

Decision 82 02 095 FEB 17 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of GROSVENOR BUS LINES,)
INC., THE GRAY LINE, INC.,)
DONALD E. WERBY, ROBERT K. WERBE,)
BARRY TRAUB, LAURENCE LEVINE,)
RALPH SELIGMAN, PAUL DILLER,)
BERNARD FELDMAN, DAVID STRAUS, AND)
LAWRENCE FELDMAN for (i) authoriza-)
tion for the issuance of certain)
long term promissory notes by)
GROSVENOR BUS LINES, INC.; and (ii))
authority to consummate certain)
transactions in the stock of)
GROSVENOR BUS LINES, INC.; or, in)
the alternative, (iii) dismissal of)
the portion of the Application)
requesting authority to consummate)
certain transactions in the stock of)
GROSVENOR BUS LINES, INC. upon the)
grounds that such authorization is)
unnecessary.)

Application 60846
(Filed August 25, 1981)

O P I N I O N

Grosvenor Bus Lines, Inc. (Grosvenor), its individual stockholders, and Gray Line, Inc. (Gray Line) request authority under Public Utilities (PU) Code Sections 818 and 854, for the following:

1. Grosvenor to issue 10-year promissory notes aggregating \$500,000 to refinance demand notes of equal amount.

2. The shareholders of Grosvenor to shift the proportionate ownership of the capital stock of Grosvenor among existing stockholders; or in the alternative,
3. Dismissal of the portion of the application requesting authority to consummate the transactions in the capital stock of Grosvenor.

This decision grants Grosvenor the authority to issue promissory notes, and dismisses that portion of the application for authority to shift the proportionate ownership of the capital stock of Grosvenor among its stockholders.

Notice of the filing of the application appeared on the Commission's Daily Calendar of August 28, 1981. No protests have been received.

Grosvenor conducts no operations. Its only asset is all of the outstanding shares of stock of Gray Line. Gray Line holds a certificate of public convenience and necessity as a passenger stage corporation granted by Decision (D.)92523 in Application (A.) 59985 and also has been granted a Class A certificate of public convenience and necessity to operate as a charter party carrier of passengers (TCP-26-A). By that same D.92523, Grosvenor was authorized to purchase all of Gray Line's stock from Greyhound Lines.

Our jurisdiction over the issuance of evidences of indebtedness, such as the promissory notes in question, is set forth in PU Code Section 818. This section requires public utilities to obtain authorization from the Commission prior to issuing stocks, promissory notes, or other evidences of indebtedness.

The question presented by the application is whether Grosvenor, whose only asset is all of the outstanding stock of a public utility, is also a public utility. The question presented is not a new one. Faced with a similar situation in Key System Transit Lines (1953) 52 CPUC 589, the Commission held that "As a matter of law, it follows that once ownership or control over a public utility operation is established then the entity exercising such control is a public utility." Id. at 597. Upon petition for rehearing, the Commission reaffirmed its prior decision and declared that "A corporate combine consisting of a parent corporation and a subsidiary or subsidiaries may be considered as one operation for the purposes of regulation....To omit the regulation of the parent and confine regulation to the subsidiary would be like disregarding the substance and seizing upon the shadow." Key System Transit Lines (1953) 52 CPUC 687, 689. See also Westgate-California Corp. (1971) 72 CPUC 26,38. Given the

facts in the present case i.e., that Grosvenor's only asset is the stock of Gray Line, these decisions should control. Otherwise, any utility could escape the Commission's jurisdiction over its indebtedness by merely creating another layer of stock and indebtedness.

Grosvenor seeks authority to issue long-term promissory notes in the aggregate principal amount of \$500,000 in the form attached to the application as Exhibit F. The principal of the notes would be due and payable in 10 years with interest payable annually at the rate of 8% per year. These notes would be issued in exchange for the cancellation of certain demand notes of equal principal amounts which bear interest, payable annually, at the rate of 6% per year. The proceeds from the demand notes were advanced by Grosvenor to Gray Line. Gray Line used these funds to acquire busses and two-way radios used in its passenger stage operations.

The application indicates that Grosvenor will receive more than adequate consideration for the issuance of 10-year 8% promissory notes in exchange for 6% demand notes. The holders of the demand notes are legally entitled to demand immediate payment of the principal and interest. Should the holders of the demand

notes demand payment, Grosvenor would be forced to borrow funds on terms less favorable than those contained in the proposed 10-year 8% promissory notes.

The Revenue Requirements Division has reviewed Grosvenor's request for authority to exchange notes and concludes the authority requested is reasonable and should be granted. The Division also concludes that an interest rate of 8% is reasonable in comparison with the bank prime rate of about 16% at this time.

At present, Grosvenor's shares are held by 15 persons, the principal shareholders being Donald E. Werby and Robert K. Werbe (brothers),^{1/} who own 16.67% and 15.33%, respectively.

Upon consummation of the proposed stock transactions, the ownership of Grosvenor will be shared as follows:

<u>Shareholder</u>	<u>Percent</u>
D. Werby	27.02%
R. Werbe	25.68
B. Traub	8.00
R. Goldman	8.00
L. Levine	6.32
L. Feldman	6.32
M. Auerbach	5.33
All Others	<u>13.33</u>
Total	100.00%

^{1/} Although brothers, their surnames are spelled differently as shown.

Donald E. Werby is chairman of the boards of directors of both Grosvenor and Gray Line. Robert K. Werbe is a director of both Grosvenor and Gray Line and in addition serves as vice president and assistant secretary of both companies. From information provided in the application and in subsequent letters to the Commission from the attorney for Grosvenor, it is apparent that neither individually nor together do the brothers own a majority of Grosvenor's stock. Although they have no binding agreement to act in concert in its affairs, in practice they have done so and have possessed and exercised effective control over the management and policies of Grosvenor. We fail to see how the stock transactions in question will effect any change in this state of affairs. Neither of the brothers will own a majority of Grosvenor's stock, but by acting in concert they may, and in all probability will, continue to control its corporate policies.

Furthermore, by joining in this application and by a letter to this Commission dated September 24, 1981, the remaining shareholders have stated their agreement to the transactions and have acknowledged that control over Grosvenor has been exercised by the brothers in the past and that it will continue to be.

Under the circumstances we find that the proposed stock transactions do not constitute an acquisition or a transfer of control either in Grosvenor or Gray Line within the meaning of PU Code Section 854 and thus our authorization is not required. Therefore, we shall dismiss this portion of the application. No material facts are in question.

Findings of Fact

1. By D.92523, issued December 16, 1980, in A.59985, we authorized the sale of all shares of Gray Line's stock to Grosvenor.

2. Grosvenor conducts no operations; its only asset is all of the issued and outstanding capital stock of Gray Line.

3. Since that time, although neither has owned a majority of Grosvenor's stock and they have no agreement to vote their shares together, Donald E. Werby and Robert K. Werbe have effectively controlled the policies and management of Grosvenor and of Gray Line.

4. Upon consummation of the proposed transactions between the owners of Grosvenor's stock Donald E. Werby and Robert K. Werbe will own 27.02% and 25.68%, respectively. These ownerships represent the largest possible individual percentages resulting from these transactions.

5. The owners of Grosvenor have stated that the brothers have and will continue to exercise control over the policies and management of Grosvenor.

6. Grosvenor is to issue long-term unsecured promissory notes in exchange for demand notes.

7. The proposed notes are for proper purposes and not adverse to the public interest.

8. There is no known opposition and no reason to delay granting the authority requested.

9. This order should be made effective today in order that Grosvenor may consummate its proposals without undue delay.

Conclusions of Law

1. A public hearing is not necessary.

2. The provisions of PU Code Sections 818 and 854 apply to Grosvenor Bus Lines, Inc.

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

4. The proposed transactions in the stock of Grosvenor do not constitute an acquisition or transfer of control of Grosvenor or of Gray Line within the meaning of PU Code Section 854.

The following order should be effective on the date of signature and payment of the fee set by PU Code Section 1904 (b) to enable Grosvenor to expeditiously issue its promissory notes.

O R D E R

IT IS ORDERED that:

1. On or after the effective date of this order, but before December 31, 1982, Grosvenor Bus Lines, Inc. (Grosvenor), for the purposes specified in the application, may issue unsecured promissory notes in the aggregate principal amount of \$500,000, similar in form to that attached to the application as Exhibit F.

2. Grosvenor shall use the proceeds from the sale of its promissory notes for the purposes specified in the application.

3. Grosvenor shall file the reports required by General Order Series 24.

4. Grosvenor's request for authority to shift the proportionate ownership of the capital stock of Grosvenor among existing stockholders is dismissed.

5. The authority granted by this order to issue promissory notes will become effective when Grosvenor pays \$1,000, the fee set by PU Code Section 1904 (b). In all other respects this order becomes effective 30 days from today.

Dated FEB 17 1982, at San Francisco, California.

RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. CREW
Commissioners *per*

Commissioner JOHN E. BRYSON

Present but not participating.

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

Joseph E. Bodovitz
Joseph E. Bodovitz, Executive Director

