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| CALIFORNIA PUBLIC UTILITIES COMMISSION DIVISION OF WATER AND AUDITS Advice Letter Cover Sheet | | | | (Date Filed / Received Stamp by CPUC) | |
| AL # 120 | Date Mailed to Service List: 04.10.2019 | Requested Effective Date: July 1, 2019 | | Requested Tier: Tier 1 Tier 2 X Tier 3 | |
| Replacing AL#: | Authorization for Filing: SP-U-27-W | Compliance Filing? Yes X No | Rate Impact | \$ 589,392 % 10.67 | |
| <u>The public has 20 days from Date Mailed (above) to protest this advice letter. If you chose to protest or respond to the advice letter, send Protest and/or Correspondence within 20 days to:</u> | | | Director Division of Water and Audits 505 Van Ness Ave. San Francisco, CA 94102 | | |
| <u>and if you have email capability, also email to:</u> | | | water_division@cpuc.ca.gov | | |
| <u>Your protest also must be served on the Utility</u> | | | (see attached advice letter for more information and grounds for protest) | | |
| Company Name: Lake Alpine Water Company | | | | CPUC Utility Number: WTA _____ WTB _____ WTC _____ WTD <u>148</u> _____ SWR _____ | |
| Address: PO Box 5013 | | | | | |
| City, State, Zip: Bear Valley, CA 95223 | | | | | |
| Contact Name: | | Phone No. | Fax No. | Email Address: | |
| Filer | Kimi Johnson | | 209-753-2409 | info@lakealpinewater.com | |
| Alternate | | | | | |
| Description: To recover the expenses recorded in the Memorandum Account approved by AL 94A&B. This filing will not cause withdrawal of service nor conflict with any other schedule or rule. | | | | | |
| (FOR CPUC USE ONLY) | | | | | |
| WTS Budget/Activity/Type _____/_____/_____ | | | Process as: <input type="radio"/> Tier 1 <input type="radio"/> Tier 2 <input type="radio"/> Tier 3 | | |
| Project Manager: _____ | | | 20th Day <input type="text"/> | 30th Day <input type="text"/> | |
| Analyst: _____ | | | Suspended on: _____ | | |
| Due Date: _____ | | | Extended on: _____ | | |
| Completion Date: _____ | | | Resolution No.: _____ | | |
| | | | AL/Tariff Effective Date: _____ | | |

April 10, 2019

Advice Letter No. 120

TO THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA (CPUC)

Pursuant to Water Industry Rule 7.7.3 of General Order 96-B, Lake Alpine Water Company (LAWC) submits this advice letter to request recovery of expenses through amortization of the balance in the memorandum account established by File No. 602-19 and to satisfy the conditions set forth in Standard Practice U-27-W regarding the recovery of a memorandum account for legal and consulting expenses.

LAWC had previously, in Advice Letter 94 A&B, requested the authority to establish a memorandum account to track the costs of legal services and other charges associated with protests to Application (A.) 11-04-013.

I. The establishment of the memorandum account satisfies the conditions, set forth below, for recovery of costs of an exceptional nature:

A. The costs are not under the utility's control.

In April, 2011, at the direction of CPUC staff, James and Marianne Orvis, the sellers, and Aspen Forest LLC, the buyers, filed Application 11-04-013 for the transfer of ownership of 50% of stock in LAWC to Aspen Forest, LLC. The actual stock sale had occurred 8 years earlier in 2003 and at that time an application was not filed as the sale was not considered a transfer of control.

After the application was filed, Ratepayers of Lake Alpine Water (RLAWC), under the direction of a LAWC customer, Gloria Dralla, filed a protest to the application. It asked that the sale not be approved and instead be deemed void. It also stated that Aspen's ownership had been detrimental to LAWC.

The Commission later recognized that LAWC's actual ratepayers had views different than those expressed by RLAWC.¹ Nonetheless, the protests resulted in a Pre-Hearing Conference and, ultimately a multi-year proceeding before the Commission, one extending from 2011 into 2016.²

The length and expense of the matter³ resulted entirely from an aggressive strategy by the Protestants, one marked by frivolous motions, and burdensome discovery. The burden placed on LAWC is catalogued in the Commission's Docket Card for A. 11-04-013 which reflects 133 documents.

Protestants focused on all the activities of LAWC between 2003 and 2011. It was apparent that the outcome of the matter would have a dramatic direct effect on LAWC, positing the removal of LAWC's management which was ultimately characterized by the Commission as an "operational and management team that has continued to provide safe and reliable water service to the customers of LAWC"⁴.

1 In D. 13-03-007 the Commission found that the actual ratepayers of LAWC supported the "sale of LAWC common stock by J&M Orvis to Aspen." Finding of Fact No. 32.

2 A. 11-04-013 was filed in April of 2011; the matter was not closed until the issuance of Decision 16-09-026 on September 15, 2016.

3 See footnote 2 *supra*. Again, the number of documents shown on the Commission's docket card for A.11-04-013 is twice that arising out of a standard Class A Water Company GRC.

4 See, Findings of Fact 30-32 of D. 13-03-007 (March 21, 2013).

As LAWC was not a formal applicant, it was necessary for the Administrative Law Judge (ALJ) to grant party status to LAWC and she did so on January 24, 2012. Protestants consistently opposed permitting LAWC to participate as a party and, on February 23, 2012, sought reconsideration of the ALJ's January 24, 2012 ruling on LAWC's party status. The Protestants motions were denied.

RLAWC filed its notice of intent to claim intervenor compensation to which LAWC was required to respond. LAWC pointed out that because it had a small customer base, any award of intervenor compensation would result in a significant rate increase to the actual ratepayers of the company. LAWC also noted that while the protestant claiming eligibility had designated itself as the "Ratepayers of Lake Alpine Water Company", the actual ratepayers of LAWC supported the current management and operation of LAWC stating that they were "satisfied with the present operations of the Lake Alpine Water Company and would oppose any CPUC decision requiring a change in the ownership or management of the company."⁵ Nonetheless, the Commission found RLAWC to be eligible for intervenor compensation.⁶

In an effort to stem the growth of legal fees, LAWC filed a petition in September, 2011 asking the Commission to order the parties to participate in alternative dispute resolution ("ADR"). The assigned Commissioner granted the motion. The parties held a conference call with ALJ Hecht, the mediator, and met with her in person on October 5, 2011. A follow-up session was scheduled for October 18, 2011 but RLAWC canceled at the last minute and asked to reschedule. Based on the many communications amongst the parties and ALJ Hecht during the rescheduling process, no further ADR sessions were held.

At the direction of the ALJ, the parties prepared and filed prehearing conference statements and a final prehearing conference was held April 26, 2012. Evidentiary hearings were held from July 23–25, 2012. The Commission issued a Proposed Decision in January 2013 authorizing the sale of LAWC stock to Aspen. On March 21, 2013, the Commission issued D.13-03-007 approving the stock sale to Aspen and rejecting all of the Protestants arguments with regard to the fitness of LAWC's management.

Despite its loss on the key issues before the Commission, RLAWC filed a claim for \$209,854 in intervenor compensation (IC) for its purported contributions to D.13-03-007. LAWC responded to the IC request, contesting the majority of the costs and contributions claimed by RLAWC. In D.14-11-016, the Commission ultimately granted RLAWC \$43,180 or about 20% of the amount it sought.

Protestants filed a lengthy Application for Rehearing of D. 13-03-007. LAWC responded by noting that it was filed three weeks beyond the statutory due date. When the Commission advised the Protestants that their filing had been rejected, Protestants filed another motion asking the Commission to accept the pleading but it was denied by Decision 15-03-022. Protestants then sought rehearing of D. 15-03-022 and LAWC replied. This Application for Rehearing was denied by the Commission in D.15-07-046.

Protestants also filed an application for rehearing of the Intervenor Compensation (IC) award in D.14-11-016. LAWC again responded. The Commission elected to reconsider certain costs of the IC but denied rehearing all other aspects. In Decision 16-09-026, the IC award was increased by \$33,967.

The protestants also twice sought a review of the case in California Supreme Court. The court denied any review in both instances.

In summary, LAWC was successful in the case of A.11-04-013 and in its opposition to the motions and appeals associated with that proceeding and was effective in reducing the intervenor awards sought by the protestants. But the cost of these successes was very high.

⁵ A letter from the Bear Valley Residents, Inc. (BVRI) homeowners' group, to Executive Director Paul Clanon was attached to LAWC's Response.

⁶ The Commission ultimately sharply reduced the intervenor compensation sought by RLAWC at the end of Phase 1. Even the sharply reduced award, however, amounted to the largest per-customer award in Commission history.

B. The costs could not have been reasonably foreseen in the utility's last general rate case.

Res. W-4809 (December 17, 2009) resolved the general rate case ("GRC") that preceded the events described in A. above. Complaint 11-04-015 and A.11-04-013 did not commence until fifteen months after the issuance of Res. W-4809.

Application 11-04-013 was concluded by the end of 2016 almost two years before July 27, 2018 when LAWC filed Advice Letter 116, the GRC culminating in Res. W-5175. LAWC did not file for a GRC during the period of the legal action

C. The costs will occur before the utility's next schedule rate case.

See the discussion in B above. LAWC's most recent GRC was resolved by Res. W- 5175, (October 11, 2018.). The costs were not included in the GRC culminating in Res. W-5175 because they were extraordinary and did not reflect typical recurring levels of expenses that should appear on a Summary of Earnings.

The costs were all incurred during a period between GRCs, a time period dictated by (1) the initiation of the dispute by RLAWC and (2) the procedural schedule set by Administrative Law Judge Wilson.

D. The costs are of substantial nature in that the amount of money involved is worth the effort of processing the memorandum account.

The expenses are substantial. The proceeding commenced in April of 2011 and ended over five years later in 2016. Over \$550,000 in legal and consulting fees were expensed.

A summary of LAWC's activity during the proceeding is set forth in A. above. LAWC is prepared to provide further detail if requested.

E. The proceeding had ratepayer benefits.

The ratepayers derived benefits from LAWC's efforts to maintain the current ownership and professional management of LAWC. Current owners have historical ties to Bear Valley as well as professional experience with the management of water utilities. Under their leadership, LAWC returned to water quality compliance and regained financial resilience. Their strong leadership has not gone unnoticed. During the proceeding, customers, through the Bear Valley Residents, Inc. and the Bear Valley Business Association, expressed their desire for current management to be maintained.

Had the LAWC not defended its record and pressed for approval of the application, the likely outcome would have been the elimination of the managerial competence and access to capital that have made LAWC one of the best run Class D companies subject to the Commission's jurisdiction.

Moreover, as noted above, LAWC's efforts to protest the requests of intervenor compensation led to the reduction of IC awards, which are reimbursed by ratepayers, by almost 65%.

II. Expenses were paid by LAWC

As detailed in the attached spreadsheet, LAWC has accumulated expenses totaling \$589,392 between June 2011 and December, 2016.

III. Justification

Although much of these expenses are more than three years old, all of the expenses for legal and consulting services and could not be recovered until the proceeding of Application 11-04-013 was closed. The initial ownership application and protests were settled on March 21, 2013, when the Commission issued D. 13-03-007 approving the stock sale to Aspen Forest. Subsequent proceedings, however, arose from the Commission's rejection of RLAWC's applications for a rehearing of D. 13-03-007 and its request for Intervenor Compensation. With respect to each issue, the protestants also sought review in the California Supreme Court. After the court denied both the petitions for writ of review in September 2015, the matter was ultimately closed by a final limited hearing of the intervenor compensation adjustment in September, 2016.

At all times the focus of the Commission proceedings was on the conduct and management of LAWC. In order to maintain the management that the Commission praised in D.13-03-007, LAWC was required to respond forcefully to the very aggressive posture of the Protestants. According to SP U-27-W, legal expenses are deemed imprudent if the utility is unsuccessful. Here, any fair reading of D.13-03-007 shows that the Commission rejected the substantive claims of the Protestants and found that LAWC was well run and had provided safe and reliable service to its customers. Moreover, LAWC successfully obtained sharp reduction on the Intervenor compensation sought by the Protestants, a success of great benefit to its ratepayers given the requirements of Section 1807.

Finally, the cost of the proceeding placed a burden on LAWC. Recovery of the costs is essential to re-capitalizing LAWC in a manner that will permit it to strengthen its system and continue the improvements to the company that commenced in 2003.

IV. Earnings Test-See attached spreadsheet

Response or Protest:

Anyone may respond to or protest this AL. A response supports the filing and may contain information that proves useful to the Commission in evaluating the AL. A protest objects to the AL in whole or in part and must set forth the specific grounds on which it is based. These grounds are:

- (1) The utility did not properly serve or give notice of the AL;
- (2) The relief requested in the AL would violate statute or Commission order, or is not authorized by statute or Commission order on which the utility relies;
- (3) The analysis, calculations, or data in the AL contain material error or omissions;
- (4) The relief requested in the AL is pending before the Commission in a formal proceeding; or
- (5) The relief requested in the AL requires consideration in a formal hearing, or is otherwise inappropriate for the AL process; or
- (6) The relief requested in the AL is unjust, unreasonable, or discriminatory (provided that such a protest may not be made where it would require re-litigating a prior order of the Commission.)

A protest may not rely on policy objections to an AL where the relief requested in the AL follows rules or directions established by statute or Commission order applicable to the utility.

A protest shall provide citations or proofs where available to allow staff to properly consider the protest. A response or protest must be made in writing or by electronic mail and must be received by the Division of Water and Audits within 20 days of the date this AL is filed.

The address for mailing or delivering a response or protest is:

California Public Utilities Commission
Water Division, 3rd Floor
505 Van Ness Avenue, San Francisco, CA 94102
water.division@cpuc.ca.gov

On the same date the response or protest is submitted to the CPUC, the respondent or protestant shall send a copy by mail (or e-mail) to us, addressed to:

Kimi Johnson, General Manager

Lake Alpine Water Company

PO BOX 5013

Bear Valley, CA 95223

Email: info@lakealpinewater.com

Cities and counties that need Board of Supervisors or Board of Commissioners approval to protest should inform the Division of Water and Audits, within the 20-day protest period, so that a late filed protest can be entertained. The informing document should include an estimate of the date the proposed protest might be voted on.

Replies:

The utility shall reply to each protest and may reply to any response. Any reply must be received by the Division of Water and Audits within 5 business days after the end of the protest period, and shall be served on the same day to the person who filed the protest or response.

Customer Notice

This is a notice from Lake Alpine Water Company (LAWC) to its customers regarding a request to the California Public Utilities Commission (CPUC) for reimbursement of legal expenses recorded between 2011 and 2016.

The legal expenses that are described below all pertain to the company's responses to an extended proceeding of a protest. The legal expenses were accumulated between June, 2011 and December, 2016. LAWC filed Advice Letter 94 in 2011 asking the CPUC's permission to track the legal expenses related to the proceeding. The CPUC allowed this to take place using a Memorandum Account. Now that the proceeding is over, LAWC is filing to recover the expenses recorded in the Memorandum Account in order to reinvest these funds in the company.

In its review of this request, the CPUC will evaluate whether or not the expenses were 1. under the utility's control; 2. not expensed in a general rate case; 3. of a substantial nature; and 4. provided ratepayer benefits. Additionally, the CPUC will audit the legal invoices submitted and will decide which expenses are warranted for reimbursement.

LAWC is applying for reimbursement of \$588,442. If granted by the CPUC, the residential surcharge would be approximately \$9.12 per month per ratepayer over a 10-year period. That amount may vary depending on the outcome of their review. Their review and the process of filing takes several months. No change in rates will occur without due notice.

Background

In early 2003, Aspen Forest Investment Co., LLC ("Aspen") purchased 50% of the shares of LAWC from James L. and Marianne S. Orvis, brother of Bruce Orvis, Sr, who owned the other 50% with his wife, Roma and son and daughter-in-law, Bruce and Paula Orvis.

When Aspen purchased 50% of the shares of LAWC, it received only two of five seats (40%) on the board of directors of the company pursuant to a Shareholder Voting Agreement between Aspen and the Orvis family shareholders. James and Marianne Orvis and Aspen did not file an application for CPUC approval of the sale in 2003 because they did not believe one was required as it was not considered a change of control.

The CPUC staff initially expressed uncertainty on that question but ultimately, they recommended that James and Marianne Orvis and Aspen file an application. On April 15, 2011, James and Marianne Orvis, the sellers, and Aspen Forest LLC, the buyers filed Application 11-04-013 for the transfer of ownership of 50% of stock and 40% of the Board voting rights in LAWC to Aspen Forest, LLC.

After the transfer application was submitted, an organization known as Ratepayers of Lake Alpine Water Company (RLAWC) under the direction of an LAWC customer, Gloria Dralla, filed a protest to the application. RLAWC asked that the sale not be approved and instead be deemed void. It also stated that Aspen's management had been detrimental to LAWC, a contention that LAWC customers and ultimately, the CPUC rejected.

Over the next 5 years, RLAWC doggedly pursued its case against Aspen and LAWC through the avenues at the CPUC. After a lengthy discovery period including requests for over 190 responses and documents and after LAWC's request for alternative dispute resolution failed, hearings were held from July 23–25,

2012. On March 21, 2013, the Commission issued a final Decision, D.13-03-007 approving the stock sale to Aspen and rejecting all of RLAWC's arguments with regard to the fitness of LAWC's management.

RLAWC twice filed for Intervenor Compensation (IC) which the CPUC partially granted. Through two surcharges, one in 2015 and one in 2017, customers paid \$77,140 to RLAWC for its legal expenses. LAWC's efforts to protest the requests of intervenor compensation led to the reduction of IC awards by almost 65%, from \$209,854 to \$77,140.

RLAWC filed for a rehearing and were denied. They also twice sought a review of the case in California Supreme Court. The court denied any review in both instances.

In summary, LAWC was successful in the case of A.11-04-013 and in its opposition to the motions and appeals associated with the proceeding and it was effective in reducing the intervenor awards sought by the protestants. But the cost of these successes was very high.

The ratepayers derived benefits from LAWC's efforts to maintain the current ownership and professional management of LAWC. Under their leadership, LAWC achieved water quality compliance and regained financial stability. LAWC's strong leadership had not gone unnoticed. During the proceeding, customers, through the Bear Valley Residents, Inc. and the Bear Valley Business Association, expressed their desire for ownership and management to be maintained and their opposition to RLAWC's efforts.

Had the LAWC not defended its record and pressed for approval of the application, the likely outcome would have been the elimination of the managerial competence and access to capital that have made LAWC one of the best run Class D companies subject to the CPUC's jurisdiction.

As an LAWC customer, you have a right to know as much as possible about this filing and can request more information from the staff at LAWC. You may also submit a response to LAWC and the CPUC regarding this reimbursement request.

Response or Protest:

Anyone may respond to or protest this AL. A response supports the filing and may contain information that proves useful to the Commission in evaluating the AL. A protest objects to the AL in whole or in part and must set forth the specific grounds on which it is based. These grounds are:

- (1) The utility did not properly serve or give notice of the AL;
- (2) The relief requested in the AL would violate statute or Commission order, or is not authorized by statute or Commission order on which the utility relies;
- (3) The analysis, calculations, or data in the AL contain material error or omissions;
- (4) The relief requested in the AL is pending before the Commission in a formal proceeding; or
- (5) The relief requested in the AL requires consideration in a formal hearing, or is otherwise inappropriate for the AL process; or
- (6) The relief requested in the AL is unjust, unreasonable, or discriminatory (provided that such a protest may not be made where it would require re-litigating a prior order of the Commission.)

A protest may not rely on policy objections to an AL where the relief requested in the AL follows rules or directions established by statute or Commission order applicable to the utility.

A protest shall provide citations or proofs where available to allow staff to properly consider the protest.

A response or protest must be made in writing or by electronic mail and must be received by the Division of Water and Audits within 20 days of the date this AL is filed.

The address for mailing or delivering a response or protest is:

California Public Utilities Commission
Water Division, 3rd Floor
505 Van Ness Avenue, San Francisco, CA 94102
water.division@cpuc.ca.gov

On the same date the response or protest is submitted to the CPUC, the respondent or protestant shall send a copy by mail (or e-mail) to us, addressed to:

Kimi Johnson, General Manager
Lake Alpine Water Company
PO BOX 5013
Bear Valley, CA 95223
Email: info@lakealpinewater.com

Cities and counties that need Board of Supervisors or Board of Commissioners approval to protest should inform the Division of Water and Audits, within the 20-day protest period, so that a late filed protest can be entertained. The informing document should include an estimate of the date the proposed protest might be voted on.

Replies:

The utility shall reply to each protest and may reply to any response. Any reply must be received by the Division of Water and Audits within 5 business days after the end of the protest period, and shall be served on the same day to the person who filed the protest or response.

Lake Alpine Water Company W-148 Service List

Bear Valley Homeowners
Association
paulnordic@sbcglobal.net

Colin McKee, Bear Valley Resident,
Inc.
colinbmckee@gmail.com

Alpine County Public Works
dburkett@alpinecountyca.gov

Terry Woodrow, County Supervisor
twoodrow@alpinecountyca.gov

Paul Peterson, Bear Valley Condo
Management Company
paulnordic@sbcglobal.net

Eric Jung, BV Real Estate and Cub
Reporter
eric@bearvalleyrealestate.com

Bear Valley Water District
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jeff@bearvalleyrealestate.com

Joel Barnett, Bear Valley Business
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Anita Taff-Rice, Attorney
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Bruce Orvis, LAWC Board Member
bporvis@juno.com

Tom MacBride, Attorney
tmacbride@goodinmacbride.com

Adrian Lund, Skyline Bear Valley
Resort
adrianl@bearvalley.com


Gloria Dralla, RLAWC
ggdralla@pacbell.net

Don Schulz, LAWC Board Member
don@mgib.net

I hereby certify that the above service list has been served a copy of the AL 120
on April 10, 2019.

Executed in Bear Valley, CA on April 10, 2019.

Lake Alpine Water Company, Inc.

By: 
Kimi Johnson, General Manager

Enclosures