

Decision 83 09 015 SEP 7 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)

CP NATIONAL CORPORATION, a
California corporation)

for an order authorizing it to)
issue and sell up to \$25,000,000)
principal amount of Convertible)
Debentures in exchange for)
currently outstanding Debentures)
and to execute one or more)
Indentures)

Application 83-08-21
(Filed August 5, 1983)

O P I N I O N

CP National Corporation (CP National) requests
authorization under Public Utilities (PU) Code Sections 816 through
818, for the following:

1. To issue and deliver not to exceed \$25,000,000 aggregate principal amount of Convertible Debentures in exchange for CP National's 15-1/4% Debentures due 1996 (authorized in Decision (D.) 82-04-078 dated March 12, 1982 in Application (A.) 82-03-53) and 16-1/2% Debentures due 1997 (authorized in D.93496 dated September 1, 1981 in A.60777);
2. Exempting the proposed issue and exchange from the competitive bidding rule set forth in D.38614 dated January 15, 1946 in Case 4761;

3. To execute and deliver one or more Indentures relating to the Convertible Debentures on the terms and conditions contemplated by application;
4. To issue and deliver from time to time the number of common shares, as may be required to be issued upon conversion of the Convertible Debentures; and
5. Authorizing an interest rate for the Debentures in excess of that permitted under the California usury law.

Summary of Decision

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

Notice of the filing of the application appeared on the Commission's Daily Calendar on August 10, 1983. 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, New Mexico and Arizona. The company provides electric, gas, telephone, and water services in the State of California.

Based on its consolidated statements of income for the calendar year ended December 31, 1982, attached as Exhibit A to the application, CP National generated total consolidated operating revenues of \$156,273,000 and net income of \$12,739,000. CP National states that 24.55% of its total consolidated operating revenue was derived from California utility operations.

CP National's consolidated Balance Sheet as of March 31, 1983, also shown as part of Exhibit A is summarized as follows:

<u>Assets</u>	<u>Amount</u> (Dollars in Thousands)
Net Utility Plant	\$214,949
Net Other Property & Investment	32,096
Current Assets	44,262
Deferred Charges	<u>14,764</u>
Total	\$306,071
 <u>Liabilities and Equity</u>	
Common Stock Equity	\$ 88,241
Preferred Stock	10,174
Long-Term Debt	132,558
Current Liabilities	41,444
Deferred Credits	<u>33,654</u>
Total	\$306,071

In D.82-04-078, dated April 21, 1982 in A.82-03-53 and in D.93496 dated September 1, 1981 in A.60777 the Commission authorized CP National to issue and deliver \$10,000,000 principal amount of 15-1/4% Debentures due 1997 (15-1/4% Debentures) and \$20,000,000 principal amount of 16-1/2% Debentures due 1996 (16-1/2% Debentures), respectively (collectively hereafter referred to as the Debentures).

CP National requests authorization to issue and deliver Convertible Debentures in an aggregate amount not to exceed \$25,000,000 in exchange for its outstanding 15-1/4% Debentures and 16-1/2% Debentures and to execute and deliver one or more

Indentures with respect to the Convertible Debentures. The Convertible Debentures will be subject to substantially the same terms and conditions as the respective outstanding Debentures except for the following:

- 1) The interest rate payable on each issue of Convertible Debentures will be significantly less than the interest rate on the respective Debentures. In its application CP National anticipated that the interest rates on the respective issues of Convertible Debentures would be approximately 11% and 12% per year, although the actual rate would depend on market conditions prevailing at the time.
- 2) The Convertible Debentures will be convertible into common shares of CP National at a premium over the market price of the shares on the offering date of the Convertible Debentures. In its application CP National anticipated that the conversion premium would be in range of 20-25%.
- 3) The Convertible Debentures are expected to be due in 1998.
- 4) The Convertible Debentures will continue the same five year call protection of the outstanding Debentures. However, the optional redemption premium on the Convertible Debentures would increase to reflect their full interest coupon. Thereafter the premium will decline by 2% annually.

The Convertible Debentures will be issued pursuant to two new Indentures which will be substantially in the form of the existing Indentures for the Debentures except as to the terms and conditions above-described.

CP National also seeks authority to issue shares of common stock upon the conversion of the Convertible Debentures under the terms and conditions of the Indenture relating thereto and to issue and deliver certificates representing those shares.

In support of its request, CP National states that it proposes to enter into this transaction to reduce current and future interest payments. It states that assuming 50% of each Debenture is exchanged and the interest rates are 11% and 12%, respectively, the gross annual interest savings will be \$212,500 and \$337,500, respectively. In addition, the Convertible Debentures will provide the possibility of converting debt into equity at a favorable rate in light of current market conditions.

CP National requests that the issuance and exchange of the Convertible Debentures for the Debentures be exempt from the Commission's competitive bidding rules established in D.38614 dated January 15, 1946, in Case 4761 as amended. Due to the fact that this request contemplates an exchange transaction of existing securities as distinguished from an initial sale of new bonds, we will grant an exemption from the competitive bidding rule.

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 scrutinized closely and may result in a disallowance of interest

expense if it is determined that the cost of money incurred was not the most prudent at the time of the exchange transaction. We will also require CP National to provide us with a showing 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 after the proposed exchange transaction.

The Commission's Revenue Requirements Division has reviewed CP National's proposed application. The Division has no objection to the proposed exchange transaction.

In D.83411 dated September 4, 1974 in A.55080 (Southern California Gas Company), and D.90382 dated June 5, 1979 in A.58838, (CP National) among others, the Commission held that in exercising its authority to regulate public utility debt securities, it is not restricted by the California usury law and its ramifications. We reaffirm this holding and conclude that if the limitation of the California usury law is exceeded in connection with the proposed issuance of the Convertible Debentures in exchange for the Debentures, then the public interest requires the Commission to authorize the issuance and exchange of the Convertible Debentures.

Findings of Fact

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

2. The proposed issuance of Convertible Debentures in exchange for the Debentures and the execution and delivery of the proposed Indenture(s) are for proper purposes.

3. The transaction will not be adverse to the public interest.

4. The proposed issuance of common shares upon conversion of the Convertible Debentures is reasonable and for proper purposes.

5. If as a result of prevailing market conditions or the effect of conversion rights with respect to the Convertible Debentures covered by this application, such securities are deemed to have an effective rate of interest for the purposes of the California usury law exceeding the limitations provided in Article XV of the California Constitution, then the public interest requires that this Commission authorize the issuance and sale of such Convertible Debentures irrespective of limitations contained in the California usury law.

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

7. The Legislature has conferred upon this Commission the authority to regulate the issuance of public utility securities, including the Convertible Debentures covered by this application, and to prescribe restrictions and conditions as it deems reasonable and necessary.

8. Pursuant to the plenary powers granted to the Legislature in Article XII, Section 5 of the California Constitution, it conferred upon this Commission comprehensive and exclusive power over the issuance of public utility securities, including debt securities and the California usury law cannot be applied as a restriction on this Commission's regulation of such issuances of public utility securities, including the establishment of a reasonable rate of interest.

9. In addition to the plenary powers granted to the Legislature by the California Constitution pursuant to which the Legislature conferred upon this Commission exclusive authority to regulate the issuance of debt securities by public utilities, irrespective of the usury law, judicial interpretation of the California usury law has exempted corporate bonds of public utilities from operation of the usury law.

10. If the usury limitation contained in Article XV of the California Constitution and the Usury Law Initiative Act is exceeded, but the transaction is authorized by this Commission, CP National, its assignees or successors in interest, will have no occasion to and cannot assert any claim or defense under the California usury law; further, and necessarily, because of lawful issuance by CP National of debt securities in compliance with authorization by this Commission, persons collecting interest on such authorized securities are not subject to the usury law sanctions.

11. There is no known opposition and no reason to delay granting the authority 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 security issuance and exchange is for lawful purposes.

The following order should be effective on the date of signature to enable CP National to issue its Convertible Debentures in exchange for the Debentures expeditiously.

O R D E R

IT IS ORDERED that:

1. CP National Corporation (CP National), on or after the effective date of this order may issue and deliver not to exceed \$25,000,000 aggregate principal amount of Convertible Debentures in exchange for the 15-1/4% Debentures and the 16-1/2% Debentures on terms and conditions to be determined substantially in accordance with the application and may issue and deliver from time to time the number of common shares, as may be required to be issued upon conversion of the Convertible Debentures.

2. CP National may issue and exchange the Convertible Debentures exempt from the requirements of the competitive bidding rule set forth in Decision 38614, as amended.

3. CP National may execute and deliver one or more Indentures relating to the Convertible Debentures on the terms and conditions contemplated by the application.

4. An interest rate and other terms, including conversion rights, for CP National's Convertible Debentures may collectively exceed the maximum annual interest rate otherwise permitted under the California usury law, as contained in Article XV of the California Constitution, if market conditions so require.

5. Neither CP National, nor anyone purporting to act on its behalf, shall at any time assert in any manner, or attempt to raise as a claim or defense in any proceeding, that the interest on its Convertible Debentures exceeds the maximum permitted to be charged under the California usury law or any similar law establishing the maximum rate of interest that can be charged to or received from a borrower.

6. Upon determining the interest rate and other terms pertaining to the Convertible Debentures herein authorized, CP National shall notify the Commission thereof in writing.

7. Within 30 days after the issuance of the Convertible Debentures, CP National shall file with the Commission a report showing why the resulting interest rate and cost of money were the most advantageous to the company and its ratepayers.

This order is effective today.

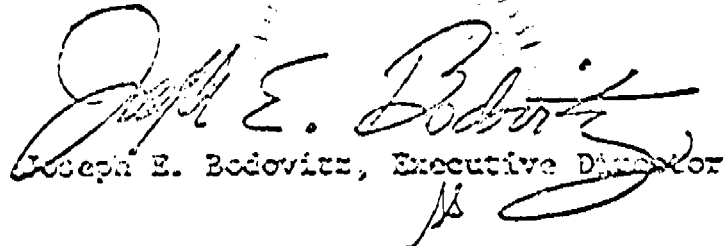
Dated SEP 7 1983, at San Francisco, California.

Commissioner William T. Bagley
being necessarily absent, did
not participate.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

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


Joseph E. Bodovitz, Executive Director