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ENERGY/RHG

ORIGINAL

Decision 97-04-027 April 9, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SAN FRANCISCO THERMAL, LIMITED PARTNER-)
SHIP (U-908-H), for authorization to) Application 96-01-010
reflect additional contributions to) (Petition for Modification
partners' capital accounts, to incur) filed February 13, 1997)
evidences of indebtedness, and to)
encumber utility property.)

S U P P L E M E N T A L O P I N I O N

Summary of Decision

This decision grants San Francisco Thermal, Limited Partnership (SFTLP) the authority requested in its Petition for Modification of Decision (D.) 96-02-069 (Petition).

Notice of the filing of the Petition appeared on the Commission's Daily Calendar of February 18, 1997. No protests have been received.

Pursuant to Rule 47 of the Commission's Rules of Practice and Procedure, SFTLP seeks to have the authority granted in D.96-02-069 modified to reflect a re-negotiated interest rate for its senior secured notes and a new credit provider for its subordinated debt financing.

D.96-02-069 dated February 23, 1996, in Application (A.) 96-01-010 (Application), authorized SFTLP to:

1. Issue fixed rate term notes in the amount of \$6,800,000 to The Prudential Insurance Company of America (Prudential);
2. Enter into a three-year revolving credit facility in the amount of \$2,000,000 with Prudential;

3. 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. Reflect additional evidence of ownership through the addition of a total of \$1,000,000 to the capital accounts of the owners of SFTLP;
5. 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. 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.

Prudential's commitment to provide financing was conditioned upon SFTLP's compliance to numbers 2 to 6, described above.

Although the negotiation had not been concluded at the time of filing the Application, Banc One Capital Partners II, Limited Partnership (Banc One) had agreed to provide SFTLP the subordinated debt financing. However, the Application indicated that other lenders may provide the subordinated debt financing under terms and conditions that will at least be as favorable as those set forth in the Banc One term sheet.

Modification Sought

SFTLP is requesting that the Commission modify D.96-02-069 to reflect a 10.61 percent interest rate on the senior secured notes. SFTLP is likewise advising the Commission that the subordinated debt financing will now be obtained from NRG Energy, Inc. (NRG Energy) in lieu of Banc One.

NRG Energy is one of the owners of the North American Thermal Systems Limited Liability Company, which in turn owns the general partnership interest in and control of SFTLP.

A.96-01-010 indicated that the senior secured notes will bear a 9.75 percent interest rate and a maturity date of 2004 with an average prepayment of five years. Pursuant to the Application, SFTLP would incur certain penalties if the loan did not close within 60 days after the loan rate was fixed, or cancelled. SFTLP states in the Petition that the loan did not close within 60 days after the loan rate was fixed. In large measure the failure to close was due to the fact that SFTLP was attempting to negotiate more favorable terms for the subordinated debt than those offered by Banc One. This resulted in delaying the closing with Prudential beyond 60 days after the time that the debt was fixed. Thereafter, the interest rate on the senior debt was re-negotiated.

D.96-02-069 reflects that one of the conditions for the loan from Prudential was that SFTLP obtain an additional \$3,000,000 of subordinated debt. The interest rate set forth in the Banc One term sheet is a floating rate 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 percent coupon.

The Petition states that NRG Energy has agreed to loan SFTLP \$3,000,000 that will be subordinate to the senior secured notes and the senior revolving credit facility. The interest rate is 11 percent per annum, with the remainder of the terms being favorable as those offered by Banc One.

SFTLP further requests that the Commission approve the Petition prior to March 20, 1997, which is the new expiration date of the commitment from Prudential.

We have reviewed SFTLP's request to reflect the 10.61 percent interest rate on the senior secured notes and to enter into a \$3,000,000 subordinated debt with NRG Energy instead of Banc One to meet its financing requirements and have determined that the proposed modifications of D.96-02-069 are proper and are not adverse to the public interest. By this financing, SFTLP will be able to retire its outstanding obligation with Pacific Gas and Electric Company (PG&E) for the acquisition of PG&E's steam heat system described in A.96-01-010.

SFTLP's Petition should be granted. We recognize SFTLP's intention of finding more favorable terms for the subordinated debt and the delay this caused in closing the Prudential transaction. We note herein that one of the conditions of closing the loan agreement with Prudential is the receipt of SFTLP of \$4,000,000 of new cash in a form and content that is satisfactory to Prudential.

Because of the filing date of the petition and the time allowed for responses under Rule 47(f) of the Rules of Practice and Procedure, it was not possible for the Commission to issue an order prior to March 20, 1997, the expiration date of the commitment from Prudential. Therefore, our action on this matter will be effective as of March 20, 1997, nunc pro tunc. SFTLP is directed to make future similar filings early enough to allow us to act before its financing requirements have lapsed.

We approve SFTLP's Petition in this order.

Findings of Fact

1. The new interest rate on SFTLP's senior secured notes and the change of provider for its subordinated debt financing would be for proper purposes and would not be adverse to the public interest.

2. Notice of the filing of the petition appeared on the Commission's Daily Calendar of February 18, 1997. There is no known opposition to the petition, and the authority requested should be granted.

Conclusions of Law

1. A public hearing is not necessary.
2. The petition should be granted to the extent set forth in the supplemental order that follows.
3. The following supplemental order should be effective today.

S U P P L E M E N T A L O R D E R

IT IS ORDERED that:

1. The authority granted to San Francisco Thermal, Limited Partnership (SFTLP) by Decision (D.) 96-02-069 in Application 96-01-010, is modified to reflect the new interest rate stated in the petition for the issuance of senior secured notes.

2. This order acknowledges NRG Energy, Inc. as the provider of SFTLP's subordinated debt financing authorized in D.96-02-069.

3. The Petition is granted as set forth above.

4. In all other respects, D.96-02-069 remains in full force and effect.

5. Application 96-01-010 is closed.

This supplemental order is effective today.

Dated April 9, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners