RR/TC/SR/WPSC

TC-2

Decision 83 08 020 AUG 3 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of VIKING FREIGHT SYSTEM, INC. for Approval and Authority to Increase and Renew Certain Lines of Credit, to Issue Promissory Notes, and to Pledge Certain Assets as Collateral Security Thereunder.	Application 83-05-34 (Filed May 16, 1983, amended May 26, 1983)

OPINION

Viking Freight System, Inc. (Viking) requests authority under Public Utilities (PU) Code Sections 816 through 830 and 851:

1. To increase and renew certain lines of credit;
2. To issue its promissory notes in connection with exercising those lines of credit; and
3. To pledge selected assets as collateral security for the repayment of the proposed promissory notes.

Viking also seeks Commission confirmation that certain actions previously authorized by the Interstate Commerce Commission (ICC) do not require Commission approval, or that certain actions are expressly permitted under PU Code Section 816.5.

Notice of the filing of the application and the amendment appeared on the Commission's Daily Calendar of May 18 and June 2, 1983, respectively. No protests have been received.

Summary of Decision

This decision grants Viking the authority requested in the application, and confirms that lines of credit and promissory notes previously authorized by the ICC do not require this

Commission's approval or are expressly permitted under PU Code Section 816.5. We also conclude that company-owned nonrevenue automobiles do not fall within the meaning of "motor vehicle equipment" as that term is used in Section 816.5.

Viking is a California corporation and a public utility transportation company principally engaged in the business of providing pickup and delivery service of commercial freight throughout California under File T-84649. In addition, Viking operates as an interstate common carrier of general freight between California, Nevada, Arizona, and Oregon, and by interline operations serves the eastern half of the United States, Washington, Hawaii, Alaska, and Canada.

For the twelve months ended December 31, 1982, Viking generated total operating revenues of $59,248,000 and net income of $2,700,000. Viking's Balance Sheet as of December 31, 1982, taken from its 1982 Annual Report to Stockholders, is as follows:

Assets	Amount (In Thousands)
Net Operating Equipment	$ 34,025
Current Assets and Prepayments	10,628
Other Assets	3,171
Total	$ 47,824
Liabilities and Common Equity	
Common Equity	$ 16,302
Long-Term Debt	17,116
Current Liabilities	8,807
Other Liabilities	5,599
Total	$ 47,824

Background

The application indicates that on April 14, 1982, Viking executed a Credit Agreement (Agreement) with Crocker National Bank (Crocker) and Golden State Sanwa Bank. The banks agreed to lend funds to Viking for certain purposes and in the following amounts:

1. An Accounts Receivable Line of Credit not to exceed $4,000,000, expiring June 30, 1983;

2. A Revenue Equipment Line of Credit not to exceed $3,000,000, expiring June 30, 1982; and

3. A Nonrevenue Equipment Line of Credit not to exceed $1,500,000, expiring June 30, 1982.

Each of the foregoing lines of credit was subject to future extensions of time, and conversion into long-term promissory notes. The Agreement, including the anticipated extensions and promissory notes, was approved by the ICC on April 22, 1982 (Finance Docket No. 29886). On May 17, 1982, this Commission issued Decision (D.)82-05-062, ruling that Viking may issue securities upon the approval of the ICC without the express authorization of the Commission. A copy of the Agreement was included as Exhibit D to Viking's Application (A.)82-03-70, filed March 18, 1982.

On August 2, 1982, the ICC issued a decision approving certain amendments to the Agreement (Finance Docket No. 29886 (Sub.-No. 1). Those amendments included a reduction in the Revenue

Equipment Line of Credit from $3,000,000 to $500,000, and the creation by Crocker of the following additional loans and lines of credit:

1. A promissory note in the amount of $824,410, payable over 60 months and secured by used non-revenue equipment;

2. A Used Revenue Equipment Line of Credit not to exceed $500,000, expiring December 31, 1982;

3. A Used Nonrevenue Equipment Line of Credit not to exceed $100,000, expiring December 31, 1982;

4. A revolving line of credit not to exceed $250,000 for the purchase of company-owned automobiles; and

5. A commitment to issue letters of credit in the aggregate principal amount of $500,000.

The amendments also extended the Accounts Receivable Line of Credit to December 31, 1982, and the Revenue and Nonrevenue Lines of Credit to December 31, 1982.

Further amendments to the Agreement were added by Crocker and Viking on January 4, 1983, including an extension of the Accounts Receivable Line of Credit to June 30, 1984, and the Revenue and Nonrevenue Equipment Lines of Credit to December 31, 1983. Crocker also increased the Revenue Equipment Line of Credit from $500,000 to $3,000,000. Since that time, Crocker and Viking have entered into certain arrangements relating to the Agreement which are described below. Each of the arrangements are outlined in Crocker's Credit Approval Reports, dated April 21, 1983, which are attached to the application as Exhibit B.

Increase and Renewal of Accounts Receivable Line of Credit

The application states that Crocker and Viking have tentatively agreed to renew the Accounts Receivable Line of Credit through December 31, 1984. The ICC approved in advance any extensions granted within two years of the lines of credit created by the Agreement. A copy of the ICC's approval, as amended, is attached to the application as Exhibit C. In view of existing law and our D.82-05-062, Viking requests confirmation that the foregoing extension does not require our approval. We confirm that under our D.82-05-062 Viking may issue securities upon the approval of the ICC without express authorization from this Commission.

Increase and Renewal of New and Used Revenue Equipment Lines of Credit

The application states Crocker and Viking have also agreed to increase the New Revenue Equipment and Used Revenue Equipment Lines of Credit to $5,000,000 and $750,000, respectively, and to renew these lines of credit through December 31, 1983. PU Code Section 816.5 provides that the execution of a note or chattel mortgage with respect to motor vehicle equipment does not require Commission approval. Therefore, authorization by the Commission to effect the increases and renewals of the lines of credit just described is unnecessary.

Increase and Renewal of Revolving Line of Credit for the Purchase of Company-Owned Automobiles

Crocker and Viking have further agreed to increase the revolving line of credit for the purchase of company-owned automobiles to $1,000,000. Viking requests that:

1. The Commission find that the automobiles fall within the definition of "motor vehicle equipment," as that term is used in PU Code Section 816.5, and that the proposed increase therefore does not require Commission approval; or

2. In the alternative, that the Commission expressly authorize and approve the increase in the revolving line of credit, and the pledge of the automobiles as collateral security for payment under the lines of credit.

We have reviewed Viking's request and have determined that company-owned nonrevenue automobiles do not fall within the meaning of "motor vehicle equipment", as that term is used in PU Code Section 816.5. That statute provides that certain specified transportation utilities may execute conditional sales contracts, notes, or chattel mortgages for the purchase of or to secure the payment of the purchase price of "... motor vehicle or railroad equipment..." without authorization of this Commission. Motor vehicle equipment is not defined. We note, however, that the exemption applies only to actions of specified transportation utilities and not to similar actions of energy, water, sewer, and telecommunication utilities, many of whom presumably have occasion to purchase or finance the purchase of company-owned automobiles. We believe that this distinction can best be explained by concluding that the Legislature intended, by Section 816.5, to exempt only the purchase of those vehicles, both rail and motor, which are used in providing the authorized transportation services.

We have also determined that our authorization is not required to increase revolving lines of credit. Such lines of credit have consistently been held not to require authorization because they do not constitute an "evidence of indebtedness" within the meaning of PU Code Section 818 (Willig Freight Lines, D.82-06-080 in A.82-04-018; Delta Lines, Inc., D.83-06-055 in A.83-02-47). Although the proposed increases in lines of credit do not require our authorization, we place Viking on notice that the issuance of promissory notes in connection with the purchase of company-owned automobiles or the encumbrance of company-owned automobiles do require our authorization. We will authorize Viking to issue up to $1,000,000 of promissory notes for the purpose of acquiring automobiles, and to pledge the automobiles as collateral security.

Viking's attorney informed the Commission's Revenue Requirements Division that the bank's interest rate on the acquisition of automobiles is 14% for loans above $8,000 and 14-1/2% on loans for less than $8,000. Viking will, however, pay the bank an interest rate of 13% and 13-1/4%, respectively.

Increase in Used Nonrevenue Equipment Lines of Credit

Crocker and Viking have further agreed to increase the Used Nonrevenue Equipment Line of Credit from $100,000 to $500,000 and to pledge any equipment obtained through this line as collateral security for repayment thereunder. The increase will facilitate the acquisition by Viking of various items of nonrevenue equipment which Viking needs to conduct its current operations and to expand its existing service areas. The issuance of any promissory notes under this line of credit for the purchase of nonmotor vehicle equipment is subject to this Commission's regulation under PU Code Sections 816 through 830 and 851.

Financing of Aircraft

Viking, at the beginning of 1983 acquired two aircraft, a 1969 Swearingen Merlin 11B (Swearingen) and a 1966 Aero Commander 1121 (Aero Commander). The Swearingen was purchased for $295,000 and has been financed through Viking's Used Revenue Equipment Line of Credit. It has been pledged as collateral security for the payment thereunder. Viking requests that the Commission approve such pledge. A copy of the Swearingen Pledge Agreement is attached to the application as Exhibit D.

The purchase of the Aero Commander was financed through Viking's promissory note to Crocker, dated as of March 29, 1983, for $372,750 principal amount, and secured by a pledge agreement identical to the Swearingen Pledge Agreement. A copy of the note is attached to the application as Exhibit E. The note provides for an interest rate of 3/4% above the bank's prime rate and full repayment within one year. Therefore, under PU Code Section 818, this note is not subject to Commission approval. Viking, however, desires to extend the term of the note to April 10, 1988, and, therefore, requests that the Commission approve the extension and the pledge of the Aero Commander as collateral security for the repayment of the note.

The application states that the purchase of the Swearingen and the Aero Commander were necessitated by a variety of factors, including the rapid increase in Viking's service area. In addition to several interline arrangements with trucking companies in the eastern United States, Viking has opened, or will open shortly, terminal facilities in Nevada, Arizona, Oregon and Washington. The large geographical area now covered by Viking and the time-sensitive nature of Viking's business require that Viking be able to transport key employees or equipment rapidly and efficiently. The aircraft will help meet that requirement.

Viking's application indicates that the Bus Regulatory Reform Act of 1982, enacted by Congress on November 20, 1982, deregulated certain areas of the trucking industry and, as a result, ICC approval of the actions described in the application is not necessary.

Viking believes that each of the foregoing actions is necessary to maintain adequate levels of working capital and to meet the company's anticipated needs in the near future.

Findings of Fact

1. Viking is a California corporation operating under the jurisdiction of this Commission.

2. The issuance of promissory notes for the purchase of company-owned automobiles and the encumbrance of these automobiles is not exempt from the provisions of PU Code Section 816.5.

3. Revolving lines of credit are not considered "evidences of indebtedness" within the meaning of PU Code Section 818.

4. The issuance of the proposed notes under the lines of credit described in the application is for lawful purposes and the money, property, or labor to be obtained by them are reasonably

required for the purposes specified in the application. Proceeds from the issuance of the proposed notes may not be charged to operating expenses or to income.

5. There is no known opposition to this proceeding and no known reason to delay granting the authority requested.

<u>Conclusions of Law</u>

1. A public hearing is not necessary.

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

3. A company-owned, nonrevenue automobile is not motor vehicle equipment within the meaning of PU Code Section 816.5.

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

<u>O R D E R</u>

IT IS ORDERED that:

1. Viking Freight System, Inc. (Viking) may issue promissory notes in an aggregate principal amount not to exceed $1,000,000, for the purchase of automobiles. Viking may pledge the automobiles as collateral security for the repayment of the proposed promissory notes.

2. Viking may pledge the nonrevenue equipment purchased under the New and Used Nonrevenue Lines of Credit as collateral security.

3. Viking may extend to April 10, 1988 the short-term promissory note issued on March 29, 1983 in the principal amount of $372,750, for the purchase of an Aero Commander aircraft.

4. Viking may pledge the aircraft here mentioned as security for the repayment of the notes issued.

5. Viking shall file the reports required by General Order Series 24.

6. The authority granted by this order to issue promissory notes in an aggregate principal amount not to exceed $1,372,750 will become effective when Viking pays $2,373, the fee set by PU Code Section 1904(b). In all other respects, this order is effective today.

Dated AUG 3 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA
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By

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

Joseph E. Bodovitz

Joseph E. Bodovitz, Executive Director