

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of The Ponderosa
Telephone Co. (U1014C) For an Order
Authorizing the Issuance of Notes In an
Amount Not Exceeding \$17,225,000
And Execution of A Related Agreement
and Supplemental Security Agreements.

Application 21-02-003

**DECISION AUTHORIZING PONDEROSA TELEPHONE
COMPANY TO ISSUE UP TO \$17.225 MILLION
OF NEW DEBT****Summary**

This decision grants Ponderosa Telephone Company (Ponderosa) the authority, pursuant to Public Utilities (Pub. Util.) Code Sections §§ 816–818 and 851, to enter into a loan agreement with the United States Department of Agriculture, Rural Utilities Service (RUS) and Federal Financing Bank and to issue notes in an amount not exceeding \$17.225 million. This decision also:

- 1) authorizes the loan agreement, loan guarantee commitment agreement, and supplemental security agreements associated with the RUS notes approved herein;
- 2) grants Ponderosa authority to encumber its utility property to secure its long-term loan from the RUS for proper regulated utility purposes; and
- 3) grants Ponderosa an exemption from the New Financing Rule.

We also grant Ponderosa authority to file the confidential version of Application 21-02-003 under seal.

Application 21-02-003 is closed.

1. Background

Ponderosa Telephone Company (Ponderosa) is a public utility under the jurisdiction of this Commission, providing telecommunications and related service to rural areas in Fresno, Madera, and San Bernardino Counties. The property owned by Ponderosa 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. These same facilities provide customers with access to the advanced telecommunications services, including unregulated broadband services.

On February 3, 2021, Ponderosa filed Application (A.) 21-02-003 requesting authorization to issue notes to the United States Department of Agriculture, Rural Utilities Service (RUS), not exceeding \$15.365 million, as well as a Loan Guarantee Commitment giving Ponderosa access to debt capital from the Federal Financing Bank (FFB), not exceeding \$1.86 million, and other related requests. The RUS, in part, provides low interest loans that help rural utilities update and institute new services.

On March 16, 2021, Ponderosa filed a Motion to Supplement the Record, seeking admission of finalized loan documents that it received from RUS and FFB on February 23, 2021. The assigned Administrative Law Judge (ALJ) granted the motion via e-mail ruling on March 25, 2021. On April 20, 2021, a prehearing conference (PHC) was held to discuss the category, scope, and schedule for the proceeding.

On June 4, 2021, the assigned Commissioner issued a Scoping Memorandum and Ruling (Scoping Memo) for the proceeding. The Scoping Memo confirmed the initial categorization of the proceeding as ratesetting and

adopted a scope and schedule for the proceeding, including a determination that evidentiary hearings were not necessary.

2. Request

In its Application, Ponderosa seeks authority to enter into a loan agreement with the RUS and to issue notes in an amount not exceeding \$15.365 million. Ponderosa also seek authority to execute a Loan Guarantee Commitment with the Federal Financing Bank (FFB) giving Ponderosa access to an additional \$1.86 million in debt capital. The total debt obligation Ponderosa requests to incur in this Application is \$17.225 million.

Ponderosa also requests that the Commission: 1) authorize the loan agreement, loan guarantee commitment, and supplemental security agreements associated with the RUS and FFB notes approved herein; and 2) grant Ponderosa 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 2.1 below) are determined at the time of such advance from the RUS.

Ponderosa also requests that its request become effective upon payment of fees prescribed by Pub. Util. Code § 1904(b).

2.1. Requested New Debt

Ponderosa proposes to enter into a loan agreement with the RUS for \$15.365 million and an additional loan guarantee commitment with FFB for \$1.86 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 Ponderosa's utility property.

Ponderosa proposes to issue and execute a Loan Agreement, Mortgage Note(s), Restated Mortgage, Security Agreement, and Financing Statement as part of the RUS loan process. The RUS would then advance funds to Ponderosa

after execution of the Mortgage Notes. 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.

2.2. Use of Proceeds from New Securities

Ponderosa states that it requires additional capital to fund construction projects in its service territory in order to address obsolescence, maintenance issues, and cable exhaust, and to provide customers with services that they are requesting and that they will require in the near future. According to Ponderosa, some of the cable and wire facilities in use today within Ponderosa's service territory have gone beyond their expected lives. Replacement of those facilities is planned to provide for continued service quality. According to Ponderosa, these projects and other investments in its facilities are designed to ensure that Ponderosa continues to meet the current and future needs of its customers in an efficient and effective manner.

3. Discussion

3.1. Public Utilities Code Requirements for Issuance of Securities

Ponderosa's request is subject to Pub. Util. Code §§ 816-818, and 851. The Commission has broad discretion under Pub. Util. Code § 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 Pub. Util. Code § 817 and, as required by Pub. Util. Code § 818, are not reasonably chargeable to operating expenses or income.

Ponderosa 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 Ponderosa's facilities. Since Ponderosa'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 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 3.3 below.

3.2. 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 9.2 below, we grant Ponderosa'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 Ponderosa's need for new financing authority, we determine that Ponderosa's forecasted sources and uses are reasonable to rely on in order to determine Ponderosa's need for new financing. Ponderosa proposes to use \$17.225 million of RUS financing and FFB loan guarantees to offset its need for funding over the next several years.

We therefore find that it is reasonable to authorize Ponderosa to issue \$17.225 million of new debt. This new financing will allow Ponderosa to fund its future net financing needs over the next several years, to the extent authorized by applicable public utilities code. We find Ponderosa's request to be reasonable and supported by the record.

3.3. Types of Debt to be Issued

The new Mortgage Notes(s) with the RUS and FFB and associated agreements requested by Ponderosa in the current application are similar to those the Commission has previously authorized for other public utilities receiving financing from RUS, such as in Decision (D.) 13-02-029. Therefore, we authorize Ponderosa to issue the Mortgage Note(s) and associated agreements with RUS and FFB under the terms and conditions detailed in Section 2 of this decision. Ponderosa may secure such new debt from the RUS and FFB by its property and assets pursuant to Pub. Util. Code § 851. Such new debt from the RUS and FFB will be used for proper regulated utility purposes, as discussed above.

4. 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, page 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 and FFB are federal government agencies, and Ponderosa's request for new debt is much less than \$42 million, we grant Ponderosa an exemption from the New Financing Rule.

5. 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; 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 Ponderosa to comply with the new requirements of GO 24-C.

6. 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 Ponderosa's application is calculated as follows:

\$17.225 Million of new debt	\$1,000,000	\$2 per \$1,000	\$2,000
	\$9,000,000	\$1 per \$1,000	\$9,000
	\$7,225,000	\$0.50 per \$1,000	\$3,612.50
Total			\$14,612.50

7. Financial Information

We place Ponderosa 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 Ponderosa'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.

8. California Environmental Quality Act (CEQA)

The 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.¹ Likewise, the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a

¹ Public Resources Code Section 21080(b)(8).

potentially significant impact on the environment is not a “project” subject to CEQA.²

This decision does not authorize any capital expenditures or construction projects. New construction projects which Ponderosa 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 Ponderosa 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.

9. Procedural Matters

9.1. Motion to File Under Seal

On February 10, 2021, Ponderosa filed a motion in which it requested, pursuant to Rule 11.4 of the Commission’s Rules of Practice and Procedure and Pub. Util. Code Section § 583, authority to file confidential material under seal, including Exhibits 3-C, 4-C, and 8-C, attached to the confidential version of its application. Rule 11.4 addresses a request to seal documents that have been filed, while Pub. Util. Code Section § 583 provides exemptions to disclosure under the California Public Records Act.

Ponderosa states that the following exhibits attached to the confidential version of its application contain sensitive information that, if disclosed, would

² CEQA Guidelines Section 15378(b)(4).

harm Ponderosa, as well as ratepayers and the public: 1) Exhibit 3-C consists of independently-audited financials for the fiscal year ending June 2020; 2) Exhibit 4-C consists of recent unaudited financial statements, including an income statement and balance sheet as of November 30, 2020; and 3) Exhibit 8-C identifies specific planned network upgrades and network deployment, and Ponderosa's network's operational capabilities in identified service areas, including identifying the expected equipment manufacturers and equipment that Ponderosa intends to procure, as well as the number of its unregulated affiliates' broadband customers.

Ponderosa states that these Exhibits describe critical aspects of Ponderosa's corporate operations, fiscal activities, financial bill of health, network capabilities, and planned capital expenditures. Ponderosa also states that it does not, nor is it required to, publish this confidential financial and business information in the normal course of business. Ponderosa submits that these Exhibits contain sensitive, proprietary business records that could expose Ponderosa to unfair competition, and which could distort the competitive market to the detriment of consumers. If this information were publicly disclosed, it could be improperly utilized by competitors or other third parties to identify mechanisms to unfairly compete with Ponderosa in a manner that would be harmful to Ponderosa and its ratepayers.

9.1.1. Discussion

Since the confidential version of Ponderosa'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 Ponderosa's motion to file the confidential version of its application under seal,

which includes Exhibits 3-C, 4-C, and 8-C, pursuant to Rule 11.4 and Pub. Util. Code Section § 583.

10. Waiver of Comment 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.

11. Assignment of Proceeding

Martha Guzman-Aceves is the assigned Commissioner and Daniel Buch is the assigned ALJ in this proceeding.

Findings of Fact

1. Based on Ponderosa's forecast of sources and uses, it has a need for new financing.
2. RUS, in part, provides low interest loans that help rural utilities update and institute new services.
3. The requested financing authority of \$17.225 million of new debt is necessary to provide the external funding required to meet Ponderosa's projected cash requirements over the next several years.
4. The proposed new financing requested by Ponderosa 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. Ponderosa'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 Ponderosa'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 provides for exemptions based on a compelling showing by the utility that it qualifies for one of the exemptions listed in Attachment A, page A-6 of D.12-06-015.

10. Exemptions from the New Financing Rule include but are not limited to 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 Ponderosa's request for new debt is much less than \$42 million, Ponderosa is exempt from the New Financing Rule.

12. Ponderosa requested that the confidential version of its application, including Exhibits 3-C, 4-C, and 8-C, be treated confidentially, and filed under seal pursuant to Rule 11.4 and Pub. Util. Code § Section 583.

Conclusions of Law

1. Ponderosa Telephone Company (Ponderosa) should be authorized to issue up to \$17.225 million of new long-term debt and loan guarantees to RUS and FFB

over the next several years, all of which is for proper purposes and consistent with the requirement of Pub. Util. Code §§ 817 and 818.

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

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

4. The order herein should not be a finding of the reasonableness of Ponderosa'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. Ponderosa should remit a check for \$14,612.50, as required by Pub. Util. Code § 1904(b).

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

7. Ponderosa should not use the proceeds from the new securities authorized by this order to fund its capital projects until Ponderosa has obtained all required Commission approvals for the projects, including any required environmental review under the 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 Ponderosa's request that the confidential version of its application, including Exhibits 3-C, 4-C, and 8-C, be treated confidentially, and filed under seal pursuant to Rule 11.4 and Pub. Util. Code § 583.

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

11. A.21-02-003 should be closed.

O R D E R

IT IS ORDERED that:

1. Ponderosa Telephone Company is authorized to issue up to \$17.225 million of new long-term debt to the United States Department of Agriculture, Rural Utilities Service and the Federal Financing Bank over the next several years, all of which are for proper purposes and consistent with the requirement of Pub. Util. Code Sections §§ 817 and 818.

2. Ponderosa Telephone Company is authorized to issue a new Loan Agreement, Mortgage Note(s), Restated Mortgage, Security Agreement, and Financing Statement as part of the United States Department of Agriculture, Rural Utilities Service loan process.

3. Ponderosa Telephone Company is authorized to encumber its utility property, pursuant to Pub. Util. 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 Ponderosa 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. Ponderosa Telephone Company shall remit a check for \$14,612.50, as required by Pub. Util. Code Section § 1904(b).

6. The authority granted by this order shall not become effective until Ponderosa Telephone Company has paid the fees prescribed by Pub. Util. 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 Ponderosa Telephone Company has paid the fees prescribed by Pub. Util. Code Section § 1904(b).

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

8. The order herein shall 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. Ponderosa Telephone Company's motions for leave to file and maintain confidential materials under seal, including the confidential versions of its Exhibits 3-C, 4-C, and 8-C, are granted. The information shall remain under seal for a period of two years after the date of this order. During this two-year period, this information shall not be viewed by any person other than the assigned Commissioner, the assigned Administrative Law Judge (ALJ), the Assistant Chief ALJ, or the Chief ALJ, except as agreed to in writing by

Ponderosa Telephone Company or as ordered by a court of competent jurisdiction. If Ponderosa Telephone Company believes that it is necessary for this information to remain under seal for longer than two years, Ponderosa Telephone Company shall file a new motion at least 30 days before the expiration of this limited protective order.

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

11. Application 21-02-003 is closed.

This order is effective today.

Dated _____, at San Francisco, California.