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SERVICE DATE – NOVEMBER 27, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21064

PRISONER TRANSPORTATION SERVICES, LLC—CONTROL—PTS OF AMERICA, LLC
D/B/A PTS AND BREVARD EXTRADITIONS, INC. D/B/A U.S. PRISONER TRANSPORT

Digest:¹ This decision grants the request of Prisoner Transportation Services, LLC, to acquire common control of PTS of America, LLC d/b/a PTS and Brevard Extraditions, Inc. d/b/a/ U.S. Prisoner Transport, and addresses a comment filed in this proceeding.

Decided: November 24, 2015

On June 24, 2015, Prisoner Transportation Services, LLC (Applicant) filed an application for approval under 49 U.S.C. § 14303 to acquire common control of PTS of America, LLC d/b/a PTS (PTS) and Brevard Extraditions, Inc. d/b/a/ U.S. Prisoner Transport (USPT). In a notice served and published in the Federal Register on July 24, 2015 (80 Fed. Reg. 44,913), the Board tentatively approved the application, subject to the consideration of any timely-filed opposing comments. Prisoner Transp. Serv., LLC—Control—PTS of America, LLC (July Decision), MCF 21064 (STB served July 24, 2015).

According to Applicant, PTS and USPT both perform a specialized type of interstate transportation of passengers by motor carrier. Specifically, PTS and USPT each has contracts of carriage with state and local prisons, correctional facilities, and sheriff's departments for the for-hire transportation of incarcerated prisoners. Applicant stated that the transaction would be an acquisition of common control of PTS and USPT through the contribution of both carriers' outstanding stock to the Applicant, a holding company. As a result, both PTS and USPT would become Applicant's subsidiaries. Applicant also stated that, as a result of this transaction, the current owners of each company would jointly control both carriers, with both companies continuing to offer their existing service.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

On September 8, 2015, a comment was filed by the law firms of Conley Griggs Partin LLP; Pajcic & Pajcic, PA; and Mozley, Finlayson & Loggins, LLP (collectively, Commenters) in opposition to Applicant's acquisition of common control of PTS and USPT. Commenters state that they each represent one or more individuals and estates in two pending civil actions alleging the wrongful deaths of prisoners while in PTS's care. Those civil actions were filed and served on PTS before Applicant filed its application for acquisition of common control of PTS and USPT. Commenters state that the acquisition of control of PTS by Applicant could allow the shift of all PTS's assets to Applicant, leaving behind a shell organization with no remaining assets to satisfy possible future jury awards. Accordingly, Commenters request that the Board deny the application. If the application is approved, Commenters request that the Board either require Applicant to assume all PTS liabilities or include provisions that would prevent a conveyance of PTS assets so that those assets are subject to collection in the pending civil actions.

On September 14, 2015, Applicant filed a reply to the comment stating that the proposed transaction meets the criteria for approval under 49 U.S.C. § 14303.² Applicant argues that Commenters did not oppose the application on the merits and did not challenge the Board's finding with respect to the statutory requirements. Applicant states that the proposed transaction would not affect Applicant's ability to provide service or to respond to any legal judgment that might be entered in the pending civil actions. Applicant further asserts that this transaction is structured to permit the owners of PTS and USPT to grow and prosper in response to a public need and that Commenters' opposition is based upon pure speculation.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of the affected carrier employees. Pursuant to 49 C.F.R. § 1182.6(a), the July Decision, which tentatively approved the transaction, was automatically vacated upon the filing of Commenters' opposing comment. Under 49 C.F.R. § 1182.6(c)(1), we find that we are able to make a determination on the current record, and that no additional evidence is required. Applying the statutory standard in 49 U.S.C. § 14303(b), Applicant's proposed transaction will be approved and authorized.

The concerns raised by Commenters do not demonstrate that the Board should alter its prior finding that the transaction is consistent with the public interest. Commenters allege that PTS may attempt to shift its assets to a newly created entity so as to prevent those assets from being subject to collection in the pending civil actions. However, the Board's licensing authority

² On November 4, 2015, Applicant filed a letter to inform the Board that a settlement was reached in one of the two civil lawsuits.

under 49 U.S.C. § 14303(b) is permissive and reflects consideration of the transportation merits only. A Board license does not legitimize the underlying corporate transaction that the parties entered into under state law. If there is a dispute about the underlying validity of a transaction such as the acquisition of control at issue, that dispute generally should be decided by a court, applying state law. See V&S Ry.—Pet. for Declaratory Order—R.R. Operations in Hutchinson, Kan., FD 35459, slip op. at 6-7 (STB served July 12, 2012).

For these reasons, the Board finds under 49 U.S.C. § 14303(b) that the transaction is consistent with the public interest and approves and authorizes the transaction.

It is ordered:

1. The proposed transaction is approved.
2. This decision is effective on its service date.
3. A copy of this decision will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue, S.E., Washington, DC 20590.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Miller.