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Decision 92-04-065 April 22, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 Greyhound Lines, Inc., a Delaware
 corporation, for an Exemption From
 the Provisions of Sections 816-830
 of the California Public Utilities
 Code.

ORIGINAL

Application 92-03-015
 (Filed March 9, 1992)

O P I N I O N

Greyhound Lines, Inc. (Greyhound) is a Delaware corporation with principal offices in Dallas, Texas. It is the only nationwide provider of intercity bus transportation, serving more than 3,000 destinations with a fleet of 2,400 buses and 2,000 sales outlets. In California, Greyhound serves 323 destinations and has 131 sales outlets. Total revenues in California for 1990 were \$98 million, or about 15.3% of total revenues of \$641 million.

In June 1990, Greyhound filed a Chapter 11 voluntary petition for bankruptcy after a strike exhausted the company's cash reserves. Greyhound's Chapter 11 plan of reorganization was confirmed by the bankruptcy court and Greyhound emerged from bankruptcy in October 1991.

Pursuant to Public Utilities (PU) Code § 829, Greyhound seeks an order that would exempt it from the requirements of §§ 816-830 (Article 5) of the PU Code. Article 5 requires, among other things, that a public utility obtain Commission approval before issuing stocks, bonds, notes, or other evidences of debt payable over a period of more than 12 months. Greyhound seeks an exemption, and asks expedited consideration of its request, because it intends in April 1992 to make a public offering of up to \$103.5 million of its convertible subordinated debentures due March 31,

2007. Proceeds of the sale would be used to reduce higher-interest debt and to purchase additional buses and other equipment.¹

Proper filings related to the public offering have been made with the Securities and Exchange Commission. (See Exhibit C, Amendment to Application for Exemption.)

Applicant alleges that, without an exemption, the review and approval process envisioned in PU Code §§ 816-830 will take several months. In an affidavit by its vice president and treasurer (Exhibit D, Amendment to Application for Exemption), Greyhound alleges that it is one of about 20 companies that have filed proposed public offerings of convertible securities since January 1, 1992. Greyhound is advised by its underwriter that if its offering is delayed, institutional investors may commit their funds elsewhere before the Greyhound securities become available. Advantageous interest rates now available (estimated at less than 9% annually) may not be available later.

In support of its request for exemption, Greyhound states that the Commission has exercised its authority to grant PU Code § 829 exemptions to motor carriers and others on numerous occasions. Most recently in In re SuperShuttle, Decision (D.) 88-06-052, the Commission granted exemptions from PU Code §§ 816-830 and § 851 (encumbrance of property) to two passenger stage corporations in connection with their issuance of debt.

In SuperShuttle, we noted that the rationale for regulating debt transactions "is to ensure that a monopoly carrier or public utility does not engage in imprudent financial

1 As consideration for the repayment of indebtedness, Greyhound's secured lenders have agreed to enter into an amended revolving credit agreement. The agreement will eliminate all required principal payments over the next seven years and will eliminate certain restrictive covenants in an existing credit agreement to reflect the overall reduction in leverage because of repayment of the senior secured debt.

transactions to the point where it is unable to provide public service to its captive customer base."² We concluded that where the public has a wide choice of other similar service (as in the case of airport shuttle buses), this rationale does not apply. Cessation of operations of one of the scores of passenger stage corporations serving San Francisco and Los Angeles airports would hardly result in the loss of available service to the public.³

The Commission also recognized that in some cases, the regulation of financial transactions of passenger stage corporations may affect the ability of these carriers to obtain financing. We stated:

"Applicants state that they require the flexibility to make substantial investments in their systems on short notice. The several months needed to secure Commission approval of debt and/or equity financing hamstrings applicants' ability to respond effectively to market demands. Potential sources of long-term capital may well be reluctant to lend funds to applicants when they are unable to commit to the final terms of a financing until after the receipt of Commission authority, a process that may take months. Since applicants, like most borrowers, are at the mercy of the financial markets, this peculiar inability to close a deal expeditiously further undermines their ability to secure reasonably priced sources of funding." (D.88-06-052, p. 5.)

Greyhound states that it faces competition to an extent that brings it within the SuperShuttle rationale. Although it is

2 D.88-06-052, p. 3, citing D.87-10-035, pp. 6-7, in which exemptions were granted to the radiotelephone utility industry.

3 Earlier, on much the same reasoning, the Commission granted exemptions to nondominant telecommunications carriers (D.85-11-044); to resellers of cellular telephone services (D.86-02-011 and D.85-06-015); and to the radiotelephone utility industry (D.87-10-035).

the only bus passenger company with a nationwide network, there are a large number of smaller, regional carriers, including (in California) Golden State, Turimos Ráidos, Transportes Inter California, Roadrunner Express, and Citizens. Greyhound states that it also competes with Amtrak and with airlines that offer discount fares.

In its initial application, Greyhound sought a class exemption on behalf of all California passenger stage corporations. In an amendment dated March 16, 1992, Greyhound withdrew its request for a class exemption, stating that it seeks an individual exemption or, alternatively, approval of its proposed issuance of debentures. As to an individual exemption, Greyhound directs us to two prior decisions in which exemptions were given to individual motor carriers of property.⁴ In those cases, however, applicants apparently did not seek expedited consideration of their request for exemption, and they were able to show that their California operations were a de minimis part of their interstate business.

Discussion

We are sympathetic to Greyhound's request for an exemption from PU Code §§ 816-830 to permit it to proceed promptly with its issuance of convertible debentures, repayment of existing indebtedness, and investment in additional equipment. Greyhound has recently emerged from bankruptcy, and it is clear from its application that the proposed issuance of new debt and repayment of existing debt is part of its confirmed plan of reorganization. Hence, the financing has been reviewed generally, if not specifically, by Greyhound's lenders and by the bankruptcy court.

⁴ Application of Ryder/P-I-E Nationwide, Inc., D.84-03-027 (March 7, 1984); Application of RTC Transportation, Inc., D.84-06-032 (June 6, 1984).

We note that Greyhound's application appeared in the Commission's Daily Calendar on March 12, 1992, and there have been no protests or objections.

In the absence of objection, and based upon the representations set forth in Greyhound's application, our order grants the requested exemption with respect to the issuance of debentures set forth in the application.

However, we do not at this time grant the exemption with respect to future stock and security transactions and encumbrances. The SuperShuttle line of cases upon which Greyhound relies is distinguishable. If an airport shuttle service fails because of imprudent financing, the public can avail itself of a host of other shuttle services. If Greyhound fails, however, we are not persuaded that the public would regard airlines, trains, or regional bus carriers as comparable alternatives.

By the same token, Greyhound has not justified an ongoing individual exemption. The cases upon which it relies involve motor carriers with de minimis California operations. By contrast, Greyhound obtains more than 15% of its total revenue in serving customers within California. We do not regard that as de minimis. Moreover, Greyhound's request for expedited consideration is not compatible with those cases in which investigations were conducted by the Commission Advisory and Compliance Division (CACD) and by the Transportation Division. In other applications seeking individual corporate exemption, both the CACD Finance Branch and the Transportation Division conducted analyses and made recommendations limiting the exemption that was finally granted.⁵

⁵ In D.84-03-027, for example, staff recommended that the exemption from PU Code §§ 816-830 and 851-855 remain in place only so long as revenue from intrastate operations remained less than 5%

(Footnote continues on next page)

We do not in this order preclude later consideration of Greyhound's request for individual exemption under PU Code § 829. On the application before us, however, we find that exemption is justified only as to the issuance on file with the Securities and Exchange Commission (Exhibit C, Amendment to Application for Exemption).

Findings of Fact

1. A public hearing is not necessary.
2. Applicant is a passenger stage corporation operating a fleet of 2,300 buses and serving more than 3,000 destinations, including 323 in California.
3. Normal review of this transaction under PU Code §§ 816-830 could prevent applicant from obtaining timely financing and could adversely affect applicant's ability to gain access to financial markets.
4. No purpose is served by requiring lengthy review of this transaction under PU Code §§ 816-830.
5. No protests to this application have been received.
6. The Commission has exempted other passenger stage corporations from complying with the requirements of PU Code §§ 816-830.
7. Applicant has registered the transaction here with the Securities and Exchange Commission.

(Footnote continued from previous page)

of gross annual revenues. In D.84-06-032, staff recommended and the Commission adopted a two-year time limit on the grant of exemption from PU Code §§ 816-830.

Conclusions of Law

1. The Commission is authorized by PU Code § 829 to exempt any public utility from the requirements of PU Code §§ 816-830 if it finds that application of those requirements is not necessary in the public interest.

2. In the absence of protests, no purpose is served by requiring regulation of applicant's transaction under PU Code §§ 816-830.

3. Exemption for the transaction set forth in the application should be granted.

4. Exemption on an individual or class basis for other transactions in the future should not be granted at this time.

5. Because applicant's sale of its securities offering is imminent, the following order should be effective immediately.

ORDER

IT IS ORDERED that:

1. The request by Greyhound Lines, Inc. (Greyhound) that it be exempted from the requirements of Public Utilities (PU) Code Sections 816-830 for the issuance of up to \$103,500,000 of convertible subordinated debentures, as set forth in Application 92-03-015, is granted.

2. The request by Greyhound that it be exempted on an individual basis from compliance with PU Code §§ 816-830 on all future financial transactions is denied.

3. This proceeding is closed.

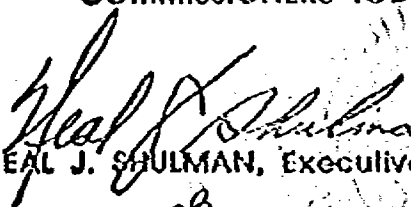
This order is effective today.

Dated April 22, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President

JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director