RR/JB/AFM/WPSC TF-1

Decision 84 02 087 FEB 16 1984 ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MORGAN DRIVE-AWAY, INC. an Indiana corporation, for exemption from Sections 816-830 of the Public Utilities Code, pursuant to Section 829.	Application 83-12-40 (Filed December 22, 1983)

O P I N I O N

Morgan Drive-Away, Inc. (Morgan) requests an order, under Public Utilities (PU) Code Section 829, for an exemption from compliance with the provisions of PU Code Sections 816-830 in connection with the proposed issue and exchange of its common capital stock.

Morgan alleges that the application of PU Code Sections 816 through 830 is not necessary or in the public interest because of the historically "de minimis" nature of the transportation performed by it in intrastate commerce, subject to this Commission's jurisdiction.

Morgan also alleges that the proposed issue and exchange of stock will not effect a change in the controlling ownership of the company.

Summary of Decision

This decision exempts Morgan from compliance with PU Code Sections 816-830 with respect to its issuance and exchange of common stock as described in the application.

Notice of the filing of the application appeared on the Commission's Daily Calendar of December 27, 1983. No protests have been received.

Morgan, an Indiana corporation, engages in the transportation of general commodities in the continental United States. Morgan operates its interstate operations under authority issued by the Interstate Commerce Commission (ICC) under Certificate MC-103993. Morgan conducts intrastate operations in California as a highway common carrier under a Certificate of Public Convenience and Necessity issued by the Commission under PU Code Section 1063.5. It also holds a highway contract carrier permit under File T-62888. Morgan is a wholly-owned subsidiary of CLC of America, Inc. (CLC).

Moody's Transportation Manual states that CLC and its subsidiaries are engaged in the business of providing barge transportation of coal, grain, and other bulk commodities on inland waterways primarily on the Mississippi River. They also provide carrier service for highway transportation of mobile homes and recreational vehicles, and the leasing of cars and light trucks as well as mobile facilities for offices and classrooms. CLC also sells, rents, and leases off-highway vehicular equipment, and distributes heavy duty industrial and earth-moving equipment.

Morgan reports it generated $32,318,646 of total operating revenue in the first nine months of 1983 as shown in Exhibit C attached to the application. Morgan estimates that its California intrastate operations represents only .54% of these revenues. Historically, Morgan has reported only de minimis operations under its California intrastate certificate authority. Morgan states in its Annual Report to the Commission for calendar year 1982 that it generated total operating revenues of $36,799,917 of which $143,527 or .39% were from California operations. For calendar year 1981, Morgan reported total operating revenues of $35,459,679 of which $94,081 or .27% were generated from operations in California intrastate commerce.

The application indicates that effective as of June 30, 1983, Morgan's board of directors and its parent, CLC, approved an amendment to Morgan's Articles of Incorporation under which its capitalization was changed from 25,000 authorized shares of Common Stock, $20 par value, to 7,300,000 authorized shares of stock consisting of the following:

Type	Par Value	Number of Shares
Class A Common Stock (Class A Stock)	5 cents	5,000,000
Class B Common Stock (Class A Stock)	5 cents	2,000,000
Preferred Stock	$50.00	300,000
	Total Shares	7,300,000

Out of the original 25,000 shares of Common Stock, $20 par value, Morgan has issued and outstanding 5,000 shares. These shares are all held by CLC. Morgan proposes to exchange its issued and outstanding capital stock for the following new classes of stock:

Type	Par Value	Number of Shares
Class A Stock	5 cents	925,000
Class B Stock	5 cents	1,075,000
	Total Shares Exchanged	2,000,000

After the exchange of stock, CLC proposes to sell to private investors 700,000 shares of the Class A Stock. The proceeds from the sale of this stock will be used by CLC for working capital and debt repayment.

The application states that the prospectus relating to the proposed sale by CLC of 700,000 shares of Morgan's Class A Stock has been submitted to the Securities and Exchange Commission, and that it has received the approval of that agency.

Following the proposed issuance and sale of 700,000 shares of Morgan's Class A Stock by CLC to private investors, CLC will own all of Morgan's Class B Stock (1,075,000 shares), and 225,000 shares of Morgan's Class A Stock. CLC's holding of this stock represents 65% of all of Morgan's outstanding stock. As a result of its holdings, CLC will remain in control of Morgan.

<u>Description of Morgan's Class A, Class B, and Preferred Stock</u>

The Class A and Class B Stock have the same liquidation and dividend rights. The holders of the Class A Stock have the right to elect 25% of the board of directors and the Class B Stock holders have the right to elect 75% of the board.

Shares of Class B Stock are convertible at any time, or from time to time, at the option of the holder, on a one-to-one basis for shares of Class A stock.

The Class A stockholders have one vote per share and the Class B stockholders have ten votes per share on all matters other than the election of the board of directors. In the event that at any time the outstanding shares of Class B Stock constitute less than 15% of the aggregate outstanding shares of Class A and Class B stock, the two classes of stock will cease to have separate voting rights as to the election of the board of directors and will each have one vote per share on all matters.

Morgan does not propose to issue preferred stock at the present time. Its board of directors may in the future, by its resolutions, establish, divide and issue each series of preferred stock with designations, relative rights and preferences as the board may determine.

Exemption Request

Morgan requests an exemption of the proposed transaction under PU Code Sections 829 and 853. In relevant part, these sections provide as follows:

> "The commission may from time to time by order or rule, and subject to such terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from the provisions of this article if it finds that the application thereof to such public utility or class of public utility is not necessary in the public interest."

Morgan alleges that the application of PU Code Sections 816-830 is not necessary, or in the public interest, because of the historically de minimis nature of the transportation performed by it in intrastate commerce, subject to this Commission's jurisdiction, compared to its operations in interstate commerce, subject to the ICC's jurisdiction. Also cited in the application is the fact that if the Commission grants the requested exemption, Morgan will continue to serve the public, using all of its facilities, both within California and throughout the United States. Finally, it is emphasized in the application that control of Morgan will not be affected by the proposed stock offering, in that CLC will retain controlling interest in Morgan.

PU Code Section 829 and 853 requires that the Commission review each case to determine its applicability to the facts set forth in the particular application. In this case, Morgan's operations, subject to the jurisdiction of this Commission, are minimal when compared to its overall operations.

The Commission's Revenue Requirements and Transportation Divisions have reviewed the application and have concluded that Morgan's request for an exemption from PU Code Sections 816 through 830 should be granted.

The attorney for Morgan has requested that the application be granted expeditiously so that the proposed transaction may be completed. The prospectus of this transaction has been approved by the Securities and Exchange Commission, and Morgan and CLC are ready to commence the proposed exchange offering. In view of these circumstances, the effective date of this order should be today.

Findings of Fact

1. Morgan, an Indiana corporation, operates as a common highway carrier subject to the jurisdiction of this Commission.

2. Morgan requests that it be exempted from the requirements of PU Code Sections 816-830 with respect to the issuance of its common stock as described in the application.

3. Morgan's California intrastate operations have historically been *de minimis* by comparison to its overall system-wide transportation service.

4. Application of PU Code Sections 816 - 830 under the facts set forth in this application is not necessary in the public interest.

5. 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. Morgan's proposed issuance and sale of its common stock should be exempted from the provisions of PU Code Sections 816-830 which prohibit the sale of stock without prior Commission approval.

3. The application should be granted to the extent set forth in the order which follows.

The following order should be effective on the date of signature to enable the applicant to complete the proposed transaction expeditiously.

O R D E R

IT IS ORDERED that Morgan Drive-Away, Inc. is exempted, under PU Code Sections 829 and 853, from any and all requirements that it obtain approval from the Commission for the issuance and sale of its common stock as described in Exhibit B attached to the application. This approval is granted because of the de minimis amount of intrastate transportation revenue earned in California.

This order is effective today.

Dated FEB 16 1984 at San Francisco, California.

LEONARD M. GRIMES, JR.
President
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

Commissioner Victor Calvo, being necessarily absent, did not participate

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

Joseph E. Bodovitz

Joseph E. Bodovitz, Executive Director

Morgan alleges that the application of PU Code Sections 816-830 is not necessary, or in the public interest, because of the historically de minimis nature of the transportation performed by it in intrastate commerce, subject to this Commission's jurisdiction, compared to its operations in interstate commerce, subject to the ICC's jurisdiction. Also cited in the application is the fact that if the Commission grants the requested exemption, Morgan will continue to serve the public, using all of its facilities, both within California and throughout the United States. Finally, it is emphasized in the application that control of Morgan will not be affected by the proposed stock offering, in that CLC will retain controlling interest in Morgan.

PU Code Section 829 and 853 requires that the Commission review each case to determine its applicability to the facts set forth in the particular application. In this case, Morgan's operations, subject to the jurisdiction of this Commission, are minimal when compared to its overall operations.

The Commission's Revenue Requirements and Transportation Divisions have reviewed the application and have concluded that Morgan's request for an exemption from PU Code Sections 816 through 830 should be granted.