

LSC

Decision No. 85004

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 F, in)
an Amount Not Exceeding \$25,000,000)
and to Execute and Deliver a)
Supplemental Indenture.)

Application No. 55911
(Filed September 4, 1975)

William M. Pfeiffer, Attorney 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 \$25,000,000 aggregate principal amount of its Series F debentures through negotiations to be conducted in the State of New York.

After due notice, a public hearing in the above-entitled matter was held before Examiner Tomita in San Francisco on September 24, 1975, 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 for resale, both companies being subsidiaries of Pacific Lighting Corporation.

According to the testimony, applicant's capitalization ratios at August 31, 1975, and as adjusted to give effect to
(a) the retirement of debentures for sinking fund purposes, and
(b) the debentures proposed in this proceeding, are as follows:

	<u>August 31, 1975</u>	<u>Pro forma</u>
Debentures	50.6%	54.9%
Common equity	<u>49.4</u>	<u>45.1</u>
Total	<u>100.0%</u>	<u>100.0%</u>

The testimony shows that on August 31, 1975, applicant's indebtedness to its parent corporation amounted to \$42,148,212. Applicant proposes to use the debenture net proceeds, other than accrued interest, to reimburse its treasury for construction expenditures, and for the discharge and lawful refunding of its obligations. The accrued interest would be used for general corporate purposes.

Factors justifying exemption from the competitive bidding requirements under current market conditions, as set forth in the application, include the following:

1. A negotiated underwriting permits the issuer to make last-minute changes in the timing of the offering in anticipation of market upswings.
2. A negotiated underwriting enables last-minute changes to be made in the terms of the issue in response to changes in market conditions.
3. A negotiated underwriting enables the managing underwriter to form an underwriting group composed of the investment banking firms having the best resources to market the issue.
4. A negotiated offering enables the underwriters to develop a greater knowledge of the issuer's particular business, which will assist them in their presale marketing activities.

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 debentures 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. 231 (1946)).

Applicant intends to situate and structure the proposed issuance and sale of its Series F 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 ratepayer, we are not opposed to such situating and structuring of the proposed issuance and sale. In this connection Decisions Nos. 83411 and 83808, 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 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 F debentures in California.
9. Prevailing market conditions may necessitate that applicant's proposed Series F 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 the 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 F debentures in compliance with authorization by this Commission, persons collecting interest on such authorized debentures are not subject to the Usury Law sanctions.
15. Applicant's proposal to situate and structure the proposed issuance and sale of Series F debentures in the State of New York is acceptable to this Commission, inasmuch as such 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 and 83808, 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.

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 \$25,000,000 aggregate principal amount of its Debentures, Series F, 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 Fifth Supplemental Indenture in substantially the same form as that attached to the application as Exhibit C.
3. Pacific Lighting Service Company may issue and sell not exceeding \$25,000,000 aggregate principal amount of its Debentures, Series F, 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 F, 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.

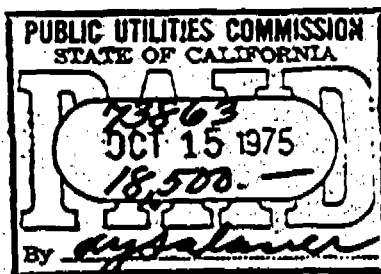
6. Promptly after determining the maturity date, price and interest rate pertaining to the debentures herein authorized, Pacific Lighting Service Company shall notify the Commission thereof in writing.


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


8. 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.

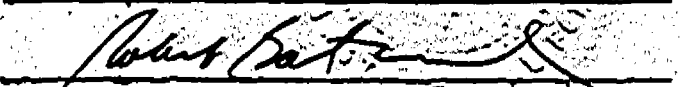
9. This order shall become effective when Pacific Lighting Service Company has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$18,500.

Dated at San Francisco, California, this 15th day of October, 1975.





President




Commissioners