

Decision No. 90381 JUN 5 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY to issue and sell on a negotiated basis not exceeding \$200,000,000 aggregate principal amount of its First and Refunding Mortgage Bonds, Series 79A due August 1, 2012.)	Application No. 58798
)	(Filed April 10, 1979)
)	and
)	Amendment
)	(Filed April 24, 1979)

O P I N I O N

Pacific Gas and Electric Company (PGandE) seeks an order granting it an exemption from the Commission's competitive bidding rule, and authorizing it (a) to issue and sell not exceeding \$200,000,000 aggregate principal amount of its First and Refunding Bonds, Series 79A, due August 1, 2012, and (b) to execute and deliver a Twelfth Supplemental Indenture.

PGandE requests this authority pursuant to Sections 816 through 818 of the Public Utilities Code. Notices of the filings of the application and amendment were published on the Commission's Daily Calendars of April 12 and April 26, 1979, respectively.

The bonds to be dated June 1, 1979, would be secured by PGandE's First and Refunding Mortgage as amended by eleven supplemental indentures and as further supplemented by a proposed Twelfth Supplemental Indenture and would be subject to a restricted redemption provision until June 1, 1984. The utility alleges that the restriction upon early redemption would result in securing funds at a lower interest cost than would otherwise be possible.

PGandE proposes to issue and sell the bonds on a negotiated basis through a nationwide group of underwriters who will agree to purchase all of the bonds pursuant to an underwriting agreement to be entered into between PGandE and the representatives

of the several underwriters. The final terms of the underwriting agreement and other terms of the proposed offering, including the price of the bonds, the interest rate, and other redemption provisions, and the underwriting commissions to be paid, will be determined by negotiation between PGandE and the underwriters shortly before the proposed public offering.

Proceeds from the sale (exclusive of accrued interest) would be used to reimburse the treasury for capital expenditures and thereafter to repay a portion of outstanding short-term notes issued for the purpose of temporarily financing additions to utility plant. Accrued interest would be used for general corporate purposes.

As of December 31, 1978, the outstanding balance of short-term notes was \$38,990,000 and unreimbursed capital expenditures amounted to \$1,122,375,000 as shown in the following summary:

	<u>Thousands of Dollars</u>
Unreimbursed capital expenditures at August 31, 1978, per Exhibit B in Application No. 58463	\$926,353
<u>Additions:</u>	
Net capital expenditures during the period September 1, 1978, to December 31, 1978, as reported in the monthly report to the California Public Utilities Commission	\$267,830
Bonds matured or purchased for sinking fund:	
Purchased for sinking fund - at cost	14,296
Payments of bank loans and notes payable	<u>195,207</u>
Total Additions	<u>477,333</u>
Subtotal	1,403,686

Deductions:

Reimbursement received:

Bank loans and notes payable	195,147	
Common stock - CPUC Decision No. 87545, dated July 6, 1977, for 2,000,000 shares and common stock - CPUC Decision No. 88712, dated February 28, 1978, for 2,000,000 shares (786,940 shares sold)	18,391	
Bonds - Pollution Control for 1978 - CPUC Decision No. 89673, dated November 28, 1978	2,870	
Accumulated provision for depreciation - increase	64,903	
Total Deductions		<u>281,311</u>
Unreimbursed capital expenditures at December 31, 1978		<u>\$1,122,375</u>

As of February 28, 1979, the unexpended balance of General Manager's authorizations for capital additions and improvements to PGandE's properties under construction amounted to \$2,176,526,592. The estimated cost of such capital outlays for the year 1979 is \$975,000,000.

PGandE's capital ratios as of December 31, 1978, and as adjusted to give effect to the proposed bonds, as well as to the \$175,000,000 aggregate principal amount of the Serial 9-3/8% Series A through T Bonds issued in January and April, 1979,^{1/} are set forth below:

	<u>December 31, 1978</u>	<u>Pro Forma</u>
Long-Term Debt	45.0%	47.7%
Preferred Stock	14.8	14.0
Common Equity	<u>40.2</u>	<u>38.3</u>
Total	<u>100.0%</u>	<u>100.0%</u>

^{1/} Authorized by Decision No. 89631 of November 9, 1978, and supplemented by Decision No. 89820 of January 4, 1979, both in Application No. 58838.

PGandE's reasons for requesting exemption from the competitive bidding requirements as set forth in the application are as follows:

- (1) The continued uncertainty in the financial markets makes it desirable to have the maximum flexibility provided by a negotiated offering to take advantage of short-term changes in the interest rate and market conditions and, if necessary, to adjust the terms of the proposed issue, including the principal amount, and maturity date(s) in response to the requirements of the market at the time of the offering. The flexibility of timing and terms afforded by a negotiated underwriting will increase the likelihood of successfully selling the Bonds even if interest rates exceed 10% at the time of public offering.
- (2) Competitive bidding divides the shrinking investment banking community into several competing selling efforts. 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 sales strength is lost.
- (3) The current unstable condition of the bond market makes essential pre-offering marketing efforts by the prospective underwriters. Investment bankers associated with the negotiating group in a negotiated underwriting are in a position to engage in such efforts, but members of a bidding group are not. Such efforts, together with the greater flexibility in timing and terms, can result in a lower cost of money through a negotiated underwriting than would be obtained if the offering were made by means of competitive bidding."

Although a negotiated sale may allow more flexibility in marketing the proposed bonds and facilitate the sale with less cost to PGandE, a negotiated sale is not always necessarily in the public interest. This decision is not intended to modify the competitive bidding rule as initially set out in Decision No. 38614 (46 Cal. R.C. 281 (1946)), and as amended by the Commission in subsequent decisions in Case No. 4761.

PGandE intends to situate and structure the proposed issuance and sale of its Series 79A Bonds in the State of New York without restricting the market for such bonds to areas outside of California. Inasmuch as PGandE's proposal does not operate to restrict the potential bond market to the detriment of PGandE or its ratepayers, we are not opposed to such situating and structuring of the proposed issuance and sale. In this connection Decision No. 83411, dated September 4, 1974, in Application No. 55080 (Southern California Gas Company), Decision No. 84392, dated April 29, 1975, in Application No. 55522 (San Diego Gas & Electric Company), and Decision No. 85983, dated June 22, 1976, in Application No. 56490 (San Diego Gas & Electric Company), among others, hold that this Commission in exercising its authority to regulate public utility debt securities 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 but it is determined that the transaction is the best the utility can obtain because of market conditions, then the public interest requires this Commission to authorize the issuance and sale of the debt instruments.

The Finance Division and the Operations Division have reviewed the application and conclude that the proposed bond sale is necessary to reimburse the treasury for capital expenditures and to refund short-term notes issued for temporary financing of construction.

Findings and Conclusions

1. PGandE is a California corporation operating under the jurisdiction of this Commission.
2. The proposed bond issue is for proper purposes.
3. The proposed restricted redemption provision is reasonable.

4. PGandE has need for external funds for the purposes set forth in the application.
5. The money, property or labor to be procured or paid for by the issue of the bonds herein authorized is reasonably required for the purposes specified herein, which purposes, except as otherwise authorized for accrued interest, are not, in whole or in part, reasonably chargeable to operating expenses or to income.
6. The proposed Twelfth Supplemental Indenture would not be adverse to the public interest.
7. The sale of the proposed bonds should not be required to be through competitive bidding.
8. If prevailing market conditions necessitate that PGandE's proposed bonds be issued and sold with a rate of interest exceeding the limitations provided in Article XV, Section 1 of the California Constitution, then the public interest requires that this Commission authorize said issuance and sale irrespective of limitations contained in the California Usury Law.
9. 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.
10. The Legislature has conferred upon this Commission the authority to regulate the issuance of public utility securities, including evidences of indebtedness, and to prescribe restrictions and conditions as it seems reasonable and necessary (Sections 816 et seq. of the Public Utilities Code).
11. 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 issuance of public utility securities, including evidences of indebtedness, and the California Usury Law cannot be applied as a restriction on this Commission's regulation of such issuances of public utility securities, including the establishment of a reasonable rate of interest.

12. In addition to the plenary powers granted to the Legislature by the California Constitution pursuant to which the Legislature conferred upon this Commission exclusive authority to regulate the issuance of bonds by public utilities (Sections 816 et seq. of the Public Utilities Code), irrespective of the Usury Law, judicial interpretation of the California Usury Law has exempted corporate bonds of public utilities from operation of the Usury Law.
13. If the usury limitation contained in Article XV, Section XV, Section 1 of the California Constitution and the Usury Law Initiative Act is exceeded, but the transaction is authorized by this Commission and the terms of said transaction are the best PGandE can obtain because of market conditions, PGandE, 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 issuance by PGandE of bonds in compliance with authorization by this Commission, persons collecting interest on such authorized bonds are not subject to the Usury Law sanctions.
14. There is no known opposition to PGandE's application and no reason to delay granting the authority requested.
15. A public hearing is not necessary.
16. On the basis of the foregoing findings we conclude that the application should be granted.
17. As set forth in Decisions Nos. 83411, 84392, and 85983, among others, we further conclude that the usury limitations on interest contained in former Article XX, Section 22 (now Article XV) of the California Constitution and the Usury Law Initiative Act do not apply to the issuance of public utility securities, including evidences of indebtedness, lawfully authorized by the Public Utilities Commission.

This Commission does not object to PGandE's situating and structuring the proposed issuance and sale of the First and Refunding Mortgage Bonds, Series 79A, in the State of New York.

The action taken herein is for the purposes 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.

O R D E R

IT IS ORDERED that:

1. The sale by Pacific Gas and Electric Company of not exceeding \$200,000,000 aggregate principal amount of its First and Refunding Mortgage Bonds, Series 79A, is hereby exempted from the Commission's competitive bidding rule set forth in Decision No. 38614, dated January 15, 1946, as amended, in Case No. 4761.

2. Pacific Gas and Electric Company may execute and deliver a Twelfth Supplemental Indenture in substantially the same form as Exhibit F attached to the application.

3. Pacific Gas and Electric Company may issue and sell not exceeding \$200,000,000 aggregate principal amount of its First and Refunding Mortgage Bonds, Series 79A, to a group of underwriters at such price and otherwise such terms and conditions to be negotiated in accordance with the application.

4. An interest rate for Pacific Gas and Electric Company's First and Refunding Mortgage Bonds, Series 79A, may exceed 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 Initiative Act, if market conditions so require.

5. Neither Pacific Gas and Electric Company, nor anyone 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 on its First and Refunding Mortgage Bonds, Series 79A 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.

6. Pacific Gas and Electric Company shall use the net proceeds from the sale of said bonds for the purposes referred to in the application.

7. Upon determining the maturity date, price and interest rate pertaining to the bonds herein authorized, Pacific Gas and Electric Company shall notify the Commission thereof in writing.

8. As soon as available, Pacific Gas and Electric Company shall file with the Commission three copies of its final prospectus pertaining to said bonds.

9. Pacific Gas and Electric Company shall file with the Commission a report, or reports, as required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

10. This order shall become effective when Pacific Gas and Electric Company has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$106,000.

Dated at San Francisco, California, this 5th day of JUNE, 1979.

John E. Baye
President

Thomas R. Stegeman

Robert D. Hoyle

Charles J. ...

Donald W. ...
Commissioners

