

Decision No. 85983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SAN DIEGO GAS  
& ELECTRIC COMPANY, a corporation,  
to issue and sell on a negotiated  
basis not exceeding \$45,000,000  
of Bonds and to execute a  
supplemental indenture.

Application No. 56490  
(Filed May 19, 1976)

Chickering & Gregory, by Leslie P. Jay, Attorney at  
Law, for applicant.  
Sidney J. Webb, for the Commission staff.

O P I N I O N

San Diego Gas & Electric 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 \$45,000,000 aggregate principal amount of First Mortgage Bonds, Series P, and (b) to execute and deliver a Seventeenth Supplemental Indenture.

After due notice, a public hearing in the above-entitled matter was held before Examiner Tomita in San Francisco on June 7, 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 principally in the business of providing electric service in portions of Imperial and Orange Counties, and electric, gas and steam service in portions of San Diego County. The utility reports that as of March 31, 1976, its uncapitalized construction amounted to \$71,779,180, and the unexpended balance of its capital budget was \$597,924,000.

Applicant proposes to issue and sell not exceeding \$45,000,000 aggregate principal amount of its bonds and to use the net proceeds (exclusive of accrued interest which would be used for general corporate purposes) for the retirement and discharge of all or a portion of its outstanding bank loans and commercial paper issued for temporary financing of utility plant, and (b) the balance, if any, to reimburse the company for capital expenditures. The bonds would be secured by an existing indenture as heretofore supplemented and amended and as further supplemented by a proposed Seventeenth Supplemental Indenture.

The reported capitalization ratios of the company as of March 31, 1976, and as adjusted to reflect the proposed \$45,000,000 of bonds and an estimated \$26,000,000 of proceeds from the common stock involved in Application No: 56489, are as follows:

	March 31, 1976	Pro Forma
First mortgage bonds	46.0%	47.3%
Debentures	3.0	2.8
Other long-term debt	.7	.6
Preferred and preference stock	17.9	16.6
Common stock equity	32.4	32.7
Total	<u>100.0%</u>	<u>100.0%</u>

Applicant proposes to issue and sell the new bonds on a negotiated basis through a group of underwriters represented by Merrill Lynch, Pierce, Fenner & Smith Incorporated and Blyth Eastman Dillon & Co. Incorporated, which group would agree to purchase all of the bonds pursuant to an Underwriting Agreement. On or about July 15, 1976, the utility expects to complete negotiations with the underwriters for determining the terms

of the proposed offering including (a) price of the bonds, (b) interest rate, (c) aggregate principal amount, (d) maturity date, (e) sinking fund requirements (if any), (f) call protection, (g) other redemption provisions, and (h) underwriting commissions.

Applicant's reasons for requesting exemption from the competitive bidding requirements as set forth in the application, are as follows:

"(1) The continued uncertainty in the financial market, at least with respect to utilities, such as the Applicant, whose securities are rated 'BBB/Baa' and below, makes it desirable to have the maximum flexibility provided by a negotiated offering to take advantage of short-term changes in the interest rate and market conditions, and, if necessary, to adjust the terms of the proposed issue, including the principal amount, maturity date, sinking fund requirements and call protection, in response to the requirements of the market at the time of the offering.

"(2) As a result of these unstable market conditions, pre-offering marketing efforts by the prospective underwriters are essential for a successful issue, at least if the securities are rated 'BBB/Baa' and below. A negotiated offering provides greater opportunity and incentive for such marketing efforts.

"(3) A negotiated sale also permits the Applicant to mobilize the underwriting and distribution strength of a greater number of firms in the securities business.

"(4) Additional marketing advantages can also be derived if Applicant is able to combine this offering of the Bonds on a negotiated basis with the offering of its Common Stock currently scheduled for the same date."

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)).

Applicant intends to situate and structure the proposed issuance and sale of its Series P bonds in the State of New York without restricting the market for such bonds to areas outside of California. Inasmuch as applicant's proposal does not operate to restrict the potential bond market to the detriment of applicant or its ratepayers, we are not opposed to such situating and structuring of the proposed issuance and sale. In this connection Decisions Nos. 83411 and 84392, 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, testimony and exhibits, the Commission finds that:

1. Applicant is a California corporation operating under the jurisdiction of this Commission.
2. Applicant's First Mortgage Bonds are presently rated BBB by Standard & Poor's Corporation and Baa by Moody's Investors Service, Inc.

3. The proposed Seventeenth Supplemental Indenture would not be adverse to the public interest.
4. The proposed bonds would be for proper purposes.
5. Applicant has need for external funds for the purposes set forth in this proceeding.
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. If prevailing market conditions necessitate that applicant's proposed bonds be issued and sold with a rate of interest exceeding the limitations provided in Article XV 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.
9. 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.
10. 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).
11. 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.

12. 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.
13. If the usury limitation contained in Article XV 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 market conditions, applicant, 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 bonds in compliance with authorization by this Commission, persons collecting interest on such authorized bonds are not subject to the Usury Law sanctions.
14. This Commission does not object to applicant's situating and structuring the proposed issuance and sale of the First Mortgage Bonds, Series P, in the State of New York.
15. There is no known opposition and there is no reason to delay granting the relief requested.

On the basis of the foregoing findings we conclude that the application should be granted. As set forth in said Decisions Nos. 83411 and 84392, among others, we further conclude that the usury limitations on interest contained in former Article XX, Section 22 (now Article XV) 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. 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 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 San Diego Gas & Electric Company of not exceeding \$45,000,000 aggregate principal amount of its First Mortgage Bonds, Series P, 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. San Diego Gas & Electric Company may execute and deliver a Seventeenth Supplemental Indenture in substantially the same form as Exhibit E attached to the application, with the modification or insertion of such terms and conditions as interest rate, principal amounts, maturity date, place and manner of payment, choice of law, sinking fund (if any), call protection and other redemption provisions and redemption restrictions as may be contemplated by the application.

3. San Diego Gas & Electric Company may issue and sell not exceeding \$45,000,000 aggregate principal amount of its First Mortgage Bonds, Series P, on terms and conditions to be negotiated in accordance with the record in this proceeding.

4. An interest rate for San Diego Gas & Electric Company's First Mortgage Bonds, Series P, may exceed the maximum annual interest rate otherwise permitted under the California Usury Law, as contained in Article XV of the California Constitution and the Usury Law Initiative Act, if market conditions so require.

5. Neither San Diego Gas & Electric 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 First Mortgage Bonds, Series P, 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. San Diego Gas & Electric Company shall use the net proceeds from the sale of said bonds for the purposes referred to in the application.

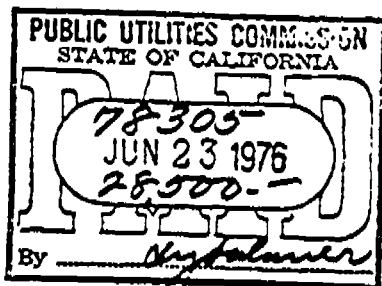
7. Upon determining the maturity date, price and interest rate pertaining to the bonds herein authorized, San Diego Gas & Electric Company shall notify the Commission thereof in writing.



8. As soon as available, San Diego Gas & Electric Company shall file with the Commission three copies of its final prospectus pertaining to said bonds.

9. Within one month after issuing and selling the bonds herein authorized, San Diego Gas & Electric 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.

10. This order shall become effective when San Diego Gas & Electric Company has paid the fee prescribed by Section 1904 (b) of the Public Utilities Code, which fee is \$28,500.

Dated at San Francisco, California, this 22nd day of JUNE, 1976.



  
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President  
  
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Commissioners