

RR/KLH/SR/WPSC

ORIGINAL

Decision 84 06 032

JUN 6 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of RTC TRANSPORTATION,)
 INC. for Exemption from Require-)
 ments of Prior Approval of)
 Issuances of Securities, or, in)
 the Alternative, for Approval of)
 Issuance of 60,000 shares of)
 Common Stock.)

Application 84-03-10
 (Filed March 2, 1984)

O P I N I O N

RTC Transportation, Inc. (RTC) requests an order, under Public Utilities (PU) Code Section 829 for an exemption from compliance with PU Code Sections 816-830, for the issuance and sale of 30,000 shares of common stock each to Alan E. Serby and R. Elliott Miller as an inducement for obtaining their services for RTC. RTC requests this exemption to remain in effect as long as its California intrastate revenues are less than 10% of its total consolidated operating revenues.

RTC's requested order is applicable to its stock only and would not apply to any transfer or conveyance of any of RTC's California intrastate operating authorities. RTC would continue to be subject to the Commission's rate regulation and reporting requirements as well as its insurance and safety regulation.

Summary of Decision

This decision grants to RTC an exemption, under PU Code Section 829, from compliance with PU Code Sections 816-830. This exemption will remain in effect for a two-year period. This decision also requires RTC to file General Order 24 Series reports and pay the fees set by PU Code Sections 1904(b) and 1904.1.

Notice of the filing of the application appeared on the Commission's Daily Calendar of March 7, 1984. No protests have been received.

RTC, a Georgia corporation, maintains its principal place of business in Forest Park, Georgia. RTC holds authority to operate as a highway common carrier within California under a Certificate of Public Convenience and Necessity issued under PU Code Section 1063. RTC also operates as a transcontinental motor carrier operating in interstate commerce under authority granted by the Interstate Commerce Commission to transport general commodities which includes refrigeration service. It maintains California terminals in Modesto and Fontana.

RTC reports that in its fiscal year ended December 26, 1982 it generated total consolidated operating revenues of \$162,902,000 of which \$241,215 or .1% were derived from California intrastate operations. During fiscal year 1983, RTC reports total consolidated operating revenues of \$169,996,000 of which \$1,870,952

or 1.1% were derived from California intrastate operations as reported in RTC's letter dated March 23, 1984 to the Commission.

Request for Exemption

RTC requests this Commission to issue an order which exempts the issuance of 60,000 shares of its common stock (30,000 shares each) to Alan E. Serby and R. Elliott Miller as an inducement to them to enter RTC's employment as Senior Vice President - Corporate Affairs and Senior Vice President - Finance, respectively. RTC has agreed to issue and sell to Messrs. Serby and Miller 30,000 shares each of RTC's Common Stock, \$.50 par value, for a cash purchase price of \$.50 per share subject, among other things, to receipt of appropriate orders from both this Commission and the Public Service Commission of the State of Georgia. The application indicates that these are the only state regulatory agencies having jurisdiction over the issuance of RTC's securities. RTC has 1,239,786 shares of its common stock outstanding as of December 27, 1982 which has a book value of \$10.67 per share. This stock was selling on the American Stock Exchange on April 12, 1984, for \$8 a share.

RTC alleges that the application of PU Code Sections 816-830 to the issuance of its common stock is not necessary or in the public interest. This is based on the historically de minimis nature of the transportation performed by RTC in intrastate commerce compared to its operations in interstate commerce.

PU Code Section 816 generally prohibits the issuance of stocks, bonds, notes, and other evidences of indebtedness, without Commission approval.

In relevant part, Section 829 provides:

"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 [Sections 816-830] if it finds that the application thereof to such public utility or class of public utility is not necessary in the public interest."

This Commission has exercised its authority to grant exemptions under PU Code Section 829 on numerous prior occasions. It has done so primarily on the basis that the California operations of various public utilities, including motor carriers, are de minimis when compared to their interstate operations.

In the past, the Commission has found that the public interest is not served by applying the requirements of PU Code Sections 816-830 to motor carriers whose California Intrastate operations are de minimis, when compared to their interstate operations.

PU Code Section 829 requires that the Commission review each case to determine its applicability to the facts set forth in a particular application. In this case, RTC's operations, subject to the jurisdiction of this Commission, are minimal when compared to its overall interstate operations. RTC does not propose that it

be relieved of all obligations and reporting requirements of this Commission. RTC must, of course, continue to file the required periodic reports; maintain appropriate amounts of insurance; comply with safety regulations; and comply with all rate and tariff requirements of the PU Code and the rules and regulations of this Commission. An exemption is requested only with respect to the requirement that RTC seek this Commission's approval for its issuance of securities under the provisions of PU Code Sections 816-830.

The Commission's Revenue Requirements Division has reviewed RTC's application and has no objection to granting the exemption requested; however, the Division recommends RTC be granted an exemption from all issuances of debt and equity securities for a two-year period. The exemption should remain in effect for a two-year period subsequent to the effective date of this decision. If after the two-year period, RTC desires to extend the exemption, it may then petition the Commission showing why a further extension should be granted. This procedure conforms to current Commission policy whereby utilities are required to justify extensions of Commission security authorizations.

The Division also recommends that if RTC issues any securities within the two-year period, it be required to file with this Commission the reports required by General Order Series 24.

Concurrent with the filing of these reports, RTC should be required to pay to the Commission all fees that would be required by PU Code Sections 1904(b) and 1904.1 as if the two-year exemption had not been granted.

The Commission accepts the recommendation of the Revenue Requirements Division.

Findings of Fact

1. RTC, a Georgia corporation, operates as a highway common carrier under the jurisdiction of this Commission.

2. RTC requests an order under PU Code Section 829 that it be exempted from the requirements of PU Code Sections 816-830 with respect to its issuance of 60,000 shares of its common stock to Alan E. Serby and R. Elliott Miller (30,000 shares each) as an inducement to them to enter RTC's employment as Senior Vice President - Corporate Affairs and Senior Vice President - Finance, respectively, as described in its application. The proposed issue of stock would not be adverse to the public interest.

3. In the past two years, RTC's intrastate revenue as related to its systemwide consolidated operating revenue has been de minimis.

4. The application of PU Code Sections 816-830 for a two-year period 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. It is proper to exempt, for a two-year period, RTC's issuance of debt and equity securities.
3. There is no reason to delay granting the authority requested.
4. 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 permit RTC to proceed with its security transactions expeditiously.

O R D E R

IT IS ORDERED that:

1. RTC Transportation, Inc. (RTC) is granted an exemption under PU Code Section 829 from compliance with PU Code Sections 816-830 for the issuance and sale of all of its debt and equity securities. This exemption is granted for a two-year period subsequent to the effective date of this order.
2. RTC shall continue to be subject to and adhere to this Commission's reporting, insurance, and safety regulation, and shall, as to its intrastate transactions be subject to this Commission's rate regulation.
3. RTC shall file the reports required by General Order Series 24.

4. Concurrent with the filing of the reports required by General Order Series 24, RTC shall pay to the Commission the fees set by PU Code Sections 1904(b) and 1904.1 for the issuance of all of its debt and equity securities under PU Code Sections 816-830.

5. The application is granted as set forth above.

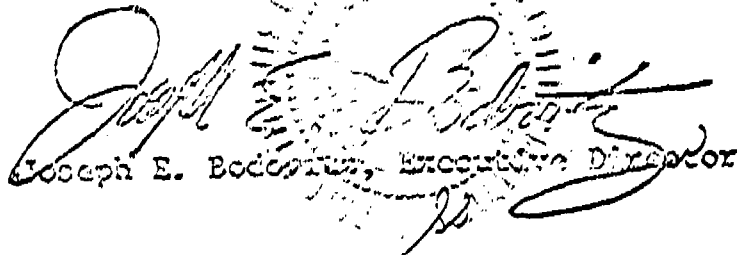
This order is effective today.

Dated JUN 6 1984 at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
DONALD VIAL
WILLIAM T. BACLEY
Commissioners

Commissioner Priscilla C. Grew,
being necessarily absent, did
not participate

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


Joseph E. Bedonkofer, Executive Director