

Decision _____

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA**

In the Matter of the Application of CALAVERAS
TELEPHONE COMPANY U-1004-C, for an
Order authorizing it to issue notes in an amount
not exceeding \$7,762,000, and to execute a related
agreement and supplemental security
instruments.

Application 05-01-010
(Filed January 14, 2005)

OPINION ON BORROWING

1. Summary

This order authorizes Calaveras Telephone Company (Calaveras) to enter into a loan agreement with The United States of America, acting through the Rural Utilities Service (RUS) for the purpose of borrowing \$7,762,000 to be used for improvement of facilities, and in connection with the loan, to execute mortgages and security instruments, pursuant to Pub. Util. Code §§ 816, 817, 818 and 851¹.

2. Background

Calaveras is a California corporation operating as a public utility telephone company under the jurisdiction of the Commission. Calaveras provides telephone services to portions of Calaveras County, California. The property owned by Calaveras and devoted to telecommunications services is comprised of wire, cable, lands, easements, central office

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

equipment, buildings and other pertinent equipment necessary for the provision of telephone service.

Calaveras' income statement for the fiscal year ended June 30, 2004, shown as Exhibit A to the Application presents total operating revenues of \$6,442,584 and net income of \$1,150,251. The balance sheet as of the same period, shown as part of Exhibit A is summarized as follows:

<u>Assets</u>	<u>Amount</u>
Current Assets	\$ 2,914,028
Noncurrent Assets	2,112,664
Net Property, Plant, and Equipment	<u>9,631,097</u>
Total Assets	<u>\$14,657,789</u>
<u>Liabilities & Stockholders Equity</u>	
Current Liabilities	\$ 1,766,043
Long-Term Debt	2,328,991
Other Liabilities & Deferred Credits	1,240,710
Stockholders' Equity	<u>9,322,045</u>
Total Liabilities & Stockholders Equity	<u>\$14,657,789</u>

3. Notice and Protests

Notice of the filing of the Application appeared on the Commission's Daily Calendar of January 25, 2005. No protests have been received.

4. Description of Financing

Calaveras has previously obtained long-term secured borrowings from the RUS (formerly the Rural Electrification Administration) and from the Rural Telephone Bank. In D.03-09-013 dated September 4, 2003 in A.03-01-022, the Commission authorized Calaveras to secure a \$7,006,750

loan from the RUS to finance 1) the replacement of an existing switch with a modern switch; 2) replacement of outdated remote switches with modern remote switches; 3) refinancing of interim financing; and 4) for other plant improvements. Of this \$7,006,750 loan account, approximately \$5 million remains unissued.

In this Application, Calaveras seeks authority to enter into a loan agreement with the RUS for \$7,762,000 to be used for the upgrade of facilities used in conjunction with the provision of broadband services². The proposed loan will be secured by previously executed mortgages and supplemental mortgages of substantially all of Calaveras' property³ to the RUS, as previously authorized by the Commission, and will be subject to documentation substantially similar to that which is attached as Exhibit C to the Application, changed only in the manner, if any, required for compliance with the published rules of the U.S. Department of Agriculture. Calaveras is not in a position and does not believe it to be prudent or in the best interest of subscribers to finance all of such a large program out of its earnings or resources when below market interest rate loans are available from the RUS. Calaveras will not use the loan funds received for purposes chargeable to operating expenses or to income.

Calaveras will execute a Broadband Loan Agreement, Mortgage Note, Security Agreement and Financing Statement as shown also in Exhibit C to the Application. As set forth in the Broadband Loan Agreement and the Mortgage Note, money shall be advanced to Calaveras from time to time after the execution of the Mortgage Note.

² Financial assistance provided by RUS specifically to finance broadband services in rural areas.

³ As of June 30, 2004, Calaveras has total assets of \$14,657,789 that is sufficient to secure the loan authorized by D.03-09-013 and the \$7.7 million requested in this Application.

Each advance under the Mortgage Note will bear interest at various rates, which shall be determined by terms set forth in the Mortgage Note. There is not a stated rate of interest for the RUS's subsidized loans to telephone companies. Instead, the applicable rate of interest for advances under RUS loans is determined on the date of each advance and is essentially equal to the U.S. Government's cost of funds. The rates so determined are generally and consistently much lower than rates available from private and commercial lenders.

Pursuant to the Broadband Loan Agreement, as amended, Calaveras is obligated from time to time to execute supplemental mortgages and other security instruments in favor of Calaveras' secured lenders. Calaveras requests that it be authorized to continue to execute and deliver from time to time such supplemental mortgages and other security instruments as may be required by the terms of its Broadband Loan Agreement; and to execute and deliver such Broadband Loan Agreement or other extension agreements as may be required in the future to permit the further advance of funds under the Broadband Loan Agreement.

The Mortgage Note will be repaid through monthly installment payments (interest plus principal payments) commencing one year after execution and concluding fourteen (14) years after execution, at cost of money interest rate. Interest only payments begin the first month after draw-down of funds.

5. Environmental Impact

The California Environmental Quality Act (Public Resources Code Section 21000, et seq., hereafter "CEQA") applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to inform governmental decision-makers and the public about the

potential, significant environmental effects of proposed activities. (CEQA Guideline Section 15002).

According to Calaveras, the requested authority to enter into a loan agreement and to execute the loan documents does not have any significant adverse effect on the environment. Calaveras is an incumbent local exchange carrier with a statutorily granted facilities-based provider authority.

The Commission must act on §§ 818 and 851 applications and must act as either a Lead or Responsible Agency under CEQA. Generally, the Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA Guideline Section 15051(b)). CEQA requires that a Responsible Agency consider the Lead Agency's Environmental Impact Report, Negative Declaration or Mitigated Negative Declaration prior to acting upon or approving a project (CEQA Guideline Section 15050(b)). The specific activities that must be conducted by a Responsible Agency are contained in CEQA Guideline Section 15096.

It is unknown at this time what the specific project activities and new construction associated with the authority to issue debt will be. The Application specifies that the purpose of the Application is to secure approval for a loan (under the RUS financial assistance specifically for broadband services) to be used for prospective plant improvements related to broadband services and to construct a redundant fiber route by placing fiber in existing conduit. Securing the financing authority now will put Calaveras in a better position to undertake plant improvements without delay when construction plans are finalized.

Calaveras is aware and states in the Application that the utility will comply with all environmental permitting requirements applicable to the projects that it will undertake in conjunction with the proposed debt issue.

Since the details of the proposed improvements are unknown at this time, we will approve the debt financing pursuant to § 818 and § 851 and place Calaveras on notice that the approval of the loan request does not constitute an implied or expressed waiver of applicable environmental regulations.

Calaveras is not authorized by this decision to undertake any construction activities outside its existing facilities-based authority. For such activities, Calaveras should seek further Commission approval including necessary environmental review.

6. Construction Budget

Calaveras' 5-year construction budget, shown as Exhibit C to the Application and updated information received April 29, 2005, follows:

	(\$)				
	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Land	30,000	15,000	0	0	0
Water Supply	120,000	120,000	0	0	0
Street Improvements	0	0	0	0	0
Distribution					
Improvements	2,251,440	1,482,144	1,722,760	3,214,355	1,232,207
Miscellaneous	158,560	158,560	158,560	258,560	258,560
Contingencies	0	15,000	0	0	0
New Business	0	0	0	0	0
Meters	0	0	0	0	0
Services	0	0	0	0	0
Main Replacements	0	0	0	0	0
Pump & Purifier	0	0	0	0	0
Office Equipment	0	0	0	0	0
Transportation Equipment	0	0	0	0	0
Other Equipment	0	70,000	270,000	250,000	540,000
Electric Plant	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	<u>2,560,000</u>	<u>1,860,704</u>	<u>2,151,320</u>	<u>3,722,915</u>	<u>2,030,767</u>

Calaveras' 5-year construction requirement totals \$12,325,706.

We will not make a finding in this decision on the reasonableness of Calaveras' proposed construction program. Construction expenditures and the resulting plant balances in rate base are issues that are normally addressed in general rate cases.

7. Cash Requirements Forecast

Calaveras' 5-year cash requirements forecast are summarized as follows:

	(\$)				
	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Funds for construction	2,560,000	1,860,704	2,151,320	3,722,915	2,030,767
Bonds, Notes retired	0	0	0	0	0
Preferred Shares retired	0	0	0	0	0
Refunds of advances	0	0	0	0	0
Taxes on advances & contributions	0	0	0	0	0
Short-term debt repaid	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
 Total Cash required	 2,560,000	 1,860,704	 2,151,320	 3,722,915	 2,030,767
 Estimated cash available from internal sources ⁴	 <u>650,000</u>	 <u>850,000</u>	 <u>1,200,000</u>	 <u>1,000,000</u>	 <u>1,200,000</u>
 External financing	 <u>2,560,000</u>	 <u>1,860,704</u>	 <u>2,151,320</u>	 <u>3,722,915</u>	 <u>2,030,767</u>

Calaveras' 5-year forecasted external financing requirement totals \$12,325,706. The \$7,762,000 requested authority in this Application is intended principally for broadband improvements. Calaveras has unused authority of \$5.0 million under D.03-09-013.

⁴ Calaveras plans to use its revenues for other company purposes such as servicing debt, payment of dividends, etc. Capital improvements will be financed entirely by external funds.

8. Capital Ratios

Calaveras' capital ratios are shown below as recorded and as adjusted to give pro forma effect to the projected issuance of mortgage notes and forecasted increase in retained earnings:

			(\$)			
	<u>Recorded</u>		<u>Adjustments</u>		<u>Proforma</u>	
Long-term debt	3,139,394	27.13%	11,269,000(A)		14,408,394	51.94%
Short-term debt	<u>0</u>	<u>0.00%</u>	<u>-</u>		<u>0</u>	<u>0.00%</u>
Subtotal	3,139,394	27.13%	11,269,000		14,408,394	51.94%
Preferred Stock	0	0.00%	-		0	0.00%
Common Equity	<u>8,433,330</u>	<u>72.87%</u>	<u>4,900,000(B)</u>		<u>13,333,330</u>	<u>48.06%</u>
Total Capitalization	<u>11,572,724</u>	<u>100.00%</u>	<u>16,169,000</u>		<u>27,741,724</u>	<u>100.00%</u>

A. Long-term Debt:

- (1) Issuance of \$7,762,000 debt requested in this Application.
- (2) Issuance of \$5,000,000 of remaining authority granted in D.03-09-013.
- (3) Payment of approximately \$1,493,000 of existing long-term debt.

B. Common Equity:

- (1) Projected increase in retained earnings of \$4,900,000.

Capital structures are normally subject to review in cost of capital or general case proceedings. We will not, therefore, make a finding in this decision on the reasonableness of the projected capital ratios for ratemaking purposes.

9. Use of Proceeds

The Application states that because of the increasing demand for broadband services, Calaveras requires funds for the upgrade of its facilities to pay for: 1) broadband upgrade projects; 2) facilities and equipment to be placed in existing structures for the provision of broadband services; and construction of a redundant fiber route connecting the Copperopolis and Jenny Lind central offices (placement of fiber optic cable in existing conduit).

10. Loan Approval

Calaveras' request to issue debt is subject to §§ 816 *et seq.*, which provide, in relevant part as follows:

Section 816: The power of public utilities to issue... evidences of indebtedness and to create liens on their property situated within this State is a special privilege, the right of supervision, regulation, restriction, and control of which is vested in the State, and such power shall be exercised as provided by law under such rules as the commission prescribes.

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

(b) For the construction, completion, extension, or improvement of its facilities.

Section 818:

No public utility may issue stocks and stock certificates, or other evidence of interest or ownership, or bonds, notes or other evidences of indebtedness payable at periods of more than 12 months..., 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...

Section 851:

No public utility... shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its... plant, system, or other property necessary or useful in the performance of its duties to the public....without first having secured from the commission an order authorizing it so to do.

The Commission has broad discretion under §§ 816 *et seq.*, to determine if a utility should be authorized to issue debt. The primary standard used by the Commission is whether a utility has demonstrated a reasonable need to issue debt for proper purposes⁵. Calaveras proposes to fund its projected 5-year construction budget totaling \$12,325,706 by external debt.

The project is for the public good and financing the project with below market interest loan is in the best interest of the utility and ratepayers. We will approve the authority requested in the Application.

11. Categorization and Need for Hearings

In Resolution (Res.) ALJ 176-3146 dated January 27, 2005, the Commission preliminarily categorized this Application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given these developments, a public hearing is not necessary, and there is no need to alter the preliminary determinations made in Res. ALJ 176-3146.

⁵ The term “proper purposes” means any expenditure that is necessary or proper to promote legitimate objects of a public utility of the type concerned. (207 Cal 630 (1929).)

12. 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), the otherwise applicable 30-day period for public review and comment is being waived.

13. Assignment of Proceeding

Kevin P. Coughlan is the assigned Examiner in this proceeding.

Findings of Fact

1. Calaveras, a California corporation, is a public utility subject to the jurisdiction of this Commission.
2. Calaveras needs external funds for the purposes set forth in the Application.
3. The proposed debt issue is for proper purposes and is not adverse to the public interest.
4. The financial assistance provided by RUS specifically to finance broadband services in rural areas provides needed capital for system improvements and is a prudent means of acquiring an estimated \$7,762,000 at below market rates.
5. The Commission does not by this decision determine that the construction budget and capital ratios presented herein are necessary or reasonable for purposes of setting rates.
6. Authorizing Calaveras to encumber utility assets as required to secure the loan is for proper purposes and is not adverse to the public interest.

7. Notice of the filing of the Application appeared on the Commission's Daily Calendar of January 25, 2005. There is no known opposition to this Application, and the authority requested should be granted.

Conclusions of Law

1. A public hearing is not necessary.
2. The Application should be granted to the extent set forth in the order that follows.
3. It is Calaveras' responsibility to abide by and comply with any applicable environmental regulations for any capital improvement undertaken relative to this debt authorization.
4. Calaveras should pay the fee determined in accordance with § 1904(b).
5. The following order should be effective on the date of signature.

ORDER**IT IS ORDERED** that:

1. On or after the effective date of this order, Calaveras Telephone Company (Calaveras), upon terms and conditions substantially consistent with those set forth or contemplated in Application 05-01-010 (Application), is authorized to enter into a Telephone Loan Contract Amendment with The United States of America, acting through the Rural Utilities Service (RUS) for a total sum not exceeding \$7,762,000 for purposes specified in the Application.
2. Calaveras may execute and deliver the Mortgage Note and supplemental mortgages of the utility's properties on substantially the same terms and conditions as set forth in Exhibit C to the Application.

3. Calaveras shall keep and maintain copies of the Telephone Loan Contract Amendment, the Mortgage Notes, and Supplemental Mortgages, and within thirty days from request provide copies to the Water Division's Audit and Compliance Branch (ACB).

4. Calaveras shall comply with all applicable environmental laws and regulations when planning and implementing any capital expenditure programs that are financed, in whole or in part, with the proceeds from the financing authorized by this decision. For such activities, Calaveras shall seek further Commission approval for construction activities and environmental review

5. On or before the 25th day of each month, Calaveras shall file with the Water Division's ACB the reports required by General Order Series 24.

6. The authority granted by this order shall become effective when Calaveras pays \$8,762⁶ as required by Pub. Util. Code § 1904(b).

7. The Application is granted as set forth above.

⁶ The fee is determined as follows: $(\$2 \times (1,000,000/1,000)) + (\$1 \times 6,762,000/1,000) = \$8,762$.

8. A.05-01-010 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORRETTA M. LYNCH

GEOFFREY F. BROWN

SUSAN P. KENNEDY

Commissioners