

Decision No. 84401**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 CALIFORNIA WATER SERVICE COMPANY,)
 a corporation, for an order (a))
 authorizing it to issue and sell)
 not exceeding \$26,000,000 principal)
 amount of its First Mortgage Bonds,)
 Series T, (b) exempting the issuance)
 and sale of said Series T Bonds from)
 the competitive bidding rule set)
 forth in Decision No. 38614, as)
 amended, and (c) authorizing it to)
 execute and deliver a Supplemental)
 Mortgage of Chattels and Trust)
 Indenture.)

Application No. 55560
 (Filed March 13, 1975)

McCutchen, Doyle, Brown & Enersen, by A. Crawford Greene, Jr., Attorney at Law, for applicant.

Sidney J. Webb, for the Commission staff.

O P I N I O N

California Water Service Company seeks an order granting it an exemption from the Commission's competitive bidding rule, and authorizing it (a) to issue and sell not exceeding \$26,000,000 aggregate principal amount of its First Mortgage Bonds, Series T, and (b) to execute and deliver a Twenty-Fifth Supplemental Indenture.

After due notice, a public hearing in the above-entitled matter was held before Examiner Tomita in San Francisco on April 7, 1975, at the conclusion of which the matter was taken under submission. The Commission has received no protests in the proceeding.

Applicant is a California corporation engaged in the retail water business in many localities from Chico in the north to Palos Verdes Peninsula in the south. For the year 1974, it reports operating revenues and net income in the respective amounts of \$36,963,113 and \$5,123,984.

The company proposes to issue and sell not exceeding \$26,000,000 aggregate principal amount of its bonds and to use the net proceeds, exclusive of accrued interest which would be used for working capital, (a) to refund its outstanding First Mortgage Bonds, Series C, D and E, all bearing a November 1, 1975 maturity date and aggregating \$20,838,000, (b) to reimburse its treasury for \$1,148,500 expended to refund its First Mortgage Bonds, Series Q, which matured on February 1, 1975, and (c) to reimburse its treasury for a portion of moneys expended prior to December 31, 1974 for capital improvements. The new bonds would be secured by an existing indenture as heretofore supplemented, amended and modified by twenty-four supplemental indentures, and as further supplemented by a proposed Twenty-Fifth Supplemental Indenture.

Reported capitalization ratios at December 31, 1974, and as adjusted to give effect to the proposed \$26,000,000 bond issue, as set forth in the application, are as follows:

	<u>December 31, 1974</u>	<u>Pro Forma</u>
First mortgage bonds	53.6%	55.2%
Preferred stock	3.3	3.2
Common stock equity	<u>43.1</u>	<u>41.6</u>
Total	<u>100.0%</u>	<u>100.0%</u>

Applicant proposes to sell the new bonds to a group of investment bankers headed by Dean Witter & Co. Incorporated. Terms to be negotiated include the purchase price of the Series T bonds, interest rate, maturity, sinking fund, call protection and form of Underwriting Agreement.

The only material issue for the Commission to resolve at this time is whether or not the sale of the proposed bonds should be required to be through competitive bidding. In addition, applicant specifically requests certain findings and authorizations due to the existence of the California Usury Law.

In support of its request for exemption from competitive bidding requirements, applicant states that it is not well known to potential bidders and that it has had no exposure to the public underwriting market place since 1954, and cites the prevailing uncertainty in the financial market. The record shows that negotiation would make available (a) maximum flexibility in timing, (b) maximum flexibility to adjust the terms of the issue to the fluctuations and requirements of the market at the time of offering, and (c) very important market preparation by the prospective underwriters.

The evidence adduced at the hearing persuades us that the present unsettled market conditions justify a negotiated offering 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)).

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. 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. Unsettled money market conditions necessitate careful timing of the proposed offering.
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. We have repeatedly held on recent occasions that the California Usury Law does not apply to security issues authorized by this Commission.

On the basis of the foregoing findings we conclude that (a) applicant's request for certain findings and authorizations due to the existence of the California Usury Law should be dismissed without prejudice, and (b) the application should be granted in all other respects. 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, including Application No. 55561 wherein the utility seeks an increase in rates attributable exclusively to the refunding.

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 California Water Service Company of not exceeding \$26,000,000 aggregate principal amount of its First Mortgage Bonds, Series T, 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. California Water Service Company may execute and deliver a Supplemental Mortgage of Chattels and Trust Indenture (Twenty-Fifth Supplemental Indenture) in substantially the same form as that received in evidence as Exhibit No. 7, with the modification or insertion of such terms and conditions as interest rate, maturity date, sinking fund, call protection and other redemption provisions and redemption restrictions as may be contemplated by the record in this proceeding.

3. California Water Service Company, on or after the effective date hereof and on or before December 31, 1975, may issue and sell not exceeding \$26,000,000 aggregate principal amount of its First Mortgage Bonds, Series T, on terms and conditions to be negotiated in accordance with the record in this proceeding.

4. California Water Service Company shall use the proceeds from the sale of said bonds for the purposes set forth in the application.

5. Upon determining the maturity date, price and interest rate pertaining to the bonds herein authorized, California Water Service Company shall notify the Commission thereof in writing.

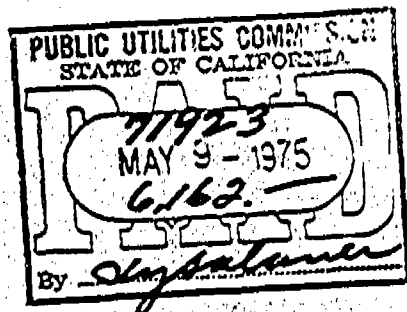
6. As soon as available, California Water Service Company shall file with the Commission three copies of its final prospectus pertaining to said bonds.

7. Within one month after issuing and selling the bonds herein authorized, California Water 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 it used the bond proceeds.

8. Insofar as it requests certain findings and authorizations due to the existence of the California Usury Law, the application is hereby dismissed without prejudice.

9. This order shall become effective when California Water Service Company has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$6,162.

Dated at Los Angeles, California, this 6th day of MAY, 1975.



[Signature] President
[Signature]
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[Signature] Commissioners