

ORIGINAL

Decision 83 06 008 JUN 1 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of Southern Pacific Communications )  
Company for authority to enter into )  
a Revolving Credit/Term Loan Agree- )  
ment and to issue \$125,000,000 )  
aggregate principal amount of its )  
Promissory Notes due 1990 in )  
connection therewith. )

Application 83-04-20  
(Filed April 25, 1983)

O P I N I O N

Southern Pacific Communications Company (SPCC) seeks authority under Public Utilities (PU) Code Sections 817 and 818 to enter into a Revolving Credit/Term Loan Agreement (Agreement) with nine different banks and under that Agreement to issue its Promissory Notes (Notes) to each of the participating lenders in the aggregate principal amount not to exceed \$125,000,000. Also SPCC seeks an exemption from the Commission's competitive bidding rule.

Summary of Decision:

This decision grants SPCC the authority requested in the application.

Notice of the filing of the application was published on the Commission's Daily Calendar of April 12, 1983. No protests have been received.

SPCC is a Delaware corporation and is a wholly-owned subsidiary of Southern Pacific Company. SPCC is a specialized common carrier of telecommunications currently operating between San Francisco and Los Angeles on the West Coast and such cities as Boston, New York, and Washington, D.C. on the East Coast. In addition to holding licenses and construction permits issued by the Federal Communications Commission, SPCC possesses a certificate of public convenience and necessity granted by Commission Decision (D.) 84167, dated March 4, 1975, affirmed by D.89580, dated October 31, 1978, in Application (A.) 55284. The certificate authorizes SPCC, as a public utility, to establish intercity private line communication service for voice and data transmission between the cities of Bakersfield, Fresno, Los Angeles, Merced, San Francisco, and Stockton. In addition to holding the certificate for California intrastate private line services, SPCC has filed an application with the Commission for a certificate of public convenience and necessity to provide switched intercity communication services within California (A.83-01-02, filed January 13, 1983.)

SPCC proposes to enter into an Agreement in the aggregate principal amount of \$125,000,000 with the following banks for the following commitments:

<u>Lender</u>	<u>Amount</u>
Irving Trust Company	\$20,000,000
Security Pacific National Bank	20,000,000
Bank of America	10,000,000
Citicorp (USA), Inc.	15,000,000
Crocker National Bank	10,000,000
Maryland National Bank	10,000,000
Mellon Bank, N.A.	15,000,000
Morgan Guaranty Trust Company	15,000,000
Wells Fargo Bank	10,000,000
Total	\$125,000,000

The proposed transaction will essentially create for SPCC a line of credit with each of the lenders from which SPCC may draw funds. Incident to entering into the Agreement, SPCC will issue its Notes to each of the lenders in an amount equal to their respective commitments. The revolving credit will be available for two years through August 31, 1985, with all or part of the funds committed at August 31, 1985, available as a term loan. SPCC will make pro rata drawdowns of a minimum of \$5,000,000. On August 31, 1985 up to the full \$125,000,000 can be converted into a term loan, payable in equal semi-annual installments commencing March 1, 1986 with a final maturity of September 1, 1990.

The application states that interest rate for each draw-down during the revolving credit period, at SPCC's option will be:

- (1) 1/2 of 1% above the primary certificate of deposit rate of the reference bank for maturities up to 180 days, adjusted for then current Federal Deposit Insurance Corporation (FDIC) reserve requirements, or

- (2) 1/2 of 1% above the average London Interbank Offering Rate (LIBOR) of the reference bank for one, three or six-month maturities, adjusted for then current Regulation D requirements, or
- (3) Prime Rate of Irving Trust Company announced from time to time.<sup>1/</sup>

The application indicates that Southern Pacific Company, the parent of SPCC, shall unconditionally guarantee the obligations of SPCC. Applicant's attorney, by letter dated May 25, 1983, informed the Revenue Requirements Division that if the authority requested in A.82-12-15 to transfer control of SPCC from Southern Pacific Company to GTE Corporation is granted, the Stock Purchase Agreement attached to A.82-12-15 as part of Exhibit II indicates that GTE Corporation or one of its affiliates will assume the guarantees of SPCC's debt obligations. ✓

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<sup>1/</sup> On May 2, 1983 the prime certificate of deposit rate for 180 days was 9.30%; the LIBOR rate for 180 days was 9.56%; and the Irving Trust Company prime rate was 10.75%.

SPCC proposes to use the proceeds of the Revolving Credit transaction to finance its 1983 capital projects. These capital projects include the purchase of radio, multiplex and analog switch equipment to be installed throughout its network. In addition, SPCC will also design and construct 14 satellite earth stations and their links to SPCC's terrestrial radio network. SPCC also plans smaller capital projects related to construction of fiber optics systems, local distribution facilities, network support systems and internal data networks.

SPCC requests an exemption from the Commission's competitive bidding requirements with respect to the proposed issuance of Notes. The application sets forth the following reasons as justification for an exemption:

"Since the date of its incorporation in Delaware on January 23, 1970, SPCC has been continuously occupied in obtaining its required licenses and permits from the FCC and other governmental agencies, in constructing its communications system and in marketing its services. SPCC commenced interstate common carrier communications service on December 26, 1973. SPCC generated a positive cash flow and earned an operating profit for the year 1981 of \$34,100,000.

"This profitable trend has been continued through the fiscal year of 1982. However, at the present time, SPCC still does not have a history of earnings necessary to commend securities to the investing public and to meet rating standards acceptable to SPCC. However, due to confidence in SPCC and its proposed operations, the Lenders set forth here are prepared to establish a line of credit for SPCC upon the terms stated in Exhibit B attached to the application, which are believed by SPCC to be more advantageous than any loan financing which could be obtained by SPCC through competitive bidding."

The Revenue Requirements Division believes that the proposed financings are reasonable, under current market conditions and SPCC's short history. The Communications Division has also reviewed the application and affirms that the proposed financings are necessary to support SPCC's future growth objectives.

In D.91984, dated July 2, 1980, for the San Diego Gas & Electric Company, A.59633, we discussed the granting of exemptions from the competitive bidding rule, and we clarified the nature of the compelling showing that must be made to warrant an exemption from the rule. We served notice that assertions regarding the

volatility of the market, the flexibility provided by a negotiated sale, and the importance of maximizing the effectiveness of the underwriting group will not serve as compelling reasons, individually or collectively, for granting an exemption from the competitive bidding rule.

Because the proposed debt securities will be placed privately to known parties, on terms which are reasonable under the circumstances, we are of the opinion that applying, in this proceeding, the Commission's competitive bidding requirements and conditions set forth in D.91984, is not necessary. We will, however, also grant SPCC the authority to issue the proposed debt securities by means of a competitive offering.

SPCC is put on notice that in the event of a general rate proceeding before the Commission, the reasonableness of the resulting interest rate and cost of money to the company will be closely scrutinized and may result in a disallowance of interest expense if it is determined that the cost of money incurred was not the most prudent. We will also require SPCC to provide the Commission with a showing that the interest rate on the proposed Notes and the resulting cost of money were the most advantageous to the company and its ratepayers. We will require this showing within a reasonable period after the issuance and sale of the proposed securities.

SPCC also requests the Commission to find that the California Usury Law does not apply to the proposed transaction or issuance of the Notes. The Commission in exercising its authority to regulate public utility debt securities is not restricted by the California Usury Law (Article XV, Section 1 of the California Constitution).

Findings of Fact

1. SPCC is a Delaware corporation subject to the jurisdiction of this Commission in that it operates as a public utility within the State of California.
2. The proposed Revolving Credit/Term Loan and the Notes to be issued would be for proper purposes.
3. SPCC has need for external funds for the purposes set forth in this proceeding.
4. The rates of interest applicable to the proposed Notes are favorable to SPCC under current market conditions.
5. The proposed guarantee of Southern Pacific Company is reasonable.
6. The transaction and issuance of the Notes should not be required to be effective through competitive bidding.
7. The money, property, or labor to be procured or paid for by the Notes authorized is reasonably required for the purposes specified in the application. Proceeds from the security issue may not be charged to operating expenses or to income.

8. The California Usury Law (California Constitution, Article XV, Section 1) is not applicable to the issuance of the Notes proposed by SPCC.

9. There is no known opposition to the application and no reason to delay granting the authority requested.

Conclusions of Law

1. A public hearing is not necessary.

2. 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 the Public Utilities Commission as it deems necessary and appropriate, unrestricted by any other provision of the California Constitution.

3. The Legislature has conferred upon the Public Utilities 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 (PU Code Section 816 et seq.).

4. Under the plenary powers granted to the Legislature in Article XII, Section 5, of the California Constitution, it conferred on the Public Utilities Commission the comprehensive and exclusive power over the issuance of indebtedness; and the California Usury Law cannot be applied as a restriction on the

Public Utilities Commission's regulation of such issuances of public utility securities, including its authorization of a reasonable rate of interest.

5. If the usury limitation contained in Article XV of the California Constitution and Usury Law Initiative act is exceeded, but the transaction is authorized by this Commission and the terms are the best SPCC can obtain because of the market conditions, SPCC, its assignees or successors in interest, will have no occasion to and cannot assert any claim or defense under the California Usury Law; further, because of the lawful issuance by SPCC of Notes in compliance with this authorization by the Public Utilities Commission, persons collecting interest on such authorized Notes are not subject to the Usury Law's sanctions.

6. The application should be granted to the extent set forth in the order which follows.

The authority 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.

The following order should be effective on the date of signature and payment of the fee set by PU Code Section 1904(b) to enable SPCC to issue its Notes expeditiously.

O R D E R

IT IS ORDERED that:

1. The participation in the Revolving Credit/Term Loan and the issuance of Promissory Notes (Notes) by Southern Pacific Communications Company (SPCC) in the aggregate principal amount of \$125,000,000 are hereby exempted from the Commission's competitive bidding rule set forth in Decision 38614, dated January 16, 1946, as amended in Case 4761.

2. SPCC may issue Notes in an aggregate principal amount not to exceed \$125,000,000.

3. SPCC shall use the proceeds from the borrowings here authorized for the purposes stated in the application.

4. SPCC is authorized to pay on such Notes 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 Act, if market conditions so require.

5. If SPCC's Notes are issued and sold by private placement, within 30 days after their issuance and sale, SPCC shall file with the Commission a report setting forth the reason the company believes the resulting interest rate and cost of money were advantageous to the company and its ratepayers.

