

ORIGINAL

Decision No. 84929

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 \$175,000,000 aggregate)
 principal amount of its First and)
 Refunding Mortgage Bonds, Series 75A,)
 due June 1, 2007.)

Application No. 55829
 Petition for Modification
 (Filed August 22, 1975)

Dennis C. Sullivan and Bruce R. Worthington,
 Attorneys at Law, for petitioner.
Sidney J. Webb, for the Commission staff.

FIRST SUPPLEMENTAL OPINION

By Decision No. 84782, dated August 12, 1975, in the above-entitled matter, the Commission authorized Pacific Gas and Electric Company to issue and sell at competitive bidding not exceeding \$175,000,000 aggregate principal amount of its First and Refunding Mortgage Bonds, Series 75A. Petitioner seeks an exemption from the competitive bidding rule so that the sale may take place pursuant to a negotiated underwriting.

After due notice, a public hearing on the Petition for Modification was held before Examiner Tomita in San Francisco on September 4, 1975, at the conclusion of which the matter was taken under submission. The Commission has received no protests in the proceeding.

Petitioner reports that it has commenced preliminary negotiations with representatives of a nationwide group of underwriters regarding the sale of the First and Refunding Mortgage Bonds, Series 75A. The petition shows that on or about

September 30, 1975, petitioner expects to conclude negotiations with the underwriters with respect to the price to be paid petitioner for the bonds, the interest rate thereon, other terms of the offering including maturity date, sinking fund requirements and call protection, and the underwriting commission.

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, petitioner requests specific findings, conclusions and ordering paragraphs due to the existence of the California Usury Law, which we have held on several recent occasions does not apply to security issues authorized by this Commission.

Petitioner has requested exemption from the Commission's competitive bidding rule, and presented testimony that negotiation of the proposed bond issue provides it with the opportunity to assure the successful placement of the bonds under current market conditions by making possible:

(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 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 petitioner, 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)).

In view of usury law considerations, petitioner asserts that it may find it necessary or advantageous to situate and structure the proposed issuance and sale of the Series 75A bonds in the State of New York, and to provide that the company's obligation to pay principal and interest with respect thereto shall be governed by and construed in accordance with the laws of such State. Nevertheless, the bonds will be offered to residents of California and the other states as well as to residents of New York. Inasmuch as petitioner's proposal does not operate to restrict the potential bond market to the detriment of petitioner or its ratepayers, we are not opposed to such situating and structuring of the proposed issuance and sale.

Recent Decisions Nos. 83411 and 83504, among others, 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 of the application, petition, and record developed at the hearing, in lieu of the findings set forth in said Decision No. 84782, the Commission finds that:

1. Petitioner is a California corporation operating under the jurisdiction of this Commission.
2. The proposed bonds would be for proper purposes.
3. Petitioner has need for external funds for the purposes set forth in this proceeding.

4. The sale of the proposed bonds should not be required to be through competitive bidding.
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. Underwriters will not be restricted from offering or selling petitioner's First and Refunding Mortgage Bonds, Series 75A, in California.
7. 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.
8. 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.
9. 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 316 et seq. of the Public Utilities Code).

10. 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.
11. 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 (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 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.
13. This Commission does not object to petitioner's situating and structuring the proposed issuance and sale of its First and Refunding Mortgage Bonds, Series 75A, 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 83504, 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 this 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.

Petitioner 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.

FIRST SUPPLEMENTAL ORDER

IT IS ORDERED that:

1. Paragraphs Nos. 1, 2 and 4 of the order in Decision No. 84782 are hereby deleted.
2. The issuance and sale by Pacific Gas and Electric Company of not exceeding \$175,000,000 aggregate principal amount of its First and Refunding Mortgage Bonds, Series 75A, are hereby exempted from the Commission's competitive bidding rule set forth in Decision No. 33614, dated January 15, 1946, as amended, in Case No. 4761.
3. Pacific Gas and Electric Company may issue and sell not exceeding \$175,000,000 aggregate principal amount of its First and Refunding Mortgage Bonds, Series 75A, to a group of underwriters at such price and otherwise upon such terms and conditions as they may negotiate.

4. An interest rate for Pacific Gas and Electric Company's First and Refunding Mortgage Bonds, Series 75A, 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 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 its First and Refunding Mortgage Bonds, Series 75A, 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.

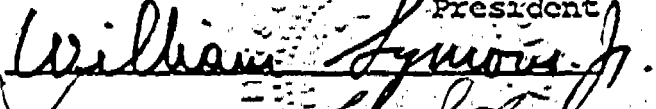

6. Upon determining the maturity date, price and interest rate pertaining to the bonds herein authorized, Pacific Gas and Electric Company shall notify the Commission thereof in writing.

7. Decision No. 84782 shall remain in full force and effect except as modified by this First Supplemental Order.

8. The effective date of this First Supplemental Order is the date hereof.

Dated at San Francisco, California, this 13th day
of SEPTEMBER, 1975.



President



1975

Commissioners

Commissioner Leonard Ross, being
necessarily absent, did not participate
- 7 - in the disposition of this proceeding.

Commissioner Robert Batimovich, being
necessarily absent, did not participate
in the disposition of this proceeding.