

Decision 99-06-036 June 10, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Red & White Ferries, Inc.
(VCC-81) and Affiliates for an Exemption from
Sections 816-830 and 851-854 of the California
Public Utilities Code.

Application 98-11-031
(Filed November 30, 1998)

O P I N I O N

Summary

This decision grants the application of Red and White Ferries, Inc., and its affiliates¹ (Red and White) which seeks (1) exemption from Sections² 816-830 (stocks and securities) and 851 (encumbrances for the purposes of securing debt) and (2) modification of certain Commission procedures by which Red and White will obtain authority to transfer assets or control pursuant to §§ 851-854.

Background

Red and White Ferries is a California corporation with its headquarters in San Francisco, California. It is a certificated vessel common carrier, with its principal place of business on San Francisco bay.

¹ Only affiliates certificated by the Commission as vessel common carriers will be included in this exemption and modified procedure. Currently, Red and White has no such affiliates. Should Red and White gain such an affiliate, Red and White may include the affiliate in this exemption and modified process by filing an advice letter with the Commission, or as a part of the Commission process which approves the acquisition.

² All citations are to the Public Utilities Code unless otherwise indicated.

In its application, Red and White stated that the Commission has previously granted nondominant interexchange carriers and SuperShuttle of San Francisco exemptions from the §§ 816-830 (stocks and security transfers) and 851 (transfer or encumbrance of utility property, to the extent it served to secure debt) in Decision (D.) 85-01-008, D.85-07-081, D.85-11-044, and D.85-06-052. In granting those exemptions, the Commission observed that the applicants operated in competitive industries.

In addition to the statutory exemptions for security transfers and encumbrances which secure debt, the Commission has gone one step further for interexchange carriers and Supershuttle and allowed them to obtain approval for asset transfers pursuant to §§ 851-854 via the Advice Letter process, rather than the more procedurally exacting application process. (See SuperShuttle of San Francisco, Inc., D.98-10-031; Cherry/MIDCOM, D.97-06-091; California Association of Long Distance Telephone Companies, 54 CPUC2d 520 (1994)(D.94-05-051).)

The purpose of Red and White's application is to obtain both an exemption from the security transfer and debt encumbrance filing requirements and authorization to use the Advice Letter process in a manner similar to the interexchange carriers and SuperShuttle.

On January 12, 1999, Catalina Channel Express, Inc., and Blue and Gold Fleet, L.P., filed a response to the application in which they objected to the requested relief being granted to this applicant alone and not the entire industry, and the apparent absence of any applicable procedural requirements for the proposed advice letter process.

On February 8, 1999, the assigned Commissioner and the assigned Administrative Law Judge held a prehearing conference at which many of

the issues raised in the response were addressed and the parties agreed that providing comments on a draft decision would be a sufficient procedural mechanism for their issues, and no hearings or briefings would be necessary.

Comments on Draft Decision

On May 11, 1999, a draft decision was mailed to all parties to this proceeding, and on May 14, 1999, to the parties to the dockets which resulted in D.98-10-031, D.94-05-051, and D.97-06-091. No party submitted comments.

Discussion

In the case of the interexchange carriers and SuperShuttle, we simplified our regulatory oversight where to do so would not compromise the public interest. The facts of this application support a similar result.

Red and White customers, like those of the interexchange carriers and SuperShuttle, have a choice of several vessel transportation providers as well as other transportation possibilities. The application process for security transfers, utility asset transfers and mergers, even where the proposed transaction is unopposed and routine, can take up to several months. This unnecessarily adds delay and uncertainty to the transaction and consequently drives up cost, with no offsetting benefit to the public. Processing the application also requires limited Commission resources.

The Commission has previously found that in a competitive environment no public purpose is served by overseeing issuance of stocks, bonds, or other forms of ownership or indebtedness. While such oversight may protect one competitor from unwise business decisions, the delay inherent in an approval process may also cause another competitor to fail

to capture fleeting but advantageous opportunities. So long as the public has alternative service providers, regulating the financial structure of the utility is not necessary to protect the public interest.

Even in a competitive environment, however, some level of Commission oversight is necessary to ensure that unscrupulous providers or practices are prevented insofar as the actual assets which provide service to customers or a merger are concerned. The Advice Letter process reserves the opportunity to review a proposed asset or merger transaction to both the Commission and other providers and to seek, if needed, further scrutiny by the Commission in the formal application process. In this way, transactions which may have unusual implications for the public can receive a higher level of review while those that are routine and noncontroversial, the vast majority, can expeditiously obtain authorization.

Like SuperShuttle, Red and White seeks this exemption and modified process only for it and its affiliates, not the full industry. Because securities transactions and debt encumbrances do not include another Commission-regulated entity, the statutory exemption limited to Red and White is sufficient. The modified process for asset transfers and mergers limited to Red and White, however, creates a practical problem in that while Red and White will be eligible to use the Advice Letter process for asset transfers or mergers, the vessel carrier from which it is obtaining the assets or merging will be required to use the application process. As a result, Red and White would obtain no benefit from its exemption. For this reason, Red and White has requested that its exemption apply to (1) all its subsequently acquired vessel carriers and (2) all vessel carriers with which it merges or transfers assets.

Red and White's request would have the effect of extending this modified process to all vessel carriers involved in a Red and White transaction, carriers which are not now known. This proposal contains insufficient parameters. While it is clear that the identity of the merger partner or asset transferor is unknown and that the party must be included or this exemption is pointless, the same can not be said for the Red and White side of the transaction. Red and White currently has no vessel carrier affiliates. Should affiliates which may acquire assets from other carriers or merge be added, Red and White can extend the authority obtained in this decision by filing an Advice Letter or as part of the Commission process authorizing the acquisition of the carrier.

Advice Letter Process

The procedural rules for advice letter filings are set out in General Order (GO) 96-A, which is inapplicable to vessel carriers such as Red and White. For purposes of its advice letter filings, it will be subject to all portions of GO 96-A which apply to advice letters.³

The previous decisions which have granted authority to use the advice letter process for §§ 851 - 854(a) transactions to interexchange carriers and SuperShuttle did not carefully state which portions of GO 96-A would apply to the advice letters. Attachment A contains such a statement and will be applicable to SuperShuttle and the interexchange carriers.

³ The Commission is currently considering revisions to GO 96-A which would create general rules applicable to all utilities as well as industry-specific rules. Should the Commission adopt both of these types of rules, Red and White need only comply with the general rules as there will be no specific rules for passenger stage corporations.

Because SuperShuttle and the interexchange carriers are not parties to this proceeding, the draft decision in this proceeding was served on all parties to the dockets which resulted in D.98-10-031, D.94-05-051, and D.97-06-091. All such parties had the opportunity to file comments on the draft decision.

Findings of Fact

1. Red and White filed its application on November 30, 1998.
2. Notice of the application appeared in the Commission's Daily Calendar on December 16, 1998.
3. No party protested the application but Catalina Channel Express, Inc, and Blue and Gold Fleet, L.P., filed a response.
4. No hearing is necessary.
5. Red and White provides service in a competitive industry.
6. The Commission has the authority to change or eliminate the procedure for reviewing exemptions from §§ 816-830 (stocks and security transfers) and 851 (transfer or encumbrance of utility property to the extent it serves to secure debt).
7. The Commission has the authority to change or eliminate the procedure for reviewing transfers of control or assets which are subjects of Pub. Util. Code §§ 851 through 854(a).
8. Red and White's proposed exemption and advice letter procedure are patterned on the exemption and procedure used by interexchange carriers and SuperShuttle for the same type of transactions.
9. Red and White's proposed procedure would substantially shorten the time period between Red and White's request for authority to transfer control or assets and the date the Commission grants that authority, and would eliminate the Commission approval process for securities and debt transactions.

10. Achieving the goal of an expedited process requires that the Advice Letter process be available to the carriers with which Red and White is transferring assets or control.

11. Red and White's proposal would retain the Commission's discretion to initiate a formal review of any future asset transfer or merger transactions.

12. No public purpose is served by a procedure which requires Red and White to obtain Commission authorization for securities or stock transfers or of encumbrances solely to secure debt.

13. No public purpose is served by a procedure which requires Red and White to obtain Commission authorization for transfers of assets or control via the formal application process.

Conclusions of Law

1. No hearing is needed.
2. The Advice Letter process, and the application process where needed, sufficiently protect the public interest in transfers of assets and control among Red and White and other vessel carriers.
3. The Commission should grant Red and White's application.
4. The advice letter process set out in Attachment A should be applicable to SuperShuttle and the interexchange carriers.
5. SuperShuttle and the interexchange carriers had an opportunity to comment on Attachment A.

O R D E R

IT IS ORDERED that:

1. Red and White, Inc., (Red and White) is exempted from the requirements for Commission authorization established in Pub. Util. Code §§ 816-830 and 851 to the extent the encumbrance secures debt.

2. Red and White may use the Advice Letter process found in Attachment A to obtain Commission authorization for transactions subject to Pub. Util. Code §§ 851 through 854(a). Red and White may extend this authority to its affiliates via the Advice Letter process.

3. Vessel common carriers certificated by the Commission with which the entities covered by Ordering Paragraphs (OPs) 1 and 2 engage in transactions subject to Pub. Util. Code §§ 851 to 854(a) may also use the Advice Letter process found in Attachment A.

4. The procedural rules for advice letters found in Attachment A shall apply to all advice letter filings by the entities covered by OPs 1 and 2. Should the Commission adopt revised advice letter filing rules, the entities covered by OPs 1 and 2 shall comply with all generally applicable rules and need not comply with industry-specific rules.

5. The preliminary determination that this proceeding does not require a hearing made in ALJ Resolution 176-3006, is affirmed as no hearing is needed and Article 2.5 of the Commission's Rules of Practice and Procedure does not apply to this proceeding.

6. This proceeding is closed.

This order is effective today.

Dated June 10, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
LORETTA M. LYNCH
JOEL Z. HYATT
Commissioners

ATTACHMENT A

Advice Letter Process for Utilities Not Subject to General Order 96-A

1. **Content of Advice Letter.** The advice letter shall advise the Commission that one of the entities authorized to use this process proposes to engage in a transaction subject to Pub. Util. Code §§ 851 through 854(a) and shall identify any other Commission-certificated entity which is also involved in the transaction. The advice letter shall describe the terms of the transaction and shall be served, in the case of SuperShuttle and Red and White, on the Director of the Commission's Rail Safety and Carriers Division and for interexchange carriers, the Director of the Commission's Telecommunications Division, as well as those persons to whom the parties to the transaction are required to serve tariff changes under GO 96-A. The advice letter shall be accompanied by financial statements for any carrier that will continue operations after the proposed transaction and shall state any tariff modifications.
2. **Applicability.** These portions of General Order 96-A shall apply to all utilities that are authorized to use the advice letter process to obtain Commission approval of transfers of control or assets which are subject to Pub. Util. Code §§ 851 through 854(a):
 - A. III. B. Number of Copies.
 - B. III. D. Numbering of Advice Letters
 - C. III. G. Notice
 - D. III. H. Protests
 - E. III. I. Supplements
 - F. III. K. Withdrawal of Advice Letter
 - G. IV. A. Filed Date
 - H. IV. B. Effective Date
 - I. V. D. Suspension.
3. In response to a protest, or of its own accord, the Commission may suspend the advice letter and order further proceedings.

(END OF ATTACHMENT A)