

Decision No. 83504**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application	)	
of PACIFIC GAS AND ELECTRIC COMPANY	)	
for an order authorizing it to issue	)	
and sell \$150,000,000 aggregate	)	Application No. 55116
principal amount of its First and	)	(Filed August 15, 1974)
Refunding Mortgage Bonds, Series 74B,	)	
and for the exemption of such proposed	)	
issue and sale of Bonds from the	)	
requirements of the competitive	)	
bidding rule established in the	)	
Commission's Decisions Nos. 38614,	)	
49941, 75556 and 81908.	)	

Philip A. Crane, Jr. and Dennis C. Sullivan,  
Attorneys at Law, for applicant.  
Ira R. Alderson, Jr., Attorney at Law, and  
Sidney J. Webb, for the Commission staff.

O P I N I O N

Pacific Gas and Electric Company seeks authority to issue and sell on a negotiated basis \$150,000,000 aggregate principal amount of its First and Refunding Mortgage Bonds, Series 74B.

After due notice, a public hearing in the above-entitled matter was held before Examiner Donovan in San Francisco on September 6, 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.

The utility intends to use the net bond proceeds, exclusive of accrued interest, to reimburse its treasury for capital expenditures, and thereafter to repay a portion of outstanding short-term notes issued for temporary financing of additions to its utility plant. The accrued interest would be used for general corporate purposes.

The company reports that as of June 30, 1974, its unreimbursed capital expenditures amounted to \$2,583,401,841. Applicant estimates that for the year 1974 its capital expenditures will approximate \$640,000,000. Its reported capitalization percentages as of June 30, 1974, adjusted to give effect to the proposed bonds and common stock involved in Application No. 55137, are as follows:

Long-term debt	51.1%
Preferred stock	12.6
Common equity	<u>36.3</u>
Total	<u>100.0%</u>

Applicant contemplates that the new bonds will be underwritten in accordance with its proposed Underwriting Agreement. On or about October 8, 1974, the utility expects to complete negotiations with the underwriters for determining the terms of the offering including (a) the price to be paid applicant for the bonds, (b) the interest rate thereon, (c) the maturity date of the bonds, (d) sinking fund requirements, (e) call protection, and (f) the underwriting commission.

Applicant has requested exemption from the Commission's competitive bidding rule and presented testimony that a negotiated sale under existing market conditions would be desirable because it would make possible:

- (1) maximum flexibility in arranging the timing of the issue, (2) additional flexibility to adjust various terms to changing market conditions, (3) very important market preparation by the prospective underwriters, and (4) a significantly larger number of underwriters.

Although we find that existing money market conditions present circumstances where a negotiated sale may allow more flexibility in marketing the proposed bonds and facilitate the sale with less cost to the applicant, we do not find that a negotiated sale is always necessarily in the public interest. This decision is not intended to modify the competitive bidding rule as initially set out in Decision No. 38614 (46 Cal.R.C. 281 (1946)).

Application No. 55116 originally stated that the proposed sale would be postponed or restructured if at the time interest rates exceeded the limitation contained in the California Usury Law. However, at the hearing applicant amended the application, asking the Commission to make findings consistent with Decision No. 83411, dated September 4, 1974, in Application No. 55080, relating to Southern California Gas Company, which decision held that the Public Utilities Commission is not restricted by the Usury Law in exercising its authority to regulate the interest rates on public utility debt securities. We stated in Decision No. 83411:

"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 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."

We affirm our conclusion in Decision No. 83411 that the Usury Law does not apply as a restriction on our authority to regulate interest rates of public utility debt securities issues.

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\*\* Commission staff's brief (filed in Application No. 55080) 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.

Consistent with our conclusion in Decision No. 83411, applicant did not propose any marketing restrictions to exclude California residents from purchasing the proposed debt securities, as such restrictions would be needless in view of the nonapplicability of the Usury Law. Furthermore such restrictions would cause a reduction of the potential bond market and may thereby tend to increase the interest rate. Such restrictive devices, or any variations thereof, intended as a means of circumventing the Usury Law may create unnecessary expense for utilities and their ratepayers.

In addition to our authority to authorize a debt issue without regard to the Usury Law, public policy demands that the issuance of public utility debt securities be unencumbered by the operation of the Usury Law. In authorizing a public utility debt issue, we recognize the utility's need to raise capital for proper purposes (Sections 816 et seq. of the Public Utilities Code), such as construction and expansion of facilities to meet consumer needs and the extinguishment of prior indebtedness. Consumers directly benefit when the utility is able to keep abreast of their needs for its services. Therefore, it is essential that the utility's ability to obtain needed capital not be impaired. Application of the Usury Law to public utility debt issues would have the undesirable and detrimental effect of crippling the ability of utilities to raise needed capital when money market conditions necessitate payment of interest exceeding the maximum allowed by the Usury Law.

While public utilities are necessitous borrowers in the sense that public interest is served by their being able to raise capital, they are not the necessitous and unwary borrowers the Usury Law was enacted to protect. It has long been established

that the purpose of the Usury Laws is to protect the individual necessitous borrower by providing him with a shield against a mercenary lender. See Barnes v. Hartman, 246 Cal.App. 2d 215, 224 (1966).

We therefore conclude that irrespective of our authority to authorize a public utility debt issue without regard to the Usury Law, the public interest inherent in the unfettered ability of utilities to raise needed capital compels the same conclusion.

After consideration the Commission finds that:

1. Applicant is a public utility corporation operating under the jurisdiction of this Commission.
2. The proposed bonds would be for proper purposes and not adverse to the public interest.
3. Applicant has need for external funds for the purposes set forth in this proceeding.
4. The 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 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. Prevailing market conditions may necessitate that applicant's proposed bonds will be issued and sold with a rate of interest exceeding the limitations provided in Article XX, Section 22 of the California Constitution.
7. 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, except those directly relating to the Commission.

8. 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).
9. 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.
10. 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.
11. 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 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.



On the basis of the foregoing findings we conclude that the application should be granted. As set forth in Decision No. 83411, Application No. 55080, we 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

IT IS ORDERED that:

1. The issuance and sale by Pacific Gas and Electric Company of not exceeding \$150,000,000 aggregate principal amount of its First and Refunding Mortgage Bonds, Series 74B, 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. Pacific Gas and Electric Company may issue and sell not exceeding \$150,000,000 aggregate principal amount of its First and Refunding Mortgage Bonds, Series 74B, to a group of underwriters at such price and otherwise upon such terms and conditions as they may negotiate.

3. Neither Pacific Gas and Electric Company nor any person 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 said bonds 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.

4. Pacific Gas and Electric Company shall use the net proceeds to be derived through the issuance and sale of said bonds for the purposes set forth in the application.

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

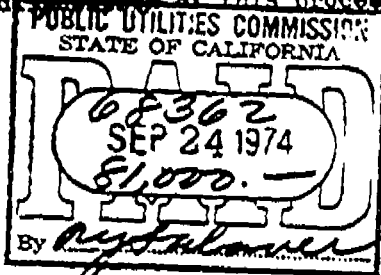
6. As soon as available, Pacific Gas and Electric Company shall file with the Commission three copies of its prospectus pertaining to said bonds.

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

8. This order shall become effective when Pacific Gas and Electric Company has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$81,000.

Dated at San Francisco, California, this 24<sup>th</sup> day of September, 1974.

Commissioner Thomas Moran, being necessarily absent, did not participate in the deliberations of this proceeding.



*[Signature]*  
President  
*[Signature]*  
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Commissioners