

A.59478 RR/lq

ORIGINALDecision No. 91746 MAY 6 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of

CP NATIONAL CORPORATION and
TUOLUMNE TELEPHONE CO.

for an order authorizing the acquisition of Tuolumne Telephone Co. by CP National Corporation; the issuance of 27,990 shares of Cumulative Convertible Preference shares, Series A, no par value, of CP National Corporation; and the issuance of up to 311,000 shares of \$5 par value, upon conversion of said Cumulative Convertible Preference shares.

Application No. 59478
(Filed February 26, 1980)O P I N I O N

CP National Corporation (CP National) requests authority, pursuant to Sections 816 through 830, 851, 852 and 854 of the Public Utilities Code (a) to acquire all of the outstanding capital stock of Tuolumne Telephone Co. (Tuolumne); (b) to issue 27,990 shares of CP National's Cumulative Convertible Preference Stock, Series A, no par value; and (c) to issue not exceeding 311,000 shares of CP National's Common Stock, \$5 par value, upon conversion of the preference shares in exchange for the common shares. Notice of the filing of the application was published on the Commission's Daily Calendar of February 28, 1980.

CP National is a California corporation engaged in public utility operations in the States of Oregon, California, Nevada, Utah, and Arizona. CP National provides electric, gas, telephone, and water services in the State of California.

Tuolumne is a California corporation and a public utility owning and operating a telephone system furnishing exchange and toll service in the Counties of Tuolumne, Shasta, and Tehama.

For the twelve months ended December 31, 1979, applicant reported total operating revenue and net income as follows:

	<u>CP National</u>	<u>Tuolumne</u>	<u>Combined</u>
Total Operating Revenue	\$88,506,467	\$1,727,338	\$90,233,805
Net Income	4,901,000	232,410	5,133,410

CP National reports that 23.2 percent of its utility operating revenues are generated in the State of California. All of Tuolumne's operations are in California.

CP National proposes to acquire all of the outstanding capital stock of Tuolumne in exchange for 27,990 shares of CP National's no par value Preference Stock having a stated or liquidation value of \$100 per share totaling \$2,799,000. The proposed transaction will be accomplished pursuant to an Agreement and Plan of Reorganization which will be entered into between CP National and Tuolumne. The reorganization contemplated by the agreement is designed to qualify as a tax free reorganization under Section 368(a)(1)(A) of the Internal Revenue Code. Section 368 prescribes certain conditions which must be met in order that neither Tuolumne nor its present shareholders would realize any immediate gain for federal income tax purposes as a result of the proposed acquisition. The reorganization contemplates that CP National will form a new subsidiary to be merged into Tuolumne with the result that CP National will become the owner of all of the outstanding stock of Tuolumne. The former shareholders of Tuolumne will receive the preference shares in exchange for the Tuolumne shares previously held by them.

The proposed preference stock will be convertible into shares of common stock of CP National. The proposal provides that CP National's common stock, not exceeding 311,000 shares, would be issuable upon conversion of the preference stock. Under the rules of the New York Stock Exchange, in an acquisition, CP National may not issue an amount of shares of common stock which is greater than 18.5 percent of its presently outstanding shares of common stock without approval of its shareholders. Since, without the proposed limitation, there is the theoretical possibility that more than this amount could be issued under the conversion formula adopted, CP National has limited the number of shares issuable to 311,000 which is slightly less than 18.5 percent of the 1,682,746 shares presently outstanding.

The application indicates that the number of preference shares which will be issued to Tuolumne's shareholders in exchange for Tuolumne's capital stock was determined by an arm's-length negotiation between the parties. The acquisition of stock will be accounted for as a "purchase" for accounting purposes, and the excess of the purchase price over the net assets will be designated as Goodwill and is estimated to be \$1,127,000 which will be amortized over a period of forty years. The Commission will require that the amortization expense be treated as a non-operating expense item and given "below-the-line" treatment for ratemaking purposes. The anticipated amount of the writeoff will be approximately \$28,175 annually.

CP National presently operates a number of small to medium size public utility telephone systems similar to the exchange areas of Tuolumne. CP National's management is experienced in the type of public utility service rendered by Tuolumne and the operations of Tuolumne will complement CP National's other telephone operations both in geographical location and size.

In Decision No. 90428, dated June 19, 1979, in Case No. 10509, the Commission concluded an investigation into the operation of Oak Run Exchange of Tuolumne's Northern Division and ordered certain improvements in telephone plant. In Decision No. 90654, dated August 14, 1979, in Application No. 58960, the Commission authorized Tuolumne to borrow \$5,170,000 from the Rural Electrification Administration (REA). This planned construction will assist in responding to Decision No. 90428. On October 16, 1979, the REA gave its final approval for the loan. CP National will continue with the budgeted construction program. CP National indicates in its application that because of its greater size, larger asset base, greater cash flow, and general flexibility, it believes it will be in a stronger position than Tuolumne to continue to maintain and improve service to all of Tuolumne's customers. For these same reasons, the applicants believe that operating economies can be achieved by means of the proposed transaction and the earnings of Tuolumne will contribute to those of CP National. The application shows that the transaction will further diversify the operations of CP National and contribute to the increased marketability of its securities while providing better service to Tuolumne's customers.

The proposed preference shares to be issued to Tuolumne shareholders will be junior to CP National's preferred shares. The preference shares (27,990 shares) will be entitled to annual cumulative dividends at the rate of \$9.80 per share, payable quarterly, and will have a liquidation preference of \$100 per

share. The preference shares will be convertible into shares of common stock of CP National at a rate determined by dividing \$100 by the average market price of the common stock during the 30 calendar days prior to CP National's receipt of the election to convert the shares, provided that CP National shall have the option to redeem the preference shares tendered for conversion at a rate of \$100 per share. The preference shares will become convertible on a cumulative basis in installments of 10 percent per year. No more than 311,000 shares of common stock will be issuable on conversion.

The proposed preference shares will be redeemable at CP National's option at a redemption price of \$100 per share; however, so long as the shares are held by an original holder, CP National may not redeem more than 10 percent of the preference shares of each such holder in any one year.

The application indicates that CP National presently intends that Tuolumne (a) will remain a subsidiary separate from CP National for capitalization, operational and ratemaking purposes, (b) that CP National will adopt the existing rates, rules and regulations of Tuolumne without change, and (c) that the accounting, records and financial and tax reporting of Tuolumne will be continued without change on a separate basis.

Balance Sheets as of December 31, 1979, for CP National and Tuolumne, recorded and as adjusted for CP National - Parent and CP National-Consolidated to reflect the acquisition of Tuolumne's stock are as follows:

	(Thousands of Dollars)			
	Recorded		Pro Forma	
	CP National	Tuolumne	CP National - Parent	CP National - Consolidated
<u>Assets</u>				
Utility Plant Less Accumulated Depreciation	\$121,436	\$7,532	\$121,436	\$128,968
Other Investments	155	257	155	412
Current Assets	20,947	270	20,947	21,217
Investments in Subsidiaries ^{1/2/}	-	-	1,672	-
Goodwill ^{1/}	-	-	1,127	1,127
Deferred Debits	2,493	61	2,493	2,554
Total	<u>\$145,031</u>	<u>\$8,120</u>	<u>\$147,830</u>	<u>\$154,278</u>
<u>Liabilities and Common Equity</u>				
Common Equity ^{2/}	\$ 38,577	\$1,672	\$ 38,577	\$ 38,577
Preferred Stock	10,353	-	10,353	\$10,353
Preference Stock ^{1/}	-	-	2,799	2,799
Long-Term Debt	64,389	6,244	64,389	70,633
Current Liabilities	24,989	204	24,989	25,193
Deferred Credits	6,723	-	6,723	6,723
Total	<u>\$145,031</u>	<u>\$8,120</u>	<u>\$147,830</u>	<u>\$154,278</u>

^{1/} Investment in Subsidiaries, \$1,672,000, and Goodwill, \$1,127,000, are recorded on the books of CP National - Parent at the time the issue of CP National's Preference Stock in the amount of \$2,799,000 is recorded. Goodwill is expected to be amortized over 40 years.

^{2/} Investment in Subsidiaries, \$1,672,000, on the books of CP National - Parent is eliminated as is the Common Equity of Tuolumne on CP National's Consolidated Balance Sheet.

CP National's capital ratios as of December 31, 1979, recorded and as adjusted to give effect to (a) the issuance of 27,990 preference shares to be issued in connection with the acquisition of Tuolumne and (b) the issuance of 100,000 shares of Common Stock, \$5 par value, in accordance with its Dividend Reinvestment and Stock Purchase Plan^{1/} are as follows:

	<u>December 31, 1979</u>	<u>Pro Forma</u>
Long-Term Debt	54.6%	52.8%
Short-Term Debt	<u>3.6</u>	<u>3.4</u>
Total Debt	58.2	56.2
Preferred Stock	9.1	8.8
Preference Stock	-	2.3
Common Equity	<u>32.7</u>	<u>32.7</u>
Total	<u>100.0%</u>	<u>100.0%</u>

The staffs of the Commission's Revenue Requirements Division and the Communications Division have reviewed the application and have concluded the proposed merger is reasonable and the request to merge should be granted.

In issuing our order herein, we place CP National and its shareholders on notice that we do not regard the number of shares outstanding, the total par value of the shares nor the dividends paid as measuring the return the company should be allowed to earn on its investment in plant and that the authorization herein granted is not to be construed as a finding of the value of the company's stock or properties nor as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

^{1/} Decision No. 91747, dated MAY 6 1980
in Application No. 59577.

Findings of Fact

1. CP National and Tuolumne are California corporations operating under the jurisdiction of this Commission.

2. The acquisition of Tuolumne by CP National would not be adverse to the public interest.

3. The proposed issuance of CP National's preference shares and common shares are for proper purposes.

4. The money, property or labor to be procured or paid for by the issuance of CP National's preference shares and common shares are 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 issuance of CP National's preference shares and common shares would not be adverse to the public interest.

6. There is no known opposition and no reason to delay granting the authority requested in the application.

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 authorization granted herein is for the purposes of this proceeding only and is not to be construed as indicative of the amounts to be included in proceedings for the determination of just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. CP National Corporation may acquire the capital stock of Tuolumne Telephone Co. pursuant to the terms and conditions as set forth in its application.

2. CP National Corporation and Tuolumne Telephone Co. may execute and enter into the Agreement and Plan of Reorganization attached as Exhibit C to the application, and Tuolumne Telephone Co. may merge with the wholly-owned subsidiary of CP National Corporation as therein contemplated.

3. CP National Corporation may issue and deliver in exchange for existing shares of Tuolumne Telephone Co. 27,990 shares of its Cumulative Convertible Preference Shares, Series A, no par value.

4. CP National Corporation may issue from time to time not exceeding 311,000 common shares of CP National Corporation on conversion of the 27,990 shares of Cumulative Convertible Preference Shares, Series A.

5. CP National Corporation shall maintain the accounting records of Tuolumne Telephone Co. in such form as to enable it to make available in any subsequent proceeding before this Commission on a separate basis the investment in properties, operating revenues and expenses and financial and tax reporting for each of the areas for which Tuolumne Telephone Co. presently maintain records.

6. Within thirty days after the merger herein authorized, CP National Corporation shall file with the Commission a certified copy of the certificate filed with the Secretary of State effectuating the merger.

7. Within sixty days after the merger herein authorized, CP National Corporation shall file with the Commission a copy of each journal entry used to record the merger on its books of account.

8. 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.

9. The authority granted by this order to issue preference and common stock will become effective when CP National Corporation has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$1,299. In other respects the effective date of this order shall be thirty days after the date hereof.

Dated MAY 6 1980, at San Francisco, California.

John E. Byrne
President
James L. Stevenson
Richard D. Hassel
Clare J. P. Pyle
Thomas J. Pyle
Commissioners

