

ORIGINAL

Decision No. 77077

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:)

(a) B & M TERMINAL CORP., a)
 corporation, to purchase, and of)
 B & M TERMINAL FACILITIES, INC., a)
 corporation, to sell, a prescriptive)
 operating right as a public ware-)
 houseman in the City of Vernon,)
 pursuant to Sections 851-853 of the)
 California Public Utilities Code.)

Application No. 51753
 Filed March 5, 1970
 and Amendments
 Filed March 11, 1970
 and March 30, 1970

(b) B & M TERMINAL CORP., a)
 corporation, to issue shares of its)
 common capital stock, pursuant to)
 Sections 816-830 of the California)
 Public Utilities Code.)

O P I N I O N

B & M Terminal Facilities, Inc. seeks an order of the Commission authorizing it to sell its prescriptive operative right as a public utility warehouseman, together with certain related assets, to B & M Terminal Corp., which corporation requests authority to issue 105 shares of its no par value common capital stock to Brake Delivery Service for \$10,500 cash. The latter is a highway common carrier requesting authority to purchase and acquire said stock.

B & M Terminal Facilities, Inc. is a California corporation operating as a public utility warehouseman pursuant to the prescriptive right determined by the Commission on August 23, 1960, in Case No. 6862. Said right authorizes the operation of 3,500 square feet of storage or warehouse floor space, exclusive of the expansion permissible under Section 1051 of the Public Utilities Code. For the fiscal year ended September 30, 1969, the company reports warehouse public utility operating revenues amounting to \$54,961.

In this proceeding B & M Terminal Facilities, Inc. contemplates transferring said prescriptive operative right, goodwill and certain equipment to B & M Terminal Corp., a California corporation incorporated on or about September 30, 1969. The latter proposes to issue and sell 105 shares of its common capital stock for \$10,500 cash, and to apply \$5,000 of the proceeds to goodwill, \$5,350 to two forklift units, a hydraulic pallet and a scale, and \$150 to working capital. No value is assigned to said operative right.

Brake Delivery Service is a California corporation incorporated on or about May 28, 1956, and operates as a highway common carrier in portions of southern California. It shares with B & M Terminal Facilities, Inc. common warehouse-motor carrier terminal facilities, which the carrier plans to utilize on a joint

basis with B & M Terminal Corp. For the year 1969 Brake Delivery Service reports total operating revenues of \$1,667,477. It proposes to acquire said shares of stock of B & M Terminal Corp. in exchange for \$10,500 cash.

After consideration the Commission finds that:

1. The proposed transactions would not be adverse to the public interest.
2. The proposed stock issue is for proper purposes.
3. The money, property or labor to be procured or paid for by the issue of the stock herein authorized is reasonably required for the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

On the basis of the foregoing findings we conclude that the application, as amended, should be granted. A public hearing is not necessary. The authorization herein granted shall not be construed as a finding of the value of the operative right and properties herein authorized to be transferred, nor as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

The order which follows will provide for, in the event the transfer is consummated, the revocation of the prescriptive operative right presently held by B & M Terminal Facilities, Inc. and the issuance of a certificate in appendix form to B & M Terminal Corp.

B & M Terminal Corp. 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, these rights extend to the holder a full or partial monopoly of a class of business. 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 September 30, 1970, B & M Terminal Facilities, Inc. may sell and transfer, and B & M Terminal Corp. may purchase and acquire, the prescriptive operative right and property referred to in this proceeding.
2. B & M Terminal Corp., on or before September 30, 1970, may issue and sell, and Brake Delivery Service may purchase and acquire, not exceeding 105 shares of the former's no par value common capital stock at a price of \$100 per share cash.

3. B & M Terminal Corp. shall apply the proceeds to be derived from issuing and selling said stock to the purposes specified in the application, as amended.

4. B & M Terminal Corp. shall file with the Commission a report, or reports, as required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

5. Within thirty days after the consummation of the transfer herein authorized; B & M Terminal Corp. 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.

6. B & M Terminal Corp. shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the warehouse 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 ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the consummation of the transfer 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. 61-A. Failure to comply with and observe the provisions of General Order No. 61-A may result in a cancellation of the operating authority granted by this decision.

7. On or before the end of the third month after the consummation of the transfer as herein authorized, B & M Terminal Corp. 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 fiscal year to and including the effective date of the transfer.

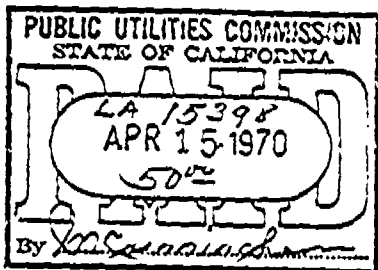
8. In the event the transfer authorized in Paragraph No. 1 hereof is consummated, a certificate of public convenience and necessity is granted to B & M Terminal Corp. as a public utility warehouseman, as defined in Section 239(b) of the Public Utilities Code, for the operation of storage or warehouse floor space as set forth in Appendix A attached hereto and made a part hereof.

9. The certificate of public convenience and necessity granted in Paragraph No. 8 of this order shall supersede the prescriptive operative right found to exist in Case No. 6862, dated August 23, 1960, which operative right is revoked concurrently with the effective date of the tariff filings required by Paragraph No. 6 hereof.

10. Within thirty days after the transfer herein authorized is consummated, B & M Terminal Corp. shall file a written acceptance of the certificate herein granted. B & M Terminal Corp. is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it will be required, among other things, to file annual reports of its operations.

11. This order shall become effective when B & M Terminal Corp. has paid the minimum fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$50.

Dated at San Francisco, California,
this 11th day of APRIL, 1970.



William J. Lyons, Jr.
President

[Signature]
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

B & M Terminal Corp., a corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to operate as a public utility warehouseman as defined in Section 239(b) of the Public Utilities Code for the operation of storage or warehouse floor space as follows:

<u>Location</u>	<u>Number of Square Feet of Floor Space</u>
Vernon	3,500

(The floor space shown is exclusive of the expansion permissible under Section 1051 of the Public Utilities Code.)

End of Appendix A

Issued by California Public Utilities Commission.

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