

ORIGINAL

Decision No. 83411

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of SOUTHERN CALIFORNIA GAS)
COMPANY, a Corporation, for)
Authority to Issue and Sell)
Not Exceeding \$50,000,000)
First Mortgage Bonds, Series J,)
to Mortgage its Properties and)
to Execute and Deliver to WELLS)
FARGO BANK, National Association)
(Formerly American Trust Company))
as Trustee, a Supplemental)
Indenture.)

Application No. 55080
(Filed August 1, 1974)

K. R. Edsall, David M. Turner and J. V. Lake,
Attorneys at Law, for applicant.
Chickering & Gregory, by Frederick A. Lorig,
Attorney at Law, for San Diego Gas &
Electric Company, interested party.
Philip A. Crane, Jr. and Dennis C. Sullivan,
Attorneys at Law, for Pacific Gas and
Electric Company, interested party.
Robert T. Dreiling, for Wells Fargo Bank,
N.A., interested party.
Ira R. Alderson, Jr., Attorney at Law, and
Sidney J. Webb, for the Commission staff.

O P I N I O N

Southern California Gas Company, a California corporation, seeks authority to execute and deliver a Supplemental Indenture, and to issue and sell not exceeding \$50,000,000 aggregate principal amount of its First Mortgage Bonds, Series J, through negotiations to be conducted in the State of New York.

After due notice, a public hearing in the above-entitled matter was held before Examiner Donovan with Commissioner Sturgeon in attendance in San Francisco on August 23, 1974, at the conclusion of which the matter was taken under submission. The application was amended at the hearing and the Commission has received no protests in the proceeding.

Applicant is a subsidiary of Pacific Lighting Corporation and sells natural gas to customers located in the central and southern parts of California. Its capitalization percentages on June 30, 1974, and as adjusted to give effect to the proposed bond issue, are summarized from the application as follows:

	<u>June 30, 1974</u>	<u>Pro Forma</u>
Long-term debt	47.34%	50.48%
Preferred stock	2.73	2.56
Common equity	<u>49.93</u>	<u>46.96</u>
Total	<u>100.00%</u>	<u>100.00%</u>

The utility contemplates that a nationwide group of investment banking firms would underwrite the \$50,000,000 of new bonds and that the terms, including but not limited to the price and interest rate, would be determined through negotiations. The bonds would be secured by an existing Indenture as heretofore amended and supplemented and as further amended and supplemented by a proposed Supplemental Indenture.

Applicant proposes to use the net proceeds, other than accrued interest, to be derived from the \$50,000,000 aggregate principal amount of Series J bonds for repaying short-term indebtedness to its parent corporation, the proceeds of which were used for its construction and expansion program. The accrued interest would be used for general corporate purposes.

The two material issues for the Commission to resolve in this proceeding are (a) whether or not the issue and sale of the proposed bonds should be required to be through competitive bidding, and (b) whether or not the maximum interest rate provisions of Section 22 of Article XX of the Constitution of the State of California are applicable to the proposed bond issue.

The utility's reasons for requesting exemption from the competitive bidding requirements as set forth in the application are as follows:

- "(1) Recently, there have been instances in which no bids or unacceptable bids were submitted in response to invitations by utilities for competitive public bids.
- "(2) A negotiated transaction permits the underwriters to build a 'book' of advance interest in the issue prior to the offering and, as a result, to price the issue more aggressively.
- "(3) Uncertainty in the financial market makes it desirable to have maximum flexibility in timing, which is feasible in a negotiated underwriting as opposed to the fixed time schedule characteristic of a competitive

bidding procedure. It is also desirable, under present volatile market conditions, to have maximum flexibility to adjust the terms of the issue (such as maturity, sinking fund and call protection) in response to the requirements of the market at the time of offering.

- "(4) A negotiated sale permits the issuer to mobilize the underwriting and distribution strength of the strong firms in the securities business. The competitive bidding method, on the other hand, automatically splits the securities industry into two or more segments at a time such as the present when the underwriting capacity of the entire investment banking community has been significantly weakened."

The evidence in this proceeding persuades us that such reasons are sound.

Nationally, the present public utility bond market is such that in many instances interest rates exceed the maximum allowable under the California Usury Law (Article XX, Section 22 of the California Constitution and the Usury Law Initiative Act*).

Applicant proposes situating and structuring the issuance and sale of its Series J bonds substantially as follows:

* Usury Law Initiative Act as adopted at the November 5, 1918 election commences on page lxxxiii of the 1919 volume of the Statutes of California, and the amendment thereto as adopted at the November 3, 1970 election commences on page 1497 of the 1970 volumes of the Statutes of California; it is also found in Civil Code 1916-1 et seq. (West Publishing Company); and Act 3757, General Laws (Deering's).

1. Negotiations with the managing underwriter will be conducted in New York.
2. The Underwriting Agreement, the Supplemental Indenture, the bonds and other documents to be executed and delivered in connection with the offering will be executed in New York and delivered in New York.
3. The proceeds of the offering will be delivered to and received by applicant in New York.
4. Principal, interest, and premium, if any, will be payable in New York.
5. An information meeting for the representatives of the underwriters will be held in New York.
6. The managing underwriter's principal office will be in New York, and the underwriting group will probably be comprised principally of qualified underwriters who have offices in New York.
7. The Underwriting Agreement will expressly provide that it is for all purposes to be governed by the law of New York.
8. The Supplemental Indenture and the bonds will provide that the obligations of applicant to pay the principal and interest (and premium, if any) on the Series J bonds and the rights of the registered owners of Series J bonds to receive the principal and interest (and premium, if any) thereon will be governed by the law of New York.

Applicant states that this proposal is not intended to restrict the sale of the bonds to purchasers outside California. Had a proposal been submitted which would restrict the potential bond market to other than California purchasers, it would necessitate a denial, for, as applicant's witness testified, approximately 30% of the bond market for California public utilities is in California, and approximately 40% of the company's Series I bonds are held by California domiciled owners. To require California public utility corporations to issue and sell bonds to other than California residents would necessarily result in inflating the interest costs at the ultimate expense of California ratepayers.

Applicant's proposal as previously outlined to situate or structure the transaction in New York is not required because by law this Commission has authority to authorize public utility security issues without regard to the Usury Law sanctions of Article XX, Section 22 of the California Constitution and the Usury Law Initiative Act; but, since applicant's proposal does not operate to restrict the potential bond market to the detriment of applicant or its ratepayers, we are not opposed to such structuring and situating of the proposed issuance and sale.

The Usury Law (Article XX, Section 22 of the California Constitution and the Usury Law Initiative Act) is not a restriction on the Public Utilities Commission's power to regulate the issuance of public utility securities. The California Constitution in Sections 22 and 23 of Article XII granted the Legislature exclusive and plenary power to confer broad and comprehensive powers upon the Public Utilities Commission. Article XII, Section 22 of the California Constitution states:

"No provision of this Constitution shall be construed as a limitation upon the authority of the Legislature to confer upon the Public Utilities Commission additional powers of the same kind or different from those conferred herein which are not inconsistent with the powers conferred upon the Public Utilities Commission in this Constitution, and the authority of the Legislature to confer such additional powers is expressly declared to be plenary and unlimited by any provision of this Constitution." (Emphasis added.)

By that authority " . . . the State of California has decided that in all matters touching public utilities the voice of the Legislature shall be the supreme law of the land." (PT&T Co. v. Eshleman, 166 Cal. 640 (1913) p. 658; see e.g. People v. Western Airlines, Inc., 42 Cal. 2d 621 (1954).)

The Legislature in creating its scheme of regulation for public utilities recognized the need for public utilities to raise necessary capital for construction or improvement of facilities, as well as other proper purposes (Public Utilities Code Sections 816 et seq.), and thereby in 1915 adopted provisions of the Public Utilities Code (now Sections 816 et seq.) conferring upon the Public Utilities Commission the power to regulate the issuance of instruments of ownership and instruments of indebtedness by public utilities. To carry out the Legislature's scheme of regulation for public utilities, given this Commission's broad and comprehensive power over the issuance of bonds, it has been held that the establishment of an interest rate is such an integral part of an issue that this Commission has supervisory control thereof; in fact, it has long been

customary that the utility shall seek the lowest interest available with bids subject to final Commission approval (e.g. In re PT&T Co., 68 Cal. P.U.C. 490 (1968)), and that the Commission can prescribe the interest rate to be incurred by a utility seeking to issue bonds (e.g. Re San Gabriel Valley Water Service, 40 Cal.R.C. 461 (1937)).

The regulation of public utility bond issues, including the establishment of interest rates, is a power conferred upon this Commission by the Legislature to accomplish its scheme of regulation for public utilities, and as such authority is plenary to the Legislature and unrestricted by other provisions of the California Constitution, the Usury Law (contained in Article XX, Section 22 and the Usury Law Initiative Act) does not restrict this Commission's power to regulate the interest rates of public utility bond issues or other evidences of indebtedness.

Public utility corporations are not the unwary and necessitous borrowers that the usury laws were enacted to protect, and judicial interpretation of the Usury Law has been that public utility corporation bonds are not subject to the California Usury Law.**

Accordingly, if the interest limitation of the Usury Law is exceeded but it is determined that the transaction, whether negotiated or by competitive bid, is the best the utility can obtain because of market conditions, then the

** Commission staff's brief extensively discusses judicial interpretation of applicability of Usury Law, Article XX, Section 22 of the California Constitution, and the Usury Law Initiative Act, citing In Re Washer, 200 Cal. 598 (1927), and covering subsequent treatment.

public interest requires this Commission to authorize the issuance and sale of the debt instruments. Because the Usury Law does not apply to authorized public utility bond issues, applicant utility has no occasion to and cannot raise the defense of usury as a result of any bond issue authorized by the Public Utilities Commission and, further, because of such lawful issuance authorized by the Public Utilities Commission, persons receiving interest on such authorized debt are not subject to the Usury Law sanctions.

After consideration the Commission finds that:

1. The proposed bonds would be for proper purposes.
2. Applicant has need for external funds for the purposes set forth in this proceeding.
3. The proposed documents would not be adverse to the public interest.
4. The issue and sale of the proposed bonds should not be required to be through competitive bidding.
5. The money, property or labor to be procured or paid for by the issue of the bonds herein authorized is reasonably required for the purposes specified herein, which purposes, except as otherwise authorized for accrued interest, are not, in whole or in part, reasonably chargeable to operating expenses or to income.
6. Applicant is a California corporation operating under the jurisdiction of this Commission.
7. Underwriters will not be restricted from offering or selling applicant's Series J bonds in California.
8. The security for applicant's Series J bonds would consist mainly of California real estate.

9. Prevailing market conditions may necessitate that applicant's proposed Series J bonds will be issued and sold with a rate of interest exceeding the limitations provided in Article XX, Section 22 of the California Constitution.
10. Pursuant to plenary powers granted to the Legislature by Article XII, Sections 22 and 23 of the California Constitution, the Legislature is authorized to confer additional consistent powers upon the Public Utilities Commission as it deems necessary and appropriate, unrestricted by any other provisions of the California Constitution.
11. The Legislature has conferred upon the Public Utilities Commission the authority to regulate the issuance of public utility securities, including evidences of indebtedness, and to prescribe restrictions and conditions as it deems reasonable and necessary (Sections 816 et seq. of the Public Utilities Code).
12. Pursuant to the plenary powers granted to the Legislature in Article XII, Sections 22 and 23 of the California Constitution, it conferred upon the Public Utilities Commission comprehensive and exclusive power over the issuance of public utility securities, including evidences of indebtedness, and the Usury Law cannot be applied as a restriction on the Public Utilities Commission's regulation of such issuances of public utility securities, including the establishment of a reasonable rate of interest.
13. In addition to the plenary powers granted to the Legislature by the California Constitution pursuant to which the Legislature conferred upon the Public Utilities Commission exclusive authority to regulate the issuance of bonds by public utilities (Sections 816 et seq. of the

Public Utilities Code), irrespective of the Usury Law, judicial interpretation of the California Usury Law has exempted corporate bonds of public utilities from operation of the Usury Law.

14. If the usury limitation contained in Article XX, Section 22 of the California Constitution and the Usury Law Initiative Act is exceeded, but the transaction is authorized by this Commission and is the best applicant can obtain because of market conditions, applicant utility, its assignees or successors in interest, will have no occasion to and cannot assert any claim or defense under the California Usury Law; further, and necessarily, because of lawful issuance by applicant of Series J bonds in compliance with authorization by the Public Utilities Commission, persons collecting interest on such authorized bonds are not subject to the Usury Law sanctions.
15. The Commission does not find objectionable applicant's proposal to situate and structure the proposed issuance and sale of said bonds in New York, since this proposal does not restrict the potential bond market to areas or purchasers outside California.

On the basis of the foregoing findings we conclude that the application should be granted. We further conclude that the usury limitations on interest contained in Article XX, Section 22 of the California Constitution and the Usury Law Initiative Act do not apply to the issuance of public utility securities including evidences of indebtedness lawfully authorized by the Public Utilities Commission. The authorization herein granted 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.

Applicant is hereby placed on notice that, if the Commission believes that the negotiated price or interest rate pertaining to the proposed bond issue will result in an excessive effective interest cost, it will take into consideration in future rate proceedings only that which it deems reasonable.

O R D E R
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IT IS ORDERED that:

1. The issuance and sale by Southern California Gas Company of not exceeding \$50,000,000 aggregate principal amount of its First Mortgage Bonds, Series J, are hereby exempted from the Commission's competitive bidding rule set forth in Decision No. 38614, dated January 15, 1946, as amended, in Case No. 4761.
2. Southern California Gas Company may execute and deliver a Supplemental Indenture in substantially the same form as that received in evidence as Exhibit No. 6.
3. Southern California Gas Company may issue and sell not exceeding \$50,000,000 aggregate principal amount of its First Mortgage Bonds, Series J, in accordance with the application, testimony and exhibits.
4. Neither Southern California Gas Company, nor anyone purporting to act on its behalf, shall at any time assert in any manner, or attempt to raise as a claim or defense in any proceeding, that the interest on its First Mortgage Bonds, Series J, exceeds the maximum permitted to be charged under the California Usury Law or any similar law establishing the maximum rate of interest that can be charged to or received from a borrower.

5. Southern California Gas Company shall apply the proceeds from the sale of said bonds to the purposes set forth in the application.

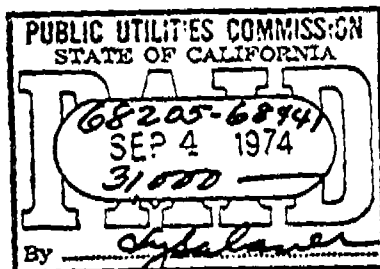
6. Upon determining the maturity date, price and interest rate pertaining to the bonds herein authorized, Southern California Gas Company shall notify the Commission thereof in writing.

7. As soon as available, Southern California Gas Company shall file with the Commission three copies of its prospectus pertaining to said bonds.

8. Within one month after issuing and selling the bonds herein authorized, Southern California Gas Company shall file with the Commission a statement, in lieu of a report under General Order No. 24-B, disclosing the purposes for which the bond proceeds were used.

9. This order shall become effective when Southern California Gas Company has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$31,000.

Dated at San Francisco, California, this 24
day of SEPTEMBER, 1974.



Vernon L. Spurgeon
President
William Spurgeon, Jr.
William Spurgeon, Jr.
William Spurgeon, Jr.
William Spurgeon, Jr.
Commissioners