CACD/BVC

Decision 90 12 020 DEC 06 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of PACIFIC BELL (U 1001 C), to issue and sell not to exceed $2 billion aggregate principal amount of Debentures and/or Notes and for an exemption from the Commission's Competitive Bidding Rule.

Application 86-12-056 (Petition for Modification filed November 14, 1990)

SUPPLEMENTAL OPINION

This decision grants Pacific Bell (Pacific), its Petition for Modification of Decision (D.) 87-03-070, as modified by D.89-04-068. Pacific's petition requests the following:

1) An exemption from the Commission's competitive bidding requirements as set forth in D.38614, as amended by D.49941, D.75556, D.81908 and Resolution F-616 (collectively, the Competitive Bidding Rule) for an issue of $225 million in Debt Securities;

2) A waiver from the protest period of Rule 8.3 of the Commission's Rules of Practice and Procedure.

Pacific's Petition for Modification appeared on the Commission's Daily Calendar of November 20, 1990. There have been no protests.

Exemption From Competitive Bidding Rule

Pursuant to D.87-03-070 as modified by D.89-04-068, Pacific has been authorized to issue up to $2 billion aggregate principal amount of debentures and/or notes, the proceeds of which are to be used to refund maturing debt and preferred issues as well as repurchase and retire high cost debt securities. Pacific expects to issue debt securities in the amount of $225 million pursuant to this authority as soon as economically reasonable to do so. Pacific seeks an exemption from the Commission's Competitive Bidding Rule for this issue of Debt Securities. Pursuant to the Competitive Bidding Rule, the Commission may grant exemptions from the Rule for debt issues in excess of $200 million upon a compelling showing by a utility that because of the size of the issue an exemption is warranted.

Recent market events and the current instability of the capital markets have affected the availability and viability of competitive bidding in the markets. Pacific believes that compelling circumstances exist for granting an exemption from the Competitive Bidding Rule for the proposed $225 million in Debt Securities.

Current market conditions indicate a continued period of volatile interest rates, due in part to such factors as investor uncertainty regarding inflation, fears of a recession and the large demand for long-term funds by both government and private industry. These conditions are expected to persist for the foreseeable future, making the timing and the setting of terms of any debt issue extremely important. Pacific argues that a negotiated offering provides greater flexibility to adjust the timing and terms of a proposed debt offering to meet these changing market conditions than would be available through the competitive bid process.

Pacific also states that competitive bidding divides the shrinking investment banking community into two or more competing selling groups. In a negotiated offering, the entire investment banking community is available to be formed into a selling syndicate with those firms best able to market the securities. In competitive bidding, firms with relatively good underwriting and marketing abilities might well be members of an unsuccessful group. Thus, their underwriting and placement capability may be lost.

Pacific believes that when a firm agrees to underwrite and issue debt securities, it accepts the risk associated with placing the bonds. The risk increases with the size of the transaction since the larger the issue, the greater the amount of bonds each firm must underwrite and place. Wall Street firms are experiencing a period of declining liquidity and retrenchment. As a result, any increased risk is likely to manifest itself in higher financing costs for Pacific as bidders seek to price issues at levels that will sell easily in the market in order to mitigate a portion of the risk. Thus, the incentive to submit an aggressive bid decreases as the size of the issue increases.

In its application, Pacific makes the argument that, by its nature, a competitively bid offering seeks to appeal to a broad segment of the market and, as such, is structured to provide terms which are generally familiar to the market. However, in today's markets, the needs of investors have become more diverse and the market increasingly segmented. A negotiated public offering can be structured to appeal to one or more of these market segments, who, because of specific investment criteria, are willing to accept a lower rate of return on transactions tailored to their needs, thereby enabling the company to achieve a lower cost of capital than available through competitive bidding.

Through October of 1990, there have been sixteen public debt issues by telephone companies. Thirteen of these issues were negotiated and the remaining three were competitively bid. Although the negotiated issues ranged in size from $43 million to a high of $450 million, two of the three competitive issues were for $75 million and the other was for $125 million. The relatively small size for the competitive issues demonstrates the reluctance of the market relative to large competitive debt issues.

The Commission Advisory and Compliance Division believes, and we agree, that Pacific has made a compelling showing that, because of the above factors, the sale of Pacific's Debt Securities through negotiation at this time would likely enable it to obtain a cost of money lower than the cost of money obtainable by sale with competitive bidding. Therefore, an exemption from the Competitive Bidding Rule for sale and issuance of the proposed $225 million Debt Securities would be in the public interest. This exemption will afford Pacific the flexibility to meet its financial requirements on the most favorable terms available.

Waiver From Rule 8.3

Pacific seeks a waiver of the protest period of Rule 8.3 of the Commission's Rules of Practice and Procedure in order to allow Pacific to take advantage of favorable market conditions in an expeditious manner.

Rule 8.3 states that:

> "Unless otherwise provided by rule or General Order, a protest shall be filed within 30 days after the latest of the following dates: (a) The date that copies of the application or petition, or notices thereof, were mailed to other persons, as evidenced by a certificate of service by mail; (b) The date that notice of the filing of the application or petition first appears in the Daily Calendar, . . . "

We believe that waiver from Rule 8.3 of the Rules of Practice and Procedure, due to the volatile market conditions, and the lack of protest letters received to date, would not be adverse to the public interest. This waiver would allow Pacific to proceed with its financing in an expeditious manner.

Findings of Fact

1. Pacific, a California Corporation, operates as a public utility under the jurisdiction of this Commission.

2. An exemption from the Competitive Bidding Rule for a $225 million issue of Debt Securities would not be adverse to the public interest.

3. A waiver from the protest period of Rule 8.3 of the Commission's Rules of Practice and Procedure would not be adverse to the public interest.

4. There is no known opposition to the proceeding and no reason to delay granting the authority requested.

Conclusions of Law

1. A public hearing is not necessary.

2. The Petition for Modification should be granted to the extent set forth below.

3. The following order should be effective on the date of issuance to enable Pacific to proceed with its financing expeditiously. No fee is due or payable under Public Utilities Code Section 1904(b).

ORDER

IT IS ORDERED that:

1. Ordering paragraph 2. of D. 87-03-070 is modified as follows:

> "2. Pacific may, by negotiated public offering, issue up to $225 million in aggregate principal amount of Debt Securities, exempt from the Commission's Competitive Bidding Rules. Other Debt Securities issued in separate and individual aggregate principal amounts of $300 million, or greater, for refunding purposes are exempt from the Commission's Competitive Bidding Rule for sales effected either by means of negotiated public offerings or private placements. Pacific may also sell its Debt Securities by means of competitive bidding."

2. A waiver of the protest period of Rule 8.3 is granted.

3. The Petition for Modification is granted as set forth above.

The order is effective today.

Dated DEC 06 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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

NEAL J. SHULMAN, Executive Director