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Decision No. 90788 SEP 12 1979**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SOUTHERN CALIFORNIA
GAS COMPANY for Authorization to
Issue Not Exceeding \$70,000,000
Aggregate Principal Amount of First
Mortgage Bonds and to Execute and
Deliver a Supplemental Indenture
Mortgaging its Properties.

Application No. 59015
(Filed July 25, 1979)

O P I N I O N

Southern California Gas Company (SoCal) requests authority (a) to issue and sell First Mortgage Bonds, Series M, in an aggregate principal amount not exceeding \$70,000,000 through competitive bidding and (b) to execute and deliver a Supplemental Indenture mortgaging certain of its properties.

SoCal request this authority pursuant to Sections 816, 817, 818 and 851 of the Public Utilities Code. Notice of the filing of the application appeared on the Commission's Daily Calendar of July 26, 1979.

SoCal is a California corporation (a subsidiary of Pacific Lighting Corporation) and a public utility engaged principally in purchasing, distributing and selling natural gas to customers throughout most of Southern California and portions of Central California. For the twelve-month period ending June 30, 1979, the utility reported total operating revenues of \$1,682,629,587 and net income of \$54,793,242.

SoCal's capitalization ratios reported as of June 30, 1979 and adjusted to give effect to the proposed bond issue are summarized from the application as follows:

	<u>June 30, 1979</u>	<u>Pro Forma</u>
Long-Term Debt	47.46%	51.04%
Preferred Stock	2.25	2.10
Common Equity	<u>50.29</u>	<u>46.86</u>
Total	<u>100.00%</u>	<u>100.00%</u>

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The proceeds from the sale of Series M Bonds, other than accrued interest which is to be used for general corporate purposes, would be applied toward the following:

A. Retirement of bonds through operation of the sinking fund provision	\$22,780,000
B. Retirement of bonds at maturity	9,650,000
C. Reimbursement of the treasury for a portion of the funds expended for construction	<u>37,570,000</u>
	<u>\$70,000,000</u>

SoCal's plant additions for the year 1978 were \$78,325,000. SoCal has estimated the additions for 1979 to be \$105,459,000 detailed as follows:

	<u>Amount</u>
Underground Storage	\$ 7,558,000
Transmission Plant	16,844,000
Distribution Plant	30,707,000
New Business Plant	43,157,000
Land and Buildings	5,606,000
Furniture and Equipment	<u>1,587,000</u>
Total	<u>\$105,459,000</u>

SoCal's Exhibit A indicates that as of June 30, 1979 the actual construction expenditures were approximately \$44,524,000. The balance of the funds for the estimated construction in 1979 is expected to be derived from internally generated funds and from short-term borrowings from its parent, Pacific Lighting Corporation.

SoCal proposes to issue and sell an additional series of its First Mortgage Bonds, to be designated as Series M (the "Series M Bonds"). The Series M Bonds would be created and authorized for issuance by SoCal's execution and delivery to Wells Fargo Bank, National Association, as trustee (the "Trustee") for holders of First Mortgage Bonds, of a Supplemental Indenture (the "Supplemental

Indenture") to be dated approximately the date of issuance of the Series M Bonds. The Supplemental Indenture would supplement the Indenture dated as of October 1, 1940, as theretofore supplemented and amended, pursuant to which SoCal's presently outstanding First Mortgage Bonds were issued and substantially all of its property is mortgaged as security for its First Mortgage Bonds. The Supplemental Indenture would set forth the terms of the Series M Bonds and expressly convey and mortgage to the Trustee certain of SoCal's properties as security for its First Mortgage Bonds, including the Series M Bonds.

SoCal proposes to offer the Series M Bonds for sale pursuant to this Commission's competitive bidding procedures and to effect the offering, issuance and sale by offering documents and purchase agreements containing terms and conditions customary for the offering, issuance and sale of first mortgage bonds by public utilities through competitive bidding procedures.

SoCal requests authorization from this Commission to issue and sell the Series M Bonds on or before December 31, 1979 in an aggregate principal amount not exceeding \$70,000,000 with the precise date and amount of such issuance and sale to be determined by SoCal with due regard for its financial requirements and prevailing market conditions. It also requests authority to determine the maturity (not to exceed twenty-five years) and the rights and terms of redemption (including redemption prices, sinking fund provisions, if any, and period of non-refundability (not to exceed five years) of the Series M Bonds.

The application indicates that the requested authorization to determine the amount and timing of the issuance of the Series M Bonds and the rights and terms of redemption thereof (within the limitations above set forth) will provide it with the flexibility necessary to respond to unsettled and rapidly changing market conditions and to obtain the best terms available. This Commission

is aware of the need for such flexibility during periods of uncertainty in the financial markets and has recently granted authorizations, similar to that requested by SoCal, to San Diego Gas & Electric Company (Decision No. 90493), The Pacific Telephone and Telegraph Company (Decision No. 90419) and Pacific Gas and Electric Company (Decision No. 90381). We are persuaded that continuing unsettled market conditions justify the flexibility requested by SoCal.

SoCal proposes to apply the proceeds (other than accrued interest which will be used for general corporate purposes) from the sale of the Series M Bonds to reimburse its treasury for monies expended and to be expended for the retirement of First Mortgage Bonds through operation of sinking fund provisions (\$22,780,000) and retirement of First Mortgage Bonds at maturity (\$9,650,000). The balance of the proceeds would be applied to reimburse SoCal's treasury for funds expended for construction.

Article XV, Section 1 (Usury) of the California Constitution and certain California statutes prohibit, non-exempt lenders from charging interest on any loan or forbearance at an effective annual rate in excess of ten percent. SoCal has expressed the concern that the market for public utility debt securities is such that if the Series M Bonds are to be sold, the effective annual interest rate thereon may of necessity exceed ten percent. Accordingly, SoCal has requested that this Commission reaffirm our prior holdings that the California Usury Law does not apply to debt securities issued by utilities pursuant to authorization from this Commission. We will do so.

In Addition, SoCal proposes to situate and structure the issuance and sale of the Series M Bonds in the State of New York and to provide that its obligation to pay principal and interest on the Series M Bonds will be governed by, and construed in accordance with,

the laws of New York, under which corporations may not plead the defense of usury. It has requested that this Commission expressly authorize the foregoing proposal. Since this proposal does not operate to restrict the potential market for SoCal's Series M Bonds to areas outside of California, we will honor this request.

The Revenue Requirements Division of the Commission's staff has reviewed SoCal's construction budget and has concluded that the proposed sale of Series M Bonds are necessary to provide funds for the purposes specified in the application. The Division has no objection to the proposed bond issue but reserves the right, however, to consider the reasonableness of construction expenditures in future rate proceedings.

Findings of Fact

1. Southern California Gas Company is a California corporation operating as a public utility subject to the jurisdiction of this Commission.
2. Southern California Gas Company's proposed offering, issuance and sale of an additional series of its First Mortgage Bonds to be designated as Series M Bonds (the "Series M Bonds") is for proper purposes.
3. Southern California Gas Company has need for external funds for the purposes set forth in these proceedings.
4. The money, property, or labor to be procured or paid for by the issuance of Southern California Gas Company's Series M Bonds is reasonably required for the purposes set forth herein, which purposes, except as authorized for accrued interest, are not, in whole or in part, reasonably chargeable to operating expenses or to income.
5. Southern California Gas Company (SoCal) may, within the limitations set forth herein, determine the timing and amount of issuance of the Series M Bonds. The rights and terms of redemption thereof will provide SoCal with the flexibility to respond to rapidly changing market conditions. This is in the best interest of SoCal, its customers and investors.

6. Prevailing market conditions may necessitate that Southern California Gas Company's Series M Bonds be issued and sold with an effective interest rate exceeding the limitations of the California Usury Law.

7. The application of the limitations of the California Usury Law to the issuance of Southern California Gas Company's (SoCal) Series M Bonds would not be in the public interest or be protective of SoCal or its customers or investors. This would, instead, impair the ability of SoCal to obtain funds necessary to provide adequate service to its customers.

8. Southern California Gas Company (SoCal) may situate and structure the issuance and sale of the Series M Bonds in the State of New York. Principal and interest on the Series M Bonds will be governed by and construed in accordance with the laws of that State. This is in the best interest of SoCal, its customers and investors.

9. There is no known opposition to Southern California Gas Company's application and no reason to delay granting the authorization requested.

Conclusions of Law

1. Pursuant to plenary powers granted to the Legislature by Article XII, Section 5 of the California Constitution, the Legislature is authorized to confer such additional consistent powers upon this Commission as it deems necessary and appropriate, unrestricted by any other provisions of the California Constitution.

2. The Legislature has conferred upon this Commission comprehensive and exclusive authority to regulate the issuance of securities, including evidences of indebtedness, by public utilities upon such terms and conditions as this Commission deems reasonable and necessary and without limitation by the California Usury Law.

3. The California Usury Law is not applicable to debt securities issued by public utilities pursuant to authorization from this Commission.

4. Neither Southern California Gas Company (SoCal) nor any of its successors or assignees will have any basis to assert any claim or defense under the California Usury Law in respect of the additional First Mortgage Bonds to be designated Series M Bonds (the "Series M Bonds") proposed to be offered, issued and sold by SoCal.

5. Persons receiving interest on Southern California Gas Company's Series M Bonds are not subject to the limitations or sanctions of the California Usury Law.

6. A public hearing is not necessary.

7. The application should be granted.

The authorization granted 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. Southern California Gas Company (SoCal) is hereby authorized to offer, issue and sell an additional series of its First Mortgage Bonds to be designated Series M Bonds (the "Series M Bonds") at such time on or before December 31, 1979 and in such aggregate principal amount not exceeding \$70,000,000 as SoCal shall determine having due regard for its financial requirements and present and anticipated market conditions.

2. Southern California Gas Company is hereby authorized to determine the maturity (not to exceed twenty-five years) and the rights and terms of redemption (including redemption prices, sinking fund provisions, if any, and period of non-refundability (not to exceed five years) of the Series M Bonds prior to the offering thereof having due regard for its financial requirements and then existing market conditions.

3. The sales price to Southern California Gas Company and the interest rate paid on the Series M Bond shall be determined pursuant to this Commission's competitive bidding procedures and without limitation by the California usury law.

4. Neither Southern California Gas Company nor anyone purporting to act on its behalf shall at any time assert any claim or defense in respect of the Series M Bonds under the California usury law or any similar laws.

5. Southern California Gas Company is hereby authorized to situate and structure the offering, issuance and sale of the Series M Bonds in the State of New York and to provide that its obligation to pay principal and interest on the Series M Bonds will be governed by, and construed in accordance with, the laws of the State of New York.

6. Southern California Gas Company is hereby authorized to execute and deliver a Supplemental Indenture, supplementing the Indenture (as theretofore supplemented and amended) pursuant to which its outstanding First Mortgage Bonds were issued, setting forth the terms of the Series M Bonds and expressly conveying and mortgaging certain of its properties as additional security for its First Mortgage Bonds, including the Series M Bonds.

7. Southern California Gas Company shall apply the proceeds from the sale of its Series M Bonds to the purposes set forth herein and shall file with this Commission a report or reports with respect thereto as required by this Commission's General Order 24-B.

8. Southern California Gas Company shall file with this Commission, promptly upon the availability thereof, three copies of each prospectus and preliminary prospectus and each supplement thereto with respect to the offering of the Series M Bonds.

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9. This order shall become effective when Southern California Gas Company has paid the fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$24,785.

Dated SEP 12 1979, at San Francisco, California.

John E. Bryson
President
Veronica L. Steyer
Robert D. Roselle
Charles J. ...
Donald W. ...
Commissioners

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA
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