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Decision No. 88429 JAN 31 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)

THE CAMPBELL WATER COMPANY,)
a corporation,)

for an Order authorizing it (a) to)
execute a supplemental loan agreement)
with Pacific Mutual Life Insurance)
Company providing for an additional)
loan of \$220,000; (b) to issue its)
promissory note in the principal)
amount of \$220,000 pursuant to said)
agreement; and (c) to execute an)
Eighth Supplemental Indenture)
supplementing its Mortgage of)
Chattels and Real Property dated as)
of May 1, 1951.)

Application No. 57718
(Filed December 1, 1977)

O P I N I O N

The Campbell Water Company (Campbell Water) requests authority from the Commission to issue a promissory note in the principal amount of \$220,000 and to execute and deliver an eighth supplemental indenture and a supplemental loan agreement.

Campbell Water is a California corporation engaged as a public utility in the distribution of water in Campbell and adjacent territory. For the nine months ended September 30, 1977 the company reported operating revenues of \$553,077, depreciation expense totalling \$55,897 and net income of \$50,113. Exhibit A attached to the application contains a balance sheet dated September 30, 1977 which is summarized as follows:

<u>Assets</u>	<u>Amount</u>
Net utility plant	\$2,050,708
Current assets	242,509
Other assets	45,213
Total	<u>\$2,338,430</u>
 <u>Liabilities and Capital</u>	
Long-term debt	\$ 822,000
Common stock equity	823,165
Advances for construction	398,827
Contributions in aid of construction	133,989
Deferred credits	66,876
Current liabilities	93,573
Total	<u>\$2,338,430</u>

Under authority previously granted by this Commission, Campbell Water has issued several long-term promissory notes at various times to Pacific Mutual Life Insurance Company (Pacific Mutual), the unpaid principal of which aggregated \$822,000 on September 30, 1977. Such notes were issued pursuant to a mortgage of chattels and real property dated May 1, 1951, as subsequently supplemented and modified. In the present application, Campbell Water proposes to issue a new note on or before March 1, 1978 in favor of Pacific Mutual in the principal amount of \$220,000, bearing interest at the rate of 8-7/8% per annum and maturing on November 1, 1998.

The new note would be subject to the provisions of a proposed supplemental loan agreement and an eighth supplemental indenture declaring the terms upon which the additional loan is to be made and confirming the lender's first lien on substantially all of the present and after acquired property of the borrower.

Campbell Water would have the option of prepaying all or any portion of the proposed note in multiples of \$1,000 at 108.875% of the principal amount if prepayment is made on or before October 31, 1978 and thereafter at 108.875% less .44375% for each

year or fraction thereof that has elapsed after October 31, 1979. Net proceeds received from utility property sold under threat of condemnation would, under certain conditions, require Campbell Water to prepay the note with a premium equal to one-half of the premium which would have then been payable. The company may not prepay any portion of the note prior to November 1, 1988 with funds obtained from other borrowings at a cost of less than 8.875% per annum. Annual sinking fund payments of \$6,600 would be required commencing November 1, 1978.

Campbell Water plans to use \$159,000 of the loan proceeds for financing plant additions and betterments and to apply the balance of \$61,000 to repay the outstanding balances of two notes issued in 1958 and maturing May 1, 1978. The utility's capitalization as recorded on September 30, 1977 and as adjusted to reflect the proposed note issue is summarized as follows:

<u>Component</u>	<u>Recorded</u>		<u>Pro Forma</u>	
	<u>Amount</u>	<u>Percent</u>	<u>Amount</u>	<u>Percent</u>
Debt	\$ 822,000	49.96%	\$ 981,000	54.37%
Preferred stock	50,000	3.04	50,000	2.77
Equity	773,165	47.00	773,165	42.86
Total	<u>\$1,645,165</u>	<u>100.00%</u>	<u>\$1,804,165</u>	<u>100.00%</u>

Campbell Water points out that if prepayment of the proposed note should occur as the result of selling its property under threats of condemnation, the yield to Pacific Mutual might exceed the 10% limitation contained in Article XV, Section 1 (Interest Rates) of the California Constitution. The utility, therefore, requests that the Commission make appropriate findings, consistent with Decisions Nos. 83411 and 83504, ^{1/} that neither the

^{1/} Decision No. 83411, dated September 4, 1974 in Application No. 55080 - Southern California Gas Company.

Decision No. 83504, dated September 24, 1974 in Application No. 55116 - Pacific Gas and Electric Company.

maximum interest rate set forth in Article XV, Section 1 (Interest Rates) of the California Constitution nor the California usury laws apply to such provisions within the proposed notes. The findings requested herein would be similar to those included in a recent decision rendered by the Commission in connection with a Pacific Mutual loan. ^{2/}

Decisions Nos. 83411 and 83504, among others, hold that this Commission in exercising its authority to regulate public utility debt securities is not restricted by the California Usury Law and its ramifications^{3/} We reaffirm this holding and conclude that if the interest limitation of the California Usury Law is exceeded but it is determined that the transaction is the best the utility can obtain because of market conditions, then the public interest requires this Commission to authorize the issuance and sale of the debt instruments.

Campbell Water states that it has carefully considered the interest rate and other provisions of the proposed loan and has concluded that in light of its size and the market conditions prevailing at the time of negotiation, borrowing on a long-term basis would be extremely difficult, if not impossible, without the inclusion of such provisions.

The Utilities Division has reviewed the application and concurs with the Finance Division's conclusion that the proposed financing is necessary to implement the company's construction program and to refund maturing debt.

After consideration the Commission finds that:

1. The proposed note would be for proper purposes.
2. Campbell Water has need for external funds for the purposes set forth in this proceeding.

^{2/} Decision No. 87548, dated July 6, 1977 in Application No. 57334 - Del Este Water Company.

^{3/} The Commission on page 8 of Decision No. 83411 discusses the legal rationale and judicial basis of this holding. A similar discussion appears on page 5 of Decision No. 83504.

3. The proposed ten-year restriction on redemption of the proposed note results in a lower interest cost than would otherwise be incurred by the applicant in the absence of such a provision.
4. The proposed eighth supplemental indenture and the proposed supplemental loan agreement would not be adverse to the public interest.
5. The money, property or labor to be procured or paid for by the note herein authorized is reasonably required for the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.
6. In the event that prepayment of the proposed note occurs as a result of Campbell Water involuntarily selling property under threats of condemnation so that Pacific Mutual's yield might exceed the 10% limitation contained in Article XV, Section 1 (Interest Rates) of the California Constitution, then the public interest requires that this Commission authorize said issuance and sale irrespective of limitations contained in the California Usury Law.
7. 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.
8. The Legislature has conferred upon this Commission the authority to regulate the issuance of public utility securities, including evidences of indebtedness, and to prescribe restrictions and conditions as it deems reasonable and necessary (Sections 816 et seq. of the Public Utilities Code).
9. 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 evidences of indebtedness, 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.

10. 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 notes by public utilities (Sections 816 et seq. of the Public Utilities Code), irrespective of the Usury Law, judicial interpretation of the California Usury Law has exempted corporate notes of public utilities from operation of the Usury Law.
11. If the usury limitation contained in Article XV, Section 1 of the California Constitution and the Usury Law Initiative Act is exceeded, but the transaction is authorized by this Commission and is the best petitioner can obtain because of market conditions, petitioner utility, 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 petitioner of bonds in compliance with authorization by this Commission, persons collecting interest on such authorized bonds are not subject to the Usury Law sanctions.

There is no known opposition to Campbell Water's application and no reason to delay granting the authority requested. On the basis of the foregoing findings we conclude that the application should be granted. As set forth in said Decisions Nos. 83411 and 83504, among others, we further conclude that the usury limitations on interest contained in Article XV, Section 1, of the California Constitution and the Usury Law Initiative Act do not apply to the issuance of public utility securities, including evidences of indebtedness, lawfully authorized by this Commission. The authorization herein granted is for the purpose of this proceeding only, and is not to be construed as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. The Campbell Water Company may execute and deliver an eighth supplemental indenture and supplemental loan agreement in substantially the same forms as those attached to the application as part of Exhibit C.

2. The Campbell Water Company may issue a promissory note in the principal amount of \$220,000 in substantially the same form as that attached to the application as part of Exhibit C.

3. The Campbell Water Company shall apply the proceeds from the issuance of said note to the purposes specified in the application.

4. The lender's yield on the note of The Campbell Water Company authorized herein may exceed the maximum annual interest rate set forth in Article XV, Section 1 (Interest Rates) of the California Constitution or any other law of the State of California establishing the rate of interest that can be charged to or received from a borrower.

5. Neither The Campbell Water Company, nor any other person 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, as a result of the provisions in the promissory note relating to condemnation or other involuntary takings, the interest on the promissory note exceeds the maximum set forth in Article XV, Section 1 (Interest Rates) of the California Constitution or any other law of the State of California establishing the maximum rate of interest that can be charged to or received from a borrower and that neither Pacific Mutual Life Insurance Company nor any other persons entitled to the benefit of such provisions are subject to any sanctions provided for in any of said laws.

6. The Campbell Water Company shall file with the Commission a report, or reports, as required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

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7. This order shall become effective when The Campbell Water Company has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$318.

Dated at San Diego, California, this 31st day of JANUARY, 1978.

Robert Butwinich
President
William S. Squire Jr.
Richard D. Howell
Clair J. L. Smith
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

