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Decision No. 90382 JUN 5 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of CP NATIONAL CORPORATION,	)	
a California corporation, for authority	)	Application No. 58838
to issue bank notes and to issue	)	(Filed May 3, 1979)
Debentures in the principal amount of	)	and
up to \$15,000,000.	)	Amendment
	)	(Filed May 7, 1979)

O P I N I O N

CP National Corporation (CP National) seeks an order granting it an exemption from the Commission's competitive bidding rule, and authorizing it (a) to issue and sell not exceeding \$15,000,000 aggregate principal amount of debentures due in 1991, and (b) to execute and deliver an Indenture. It also seeks authorization to increase its short-term bank lending arrangements from \$20,000,000 to \$25,000,000, to be used only if there is a delay or postponement of the proposed debenture sale.

CP National requests this authority pursuant to Sections 816 through 818 and 823(c) of the Public Utilities Code. Notices of the filing of the application and amendment were published on the Commission's Daily Calendar of May 4, and May 8, 1979, respectively.

CP National is a California corporation engaged in public utility operations in Oregon, California, Nevada, Utah and Arizona. Based on its annual report to stockholders for the year ended December 31, 1978, CP National derived 51.2% of its utility operating revenue from Oregon operations, 23.3% from California, 14.2% from Nevada, 11% from Utah and .3% from Arizona. In California, CP National provides electric, gas, telephone and water services.

Debenture Financing

Although the terms of the proposed debentures might be altered in response to any change in market conditions at the time of sale, it is intended that the debentures would have a twelve-year maturity, bear interest at the rate of 10-3/8% per annum, payable quarterly or, at the option of a holder of \$6,000 or more, monthly, and would be noncallable for five years and callable in the sixth year at 105% and at 1% less each year thereafter to maturity. The debentures would be redeemable at par at the option of the holders (a) on the death of a holder or joint holder or (b) commencing December 31, 1981, with an annual aggregate, noncumulative limit of \$25,000 per holder of 5% of the original aggregate principal amount of the debentures.

CP National proposes to issue and sell the debentures on a negotiated basis through Edward D. Jones & Co., who would agree to sell the debentures to the public on an all or none, best efforts basis at par value. Interest would be payable from the date of delivery of the debentures. CP National proposes to pay the underwriter a commission of 5% of the aggregate par value of the debentures and would expect to incur additional expenses of up to \$150,000 in connection with the sale. Net proceeds to CP National equal to 95% of par, with a 10-3/8% nominal interest rate, produces an 11.15% effective interest rate.

Although the 5% underwriter's commission (\$750,000) is high in comparison with public offerings recently authorized by this Commission, the application indicates that it is necessitated by the underwriter's broad distribution efforts through its approximately 200 sales offices without the formation of an underwriting or selling group. When viewed in the context of the effective interest rate it produces and a comparison of that rate with rates recently observed for other utilities, the proposed underwriting appears reasonable.

CP National's first mortgage bonds have not been rated by Moody's Investors Service, Inc. or Standard & Poor's Corporation, and the application states CP National's opinion that its bonds would not be rated higher than its outstanding preferred stock (Baa/BBB) but, in fact, with its current financial situation, might be rated lower. The debentures to be offered by CP National, if rated, would be rated less than Baa/BBB because they are unsecured and do not have any restrictive covenants associated with a typical first mortgage bond issue. Given these factors, CP National would not expect an effective cost of money lower than 11.15%. The application notes the April 26, 1978, sale of Baa/BBB first mortgage bonds by Louisiana Power & Light, 10-year term, with an effective interest rate of 11.15%, and the expected effective interest rate on the debentures compares favorably with this.

The application indicates that CP National is in need of external financing in order to continue its utility construction program. CP National's short-term bank borrowings presently bear interest at a composite annual rate (including fees) of 12.6%. CP National had \$14,000,000 outstanding under its \$20,000,000 short-term bank lines of credit at March 31, 1979, all of which bank indebtedness was used to finance construction of additions to the company's utility plant. If market conditions warrant, CP National will sell the entire \$15,000,000 of debentures, but CP National does not anticipate issuing less than \$12,500,000 of debentures. All of the net proceeds would be used to retire bank indebtedness, to reimburse CP National's treasury for amounts expended to retire such indebtedness or to finance CP National's utility construction program. Based on December 31, 1978, financial information, CP National cannot issue first mortgage bonds because of the coverage test under its first mortgage indenture or preferred stock because of applicable restrictive provisions of prior issues.

Interim Bank Financing

By Decision No. 88998, dated June 27, 1978, (as modified by Decision No. 89259, dated August 22, 1978) in Application No. 58062, CP National was authorized to issue promissory notes and acceptance drafts, and notes and drafts refunding them, in the aggregate principal amount not exceeding \$20,000,000 at any one time outstanding. The bank agreements pertaining to the foregoing indebtedness were filed as exhibits in Application No. 57485 and Application No. 58062, and the basis of this proceeding under Section 823(c) of the Public Utilities Code is fully set forth in the decisions in those applications.

The application indicates that, in order to permit CP National to continue to finance its construction program on a temporary basis, should there be any delay in the closing of its debenture financing, it intends to negotiate for increased bank lines either with its present lenders or with other banks, on terms substantially the same as those contained in the documents previously filed in the applications referred to above.

CP National requests that the authorization granted by Decision No. 88998, dated June 27, 1978, (as modified by Decision No. 89259, dated August 22, 1978) be extended to cover an additional \$5,000,000 of bank indebtedness.

CP National states in the amendment to the application that it expects to reach the \$20,000,000 maximum under its present bank lending arrangements in the Fall of 1979. The application also indicates that, upon successful completion of the debenture sale, the present \$20,000,000 bank lending arrangements should be adequate.

Financial Matters

According to the financial statements filed with the application for the twelve months ended February 28, 1979, CP National had operating revenues of \$81,913,000, operating income of \$7,052,000 and net income of \$3,364,000. CP National's capital structure at March 31, 1979, was as follows:

Long-term debt	\$50,477,000	44.5%	
Short-term bank debt	<u>14,000,000</u>	<u>12.3</u>	
Total debt	\$64,477,000		56.8%
Preferred equity	10,572,000	9.3	
Common equity	<u>38,309,000</u>	<u>33.9</u>	
Total equity	48,881,000		43.2
TOTAL	<u>\$113,358,000</u>	<u>100.0%</u>	<u>100.0%</u>

The Finance Division observes that CP National's debt ratio of 56.8% (which will not be affected by the debenture sale) is slightly higher than the 55% or less which the Division suggested in Decision No. 88998, but that it does appear to be declining slightly. CP National should continue to aim its financings toward a debt ratio of 55% or less. In other respects, the Finance Division concludes that the debenture sale and the alternative increase in bank debt authorization are proper.

A summary of CP National's construction program for 1978 and 1979 is attached to the application as Exhibit E. The Operations Division evaluated and compared this information with past construction budgets and has analyzed CP National's construction program in connection with pending rate increase applications. The Operations Division concludes that the debenture sale and the alternative increase in bank debt authorization are not unreasonable in relation to past and present construction levels, and therefore does not object to these proposals.

#### Competitive Bidding

CP National's reasons for requesting that the issue and sale of the debentures be exempted from the requirements of the competitive bidding rule are summarized as follows:

1. CP National has not sold debt securities to the public. All of its debt securities have been placed privately in small issues with institutional investors. Consequently, CP National's name in the public debt securities market is unknown, and in view of the other factors noted below and CP National's depressed interest coverage, there is no assurance of investment banking community interest in forming bidding groups.

2. CP National's debt offering is of small size and in its opinion would be unrated by Moody's Investors Service, Inc. or Standard & Poor's Corporation. In addition, it is being sold in a specialized marketplace through the specialized distribution system described above. Negotiation with the underwriter is the only method of reaching this market. As noted above, the proposed debentures will produce a comparably favorable effective cost of money.

3. A negotiated underwriting provides flexibility in establishing such terms as maturity date, sinking fund requirements and call protection. With this flexibility, adjustments can be made to changing market conditions and a lower interest rate may be obtained.

4. The current unstable condition of the debt securities market makes essential pre-offering marketing efforts by the prospective underwriter. The underwriter, in a negotiated offering, can engage in such efforts while members of a bidding group cannot since bidding group members never know when they have the merchandise until the very last minute.

Although a negotiated sale may allow more flexibility in marketing the proposed debentures and facilitate the sale with less cost to CP National, a negotiated sale is not always necessarily in the public interest. This decision is not intended to modify the competitive bidding rule as initially set out in Decision No. 38614 (46 Cal. R.C. 281 (1946)), as amended by the Commission in subsequent decisions in Case No. 4761.

CP National intends to situate and structure the proposed issuance and sale of its debentures in the State of Oregon without restricting the market for such debentures to areas outside of California. Inasmuch as CP National's proposal does not operate to restrict the potential debenture market to the detriment of CP National or its ratepayers, we are not opposed to such situating and structuring of the proposed issuance and sale. In this connection Decision No. 83411, dated September 4, 1974, in Application No. 55080 (Southern California Gas Company), Decision No. 83492, dated April 29, 1975, in Application No. 55522 (San Diego Gas & Electric Company), and Decision No. 85983, dated June 22, 1976, in Application No. 56490 (San Diego Gas & Electric Company), 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. 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.

CP National's attorney, by letter dated May 9, 1979, requests that an order of this Commission become final on June 5, 1979, in order to preserve the benefit of the 10-3/8 percent interest rate on the debentures. We will therefore make this order effective on the date on which the company has paid the prescribed fee.

Findings and Conclusions

1. CP National is a California corporation operating under the jurisdiction of this Commission.
2. CP National has need for external funds for the purposes set forth in the application.
3. The proposed debenture issue and the proposed additional bank debt are for proper purposes.

4. The money, property or labor to be procured or paid for by the issue of the debentures and the additional bank debt 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.
5. The proposed Indenture would not be adverse to the public interest.
6. The sale of the proposed debentures should not be required to be through competitive bidding.
7. If prevailing market conditions necessitate that CP National's proposed debentures be issued and sold with a rate of interest exceeding the limitations provided in Article XV, Section 1 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.
8. 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.
9. The Legislature has conferred upon this Commission the authority to regulate the issuance of public utility securities, including evidence of indebtedness, and to prescribe restrictions and conditions as it deems reasonable and necessary (Sections 816 et seq. of the Public Utilities Code).
10. 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 evidence 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.



11. 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 public utility securities, including evidence of indebtedness, 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 bonds of public utilities from operation of the usury law.
12. If the usury limitation contained in Article XV, Section 1 of the California Constitution and the Usury Law Initiative Act is exceeded, but transaction is authorized by this Commission and is the best CP National can obtain because of market conditions, 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 debentures in compliance with authorization by this Commission, persons collecting interest on such authorized bonds are not subject to the usury law sanctions.
13. This Commission does not object to CP National's situating and structuring the proposed issuance and sale of the debentures in the State of Oregon.
14. There is no known opposition and no reason to delay granting the authority requested in the application.
15. A public hearing is not necessary.
16. The application should be granted to the extent set forth in the order which follows.

The authorization granted herein is for the purposes 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 sale by CP National Corporation of not exceeding \$15,000,000 aggregate principal amount of its debentures is hereby exempted from the Commission's competitive bidding rule set forth in Decision No. 38614, dated January 15, 1946, as amended, in Case No. 4761.

2. CP National Corporation may execute and deliver an Indenture in substantially the same form as Exhibit C attached to the application.

3. CP National Corporation may issue and sell not exceeding \$15,000,000 aggregate principal amount of its debentures through the underwriter named in the application at such price and otherwise on such terms and conditions to be negotiated in accordance with the application.

4. An interest rate for CP National Corporation's debentures may exceed the maximum annual interest rate otherwise permitted under the California usury law, as contained in Article XV of the California Constitution and the Usury Law Initiative Act, if market conditions so require.

5. Neither CP National Corporation, 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 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. CP National Corporation may situate the sale of the debentures in the State of Oregon.

7. CP National Corporation shall use the net proceeds from the sale of said debentures for the purposes referred to in the application, as amended.

8. Upon determining the maturity date, price and interest rate pertaining to the debentures herein authorized, CP National Corporation shall notify the Commission thereof in writing.

9. As soon as available, CP National Corporation shall file with the Commission three copies of its final prospectus pertaining to said debentures.

10. CP National Corporation 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.

11. CP National Corporation may increase its bank lending arrangements from \$20,000,000 to \$25,000,000 aggregate amount, on terms and conditions negotiated as contemplated by the application, and use the proceeds thereof for the same purposes contemplated in the Commission's Decision No. 88998; provided, however, that such increase shall be used only to the extent there is a delay or postponement of the debenture sale.

12. Upon determining the terms and conditions of any increase in bank lending arrangements, CP National Corporation shall notify the Commission thereof in writing.

13. This order shall become effective when CP National Corporation has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$4,495 for the debentures and \$2,330 for the additional bank debt.

Dated at San Francisco, California, this 5<sup>th</sup> day of JUNE, 1979.

John E. Bay  
President  
William L. Ferguson  
Richard D. Howell  
Charles J. ...  
...  
Commissioners

PUBLIC UTILITIES COMMISSION  
STATE OF CALIFORNIA  
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JUN 7 1979  
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By [Signature]