

Decision No. 67864

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of
SOUTHWEST GAS CORPORATION
for Authority to Issue Bonds
and Preferred Stock

Application No. 46867
Filed August 3, 1964

Charles H. McCrea, for applicant, and
Sidney J. Webb, for the Commission Staff.

O P I N I O N

Southwest Gas Corporation has filed this application for authority to issue and sell, exempt from competitive bidding, \$4,000,000 par value of its Preferred Stock, 4.85% Cumulative Series, and \$5,000,000 principal amount of its First Mortgage Bonds, 4.85% Series due 1989, and to execute and deliver its Tenth Supplemental Indenture.

A public hearing was held before Examiner Donovan in San Francisco on August 24, 1964, at which time the matter was taken under submission. The Commission has received no protests in the proceeding.

Applicant is a California corporation engaged in the business of distributing and selling natural gas and liquefied petroleum gas in portions of San Bernardino County, California. In addition, the company transmits, sells and distributes

natural gas in portions of the States of Arizona and Nevada. Exhibit No. 3 shows that 92% of applicant's sales and 86% of its revenues were derived from operations in the States of Arizona and Nevada during 1963, leaving 8% and 14%, respectively, from California operations.

The preferred stock which applicant proposes to issue will consist of 80,000 shares of a new series having a par value of \$50 per share and a dividend rate of 4.85% and will be redeemable at the company's option in multiples of 20,000 shares at a premium of five percent of par value prior to September 1, 1969, four percent thereafter and prior to September 1, 1974, three percent thereafter and prior to September 1, 1979, and two percent thereafter, plus accrued and unpaid dividends in each instance. However, none of the shares will be redeemable prior to September 1, 1969 as a part of, out of the proceeds of, or in anticipation of, the incurring of debt or the issue of shares of preferred stock or other stock ranking prior thereto or on a parity therewith if such debt has an interest cost to the corporation or such shares have a dividend cost to the corporation less than the rate of 5% per annum. Applicant proposes to sell the 80,000 shares of preferred stock at private placement prior to November 1, 1964 for a price of \$50 per share to five institutional buyers as follows:

<u>Name of Purchaser</u>	<u>No. of Shares</u>
Allstate Insurance Company	40,000
The Connecticut Mutual Life Insurance Company	20,000
Equitable Life Insurance Company of Iowa	10,000
Washington National Insurance Company	5,000
General American Life Insurance Company	5,000
Total	<u>80,000</u>

The proposed new bonds of applicant will bear interest at the rate of 4.85% per annum, will mature September 1, 1989, and will be redeemable prior to September 1, 1965 at a premium of 4.85%, and thereafter at annually decreasing premiums; provided, however, that the bonds may not be redeemed prior to September 1, 1969 as a part of, or in anticipation of, any refunding operation by the application directly or indirectly of borrowed funds having an interest rate or cost to the company less than 4.85% per annum. Applicant proposes to sell the bonds at their principal amount, plus accrued interest, on closing dates to occur in September, 1964 and March, 1965. The company proposes to sell the bonds at private placement to ten institutional investors as follows:

<u>Name of Purchaser</u>	<u>Principal Amount of Bonds</u>	
	<u>First Closing</u>	<u>Second Closing</u>
Wilmington Trust Company, Trustee	\$ 500,000	\$ 500,000
Modern Woodmen of America	400,000	400,000
The Chase Manhattan Bank, as Trustee for The Northrop Fixed Dollar Pooled Trust P33796	500,000	-
Lutheran Brotherhood	500,000	-
Southwestern Life Insurance Company		500,000
California Western States Life Insurance Company	500,000	-
Mutual Trust Life Insurance Company	400,000	-
The Home Life Insurance Company of America	250,000	100,000
The United States Life Insurance Company in the City of New York	-	250,000
American Lutheran Church	200,000	-
Total	<u>\$3,250,000</u>	<u>\$1,750,000</u>

Applicant proposes to use the proceeds from the sale of the preferred stock and bonds, together with other funds, (1) to pay expenses incurred for the construction program of the company and/or (2) to repay any bank loans incurred for such program and outstanding on each closing date. With respect to bank loans, the company reports that it has issued and outstanding \$7,000,000 of notes pursuant to its credit agreement with Bank of America National Trust and Savings Association as authorized by Decision No. 67411, dated June 23, 1964, in Application No. 46671. In addition to borrowing the full amount of \$7,000,000 as authorized by said Decision No. 67411, the testimony shows that at the time of the hearing applicant had borrowed \$1,500,000 more through short-term bank financing.

By Ordering Paragraph 1 of Decision No. 67134, dated April 28, 1964, in Application No. 45964, the Commission authorized applicant to execute a Ninth Supplemental Indenture. Exhibit No. 1 in the present proceeding consists of a copy of the company's Ninth Supplemental Indenture as actually executed and complies with said Ordering Paragraph 1. Exhibit A, attached to Exhibit B on file in this proceeding, consists of applicant's proposed Tenth Supplemental Indenture setting forth, among other things, the terms of the new bond issue, which document the company seeks authority to execute.

In order to proceed with its plans, applicant requests the Commission to exempt both the preferred stock and the bond issues from competitive bidding. A representative of Eastman

Dillon, Union Securities & Co. presented oral and documentary evidence in support of such exemption and outlined the market conditions and negotiations culminating in the selection of the proposed purchasers of the preferred stock and bonds in accordance with the terms set forth in this proceeding. The added expenses, including costs involved in registering with the Securities and Exchange Commission, additional accounting and legal costs, and the fact of two closing dates resulting in a substantial saving of interest, were cited as reasons for private placement as compared with selling the securities through competitive bidding. The anticipated downgrading of applicant's securities as a result of its unbalanced capital structure, among other things, is a basis for contending that better prices would not be obtained through competitive bidding. In this connection, page 4 of Exhibit No. 3 shows a pro forma capitalization for applicant as of April 30, 1964, consisting of 60% funded debt, 12% preferred stock and 28% common stock equity. Applicant does not deem it advisable to issue additional common stock or convertible preferred stock at this time, but anticipates that by 1968 its capital structure will approach 55% debt, 10% preferred stock and 35% common stock equity. Applicant believes that as the company becomes better known to the investment public it will be able to obtain more favorable financing through competitive bidding.

When considering an application for an exemption from the provisions of the competitive bidding rule, the Commission must be convinced that adherence to the rule would be other than

in the public interest. Based on the record in this proceeding, it appears that the terms and conditions under the proposed private placements are at least equal to those which might prevail under competitive bidding. In view of the circumstances previously stated, together with the extensive construction and expansion program in which applicant is engaged, the lack of demonstrated earnings which will result therefrom, the substantial item of interest charged to construction (reported at \$603,765 for the twelve months ended June 30, 1964, or approximately one-third of net income), and the absence of any protest, the Commission will grant applicant an exemption from the competitive bidding rule. Applicant is placed on notice that in any future proceeding involving a requested exemption from the provisions of the competitive bidding rule, it will be required to provide evidence which will demonstrate clearly and convincingly that adherence to the rule would be other than in the public interest.

From a review of the application, testimony and exhibits, we find that (1) the proposed issues of preferred stock and bonds are for proper purposes; (2) the terms of the proposed preferred stock and bond issues are not adverse to the public interest; (3) the inclusion of five-year restricted redemption provisions in the terms of the preferred stock and bonds will enable applicant to obtain funds at lower annual costs than in the absence of such provisions; (4) to require applicant to sell the proposed issues of preferred stock and bonds in accordance with the requirements of the Commission's competitive bidding rule would

not be in the public interest; (5) the money, property or labor to be procured or paid for by the issue of the preferred stock and bonds herein authorized is reasonably required for the purposes specified herein; and (6) such purposes, except as otherwise authorized for accrued interest, are not, in whole or in part, reasonably chargeable to operating expenses or to income.

On the basis of the foregoing findings we conclude that the application should be granted. The action taken by the Commission on the company's present application is for the purpose of this proceeding only and is not to be construed as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. The issue by Southwest Gas Corporation of \$4,000,000 par value of Preferred Stock, 4.85% Cumulative Series, and \$5,000,000 principal amount of First Mortgage Bonds, 4.85% Series due 1989, hereby is exempted from the Commission's competitive bidding rule which is set forth in Decision No. 38614, dated January 15, 1946, as amended.

2. Southwest Gas Corporation may issue and sell not to exceed 80,000 shares of its \$50 par value Preferred Stock, 4.85% Cumulative Series, in accordance with the provisions of an agreement in the same form, or in substantially the same form, as that contained in Exhibit No. 2 filed in this proceeding.

3. Southwest Gas Corporation may execute and deliver its Tenth Supplemental Indenture in the same form, or in substantially the same form, as that designated as Exhibit A attached to Exhibit B in this proceeding.

4. Southwest Gas Corporation may issue and sell not to exceed \$5,000,000 principal amount of its First Mortgage Bonds, 4.85% Series due 1989, in accordance with the provisions of a Bond Purchase Agreement in the same form, or in substantially the same form, as that filed in this proceeding as Exhibit B.

5. Southwest Gas Corporation shall use the proceeds, exclusive of accrued interest, from the sale of said bonds and preferred stock for the purposes set forth in this proceeding. The accrued interest to be received from the sale of the bonds may be used for such purposes or for general corporate purposes.

6. Southwest Gas Corporation shall file with the Commission a report, or reports, as required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

7. This order shall become effective when Southwest Gas Corporation has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$1,375.

Dated at San Francisco, California,
this 22nd day of SEPTEMBER, 1964.

*I dissent.
The face of this
decision re-
veals that
exemption from
competitive
bidding is
not justified.*

*Ernest George
Commissioner*

Fredrick B. Holbrook
President

George H. Hoover

William M. Beunda
Commissioners

