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Decision No. 92876

APR 7 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of General Telephone )  
 Company of California to issue )  
 and sell not exceeding 4,500,000 )  
 shares of its Common Stock (\$20 )  
 par value); to issue and sell not )  
 exceeding \$50,000,000 par or )  
 stated value of Preferred Stock; )  
 and to issue and sell not ex- )  
 ceeding \$250,000,000 principal )  
 amount of First Mortgage Bonds )  
 in one or more series, and to )  
 execute and deliver a )  
 Supplemental Indenture(s). )

Application No. 60163  
 (Filed December 30, 1980)  
 Petition for Modification  
 (Filed February 25, 1981)

SUPPLEMENTAL OPINION

Decision No. 92713, dated February 18, 1981, as supplemented by Decision No. 92759, dated March 3, 1981, granted General Telephone Company of California (General), among other things, the authority to issue and sell not exceeding \$250,000,000 principal amount of First Mortgage Bonds (New Bonds) in one or more series by competitive bidding and/or private placement.

General requests Decisions Nos. 92713 and 92759 be modified to also authorize the company to sell the New Bonds by negotiated public offerings.

Notice of the filing of the Petition for Modification No. D. 92713, appeared on the Commission's Daily Calendar on March 3, 1981. No protests have been received.

General sets forth various reasons to justify its request to issue and sell the New Bonds by negotiated public offering.

General indicates the marketplace for debt instruments such as those it proposes to offer is volatile and chaotic. Despite

efforts to discourage borrowing through government sponsored credit restrictions, high demand for funds by both the public and private sector have kept interest rates at near record levels. Investor uncertainty about the eroding effect of inflation on value of long-term debt instruments contributes to market volatility. As a result, investors are increasingly more selective in making investment decisions. The investor in today's market carefully weighs such factors as the principal amount of the issue, its maturity date, and the borrower's external financing requirements and credit worthiness. If a potential borrower does not show strong financial characteristics, it become both difficult and costly for the borrower to raise capital. General's current financial characteristics are looked upon unfavorably by investors. It has record level external financing requirements for the foreseeable future. Despite rate relief granted by Decision No. 92366, dated October 22, 1980, in Application No. 59132, General's times interest coverages are at unsatisfactory levels. The utility's credit rating for first mortgage bonds was downgraded in September 1979 from A+ to A by Standard and Poor's, and there is a strong possibility of further downgrading prior to the sale of all or part of the New Bonds.<sup>1/</sup>

General further states, because of the aforementioned market conditions and its credit rating, it is essential that the utility have flexibility to make decisions concerning the timing of the offering as close to the proposed date of sale as possible. General states it can obtain more flexibility through a negotiated sale than would be the case if the sale was subject to competitive bidding.

General also is informed and believes, and therefore alleges, that the opportunity to engage in pre-offering marketing efforts will aid the successful sale of the New Bonds. Underwriters

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<sup>1/</sup>On March 12, 1981, Standard and Poor's further downgraded General's mortgage bonds from A to BBB+.

and dealers who are part of a negotiating group can more precisely ascertain in advance the marketability of the offering. In a competitive bidding situation, pre-marketing efforts are not as effective since each bidding group does not know that it will be the successful bidder until after the bids are received. Thus, the cost of money to the utility in a negotiated transaction may be lower where pre-marketing efforts have been made.

General indicates in its petition that the size of the offering of New Bonds is also such that its marketability and distribution will be enhanced by participation from as large a group of underwriters and dealers as possible. General is informed and believes, and therefore alleges, that if the offering is subject to competitive bidding, the number of underwriters and dealers participating in the offering could be smaller because the available number of underwriters and dealers will be segmented into bidding groups smaller than would be available if competitive bidding is not required.

For the above reasons, General believes that it can sell the New Bonds at as low, if not lower, a cost than would prevail if the New Bonds were sold at competitive bidding. Based on such belief, the company represents that it would be in the public interest to exempt the sale of the New Bonds from the Commission's competitive bidding requirements.

In Decision No. 91984, dated July 2, 1980, for the San Diego Gas & Electric Company, Application No. 59633, we discussed the granting of exemptions from the competitive bidding rule, and we clarified the nature of the compelling showing that must be made to warrant an exemption from the rule. We served notice that assertions regarding the volatility of the market, the flexibility provided by a negotiated sale, and the importance of maximizing the effectiveness of the underwriting will not serve as compelling

reasons, individually or collectively, for granting an exemption from the competitive bidding rule.

We also stated in Decision No. 91984, that the decision was not to be construed as a blanket prohibition of negotiated sales. The decision merely clarified our requirement of a "compelling showing" to gain an exemption constitutes a very high standard of proof. Such a standard requires that utilities, in most instances, proceed initially on a competitive bid basis with the ability to return to the Commission for an exemption if the bids are unacceptable.

We gave notice to utilities who file applications requesting exemption from our competitive bidding rule that they can expect to have the request for a competitive bidding exemption denied, with the application approved on the condition that competitive bidding will be used, and that we may do this absent public hearings. We also stated that if utilities attempt a competitive sale and do not consummate it because the terms are unfavorable, they may petition for modification of the decision authorizing the sale and seek to demonstrate why competitive bidding is not in the public interest.

We do not believe that we have yet reached an optimal solution to this complex problem. We intend to explore the advantages and disadvantages of revisions in the competitive bidding rule to respond to changes in the financial marketplace.

In the present case, we are frankly uncertain whether under current volatile market conditions, unfavorable to the issuer of corporate debt, strict adherence to the competitive bidding rule would prove beneficial. Consequently, for this application only we will authorize General to proceed on either a competitive bid, a private placement, or a negotiated bid basis, according to General's estimation of where the most favorable opportunity lies. We place General on notice, however, that if it chooses to pursue the path of a negotiated bid, we will expect our staff to give exceptionally close and critical

scrutiny to the reasonableness of such costs ourselves. We will require General to provide us with a showing as to why General believes that the resulting interest rate and cost of money were the most advantageous to the company and its ratepayers. We will require this showing within a reasonable period of time after the issuance and sale of the proposed bonds. ✓

The authority sought by General is pursuant to Section 701 of the Public Utilities Code.

Under the circumstances, the Commission finds that General's request is reasonable and would not be adverse to the public interest. A public hearing is not necessary. The Commission concludes that General's request be granted. The following Supplemental Order should be effective the date of signature to enable General to issue its New Bonds expeditiously.

SUPPLEMENTAL ORDER

IT IS ORDERED that:

1. Supplemental Ordering Paragraph No. 1 of Decision No. 92759, which amended Ordering Paragraph No. 6 of Decision No. 92713, is hereby further amended to read as follows:
  6. On or before December 31, 1981, General Telephone Company of California may issue, sell, and deliver for cash, in one or more series, its First Mortgage Bonds in the aggregate principal amount not to exceed \$250,000,000 at a price obtained either by private placement, by a negotiated public offering or, if by competitive bidding, at the price offered in a bid which would result in the lowest annual cost of money to it calculated in the manner provided in the Invitation

for Bids, a copy of which, in substantially the form to be used, is attached to the application as a part of Exhibit D. The time period between the publication of the public invitation for bids and the opening of bids, if required, shall be not less than one day.

2. Ordering Paragraphs Nos. 7, 10 and 11 of Decision No. 92713 are hereby amended to read as follows:

7. The sale by General Telephone Company of California of its First Mortgage Bonds in the aggregate principal amount not to exceed \$250,000,000, 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 for the limited purpose of permitting the sale of General's First Mortgage Bonds, or any series thereof, by private placement or by a negotiated public offering.
10. If the First Mortgage Bonds are sold on a private placement basis or by a negotiated public offering within 30 days after their issuance and sale, General Telephone Company of California shall file with the Commission a report setting forth the reason that General believes the resulting interest rate and cost of money to the company were the most advantageous to the company and its ratepayers. ✓
11. If the First Mortgage Bonds, or any series thereof, are sold by competitive bidding or by a negotiated public offering as soon as available, General Telephone Company of California shall file with the Commission three copies of its final prospectus relating to the First Mortgage Bonds.

3. In all other respects, Decisions Nos. 92713 and 92759 shall remain in full force and effect.

The effective date of this order is the date hereof.

Dated APR 7 1981, at San Francisco, California.

John E. Coyne  
President

Richard D. Temple

Thomas M. Jones

Walter C. Baker

Presulla C. Green  
Commissioners