

Decision No. 83766**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 \$170,000,000)
 aggregate principal amount of its)
 First and Refunding Mortgage Bonds,)
 Series 74C, due December 1, 2006.)

Application No. 55313
 (Filed November 14, 1974)

O P I N I O N

Pacific Gas and Electric Company seeks authority to issue and sell \$170,000,000 aggregate principal amount of its First and Refunding Mortgage Bonds, Series 74C, due December 1, 2006.

The utility intends to use the net bond proceeds, exclusive of accrued interest, for reimbursing its treasury for capital expenditures and thereafter to repay any 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 September 30, 1974, its unreimbursed capital expenditures amounted to \$2,626,894,589. Applicant estimates that for the year 1974 its capital expenditures will approximate \$630,000,000. Its reported capitalization percentages as of September 30, 1974, adjusted to give effect to the proposed bonds and to the recent sale of its Series 74B bonds and 5,923,503 shares of its common stock, are as follows:

Long-term debt	52.6%
Preferred stock	12.2
Common stock equity	<u>35.2</u>
Total	<u>100.0%</u>

Applicant intends to sell its new bonds at competitive bidding, the successful bid to determine the interest rate. They would be subject to a restricted redemption provision until December 1, 1979.

Decisions Nos. 83411, 83504, 83542, 83579, 83598 and 83600 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 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.
3. Applicant has need for external funds for the purposes set forth in the application.
4. The proposed restricted redemption provision is reasonable.
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, Section 5 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, Section 5 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.
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 (Section 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 Decisions Nos. 83411, 83504, 83542, 83579, 83598 and 83600, 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. A public hearing is not necessary.

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.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company may invite the submission of written sealed bids for the purchase of not exceeding \$170,000,000 aggregate principal amount of its First and Refunding Mortgage Bonds, Series 74C, due December 1, 2006.
2. Pacific Gas and Electric Company may issue and sell not exceeding \$170,000,000 aggregate principal amount of its First and Refunding Mortgage Bonds, Series 74C, due December 1, 2006, at competitive bidding to the purchaser, or purchasers, offering to it the most favorable terms as disclosed by the bids received.

3. An interest rate for Pacific Gas and Electric Company's First and Refunding Mortgage Bonds, Series 74C, may exceed the maximum annual interest rate otherwise permitted under the California Usury Law, if market conditions so require.

4. 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.

5. 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.

6. Promptly after awarding the contract for the sale of said bonds, Pacific Gas and Electric Company shall file with the Commission a written report showing, as to each bid received, the name of the bidder, the price, the interest rate, and the cost of money based upon said price and interest rate.

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

8. 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.

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9. 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 \$91,000.

Dated at San Francisco, California, this 26th day of November, 1974.

Vernon L. Sturgeon
President
William J. Quinn
Robert E. Merland
Commissioners

