

RR/KLH/TCG/WPSC

ORIGINALDecision 84 07 074

JUL 5 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND)
 ELECTRIC COMPANY to issue, sell)
 and deliver one or more series of)
 its First and Refunding Mortgage)
 Bonds, debentures, promissory)
 notes and/or other evidences of)
 indebtedness in an aggregate)
 principal amount not exceeding)
 \$750,000,000.)

Application 84-05-111
 (Filed May 31, 1984)

O P I N I O N

In Decision (D.) 83-09-072 dated September 30, 1983 in Application (A.) 83-08-37, Pacific Gas and Electric Company (PG&E) was authorized to issue and sell, in one or more series, up to \$750,000,000 of its Debt Securities by means of competitive bidding, negotiated public offering, or negotiated private placement. These issues were exempted from the Commission's competitive bidding rule which was also modified to shorten to one day the period of time between the public invitation for bids and the opening of bids for those Bonds sold through competitive bidding.

In this petition for modification, PG&E requests a modification of D.83-09-072 in A.83-08-37 to adopt findings, conclusions, and orders consistent with prior Commission decisions to the effect that the Commission, in exercising its authority to regulate public utility debt securities, is not restricted by the California usury law.

Summary of Decision

This decision grants PG&E the authority requested in its petition for modification.

Notice of the filing of the petition for modification appeared on the Commission's Daily Calendar on June 4, 1984. No protests have been received.

The California usury law (Article XV of the California Constitution and the Usury Law Initiative Act) prohibits, with certain exceptions, the charging of interest on any loan or forbearance at an annual rate in excess of the higher of (a) 10% per year or (b) 5% per year in excess of the rate prevailing on advances by the Federal Reserve Bank of San Francisco to its member banks. As of May 30, 1984 the maximum interest rate under the California usury law was 14% per year on transactions not otherwise exempt. Based on current market prices for long-term debt, an A-rated utility like PG&E would have to issue debt at an interest rate greater than 14%.

In D.83411 dated September 4, 1974 in A.55080 (Southern California Gas Company) and D.90381 dated June 5, 1979 in A.58798 (PG&E), among others, the Commission held that in exercising its authority to regulate public utility debt securities that it is not restricted by the California usury law and its ramifications. We

reaffirm this holding and conclude that if the limitation of the California usury law is exceeded in connection with the proposed issuance of the Debt Securities, then the public interest requires the Commission to authorize the issuance and sale of the Debt Securities.

In view of the usury law considerations, PG&E asserts it may find it necessary or advantageous to situate and structure the proposed issuance and sale of the Debt Securities in the State of New York and to provide that PG&E's obligation to pay principal and interest with respect thereto shall be governed by and construed in accordance with the laws of that state. The Debt Securities will, nevertheless, be offered to residents of California and the other states as well as residents of New York. Inasmuch as PG&E's proposal does not operate to restrict the potential debt market to the detriment of PG&E, or its ratepayers, we are not opposed to this situating and structuring of the proposed issuance and sale.

After consideration of the petition for modification and the information contained in the prior Commission decisions concerning the application of the California usury law, we will adopt the following additional findings of fact and conclusions of law:

Findings of Fact

If prevailing market conditions necessitate that PG&E's proposed Debt Securities be issued and sold with a rate of interest exceeding the limitations provided in Article XV of the California Constitution and the Usury Law Initiative Act, then the public interest requires that this Commission authorize the issuance and sale irrespective of limitations contained in the California usury law.

Conclusions of Law

1. Under the 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.

2. The Legislature has conferred upon this Commission the authority to regulate the issuance of public utility securities, including the Debt Securities, and to prescribe restrictions and conditions as it deems reasonable and necessary (Public Utilities (PU) Code Section 816, et seq.).

3. Under the plenary powers granted to the Legislature in Article XII, Section 5 of the California Constitution, it conferred on this Commission the comprehensive and exclusive power over the issuance of public utility securities, including the Debt Securities, and the California usury law cannot be applied as a restriction on this Commission's regulation of the issuances of public utility securities, including its authorization of a reasonable rate of interest.

4. In addition to the plenary powers granted to the Legislature by the California Constitution under which the Legislature conferred upon this Commission exclusive authority to regulate the issuance of debt securities by public utilities (PU Code Section 816, et seq.), 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.

5. 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, PG&E, 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 PG&E of the Debt Securities in compliance with

authorization by this Commission, persons collecting interest on the authorized securities are not subject to the California usury law sections.

6. This Commission does not object to PG&E situating and structuring the proposed issuance and sale of its Debt Securities in the State of New York.

The following order should be effective on the date of signature so that PG&E may issue its Debt Securities without being restricted by California's usury law.

ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is authorized to pay on its Debt Securities an interest rate in excess of 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.

2. Neither PG&E 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 Debt Securities 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.

3. In all other respects, Decision 83-09-072 shall remain in full force and effect except as modified by this order.

4. This petition for modification is granted as set forth above.

This order is effective today.

Dated JUL 5 1984 at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO

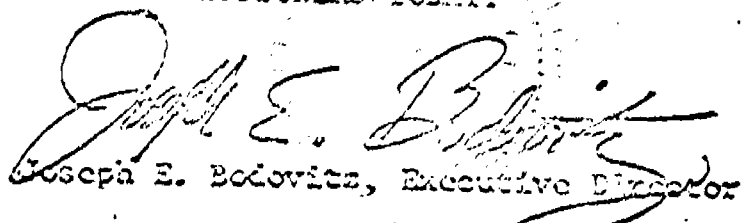
FRISCILLA C. GREW

DONALD VIAL

WILLIAM T. BAGLEY

Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bolovitz, Executive Director

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O R D E R

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