

Decision No. 83406**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:

(a) RHEA M. McLEOD, an individual,  
 doing business as BUDWAY EXPRESS, to  
 purchase, and JOHN V. FOX, JR., GEORGE  
 F. FOX and JOSEPH T. FOX, co-partners,  
 doing business as JOHN MCCARTHY & SON,  
 to sell Public Utility Warehouse Oper-  
 ating Authority, Pursuant to Section  
 851, et seq., and Section 1052 of the  
 California Public Utilities Code; and  
 upon approval thereof.

(b) To operate as a Public Warehouseman  
 in San Leandro, California; and,  
 (c) For authorization to cease operations  
 at San Francisco, California; and,  
 (d) To extend or increase storage or  
 warehouse floor space from 40,000 square  
 feet to 100,000 square feet, pursuant to  
 Section 1051 of the California Public  
 Utilities Code.

Application No. 55007  
 (Filed July 1, 1974)

O P I N I O N

John V. Fox, Jr., George F. Fox, and Joseph T. Fox, co-partners doing business as John McCarthy & Son, request authority to sell and transfer, and Rhea M. McLeod, doing business as Budway Express, requests authority to purchase and acquire, a certificate of public convenience and necessity authorizing operations as a public utility warehouseman in the city of San Francisco. Applicant purchaser also requests authority to transfer said warehouse authority to the city of San Leandro and to increase the authorized space from 40,000 square feet of floor space to 100,000 square feet of floor space.

The certificate was granted by Decision No. 40755 dated September 23, 1947 as amended by Decision No. 40813 dated October 10, 1947 in Application No. 28078 and was acquired by applicant sellers by Decision No. 56463 dated April 8, 1958 in Application No. 39902. The agreed cash consideration is \$3,750.

Applicant purchaser has under lease a concrete tilt-up building in the city of San Leandro with approximately 73,000 square feet of floor space. Applicant purchaser also has an option to lease an adjacent building with approximately 38,000 square feet of floor space. The proposed rates would be the same as those presently being charged by applicant sellers. As of December 31, 1973, applicant purchaser indicated a net worth in the amount of \$91,193.

It is alleged that applicant purchaser is presently conducting operations as a public utility warehouseman in the city of Pico Rivera;<sup>1/</sup> that she has received numerous requests for public storage in the city of San Leandro; that none of the present storers have any objection to the discontinuance of the San Francisco service; and that the expense of moving the property of the present customers will be paid by applicant purchaser.

A copy of the application was served upon the San Francisco Warehousemen's Association. No protest has been received.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest; that public convenience and necessity no longer require applicant sellers' public utility service in San Francisco; and that public convenience and necessity require applicant purchaser's service as a public utility warehouseman in the city of San Leandro.

We further find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

A public hearing is not necessary.

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

Rhea M. McLeod is 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

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<sup>1/</sup> Pursuant to a certificate granted by Decision No. 79591 dated January 11, 1972 in Application No. 53021.

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. 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 March 1, 1975, John V. Fox, Jr., George F. Fox, and Joseph T. Fox may sell and transfer the operative rights referred to in the application to Rhea M. McLeod.

2. Within thirty days after the transfer the purchaser shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.

3. Purchaser shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the warehouse operations transferred to show that she has adopted or established, as her own, the 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 transfer. 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-Series. Failure to comply with the provisions of General Order No. 61-Series may result in a cancellation of the operating authority granted by this decision.

4. On or before the end of the third month after the transfer, the purchaser 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 sellers for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to Rhea M. McLeod, an individual, authorizing her 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 set forth in Appendix A, attached hereto and made a part hereof.

6. The certificate of public convenience and necessity granted by Decisions Nos. 40758, 40813, and 79591 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

7. Purchaser shall maintain her accounting records in conformance with any applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission, and each year shall file with the Commission an annual report of her operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

8. Purchaser shall, at the direction of the owner of any property in storage at the present location, transport such property to the new facility of purchaser or any available public utility

warehouse in the vicinity of the San Francisco Bay area at the expense of purchaser and at no expense or risk to the owner of the property transported.

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

Dated at San Francisco, California, this 4th  
day of SEPTEMBER, 1974.

Vernon L. Sturgeon  
President  
William Lyng  
William Lyng  
William Lyng  
William Lyng  
Commissioners

Rhea M. McLeod, dba Budway Express, 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>
Pico Rivera	40,000
San Leandro	100,000

(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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