

ORIGINAL

Decision No. 49941

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the investigation)	
upon the Commission's own motion to	:	
determine the propriety of requiring)	Case No. 4761
public utilities to invite publicly,	:	(Petition for
written sealed bids for the purchase)	Modification)
of their securities.	:	
-----)	

Claude N. Rosenberg and Chas. DeY. Elkus, Jr., for California Water & Telephone Company, petitioner; John Francis Neylan, for Halsey, Stuart & Co., Inc., protestant; Orrick, Dahlquist, Herrington & Sutcliffe and Warren A. Palmer, for California-Pacific Utilities Company, interested party; Brobeck, Phleger & Harrison, by George D. Rives, for The California Oregon Power Company, interested party; O'Melveny & Myers, by Frederick N. Edwards, for Southern California Water Company, interested party; McCutchen, Thomas, Matthew, Griffiths & Greene, by Robert Minge Brown, for California Water Service Company and San Jose Water Works, interested parties; Fred Oldendorf, for California Electric Power Company, interested party; J. T. Phelps, for the Commission's staff.

OPINION ON PETITION FOR MODIFICATION OF COMPETITIVE BIDDING RULE

On January 15, 1946, the Commission made its order requiring public utilities to invite written sealed bids for the purchase of their securities, with certain exceptions. The Commission's requirement is set forth in its Decision No. 38614 and is referred to as its competitive bidding rule.

At this time we have under consideration a petition filed by California Water & Telephone Company requesting the Commission to amend its competitive bidding rule in the following respects:

- (a) Equity securities should be exempted from said rule.
- (b) Debt securities should be exempted from said rule when they are sold privately or solely to institutional investors and not through a public offering.

(c) The present exemption on the sale of securities where the total consideration received by the issuing public utility is \$1,000,000 or less should apply only to debt securities, and should be enlarged so as to exempt the sale of securities where the total consideration received by the issuing public utility is \$3,000,000 or less.

Public hearings on the petition for modification were held in San Francisco before Commissioner Mittelstaedt and Examiner Coleman, the matter being taken under submission on April 14, 1954. A motion to dismiss the petition was made by counsel for Halsey, Stuart & Co., Inc.

The Commission prescribed its competitive bidding rule in 1946 after extended hearings. In the exercise of its administrative functions it concluded that the issue by utilities of securities, including equity securities, should be made at competitive bidding, with certain exceptions as set forth in the rule. It recognized there might be cases where competitive bidding should not be required and it made provision for exemption upon due showing by a utility in any particular issue. The records of the Commission clearly show that it has not been unwilling to grant exemption from the application of the competitive bidding rule upon showing being made that more advantageous terms might be expected from negotiated underwriting and by private placement than by competitive bidding.

A review of the record in the pending matter shows that the reasons now advanced for modification of the bidding requirements, in general, are the same as those presented to the Commission in the original proceeding. These matters were fully considered by the Commission at the time it promulgated its present rule. In our opinion, no additional evidence is now before us which would warrant us to modify our requirements as requested by petitioner.

The record in this proceeding does show, however, that the Commission has exempted all preferred stock issues of less than \$3,000,000, that since 1948 it has exempted all common stock offerings of less than \$3,000,000 when requested to do so, and that since 1950 it similarly has exempted all applications involving debt financing of less than that amount. From a review of the information now before the Commission, it appears that in general security underwriters have shown little interest in competitive bidding proceedings involving financing of less than \$3,000,000 and that sales of securities in that amount which were made by private placement or by negotiated underwriting were consummated under reasonable terms. Upon the basis of our experience with the competitive bidding rule, it appears to us that it is reasonable to increase the present exemption from \$1,000,000 to \$3,000,000.

One further modification of the administrative procedure set forth in our competitive bidding rule will be considered at this time. Under our existing rule the utility, in each proceeding involving sales of securities at competitive bidding, is required to file a supplemental application setting forth information regarding the bids received and requesting issuance by this Commission of a supplemental order approving the price offered by the successful bidder. It appears to us that this provision of the competitive bidding rule should be modified so as to eliminate the mandatory requirement. In the future the Commission, while retaining the right to require the filing of supplemental applications as in the past, may at its option authorize the utility to issue and sell its securities at competitive bidding to the underwriter or underwriters offering the most favorable terms as disclosed by the bids received.

ORDER ON PETITION FOR MODIFICATION OF COMPETITIVE BIDDING RULE

Public hearings having been held on the above entitled matter, and the Commission having considered the evidence and being of the opinion that an order should be entered amending the competitive bidding rule in certain respects; therefore,

IT IS HEREBY ORDERED as follows:

1. Subparagraph 5 of the first ordering paragraph of the order in Decision No. 38614, dated January 15, 1946, reading as follows:

"5. Any security issued and sold where the total consideration received by the issuing public utility is \$1,000,000 or less."

be, and it hereby is, modified to read as follows:

"5. Any security issued and sold where the total consideration received by the issuing public utility is \$3,000,000 or less."

2. The fourth ordering paragraph of the order in said Decision No. 38614, reading as follows:

"IT IS HEREBY FURTHER ORDERED that as a condition precedent to the entering of an order authorizing a public utility to issue any security covered by this order, it shall file with the Commission an application setting forth each bid received and which bid it is ready to accept. The Commission reserves the right to deny the application or grant it conditionally."

be, and it hereby is, vacated and set aside.

3. Except to the extent indicated herein, the petition for modification is denied without prejudice.

4. The effective date of this opinion and order on petition for modification of competitive bidding rule shall be 20 days after the date hereof.

The foregoing order, in effect, disposes of the motion to dismiss.

Dated at San Francisco, California, this 20th day of April, 1954.

R. F. [Signature]
President
Justin J. Gammal
Lawrence P. [Signature]
Robert L. [Signature]
Gene [Signature]
Commissioners