RR/KLH/ARM/WPSC

ORIGINAL

Decision 82 04 078 APR 21 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| In the Matter of the Application of CP NATIONAL CORPORATION, a California corporation for an order authorizing it to issue and sell securities. | Application 82-03-53 (Filed March 12, 1982) |

## O P I N I O N

CP National Corporation (CP National) requests authority, under Public Utilities (PU) Code Sections 816 through 830 and 851, for the following:

1. To issue, sell, and deliver, by a negotiated private placement to CP National Overseas Finance N.V., a wholly owned Subsidiary of CP National, a series of First Mortgage Bonds (New Bonds) in an aggregate principal amount of up to $20,000,000, in connection with the sale of Eurodollar Notes (Notes) described in the application;

2. To guarantee unconditionally up to $20,000,000 of principal, interest, premium (if any), and other charges on Eurodollar Notes issued by CP National Overseas Finance N.V.;

3. To issue, sell, and deliver by negotiated private placement a series of New Bonds in an aggregate principal amount of up to $20,000,000;

4. To execute and deliver an appropriate supplement to its First Mortgage Indenture dated as of July 1, 1944 providing for the series of New Bonds;

5. To issue, sell, and deliver by a negotiated private placement or negotiated public offering similar to that authorized in Decision (D.)93496 dated September 1, 1981 in Application (A.)60771, as amended, Debentures in an aggregate principal amount of up to $20,000,000;

6. To execute and deliver an appropriate Indenture providing for the Debentures;

7. To be exempted from the Commission's competitive bidding requirements; and

8. To issue, sell, and deliver up to $15,000,000 of Common Stock, $5 par value.

## Summary of Decision

This decision grants CP National the authority requested in its application.

Notice of the filing of the application appeared on the Commission's Daily Calendar of March 17, 1982. No protests have been received.

CP National, a California corporation, directly and through its subsidiaries, is engaged in public utility operations in Oregon, California, Nevada, Texas, Utah, New Mexico, and Arizona. The company provides electric, gas, telephone, and water service in the State of California.

For the calendar year 1981, CP National reports it generated total consolidated revenues of $135,534,000 and net income of $7,940,000. The company reports it earned 24.97% of its total consolidated operating revenues in California.

CP National's Consolidated Balance Sheet as of December 31, 1981, filed supplementally as it became available, is summarized as follows:

| Assets | Amount |
|---|---|
| Net Utility Plant | $206,562,000 |
| Net Other Property and Investment | 25,565,000 |
| Current Assets | 30,661,000 |
| Deferred Charges | 5,825,000 |
| Total | $268,613,000 |
| **Liabilities and Equity** | |
| Common Stock Equity | $ 64,538,000 |
| Preferred Stock | 11,151,000 |
| Long-Term Debt | 114,951,000 |
| Current Liabilities | 47,979,000 |
| Deferred Credits | 29,994,000 |
| Total | $268,613,000 |

CP National's consolidated capital ratios reported as of December 31, 1981, and after giving pro forma effect to the following:

1. The proposed issuance and sale of up to $20,000,000 of New Bonds and $15,000,000 of Common Stock, $5 par value;

2. The retirement of $9,200,000 balance of short-term debt incurred for the acquisition of Great Southwest Telephone Corporation (GSTC) D.93266 dated July 7, 1981 in A.60592;

3. The repayment of $6,000,000 of short-term notes prior to December 31, 1982; and

4. The reduction in long-term debt and Preferred Stock in the amount of $2,733,000 from current maturities

are as follows:

| | December 31, 1981 | Pro Forma |
|---|---|---|
| Long-Term Debt | 54.4% | 58.7% |
| Short-Term Debt | 10.4 | 2.6 |
| Total | 64.8 | 61.3 |
| Preferred/Preference Stock | 5.3 | 5.0 |
| Common Equity | 29.9 | 33.7 |
| Total | 100.0% | 100.0% |

The foregoing ratios are significantly affected by the inclusion of the separate indebtedness of CP National's operating telephone subsidiaries ($39,000,000) in the consolidated figures CP National is required to use for financial statement presentation. Much of the operating telephone companies' debt is comprised of Rural Electrification Administration borrowings which typically allow higher debt ratios and provide interest rates from 2% to 8%. The following table shows parent company only ratios for the period presented above:

| | December 31, 1981 | Pro Forma |
|---|---|---|
| Long-Term Debt | 44.3% | 50.2% |
| Short-Term Debt | 12.7 | 3.1 |
| Total | 57.0 | 53.3 |
| Preferred/Preference Stock | 6.5 | 6.1 |
| Common Equity | 36.5 | 40.6 |
| Total | 100.0% | 100.0% |

The Revenue Requirements Division is concerned with CP National's high debt ratio which on a consolidated pro forma basis will approximate 61%. In the past, the Revenue Requirements Division and the Commission have stressed the importance of utilities to maintain a balanced capital structure in order to be financially sound, to maintain financial flexibility, and to be able to attract capital at reasonable rates. The Division believes that additional amounts of equity capital are necessary to balance CP National's capital structure. This should be given primary attention by CP National when analyzing future financing requirements. Our review of its financing proposals will heavily stress attention to this matter.

CP National is engaged in an extensive utility construction program and estimates that the gross expenditures required for this construction program for the years 1982 and 1983 will approximate $21,137,000 and $19,604,000, respectively, estimated as of December 31, 1981, as follows:

| | 1982 | 1983 |
|---|---|---|
| Electric 1/ | $ 5,282,000 | $ 5,509,000 |
| Gas | 3,592,000 | 2,704,000 |
| Telephone 2/ | 11,998,000 | 11,050,000 |
| Water 1/ | 265,000 | 341,000 |
| Total | $21,137,000 | $19,604,000 |

Notes:

1/ Excludes Elko and Winnemucca, Nevada, electric and water properties.

2/ Excludes Tuolumne Telephone Co. and GSTC.

By this application, CP National seeks authority for its 1982 external financing needs, which aggregate approximately $35,000,000. During 1982, CP National proposes to issue long-term debt in the earlier part of 1982 in an aggregate principal amount of up to $20,000,000 and Common Stock, $5 par value, for the balancing of its financing needs in late 1982. For its long-term debt requirements, CP National seeks authority to sell Eurodollar Notes, Debentures, or First Mortgage Bonds, as outlined in detail below, and requests exemption from the Commission's competitive bidding requirement.

Eurodollar Notes

CP National requests authorization to issue, sell, and deliver its New Bonds in an aggregate principal amount of up to $20,000,000 in connection with a Eurodollar Note offering and to guarantee the indebtedness of CP National's financing subsidiary. The New Bonds would be issued in conformity with, and secured by, CP National's First Mortgage Indenture dated as of July 1, 1944.

The application states that a special financing structure must be established for a Eurodollar Note offering. The tax laws of the United States impose withholding tax requirements on interest paid by domestic corporations on loans made by certain foreign investors. The United States has entered into various treaties with foreign countries which reduce or eliminate the withholding requirements. Because European investors are reluctant to make loans to or purchase the debt securities of domestic corporations which are subject to withholding tax, various financing structures have evolved which enable domestic corporations to take advantage of the favorable tax treaties negotiated by the United States. CP National seeks Commission authorization to participate in the financing structure.

As the financing structure is presently contemplated, CP National will organize a wholly owned subsidiary, CP National Overseas Finance N.V. (Subsidiary), under the laws of the Netherlands Antilles, which has a favorable tax treaty with the United States. The Subsidiary will issue and sell, to foreign investors, Eurodollar Notes. CP National would then borrow from the Subsidiary the net proceeds of these offerings either on an unsecured basis or by issuing a series of New Bonds to the Subsidiary. If the New Bonds are issued, they would be used as security for the Eurodollar Notes. CP National contemplates that the overall net cost of the money to it will be substantially the same as the cost of the money to the Subsidiary after giving effect to the laws of the Netherlands Antilles and the United States.

The maturity date, interest rate, and other terms and conditions of Eurodollar Notes issued by the Subsidiary will be negotiated at the time of offering. CP National is informed that there is no competitive bidding market for these Notes. The terms and conditions of CP National's borrowing from the Subsidiary will be determined by CP National and the Subsidiary on the basis of the terms and conditions of the Notes.

Because of the volatility of the Eurodollar market, CP National states it is impractical at this time to provide the Commission with a meaningful estimate of interest rates or other terms of the issue of Eurodollar Notes or New Bonds. However, the

Notes would be issued and sold only when the issuances were designed to result in an overall cost of money to CP National at least as advantageous as issuances of comparable long-term debt in the United States market.

The financing structure contemplated by CP National may require that CP National guarantee the obligations of the Subsidiary evidenced by its Notes. Therefore, CP National requests authorization to guarantee unconditionally the Subsidiary's payment of up to $20,000,000 aggregate amount of principal, interest, premium (if any), and other charges on the Notes. Such a guarantee is common in Eurodollar offerings, and it would be in CP National's best interest to have the flexibility to effect the offering in a form which is familiar to foreign investors.

The definitive terms and conditions of a guarantee and/or a security arrangement will be determined at the time of, and be consistent with, the offering of Eurodollar Notes.

**Debentures**

As an alternative to Eurodollar Notes, CP National requests authorization to issue, sell, and deliver Debentures in an amount up to $20,000,000. Although CP National has not undertaken definite negotiations for such a financing, it is possible that changed market conditions would lead CP National to conclude that such a financing would be more advantageous. Although CP National does not propose that its authority be limited, possible alternatives would include a negotiated domestic private placement or a negotiated domestic public offering similar to that authorized in D.93496 dated September 1, 1981 in A.60777. Whatever the mode of offering, if Debentures were used, the specific terms would be negotiated at the time of offering to give CP National what it believes are the most advantageous terms in light of the prevailing market conditions.

First Mortgage Bonds

Finally, as a third alternative, CP National seeks authorization to issue, sell, and deliver a series of its New Bonds in an amount up to $20,000,000. Although CP National does not propose that its authority be limited, it is most likely the New Bonds would be sold in a negotiated domestic private placement as CP National has done many times in the past. Specific terms of the bonds would be negotiated in the same manner as proposed for the Debentures.

Request for Exemption for Eurodollar Notes, Debentures, and New Bonds from the Commission's Competitive Bidding Rule

Eurodollar Notes

CP National states that the nature, mechanics, and timing of the Eurodollar Note offering require an exemption for applicant's issuance of New Bonds from the Commission's competitive bidding rule established by D.38614 dated January 15, 1946, as amended by D.49946, D.75556, and D.81908 in Case 4761. These decisions contemplated that under appropriate circumstances the Commission will not require competitive bidding.

As described above, the interest rate and other terms and conditions of the Notes offered by the Subsidiary must be determined on a negotiated basis because, unlike the domestic bond market, there is no competitive bidding in the European market for the Notes. Also, if the New Bonds are used, CP National must privately place them on a negotiated basis with the Subsidiary. Unless the Commission authorized an exemption from the rule, CP National would be precluded from participating in the Eurodollar financings.

In San Diego Gas & Electric Company's D.91984 dated July 2, 1980 in A.59633, the Commission stated that it would grant an exemption from competitive bidding if a compelling showing is made that an exemption would be in the best interest of the utility's ratepayers. CP National believes that the Eurodollar Note offering is in the best interest of its ratepayers because the offering will result in an overall cost of money, to CP National, at least as advantageous as that obtainable from comparable competitively bid securities in the domestic market. It will provide CP National a new source of capital.

It is important that CP National have access to the broadest range of capital markets in addition to the domestic market. The ability to raise capital in the European market gives CP National additional flexibility and availability of funds to meet its continuing need for additional capital.

The European and domestic capital markets are often affected by different economic and political forces. Accordingly, interest rates and other terms and conditions available in the European market are, during certain periods, more favorable than those available in the domestic market. These periods, known as "windows", occur at uncertain intervals and may exist for only a few days or for several weeks.

CP National contemplates participating in a Eurodollar Note offering during one or more these future window periods. By consulting with investment bankers and surveying interest rates available on both the domestic and European market, CP National can determine when a window is available. By acting quickly to effect an offering of the Eurodollar Notes, CP National can raise capital in the European market at a favorable interest rate. Since some of these windows in the European market last only a short period of time, CP National must have the flexibility to enter the European market when an opportunity arises.

The Eurodollar Notes do not need to be registered with the Securities and Exchange Commission. Without the time constraints normally imposed by the registration, the Note issue can be placed in a relatively short period of time. This ability to act quickly would allow CP National to achieve the best interest rates available at the time.

By having CP National's name exposed to international markets, CP National can be properly positioned for involvement in innovative and economical forms of financing that may be made available, in the future, with European investors and financial institutions.

CP National believes that Eurobond financing is a proven method of raising capital for American corporations economically. The Commission has encouraged California utilities to explore innovative financing methods to give its ratepayers the lowest cost of money available. In furtherance of that goal, CP National has engaged in an extensive effort to lay the groundwork for this Eurodollar Note offering through consultation with Lloyds Bank International Limited in London.

Debentures and First Mortgage Bonds

CP National states that if it were to sell its Debentures or its New Bonds in a domestic private placement, it would only do so if it concluded that the Company would receive terms at least as favorable as it would receive from the other alternatives proposed in the application.

CP National believes the flexibility to determine the market and method for its proposed financings (within the constraints set forth in its application) will enable it to obtain its necessary financing at the lowest overall cost. Accordingly, it requests exemption from the Commission's competitive bidding rule for its proposed financings in foreign capital markets and for its proposed financings in domestic capital markets through negotiated public offerings or negotiated private placements.

This Commission has, from time to time, confirmed the continuing validity of its competitive bidding rule. We are persuaded that an inflexible adherence to these requirements may not be in the public interest, particularly, during periods of high interest rates and volatile market conditions for issuance of public utility securities.

In its application, CP National has advised us that it intends to confine its foreign and domestic financings through negotiated public offerings and negotiated private placements to those periods in which it believes that it can obtain financing on terms and conditions at least as favorable as would be available through competitive bidding. We do not believe that CP National should be precluded from doing so. Accordingly, we will grant CP National's request to obtain financing in the manner outlined in the application. We will also authorize CP National to utilize a competitive offering.

Because the proposed New Bonds or Debentures may be sold on terms which will be negotiated after issuance of this decision, and because of CP National's conclusion and belief that the securities will be sold at a cost as low, if not lower, than would prevail if they were to be sold at competitive bidding, we are of the opinion that applying the Commission's competitive bidding requirements and conditions set forth in D.91984, in this proceeding, may not be in the best interest of CP National or its ratepayers. These requirements and conditions may not operate to ensure that CP National's sale of long-term debt would be at the most favorable cost of money.

CP National is put on notice that in its next general rate proceeding before the Commission, the reasonableness of the resulting interest rate and cost of money to the company will be closely scrutinized and may result in a disallowance of interest expense if it is determined that the cost of money incurred was not the most prudent.

The Commission has urged utilities to seek new and innovative forms of financing. The Revenue Requirements Division concurs in CP National's belief that the ability to finance in foreign capital markets may enable it to obtain more favorable financing than may be available to it in domestic capital markets. The Division believes that utilities should not be foreclosed from this market. The Division also concurs in CP National's belief that it may be able to obtain more favorable terms with a domestic private placement or negotiated public offering than it could with competitive bidding. The Division concludes that CP National's request for exemption from our competitive bidding requirements for the proposed financings should be granted.

If CP National issues and sells its New Bonds or Debentures by means of negotiated public offerings or negotiated private placements in the domestic or European market, we will require the Company to provide us with a showing of why it believes 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 after the issuance and sale.

Common Stock Sale

Late in 1982, CP National proposes to enter into negotiations for the sale of the number of shares of its Common Stock, $5 par value, to a group of Underwriters, as would produce up to $15,000,000 in proceeds. The initial public offering price of the shares would be determined by agreement between CP National and the Underwriters on the basis of reported prices or quotations of the New York Stock Exchange immediately prior to the public offering. The initial public offering price per share will be based on the reported last sale price or the reported last asked price. CP National will enter into an underwriting agreement with the Underwriters providing for the Underwriters' firm commitment to purchase the stock at a purchase price per share equal to the initial public offering price less an underwriter's discount. The discount will be determined by agreement between CP National and the Underwriters immediately prior to the public offering and will be based in part on underwriters' discounts for public offerings of common stock of issuers similar to CP National.

Use of Proceeds

CP National states that the proposed debt issues, as well as an equity offering, will provide the necessary funds to partially reimburse the treasury for capital expenditures by applying the proceeds to repay a portion of the outstanding short-term notes issued for temporary financing of capital additions and improvements to its utility plant.

On December 31, 1981, CP National reported unreimbursed construction expenditures of $27,436,000. CP National believes that the proposed financing plan for 1982 provides for an alternative form of debt financing through Eurodollar Notes that is in the best interest of its ratepayers because the offering will result in an overall cost of money to CP National that is at least as advantageous as that obtainable in the domestic market. In addition, the equity offering will improve CP National's debt to equity ratio in accordance with the Commission's as well as CP National's desires. CP National states that its objective is to have a consolidated common equity ratio (exclusive of short-term debt) of 40% by the end of 1983.

CP National estimates that internally generated funds will provide about 50% of the 1982 and 1983 (parent only) capital expenditures. Thus, CP National anticipates that the proceeds from securities issuances will be necessary to help it meet its requirement for external financing on a permanent basis. CP National expects that GSTC will separately finance its own construction program.

The Commission's Revenue Requirements Division has analyzed CP National's cash requirement forecast and has concluded that the proposed issuance and sale of securities is necessary to help CP National meet forecasted cash requirements. The Division has also reviewed CP National's 1982-83 construction program and has concluded that the program is necessary. The Division reserves the right to reconsider the reasonableness of any specific program and construction expenditures in future rate proceedings.

Findings of Fact

1. CP National, a California corporation, operates as a public utility under the jurisdiction of this Commission.

2. CP National has need for external funds for the purposes set forth in the application.

3. CP National's proposed issuance and sale of its New Bonds, Debentures, and Common Stock and its guarantee of Subsidiary indebtedness are for proper purposes.

4. Authorizing CP National to determine the amount, timing, market, terms and conditions, and method of offering for its proposed financings within the constraints set forth in the application is in the public interest.

5. Exempting CP National's proposed long-term debt financings from the Commission's competitive bidding rule is in the public interest. CP National should also be authorized to effect its financings by means of a competitive offering.

6. The money, property, or labor to be procured or paid for by the proposed financings is reasonably required for the purposes set forth in the application.

7. There is no known opposition to the application and no reason to delay granting the authorities 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.

The proposed security issues are for lawful purposes and the money, property, or labor to be obtained by them is required for these purposes. Proceeds from the security issues may not be charged to operating expenses or income.

The following order should be effective on the date of signature and payment of the fee set by PU Code Sections 1904(b) and 1904.1 to enable CP National to proceed with its financings expeditiously.

**O R D E R**

IT IS ORDERED that:

1. CP National Corporation (CP National) may issue, sell, and deliver a new series of First Mortgage Bonds, Debentures, Notes, and/or other evidences of indebtedness (Debt Securities) in an aggregate principal amount of up to $20,000,000, at any time or from time to time, on or before December 31, 1982 in either or both domestic or foreign capital markets in one or more financings by means of competitive bidding, negotiated public offerings, or negotiated private placements.

2. CP National may guarantee unconditionally Debt Securities and/or other evidences of indebtedness issued by CP National Overseas Finance N.V.

3. CP National may execute and deliver an appropriate supplement to its First Mortgage Indenture dated as of July 1, 1944 providing for the Debt Securities.

4. CP National may execute and deliver an appropriate indenture providing for the Debentures.

5. The proposed Debt Securities and/or other evidences of indebtedness are exempted from the Commission's competitive bidding rule. CP National may also offer and sell these securities in a competitive offering.

6. CP National may issue, sell, and deliver an amount of shares of its Common Stock, $5 par value, which would produce proceeds of up to $15,000,000.

7. CP National may execute and deliver an appropriate underwriting agreement in connection with the sale of Common Stock, $5 par value, or, if required, the Debentures.

8. CP National is authorized to determine the precise amount and timing of each financing, the market in which each is effected, the method by which each is effected, and the terms and provisions of additional Debt Securities and/or other evidences of indebtedness in the manner and subject to the limitations set forth in its application.

9. If CP National utilizes a competitive offering, CP National may publish an invitation for bids not less than one day prior to the scheduled opening of bids, and may accelerate, postpone, cancel the scheduled date of invitation for bids, reject all bids submitted, request the resubmission of bids, reschedule subsequent openings of bids, and vary the amount and terms of the securities submitted for bids, all without republishing an invitation for bids.

10. If CP National utilizes a competitive offering, promptly after awarding the contract for the sale, CP National shall file a written report with the Commission showing for each bid received, the name of the bidder, the price, the interest rate, and the cost of money to the company based on the price and interest rate.

11. If the Debt Securities and/or other evidences of indebtedness are sold by competitive bidding or by a negotiated public offering, as soon as available, CP National shall file with the Commission three copies of its final prospectus pertaining to the securities. ✓

12. Within 30 days after the issuance and sale of any series of Debt Securities and/or other evidences of indebtedness by means of negotiated public offering or by a negotiated private placement, on either the domestic or foreign markets, CP National shall file with the Commission a report showing why the resulting rate and cost of money were the most advantageous to the company and its ratepayers. ✓

13. CP National shall file the reports required by General Order Series 24.

14. The authority granted by this order will become effective when CP National pays $9,740, the fee set by the PU Code Sections 1904(b) and 1901.1.

Dated APR 21 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA
PAID
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BY

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Joseph E. Bodovitz, Executive Director