

Decision 82 07 106 JUL 21 1982**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 A & W INVESTMENTS, INC., a Utah )  
 corporation, and IML FREIGHT, INC., )  
 a Utah corporation, for exemption )  
 from Sections 816-830 of the Public )  
 Utilities Code, pursuant to Section )  
 829. )

Application 82-06-47  
 (Filed June 18, 1982)

O P I N I O N

By this application, A & W Investments, Inc. (A & W) and IML Freight, Inc. (IML) jointly request an order, under Public Utilities (PU) Code §§ 816 through 830, for an exemption under § 829 from compliance with the provisions of PU Code §§ 816-830 in connection with an Accounts Receivable Agreement (Agreement) to be executed by IML.

Notice of the filing of the application appeared on the Commission's Daily Calendar of June 22, 1982. No protests have been received.

A & W, a Utah corporation, is a nonutility holding company owning all 16,153 issued and outstanding shares of IML's common stock. A & W was authorized to control IML through stock ownership in Decision (D.) 90470, dated June 19, 1979, in Application (A.) 57163.

IML, a Utah corporation, maintains its principal place of business in Salt Lake City. It holds authority to operate as a highway common carrier within California under certificates of public convenience and necessity issued under PU Code § 1063 in D.83371

dated August 27, 1974, as corrected by D.83512 dated October 1, 1974, and under § 1063.5, effective April 30, 1980, in GC-5056 under File T-59825. IML also operates as a transcontinental motor carrier operating in interstate commerce under authority granted by the Interstate Commerce Commission (ICC).

IML reports in its Comparative Consolidated Statement of Changes in Financial Position for the period ended December 31, 1981 that it generated total consolidated operating revenue of \$169,669,659 and a net loss of \$6,398,496. In 1981, none of IML's revenues were earned in California.

IML Consolidated Balance Sheet of December 31, 1981 is summarized as follows:

<u>Assets</u>	<u>Amount</u>
Net Property, Plant and Equipment	\$ 21,812,483
Other Assets	623,556
Investment and Advances	1,582,348
Current Assets	<u>17,486,636</u>
Total	\$ 41,505,023
<u>Liabilities and Equity</u>	
Common Equity	\$(12,491,810)
Long-Term Debt	18,461,466
Current Liabilities	32,393,464
Deferred Credits	<u>3,141,903</u>
Total	\$ 41,505,023

(Red Figure)

By the terms and conditions of the Agreement, as filed, IML would borrow from TRADEX, Inc., an Oregon corporation qualified to do business in the State of Utah, sums up to a total of \$7,500,000, securing any outstanding indebtedness with its accounts receivable.

IML's operations have been, and are, related primarily to the interstate transportation authorized by the ICC. Historically, operations under its California intrastate certificate authority have been de minimis by comparison. In fact, most of the California intrastate activities which have been conducted have been performed as an adjunct to, or related to, its interstate operations. These intrastate operations have diminished to the point that none of its systemwide revenue in 1981 was related to California intrastate traffic. IML's total emphasis on interstate operations, coupled with little real public need for its intrastate services, has resulted in little demand of IML by the California shipping public. This is so even though IML has consistently been ready, willing, and able to render full and complete service under the certificates issued by this Commission.

Based upon the above sets of facts, applicants filed their application to exempt the execution of the Agreement under PU Code § 829.

Applicants allege that the application of PU Code §§ 816 through 830 is not necessary or in the public interest because of the historically de minimis nature of the transportation performed by it in intrastate commerce subject to this Commission's jurisdiction. As support for their allegations, they cite D.90470 dated June 19, 1979 in A.57163, and D.93627 dated October 6, 1981 in A.60905, wherein this Commission found that IML's California intrastate operations have been de minimis by comparison to its overall systemwide transportation service, and concluded that two substantially identical revolving lines of credit should be exempted from approval under the PU Code.

Specifically, PU Code § 829 requires that the Commission review each case to determine the applicability or lack of the merits of the proposal. In this case, IML currently engages in no operations subject to the jurisdiction of this Commission. The Commission's Revenue Requirements and Transportation Divisions have reviewed the application and have concluded that it is not necessary

in the public interest for applicants to seek approval for the issuance of indebtedness or the encumbrance of carrier operating property.

Applicants request that the application be granted expeditiously so that the transaction may be completed without further delay. They have brought to the Division's attention compelling financial circumstances that justify expedited action upon this application. IML's financial condition is sufficiently precarious that a delay beyond the first of the month may cause its insolvency. Because of this, the effective date of the order should be today.

Findings of Fact

1. Applicants request that they be exempted from the requirements of PU Code §§ 816 through 830 with respect to the execution of the proposed Agreement by IML.
2. In 1981 none of IML's systemwide revenue was related to California intrastate operations.
3. IML's California intrastate operations have historically been de minimis by comparison to its overall systemwide transportation service.
4. There is no known opposition and no reason to delay granting the authority requested.
5. Compelling financial circumstances require expedited action on this application.

Conclusions of Law

1. It is proper to exempt applicants' proposed Agreement and proposed trust deed from PU Code §§ 816 through 830 which prohibit the issuance of any evidence of indebtedness without prior Commission approval.
2. A public hearing is not necessary.
3. There is no reason to delay granting the authority requested.
4. The application should be granted to the extent set forth in the order which follows.

5. The following order should be effective on the date of signature to enable the applicants to issue their Agreement expeditiously.

O R D E R

IT IS ORDERED that:

1. A & W Investments, Inc. (A & W) and IML Freight, Inc. (IML) jointly are exempted under PU Code §§ 816 through 830 from any and all requirements that they obtain approval for the execution and delivery of an Accounts Receivable Agreement attached to the application as Exhibit A. This approval is granted because of the de minimis amount of transportation revenue earned in the State of California.

2. A & W and IML shall file the reports required by General Order Series 24.

This order is effective today.

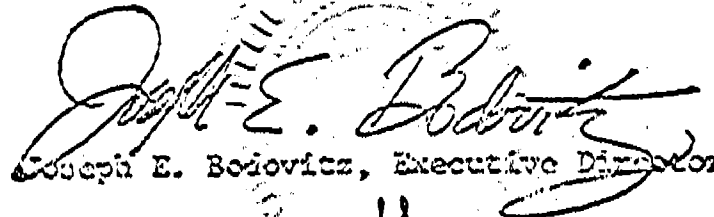
Dated JUL 21 1982, at San Francisco, California.

JOHN E. BRYSON  
President  
RICHARD D. GRAVELLE  
VICTOR CALVO  
PRISCILLA C. GREW  
Commissioners

Commissioner Leonard M. Grimes, Jr.,  
being necessarily absent, did not  
participate.

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

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Joseph E. Bodovitz, Executive Director