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NO. 00772.A

ORIGINAL

Decision No. 88716 APR 18 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
)

PACIFIC POWER & LIGHT COMPANY)
)

for an order (1) authorizing Applicant's)
assumption of liability for the performance)
of Black Hills Power and Light Company's)
obligations and liabilities under the Basic)
Agreements in the event of a Black Hills)
default; (2) authorizing Applicant to)
assume the obligations of the Owner Trustee)
under the Bonds and the Indenture following)
a Special Termination Event; (3) authorizing)
Applicant to issue indebtedness having a)
maturity of 180 days or less, to the Owner)
Trustee following a Special Termination)
Event; (4) disclaiming jurisdiction over the)
Owner Trustee, the Indenture Trustee, the)
Owner Participants and the holders of Bonds)
issued under the Indenture; (5) authorizing)
the proposed transactions contemplated by)
the sale, leaseback and repurchase of the)
Wyodak Project; and (6) reaffirming)
Applicant's exemption from certain provisions)
of the Public Utilities Code of California.)

Application No. 57946
(Filed March 24, 1978)

O P I N I O N

Pacific Power & Light Company (Applicant) requests authority to enter into the transactions contemplated by certain agreements to be executed in connection with the leveraged lease of the Wyodak Project (sometimes referred to herein as the Facility), a 330 megawatt coal-fired, air-cooled electric generating facility to be located on a site five miles east of Gillette, Wyoming.

Applicant is a corporation organized on June 16, 1910 under the laws of the State of Maine. It is engaged in business principally as an electric utility in the States of California, Idaho, Montana, Oregon, Washington and Wyoming. In addition, the utility supplies water and steam heat services in communities outside of California.

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The corporation reports, for the year ended December 31, 1977, total operating revenues of \$367,468,709, and net income of \$88,574,897. Its California operations provided 4.7% of the total operating revenues generated in 1977.

Applicant specifically requests authority (1) to assume certain obligations of Black Hills Power and Light Company (Black Hills) in the event of a Black Hills Default, ^{1/} (2) to assume the obligations of The Wyoming National Bank of Casper (the Owner Trustee) under the Bonds and Indenture following a "Special Termination Event", and (3) to issue evidences of indebtedness having a maturity of 180 days or less to the Owner Trustee following a Special Termination Event. Commission authority for the assumption of such obligations is required under Section 830 of the Public Utilities Code and Commission authority for the issuance of such indebtedness is required under Section 823(c) of the Public Utilities Code. Although Applicant is presently exempt from these sections, by Commission Decision No. 84286 dated April 1, 1975, in Applications Nos. 55569 and 55570, both filed on March 17, 1975, it has requested explicit Commission authority, in this proceeding, because of the size of the transaction and its importance to Applicant. Applicant has also requested the Commission to disclaim jurisdiction with respect to the Owner Trustee, the Indenture Trustee, the Owner Participants and holders of the Bonds issued under the Indenture. Section 829 of the Stocks and Security Transactions portion (Article 5, Chapter 4, Part 1, Division 1) of the California Public Utilities Code reads, in part, as follows:

The commission may from time to time by order or rule, and subject to such terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from the provisions of this article if it finds that the application thereof to such public utility or class of public utility is not necessary in the public interest."

1/ All capitalized terms are defined in this opinion or by reference to the application or exhibits attached thereto.

Section 853 contains similar language empowering this Commission to exempt Applicant from the mortgaging or otherwise encumbering provisions of Section 851, which sections are included in Article 6, Chapter 4, Part 1, Division 1 of the California Public Utilities Code.

On May 26, 1976 Applicant and Black Hills entered into an interim construction financing arrangement of the Wyodak Project. As part of the interim financing arrangement, Black Hills and Applicant conveyed their interest in the Wyodak Project to Wyodak Construction Company, Inc. (Construction Company), a wholly owned subsidiary of BEDCO Leasing Company, Inc. (BEDCO) which in turn is a wholly owned subsidiary of Blyth Eastman Dillon & Co. Incorporated (Blyth). Construction Company, Black Hills and Applicant entered into a loan agreement with fifteen banks which banks agreed to loan to Construction Company up to \$215,000,000 to finance construction of the Wyodak Project. To induce the banks to enter into the loan agreement, Applicant and Black Hills agreed to purchase an undivided 90% and 10% interest, respectively, in the Wyodak Project upon completion of construction but prior to operation of the Facility. At the time of their entering into the interim financing arrangement, Applicant and Black Hills anticipated a sale and leaseback of the Facility in a leveraged lease transaction in lieu of Applicant's and Black Hills' purchase of the Wyodak Project from Construction Company. (By a letter to the Commission dated April 6, 1976, Applicant described the interim financing arrangement, and Applicant requested confirmation that the Commission would claim no jurisdiction with respect to the transactions described in the letter. By letter dated April 16, 1976, Commission File No. 004-3-13 the Executive Director of the Commission advised Applicant that it was the opinion of the staff of the Legal Division of the

Commission that the Commission had no jurisdiction under the provisions of Section 851 of the Public Utilities Code to approve or disapprove the sale of Wyodak Project to Construction Company and that the Commission had no jurisdiction pursuant to the provisions of Sections 818 and 830 of said Code to treat Pacific's agreement to repurchase Wyodak Project as a "security" or an "evidence of indebtedness." In this letter the Staff noted that on April 1, 1975, by Decision No. 84286, the Commission exempted Pacific from the application of, among other things, Sections 818 and 830 of the Public Utilities Code.)

Applicant and Black Hills propose to enter into a "leveraged lease"^{2/} transaction in which they would cause Construction Company to sell the Facility to a trust created for the beneficial interest of four major financial institutions; namely, Manufacturers Hanover Leasing Corporation, the Prudential Insurance Company of America, The Travelers Insurance Company and Merrill Lynch Leasing, Inc. (Owner Participants). The Owner Trustee will hold legal title to the Facility and lease the Facility to Applicant and Black Hills (collectively referred to as Lessees). Approximately 26% of the funds for the acquisition of the Facility will be provided by the Owner Participants, and approximately 70% of the funds will be provided by eighteen insurance companies (Loan Participants). It is anticipated that the remaining 4% of the funds, approximately \$10.4 million, will be supplied pursuant to the Pollution Control Equipment Finance Agreement by Campbell County, Wyoming (County) through the sale of pollution control bonds.

A diagram attached to the Application as Exhibit C-1 indicates the flow of funds from the investors to the Owner Trustee who will make the funds available to Lessees and Construction

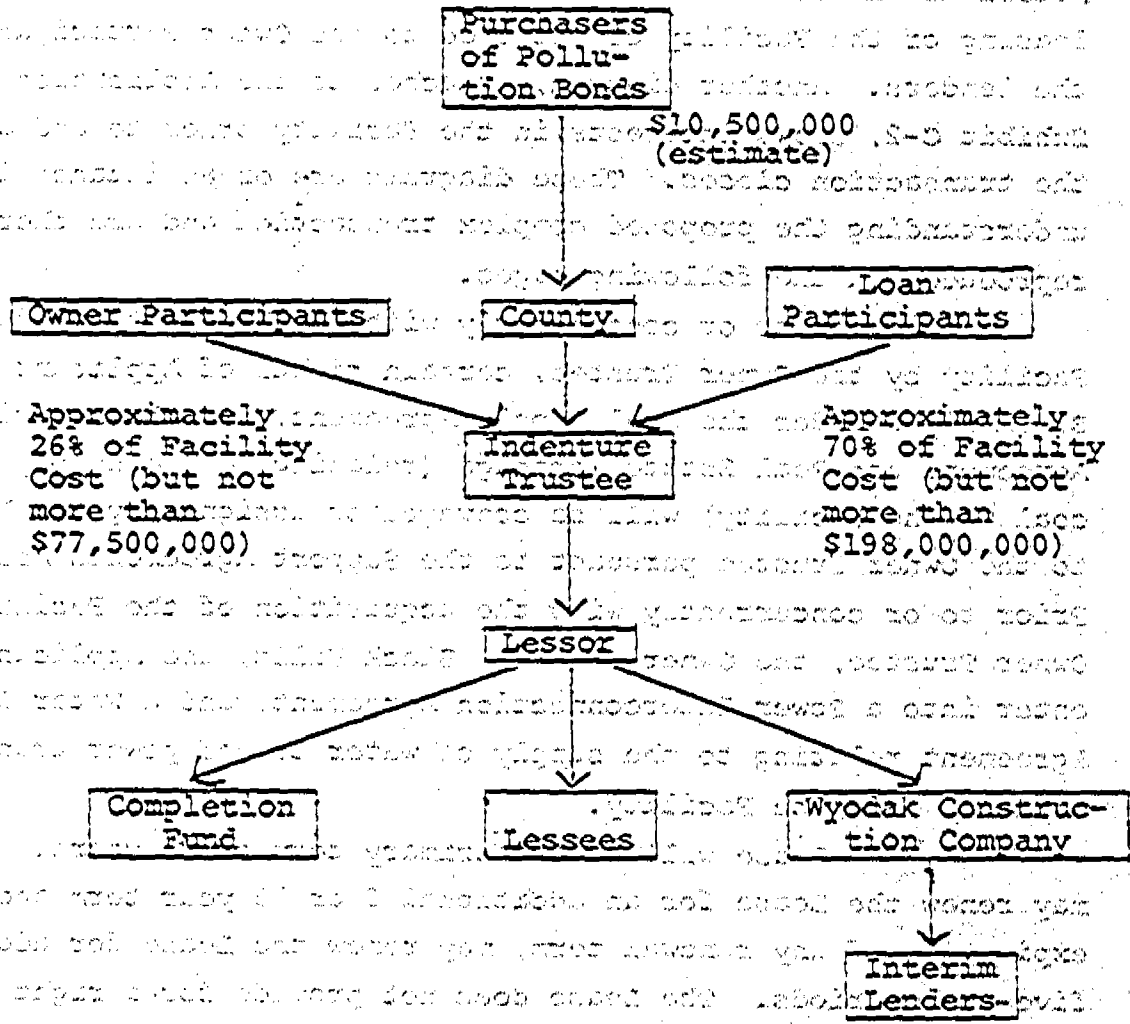
^{2/} One of the characteristics of a leveraged lease is that there are three parties involved, a lessee, a lessor, and a long-term creditor.

Company to retire the interim borrowings and for reimbursement of other expenses incurred in constructing, selling and leasing the Facility. Remaining funds will be placed in an escrow fund (Completion Fund) until ultimately disbursed to suppliers of materials and services in connection with the construction and leasing of the Facility or returned to the Owner Participants and the lenders. Another diagram, attached to the Application as Exhibit C-2, shows interests in the Facility prior to and after the transaction closes. These diagrams are of assistance in understanding the proposed complex transaction and are therefore reproduced on the following pages.

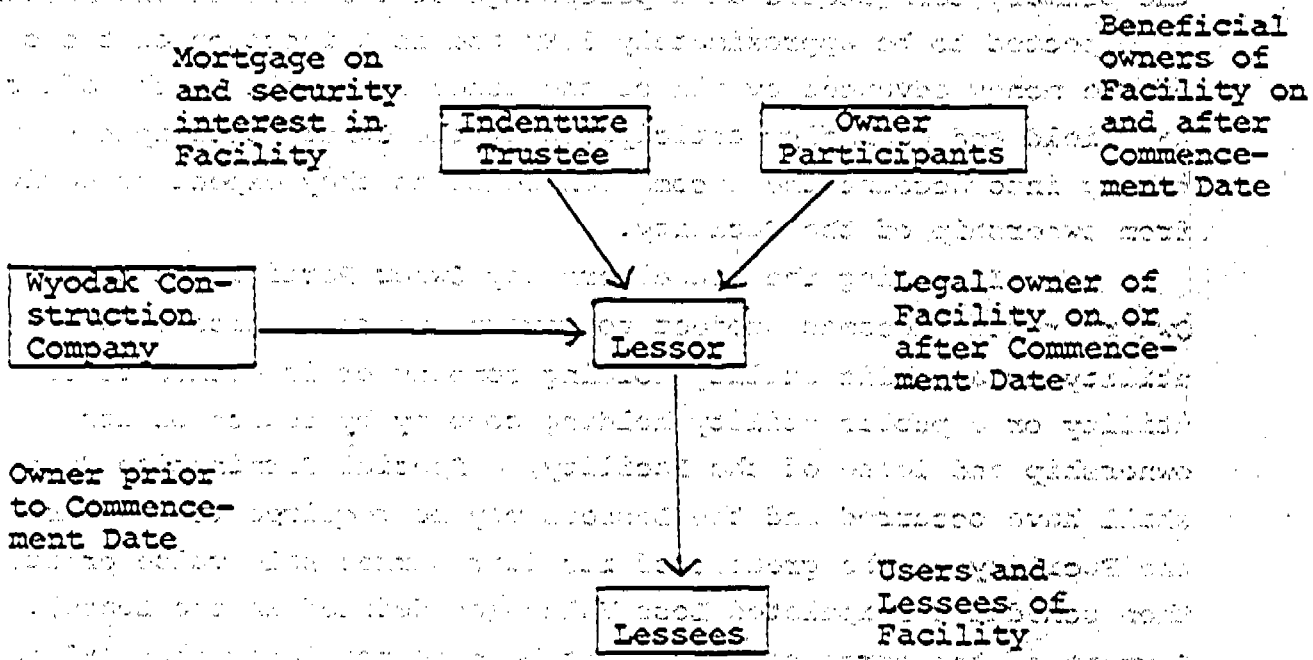
Prior to or concurrently with the acquisition of the Facility by the Owner Trustee, certain rights of Applicant and Black Hills under the Coal Supply Agreement, and the Security Agreement and Real Estate Mortgage (relating to the supply of coal to the Facility) will be conveyed or assigned by the Lessees to the Owner Trustee pursuant to the Support Agreements Assignment. Prior to or concurrently with the acquisition of the Facility by the Owner Trustee, the Owner Trustee, Black Hills, and Applicant will enter into a Power Interconnection Agreement, and a Water Rights Agreement relating to the supply of water to and power transfer capacity from the Facility.

The Lease will have a primary term of 25 years. Lessees may renew the Lease for an additional 5 or 10 year term and at the expiration of any renewal term, may renew the Lease for additional five-year periods. The Lease does not provide for a right to renew for more than 20 years after the expiration of the initial term. Lessees have limited options to purchase the Facility at not less than the Facility's then fair market sale value.

THE FLOW OF FUNDS OF THE PROJECT...
 The flow of funds for the project is as follows:
 1. Purchasers of Pollution Bonds (estimated \$10,500,000)
 2. Loan Participants (approximately 70% of facility cost, but not more than \$198,000,000)
 3. Owner Participants (approximately 26% of facility cost, but not more than \$77,500,000)



INTERESTS IN THE FACILITY



The basic rent for the primary term under the Lease is payable in arrears in 50 consecutive semiannual installments and is equal to specified percentages of the various cost components of the Project (land, plant, structures and the Completion Fund). The basic rent during each renewal term will be the fair market rental value of the Facility as of the first day of the renewal term. The average semiannual lease rate to be paid by the Lessees during the primary term stated as a percentage of the cost of the Facility is expected to be approximately 3.9% and is a function of the cost of the money advanced by all of the lenders, as well as the after-tax yield and cash flow anticipated by the Owner Participants after taking into account the income tax benefits they expect to derive from ownership of the Facility.

If during the Lease term any Owner Participant or the Owner Trustee becomes subject to government regulation as a utility or a public utility holding company or is deemed to be a utility or a public utility holding company by reason of its ownership and lease of the Facility, a Special Termination Event shall have occurred and the Lessees may be required to purchase the Facility at the greater of its fair market sale value or its then scheduled Stipulated Loss Value (as defined in the Lease). Payment of the purchase price must be made not later than 180 days following the Facility Purchase Date (as defined in the Participation Agreement). The Participation Agreement and the Lease permit Applicant alone to acquire the Facility and to assume the obligations of the Owner Trustee under the Bonds and the Indenture pursuant to a Bond and Indenture Assumption Agreement (Bond Assumption Agreement). In the event of such assumption, the cash purchase price will be reduced by an amount equal to the obligations so assumed.

To avoid paying the entire purchase price of the Facility following a Special Termination Date immediately on the Facility Purchase Date, Applicant may issue evidences of indebtedness to pay to the Owner Trustee on or before 180 days after the Facility Purchase Date the balance of such purchase price plus interest at a rate yet to be negotiated on the unpaid portion. If such indebtedness is not incurred, Applicant would be required to pay in cash immediately following the Special Termination Date that portion of the purchase price not satisfied by its assumption of the Bonds issued by the Owner Trustee.

Pursuant to the Participation Agreement, Lessees shall pay to each Original Owner Participant a standby fee for the period from February 10, 1977 to and including either the Closing Date or the date of termination or March 15, 1979, computed at the rate of $1/2$ of 1% per annum on the amount of Original Commitment. Lessees shall also pay to each Loan Participant a standby fee from July 1, 1978 to and including either the Closing Date or the date of termination or March 15, 1979, computed at the rate of $1/2$ of 1% per annum on the maximum amount of each Loan Participant's commitment.

Applicant and Black Hills will also pay to Blyth a placement fee of $3/8$ of 1% on the first \$50 million of commitments, $11/32$ of 1% on the next \$50 million and $1/4$ of 1% on the amount of commitments exceeding \$100 million, i.e., a maximum fee of up to \$798,250 on commitments aggregating up to \$275,550,000.

Applicant alleges that the proposed execution and delivery of Basic Agreements, the assumption of Black Hills' obligations in the event of a Black Hills Default, the assumption of the obligations of the Owner Trustee under the Bonds and the Indenture pursuant to the Bond Assumption Agreement, and the issuance of its

... evidence of indebtedness having a maturity of 180 days or less following a Special Termination Event, are necessary to afford Applicant the benefits derived from leasing the Facility and obtaining the lowest cost of financing available from outside sources.

The Operations Division and the Finance Division of the Commission have reviewed Applicant's request and have no objection to its execution and delivery of the Basic Agreements. The staff, however, reserves the right to review further all aspects of the Wyodak Project in measuring the reasonableness of charges allocable to California consumers in any future rate proceeding.

The Commission has considered this matter and finds that:

1. The execution and delivery of the Basic Agreements and Applicant's performance of the transactions contemplated thereby would not be adverse to the public interest.
2. Commission approval is required under Section 823(c) of the Public Utilities Code, in order to issue evidences of indebtedness having a maturity of 180 days or less to finance the purchase of the Facility pursuant to the Lease and Participation Agreement.
3. Commission approval is required under Section 830 of the Public Utilities Code in order to assume, pursuant to the Bond Assumption Agreement, liability for the obligations of the Owner Trustee under the Bonds and the Indenture.
4. Applicant should be exempted from all provisions of Article 5 and the mortgaging or otherwise encumbering provisions of Article 6, Chapter 4, Part 1, Division 1 of the California Public Utilities Code pursuant to the Commission's Decision No. 84286 dated April 1, 1975.

On the basis of the above findings, the Commission concludes that the Application should be granted. There is no known opposition to the Application and there is no reason not to grant the authority requested. Furthermore, we conclude there is no reason not to disclaim jurisdiction over these parties to the transactions which are not public utilities and, we find that such disclaimer is necessary to facilitate the proposed lease transaction. A public hearing is not necessary. In order that the financing may be completed in an expeditious manner, the effective date of this order will be the date hereof.

O R D E R

IT IS ORDERED that:

1. Pacific Power & Light Company may assume, pursuant to the Assumption Agreement, the obligations of Black Hills in the event of a Black Hills Default.
2. Pacific Power & Light Company may assume, pursuant to the Bond Assumption Agreement, liability for the obligations of the Owner Trustee under the Bonds and the Indenture.
3. Pacific Power & Light Company may, under Section 823(c) of the Public Utilities Code, issue evidences of indebtedness having a maturity of 180 days or less to finance purchase of the Facility pursuant to the Lease and Participation Agreement.
4. Pacific Power & Light Company may execute and deliver the Basic Agreements and perform the transactions contemplated thereby.
5. The Commission disclaims jurisdiction over the Owner Trustee, the Owner Participants, the holders of Bonds issued under the Indenture, and the Indenture Trustee in connection with their participation in the transactions contemplated by the Basic Agreements.

6. Except to the extent the Commission has exercised jurisdiction over the Application and the transactions contemplated by the Basic Agreements, Pacific Power & Light Company is and shall be exempted from all provisions of Article 5 and the mortgaging or otherwise encumbering provisions of Article 6, Chapter 4, Part 1, Division 1 of the California Public Utilities Code pursuant to the Commission's Decision No. 84286 dated April 1, 1975.

The effective date of this order is the date hereof. Dated at San Francisco, California, this 18th day of April, 1978.

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Robert Bateman
President
William [Signature]
[Signature]

Commissioners
Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Clair T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.