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Decision No. 89674 NOV 28 1978

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND	)	
ELECTRIC COMPANY authorizing it	)	Application No. 58406
to assume liabilities, not to	)	(Filed October 12, 1978)
exceed \$200,000,000 in aggregate	)	
principal amount in Canadian	)	
and/or U.S. funds, as guarantor	)	
on certain promissory notes of	)	
ALBERTA AND SOUTHERN GAS CO. LTD.	)	

O P I N I O N

Pacific Gas and Electric Company (PGandE) pursuant to Section 830 of the Public Utilities Code, requests authority to assume liabilities, not to exceed \$200,000,000 in aggregate principal amount in Canadian and/or U.S. funds, as guarantor on certain promissory notes and standby bank lines of credit of its wholly-owned Canadian subsidiary Alberta and Southern Gas Co. Ltd. (A&S).

According to the application, A&S is an Alberta Company, having an office and carrying on business in the City of Calgary in the Province of Alberta, Canada. Its principal function is to purchase gas from producers in Alberta, arrange for transportation of the gas, by Alberta Natural Gas Company Ltd. (ANG) and others, to the international boundary where the bulk of the gas is delivered and sold to Pacific Gas Transmission Company (PGT), which in turn delivers and sells the natural gas to PGandE at the California-Oregon boundary. A&S does not own any pipeline facilities and has only nominal capitalization.

The application indicates that A&S has currently in effect over 400 gas purchase contracts with Alberta producers for the purchase of natural gas. The majority of the purchase contracts contain clauses which require A&S to make payments to the producer in the event A&S does not request and take, if available, stipulated minimum annual volumes of gas during a contract year. With the exception of four contracts involving small amounts of gas, gas purchase contracts containing take or pay clauses stipulate that A&S shall have the right during the remaining term of the contract to make up the deficiency gas paid for but not taken. It is considered unlikely that such deficiency gas will not be taken during the remaining term of the contracts and export licenses.

The application shows that A&S in order to enable it to satisfy its take or pay obligation for the contract year 1977-78, has borrowed approximately \$34,000,000. A&S currently forecasts that the take or pay obligations will peak at the end of the 1980-81 contract year at approximately \$160,000,000 and that all of the deficiency gas will have been recovered at the end of the 1984-85 contract year.

The application also states that A&S has taken various measures to minimize the take or pay payments. Although A&S has never made any official announcement, contracting for additional gas supply effectively ceased in mid 1975. In regard to existing contracts, A&S is operating within the constraints of its gas purchase contracts to minimize its take or pay obligations. A&S has also endeavored to reduce take or pay obligations through special marketing arrangements with other shippers.

In order to finance the take or pay obligations at the lowest cost, A&S proposes to issue and sell short-term promissory notes in the Canadian commercial paper market supported by a standby bank line of credit from the Bank of Montreal (Bank). The initial line of credit negotiated with the Bank in the amount of \$50,000,000 was sufficient to satisfy A&S's current take or pay liabilities. Based on their forecast of future deficiencies in gas demand, A&S may need to finance take or pay obligations in excess of \$150,000,000.

A&S, through Canadian investment bankers, McLeod Young Weir Limited and Dominion Securities Limited, will issue short-term promissory notes with maturities up to 365 days. In order to be marketable, these securities will have to be unconditionally guaranteed by PGandE as to the principal amount and interest. Such guarantee will be endorsed on each note. A copy of the proposed forms of Notes and the Guarantee are attached to the application as Exhibit D.

The standby bank line of credit would be used only in the event that the commercial paper market is not fully utilized. The basic terms of the initial line of credit are as follows:

1. A \$50,000,000 (Canadian) revolving loan available by way of direct advances in Canadian and/or U.S. funds and/or Bankers Acceptances.
2. The interest rate shall be floating, payable monthly in arrears, and depends on the type of loan:
  - (a) Canadian - Bank of Montreal prime.
  - (b) U.S. - Bank of Montreal Base Rate, or London Interbank Rate plus 1/2% based on 3 or 6 months roll over basis.
  - (c) Bankers Acceptances - 1/2% for terms 10 through 180 days.

3. The terms will be subject to review by the Bank at any time, and at least on an annual basis.
4. A&S shall pay a nominal standby fee for maintaining a line of credit.
5. As a condition of the extension of credit to A&S, the Bank will require the execution by PGandE of an unconditional guarantee in favor of the Bank in the aggregate amount sufficient to cover all loans made pursuant to the agreement with A&S. A copy of the proposed form of Guarantee is attached to the application as Exhibit E. In addition, the Bank will require PGandE to execute a letter of undertaking to pay interest and/or fees on the loan monthly, to the extent and in the event A&S is unable to do so. A copy of the proposed form of Letter of Undertaking is attached to the application as Exhibit F.

PGandE believes that it is in its interest and the interest of its customers for A&S to meet its take or pay obligations since approximately 48% of PGandE's total supply of natural gas is Canadian gas acquired through A&S. By fulfilling the take or pay obligations A&S will be able to continue to provide a major source of PGandE's gas supply.

The application further indicates that a PGandE guarantee of A&S's short-term promissory notes and standby bank line of credit is the least costly method of financing the take or pay obligations. Since A&S has only relatively nominal assets and since it is wholly owned by PGandE, it is reasonable for the purchasers of the short-term promissory notes and the Bank to obtain assurance of payment from PGandE in the manner provided for in the form of the Guarantees.

The Commission's policy on the use of proceeds from utility debt and equity issues being applied to benefit subsidiaries is set forth in Decision No. 85468, dated October 3, 1978 in The Pacific Telephone and Telegraph Company's (TPT&T) Application No. 58310 and in Decision No. 89631, dated November 9, 1978 in PGandE's Application No. 58338. In those Decisions we discussed the use of debenture proceeds to benefit a wholly-owned utility subsidiary. In Decision No. 89631 we said:

"We prohibited TPT&T from using the debenture proceeds to finance Bell Telephone Company of Nevada (Nevada Bell). PGandE has a number of subsidiaries, some utility operations and others not. However, all of PGandE's subsidiaries are substantially engaged in activity that assists PGandE in meeting its obligation to supply energy in California. Accordingly, it is apparent that the relationship between PGandE and its subsidiaries, compared to that of TPT&T and Nevada Bell, is strikingly different. Nevada Bell does not exist to aid TPT&T in providing California intrastate telephone service."

"We are of the opinion that it was not the intent of the Legislature that utilities encumber their utility property or issue indebtedness to secure funds for: 1) nonutility subsidiaries that make no contribution to assist the utility in maintaining or improving its California service; or 2) utility subsidiaries operating outside of California and which provide no service or benefit to California's utility users."

"The regulatory scheme, with very specific statutory provisions on the purposes and conditions for utility indebtedness (Section 816 et seq. of the Public Utilities Code), illustrates an overall legislative concern that California have financially sound utilities to serve the public. Accordingly, public utilities, which operate as franchised monopolies to serve the public, are not allowed the same flexibility to incur indebtedness as unregulated businesses; or, put another way, they

are not allowed the same latitude to make financially imprudent judgments (for which the captive ratepayer could bear the consequences). Issuing indebtedness, then, for a utility is a special privilege because of the public trust that a public utility serves. Section 817 sets forth the purposes for which a public utility may issue indebtedness or encumber its dedicated property. Those guidelines, to be administered by this Commission, provide some assurance that the financial integrity of utilities will not be jeopardized through unfettered use of their property or credit to procure loans, the proceeds of which are used for imprudent investment in an enterprise wholly unrelated to utility activity."

Given the nature and functions of PGandE's subsidiaries, and A&S in particular, we need not prohibit the use of PGandE's credit to guarantee the liabilities (not to exceed \$200,000,000) of A&S.

PGandE is concerned that the guaranteed loans to A&S will bear interest at rates to be determined at the time of issuing the notes, which rates will fluctuate and may from time to time exceed 10 percent per annum. A rate in excess of 10 percent would exceed the limitation contained in Article XV, Section 1 (Interest Rates) of the California Constitution. PGandE, therefore, requests that the Commission adopt appropriate findings, conclusions and orders consistent with Decisions Nos. 83411 and 84929,<sup>1/</sup> to the effect that the Commission has the necessary authority to regulate and authorize the utility's proposed Guarantees irrespective of the limitations otherwise imposed by the California Usury Law.

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<sup>1/</sup> Decision No. 83411, dated September 4, 1974 in Application No. 55080 - Southern California Gas Company.  
Decision No. 84929, dated September 23, 1975 in Application No. 55829 - Pacific Gas and Electric Company.

In addition the application indicates that the proposed Guarantees have been situated and structured in the Province of Alberta, Canada, and provide that PGandE's unconditional Guarantee in favor of the Bank and the purchasers of the notes shall be governed by and construed in accordance with the laws of said Province.

In view of the fact that Bank and A&S are Canadian entities, that the proposed short-term notes will be issued and sold in the Canadian commercial paper market, and that the funds advanced under the lines of credit will be advanced and spent in Canada, as required by the Bank, this Commission does not object to PGandE situating and structuring the guarantees in the Province of Alberta, Canada.

In Decisions Nos. 83411 and 84929, among others, the Commission held that in exercising its authority to regulate public utility debt securities, it 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 in connection with the proposed Guarantees, but it is determined that the guaranteed loans are the best A&S can obtain because of market conditions, then the public interest requires this Commission to authorize the Guarantees.<sup>2/</sup>

The Operations Division and the Utilities Division have reviewed the application and concur with the Finance Division that PGandE's request is not unreasonable.

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<sup>2/</sup> The Commission on page 8 of Decision No. 83411 discusses the legal rationale and judicial basis of this holding.

After consideration the Commission finds that:

1. The proposed short-term promissory notes which might be issued by A&S and the standby line of credit between A&S and the Bank, pursuant to which PGandE seeks to assume certain liabilities as guarantor, may, because of prevailing market conditions, contain interest rate provisions which from time to time exceed the limitations provided in Article XV, Section 1 (Interest Rates) of the California Constitution (the California Usury Law). The public interest requires that this Commission authorize the execution of said Guarantees irrespective of limitations contained in the California Usury Law.
2. 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.
3. The Legislature has conferred upon this Commission the authority to regulate the creation by public utilities of all evidences of indebtedness, including the assumption by public utilities of any obligation or liability as guarantor, and to prescribe restrictions and conditions as it deems reasonable and necessary (Sections 816, et seq. of the Public Utilities Code).
4. 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 creation by public utilities of all evidences of indebtedness, including the assumption by public utilities of any obligation or liability as guarantor, and the California Usury Law cannot be applied as a restriction on this Commission's regulation of such guarantees by public utilities.



5. If the usury limitation contained in Article XV, Section 1 of the California Constitution and the Usury Law Initiative Act is exceeded, but the transaction is authorized by this Commission, applicant utility, 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 execution and issuance by PGandE of the Guarantees in compliance with authorization by this Commission, persons collecting interest pursuant to PGandE's obligations and liabilities as guarantor are not subject to the Usury Law sanctions.
6. This Commission does not object to PGandE situating and structuring the Guarantees in the Province of Alberta, Canada.

There is no known opposition and there is no reason to delay granting the authority requested in the application. On the basis of the foregoing findings we conclude that the application should be granted. A public hearing is not necessary. As set forth in said Decisions Nos. 83411 and 85983, among others, we further conclude that the usury limitations on interest contained in Article XV, Section 1, of the California Constitution and the Usury Law Initiative Act do not apply to the issuance of public utility securities, including evidences of indebtedness, such as Guarantees, lawfully authorized by the Public Utilities Commission. The authorization herein granted is for the purposes of this proceeding only, and is not construed as indicative of the amounts to be included in proceedings for the determination of just and reasonable rates.

PGandE is hereby placed on notice that if the Commission believes that the interest rate pertaining to the proposed loans by A&S will result in an excessive cost of gas to PGandE, it will take into consideration in rate proceedings only that which it deems reasonable.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company may enter into and carry out the provisions of the Guarantees and Letter of Undertaking with the purchasers of the short-term promissory notes of Alberta and Southern Gas Co. Ltd. and the Bank of Montreal under which the liability of Pacific Gas and Electric Company is limited to an aggregate principal amount not to exceed \$200,000,000 in Canadian and/or U.S. funds, substantially in the form of Exhibits D, E and F, attached to the application.
2. Interest rates applicable to Pacific Gas and Electric Company's obligations and liabilities as guarantor pursuant to the Guarantees and the Letter of Undertaking may exceed the maximum annual interest rate otherwise permitted under the California Usury Law, as contained in Article XV, Section 1 (Interest Rates) of the California Constitution and the Usury Law Initiative Act when and as required in the short-term promissory notes issued by Alberta and Southern Gas Co. Ltd. or by the agreement between Alberta and Southern Gas Co. Ltd. and the Bank of Montreal.
3. Pacific Gas and Electric Company is authorized to situate and structure the Guarantees in the Province of Alberta, Canada.
4. Neither Pacific Gas and Electric Company, 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 payable by Pacific Gas and Electric Company pursuant to its obligations and liabilities as guarantor 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.

5. The effective date of this order is the date hereof.

Dated at San Francisco, California this 28th day  
of NOVEMBER, 1978.

Commissioner Vernon L. Sturgeon, being  
necessarily absent, did not participate  
in the disposition of this proceeding.

Robert B. Brown  
President  
William J. Lyons  
Robert D. Lusk  
Clare T. DeSilva  
Commissioners