

LAM

Decision No. 83598

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of SAN DIEGO GAS & ELECTRIC)
COMPANY, a corporation, for)
authority to issue and sell)
not exceeding \$50,000,000)
aggregate principal amount of)
its First Mortgage Bonds,)
Series N, to execute and deliver)
a Fourteenth Supplemental)
Indenture, and for exemption)
from the requirements of the)
competitive bidding rule.)

Application No. 55164
(Filed September 12, 1974)

Chickering & Gregory, by Leslie P. Jay,
Attorney at Law, for applicant.
William M. Pfeiffer, Attorney at Law,
for Southern California Gas Company,
interested party.
Patrick J. Power, Attorney at Law, and
Sidney J. Webb, for the Commission
staff.

O P I N I O N

San Diego Gas & Electric Company seeks authority to execute and deliver a Fourteenth Supplemental Indenture, and to issue and sell on a negotiated basis not exceeding \$50,000,000 aggregate principal amount of its First Mortgage Bonds, Series N.

After due notice, a public hearing in the above-entitled matter was held before Examiner Tomita in San Francisco on September 26, 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 California corporation engaged principally in the business of providing electric service in portions of Imperial and Orange Counties, and electric, gas and steam service in portions of the County of San Diego. The utility reports that its uncapitalized construction amounted to \$64,518,098, as of July 31, 1974, and that the unexpended balance of its capital budget on such date was \$420,736,000.

The company proposes to issue and sell not exceeding \$50,000,000 aggregate principal amount of its bonds and to apply the net proceeds, exclusive of accrued interest, to the retirement and discharge of short-term bank notes and commercial paper issued for temporary financing of additions to its utility plant, and to reimburse its treasury for capital expenditures. The accrued interest would be used for general corporate purposes. The bonds would be secured by an existing indenture as heretofore supplemented and amended and as further supplemented by a proposed Fourteenth Supplemental Indenture.

The reported capitalization ratios of the company at July 31, 1974, as adjusted to reflect the proposed \$50,000,000 of bonds and an estimated \$20,000,000 of additional common stock proceeds, are as follows:

First mortgage bonds	46.3%
Debentures	3.5
Other long-term debt	.3
Preferred and preference stocks	16.8
Common stock equity	<u>33.1</u>
Total	<u>100.0%</u>

Applicant proposes to issue and sell the new bonds on a negotiated basis through a nationwide group of underwriters who will agree to purchase all of the bonds pursuant to an Underwriting Agreement. On or about November 19, 1974, the utility expects to complete negotiations with the underwriters for determining the terms of the proposed offering including (a) price of the bonds, (b) interest rate, (c) aggregate principal amount, (d) maturity date, (e) sinking fund requirements (if any), (f) call protection, (g) other redemption provisions, and (h) underwriting commissions.

The only material issue for the Commission to resolve in this proceeding is whether or not the sale of the proposed bonds should be required to be through competitive bidding. In addition, applicant specifically requests (1) a finding that the Commission would not object to the situating and structuring of the proposed issuance and sale of the bonds outside California, and (2) findings consistent with 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, which decisions hold that the California Usury Law has no application to the issuance and sale of bonds authorized by this Commission.

In testifying as to the advantages of negotiation over competitive bidding under current market conditions, applicant's witness listed the following:

- "(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."

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 seeks authorization to situate and structure the proposed issuance and sale of the bonds outside California if, and to the extent, it determines such a change would be feasible and advisable, but it does not intend to restrict 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 said Decisions Nos. 83411 and 83504 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 California 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. The proposed documents would not be adverse to the public interest.
4. Applicant has need for external funds for the purposes set forth in this proceeding.
5. The sale of the proposed bonds should not be required to be through competitive bidding.
6. 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.
7. 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.
8. 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.
9. 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).

10. 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.
11. 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.
12. 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.
13. In the event applicant proposes to situate and structure the proposed issuance and sale of its First Mortgage Bonds, Series N, outside California, the Commission would not interpose an objection thereto.

On the basis of the foregoing findings we conclude that the application should be granted. As set forth in said Decisions Nos. 83411 and 83504, 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 San Diego Gas & Electric Company of not exceeding \$50,000,000 aggregate principal amount of its First Mortgage Bonds, Series N, 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. San Diego Gas & Electric Company may execute and deliver a Fourteenth Supplemental Indenture in substantially the same form as Exhibit D attached to the application, with the insertion of such terms and conditions as interest rate, Principal amounts, maturity date, place of performance and choice of law, sinking fund (if any), call protection and other redemption provisions and redemption restrictions, as may be contemplated by the application as amended.

3. San Diego Gas & Electric Company may issue and sell not exceeding \$50,000,000 aggregate principal amount of its First Mortgage Bonds, Series N, on terms and conditions to be negotiated in accordance with the record in this proceeding.

4. An interest rate for San Diego Gas & Electric Company's First Mortgage Bonds, Series N, may exceed the maximum annual interest rate otherwise permitted under the California Usury Law, as contained in Article XX, Section 22 (Interest Rates) of the California Constitution and the Usury Law Initiative Act, if market conditions so require.

5. Neither San Diego Gas & 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 its First Mortgage Bonds, Series N, 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. San Diego Gas & Electric Company shall use the net proceeds from the sale of said bonds for the purposes referred to in the application.

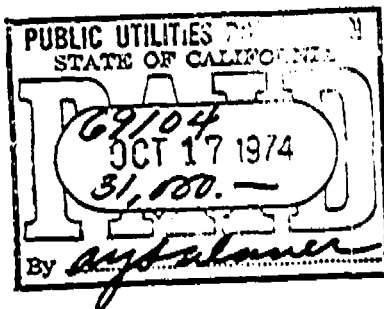
7. Upon determining the maturity date, price and interest rate pertaining to the bonds herein authorized, San Diego Gas & Electric Company shall notify the Commission thereof in writing.

8. As soon as available, San Diego Gas & Electric 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, San Diego Gas & 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.

10. This order shall become effective when San Diego Gas & Electric 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 16th day of OCTOBER, 1974.



Vernon L. Sturgeon
President
William J. Gurnea, Jr.

[Signature]
[Signature]
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.