

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EXECUTIVE DIVISION

San Francisco, California

Date: May 28, 2020

Resolution M-4843

RESOLUTION

EMERGENCY RESOLUTION AND ORDER AUTHORIZING CERTAIN RATE-REGULATED UTILITIES TO ENTER INTO LOAN COMMITMENTS OR OTHER EVIDENCES OF INDEBTEDNESS TO FUND UTILITY OPERATING, MAINTENANCE, ADMINISTRATIVE, AND GENERAL EXPENSES AND CAPITAL PROJECTS DUE TO THE COVID-19 PANDEMIC

SUMMARY

The Commission issues this Resolution on its own motion in response to certain consequences of the novel Coronavirus (COVID-19) pandemic being experienced by rate-regulated utilities under its jurisdiction. Due to the financial stresses caused by the COVID-19 pandemic, including unexpected unemployment suddenly being experienced by a growing number of Californians, utility bills are not being paid by many utility customers, resulting in insufficient cost recovery by the utilities. Utilities are facing cash flow issues; some are facing financial situations that make it difficult to pay their employees and other expenses.

A number of Public Utility Code Sections require Commission approval for rate-regulated utilities to assume debt for periods longer than one year. Sections 817, 818, 821, 823 and 830 clearly restrict the issuing of short-term debt to a 12-month period without authorization of the Commission. (See Decision 10-09-026, Conclusion of Law 8).

- Section 817 provides that a public utility may issue evidences of indebtedness payable at periods of more than 12 months only for specific purposes. Among the authorized purposes are for the construction, completion, extension, or improvement of its facilities (Section 817(b)), and for the discharge or lawful refunding of its obligations (Section 817(d)).

- Section 818 provides that no public utility may issue indebtedness payable at periods of more than 12 months without first having obtained an order from the Commission authorizing the issue.
- Section 823 governs the regulation of the use of short-term debt.
- Section 823(b) provides that a utility may issue notes, for proper purposes and not in violation of any provision of law, payable at periods of not more than 12 months after the date of issuance of the notes without consent of the Commission.
- Section 823(d) provides that no note payable at a period of not more than 12 months after the date of issuance of such note shall in whole or in part, be refunded by any issue of stock or stock certificates or other evidence of interest or ownership of bonds, notes of any term or character, or any other evidence of indebtedness, without the consent of the Commission.

These requirements could limit the ability of rate-regulated utilities to adequately respond financially during COVID-19 Emergency. Consistent with Public Utilities Code §§ 816 through 830 and 851, Decision (D.) 93-11-066, General Order (G.O.) 96-B, and Rule 3.5 of the Rules of Practice and Procedure, an application is normally required for utilities to obtain loans payable at periods of more than 12 months. Pursuant to Section 829, the Commission is authorized to exempt any class of utilities from any provision of these requirements if it finds that exemption serves the public interest. (see Decision (D.) 93-11-066, p. 12).

This Resolution authorizes the Small Local Exchange Carriers (rate-regulated telephone utilities, “Small LECs”),¹ rate-regulated electric and gas utilities with fewer than 175,000 California customers² and all Water and Sewer Utilities to use the Commission’s Advice Letter process to:

1. Enter into loan agreements and issue evidences of indebtedness payable at periods of more than 12 months to fund operating, maintenance, administrative, and general expenses because of COVID-19;

¹ The Small Local Exchange Carriers are the following telephone companies: Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, Volcano Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, and Winterhaven Telephone Company.

² The electric and gas utilities are the following: Bear Valley Electric Service, Liberty Utilities, Pacificorp, Alpine Natural Gas, and West Coast Gas.

2. Enter loan agreements and issue evidences of indebtedness payable at periods of more than 12 months to fund capital projects to respond to the COVID-19 emergency;
3. Encumber utility assets, if required in conjunction with the loans.

The authorizations granted by this Resolution are subject to the conditions described below and effective as of March 4, 2020, the date a state of emergency was declared for the State of California related to COVID-19; the authorizations shall remain for up to two years from the effective date of this Resolution.

BACKGROUND

On March 4, 2020, Governor Newsom declared a State of Emergency³ in California related to COVID-19. The following actions were taken:

- Executive Order N-28-20 was issued on March 16, 2020, requesting that the Commission monitor the measures undertaken by public and private utility providers to implement customer service protections for critical utilities, including but not limited to electric, gas, water, internet, landline telephone and cell phone service, in response to COVID-19 response to COVID-19.⁴
- Executive Order N-42-20 was issued on April 2, 2020, ordering public water systems in the State of California, including those under the jurisdiction of the Commission: (1) to not discontinue residential water service to any customers for non-payment; (2) to restore any residential service to occupied residences that were discontinued for nonpayment since March 4, 2020; (3) to not discontinue service to any business in the critical infrastructure sectors identified in the Executive Order, including small businesses under 13 C.F.R. Sec. 121.201; and other measures to ensure the continuing right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.⁵
- On March 13, 2020, Federal Communications Commission Chairman Ajit Pai launched the Keep American Connected Pledge that asked for suspension of

³ <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>

⁴ <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.16.20-Executive-Order.pdf>

⁵ <https://www.gov.ca.gov/wp-content/uploads/2020/04/4.2.20-EO-N-42-20-text.pdf>

disconnections, late fees, and collection efforts for all telephone customers for 60 days; and open Wi-Fi hotspots to anyone that needs it.⁶

The Commission has taken a number of actions in response to the declared state of emergency and the effects of COVID-19 on utilities under its jurisdiction, including the following:

- On March 17, 2020, Commission Executive Director Alice Stebbins issued a notification that the Commission plans to take action to provide emergency customer protection measures for customers in California to prevent disconnections for unpaid bills during the pendency of the COVID-19 emergency. This letter instructed utilities to file advice letters reporting compliance with the instructions to implement mandatory customer protections.⁷
- On April 17, 2020, the Commission issued Resolution (Res.) M-4842 ordering electric, gas, communications, and water and sewer corporations to retroactively apply the customer protection measures adopted in D.19-07-015 and D.19-08-025 from March 4, 2020 onward – during the pendency of the COVID-19 pandemic. Each industry corporation is required to file a Tier 2 Advice Letter describing all reasonable and necessary actions to implement the emergency customer protections. The Tier 2 filing shall include a request to track and recover incremental costs associated with complying with Res. M.4842.

The Commission is monitoring utilities' compliance with these directives and is communicating regularly with the utilities to evaluate the effects of the COVID-19

⁶ The FCC-endorsed pledge can be found at the following link: <https://docs.fcc.gov/public/attachments/DOC-363033A1.pdf>. The Small LECs submitted a letter to the Commission on March 18, 2020. The Small LECs indicate they have taken the FCC's consumer protection "pledge" pertaining to disconnection practices and the availability of WiFi; and they will implement the applicable disaster relief measures set forth in the Executive Director's letter of March 17

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https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/News_Room/NewsUpdates/2020/Exec%20Director%20Letter%20to%20Energy%20Companies%20re%20COVID-19%20March%2017,%202020.pdf;

https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/News_Room/NewsUpdates/2020/Exec%20Director%20Letter%20to%20Water%20Companies%20re%20COVID-19%20March%2017,%202020.pdf;

https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/News_Room/NewsUpdates/2020/Exec%20Director%20Letter%20to%20Communications%20Companies%20re%20COVID-19%20March%2017,%202020.pdf

pandemic on the ability of the utilities to provide safe, reliable and affordable service. The Commission takes specific actions in this Resolution, in response to the Governor's declared state of emergency and Executive Orders and the Commission's actions, all pertaining to the COVID-19 pandemic. These actions are to provide rate-regulated utilities flexibility to access state and federal funding in response to the COVID-19 emergency.

Examples of funds eligible for the treatment authorized by this Resolution include the Coronavirus Aid, Relief, and Economic Security (CARES) Act passed by Congress to assist and aid business owners. Resources now available include:

Paycheck Protection Program (PPP) Loans - provides cash-flow assistance through 100% federally guaranteed loans to employers who maintain their payroll during this COVID-19 emergency. If employers maintain their payroll, the loans would be forgiven, which would help workers remain employed, as well as help affected small businesses and the economy snap-back quicker after the crisis. For any amounts not forgiven, the maximum terms are 10 years, maximum interest rate of 4%, zero loan fees, zero prepayment fee.

504 Loan Program - this program provides loans to approved small business with long-term, fixed rate financing used to acquire fixed assets for expansion or modernization.

7(a) Loan Program - this program is for borrowers who lack credit elsewhere and need access to financing, provide short-term or long-term working capital and to refinance current business debt, or purchase supplies. Banks share a portion of the risk of the loan with SBA.

Economic Injury Disaster Loans (EIDL) & Emergency Economic Injury Grants - this program provides emergency advance of up to \$10,000 to small businesses and private non-profits harmed by COVID-19. The advance does not need to be repaid and may be used to keep employees on payroll, to pay for sick leave, meet increased production costs due to supply chain disruptions, pay business obligations, including debts, rent and mortgage payments.

If similar state and federal programs responding to the COVID-19 emergency make additional funding available to utilities in the future, the authorizations contained in this Resolution will also apply to these programs.

DISCUSSION

As detailed above, most of the actions taken by the Governor and the Commission with respect to the COVID-19 pandemic have been focused upon the disruptive and often devastating effects of the pandemic on Californians. This Resolution focuses upon some of

the direct and indirect effects of the COVID-19 pandemic on certain rate-regulated utilities subject to Commission jurisdiction.

The Commission believes that customer protections ordered by the Commission and implemented by the utilities will likely result in fewer utility customers paying their bills on time, paying their bills in full, or paying their bills at all. However, when the COVID-19 emergency is over, those customers will still be obligated to pay their utility bills, which for some, will include past due amounts.

Even though utilities will have the right to recover past due amounts from delinquent customers after the COVID-19 emergency has passed, collectability of those past due amounts is uncertain. During the COVID-19 emergency, utilities not being paid in full or paid at all by some customers for the utility services being provided will face unplanned and unexpected revenue issues and shortfalls.

To address revenue shortfalls, and to permit utilities to continue to pay their employees and their own bills, some utilities may choose to borrow money or issue other evidences of indebtedness to pay operating, maintenance, administrative, and general expenses.

Other utilities may also require financing of capital projects either necessitated by the COVID-19 emergency or capital projects that have been previously approved by the Commission, but which are now more difficult to finance out of retained earnings or other sources and which now require outside financing to continue.

The Commission recognizes that as the utilities are continuing to provide necessary and often life-saving utility services during the COVID-19 pandemic, the Commission must also provide those same utilities with the opportunity to obtain necessary funding for operations, maintenance, administration, and general expenses and certain capital projects impacted by the COVID-19 emergency, and to do so on a timely basis.

The PPP loans are through SBA-approved local financial institutions and the EIDL with a set 3.75% interest rate and a repayment term of up to 30 years is funded by the SBA directly.

Because a state of emergency related to COVID-19 was declared for the State on March 4, 2020, the authorizations granted in the Resolution should relate back to that date and include loans available under the CARES Act and other evidences of indebtedness entered into on and after that date, subject to the conditions set forth in this Resolution.

Upon order of the Commission and for proper cause, Public Utilities Code § 817 allows the use of proceeds from the issuance of debt for purposes reasonably required for the improvement or maintenance of service of a utility. While the Commission does not look

with favor upon the capitalization of operating expenses and the cost of maintaining service, it has the power and will, in extraordinary cases, authorize debt for that purpose.⁸

The Commission is not a party to any funding agreements, but because regulated utilities are under our jurisdiction, it is the Commission's responsibility to provide the utilities the means to procure funds expeditiously during the COVID-19 emergency to liquidate its obligations and continue operating and providing service to customers.

This Resolution responds to Federal and State directives on COVID-19 and will help alleviate cash-flow requirements of certain rate-regulated utilities under the Commission's jurisdiction.

In order to keep track of financing/s procured during the COVID-19 emergency, the Commission will impose the following conditions:

- a. Within 30 days of receiving approval of the loan through State or Federal Programs during the COVID-19 emergency - or immediately if more than 30 days have elapsed since the loan was issued - the utility shall file a Tier 2 Advice Letter to inform the Industry Division⁹ the following:
 1. Amount, type, and provider of loan.
 2. Terms and Conditions of the loan.
 3. Purpose of use of loan. If for capital improvements, the utility will include details of the construction costs.
 4. A copy of the loan documents including supporting workpapers.
 5. Request authority to establish a Loan Memorandum account to track receipt of loan funds, operating and maintenance expense, cost of new or replacement utility plant, unpaid bills or portions thereof along with uncollectible expense component authorized in rates, and disbursements.
- b. Notify the Industry Division by letter if the utility has started booking receipt of loan funds, costs and expenses to the Loan Memorandum account. The utility shall also keep track of late payments made in the

⁸ Page 386, West's Annotated California Codes, Public Utilities Code Sections 700 to 1000.

⁹ Energy, Communications or Water.

future on bills not paid during this emergency period, including any late-payment charges.

- c. Operating expenses, administrative and general expenses, and taxes associated with grant funds, but not funded with grant funds, may be allowed in the determination of rates prospectively, if ultimately determined reasonable by the Industry Division.
- d. The Loan Memorandum account will be reviewed and audited before any credit or debit entries can be transferred to a balancing account for future rate adjustment, and may be approved in an advice letter or in an application, as appropriate.
 - i. The Small Local Exchange Carriers shall include the Loan Memorandum Account in their annual California High Cost Fund-A Advice Letter Filing in September each year for the Communications Division's review until there is no further activity in the Loan Memorandum Account and the loan has either been forgiven or repaid.
- e. The utility shall notify the Industry Division if the loan is forgiven or converted into a grant.
 - i. The Small Local Exchange Carriers shall notify the Communications Division if the loan is forgiven or converted into a grant within 30 days after it occurs and shall include the loan forgiveness or conversion as part of their annual California High Cost Fund-A Advice Letter filing in September.

Expenses associated with loans or indebtedness authorized by this Order shall be reviewed in the utility's next General Rate Case. Expenses associated with loans or indebtedness procured by utilities who do not come in for General Rate Cases shall be reviewed in one of the utility's informal filings for determination of rates.

FEES

The Commission is required to charge and collect a financing fee from the utilities in accordance with Public Utilities Code § 1904(b).

COMMENTS

Public Utilities Code Section 311(g)(1) provides that this Resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the

Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived “in an unforeseen emergency...”.

The Commission Rules of Practice and Procedure also provide that public review and comment may be waived or reduced in an “unforeseen emergency situation” specifically where there are “[a]ctivities that severely impair or threaten to severely impair public health or safety...” (Rule 14.6(a)(1) and/or where there are “[c]rippling disasters that severely impair public health or safety.” (Rule 14.6(a)(2). “Requests for relief based on extraordinary circumstances in which time is of the essence” justify such action. (Rule 14.6(a)(2)). “Unusual matters that cannot be disposed of by normal procedures if the duties are to be fulfilled” qualify for such expedited treatment. (Rule 14.6(a)(8)).

Accordingly, the 30-day comment period is reduced to ten (10) days pursuant to these authorities due to the extraordinary nature of the COVID-19 pandemic. In order to better disseminate the directives in this Resolution, it shall be served on the Service List for Resolution M-4842 - *Emergency Authorization And Order Directing Utilities To Implement Emergency Customer Protections To Support California Customers During The Covid-19 Pandemic*. Interested persons may participate in the forthcoming general rate cases or informal filings for determination of rates where the loans and other evidences of indebtedness will be reviewed. Interested persons may also participate in the forthcoming review of requests for amortization of loan memorandum accounts.

FINDINGS

1. On March 4, 2020, Governor Newsom declared a State of Emergency in California related to COVID-19.
2. On March 16, 2020, Governor Newsom issued Executive Order N-28-20, requesting that the Commission monitor the measures undertaken by public and private utility providers to implement customer service protections in response to COVID-19.
3. On March 17, 2020, Commission Executive Director Alice Stebbins issued a notification that the Commission plans to take action to provide emergency customer protection measures for customers in California to prevent disconnections for unpaid bills during the pendency of the COVID-19 emergency. This letter instructed utilities to file advice letters reporting compliance with the instructions to implement mandatory customer protections.
4. On April 17, 2020, the Commission issued Resolution (Res.) M-4842 ordering electric, gas, communications, and water and sewer corporations to retroactively apply the customer protection measures adopted in Decision (D.)19-07-015 and D.19-08-025 from March 4, 2020 onward – during the pendency of the COVID-19 pandemic.

5. In Res. M-4842, industry utilities are required to retroactively apply customer protection measures from March 4, 2020 onward or during the pendency of the COVID-19 pandemic.
6. On April 2, 2020, Governor Newsom issued Executive Order N-42-20, ordering public water systems in the State of California, including those under the jurisdiction of the Commission: (1) to not discontinue residential water service to any customers for non-payment; (2) to restore any residential service to occupied residences that were discontinued for nonpayment since March 4, 2020; (3) to not discontinue service to any business in the critical infrastructure sectors identified in the Executive Order, including small businesses under 13 C.F.R. Sec. 121.201; and other measures to ensure the continuing right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.
7. The customer protections ordered by the Commission and implemented by the utilities under its jurisdiction of those customer protections will likely result in fewer utility customers paying their bills on time, paying their bills in full, or paying their bills at all.
8. As a direct result, the utilities providing the customer protections will likely not collect the full amount of billed revenues necessary to fully recover their costs for the utility services being provided during the COVID-19 emergency.
9. Utilities are responsible for maintaining their quality of service and providing necessary improvements to their systems.
10. Utilities under the Commission's jurisdiction may require additional operating, maintenance, administrative, and general funding or capital funding because of actual or projected reductions in revenues received during the COVID-19 emergency. In such event, it is imperative that the Commission act expeditiously on all requests for approval of financing related to the COVID-19 emergency.
11. State and federal funding sources may be available to utilities to alleviate anticipated undercollections, such as PPP loans, Small Business Debt Relief Program, EIDL and other loan programs. Utilities must be able to quickly access these funding sources to respond to the COVID-19 emergency.
12. While the Commission does not look with favor upon the capitalization of operating expenses and the cost of maintaining service, it has the power and will, in extraordinary cases, authorize debt for that purpose.

13. Borrowing money or issuing evidence of indebtedness to fund operations, maintenance, administrative, and general functions and capital projects adversely impacted by the COVID-19 emergency are in the public interest.
14. The Commission is authorized to expedite requests for financing approvals pertaining to the COVID-19 emergency and condition its orders granting such approvals to ensure that such requests are related to the COVID-19 emergency.
15. Public Utilities Code Section 311(g)(2) allows the Commission to reduce or waive the public review and comment period in an unforeseen emergency. The COVID-19 emergency is an unforeseen emergency.
16. The Commission is required to charge and collect a financing fee from the utilities in accordance with Public Utilities Code § 1904(b).
17. In the event utilities entered into loans or other evidences of indebtedness related to COVID-19 after the date a state of emergency was declared in the State of California and before the issuance of this Resolution, the effective date of their authorization should be March 4, 2020.

THEREFORE, IT IS ORDERED THAT:

1. This Resolution applies to small local exchange carriers (telephone utilities),¹⁰ rate-regulated electric and gas utilities with fewer than 175,000 California customers¹¹ and all Water and Sewer Utilities.
2. Utilities in Ordering Paragraph 1 are authorized to borrow money or issue evidences of indebtedness payable at periods of more than 12 months to fund operations adversely impacted by the COVID-19 emergency.
3. Utilities in Ordering Paragraph 1 are authorized to borrow money or issue evidences of indebtedness payable at periods of more than 12 months to fund capital projects.

¹⁰ The Small Local Exchange Carriers are the following telephone companies: Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, Volcano Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, and Winterhaven Telephone Company.

¹¹ The small electric and gas utilities are: Bear Valley Electric Service, Liberty Utilities, Pacificorp, Alpine Natural Gas, and West Coast Gas.

4. The debt authorizations are subject to the following conditions:
 - a. Within 30 days of receiving approval of the loan through State or Federal Programs during the COVID-19 emergency - or immediately if more than 30 days have elapsed since the loan was issued - the utility shall file a Tier 2 Advice Letter to inform the Industry Division the following:
 1. Amount, type, and provider of loan.
 2. Terms and Conditions of the loan.
 3. Purpose of use of loan. If for capital improvements, the utility will include details of the construction costs.
 4. A copy of the loan documents including support workpapers.
 5. Request authority to establish a Loan Memorandum account to track receipt of loan funds, operating and maintenance expense, cost of new or replacement utility plant, unpaid bills or portions thereof along with uncollectible expense component authorized in rates, and disbursements.
 - b. Notify the Industry Division by letter if the utility has started booking receipt of loan funds, costs and expenses to the Loan Memorandum account. The utility shall also keep track of late payments made in the future on bills not paid during this emergency period, including any late-payment charges.
 - c. Operating expenses, administrative and general expenses, and taxes associated with grant funds, but not funded with grant funds, may be allowed in the determination of rates prospectively, if ultimately determined reasonable by the Industry Division.
 - d. The Loan Memorandum account will be reviewed and audited before any credit or debit entries can be transferred to a balancing account for future rate adjustment, as may be approved by the Industry Division.
 - i. The Small Local Exchange Carriers shall include the Loan Memorandum Account in their annual California High Cost Fund-A Advice Letter Filing in September each year for the Communications Division's review until there is no further

activity in the Loan Memorandum Account and the loan has either been forgiven or repaid.

- e. The utility shall notify the Industry Division if the loan is forgiven or converted into a grant.
 - i. The Small Local Exchange Carriers shall notify the Communications Division if the loan is forgiven or converted into a grant within 30 days after it occurs and shall include the loan forgiveness or conversion as part of their annual California High Cost Fund-A Advice Letter filing in September.
5. Utilities in Ordering Paragraph 1 are authorized to encumber utility assets in conjunction with borrowing money or issuing evidences of indebtedness.
6. Expenses associated with loans or indebtedness authorized by this Order shall be reviewed in the utility's next General Rate Case.
7. Expenses associated with loans or indebtedness procured by utilities who do not come in for General Rate Cases shall be reviewed in one of the utility's informal filings for determination of rates.
8. The authorizations granted by this Resolution shall remain for up to two years from the effective date of this Resolution.
9. The authorizations contained in this Resolution are effective as of March 4, 2020.

I certify that the foregoing resolution was adopted by the California Public Utilities Commission in its regular meeting of May 28, 2020, and the following Commissioners approved favorably thereon:

Alice Stebbins
Executive Director