

Decision 89 06 057 JUN 21 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of THE BEKINS COMPANY)
authorizing the issuance of)
evidences of indebtedness and the)
encumbrance of property.)

Application 89-05-070
(Filed May 31, 1989)

OPINION

Summary of Decision

This decision grants to The Bekins Company (BC) on an emergency basis, the authority requested in the application. BC requests authority under Public Utilities Code (Code) Sections 818 through 830 and 851, for the following:

1. To enter into a Loan Agreement (Agreement) with the Security Pacific National Bank (SPNB) and other participating banks for which SPNB will act as agent;
2. To enter into a Senior Subordinated Loan Agreement (Senior Agreement) with SPNB in the aggregate principal amount not to exceed \$5,000,000, with the contemplation that SPNB will receive from Bekins Holding Company (BHC), the parent of BC, a warrant to acquire up to 10% of the stock of BHC, in consideration of the extension of credit to BC;
3. To borrow from SPNB and other banks an aggregate principal amount not to exceed \$47,500,000, and to issue a Note or Notes (Notes) evidencing the loan; and
4. To encumber or pledge as security for the Notes all of BC's assets and capital stock of each of its operating subsidiaries, each of the operating subsidiaries total assets, both real and personal, including operating rights, and the stock of BC itself to be given by the holder BHC.

Decision 87-04-040, in addition to authorizing the change of control, authorized BC and its operating subsidiaries to issue evidences of indebtedness and to pledge assets, including operating authority, to the extent such authorization would be required to carry out the terms of a Financing Agreement set forth in the Application.

The present Application recites that the Financing Agreement above, which was in draft form when Decision 87-04-040 of April 7, 1987 was issued, was finalized a short time later, on May 1, 1987. The present Application further recites that the Financing Agreement was amended from time to time without changing the total amount of the loan. Specifically, the Third Amendment is stated to have spread the installment payments of principal over a shorter time and to have provided for a pledge of the stock of BC itself. On May 10, 1989 the parties filed a Petition for Modification to Clarify Decision 87-04-040 [Petition], asking confirmation that the decision is to be construed to give the authority required for the modifications through the Third Amendment.

The present Application recites that it subsumed the Petition, and it goes on to state that a refinancing agreement has now been worked out, subject to Commission authorization, under which the loan by the present lender, Citicorp North America, Inc. (formerly known as Citicorp Industrial Credit, Inc.) is to be rearranged and then satisfied through a refinancing by SPNB (and the banks joining with that bank). Under the new financing arrangement as presented, the revolving credit portion of the existing loan from Citicorp North America, Inc. [Citicorp] will increase by \$2 million the amount of funds available for borrowing. This is set forth in a Fourth Amendment to the Financing Agreement with Citicorp, attached to the present Application.

Also attached to the present Application is a copy of a draft stamped May 13, 1989, of the proposed Loan Agreement between BC, on the one hand, and SPNB, on the other. The loans are to be secured, as in the existing agreement with Citicorp, by (i) a pledge by BC of all of its assets, including the capital stock of

each of the operating subsidiaries; (ii) a pledge by each of the operating subsidiaries of all their assets, both real and personal, and including operating rights; (iii) a pledge of the stock of BC itself to be given by the holder thereof, BHC. In addition to the above, a \$5 million Senior Subordinated Loan Agreement between BC and SPNB will make additional funds available to BC. A copy of the Senior Subordinated Loan Agreement is attached to the Application. The lending arrangement between the parties also contemplates that SPNB will receive from BHC a warrant to acquire up to 10% of the stock of BHC, in consideration of the extension of credit to BC.

The stated purpose of the refinancing described is to enable BC to avoid delinquency on its loan from Citicorp and to have access to the additional capital needed to finance the Bekins operating companies.

Claim of Urgency

Applicant declares that an emergency exists to obtain authority for the new financing immediately because Citicorp will terminate additional credit facilities on June 30, 1989, and applicant asserts that Security Pacific National Bank will not fund the loan agreement until all regulatory approvals are granted. If the Commission does not act until July 6, 1989, when this matter could be placed on the public agenda applicant asserts that it would have to obtain "bridge" financing, an almost impossible task at this late date, or face the risk of forced bankruptcy.

Notice of these matters did not appear on the Commission's public agenda as required by the Government Code; however, under the facts stated above, there is sufficient emergency to act today under the provisions of Code Section 306(b) without public notice. We strongly caution Bekins Company and its parent, Bekins Holding Company, that we do not take this action lightly and that in the future it must file its applications sufficiently in advance to preclude the necessity of acting again without public notice. Applicant further requests that the Commission issue its decision ex parte, effective upon the date thereof.

Discussion

It is evident that the present Application reflects a continuation of the efforts first reflected in Application 87-03-010 (leading to Decision 87-04-040) to obtain necessary financing to maintain viable operations. The Commission Advisory & Compliance Division's Accounting & Finance Branch has examined the proposed financing arrangements and concludes that they are reasonable. That Branch has no objection to the proposed issuance of notes and the encumbrance of property, and it recommends that the authority requested in the Application be granted.

Findings of Fact

1. A public hearing is not necessary in this matter.
2. Bekins has an emergency need for the authority for financing as soon as possible, and for that reason the request should be granted.
3. BC and its subsidiaries should be authorized to enter into the financing arrangements described in the Application, and in connection therewith to issue evidences of indebtedness and to pledge assets, including operating authority, to the extent such authorization may be required.
4. Decision 87-04-040 has been correctly construed by the applicant to include authorization for the several amendments to the Financing Agreement, including the Third Amendment.
5. The Fourth Amendment to such Financing Agreement should be authorized by the decision herein.
6. Notice of this matter did not appear on the Commission's public agenda; however, an emergency exists in that the applicant must obtain regulatory approval of this financing authority prior to July 1, 1989, or face potential forced bankruptcy.

Conclusions of Law

1. Decision 87-04-040, properly construed, granted authority to enter into the First, Second and Third Supplements to the Financing Agreement authorized by that Decision.
2. The requested financing arrangements set forth in the Application should be granted, including entering into the Fourth Supplement to the Financing Agreement authorized by Decision 87-04-040.
3. The requested authority to pledge assets, including operating authority of BC subsidiaries, should be granted.
4. The request for emergency consideration of this application should be granted.
5. A public hearing is not necessary.
6. The order should be effective on the date of issuance in order that the proposed financing arrangements can be carried out and the Bekins operations continued.

O R D E R

IT IS ORDERED that:

1. Decision 87-04-040, properly construed, authorizes the modifications to the Financing Agreement as described through the Third Amendment;

2. The Bekins Company is authorized to enter into the Fourth Amendment to the Financing Agreement between itself and Citicorp North America Inc. (formerly known as Citicorp Industrial Credit, Inc.);

3. The Bekins Company and its subsidiaries (and Bekins Holding Company to the extent authorization may be required) are authorized to enter into the financing arrangements described in the Application with Security Pacific National Bank and to issue evidences of indebtedness and to pledge assets, including operating authority, as described in the Application, to the extent such authorization may be required, and to enter into such supplemental agreements as the parties may agree from time to time which do not substantially alter the obligations incurred;


4. The Bekins Company and its subsidiaries (and Bekins Holding Company to the extent authorization may be required) are authorized to do all things necessary or appropriate to carry out the financing program set forth in the Application.

This order is effective today.

Dated JUN 21 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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


Victor Weisser, Executive Director

each of the operating subsidiaries; (ii) a pledge by each of the operating subsidiaries of all their assets, both real and personal, and including operating rights; (iii) a pledge of the stock of BC itself to be given by the holder thereof, BHC. In addition to the above, a \$5 million Senior Subordinated Loan Agreement between BC and SPNB will make additional funds available to BC. A copy of the Senior Subordinated Loan Agreement is attached to the Application. The lending arrangement between the parties also contemplates that SPNB will receive from BHC a warrant to acquire up to 10% of the stock of BHC, in consideration of the extension of credit to BC.

The stated purpose of the refinancing described is to enable BC to avoid delinquency on its loan from Citicorp and to have access to the additional capital needed to finance the Bekins operating companies.

Claim of Urgency

Applicant declares that an emergency exists to obtain authority for the new financing immediately because otherwise Security Pacific National Bank is likely to withdraw, leaving BC unable to meet its obligations to Citicorp on time. BC's application concerns matters brought to the attention of the Commission that requires action by the Commission more quickly than if advance publication were made of the matters on the regular meeting agenda.

Notice of these matters did not appear on the Commission's public agenda as required by the Government Code; however, under the facts stated above, there is sufficient emergency to act today without public notice under the provisions of P.U. Code section 306(b). We strongly caution Bekins Company and its parent, Bekins Holding Company, that we do not take this action lightly and that in the future it must file its applications sufficiently in advance to preclude the necessity of acting again without public notice. Applicant further requests that the Commission issue its decision ex parte, effective upon the date thereof.

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