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Decision No. S1344 FEB 13 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of KEY TRANSPORT, INCORPORATED for an Order Authorizing it to Issue Stock to Discharge a Long-Term Obligation, and to Obtain Working Capital.

Application No. 59344
(Filed December 18, 1979)

O P I N I O N

Key Transport, Incorporated (Key) requests authority, pursuant to Sections 816 through 830 of the Public Utilities Code, (1) to issue and sell 8,980 shares of its common stock of \$10 par value; (2) to use the proceeds from the newly issued common stock to discharge a prior indebtedness to Neptune T & W, Inc., Key's parent corporation; and (3) to use the balance to replenish working capital. Notice of the filing of the application appeared on the Commission's Daily Calendar of December 19, 1979.

Key is a California corporation operating as a highway common carrier of general commodities by authority granted by this Commission in Decision No. 61592, dated February 28, 1969 in Application No. 42989. Key is permitted as a radial highway common carrier, and a highway contract carrier and has been granted a highway common carrier certificate pursuant to Senate Bill 860 in File No. T-62,576. Key also operates in interstate commerce (within the same boundaries as defined in its Public Utilities Commission's certificate) under authority granted it by the Interstate Commerce Commission in Docket No. MC-120078(1).

Key's results of operations for the year 1978 are set forth in Appendix A, attached to the Application. The company's total operating revenues and net income for the calendar year 1978 amounted to \$5,351,010 and \$25,197, respectively. For the ten months ended October 31, 1979, the carrier reported operating revenues and net income of \$4,129,032 and \$77,979, respectively.

The staff received Key's most recent Balance Sheet as of October 31, 1979 which was attached to Key's attorney's letter of January 3, 1980. This document contains the following data:

<u>Assets</u>	<u>Amount</u>
Carrier Operating Property (less) Accumulated Depreciated	\$ 126,095
Current Assets	866,640
Other Assets	<u>37,275</u>
Total	<u><u>\$1,030,010</u></u>
 <u>Liabilities and Common Equity</u>	
Common Equity	\$ (95,867)
Long-Term Debt	341,000
Current Liabilities	<u>784,877</u>
Total	<u><u>\$1,030,010</u></u>

Key is authorized in its Articles of Incorporation to issue 20,000 shares of stock. To date, 1,020 shares have been issued to Applicant's sole shareholder, Neptune T & W, Inc. (Neptune). The acquisition and control of Key by Neptune was authorized by Decision No. 87802, dated August 30, 1977 in Application No. 57351.

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Key alleges in its Application, that through a series of transactions in 1977 and 1978, it incurred a debt of \$109,000 to its parent corporation and sole shareholder, Neptune. Through a series of payments, this debt was reduced by \$28,000. A promissory note was executed by Key promising to repay Neptune \$81,000. The term of the indebtedness was for a period greater than twelve months. The Application also alleges that Key inadvertently failed to seek the required Commission authorization prior to the incurrence of the original \$109,000 indebtedness or the issuance of the promissory note for \$81,000. The purpose of the indebtedness was to obtain funds for the maintenance of working capital.

In order to repay the outstanding indebtedness of \$81,000 and to obtain further funds for Key's working capital, Key proposes to issue 8,980 shares of its common stock of \$10 par value for a total consideration of \$89,800. Of that sum, Key would receive \$8,800 in cash from Neptune. The debt of \$81,000 would be discharged.

The Revenue Requirements Division has reviewed the Application and concludes that the Applicant's request is reasonable and not adverse to the public interest.

Findings of Fact

1. Key is a California corporation and a highway carrier subject to the jurisdiction of this Commission.

2. Key, through inadvertence, incurred an indebtedness of \$109,000 to its parent company, reduced that indebtedness by a series of payments totaling \$28,000 and issued a promissory note promising to repay its parent company \$81,000 without first securing the Commission's approval. The assumption of the indebtedness and the issuance of the promissory note purportedly made on June 23, 1977, are void under Section 825 of the Public Utilities Code. ✓

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3. The incurrence of the indebtedness and to reissuance of the promissory note to Key's parent company at this time is for a proper purpose.

4. Key proposes to issue and sell 8,980 shares of common stock of \$10 par value for the purpose of discharging its outstanding indebtedness of \$81,000 to its parent and for the purpose of obtaining additional working capital.

5. The issuance and sale of Key's common stock for the purposes set forth in the Application would be for proper purposes and would not be adverse to public interest.

6. The monies, property or labor to be procured or paid for by the issuance and sale of Key's common stock herein authorized are reasonably required for the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

Conclusions of Law

1. A public hearing is not necessary.

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

The authorization granted herein is not to be construed as a finding of the value of the carrier's common stock or property nor as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. Key Transport, Incorporated, on or after the effective date hereof and on or before June 30, 1980, may issue and distribute not exceeding 8,980 shares of its common stock at a par value of \$10 per share to Neptune T & W, Inc., for a total consideration of \$89,800 in order to discharge its previously issued but unauthorized promissory note to its parent company and to augment its working capital account.

2. Key Transport, Incorporated, on or after the effective date hereof and on or before June 30, 1980, may issue a promissory note to its parent company in the amount of \$81,000. This instrument shall replace the corresponding document which was issued and executed without authorization from the Commission.

3. Key Transport, Incorporated shall file with the Commission a report, or reports as required by General Order 24-B, which order, insofar as applicable, is hereby made a part of this order.

4. This order shall become effective when Key Transport, Incorporated has paid the fee prescribed by Section 1904(b) and Section 1904.1 of the Public Utilities Code, which fee is \$180.

Dated FEB 13 1980, at San Francisco, California.

John E. Bayne President
Veron L. Stevenson
Richard G. Howell
Clare T. Dietrich
Commissioners

Commissioner Leonard M. Grimes, Jr.,
being necessarily absent, did not
participate.

