

RR/KLH/VDL/WPSC

ORIGINAL

Decision 93627 OCT 6 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of A & W INVESTMENTS, INC., a )  
Utah corporation, IML FREIGHT, )  
Inc., a Utah corporation, and )  
INTERSTATE RENTAL of UTAH, a )  
Utah corporation, for exemption )  
from SS816-830 of the Public )  
Utilities Code, pursuant to )  
S829, and for exemption from )  
SS851-852 of the Public )  
Utilities Code, pursuant to )  
S853. )

Application 60905  
(Filed September 14, 1981;  
amended September 23, 1981)

O P I N I O N

By the instant verified application, A & W Investments, Inc. (A & W), IML Freight, Inc. (IML), and Interstate Rental of Utah, Inc. (IRU), jointly request an order, under Public Utilities (PU) Code Sections 816 through 854, for the following:

1. For an exemption from compliance with the terms of PU Code Section 829 in connection with a General Loan and Security Agreement (Agreement) to be executed by IML and
2. For an exemption from the requirements of PU Code Sections 851 through 853 with respect to the encumbrance of public utility property through the execution by IRU of a trust deed on public utility operating property located in Santa Fe Springs, California.

Notice of the filing of the application appeared on the Commission's Daily Calendars of September 22 and 28, 1981. 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, Utah, and operates as a certificated highway common carrier within California under certificates of public convenience and necessity issued under PU Code Section 1063 in D.83371 dated August 27, 1974, as corrected by D.83512 dated October 1, 1974 and under Section 1063.5, effective April 30, 1980, in GC-5056 under file T-59825. IML also operates as a trans-continental motor carrier operating in interstate commerce under authority granted by the Interstate Commerce Commission (ICC).

IRU is a nonutility real estate holding company, the stock of which is wholly owned by IML. Its primary business activities include the leasing of motor carrier terminals throughout the United States to its parent, IML. As relevant to the instant application, IRU owns and leases to IML, a motor carrier terminal located at Santa Fe Springs, California.

IML reports in its Comparative Consolidated Statement of Changes in Financial Position for the period ended August 8, 1981 that it generated total consolidated operating revenue of \$106,545,000 and a net loss of \$3,618,000. Only 0.0040223% of this revenue in 1980 was earned in California.

IML's Consolidated Balance Sheet of August 8, 1981 is summarized as follows:

<u>Assets</u>	<u>Amount</u>
Net Property, Plant, and Equipment	\$22,626,000
Other Assets	119,000
Investment and Advances	2,253,000
Current Assets	19,891,000
Total	<u>\$44,889,000</u>
 <u>Liabilities and Equity</u> 	
Common Equity	\$(10,085,000)
Long-Term Debt	17,930,000
Current Liabilities	33,627,000
Deferred Credits	3,417,000
Total	<u>\$ 44,889,000</u>

(Red Figure)

By the terms and conditions of the Agreement, as filed, IML would borrow from Foothill Capital Corporation, a California corporation qualified to do business in the State of Utah under the name of Foothill Credit Corporation, sums up to a total of \$5,000,000, securing any outstanding indebtedness with its accounts receivable.

As further security for the Agreement, A & W and IRU will execute guaranties of the indebtedness, and IRU would further secure the indebtedness by a grant of trust deeds on motor carrier terminals, including, as relevant here, the Santa Fe Springs Terminal owned by IRU and leased to IML.

IML's operations have been, and are, related primarily to the interstate transportation authorized by the ICC. Operations under its California intrastate certificate authority are 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. For example, in 1980, only 0.0040223% of its systemwide revenue was related to California intrastate traffic. IML's 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 certificate issued by this Commission.

Based upon the above set of facts, applicants filed their application to exempt the execution of the Agreement under PU Code Section 829 and the encumbrance of the Santa Fe Springs California terminal under PU Code Section 853.

Applicants have alleged that the application of PU Code Sections 816 through 854 is not necessary or in the public interest because of the 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 Leeco Enterprises, Inc., D.90470, dated June 19, 1979 in A.57163, 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 the revolving line of credit should be exempted from approval under the PU Code.

Specifically, PU Code Sections 829 and 852 require that the Commission review each case to determine the applicability or lack of the merits of the proposal. In this case, IML engages in very limited 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.

The attorney for applicants has requested that the application be granted expeditiously so that the transaction may be completed without further delay. He has brought to the Divisions'

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 this order should be today.

Findings of Fact

1. Applicants request that they be exempted from the requirements of PU Code Sections 816 through 854 with respect to the execution of the proposed Agreement by IML and be exempted with respect to the encumbrance of public utility property through the execution of the proposed trust deed to be executed by IRU on public utility operating property located in Santa Fe Springs, California.

2. In 1980, only 0.0040223% of IML's systemwide revenue was related to California intrastate operations.

3. IML's California intrastate operations have 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 Sections 816 through 854 which provide for evidence of indebtedness and prohibit encumbrances of public utility property 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.

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

O R D E R

IT IS ORDERED that

1. A & W Investments, Inc., IML Freight, Inc., and Interstate Rental of Utah, jointly, are exempted, under PU Code Sections 816 through 854, from any and all requirements that they obtain approval for the execution and delivery of (1) a General Loan and Security Agreement attached to the application as Exhibit A and (2) a Deed of Trust on public utility property located at

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Santa Fe Springs, California and a Continuing Guaranty, encumbering utility property, evidenced by forms attached to the application as Exhibit B. This approval is granted because of the de minimis amount of transportation revenue earned in the State of California.

2. A & W Investments, Inc., IML Freight, Inc., and Interstate Rental of Utah shall file the reports required by General Order Series 24.

This order is effective today.

Dated OCT 6 1981 at San Francisco, California.

JOHN E. BRYSON  
President  
RICHARD D. GRAVELLE  
LEONARD M. GRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. GREW  
Commissioners

*I certify that this decision was approved by the above Commissioners today.*

*John E. Bryson*

