached to the confidential version of its application contain sensitive information that, if disclosed, would harm Foresthill, as well as ratepayers and the public: 1) Exhibit 2-C consists of unaudited financial statements; 2) Exhibit 3-C consists of independently-audited financials; 3) Exhibit 4-C consists of information regarding Foresthill's outstanding RUS loans; 4) Exhibit 5-C consists of payment and interest information regarding outstanding notes or security agreements; and 5) Exhibit 6-C consists of dividend amounts issued for the years 2007-2011.

Foresthill states that it is not normally required to publicly disclose the above information in the normal course of business. Foresthill posits that if the above information were disclosed, it would put it at an unfair business disadvantage or inform potential competitors about the profitability and non-profitability of Foresthill's operations. Foresthill also advances that such disclosure could result in unfair competition, negatively impacting ratepayers and the public.

Foresthill also requests that its forecast of sources and uses, provided in its responses (dated December 21, 2012 and January 16, 2013) to requests by the assigned ALJ, be filed under seal. Foresthill posits that, pursuant to Rule 11.4,

GO 66-C and Public Utilities (Pub. Util.) Code §583,⁷ the disclosure of what it considers competitively-sensitive information would place it at an unfair business disadvantage. Foresthill also references RUS' practice of treating this information confidential; and Decision (D.)12-04-015, in which we granted Pacific Gas and Electric Company confidential treatment of its sources and uses statement.⁸

10.2.1. Discussion

Since the confidential version of Foresthill's application contains information that is normally not disclosed, and that, if disclosed, would put it at an unfair business disadvantage or result in unfair competition, we grant Foresthill's motion to file the confidential version of its application under seal, which includes Exhibits 2-C, 3-C, 4-C, 5-C, and 6-C, pursuant to Rule 11.4 and GO 66-C.

We find that the forecast of sources and uses provided in Foresthill's December 21, 2012 and January 16, 2013 responses to the assigned ALJ's inquiries qualifies for confidential treatment pursuant to GO 66-C and Pub. Util. Code § 583. Additionally, pursuant to Pub. Util. Code § 275.6(e), small independent telephone corporations have the opportunity to request confidential treatment of

⁷ Pub. Util. Code § 583. No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor.

⁸ See D.12-04-015 at 3.

information regarding revenues resulting from the provision of unregulated internet access service. Foresthill's forecast of sources and uses includes such confidential information, therefore, pursuant to the above referenced rules, GO and public utilities code sections, we grant Foresthill's request to file the confidential version of its responses under seal.

11. Waiver of Comments Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code §311(g)(2) and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

12. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this proceeding.

Findings of Fact

1. Based on Foresthill's forecast of sources and uses, it has a need for new financing.
2. The RUS, in part, provides low interest loans that help rural utilities update and institute new services.
3. The requested financing authority of \$6.56 million of new long-term debt is necessary to provide the external funding required to meet Foresthill's projected cash requirements over the next several years.
4. The proposed new financing requested by Foresthill and the associated money, property, or labor to be procured or paid for with the proceeds of this proposed new financing, are, pursuant to Pub. Util. Code §§ 817 and 818, reasonably required for proper purposes, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

5. Pub. Util. Code § 851 requires, in part, that a public utility must first secure Commission authority before it may mortgage or encumber its used and useful assets.

6. Foresthill's forecast of sources and uses includes uses of funds for capital expenditures; and sources of funds such as cash from operating activities, and other sources.

7. Granting of financing authority to a utility does not obligate the Commission to approve any capital projects. Review of the reasonableness of capital projects occurs as needed through the regulatory process applicable to each capital project.

8. The necessity or reasonableness of Foresthill's construction budget, cash requirements forecast, and capital structure, are normally reviewed and authorized in general rate cases or cost of capital proceedings.

9. The New Financing Rule set forth in D.12-06-015 replaced the CBR authorized in Resolution F-616 in 1986. The New Financing Rule provides for exemptions based on a compelling showing by the utility that it qualifies for one of the exemptions listed in Attachment A, at A-6 of D.12-06-015.

10. Exemptions from the New Financing Rule also provides for an exemption if the new debt requested: 1) is tax exempt or government debt; or 2) if the new debt amount is \$42 million or less.

11. As the RUS is a federal government agency, and Foresthill's request for new debt is much less than \$42 million, Foresthill qualifies for exemption from the New Financing Rule.

12. Foresthill's last financing authority was granted in D. 06-06-068.

13. Foresthill requested that the confidential version of its application, including Exhibits 2-C, 3-C, 4-C, 5-C, and 6-C, be treated confidentially and filed under seal pursuant to Rule 11.4 and GO 66-C.

14. Foresthill requested that the confidential version of its responses to the assigned ALJ's request for information be treated confidentially and filed under seal pursuant to Rule 11.4, GO 66-C and Pub. Util. Code § 583.

Conclusions of Law

1. Foresthill should be authorized to issue up to \$6.56 million of new long-term debt to the RUS over the next several years, all of which is for proper purposes and consistent with the requirements of Pub. Util. Code §§ 817 and 818.

2. Foresthill should be authorized to issue a new Loan Agreement, Mortgage Note, Restated Mortgage, Security Agreement, and Financing Statement as part of the RUS loan process.

3. Foresthill should be authorized to encumber its utility property through previously executed mortgages and supplemental mortgages, in order to secure its loan from the RUS, because such new debt from the RUS will be used for proper regulated utility purposes.

4. The order herein should not be a finding of the reasonableness of Foresthill's proposed construction plan or expenditures, the resulting plant balances in rate base, the capital structure, or the cost of money, nor should it indicate approval of matters subject to review in a general rate case or other proceedings.

5. Foresthill should remit a check for \$7,560, as required by Pub. Util. Code § 1904(b).

6. The authority granted by this order should not become effective until Foresthill has paid the fees prescribed by Pub. Util. Code § 1904(b).

7. Foresthill should not use the proceeds from the new securities authorized by this order to fund its capital projects until Foresthill has obtained all required approvals for the projects, including any required environmental review under CEQA.

8. The order herein does not involve any commitment to any specific project which may result in a potentially significant impact on the environment; thus it is not a project subject to CEQA.

9. We should grant Foresthill's request that the confidential version of its application, including Exhibits 2-C, 3-C, 4-C, 5-C, and 6-C, be treated confidentially and filed under seal pursuant to Rule 11.4 and GO 66-C.

10. We should grant Foresthill's request that the confidential version of its responses to the assigned ALJ's request for information be treated confidentially and filed under seal pursuant to Rule 11.4, GO 66-C and Pub. Util. Code §§ 275.6(e) and 583.

11. The authority granted Foresthill herein is in compliance with Pub. Util. Code §§ 816, 817, 818, and 851.

12. A.12-11-020 should be closed.

O R D E R

IT IS ORDERED that:

1. Foresthill Telephone Company is authorized to issue up to \$6.56 million of new long-term debt to the United States Department of Agriculture, Rural Utilities Service over the next several years, all of which are for proper purposes and consistent with the requirement of Public Utilities Code §§ 817 and 818.

2. Foresthill Telephone Company is authorized to issue a new Loan Agreement, Mortgage Note, Restated Mortgage, Security Agreement, and

Financing Statement as part of the United States Department of Agriculture, Rural Utilities Service loan process.

3. Foresthill Telephone Company is authorized to encumber its utility property, pursuant to Public Utilities Code Section 851, through previously executed mortgages and supplemental mortgages, in order to secure its loan from the United States Department of Agriculture, Rural Utilities Service. Such loan will be used for proper regulated utility purposes.

4. The order herein is not a finding of the reasonableness of Foresthill Telephone Company's proposed construction plan or expenditures, the resulting plant balances in rate base, the capital structure, or the cost of money, nor does it indicate approval of matters subject to review in a general rate case or other proceedings.

5. Foresthill Telephone Company shall remit a check for \$7,560, as required by Public Utilities Code Section 1904(b).

6. The authority granted by this order does not become effective until Foresthill Telephone Company has paid the fees prescribed by Public Utilities Code Section 1904(b), to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. The number of this Decision must appear on the face of the check. The authority granted by this Decision is effective once Foresthill Telephone Company has paid the fees prescribed by Public Utilities Code Section 1904(b).

7. Foresthill Telephone Company may not use the proceeds from the new long-term debt authorized by this order to fund its capital projects until Foresthill Telephone Company has obtained all required approvals for the projects, including any required environmental review under the California Environmental Quality Act.

8. The order herein does not involve any commitment to any specific project which may result in a potentially significant impact on the environment; thus it is not a project subject to California Environmental Quality Act.

9. Foresthill Telephone Company's motions for leave to file and maintain confidential materials under seal, including the confidential versions of its: 1) Exhibits 2-C, 3-C, 4-C, 5-C, and 6-C; and 2) December 21, 2012 and January 16, 2013 responses to the assigned Administrative Law Judge's (ALJ) requests for information, are granted. The information will remain under seal for a period of two years after the date of this order. During this two-year period, this information may not be viewed by any person other than the assigned Commissioner, the assigned ALJ, the Assistant Chief ALJ, or the Chief ALJ, except as agreed to in writing by Foresthill Telephone Company (Foresthill) or as ordered by a court of competent jurisdiction. If Foresthill believes that it is necessary for this information to remain under seal for longer than two years, Foresthill must file a new motion at least 30 days before the expiration of this limited protective order.

10. The authority granted Foresthill Telephone Company herein is in compliance with Public Utilities Code §§ 816, 817, 818, and 851.

11. Application 12-11-020 is closed.

This order is effective today.

Dated _____, at San Francisco, California.