

Decision No. 83808

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 PACIFIC LIGHTING SERVICE COMPANY, a)
 Corporation, for Authority to Issue)
 and Sell Its Debentures, Series E,)
 in an Amount not exceeding \$30,000,000)
 and to Execute and Deliver to WELLS)
 FARGO BANK, National Association)
 (Formerly Wells Fargo Bank American)
 Trust Company) as Trustee, a)
 Supplemental Indenture.)

Application No. 55298
 (Filed November 7, 1974)

William M. Pfeiffer and Jay V. Lake, Attorneys
 at Law, for applicant.
Sidney J. Webb, for the Commission staff.

O P I N I O N

Pacific Lighting Service Company, a California corporation, seeks authority to execute and deliver a supplemental indenture, and to issue and sell not exceeding \$30,000,000 aggregate principal amount of its Series E debentures, either through negotiations to be conducted in the State of New York or by competitive bidding.

After due notice, a public hearing in the above-entitled matter was held before Examiner Donovan in San Francisco on November 27, 1974, at the conclusion of which the matter was taken under submission. The Commission has received no protests in the proceeding.

Applicant is engaged principally in purchasing, transmitting and storing natural gas for sale exclusively to Southern California Gas Company, both companies being subsidiaries of Pacific Lighting Corporation.

The reported capitalization percentages of applicant at September 30, 1974, and as adjusted to give effect to the proposed debentures, are summarized from the application as follows:

	<u>September 30, 1974</u>	<u>Pro Forma</u>
Debentures	46.3%	53.4%
Common equity	<u>53.7</u>	<u>46.6</u>
Total	<u>100.0%</u>	<u>100.0%</u>

On September 30, 1974, applicant's reported indebtedness to its parent corporation amounted to \$59,229,000. As of January 23, 1975, the proposed closing date for the Series E debentures, applicant estimates that it will owe its parent corporation in excess of \$80,000,000. Said debentures would be issued for, and the net proceeds other than accrued interest would be applied to, the reimbursement of applicant's treasury for monies actually expended for construction programs and for the discharge and lawful refunding of its obligations. The accrued interest would be used for general corporate purposes.

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

- "(1) Recently, there have been instances in which no bids or unacceptable bids were submitted in response to invitations by utilities for competitive public bids.
- "(2) A negotiated transaction permits the underwriters to build a 'book' of advance interest in the issue prior to the offering and, as a result, to price the issue more aggressively.

- "(3) Uncertainty in the financial market makes it desirable to have maximum flexibility in timing, which is feasible in a negotiated underwriting as opposed to the fixed time schedule characteristic of a competitive bidding procedure. It is also desirable, under present volatile market conditions, to have maximum flexibility to adjust the terms of the issue (such as maturity, sinking fund and call protection) in response to the requirements of the market at the time of offering.
- "(4) A negotiated sale permits the issuer to mobilize the underwriting and distribution strength of the strong firms in the securities business. The competitive bidding method, on the other hand, automatically splits the securities industry into two or more segments at a time such as the present when the underwriting capacity of the entire investment banking community has been significantly weakened."

The evidence adduced at the hearing 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 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)).

In the event of a negotiated offering, applicant intends to situate and structure the proposed issuance and sale of its Series E debentures in the State of New York without restricting the market for such debentures to areas outside of California.

Inasmuch as applicant's proposal does not operate to restrict the potential debenture 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 Decisions Nos. 83411, 83504, 83542, 83579, 83598, 83600 and 83766 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 debentures would be for proper purposes.
3. Applicant has need for external funds for the purposes set forth in this proceeding.
4. The proposed documents would not be adverse to the public interest.
5. The sale of the proposed debentures should not be required to be through competitive bidding.
6. The money, property or labor to be procured or paid for by the issue of the debentures 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. The application of Article 5, Chapter 4, Part 1, Division 1 of the Public Utilities Code to this proceeding is required by the public interest.
8. Underwriters will not be restricted from offering or selling applicant's Series E debentures in California.

9. Prevailing market conditions may necessitate that applicant's proposed Series E debentures will be issued and sold with a rate of interest exceeding the limitations provided in Article XX, Section 22 of the California Constitution and, if such a rate of interest is necessitated, it would not be in the public interest to require applicant to abandon the proposed issuance and sale of such debentures, because such a requirement would impair applicant's ability to obtain the external funds needed by applicant for the purposes set forth in this proceeding.
10. Pursuant to plenary powers granted to the Legislature by Article XII, Section 5 of the California Constitution, the Legislature is authorized to confer such additional consistent powers upon this Commission as it deems necessary and appropriate, unrestricted by any other provisions of the California Constitution, except those directly relating to the Commission.
11. The Legislature has conferred upon this 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, Section 5 of the California Constitution, it conferred upon this Commission comprehensive and exclusive power over the issuance of public utility securities, including evidences of indebtedness, and the application of the California Usury Law as a restriction on this Commission's regulation of such issuances of public utility securities, including the establishment of a reasonable rate of interest, would not be in the public interest or be protective of public utilities or their customers, but would, instead, impair the ability of public utilities to obtain funds necessary to provide an adequate standard of public utility service to their customers.
13. In addition to the plenary powers granted to the Legislature by the California Constitution pursuant to which the Legislature conferred upon this Commission exclusive authority to regulate the issuance of debentures 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 debentures 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 Series E debentures in compliance with authorization by this Commission, persons collecting interest on such authorized debentures are not subject to the Usury Law sanctions.
15. The Commission does not find objectionable applicant's proposal to situate and structure the proposed issuance and sale of said debentures in the State of New York, since this proposal does not restrict the potential debenture market to areas or purchasers outside California.

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, 83600 and 83766, we further 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 debenture 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 Lighting Service Company of not exceeding \$30,000,000 aggregate principal amount of its Debentures, Series E, 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 Lighting Service Company may execute and deliver a Fourth Supplemental Indenture in substantially the same form as that received in evidence as Exhibit No. 4.
3. Pacific Lighting Service Company may issue and sell not exceeding \$30,000,000 aggregate principal amount of its Debentures, Series E, in accordance with the application, testimony and exhibits.
4. Neither Pacific Lighting Service Company, nor anyone 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 Debentures, Series E, 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 Lighting Service Company shall apply the proceeds from the sale of said debentures to the purposes set forth in the application.
6. Promptly after determining the maturity date, price and interest rate pertaining to the debentures herein authorized, Pacific Lighting Service Company shall notify the Commission thereof in writing.

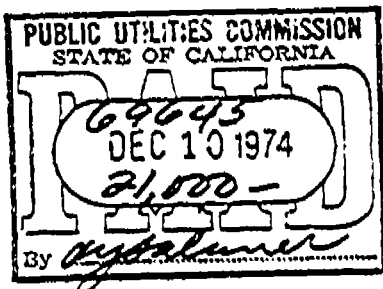
7. In the event Pacific Lighting Service Company utilizes competitive bidding, in lieu of the notification required by paragraph 6 hereof the company shall file with the Commission a written report showing as to each bid received, the names of the bidders, the price, the interest rate, and the cost of money to it based upon said price and interest rate.

8. As soon as available, Pacific Lighting Service Company shall file with the Commission three copies of its prospectus pertaining to said debentures.

9. Within one month after issuing and selling the debentures herein authorized, Pacific Lighting Service 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 debenture proceeds were used.

10. This order shall become effective when Pacific Lighting Service Company has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$21,000.

Dated at San Francisco, California, this 10th day of December, 1974.



Vernon L. Sturgeon
President
William Simon
Thomas Morara
Robert E. McFarland
Commissioners