

Decision No. 85522

ORIGINAL

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)  
 of RHEA M. McLEOD, doing busi- )  
 ness as BUDWAY EXPRESS, for )  
 authority to transfer her )  
 Certificates of Public Conve- )  
 nience and Necessity and related )  
 assets, to BUDWAY ENTERPRISES, )  
 INC., and of the latter, for )  
 authority to assume equipment )  
 obligations and issue capital )  
 stock. )

Application No. 56167  
 (Filed December 29, 1957)

O P I N I O N

Rhea M. McLeod, an individual, (transferor) doing business as Budway Express seeks authority to sell and transfer her highway common carrier and warehouseman certificates of public convenience and necessity and related assets to Budway Enterprises, Inc., a California corporation, (transferee). Budway Enterprises, Inc., requests authority to purchase and acquire such certificates and assets and to assume equipment obligations and issue capital stock.

The highway common carrier certificate was granted by Decision 79501, dated December 21, 1971, in Application 52993 and authorizes transportation of automobile parts, accessories and supplies between Los Angeles, Wilmington and San Pedro. The warehouseman certificate was granted by Decision 83406, dated September 4, 1974, in Application 55007 and authorizes storage or warehouse floor space as a public utility at Pico Rivera and San Leandro.

Transferee was incorporated on January 2, 1974, and is authorized by its Articles of Incorporation to issue 7500 shares of common capital stock without nominal or par value. It has no shares of stock presently issued or outstanding, but by this Application

seeks authority to issue 100 shares each, or a total of 200 shares at an issue price of \$100 per share to Rhea H. McLeod and her son, Vincent McLeod in repayment of advances for working capital in the amount of \$20,000.

Transferee also seeks authority to assume equipment obligations outstanding on equipment to be transferred which according to the transferee's pro forma balance sheet of September 30, 1975, submitted as Exhibit "E" of the application, totals \$51,644.83.

Transferee proposes to continue the operations as presently conducted by transferor, using the properties concurrently acquired with the rights to perform the services. Transferee proposes to conduct the business of transporting property for-hire under the trade name of "Budway Express", the name under which said operations are presently conducted and to conduct the public warehouse operations under the trade name of "Budway Warehouses".

Transferor is party to Western Motor Tariff Bureau, Inc., Agent, tariff publications for its highway common carrier and warehouseman operations and also California Warehouse Tariff Bureau, Jack L. Dawson, Agent, tariff publications for the warehouseman service. Transferee proposes to adopt the tariffs.

The applicants have requested relief from the provisions of the Commission's Rules of Practice and Procedure, which require that copies of the application be widely disseminated. It is alleged that a copy of the application was mailed to the California Trucking Association. Notice of the filing of the application appeared in the Commission Daily Calendar of January 6, 1976. No protests to the application have been received.

After consideration, the Commission finds:

1. The requested deviation from its Rules of Practice and Procedure should be authorized.
2. The proposed transfer would not be adverse to the public interest.

3. With reasonable certainty, the project involved in this proceeding will not have a significant effect on the environment.
4. Transferee should be authorized to assume the equipment obligations of transferor.
5. The proposed stock issue would be for a proper purpose.
6. The money, property or labor to be procured or paid for by the stock herein authorized is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.
7. The equipment proposed to be obtained from transferor will no longer be necessary or useful in the performance of transferor's duty to the public as a public utility.

The Commission concludes that the application should be granted. A public hearing is not necessary. The action taken herein shall not be construed as a finding of the value of the capital stock of Budway Enterprises, Inc., or the certificates of public convenience and necessity and equipment to be transferred. Such action shall also not be indicative of a conclusion by the Commission that the holding by one party of not more than 50% of the outstanding stock of a corporation constitutes control of the corporation.

The order which follows will provide for, in the event the transfer is completed, the revocation of the highway common carrier and warehouseman certificates presently held by Rhea M. McLeod and the issuance of certificates in appendix form to Budway Enterprises, Inc., a corporation.

Transferee 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 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 cancelled 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, 1976, Rhea M. McLeod may sell and transfer the operative rights and related assets referred to in the application to Budway Enterprises, Inc., a California corporation.
2. Within thirty days after the transfer the transferee shall file with the Commission written acceptance of the certificates and a true copy of the bill of sale or other instrument of transfer.
3. Transferee shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier and warehouse operations transferred to show that it has adopted or established, as its own, the rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of this order on not less than five 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 Orders 61 and 80-Series. Failure to comply with the provisions of General Orders 61 and 80-Series may result in a cancellation of the operating authorities granted by this decision.
4. 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, certificates of public convenience and necessity are granted to Budway Enterprises, Inc.,

a California corporation, authorizing it to operate as a highway common carrier as defined in Section 213 of the Public Utilities Code, between the points and over the routes set forth in Appendix A, and 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 B, both appendices attached hereto and made a part hereof.

5. The certificates of public convenience and necessity granted by Decision 79501 and Decision 83406 are revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Transferee shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order 100-Series.

7. Transferee shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall each year file with the Commission, an annual report of its operations in such forms, content, number of copies and on such dates as the Commission, from time to time, shall prescribe.

8. Transferee shall comply with the requirements of the Commission's General Order 84-Series for the transportation of collect on delivery shipments. If transferee elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

9. The applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application.

10. Budway Enterprises, Inc., on or after the effective date hereof and on or before July 1, 1976, for the purpose specified in this proceeding, may issue not exceeding a total of 200 shares of its common stock without nominal or par value at an issue price of \$100 per share to Rhea M. McLeod and Vincent McLeod; each to receive 100 shares.

11. Rhea M. McLeod and Vincent McLeod may control Budway Enterprises, Inc.

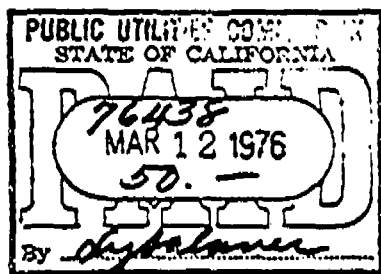
12. On or before July 1, 1976, Rhea M. McLeod, Vincent McLeod and Budway Enterprises, Inc., shall file reports informing the Commission whether or not the stock acquisition has been completed.

13. Transferee may assume the equipment obligation of transferor as requested in the application.

14. Budway Enterprises, Inc., shall file with the Commission a report, or reports, as required by General Order 24-8, which order, insofar as applicable, is hereby made a part of this order.

15. This order shall become effective when Budway Enterprises, Inc., 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 2nd day of March, 1976.



[Signature]  
President

William J. [Signature]

Vernon L. [Signature]

[Signature]

[Signature]  
Commissioners

Budway Enterprises, Inc., a corporation, doing business as BUDWAY EXPRESS, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of automobile parts, accessories and supplies between Los Angeles, Wilmington and San Pedro.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision 85522, Application 56167.

Budway Enterprises, Inc., dba Budway Warehouses, 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 B)

Issued by California Public Utilities Commission.

Decision 85522, Application 56167.