

Decision 82 06 080 JUN 15 1982**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 WILLIG FREIGHT LINES, a California)
 corporation, for authority to)
 issue notes or other evidences of)
 indebtedness pursuant to Section)
 816 et seq., 818 and 823 of the)
 California Public Utilities Code.)

Application 82-04-18
 (Filed April 7, 1982)

ORDER OF DISMISSAL

Willig Freight Lines (Willig), a California corporation, seeks authority under Public Utilities Code §§ 816-830 to issue notes or other evidences of indebtedness. Concurrently, Willig moves to dismiss the application for lack of jurisdiction.

Willig is a wholly owned subsidiary of Transport Holdings, Inc. (parent), a Delaware corporation. Parent requires Willig to remit monthly all surplus funds. Parent will in turn advance to Willig funds to cover capital expenditures and tax payments. When funds are advanced by parent, Willig will not issue any notes or other evidences of indebtedness to parent. When funds are remitted by Willig, parent will not issue any notes or other evidences of indebtedness to Willig. The only record of the transaction will be open accounts on the books of the parties. The advances will be short term and will bear no interest regardless of whether Willig is the creditor or debtor. There is no formal agreement under which the advances are made.

Jurisdiction

With the application, Willig filed a motion to dismiss for lack of jurisdiction arguing that the proposed financing by advances does not involve "bonds, notes, or other evidences of indebtedness" and is, therefore, not subject to Commission

authorization under PU Code §§ 816-830. Apart from bookkeeping entries, the only document generated by the transactions is a monthly remittance statement. Willig contends that the remittance statement is not an evidence of indebtedness but merely shows the basis upon which the advances are computed and requested. The computations are performed according to a predetermined formula. If the remittance statement shows that a remittance is due from Willig to parent, then the statement is merely an advice of transmittal of that remittance. If the statement shows that an advance is due from parent to Willig, then the document is the request for that advance. A copy of the remittance statement for December 1981 is attached to the application as Exhibit "B". It shows no signatures or agreements. The last line of the form reads: "Net Amount due to (by) Transport Holdings, Inc."

The phrase "other evidences of indebtedness", standing alone, is broad enough to encompass both the bookkeeping entries and the remittance statement. However, the context in which the phrase appears in the statutes indicates that the Legislature intended a narrower meaning. For instance, the statutes use the language "issue...bonds, notes, or other evidences of indebtedness."

(Emphasis added.) The word "issue" is a word of art with a

1/ "ISSUE, v. To send forth; to emit; to promulgate; as, an officer issues orders, process issues from a court. To put into circulation; as, the treasury issues notes. To send out, to send out officially; to deliver, for use, or authoritatively; to go forth as authoritative or binding. [Citations]"

* * *

"In financial parlance, the term 'issue' seems to have two phases of meaning. 'Date of issue'... When the bonds are delivered to the purchaser, they will be 'issued' to him, which is the other meaning of the term."

"ISSUE, n. . . . Business Law. A class or series of bonds, debentures, etc., comprising all that are emitted at one and the same time." (Black's Law Dictionary, Revised Fourth Edition, 1968, pp. 965-966.)

2. A similar application in Finance Docket 29871 before the Interstate Commerce Commission (ICC) was dismissed March 11, 1982 on Willig's motion after the ICC found that the "proposed transaction does not involve an issuance of securities as defined under 49 U.S.C. § 11302."

Conclusions of Law

1. The bookkeeping entries and remittance statements produced by Willig in connection with financing transactions between itself and its parent corporation are neither notes, bonds, nor other evidences of indebtedness as those terms are used in PU Code §§ 816-830.

2. The Commission has no jurisdiction to regulate the production or use of such documents, or the associated financing by Willig's parent, under PU Code §§ 816-830.

3. Willig's motion to dismiss the application for lack of jurisdiction should be granted.

4. This order should be effective today to allow Willig to proceed with its financing plans as soon as possible.

IT IS ORDERED that this application is dismissed.

This order is effective today.

Dated JUN 15 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. CRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. CREW
Commissioners

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


Joseph E. Bodovitz, Executive Director