

Decision No. 83579**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
)
 PACIFIC POWER & LIGHT COMPANY)
)
 for an order authorizing it to)
 execute a Supplemental Indenture)
 and to issue and sell \$70,000,000)
 in principal amount of First)
 Mortgage Bonds, and exempting such)
 proposed issue from the requirements)
 of the competitive bidding rule.)

Application No. 55201
 (Filed September 25, 1974)

Rives, Bonyhadi & Drummond, by Gerard K. Drummond,
 Attorney at Law (Oregon), for applicant.
Sidney J. Webb, for the Commission staff.

O P I N I O N

Pacific Power & Light Company, a Maine corporation, seeks authority to execute and deliver a Twenty-seventh Supplemental Indenture, and to issue and sell not exceeding \$70,000,000 aggregate principal amount of its First Mortgage Bonds 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 Tomita in San Francisco on October 4, 1974, at the conclusion of which the matter was taken under submission. The Commission has received no protests in the proceeding.

Applicant is a corporation organized under the laws of the State of Maine, and is engaged in business principally as an electric utility in the States of California, Idaho, Montana, Oregon, Washington and Wyoming. It also supplies water and steam

heat service in communities outside of California. For the 12 months ended July 31, 1974, the utility reports that approximately 98.1% of its operating revenues was derived from its electric business, and that only 5.0% of all revenues originated in California.

The utility proposes to use the net proceeds, other than accrued interest, to be derived from the \$70,000,000 aggregate principal amount of First Mortgage Bonds to refund \$11,434,000 of its previously authorized First Mortgage Bonds, 3-5/8% Series due November 1, 1974, and to retire short-term notes pertaining to its construction program. The accrued interest would be used for such purposes or for general corporate purposes.

Applicant proposes to sell the new bonds to a group of underwriters upon terms and conditions, including the underwriting spread, to be determined through negotiations. The resulting agreement will provide that it shall be construed in accordance with the laws of the State of New York. The bonds would be secured by a Mortgage and Deed of Trust dated as of July 1, 1947, as supplemented by twenty-six supplemental indentures and a proposed Twenty-seventh Supplemental Indenture.

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

- "1. The current financial market is characterized by extremely high interest rates and a general reluctance on the part of underwriters to assume the risks involved in competitive bidding. Thus, Applicant is in no way assured it would receive bids or that such bids, if received, would be acceptable.

- "2. Negotiation with a group of underwriters would permit the establishment of a strong 'syndicate' to market Applicant's New Bonds without the necessity of splitting the underwriting community, which would occur if competitive bidding were required.
- "3. The underwriters with which Applicant intends to negotiate will be able to obtain expressions of interest from prospective purchasers of the New Bonds.
- "4. A negotiated transaction permits greater flexibility in the timing of the offering of the New Bonds than is possible with an offering sold through competitive bidding. Flexibility in timing would permit changes in the date of sale of the New Bonds to take advantage, if possible, of improvements in the financial market."

The evidence adduced at the hearing persuades us that the present unsettled market conditions justify negotiated offerings of the securities. Although a negotiated sale may allow more flexibility in marketing the proposed bonds and facilitate the sale with less cost to applicant, a negotiated sale is not 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)).

Applicant intends to situate and structure the proposed issuance and sale of its new bonds in the State of New York without restricting the market for such bonds to areas outside of California. 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. In this connection Decision No. 83411, dated September 4, 1974, in Application No. 55080,

relating to Southern California Gas Company, Decision No. 83504, dated September 24, 1974, in Application No. 55116, relating to Pacific Gas and Electric Company, and Decision No. 83542, dated October 1, 1974, in Applications Nos. 54775 and 55130, relating to The Pacific Telephone and Telegraph Company, hold that this Commission in exercising its authority to regulate public utility debt securities is not restricted by the California Usury Law and its ramifications. 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. Applicant is a Maine corporation operating in the States of California, Idaho, Montana, Oregon, Washington and Wyoming, and conducts less than 6% of its business in California.
2. Applicant operates under the jurisdiction of the Federal Power Commission and other Commissions including this Commission.
3. The proposed bonds would be for proper purposes.
4. Applicant has need for external funds for the purposes set forth in this proceeding.
5. The proposed Twenty-seventh Supplemental Indenture would not be adverse to the public interest.
6. The sale of the proposed bonds should not be required to be through competitive bidding.

7. 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.
8. Underwriters will not be restricted from offering or selling applicant's new bonds in California.
9. 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.
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 California 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 316 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 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. Applicant's proposal to situate and structure the issuance and sale of its new bonds in New York and involving a choice of New York law is not inconsistent with the public policy of this State.

On the basis of the foregoing findings we conclude that the application should be granted. As set forth in said Decisions Nos. 83411, 83504 and 83542, 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 rate proceedings only that which it deems reasonable.

O R D E R

IT IS ORDERED that:

1. The sale by Pacific Power & Light Company of not exceeding \$70,000,000 aggregate principal amount of its First Mortgage Bonds 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.
2. Pacific Power & Light Company may execute and deliver a Twenty-seventh Supplemental Indenture in substantially the same form as that received in evidence as Exhibit No. 2.
3. Pacific Power & Light Company may issue and sell not exceeding \$70,000,000 aggregate principal amount of its First Mortgage Bonds to a group of underwriters at such price and otherwise upon such terms and conditions as they may negotiate.
4. An interest rate for the bonds herein authorized may exceed the limit prescribed in Article XX, Section 22 of the California Constitution if market conditions so require.
5. Neither Pacific Power & Light 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 rate on its First Mortgage 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 or received from a borrower.

6. Pacific Power & Light Company shall use the net proceeds from the sale of said bonds for the purposes set forth in this proceeding.

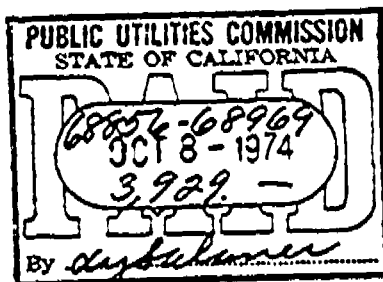
7. Upon determining the maturity date, price and interest rate pertaining to the bonds herein authorized, Pacific Power & Light Company shall notify the Commission thereof in writing.

8. As soon as available, Pacific Power & Light Company shall file with the Commission three copies of its prospectus pertaining to said bonds.

9. Within one month after issuing and selling the bonds herein authorized, Pacific Power & Light 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.

10. This order shall become effective when Pacific Power & Light Company has paid the fee computed in accordance with Section 1904.2 of the Public Utilities Code, which fee is \$3,929.

Dated at San Francisco, California, this 8th day of October, 1974.



Vernon L. Sturgeon
President
William J. [signature]
[signature]
[signature]
Commissioners