

Decision No. 22925.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 H. L. HINMAN and EFFIE E. HINMAN,
 operating under the fictitious name
 and style of Merchants Express and
 Draying Company, and OAKLAND WAREHOUSE
 TERMINALS Co., a corporation, for an
 order of the Railroad Commission of
 the State of California authorizing
 the former to sell and convey and the
 latter to purchase and acquire the pro-
 perties and rights referred to in this
 application, and for a further order
 authorizing Oakland Warehouse Terminals
 Co., to issue and sell its capital
 stock.

ORIGINAL

Application No. 16825

In the Matter of the Application of
 CONSOLIDATED MOTOR TRANSPORT COMPANY,
 a corporation, and PACIFIC FREIGHT
 LINES COMPANY, a corporation, for an
 order of the Railroad Commission of the
 State of California authorizing (a)
 the former to sell and convey and the
 latter to purchase and acquire the pro-
 perties referred to in this application,
 (b) the latter to issue and sell shares
 of its capital stock in payment therefor
 and for certain corporate purposes and
 (c) the consolidation of certain opera-
 tive properties and rights.

Application No. 16826

In the Matter of the Application of
 H.L.HINMAN and EFFIE E. HINMAN, operating
 under the firm name and style of Mer-
 chants Express and Draying Company on
 the one hand, and PACIFIC FREIGHT LINES
 COMPANY, a corporation, on the other,
 for an order of the Railroad Commission
 of the State of California authorizing
 the former to sell and convey and the
 latter to purchase and acquire the pro-
 perties and rights referred to in this
 application, and for a further order auth-
 orizing Pacific Freight Lines Company to
 issue and sell its capital stock.

Application No. 16827

- W. F. Williamson, Wallace & Vaughan, by Reginald
 L. Vaughan and H.L.Rixford, for applicants.
- W. F. Brooks, for The Atchison, Topeka and Santa Fe
 Railway Company, interested party.
- W. S. Johnson, for Southern Pacific Company,
 interested party.

BY THE COMMISSION:

O P I N I O N

In Application No. 16825 H. L. Hinman and Effie H. Hinman, operating under the fictitious name and style of Merchants Express and Draying Company, ask permission to sell to the Oakland Warehouse Terminals Co., the warehouse properties described in Exhibit "A" attached to the petition in said application. The Oakland Warehouse Terminals Co. requests permission to acquire said properties and to issue in payment therefor sixty-five shares of its capital stock and further issue nine shares of its capital stock at \$100.00 per share for the purpose of obtaining funds with which to pay legal, engineering and auditing expenses and provide itself with working capital.

In Application No. 16826 Consolidated Motor Transport Company asks permission to sell and transfer all of its operative rights, business and properties to Pacific Freight Lines Company, which company asks authority to acquire said operative rights, business and properties and issue in payment therefor one thousand one hundred and eighty shares of its common capital stock; and, further, to issue forty-five shares of its common capital stock at \$100.00 per share, for the purpose of paying legal, engineering and auditing expenses and provide itself with working capital. The Pacific Freight Lines Company further asks permission to consolidate the operative rights now owned by Consolidated Motor Transport Company with those owned by H.L.Hinman and Effie H.Hinman, operating under the fictitious name and style of Merchants Express and Draying Company, which operative rights are referred to in Application No. 16827.

In Application No. 16827 H. L. Hinman and Effie H. Hinman, operating under the fictitious name and style of Merchants Express and Draying Company, ask permission to sell the properties described in Exhibit "A" attached to the petition in said application to Pacific Freight Lines Company. The Pacific Freight Lines Company asks authority to acquire said properties and to issue in payment therefor seven hundred and eight shares of its capital stock; and further, to issue and sell forty-five shares of its capital stock at \$100.00 per share, and use the proceeds to pay legal, engineering and auditing expenses and provide itself with working capital.

No evidence was submitted showing to what extent, if at all, the Pacific Freight Lines Company has need for working capital or the amount of its legal, engineering and auditing expenses, or how much of such expenses may properly be financed through the issue of stock. The applications, insofar as they involve the issue of stock for the payment of legal, engineering and auditing expenses, and for working capital, will be dismissed without prejudice.

It appears from the record that the applications before the Commission are ancillary to a transaction which contemplates the consolidation, directly or indirectly, of the properties operated under the name of the Merchants Express and Draying Company and Drayage Service Corporation, and the transfer of the stock of the latter from W. P. Scott et al. to United States Engineering Corporation, or its nominees. The vendors are to receive for their properties, subject to certain conditions, \$250,000.00 in cash, \$300,000.00 in ten year six percent convertible gold bonds, Series "A", dated March 1, 1930, due March 1, 1940, of United American Utilities, Incorporated, a Delaware corporation, to be applied upon

the purchase price at 98 percent of their principal amount, plus accrued interest thereon, to the date of the delivery thereof, and \$185,000.00 in Class "A" common stock, "First series", of said United American Utilities, Incorporated, to be applied upon the purchase price at \$22.00 per share. Upon the payment of the purchase price, the buyer shall be entitled to receive title and possession, not only of the stock, business, properties and assets which are the subject matter of the agreement, but also of all the outstanding or subscribed preferred stock of Drayage Service Corporation. The properties are being transferred, subject to outstanding indebtedness.

The end to be accomplished by the applications now before the Railroad Commission is to transfer the public utility-warehouse properties of H. L. Hinman and Effie E. Hinman, to Oakland Warehouse Terminals Co., controlled through stock ownership by Drayage Service Corporation and the operative rights and all-business and properties used by H. L. Hinman and Effie E. Hinman in the conduct of a common carrier transportation business, and all the properties of Consolidated Motor Transport Company to Pacific Freight Lines Company, a corporation affiliated with United States Engineering Corporation. The consideration which Pacific Freight Lines Company and Oakland Warehouse Terminals Company propose to pay for the properties which they intend to acquire is not of any importance, so far as the principal agreement is concerned. Though the agreement does not become effective until the Railroad Commission has authorized the transfer of the properties herein mentioned, the Commission is not asked to approve the same.

The operative rights involved in Applications Nos. 16826 and 16827 and the manner of their creation are as fol-

lows:-

H. L. Hinman, operating under the name Oakland Parcel Delivery, issued freight tariff C.R.C. No. 1, effective February 1, 1918, showing rates for the transportation of property between San Francisco, Oakland, Berkeley, Alameda, Piedmont, Emeryville, Fruitvale and Melrose. By Decision No. 21563, issued on Application No. 15944, he was authorized to transfer this prescriptive right to Consolidated Motor Transport Company, a corporation. By Decision No. 21634, issued on Application No. 15918, Consolidated Motor Transport Company was authorized to acquire the operative rights and properties of Consolidated Motor Freight Lines, Inc., which were established as follows:

A.A. McFarland, operating under the name of Richmond Motor Express Company issued C.R.C. No. 1, Local & Joint Freight Tariff, showing local rates for transportation of property between Oakland, Albany, El Cerrito and Richmond;

S.L. Williams, operating under the name of Williams Motor Express Company, filed C.R.C. No. 1, effective February 1, 1918, Local and Joint Freight Tariff, showing local rates for the transportation of property between Oakland, Fruitvale, Melrose, San Leandro, Hayward and San Lorenzo.

By Decision No. 9421, of August 25, 1921, on Application No. 6952, Consolidated Motor Freight Lines, Inc., was authorized to acquire the prior rights of McFarland and Williams.

Consolidated Motor Transport Company was authorized, by Decision No. 21981, issued on Application No. 16175, to publish tariffs showing Albany as a service and rate point as part of prescriptive operations.

By Decision No. 22281, issued on Application No. 16499, Consolidated Motor Transport Company was authorized to acquire from R.E. Clarke and Walter Johnson, operating as Oakland-San Rafael Express, freight operative rights between Oakland and San Rafael. Consolidation or merging was not authorized. Such rights were established and are as follows:-

By Decision No. 10672, of July 7, 1922, issued on Application No. 7607, a certificate was granted to R.E. Clarke and F.O. Garrett for the transportation of milk in cans between Ignacio and dairies in the vicinity of Ignacio on the one hand, and Oakland, Berkeley and Richmond on the other hand via San Rafael, San Rafael-Richmond Ferry and Point Richmond; and for the common carriage of freight, in general, between San Rafael and San Quentin on the one hand, and Richmond, Berkeley and Oakland on the other hand via Richmond-San Rafael Ferry and Point Richmond. Provision No. 1 of the order reads:

1. Nothing herein contained shall be construed as authorizing the transportation of milk or other freight between points, other than those above mentioned, by the establishment of joint rates and through routes or otherwise.

Decision No. 12860, of November 26, 1923, issued on Application No. 9564, authorizing Walter Johnson to acquire a one-third interest with Clarke and Garrett; and by Decision No. 17172, of July 31, 1926, issued on Application No. 13038, Johnson acquired the right of Garrett.

No authority was granted to Consolidated Motor Transport Company to consolidate or merge the rights acquired by Decision No. 22281 with its existing rights.

E.L.Hinman, operating under the name of Merchants Express & Draying Co., filed C.R.C. No. 1, effective February 1, 1918, showing rates for transportation of property between San Francisco, Oakland, Berkeley, Alameda, Piedmont, Emeryville, Fruitvale and Melrose. By Decision No. 21998, issued on Application No. 16175, the Merchants Express & Draying Company was authorized to publish tariffs showing Albany as a service and rate point as a part of the operations created by its prescriptive right.

By Decision No. 21998, issued on Application No. 16122, a certificate was granted to Hinman to transport freight as an extension of his prescriptive operating rights, and not as a new operating right, freight service between "Alameda County points now served by him, and no others, and the City of South San Francisco, over and along the following route, and no other:-

From the Embarcadero via Market Street, Tenth Street, Potrero Avenue and San Bruno Avenue; thence via San Bruno Avenue to the City of South San Francisco",

the order providing specifically that no transportation may be conducted between the City and County of San Francisco and South San Francisco, or points intermediate.

Pacific Freight Lines Company proposes, with the consent of the Commission, to consolidate the aforementioned operative rights.

The present applications show that the consideration to be paid by Pacific Freight Lines Company for the auto truck rights, properties and business of Merchants Express and Draying Company is seven hundred and eight shares of its capital stock without nominal or par value, at \$100.00 per share, plus the assumption by the purchaser of the sellers' liability on lease contracts for the purchase of automotive equipment, which, as of July 31, 1930, according to Exhibit No. 2 in Applications Nos. 16825 and 16827, amounted to \$5,322.65. The consideration for the operative rights, properties and business of Consolidated Motor Transport Company is reported at \$117,948.96, plus the assumption by the purchaser of the sellers' liability on lease contracts for the purchase of automotive equipment, which, as of July 31, 1930, according to Exhibit No. 1 in Application No. 16826, amounted to \$11,763.01.

In support of the requests to transfer properties and to issue stock, applicants have filed as exhibits in these matters, financial reports prepared by Barrow, Wade, Guthrie & Co., accountants and auditors, showing the assets and liabilities as of July 31, 1930, of Consolidated Motor Transport Company and of the common carrier truck operations of Merchants Express and Draying Company as follows:-

A S S E T S	:Consolidated: :Motor Trans- :port Company	:Merchants Ex- :press and Dray- :ing Company
Fixed assets	:\$ 139,454.92	:\$ 122,878.25
Special deposits	: 250.00	: -
Cash	: 503.64	: -
Accounts receivable	: 10,556.28	: 12,422.40
Materials and supplies	: 454.50	: -
Due from affiliated companies	: 772.67	: -
Prepaid and deferred items	: 2,822.51	: 3,635.81
TOTAL ASSETS.....	:\$ 154,814.52	:\$ 138,936.46
<u>L I A B I L I T I E S</u>		
Lease contracts	:\$ 11,763.01	:\$ 5,322.65
Overdraft	: 2,120.85	: -
Notes and accounts payable	: 11,798.09	: -
Accruals	: 928.28	: -
Due to affiliated companies	: 79,982.58	: -
Reserves	: 36,009.51	: 62,819.54
Capital stock or investment	: 48,700.00	: 70,794.27
Deficit	: 36,487.80	: -
TOTAL LIABILITIES.....	:\$ 154,814.52	:\$ 138,936.46

The stock proposed to be issued for the properties of Merchants Express and Draying Company is approximately equal to the reported investment, as shown in the preceding tabulation. It appears that the amount representing fixed assets of Merchants Express and Draying Company is based on a valuation prepared by Sanderson & Porter, with additions and betterments since the date of the valuation, rather than on an actual cost, it being alleged that the book figures are inadequate. A copy of the appraisal is filed as Exhibit No. 1 in Application No. 16827, and shows, among other things, replacement costs of the common carrier truck properties,

as of April 1, 1930, at \$122,442.00 and the replacement costs less depreciation at \$65,926.00. The figures contain no allowances for operative rights or other intangible items.

The purchase price to be paid for the properties of Consolidated Motor Transport Company is based on the book figures representing investment in plant and equipment. The proposed price of \$117,948.96, according to Exhibit No. 2 in Application No. 16826, was determined as follows:-

<u>Assets as of June 30, 1930:</u>		
Plant and equipment	\$139,474.92	
Less-Reserve for depreciation	<u>34,606.74</u>	\$104,868.18
Cash		240.43
Accounts receivable		10,443.57
Materials and supplies		1,529.58
Prepayment		<u>1,205.66</u>
Total assets to be acquired		\$118,287.42
<u>Add-Estimated amount of goodwill as at June 30, 1930</u>		<u>12,000.00</u>
Total		\$130,287.42
<u>Deduct-Liens on assets acquired</u>		<u>12,338.46</u>
Balance		<u>\$117,948.96</u>

The book figures representing plant and equipment likewise appear to be based on a similar valuation with additions and betterments subsequent thereto. Permission is asked by the purchaser to issue and sell one thousand one hundred and eighty shares of stock for \$100.00 a share to finance the purchase price.

The record indicates, as set forth in the testimony of Charles G. Anthony, executive vice-president of Pacific Freight Lines Company, and in Exhibit No. 3 in Application No. 16826 that a centralized management and control of the two systems, through consolidation, will result in substantial economies in operation and in the elimination of duplication. The proposal of the purchaser to acquire and consolidate the rights here under review was not opposed and there seems to be no good reason why the Commission's approval of such purchase and consolidation should not be given. The order herein will so provide.

We do not believe, however, that we can authorize the issue of all the stock requested. The delivery of seven hundred and eight shares in part payment for the common carrier truck properties of Merchants Express and Draying Company does not seem unreasonable for the purpose of these proceedings. In arriving at the purchase price to be paid for the properties of Consolidated Motor Transport Company, applicants have included the sum of \$12,000.00 for goodwill, \$2,261.38 for organization and \$3,644.27 for franchises. Neither by oral nor by documentary evidence did applicants introduce anything into the record in support of these alleged values. The order herein accordingly will authorize Pacific Freight Lines Company to issue, at the rate of \$100.00 a share, seven hundred and eight shares of stock in acquiring the common carrier truck properties of Merchants Express and Draying Company, ^{and} one thousand shares in acquiring the properties of Consolidated Motor Transport Company.

In acquiring these operative rights, the purchaser is placed upon notice that operative rights do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State, which is not in any respect limited in the number of rights which may be given.

Coming to the request of H. L. Hinman and Effie E. Hinman to sell and transfer their public utility warehouse properties to Oakland Warehouse Terminals Co., it seems that arrangements have been made for the transfer for a consideration, of sixty-five shares of common stock of a total par value of \$6,500.00, plus the assumption by the purchaser of the liabilities, if any, incurred subsequent to

May 31, 1930. From Exhibit No. 2 in Applications Nos. 16825 and 16827, it appears that such liabilities, as of July 31, 1930, aggregated \$8,740.13. This exhibit sets forth the assets to be transferred as follows:-

<u>FIXED ASSETS:</u>		
Furniture and fixtures	\$3,626.00	
Equipment	<u>431.00</u>	\$4,057.00
Accounts receivable		12,614.86
Prepaid insurance		535.89
Total		<u>17,207.75</u>
<u>LESS-</u> Accounts payable	8,740.13	
Reserves	<u>1,990.88</u>	<u>10,731.01</u>
Balance		<u>\$ 6,476.74</u>

In addition, there will be assigned to the purchaser, five leases covering warehouse properties now occupied by the seller. No value apparently is assigned to these leases.

Applicants allege that the transfer of the warehouse properties, as here proposed, is in the public interest and that substantial savings in costs of operation can be effected, as set forth in Exhibit No. 2 in Application No. 16825. No protest was made to the granting of the application and it appears to us that a favorable order should be entered herein.

It should be noted that Oakland Warehouse Terminals Co. at present owns and operates two warehouses in Oakland for the general storage of commodities, as set forth in its tariffs on file with the Commission, while H. L. Hinman leases and operates seven warehouses for the storage, primarily, of household goods, his operations being conducted under somewhat limited tariffs. The purchaser, in acquiring the rights and properties, must continue the operations under the same rates, rules and regulations now used by the sellers, unless hereafter permitted to make adjustments.

O R D E R

Application having been made to the Railroad Commission for orders authorizing the transfer of properties and the issue of stock, a public hearing having been held before Examiner Fankhauser, the Railroad Commission being of the opinion that the applications should be granted to the extent indicated herein, that the money, property or labor to be procured or paid for through the issue of the stock herein authorized, is reasonably required for the purposes set forth herein, which purposes are not, in whole or in part, reasonably chargeable to operating expense or to income, and that these applications insofar as they involve the issue of two hundred and seventy-nine shares of stock, should be dismissed without prejudice, therefore-

IT IS HEREBY ORDERED that-

1. H. L. Hinman and Effie H. Hinman, doing business under the firm name and style of Merchants Express and Draying Company, be, and they hereby are, authorized to sell and transfer, on or before December 1, 1930, to Oakland Warehouse Terminals Co., a corporation, the warehouse operative right, business and properties, referred to and described in Application No. 16825.

2. Oakland Warehouse Terminals Co. be, and it hereby is, authorized to purchase and acquire, on or before December 1, 1930, said right, business and properties, and to issue in part payment \$6,500.00 of its common capital stock.

3. Consolidated Motor Transport Company; and H. L. Hinman and Effie H. Hinman, doing business under the firm name and style of Merchants Express and Draying Company, be, and they hereby are, authorized to sell and transfer, on or before December 1, 1930, the operating rights, business and properties, referred to in Applications Nos. 16826 and 16827, to Pacific Freight Lines Company, a corporation.

4. Pacific Freight Lines Company be, and it hereby is, authorized to purchase and acquire, on or before December 1, 1930, such properties, and to issue, at not less than \$100.00 a share, seven hundred and eight shares of its common stock in part payment for the rights, business and properties of H. L. Hinman and Effie H. Hinman, subject to outstanding liabilities approximating \$5,322.65, and one thousand shares to finance in part the cost of the rights, business and properties of Consolidated Motor Transport Company, subject to outstanding liabilities approximating \$11,763.01.

5. Application No. 16825, insofar as it involves the issue of nine shares of stock, Application No. 16826 insofar as it involves the issue of two hundred and twenty-five shares of stock, and Application No. 16827 insofar as it involves the issue of forty-five shares of stock, be, and they hereby are, dismissed without prejudice.

6. Pacific Freight Lines Company be, and it hereby is, authorized to consolidate the operative rights it herein is authorized to acquire from Consolidated Motor Transport Company and H. L. Hinman and Effie H. Hinman.

7. A certificate of public convenience and necessity for such consolidation be, and it hereby is, granted to Pacific Freight Lines Company.

8. Pacific Freight Lines Company shall, for a period of twelve months, after acquiring the aforesaid properties, file with the Commission monthly reports showing the operating revenues and the operating expenses applicable to the properties which it is herein authorized to acquire, said reports to be filed as soon as available; but in no event later than thirty days after the close of each month and to show the revenues and expenses segregated in accordance with the Uniform Classification of Accounts

for Class "A" Automotive Transportation Companies, prescribed by this Commission.

9. The authority herein granted is subject to the following conditions:-

- (a) All limitations and restrictions under which the operative rights herein authorized to be consolidated have been granted, shall remain in full force and effect, except such limitations and restrictions which prohibit the consolidation of said operative rights.
- (b) Consolidated Motor Transport Company and H. L. Hinman shall within thirty days from the date hereof cancel auto truck tariffs and time schedules on file in their names with the Railroad Commission, and said Pacific Freight Lines Company, a corporation, shall file in its own name, tariffs and time schedules, said time schedules and tariffs to contain the same rates, rules and regulations now maintained by Consolidated Motor Transport Company and H. L. Hinman, or rates and time schedules satisfactory to the Railroad Commission.
- (c) The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission or any other rate fixing body as a measure of value of said property for rate fixing, or any purpose other than the transfer herein authorized.
- (d) The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been secured.
- (e) No vehicle may be operated by applicant Pacific Freight Lines Company unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.
- (f) H. L. Hinman and Effie H. Hinman, doing business under the firm name and style of Merchants Express and Draying Company, and Oakland Warehouse Terminals Co. shall join in common supplement to the warehouse tariffs now on file with the Railroad Commission in the name of Merchants Express and Draying Company, applicants Hinman withdrawing and applicant Oakland Terminals Co. adopting such tariffs and all effective supplements thereto.

- (g) Pacific Freight Lines Company shall keep such record of the issue of the stock herein authorized and of the disposition of the proceeds as will enable it to file, on or before the 25th day of each month, a verified report, as required by the Railroad Commission's General Order No. 24, which order, insofar as applicable, is made a part of this order.
- (h) The authority herein granted will become effective five (5) days from the date hereof.
- (i) If Pacific Freight Lines Company pays for the rights, business and properties of Consolidated Motor Transport Company more than the \$100,000.00 plus the liabilities to be assumed, it must charge such excess to surplus.
- (j) Within thirty (30) days after acquiring the aforesaid properties, Pacific Freight Lines Company and Oakland Warehouse Terminals Co. shall file with the Commission a copy of every agreement under the terms of which they are obligated to pay a management or similar fee in connection with their operations or acquisition and construction of properties and equipment.

DATED at San Francisco, California, this 30th day of
September, 1930.

Al Seaver
Frank J. ...
Leon ...
...
...

Commissioners.