

**ORIGINAL**

Decision No. 72775

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 IML FREIGHT, INC., a corporation, )  
 and MARR FREIGHT TRANSIT, INC. )  
 (James A. A. Smith, Trustee in )  
 bankruptcy) for a authority for IML )  
 FREIGHT, INC., to purchase the )  
 operative rights of MARR FREIGHT )  
 TRANSIT, INC. )

Application No. 49435  
 Filed June 7, 1967

O P I N I O N

James A. A. Smith as Trustee in bankruptcy of Marr Freight Transit, Inc., requests authority to sell and transfer, and IML Freight, Inc., requests authority to purchase and acquire a certificate of public convenience and necessity authorizing operations as a highway common carrier.

The certificate was granted by Decision No. 60987, dated November 1, 1960, in Application No. 42354, and authorizes the transportation of general commodities between points in the Los Angeles Basin Territory. In addition to said authority Marr Freight Transit, Inc. possesses certificated rights authorizing operations in interstate commerce.

As the result of continuous operational losses a petition in bankruptcy was filed on July 1, 1966, and James A. A. Smith was subsequently appointed Trustee in bankruptcy for Marr Freight Transit, Inc. Upon being so informed by the counsel for the Trustee, the Commission by Decision No. 71474, dated October 25, 1966, suspended the operating authority of Marr until November 20, 1967.

The agreed cash consideration for both the intrastate and interstate operative rights is \$35,000. The consideration was

determined by public auction. The auction was widely publicized and IML was the successful bidder.

IML is a common carrier primarily engaged in interstate commerce. It is also certificated by the Commission to conduct operations between various points within the State. As of the filing of the application, applicant purchaser indicated a net worth in the amount of \$13,549,893.

Pending final authorization of the Commission and the Interstate Commerce Commission, it is requested that IML be temporarily authorized to conduct operations pursuant to a lease agreement whereby IML would pay a rental of \$100 per month.

After consideration, the Commission finds that the proposed transfer and lease agreement would not be adverse to the public interest. A public hearing is not necessary.

The authorization herein granted shall not be construed as a finding of the value of the rights herein authorized to be transferred.

IML Freight, Inc., a corporation, is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. On or before July 1, 1968, James A. A. Smith, Trustee in bankruptcy for Marr Freight Transit, Inc., a corporation, may sell and transfer and IML Freight, Inc., a corporation, may purchase and acquire, the operative rights referred to in the application.

2. Within thirty days after the consummation of the transfer herein authorized, IML Freight, Inc. shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.

3. IML Freight, Inc. shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations herein to show that it has adopted or established, as its own, said rates and rules. The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the service herein authorized. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-A.

4. On or before the end of the third month after the consummation of the transfer as herein authorized, IML Freight, Inc. shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the

first day of the current year to and including the effective date of the transfer.

5. Pending execution of the transfer herein authorized, the parties hereto may execute and conduct operations pursuant to the lease agreement heretofore referred to.

6. Concurrent with the establishment of service authorized by ordering paragraph 5 herein, the suspension imposed by Decision No. 71474 is hereby set aside.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 17th day of JULY, 1967.

[Signature]  
President

[Signature]

[Signature]

[Signature]  
Commissioners