

ORIGINAL

Decision No. 84392

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 O, to)
 execute and deliver a Fifteenth)
 Supplemental Indenture, and for)
 exemption from the requirements of)
 the competitive bidding rule.)

Application No. 55522
 Petition for Modification
 (Filed April 28, 1975)

FIRST SUPPLEMENTAL OPINION

By Decision No. 84283, dated April 1, 1975, in the above-entitled matter, the Commission, among other things, authorized San Diego Gas & Electric Company to issue and sell not exceeding \$50,000,000 aggregate principal amount of its First Mortgage Bonds, Series O.

On recent occasions, commencing with Decision No. 83411, dated September 4, 1974, in Application No. 55080, relating to Southern California Gas Company's First Mortgage Bonds, Series J, we have held that the California Usury Law does not apply to security issues authorized by this Commission. Nevertheless, petitioner requests specific findings, conclusions and ordering paragraphs pertaining to such law, and corresponding to those set forth in Decision No. 83598, dated October 16, 1974, in Application No. 55164 relating to its First Mortgage Bonds, Series N.

After consideration the Commission reaffirms its five findings set forth in said Decision No. 84283, and further finds as follows:

6. If prevailing market conditions necessitate that petitioner's proposed bonds be issued and sold with a rate of interest exceeding the limitations provided in Article XX, Section 22 of the California Constitution, then the public interest requires that this Commission authorize said issuance and sale irrespective of limitations contained in the California Usury Law.
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 this Commission as it deems necessary and appropriate, unrestricted by any other provisions of the California Constitution.
8. 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).
9. 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 California Usury Law cannot be applied as a restriction on this 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 this 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 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 bonds in compliance with authorization by this Commission, persons collecting interest on such authorized bonds are not subject to the Usury Law sanctions.
12. This Commission does not object to petitioner's situating and structuring the proposed issuance and sale of its First Mortgage Bonds, Series O, in the State of New York.

On the basis of the foregoing findings we conclude that the petition should be granted. As set forth in said Decisions Nos. 83411 and 83598, among others, 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. A further public hearing is not necessary.

FIRST SUPPLEMENTAL ORDER

IT IS ORDERED that the order in Decision No. 84283 is hereby modified by adding paragraphs reading as follows:

- 9. An interest rate for San Diego Gas & Electric Company's First Mortgage Bonds, Series O, 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.
- 10. 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 O, 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.

IT IS FURTHER ORDERED that Decision No. 84283 shall remain in full force and effect except as modified by this order.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 29th day of APRIL, 1975.

Vernon L. Stearns
President

William J. Quinn

Edward Ross

John B. ...
Commissioners