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Decision No. 89785 . DEC 19 1978

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
GEOHERMAL GENERATION, INC. for)
Authority to Lease East Mesa Electric)
Generating Equipment and Related)
Facilities.)

Application No. 58512
(Filed December 8, 1978)

O P I N I O N

On December 8, 1978, Geothermal Generation, Inc. (GGI), filed an application seeking an ex parte order from the Public Utilities Commission of the State of California (Commission), pursuant to Section 246 of the Public Utilities Code approving the terms of and authorizing the execution of a Lease Agreement in connection with the lease of a 48 (net) megawatt geothermal electric generating plant and related facilities.

GGI was formed to facilitate geothermal development in Southern California. In pursuit of this goal GGI proposes to become the vehicle to facilitate the financing of a geothermal generating facility located at East Mesa in Imperial County. This project will be one of the first commercial sized geothermal generating facilities constructed in the Imperial Valley.

The subject electric equipment and facilities are designed with a base load capacity of 48 (net) megawatt (64 MW gross) and will be located at East Mesa near Holtville, Imperial County, California. The construction of the subject electric equipment and facilities is estimated to commence in February 1979 with completion of the first phase, consisting of a 10 MW (gross) turbine generator with related equipment, scheduled by year end 1979. It is contemplated that the second phase consisting of a 54 MW (gross) turbine generator set and related facilities will be completed one year later. The turbine generator will be powered by geothermal heat purchased from Republic Geothermal, Inc.

When constructed, GGI will operate and maintain the equipment and facilities, will purchase geothermal heat to fuel electric generation and will sell the net electric output of the facilities, to one or more electric distribution entities for resale to the public. GGI may also sell electric energy directly to the public. GGI dedicates its facilities to public utility service. Therefore, GGI is a public utility within the meaning of Section 216 of the Public Utilities Code of the State of California.

In order to facilitate the financing of the East Mesa geothermal project GGI proposes to enter into a Lease, substantially in the form attached as Exhibit "B" to the application, as lessee of electric generating equipment and related facilities as described above. An equity investor will advance sufficient funds to initiate construction of the facilities and pursuant to the lease agreement agree to lease said facilities to GGI on a net lease basis. The equity investor (leveraged lessor) will apply for Federal government loan guarantees under P.L. 93-410 in order to secure the debt portion of the financing. This law allows the Federal government to provide loan guarantees for debt investors in geothermal projects of up to 75% of the total project cost.

The Commission's approval of the lease transaction is required in order to provide certain exemptions to the equity investor (leveraged lessor).

The California Legislature recently amended the Public Utilities Code by adding Section 246, which authorizes the Commission to approve the terms of a lease between a lessor of an electric utility plant and a public utility, grants the lessor

exemption from Section 216 of the Public Utilities Code, and further provides for Commission approval of such a lease for the purpose of qualifying the lessor for exemption by the Securities and Exchange Commission of the United States from the Federal Public Utility Holding Company Act of 1935.

GGI will not issue any stock or other evidence of interest or ownership in connection with this transaction, nor will the Lease be regarded as a bond, note or other evidence of indebtedness. GGI will not, through its lease payments, acquire any ownership, equity or reversionary interest in the subject facilities and equipment.

GGI filed this application on December 8, 1978 requesting expeditious approval. GGI points out that the provisions of Section 246 of the Public Utilities Code expire January 1, 1979. GGI further alleges that commencement of construction of the equipment and facilities is dependent on successful equity funding by the Lease's lessor and that this financing is in turn dependent upon compliance with the regulations of the Securities and Exchange Commission (17 C.F.R. 250.7 et seq.) in regard to qualification for exemption from the Public Utilities Holding Company Act of 1935. Approval of the Lease pursuant to Section 246 of the Public Utilities Code is a prerequisite to such an exemption.

The Finance Division staff has reviewed Application No. 58512 and recommends that the requested approval under Section 246 be granted and GGI be authorized to enter into the Lease in substantially the same form as presented in the application.

The Commission has considered this matter and finds that:

1. Geothermal Generation, Inc. is a public utility within the meaning of Section 216 of the Public Utilities Code.
2. The Lease Agreement constitutes a true lease and GGI is not a guarantor or issuer of indebtedness under Sections 816, 817, 818, 830 or 851 of the Public Utilities Code.
3. The terms of the Lease Agreement should be approved as contemplated in Section 246 of the Public Utilities Code. A public hearing is not necessary.

On the basis of the foregoing findings we conclude that the application should be granted and this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The terms of the Lease Agreement are approved and Geothermal Generation, Inc., a public utility, is hereby authorized to enter into such Lease Agreement in substantially the same form as set forth in Exhibit "B" to the application, for purposes of qualification under Section 246 of the Public Utilities Code.
2. Such Lease is approved for the purpose of qualifying the lessor for an exemption by the Securities and Exchange Commission of the United States from the Federal Public Utility Holding Company Act of 1935.

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The effective date of this order is the date hereof.

Dated at San Francisco, California, this 19th day
of DECEMBER, 1978.

Robert Batminal

President

William S. Brown, Jr.

Vernon L. Stinson

Robert W. Givens

Clair T. Smith

Commissioners