

Decision 90 07 063 JUL 18 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
The Harbor Tug and Barge Company)	
for exemptions under Sections 829)	
and 853 of the California Public)	Application 90-04-022
Utilities Code in connection with)	(Filed April 13, 1990;
the ownership and operation of)	amended May 25, 1990)
Harbor Carriers, Inc. and)	
H. Tourists, Inc.)	

O P I N I O N

Summary of Decision

The Harbor Tug and Barge Company (Harbor) and certain other members of the Crowley Group are granted exemptions from certain sections relating to financing within Articles 5 and 6 of Division 1, Part 1, Chapter 4 of the Public Utilities (PU) Code. The exemptions cover future and prior transactions, but do not extend to regulated vessel common carriers Harbor Carriers, Inc. (HCI) or H. Tourist, Inc. (HTI). The Commission retains access to all books and records relating to matters that might affect ratepayer or passenger interests.

Regulatory Background

Article 5 of Division 1, Part 1, Chapter 4 of the California PU Code pertains to stocks and securities transactions. Article 6 pertain to transfer or encumbrance of utility property. Vessel common carriers, such as HCI and HTI, are public utilities as defined in § 216.

Section 829¹ within Article 5 allows the Commission to exempt any public utility from the provisions of the Article if it

1 Section (§) references herein are to the PU Code.

finds that application of the Article to a utility "is not necessary in the public interest". Section 853 allows a similar exemption from Article 6.

On June 6, 1984 the Commission adopted Resolution F-607, which delegates to the Executive Director authority to grant exemptions to Articles 5 and 6. That authority is limited to conditions where a transportation utility's annual intrastate revenues are less than 5% of gross annual revenues, the exemption does not exceed two years, and there are no protests.

Restructuring of the Crowley Group

Harbor is a wholly owned subsidiary of Crowley Maritime Corporation. The Crowley Group includes Crowley Maritime Corporation and its direct and indirect subsidiaries.

HCI and HTI are wholly owned subsidiaries of Harbor. Both hold certificates of public convenience and necessity as vessel common carriers. HCI operates in the San Francisco Bay Area under the name Red & White Fleet. HCI's common carrier business is transportation of passengers and property over fixed routes in the Bay Area; its unregulated business is vessel tour service on San Francisco Bay. HTI transports passengers and property between points on the Southern California coast and Catalina Island under the name Catalina Cruises.

In their operations, HCI and HTI use vessels owned by affiliated corporations. Vessels have been treated as if owned in annual and other reports to the Commission. At present seven of the passenger vessels (and three water taxis) used by HCI are owned by Harbor, and two other vessels used by HCI are chartered by Harbor from unaffiliated third parties. The personnel dedicated to HCI operations are actually employed by affiliated corporations. Five passenger vessels used by HTI are owned by Harbor. As members of Crowley Group, HCI and HTI both receive from affiliates staff

services such as administration and accounting, office services, legal counsel, purchasing, engineering, insurance, finance and banking, personnel and labor relations, and general management.

In recent years Crowley Group has expanded its operations substantially, to the point that HCI and HTI revenues are now reduced to about 2% of Crowley Group's annual revenues. It has become increasingly important to Harbor that HCI and HTI operations be separated from other members of Crowley Group. Harbor states that current and pending financing requires a more definitive structure for the regulated affiliates HCI and HTI. According to Harbor, it is critical that it be clear beyond question that the Commission's jurisdiction under the PU Code does not extend to financings which involve neither the credit nor the assets of HCI or HTI, either currently or as restructured.

The restructuring to which Harbor refers will be accomplished in order to separate the regulated operations of HCI and HTI from the unregulated operations of Harbor and other Crowley Group members. Harbor intends to:

1. Transfer to HCI and HTI, as appropriate, all vessels which it owns and are used in vessel common carrier operations. Costs and depreciation will be transferred at values consistent with those now shown in reports to the Commission.
2. Subcharter to HCI vessels now chartered to Harbor, under substantially the same terms.
3. Transfer dedicated personnel to HCI and HTI, without change in terms of employment.
4. Effect a service agreement among HCI, HTI, and other Crowley Group members to document the current arrangements for provision of common support services.

Harbor's Request

Solely for the purpose of removing any doubt concerning the scope of the Commission's regulatory reach, Harbor requests exemptions from Articles 5 and 6 with respect to the operations of Crowley Group members other than those operations which, with the restructuring, will reside within HCI and HTI. Harbor asks the Commission to exercise its authority to grant exemptions as set forth in §§ 829 and 853.

In filing this application, neither Harbor nor any other member of Crowley Group concedes that it is subject to the Commission's jurisdiction. Nonetheless, because legal titles to the vessels used by HCI and HTI reside outside the regulated affiliates, an issue could be raised concerning the regulatory status of Harbor and possibly other members of Crowley Group.

Harbor argues that restructuring and the exemptions are in the public interest because no regulatory objective would be furthered by extending regulation to the financing of unregulated affiliates. Neither the Commission nor its staff have ever pursued extended regulation of Crowley Group members. Restructuring would help clarify the regulatory status of HCI and HTI.

Harbor specifically asks that the Commission grant Harbor "and the other members of the Crowley Group (other than HCI and HTI) exemptions from Articles 5 and 6 [of Chapter 4] of Part 1 of Division 1 of the California Public Utilities Code, applicable, to the extent necessary, to both future and prior transactions which might have been of the type covered by said Articles 5 and 6 with respect to entities which are public utilities subject to the jurisdiction of the Commission." Harbor requests that the decision become effective on its date of issuance and no later than July 26, 1990.

Harbor assures the Commission of access to any books and records on matters which might affect the interests of ratepayers or passengers of either HCI or HTI, subject to the provisions of General Order Series 66.

Notice and Protests

Notice of the application appeared in the Commission's Daily Calendar on April 18, 1990; notice of the amendment to the application appeared May 30, 1990. Similar notices appeared in the Daily Transportation Calendar on April 19 and May 31, 1990.

No protests have been received in this matter.

The Commission's Transportation Division recommends that the application be granted by ex parte order.

The Commission Advisory and Compliance Division concurs, and adds that Harbor should be ordered to enter into written service agreements for support services from other members of Crowley Group. This is essential for documentation of affiliate transactions.

Discussion

Jurisdiction

Harbor wishes to clarify for its financing partners that the Commission has no jurisdiction over the financing of the unregulated affiliates of HCI and HTI. Rather than seek such declaratory relief, Harbor seeks the exemptions permitted by §§ 829 and 853. We agree with Harbor that granting exemptions is an easier task than wrestling with larger jurisdictional issues. Although Commission jurisdiction over allegedly unregulated affiliates will remain uncertain, we agree to exercise our authority under §§ 829 and 853 so long as the relief requested is not adverse to the public interest.

The relief sought in the application is restricted to granting of exemptions from portions of Articles 5 and 6 relating to financing. We note, however, that not all the sections in

Articles 5 and 6 relate to financing. We will not authorize exemptions unnecessarily.

Harbor has chosen not to pursue the Executive Director's delegated exemptions allowed by Resolution No. F-607. Additional information would be required to do so, regarding carrier intrastate vs. interstate revenues.

Public Interest

Our fundamental concern in this matter is protection of ratepayer and passenger interests. In general, the restructuring of HCI and HTI should improve accountability for common carrier costs that might be included in rates. For this reason we will grant Harbor's request for exemptions, incorporating the staff recommendation on written service agreements.

However, review of Articles 5 and 6 shows that exemptions from all the sections are not necessary.

Article 5 includes §§ 816-830. Of those, §§ 816-819 and §§ 821-827 relate solely to financing, stocks, and security transactions. Section 820 relates to capitalization of regulated utility franchises upon transfer. Its exemption for Harbor and unregulated Crowley Group members is unnecessary. Section 828, relating to State guarantees for security transactions, is in the public interest and should not be exempted. Section 829 must be retained intact in order to grant the other exemptions. Section 830 requires Commission authorization whenever any public utility assumes financial obligations or liabilities of other entities. We will grant exemption to § 830 for unregulated affiliates within Crowley Group, but we will explicitly exclude from the exemption any transaction involving the credit or assets of HCI or HTI, either currently or as restructured.

Article 6 includes §§ 851-856. Only § 852 relates solely to utility financing. Using the same terms as for § 830 in Article 5, we will grant limited exemptions to § 851, regarding disposal or encumbering of utility property still in service, and § 854,

regarding acquisition or control of public utilities by other entities. We will retain § 853 in order to grant the other exemptions. We will retain § 855 because it relates only to water and sewer utilities. Finally, we will retain § 856 regarding misdemeanor penalties for violations of those Sections not exempted.

Harbor seeks exemptions to Articles 5 and 6 without a time limitation. We will not restrict the duration of the exemptions, but Harbor must realize that as a matter of law this Commission cannot bind future Commissions to maintain the exemptions permanently. Nevertheless, we intend to allow the exemptions to stand so long as the public interest is not adversely affected. If the public interest should require it, the exemptions may be revoked.

Granting of exemptions here neither explicitly nor implicitly includes approval of the prudence or eventual rate recovery of any costs assigned to HCI or HTI as a result of Harbor's restructuring. This is not a rate application. If any costs are to be included in rates, they must be justified in a rate proceeding.

Findings of Fact

1. Solely for the purpose of removing any doubt concerning the scope of the Commission's regulatory reach, Harbor requests exemptions from Articles 5 and 6 of Division 1, Part 1, Chapter 4 of the PU Code. The exemptions sought would apply to both future and prior financing transactions, but would not extend to HCI and HTI.
2. The requested exemptions are elements of Harbor's intended restructuring of HCI and HTI.
3. Restructuring of HCI and HTI would improve accountability for vessel common carrier costs that might be included in rates.
4. Written service agreements are essential for documentation of affiliate transactions.

5. Application of the following PU Code sections to Harbor and the unregulated members of Crowley Group is not presently necessary in the public interest: §§ 816-819, 821-827, and 852.

6. Except as the Sections may apply to any transaction involving the credit or assets of HCI or HTI, either currently or as restructured, application of the following PU Code Sections to Harbor and the unregulated members of Crowley Group is not presently necessary in the public interest: §§ 830, 851, and 854.

7. Sections 820, 828, 829, 853, 855, and 856 should not be exempted.

8. Harbor and the other members of Crowley Group assure that the Commission has access to their books and records with respect to any matter which might affect the interests of ratepayers or passengers of HCI or HTI, subject to the provisions of General Order Series 66.

9. Harbor requests that the decision in this matter be made effective on the date it is approved and no later than July 26, 1990. That request is not adverse to the public interest.

10. The application by Harbor should be granted to the extent ordered below.

Conclusions of Law

1. Sections 829 and 853 of the PU Code provide the Commission with authority to grant the exemptions ordered here.

2. Not all sections of Articles 5 and 6 relate to financings of unregulated Crowley Group members.

3. This Commission cannot bind future Commissions to maintain the ordered exemptions. Nevertheless, to the extent permitted by law the Commission intends to allow the exemptions to remain in effect so long as the public interest is not adversely affected.

4. Granting of exemptions here neither explicitly nor implicitly includes approval of the prudence or eventual rate recovery of any costs assigned to HCI or HTI as a result of Harbor's restructuring.

5. A hearing in this matter is not necessary.

O R D E R

Therefore, IT IS ORDERED that:

1. The Harbor Tug and Barge Company (Harbor), Crowley Maritime Corporation, and its direct and indirect subsidiaries (other than Harbor Carriers, Inc. and H. Tourists, Inc.) are granted the following exemptions:

a. Public Utilities (PU) Code §§ 816-819, 821-827, and 852 are exempted.

b. PU Code §§ 830, 851, and 854 are exempted, except as they may apply to any transaction involving the credit or assets of Harbor Carriers, Inc. or H. Tourists, Inc., either currently or as restructured.

2. The exemptions shall apply to both future and prior transactions.

3. The exemptions are granted without time limitation.

4. Harbor shall cause Harbor Carriers, Inc. and H. Tourists, Inc. to document their affiliate transactions relating to provision of common support services, by execution of written service agreements. Those service agreements shall be completed within 90 days after the effective date of this decision. Within 10 days after completion, Harbor shall file copies of the service agreements with the Director of the Commission Advisory and Compliance Division and the Director of the Transportation Division.

5. Within 30 days after completion of the restructuring of Harbor Carriers, Inc. and H. Tourists, Inc. described in this

application, Harbor shall so notify the Director of the Commission Advisory and Compliance Division and the Director of the Transportation Division.

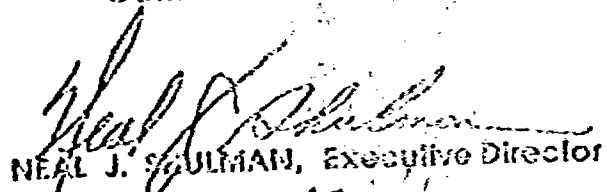
6. The Commission retains access to the books and records of Harbor and other members of Crowley Group with respect to any matter which might affect the interests of ratepayers and passengers of HCI or HTI, subject to the provisions of General Order Series 66.

This order is effective today.

Dated JUL 18 1990, at San Francisco, California.

G. MITCHELL WALK
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.


NEAL J. SULMAN, Executive Director
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