

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Resolution TL-18881
Rail Safety and Carriers Division
February 4, 1999**

RESOLUTION

**(Res. TL-18881) HORNBLOWER YACHTS, INC. (HORNBLOWER).
REQUEST TO PLEDGE A PUBLIC UTILITY ASSET AS PART OF
THE SECURITY FOR A CREDIT FACILITY AND LOAN
AGREEMENT WITH THE FLEET CAPITAL CORPORATION
(FLEET).**

ADVICE LETTER (AL) NO. 1 DATED DECEMBER 17, 1998.

SUMMARY

This Resolution authorizes Hornblower to pledge a public utility asset as part of the security for a credit facility and loan transaction with Fleet.

No protests have been received.

BACKGROUND

Hornblower is a corporation organized and existing under the laws of the State of California. It is a certificated vessel common carrier (VCC-59) engaged in the provision of on-call charter service on San Francisco Bay and San Diego Bay, respectively, as well as providing extensive exempt charter services in San Francisco, Berkeley, Newport Beach, Marina del Rey, San Diego and the Port of Los Angeles/Long Beach markets.

Hornblower has stated in AL No. 1 that unregulated services account for approximately 99 percent of Hornblower's revenues. Out of the projected revenues of \$30,000,000 for 1998, less than \$50,000 relates to revenues earned under Hornblower's certificate (i.e., regulated service).

DISCUSSION

Pursuant to AL No. 1, Hornblower is in the process of negotiating an agreement with Fleet whereby Hornblower, and its affiliated, non-regulated companies, will be extended a total credit facility of \$27,300,000, consisting of: (a) a facility for revolving credit loans of up to \$500,000; (b) term loan in the original principal amount of \$25,200,000; and (c) a facility for other financing arrangements up to \$1,600,000. In connection with this financing transaction, Hornblower will provide security that includes a pledge of its assets, including operating vessel equipment owned by the company.

Only one of Hornblower's twenty vessels, the "Monte Carlo" is used for regulated services. The remainder of the fleet (harbored in San Francisco, Berkeley, Los Angeles, San Diego, Newport Beach and Lake Tahoe) is used exclusively for exempt services. The Monte Carlo is harbored in San Francisco and has a configuration which best accommodates requirements for certificated services when needed.

Hornblower's projected revenue for 1998 is \$30,000,000. Of this sum, less than \$50,000 relates to revenues earned under Hornblower's certificate. The balance is all attributable to the so-called "loop" exemption, for which no certificate is required.

Of the 6,000 cruises hosted by Hornblower during 1998, only six were conducted as certificated, regulated services. All of these originated in the San Francisco Bay Area (generally, one-way trips between San Francisco and Sausalito). In each case, the trips were prepaid. There was no accounts receivable generated by such services. Only the Monte Carlo was and is used for regulated service. The remaining nineteen vessels are used exclusively for exempt services.

As part of the subject financing, Fleet will be granted security for its loans. The assets to be encumbered include the vessels operated by Hornblower. In order to encumber the Monte Carlo within the context of the loan transaction, Hornblower requests Commission approval pursuant to Public Utilities (PU) Code § 851.

PU Code § 851 provides in part:

No public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act (Title 49, U.S.C.) shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or

permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do.

Hornblower points out in AL No. 1 that Resolution (Res.) TL-18875 dated December 17, 1998 authorized passenger stage corporations to use the advice letter process to obtain Commission authorization for transactions subject to PU Code §§ 851 through 854(a). It requests that the Commission give its approval to this transaction through the same advice letter process because the degree of regulated activity and any potential adverse impact on the public are *de minimus*.

Use of Proceeds

Hornblower proposes to use the proceeds of the Fleet lending commitment to (1) buy-off limited partnership interests in several of the vessels operated by Hornblower, (2) retire existing debt, and (3) provide operating capital for day-to-day operations.

We recognize Hornblower's need and intention to have access to a credit facility to provide liquidity support in its operation.

We will grant Hornblower the authority to encumber its public utility asset as set forth or contemplated in AL No. 1.

We note herein that because Hornblower's degree of regulated activity is virtually *de minimus*, the construction budget, cash requirements forecast, and capital ratios are not presented in this resolution.

This is an uncontested matter in which the resolution grants the relief requested. Accordingly, pursuant to PU Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings

1. Hornblower has need for external funds for the purposes set forth in AL No. 1.
2. Hornblower's regulated revenue is approximately .17% of its total revenue.
3. PU Code § 851 states that a mortgage of public utility property must be authorized by the Commission.
4. It is reasonable to allow Hornblower to use the advice letter process for the limited purpose of obtaining the Commission's approval to encumber the vessel Monte Carlo.

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5. Authorizing Hornblower to encumber its regulated vessel as security for the credit facility it is contemplating is not adverse to the public interest.
6. There is no known opposition to granting the authority requested.

THEREFORE, IT IS ORDERED that:

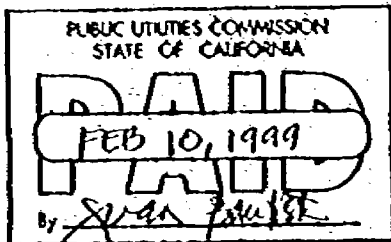
1. On or after the effective date of this order, Hornblower Yachts, Inc. may pledge its regulated asset as part of the security for a credit facility and loan agreement with the Fleet Capital Corporation as contemplated in Advice Letter No. 1.
2. The authority granted by this resolution shall become effective when Hornblower Yachts, Inc. pays \$92.82, the fee set forth by Public Utilities Code § 190-(b).

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted by the Commission at its regularly scheduled meeting on February 4, 1999. The following Commissioners voted favorably thereon:

Wesley Franklin

WESLEY M. FRANKLIN
Executive Director



CSR # 40267

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEPPER
Commissioners