

ORIGINAL

Decision 93614 OCT 6 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ASSOCIATED FREIGHT LINES, a )  
California corporation, for )  
exemption from Commission approval )  
for execution and issuance of note )  
and security agreements or, in the )  
alternative, for ratification and )  
approval of execution of note and )  
security agreements. )

Application 60671  
(Filed June 22, 1981)

O P I N I O N

Associated Freight Lines (Associated) requests authority, under Public Utilities (PU) Code Sections 817, 818, 829, 851, and 853, for the following:

1. An exemption from the normal requirements of obtaining approval for the issuance of an Installment Note (Note) in the original principal amount of \$600,000 and the execution of a General Loan Agreement, and Accounts Receivable Rider, and a Loan and Security Agreement - Equipment (collectively referred to as Security Agreements); or in the alternative,
2. Ratification and approval of the Note and Security Agreements. The Note and Security Agreements were executed on July 9, 1980 without Commission approval.

Notice of the filing of the application appeared on the Commission's Daily Calendar of June 25, 1981. No protests have been received.

Associated, a California corporation, operates as a highway common carrier of general commodities under authorities granted under PU Code Sections 1063 and 1063.5 in Decision 86731, dated December 7, 1976 in Application 56640 and under File T-115381, effective April 30, 1980 in GC-6236. Associated also operates in interstate commerce under authority granted it by the Interstate Commerce Commission in Docket MC-142889.

For calendar year 1980, Associated reported it generated gross operating revenues of \$11,009,116 and a net loss of \$269,651, shown in the application as part of Exhibit B.

Also shown as part of Exhibit B is Associated's Balance Sheet as of December 31, 1980, summarized as follows:

<u>Assets</u>	<u>Amount</u>
Net Property and Equipment	\$ 687,011
Current Assets	1,444,620
Deferred Assets	9,750
Total	<u>\$2,141,381</u>
<u>Liabilities and Equity</u>	
Common Equity	\$ (43,206)
Long-Term Debt	550,821
Current Liabilities	1,633,766
Total	<u>\$2,141,381</u>

(Red Figure)

On July 9, 1980, Associated, without Commission approval, executed Security Agreements, and issued a Note in favor of Aetna Business Credit, Inc. (Aetna)<sup>1/</sup> in the principal amount of \$600,000. These documents are void under PU Code Sections 825 and 851. Copies of the Security Agreements and the Note are attached to the application as Exhibit A.

The application indicates that the failure of Associated to seek approval of the Commission for the issuance of the Note and the grant of security interests to Aetna was due to a good faith oversight. Associated, therefore, seeks an exemption, under PU Code Sections 829 and 853, from the normal requirement of Commission approval. In the alternative, Associated seeks retroactive ratification and approval of the Note and Security Agreements, as of July 9, 1980. As further justification for an exemption or retroactive ratification, Associated's attorney, by letter dated July 20, 1981, informed the Commission's Revenue Requirements Division that under the terms of the Security Agreements, Associated agreed to

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<sup>1/</sup> As of December 31, 1980, Aetna assigned all of its right, title and interest in its loan portfolio, including its loans to Associated, to Barclays American/Business Credit, Inc. (Barclays). For purposes of clarity, however, this application shall refer to Aetna, which references shall be deemed to include Barclays.

comply with all regulations to which it is subject and agreed that failure to do so would constitute an event of default. Under such an event Aetna is entitled to accelerate all Associated indebtedness and to enforce its security interest in Associated's assets. The attorney's letter further indicates that in the event the Commission decided to neither exempt nor approve the issuance of Note and Security Agreements, Aetna would have to consider termination of its financing arrangements with Associated. Without Aetna's financing there is a significant possibility that Associated would be unable to continue to serve the public in its capacity as a highway common carrier.

Under the Security Agreements, Aetna advanced \$600,000 to Associated as evidenced by the Note, and advanced additional amounts on a revolving basis against Associated's accounts receivable. In consideration for these advances by Aetna, Associated granted to Aetna security interests in substantially all of Associated's assets, including, without limitation, all accounts receivable, certain equipment, instruments, documents, and general intangibles.

The application indicates that Associated used the money it obtained through the Security Agreements and the Note for working capital used for improvements and maintenance of Associated's equipment and services and to finance the acquisition of new equipment. The Commission may approve the issuance of long-term debt for these purposes.

As of June 16, 1981, Associated was indebted to Aetna in the aggregate principal amount of \$841,813, of which \$488,141 represented amounts owing under the Note and \$353,672 represented amounts advanced on a revolving basis against Associated's accounts receivable.

The Note, by its terms, calls for a floating annual interest rate of 5.75% plus the prime rate in effect, and amortizes over a 5-year term, with a final payment due on July 10, 1985. Under the Security Agreements, the same floating annual interest rate of 5.75% plus the prime rate applies to advances on a revolving basis against Associated's accounts receivable.

The Security Agreements have an original term of 2 years and renew automatically, from year to year thereafter, unless terminated. Either Associated or Aetna may terminate the loan agreements by delivering notice of termination at least 60 days prior to the end of the original term, or any anniversary.

Before the execution and issuance of the Note and the Security Agreements, Associated reviewed alternate sources of financing. After that review, Associated concluded that (a) most lenders would not finance both the equipment and the accounts receivable of highway common carriers, (b) many of the lenders which would finance equipment would not finance Associated's used equipment, and (c) of those lenders which would finance both new and used equipment and accounts receivable, Aetna provided the most advantageous terms.

The Commission's Revenue Requirements and Transportation Divisions have reviewed the application and conclude that the Security Agreements and Note were issued for proper purposes.

The Revenue Requirements and the Transportation Divisions recommend that Associated's request for an exemption from the Commission's normal requirements of obtaining approval for the Security Agreements and Note be granted on one condition. Associated, because of its precarious financial position, should file the reports required by General Order Series 24.

The Revenue Requirements and Transportation Divisions' recommendation is based on the possibility that Aetna would terminate its financing arrangements with Associated if we were to deny Associated's request. The termination of the financing

arrangement would be contrary to the public interest, would worsen Associated's financial position, and possibly would prevent Associated from continuing to serve the public.

We will adopt the recommendation of the Revenue Requirements and Transportation Divisions and grant Associated's request for an exemption from the normal requirements of obtaining approval for the Security Agreements and Note. We will grant this exemption under PU Code Sections 829 and 853.

Findings of Fact

1. Associated, a California corporation, operates as a high-way common carrier under the jurisdiction of this Commission.
2. Associated requests that the Security Agreements and Note executed on July 9, 1980 without Commission approval be exempt under PU Code Sections 829 and 853.
3. The Security Agreements and Note were executed for proper purposes and are not adverse to the public interest.
4. The money, property, or labor to be procured or paid for by the Security Agreements and Note is reasonably required for the purposes specified in the application.
5. There is a possibility that Aetna would terminate the financial arrangements with Associated if an exemption is not granted.

6. Termination by Aetna of the financial arrangements would worsen Associated's financial position and possibly prevent Associated from providing service to the public as a highway common carrier.

7. Application of PU Code Sections 818 and 851 to the issuance and delivery of the Note and Security Agreements in question is not necessarily in the public interest.

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

Conclusions of Law

1. It is proper under the circumstances to exempt the Security Agreements and Note from the requirements of PU Code Sections 818 and 851.

2. A public hearing is not necessary.

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

4. Unless Associated's request for exemption is granted, the Note and Security Agreements are void under PU Code Sections 818 and 851.



O R D E R

IT IS ORDERED that:

1. Associated Freight Lines (Associated) is exempted, under PU Code Sections 829 and 853, from any and all requirements that it obtain approval for the execution and delivery of (1) an installment note dated July 9, 1980 in the principal amount of \$600,000 payable to the order of Aetna Business Credit, Inc., and (2) a loan and security agreements and various other related documents in favor of Aetna Business Credit, Inc., all dated July 9, 1980 and in the same forms as those attached to the application.

2. Associated shall file the reports required by General Order Series 24.

This order becomes effective 30 days from today.

Dated OCT 6 1981 at San Francisco, California.

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

*I certify that this decision was approved by the above Commissioners today.*

