CACD/RHG

Decision 96-02-069 February 23, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SAN FRANCISCO THERMAL, LIMITED PARTNERSHIP (U-908-H), for authorization to reflect additional contributions to partners' capital accounts, to incur evidences of indebtedness, and to encumber utility property.	Application 96-01-010 (Filed January 5, 1996)

ORIGINAL

OPINION

Summary of Decision

This decision grants the authority requested by San Francisco Thermal, Limited Partnership (SFTLP) in Application (A.) 96-01-010 (Application).

SFTLP requests authority, pursuant to § 816 et seq. and § 851 et seq. of the Public Utilities (PU) Code and Rules 33 through 36 of the Commission's Rules of Practice and Procedure for the following:

1. To issue fixed rate term notes in the amount of $6,800,000 to The Prudential Insurance Company of America (Prudential).

2. To enter into a three-year revolving credit facility in the amount of $2,000,000 with Prudential.

3. To encumber its public utility property, by granting Prudential a perfected first priority security interest in the assets of SFTLP in the amount of the notes issued pursuant to the fixed rate term loan and the revolving credit facility.

4. To reflect additional evidence of ownership through the addition of a total $1,000,000 to the capital accounts of the owners of SFTLP.

5. To enter into a $3,000,000 long-term financing that is subordinate to the senior secured notes and senior secured revolving facility with another lender.

6. To encumber its public utility property by granting the lender of the subordinated debt a security interest in the assets of SFTLP in the amount of the subordinated debt.

Notice of the filing appeared on the Commission's Daily Calendar of January 9, 1996. No protests have been received.

Background

SFTLP is a limited partnership created and existing under the laws of the State of Delaware. SFTLP provides steam heat service in the City and County of San Francisco and is subject to the jurisdiction of this Commission.

Currently before the Commission is A.95-11-045, filed jointly by SFTLP, its general partner Thermal Ventures, Inc. (TVI), NRG Energy, Inc. (NRG), and North American Thermal Systems Limited Liability Company (NATS) for authority to transfer TVI's general partnership interest in and control of SFTLP to NATS, a company which is owned equally by TVI and NRG.

TVI (a Delaware corporation) currently owns and operates three systems, Pittsburgh Thermal, Limited Partnership (PTLP) in Pittsburg, Pennsylvania, SFTLP, and Youngstown Thermal, Limited Partnership in Youngstown, Ohio. In addition, TVI was recently awarded the rights to operate by lease and acquire in the future, the district heating and cooling system in Akron, Ohio. TVI has organized and staffed Akron Thermal, Limited Partnership.

NRG (a Delaware corporation) is a subsidiary of Northern States Power Company and is one of the world's leading independent power producers.

NATS (a Ohio limited liability company) was formed by TVI and NRG for the purpose of (1) acquiring TVI's general partnership interest in SFTLP and (2) acquiring general partnership or other controlling interests in additional district steam heating and cooling systems in North America. NATS is owned 50 percent by TVI and 50 percent by NRG.

Following the transfer, NATS will own the general partnership interests of the district heating and cooling systems in North America. The management of NATS and the overall management of each district heating and cooling system will be vested to TVI. TVI then, while no longer the general partner of SFTLP, will continue to have management authority, as in the past. The addition of NRG as the general partner of NATS will provide the parties additional expertise and access to capital.

A.95-11-045 indicates that the property involved in the transaction relating to TVI and NRG consists of an interest in the allocation of certain profits and the distribution of certain net cash flow of SFTLP presently held by TVI as the sole general partner in SFTLP. Upon NATS becoming the general partner of SFTLP, NRG and TVI will share equally in that interest in SFTLP. The remaining interest in the profits and net cash flow of SFTLP will be held by Thermal Ventures, Limited Partnership (TVLP) and NRG as limited partners.

In connection with this Application, no presently existing assets of SFTLP will be transferred or otherwise affected.

The consolidated financial statements of TVI and TVLP for the year ended December 31, 1994 are provided in A.95-11-045 under separate cover pursuant to PU Code § 583.

SFTLP's balance sheet as of September 1995, shown as Exhibit 2 to the Application, is summarized below:

Assets	Amount
Current Assets	$ 1,348,518.92
Deferred Fuel Adjustment over/(under)	(55,220.99)
Net Property, Plant & Equipment	11,017,674.75
Deferred Assets	171,294.30
Total Assets	$12,482,266.98
Liabilities and Equity	
Partners' Equity	$ 649,199.24
Long-term debt	9,632,225.12
Current liabilities	2,200,842.62
Total Liabilities and Equity	$12,482,266.98

Financing Under Decision (D.) 93-06-038

D.93-06-038 dated June 3, 1993 in A.93-01-008 granted SFTLP authority to acquire and operate the steam heat system of Pacific Gas and Electric Company (PG&E) and to finance the acquisition. The sales price for PG&E's steam heating system was $8,800,000. SFTLP paid PG&E $4,000,000 upon the close of escrow and agreed to pay PG&E an additional $4,800,000 million by the second anniversary of the close of the sale. PG&E has agreed to extend the payment of the promissory note until the lending under this Application has been approved and funded.

In addition to the loan from PG&E, SFTLP also arranged for a two-year debt financing with Banc One Capital Partners II, Limited Partnership (Banc One) in the amount of $5,000,000 to finance the acquisition from PG&E and to provide working capital. Of this amount, $4,500,000 was a senior note and $500,000 was in the nature of a revolving loan. Both of the loans were senior to the loan from PG&E and were secured by a first lien on all of the assets of SFTLP. D.93-06-038 indicated that SFTLP would arrange permanent financing at the end of the interim financing period.

Discussion

SFTLP now seeks authority for permanent financing of its steam heating system acquisition. SFTLP, through its general partner TVI, has entered into an agreement in principle with Prudential whereby Prudential, or one of its subsidiaries or managed accounts, will purchase $6,800,000 of SFTLP's senior secured notes and provide SFTLP a three-year $2,000,000 senior secured revolving credit facility. The notes and the revolving facility would be secured by a first priority security interest in (i) all of the real and personal property of SFTLP, and (ii) all of the equity interests in SFTLP and virtually all of the equity interest in PTLP.[1]

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1 In addition, Prudential will make a loan to PTLP that will be secured first by PTLP assets and secondarily by the equity interest in SFTLP.

The notes will have a maturity date of 2004 with an average principal prepayment of five years. The interest rate on the notes has been fixed at 9.75 percent.[2] SFTLP will incur certain penalties if the loan does not close within 60 days after the loan rate was fixed, or it is cancelled.

The interest rate on the revolving facility will be the one-month London Interbank Offering Rate (LIBOR) plus 4.25 percent. The LIBOR rate will be adjusted monthly. A fee of one-half percent on an annual basis will be charged monthly on the average daily unused available balance of the revolving facility commitment.

As indicated in the supplemental data to the Application, the $2,000,000 revolver will be used by either SFTLP or PTLP, but the total outstanding will not exceed $2,000,000. While the revolver is for three years, it will be paid down to $0 each rolling 14-month period for seven consecutive days in each of three consecutive months. Thus while the revolver is a three-year commitment, it must be paid periodically, so that at any point in time, debt is outstanding for only eleven months.

PU Code § 823(b) allows a public utility to issue notes for proper purposes, payable at periods of not more than 12 months after the date of issuance of the notes without the consent of the Commission.

Since the combined terms of the original and refunding debt will exceed twelve months, Commission approval for such refunding without the need periodically to request authorization is necessary. Without Commission authorization, SFTLP would be forced to retire all the outstanding short-term debt at least once a year in order to avoid the prohibition on refunding the original debt securities with new short-term debt.

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2 The term sheet for the loan, shown as Exhibit 3 to the Application, states that the interest rate on the notes will be a fixed rate and will be the greater of (i) a U.S. treasury note with a term that approximates the proposed average life plus a spread of 4.24 percent, or (ii) 9.75 percent. On December 27, 1995, SFTLP locked-in the 9.75 percent annual rate.

Pursuant to PU Code $ 823(d), no note payable at a period of not more than twelve months after the date of issuance of such note shall, in whole or in part, be refunded by any issue of stocks or stock certificates or other evidence of interest or ownership, or of bonds, notes of any term or character, or any other evidence of indebtedness, without the consent of the Commission.

In D.87-09-056 dated September 23, 1987, the Commission authorized PG&E to refund previously issued short-term debt securities such that the combined terms of the refunded issues and the new debt securities exceed twelve months, without the need for additional Commission authorization.

In D.94-01-022 and D.94-12-018, the Commission likewise authorized Washington Water Power Company and Southwest Gas Corporation, respectively, for a specified period, to refund previously issued short-term debt securities without the need for additional Commission authorization.

The revolving credit facility is for a period of three years. Commission authorization is required to continuously refund the debt for a period of three years.

SFTLP states that the permanent debt financing as described in the Application is predicated on the organizational restructuring set forth in A.95-11-045.

One of the conditions of closing the loan agreement with Prudential is the receipt by SFTLP of $4,000,000 of new cash in a form and content that is satisfactory to Prudential. In satisfaction of this condition, NRG and TVI or one of its affiliates, will each contribute $500,000 to their respective capital accounts in SFTLP. In addition, SFTLP will incur $3,000,000 of additional long-term debt that is secured by the assets of SFTLP, but which is subordinate to the notes and the revolving facility.

Banc One has agreed to provide the subordinated debt financing to SFTLP with the terms and conditions shown in Exhibit 4 to the Application.[3] SFTLP has not concluded its negotiations with Banc One and it is possible that other lenders will provide the subordinated debt financing under terms and conditions that are at least as favorable as those set forth in the Banc One term sheet.

Subsidiary or Affiliate Transactions

As presented earlier, the $2,000,000 senior secured revolving credit facility would be secured by a first priority security interest in all of the real and personal property of SFTLP and all of the equity interests in SFTLP and virtually all of the equity interest in PTLP. Cross collateralization will not occur on the assets of SFTLP or PTLP.

PTLP is owned by TVI and TVI's general partnership in PTLP would be transferred to NATS. PTLP is engaged in a regulated public utility business in another state.

PU Code $ 701.5 prohibits electrical, gas, or telephone corporations from issuing notes, guaranteeing financial transactions, or pledging utility assets for or on behalf of their subsidiaries, but allows exceptions in some instances. SFTLP provides steam heat service and therefore PU Code $ 701.5 is not applicable.

Construction Budget

SFTLP's capital budgets for 1996 and 1997 amount to $1,009,534 and 1,245,000, respectively as shown in the supplemental data to the Application. The projected expenditures are intended mainly for new service hook-ups, main extensions, main replacements and other capital additions and improvements.

The Commission Advisory and Compliance Division (CACD) advises us that SFTLP's capital budgets raise no questions that

3 Floating on a weekly basis at a rate calculated based on Banc One Capital Corporation's announced 30-day AA rated commercial paper, plus a spread to be fixed at closing equivalent to an 11% coupon, payable quarterly in arrears.

should dissuade us from giving favorable consideration to the financing requested in the Application. We will not, however, make a finding in this decision on the reasonableness of the proposed capital budgets. Construction expenditures and the resulting plant balances in rate base are issues which are normally addressed in general rate cases or other ratemaking proceedings.

Capital Ratios

SFTLP's capital ratios as of December 31, 1995, shown as part of the supplemental data to the Application are presented below as recorded and adjusted to give pro forma effect to the proposed $6,800,000 senior debt and $3,000,000 subordinated debt; payment of the Bank One senior debt and revolving line of credit totalling $10,135,000; and additional capital of $1,000,000.

(Dollars in Thousands)

	Recorded		Pro Forma	
	Amount	Percentage	Amount	Percentage
Capital Structure				
Long-Term Debt	$10,135	93.9%	$ 9,800	85.5%
Equity	663	6.1%	1,663	14.5%
Total	$10,798	100.00%	$11,463	100.00%

Use of Proceeds

SFTLP states in the Application that the proceeds from the proposed financing will be used to refinance the existing debt held by PG&E and Banc One, provide working capital to SFTLP, and help finance needed improvements and additions to facilities.

For proper cause, § 818 of the PU Code allows upon order of the Commission, the use of proceeds for purposes reasonably required in the operation of a utility, including operating capital.

We recognize the utility's need and intention to have access to a credit facility to provide liquidity support in its operation. We believe that the proposed financing is for proper purposes and the debt to be retired or property to be paid for by the issue of the loan, including the use of proceeds for working capital, are reasonably required for the purposes specified in the Application.

We will grant SFTLP the authority to issue debt in accordance with the terms and conditions contemplated in the Application.

In addition, pursuant to PU Code § 829, we will permit SFTLP, for a period of three (3) years from the date of this decision, to refund previously issued short-term debt securities such that the combined terms of the refunded issues and the new debt may exceed twelve months to comply with the requirements of PU Code § 823(d).

We place SFTLP on notice that the reasonableness of any resulting interest rate and cost of money negotiated and placed by SFTLP will be subject to scrutiny in future ratemaking proceedings.

Findings of Fact

1. The proposed financing will provide SFTLP the funds to retire the PG&E promissory note.

2. SFTLP has an immediate need for external funds for the purposes set forth in the Application.

3. Authorizing SFTLP to encumber its properties as security for its debt is not adverse to the public interest.

4. Authorizing SFTLP to execute and deliver any and all documents and agreements as may be required in connection with the proposed financing is not adverse to the public interest.

5. The infusion of an additional $1,000,000 in the capital accounts of the owners of SFTLP as described in the Application is for proper purposes.

6. The money, property, or labor to be procured or paid for by the proposed financing are reasonably required for the purposes specified in the Application.

7. For proper cause, § 818 of the PU Code allows upon order of the Commission, the use of proceeds for purposes reasonably required in the operation of a utility, including operating capital.

8. PU Code § 701.5 applies only to electrical, gas, or telephone corporations.

9. Short-term debt transactions are governed by PU Code § 823.

10. The Commission does not by this decision determine that SFTLP's construction budget and capital ratios are necessary or reasonable for ratemaking purposes. These issues are normally tested in general rate case or cost of capital proceedings.

11. There is no known opposition to this proceeding and there is no reason to delay granting the approval requested.

Conclusions of Law

1. A public hearing is not necessary.

2. The Application should be granted to the extent set forth in the order which follows.

3. The proposed financing is for lawful purposes and the money, property or labor to be obtained by it is required for these purposes.

4. SFTLP has previously paid the fee of $11,900. The appropriate fee in accordance with PU Code § 1904 is $10,800. SFTLP should be entitled to a refund of $1,100 for overpayment of fee.

O R D E R

IT IS ORDERED that:

1. On or after the effective day of this order, San Francisco Thermal, Limited Partnership (SFTLP), may, for the purposes specified in Application 96-01-010 (Application), enter into a financing arrangement with the Prudential Insurance Company of America (Prudential) and issue senior secured notes in the amount of $6,800,000; enter into a three-year revolving credit facility in the amount of $2,000,000; and encumber its public utility property upon terms and conditions set forth or contemplated in the Application.

2. SFTLP may refinance previously issued short-term debt securities so that the combined term of such indebtedness may exceed twelve months without the need for further authorization from the Commission for a period of three (3) years from the date of this order.

3. SFTLP may increase and add a total of $1,000,000 to its capital account.

4. SFTLP may enter into a $3,000,000 long-term financing that is subordinate to the senior secured notes and senior secured revolving facility with another lender.

5. SFTLP may encumber its public utility property by granting the lender of the subordinated debt a security interest in the assets of SFTLP in the amount of the subordinated debt.

6. SFTLP shall file with the Commission Advisory and Compliance Division copies of the loan agreement, encumbering document, and the executed promissory note authorized by this Order, within 15 days of execution.

7. On or before the 25th day of each month, SFTLP shall file the reports required by General Order Series 24.

8. The Application is granted as set forth above.

This order is effective today.

Dated February 23, 1996, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners