

ORIGINAL

Decision No. 85621

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Southwest Gas Corporation For)
Authority to Issue and Sell not)
Exceeding \$12 Million Principal)
Amount of Promissory Notes.)

Application No. 56270
(Filed February 9, 1976)

Constance L. Howard, Attorney at Law, for applicant.
Sidney J. Webb, for the Commission staff.

O P I N I O N

Southwest Gas Corporation seeks exemption from the Commission's competitive bidding rule, and authority to issue and sell not exceeding \$12,000,000 aggregate principal amount of its unsecured promissory notes.

After due notice, a public hearing in the above-entitled matter was held before Examiner Tomita in San Francisco on March 4, 1976, 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 business of distributing and selling natural gas in portions of Placer and San Bernardino Counties. In addition, the utility transmits, sells and distributes natural gas in the States of Arizona and Nevada. For the year 1975, the company reports that it derived 7% of its revenues from operations in Arizona, 13% from California and 80% from Nevada.

At the time of receiving the proceeds from the notes for which it seeks authority to issue, the utility expects to have \$10,000,000 of notes outstanding under a line of credit with a

group of banks and authorized by Decision No. 84301, dated April 8, 1975, in Application No. 55563. Applicant proposes to use a portion of such proceeds to repay said notes and, after deducting underwriters' commissions, to apply the remainder of the proceeds toward meeting its construction requirements during 1976, which are estimated at \$8,000,000.

The utility proposes to register the unsecured notes with the Securities and Exchange Commission, and they would be sold to the public through a "best efforts" underwriting managed by Edward D. Jones & Co. at interest rates and commissions to be negotiated immediately prior to commencement of the public offering. Paragraph 8.2 of the application indicates that the notes are to be offered at par, and would be issued under an indenture containing substantially the following provisions:

- "(1) The Notes will be offered in maturities of five years and ten years (or in the alternative, in maturities of six years and twelve years), as the purchasers thereof may elect.
- "(2) The rates of interest on the Notes on the intermediate and longer maturities, respectively, are unknown at this time and will be negotiated prior to the effective date of the Registration Statement.
- "(3) The Notes will be issued and sold in any denomination expressed in even hundreds of dollars, as the purchasers thereof may elect, but the minimum denomination shall be \$1,000.
- "(4) Applicant will pay underwriting commissions to be negotiated prior to the effective date.
- "(5) The Notes will be issued only in registered form.
- "(6) Interest on the Notes will be payable no less frequently than quarterly.

- "(7) Applicant shall have the obligation to redeem at par plus interest accrued to the date of redemption
- (i) each Note held by a single registered owner upon the death of such owner, at the election of his personal representative, and
 - (ii) each Note held by two or more joint tenants upon the death of one joint tenant, at the election of the remaining joint tenant or tenants; provided, however, that Applicant's obligation hereunder shall not exceed in any twelve-month period, redemption of more than 5% of the original principal amount of the Notes sold.
- "(8) Applicant will have an obligation to purchase in each year, at the face amount thereof or at the price offered, whichever shall be smaller, up to 5% of the original principal amount of the Notes sold if the same are offered for repurchase. Against the obligation specified in this paragraph will be credited the principal amount of all of the Notes which Southwest might purchase during such year pursuant to paragraph (7) hereof.
- "(9) The five or six year Notes will be noncallable prior to maturity. The ten or twelve year Notes will be callable by Applicant at any time after five years at premiums of 3% on 12 year notes or 2% on 10 year notes, expressed in percentages of the face amount, in each case declining by 1/2% per year to zero in the last year prior to maturity.
- "(10) Upon original issuance (but not upon transfer after original issuance), each Note will bear interest from the first day of the month in which the settlement date of the transaction in which it is sold occurs, provided that payment shall actually be received by the Underwriters on or before each settlement date."

Applicant's computed capital ratios at December 31, 1975, and as adjusted to give effect to the proposed \$12,000,000 of notes, are as follows:

	<u>December 31, 1975</u>	<u>Pro Forma</u>
Long-term debt	51.5%	56.8%
Preferred and preference stock	14.4	12.8
Common stock equity	<u>34.1</u>	<u>30.4</u>
Total	<u>100.0%</u>	<u>100.0%</u>

As justification for seeking exemption from competitive bidding requirements with respect to the notes, the application includes the following:

" . . . Applicant has had an extremely difficult time finding purchasers for bonds or any other form of long-term debt financing. In fact, the Applicant has been trying to privately place any form of long-term debt since shortly after the close of the sale of its Common Stock in April, 1975. Applicant believes that there is very little possibility that it would receive any bids at all to purchase its Notes at any price, under any terms, under the prevailing market conditions, should Applicant solicit competitive bids, and Applicant is so advised by its investment bankers..."

After consideration the Commission finds that:

1. Only a minor portion of applicant's operations is in California.
2. The terms of the proposed indenture are reasonable.
3. The proposed notes would be for proper purposes.
4. Applicant has need for external funds for the purposes set forth herein.
5. The sale of the proposed notes should not be required to be through competitive bidding.
6. The money, property or labor to be procured or paid for by the notes herein authorized is reasonably required for the purposes specified herein, which purposes, are not, in whole or in part, reasonably chargeable to operating expenses or to income.

On the basis of the foregoing findings we conclude that the application should be granted. Certain decisions (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, and most recently Decision No. 85381, dated January 27, 1976, in Application No. 56166, relating to

Roseville Telephone Company's Series H Debentures) 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 further 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.

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 notes 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 Southwest Gas Corporation on or before December 31, 1976, of not exceeding \$12,000,000 aggregate principal amount of its unsecured promissory notes 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. On or after the effective date hereof and on or before December 31, 1976, Southwest Gas Corporation may issue and sell not exceeding \$12,000,000 aggregate principal amount of its unsecured promissory notes to the public through underwriters under an indenture containing provisions consistent with those set forth in this proceeding.

3. Neither Southwest Gas Corporation, 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 the notes herein authorized 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.

4. Southwest Gas Corporation shall apply the proceeds from the sale of said notes to the purposes set forth in this proceeding.

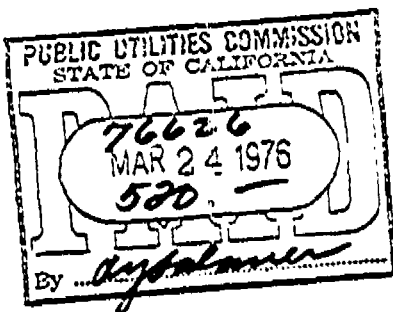
5. Promptly after determining the maturity dates, prices and interest rates pertaining to the notes herein authorized, Southwest Gas Corporation shall notify the Commission thereof in writing.

6. As soon as available, Southwest Gas Corporation shall file with the Commission three copies of its final prospectus pertaining to said notes.

7. Southwest Gas Corporation shall file with the Commission a report, or reports, as required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

8. This order shall become effective when Southwest Gas Corporation has paid the fee prescribed by Section 1904.2 of the Public Utilities Code, which fee is \$520.

Dated at Los Angeles, California, this 23rd day of MARCH 1976.



[Signature] President
William Sproull
Vernon L. Stenger
[Signature]
Robert [Signature] Commissioners