

83542

ORIGINAL

Decision No. \_\_\_\_\_

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application )  
of THE PACIFIC TELEPHONE AND )  
TELEGRAPH COMPANY, a corporation, )  
for an order authorizing it )  
(a) to issue and sell Thirty- )  
Eight Year Debentures due )  
October 15, 2012 in an aggregate )  
principal amount not exceeding )  
\$300,000,000, (b) to execute )  
and deliver an Indenture and )  
(c) for the exemption of such )  
proposed issue of Debentures )  
from the requirements of the )  
competitive bidding rule )  
established in the Commission's )  
Decisions Nos. 38614, 49941, )  
75556 and 81908. )

Application No. 55130  
(Filed August 23, 1974)  
Request for Dismissal  
(Filed September 27, 1974)

In the matter of the Application )  
of THE PACIFIC TELEPHONE AND )  
TELEGRAPH COMPANY, a corporation, )  
for an order authorizing it )  
(a) to issue and sell )  
\$100,000,000 principal amount )  
of Seven Year Notes due )  
June 15, 1981, and (b) to )  
execute and deliver an )  
Indenture to be dated as of )  
June 15, 1974. )

Application No. 54775  
Petition for Modification  
(Filed August 23, 1974)  
Petition for Further  
Modification  
(Filed September 27, 1974)

Milton J. Morris, Attorney at Law, for  
applicant and petitioner.  
Robert W. Russell, for City of Los Angeles,  
interested party.  
Ira R. Alderson, Jr., Attorney at Law, and  
Sidney J. Webb, for the Commission staff.

O P I N I O N

The Pacific Telephone and Telegraph Company seeks authority to execute and deliver two indentures and to issue and sell, either by competitive bidding or negotiation, notes in the aggregate principal amount of not exceeding \$300,000,000. The notes would be in the forms of not exceeding \$150,000,000 aggregate principal amount of Seven Year Notes due October 15, 1981, and not exceeding \$150,000,000 aggregate principal amount of Ten Year Notes due October 15, 1984.

After due notice, a public hearing in the above-entitled matters was held before Commissioner Sturgeon and/or Examiner Donovan in San Francisco on September 6 and 16, 1974, at the conclusion of which the matters were taken under submission. By brief and oral argument staff counsel opposed the company's proposal to restrict the California market for the securities.

The company proposes to use the note proceeds for partial reimbursement of its treasury for capital expenditures. In this connection, Exhibit C attached to Application No. 55130 shows unreimbursed capital expenditures amounting to \$2,505,602,816 on July 31, 1974. Upon reimbursement of the company's treasury, the utility contemplates applying \$250,000,000 to repaying short-term promissory notes, which notes in the absence of financing are estimated to approximate \$250,000,000 as of October 24, 1974 and \$365,000,000 by the end of December, 1974.

After giving effect to the financing proposed herein, the company estimates that its debt ratio would be 48.7% on October 31, 1974.

The three material issues for the Commission to consider in these proceedings are whether or not (a) the sale of the proposed securities should be required to be through competitive bidding, (b) special restrictions should apply to California residents with respect to interest rate limitations, and (c) the maximum interest rate provisions of Article XX, Section 22 of the California Constitution are applicable to the proposed security issues.

As closing remarks supporting the request for exemption from competitive bidding requirements, the utility's treasurer testified " . . . we are being influenced by the conditions now existing in the financial markets. Interest rate pressures are intense, reflecting a lessening of credit availability and a strong demand for funds. Investors are showing their concern by placing great emphasis on the quality of issues and by being very selective in committing long-term money. "

The evidence in these proceedings persuades us that the present unsettled market conditions justify negotiated offerings of the securities. Although the utility's present plans contemplate selling the securities on a negotiated basis and underwritten by a nationwide group, or groups, of investment banking firms, the company desires alternative authority to sell them pursuant to competitive bidding in the event of substantially improved market conditions. 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)).

The notes are not proposed to be offered or initially sold in the State of California or to California residents if the interest rate thereon exceeds 10% per annum. Petitioner asserts that in view of the California Usury Law the notes and indentures should "contain special provisions applicable to California residents which will have the effect, in the event the interest rate on the Notes exceeds 10% per annum, of limiting the interest which may be received by such residents, other than lenders exempted by the California Constitution, to 10% per annum." The record does not support this assertion.

In any event the proposed restriction is unnecessary in view of our recent holding in Decision No. 83411, dated September 4, 1974, in Application No. 55080, relating to Southern California Gas Company, and Decision No. 83504, dated September 24, 1974, in Application No. 55116, relating to Pacific Gas and Electric Company, that the California Usury Law does not apply to the issuance and sale of securities authorized by this Commission. We reaffirm this holding and conclude that if the interest limitation of the California 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.

After consideration the Commission finds that:

1. Petitioner is a California corporation operating under the jurisdiction of this Commission.
2. Petitioner seeks modifications of Decision No. 82782, dated April 23, 1974, as amended by Decision No. 82938, dated May 29, 1974, which required an unpaid \$56,000 fee for authorizing not exceeding \$100,000,000 of Seven Year Notes.

3. The proposed notes would be for proper purposes.
4. The utility has need for external funds for the purposes set forth in these proceedings.
5. It has not been established to our satisfaction that the proposed restrictions on California sales would be in the public interest.
6. The proposed use of five-year redemption provisions is reasonable.
7. The money, property or labor to be procured or paid for by the issuance and sale of the notes 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.
8. The sale of the proposed notes should not be required to be at competitive bidding.
9. The notes being unsecured, no California property would become encumbered thereby.
10. Prevailing market conditions may necessitate that petitioner's proposed notes will be issued and sold with a rate of interest exceeding the limitations provided in Article XX, Section 22 of the California Constitution.
11. 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.
12. 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).

13. 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.
14. 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 notes 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 notes of public utilities from operation of the Usury Law.
15. 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 petitioner can obtain because of market conditions, petitioner 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 petitioner of notes in compliance with authorization by the Public Utilities Commission, persons collecting interest on such authorized notes are not subject to the Usury Law sanctions.
16. The Commission does not find objectionable petitioner's proposal to situate and structure the proposed issuance and sale of said notes outside California.

On the basis of the foregoing findings we conclude that (1) Decisions Nos. 82782 and 82938 should be rescinded, (2) the utility should be authorized to issue and sell \$300,000,000 of securities in the forms and manners as requested, except that no special restrictions shall apply to California residents, and (3) the California Usury Law has no application to the issuance and sale of the utility's notes.

The authorization herein granted is for the purpose of these proceedings only, and is not to be construed as indicative of amounts to be included in proceedings for the determination of just and reasonable rates. The utility is hereby placed on notice that, if the Commission believes that the negotiated prices or interest rates pertaining to the proposed security issues will result in excessive effective interest costs, it will take into consideration in rate proceedings only that which it deems reasonable.

O R D E R

IT IS ORDERED that:

1. Decisions Nos. 82782 and 82938 are hereby rescinded, and Application No. 55130 is hereby dismissed.
2. The sale by The Pacific Telephone and Telegraph Company of not exceeding \$150,000,000 aggregate principal amount of its Seven Year Notes due October 15, 1981, and not exceeding \$150,000,000 aggregate principal amount of its Ten Year Notes due October 15, 1984, is 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.

3. The Pacific Telephone and Telegraph Company may execute and deliver indentures in substantially the same forms as Exhibit E in Application No. 54775, appropriately modified to comply with this order including deletion of the Restrictions Applicable to California Residents paragraph and the related subsection 9.01(e).

4. The Pacific Telephone and Telegraph Company may issue and sell notes in the aggregate principal amount of not exceeding \$300,000,000 in the forms of not exceeding \$150,000,000 aggregate principal amount of Seven Year Notes due October 15, 1981, and not exceeding \$150,000,000 aggregate principal amount of Ten Year Notes due October 15, 1984, all in accordance with the pleadings, testimony and exhibits modified to be consistent with paragraph 3 hereof.

5. Neither The Pacific Telephone and Telegraph 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 notes 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.

6. The Pacific Telephone and Telegraph Company shall use the proceeds of the issuance and sale of said securities, exclusive of accrued interest, to reimburse, so far as possible, its treasury for funds expended as set forth in the record. The accrued interest may be used for such purpose or for general corporate purposes.

7. Promptly after The Pacific Telephone and Telegraph Company determines the price or prices and interest rate or rates pertaining to the securities herein authorized, it shall notify the Commission thereof in writing.

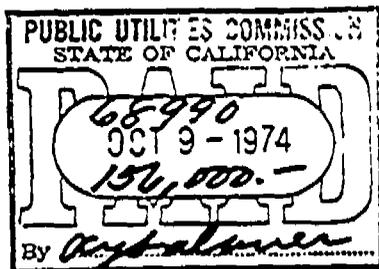
8. In the event The Pacific Telephone and Telegraph Company utilizes competitive bidding, in lieu of the notification required by paragraph 7 hereof the company shall file with the Commission a written report showing as to each bid received, the name of the bidders, the price, the interest rate, and the cost of money to it based upon said price and interest rate.

9. As soon as available, The Pacific Telephone and Telegraph Company shall file with the Commission three copies of each prospectus pertaining to said securities.

10. Within one month after issuing and selling the securities herein authorized, The Pacific Telephone and Telegraph 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 security issue proceeds.

11. This order shall become effective when The Pacific Telephone and Telegraph Company has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$156,000.

Dated at San Francisco, California, this 1st day of OCTOBER, 1974.



Thomas L. Sturgeon  
President  
William J. Synanon, Jr.  
[Signature]  
[Signature]  
Commissioners