

ORIGINAL

Decision No. 27287

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of E. F. SALSBUURY as receiver of Merchants Express & Draying Company, a corporation, SELLER, and HENRY C. MAHAFFY, JR. and RALPH J. RITCHIE, as receivers of United American Utilities, Inc., a corporation, and WEBB RICHARDS, BUYERS, 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 properties and rights referred to in this application.

Application No. 19594

In the Matter of the Application of WEBB RICHARDS, SELLER, and MERCHANTS EXPRESS CORPORATION, a corporation, BUYER, for an Order of the Railroad Commission of the State of California (a) authorizing the former to sell and convey and the latter to purchase and acquire the properties and rights referred to herein; (b) authorizing the latter to issue its capital stock in payment of said properties and rights; (c) authorizing the latter to issue certain promissory notes; and (d) authorizing the latter to execute the mortgage herein set forth.

Application No. 19603

DeLancey C. Smith, for E. F. Salsbury, Receiver of Merchants Express & Draying Company,

Reginald L. Vaughn, for Henry C. Mahaffy, Jr. and Ralph J. Ritchie, Receiver of United American Utilities, Inc., and for Merchants Express Corporation,

Angelo J. Scampini, for Webb Richards.

BY THE COMMISSION:

O P I N I O N

The two above entitled applications involve the transfer of the properties of Merchants Express & Draying Company, now in receivership, to Merchants Express Corporation, a new corporation, and to United American Utilities, Inc., and the issue of stock and notes by Merchants Express Corporation.

Merchants Express & Draying Company is a California corporation heretofore engaged in the business of transporting property by auto trucks generally between San Francisco and East Bay points, and in the public utility warehouse business in Oakland. It has been controlled through stock ownership, directly or indirectly, by United American Utilities, Inc., a Delaware corporation.

The applications show that both United American Utilities, Inc. and Merchants Express & Draying Company are in receivership. It is reported that Henry C. Mahaffy, Jr. and Ralph J. Ritchie are the receivers of the former company and that E. F. Salsbury is the receiver of the latter. In addition said Henry C. Mahaffy, Jr. is the receiver of Pacific Freight Lines Corporation, Ltd., a Delaware corporation affiliated with United American Utilities, Inc. and Merchants Express & Draying Company.

The record here shows that on May 15, 1934 an agreement was entered into by and between Henry C. Mahaffy, Jr. and Ralph J. Ritchie, as Receivers of United American Utilities, Inc.; Henry C. Mahaffy, Jr. as Receiver of Pacific Freight Lines Corporation, Ltd.; and Webb Richards, whereby said Richards agreed to purchase all the properties and assets, including current assets and all operating rights, of Merchants Express & Draying Company, excepting certain terminal properties. These latter properties, which consist of terminal facilities located in Oakland and San Francisco, will be transferred to the receivers of United American Utilities, Inc., or their nominees, and thereafter leased to Webb Richards for a period of three years.

Under the terms of the agreement, a copy of which is filed as Exhibit "B" in Application No. 19594, Webb Richards agrees to pay or cause to be discharged (1) the claims of the creditors of Merchants Express & Draying Company who have filed such claims in the receiver-

ship proceedings except the claims of the receivers of United American Utilities, Inc. and Pacific Freight Lines Corporation, Ltd., and of Pacific Freight Lines, Inc., (2) the costs and expenses of the receivership of Merchants Express & Draying Company and (3) the sum of \$30,000.00, payable \$15,000.00 in cash and \$15,000.00 in notes, to discharge the claims of the receivers of United American Utilities, Inc. and Pacific Freight Lines Corporation, Ltd.

It appears that Henry C. Mahaffy, Jr. and Ralph J. Ritchie as receivers, have obtained authority from the Court of Chancery of the State of Delaware to enter into the agreement, and E. F. Salsbury, as receiver, has obtained authority from the District Court of the United States in and for the Northern District of California, Southern Division, to sell and convey the properties of Merchants Express & Draying Company.

The various applicants accordingly have filed Application No. 19594 for authority from this Commission to consummate the transactions.

Upon acquiring the properties as set forth in the agreement, Webb Richards proposes to cause their transfer to a new corporation known as Merchants Express Corporation, which was organized under the laws of the State of California on or about August 22, 1934. Application No. 19603 shows that in taking over such properties Merchants Express Corporation proposes to issue \$125,000.00 of stock, consisting of 12,500 shares of the par value of \$10.00 each, all common; to assume the payment of the \$15,000.00 of five percent notes issued by Webb Richards to the receivers of United American Utilities, Inc., as provided in the agreement of May 15, 1934, said notes being six in number, each for \$2,500.00 and falling due in six months intervals; to assume the payment of a note, issued by Webb Richards to DeLancey C. Smith in the principal amount of \$5,000.00 payable at the rate of

\$500.00 monthly with interest at the rate of five percent. and to assume the payment of notes issued by Webb Richards to creditors of Merchants Express & Draying Company in the amount of \$5,928.31, each payable in five semi-annual installments, making total note indebtedness to be assumed of \$25,928.31, aside from the current liabilities also to be assumed.

In addition to assuming the foregoing indebtedness, Merchants Express Corporation proposes to issue a promissory note, to be secured by chattel mortgage, in the principal amount of \$17,500.00, payable ninety days after date of issue with interest at the rate of six per cent per annum for the purpose of paying indebtedness of \$14,963.32 incurred by the receiver of Merchants Express & Draying Company and of providing working capital of \$2,536.68. A pro forma balance sheet adjusted to July 31, 1934 shows the assets to be acquired and the liabilities to be incurred by the new corporation, as follows:-

<u>A S S E T S</u>		
Fixed assets		\$580,609.28
Current assets:		
Cash	\$14,982.05	
Stamps	122.44	
Notes receivable	379.09	
Accounts receivable	47,296.06	
Inventories	<u>5,074.64</u>	
Total current assets		67,854.28
Prepayments		10,741.11
Other assets		1,471.89
Total assets		<u>\$660,676.56</u>
<u>L I A B I L I T I E S</u>		
Current liabilities:		
Accrued payroll	\$ 8,854.24	
C.O.D.'s	1,247.94	
Freight drafts	5,375.70	
Vouchers	11,634.10	
Interest, taxes	198.85	
Insurance	746.77	
Notes and contracts payable	<u>1,560.51</u>	
Total current liabilities		\$ 29,618.11
Fixed liabilities:		
Bank loan- Secured	\$17,500.00	
Notes payable	<u>25,928.31</u>	
Total fixed liabilities		43,428.31
Reserve for depreciation		437,871.13
Other reserves		2,997.36
Capital stock		125,000.00
Capital surplus		<u>21,761.65</u>
Total liabilities		<u>\$660,676.56</u>

The physical properties to be acquired by Merchants Express Corporation are described in some detail in Exhibit "F" in Application No. 19594 which sets forth fifty-two trucks, thirty tractors and one hundred and twenty-six trailers. The foregoing pro forma balance sheet, it is noted, shows the fixed assets to be transferred, less the reserve for depreciation, at \$142,738.15.

The operating rights to be transferred are those acquired by Merchants Express & Draying Company under authority granted by the Commission by Decision No. 24158, dated October 26, 1931, in Application No. 17721, and by Decision No. 24483, dated February 15, 1932, in Application No. 17850. For descriptions of the operating rights here involved, reference should be made to those decisions.

The order herein will authorize the transfers of property and the issue of the securities in the amounts applied for in the applications. In making this order, we wish to place Merchants Express Corporation upon notice that operating 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 or at a particular location. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

ORDER

Applications having been made to the Railroad Commission for orders authorizing E. F. Salsbury, as Receiver of Merchants Express & Draying Company, and Webb Richards to transfer properties and authorizing Merchants Express Corporation to issue stock and notes and to assume the payment of indebtedness, and the Commission being of

the opinion that these are not matters in which public hearings are necessary, that the applications should be granted, as herein provided, and that the money, property or labor to be procured or paid for through the issue of the stock and notes herein authorized are reasonably required for the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expense or to income,

IT IS HEREBY ORDERED as follows:-

1. E. F. Salsbury, as Receiver of Merchants Express & Draying Company, may transfer to Webb Richards the operating rights heretofore acquired by said Merchants Express & Draying Company pursuant to authority granted by Decision No. 24158, dated October 26, 1931, and by Decision No. 24483, dated February 15, 1932, and the physical properties referred to in the foregoing opinion and in the Bill of Sale dated August 21, 1934 and filed in Application No. 19594 on September 6, 1934, and may transfer to Henry C. Mahaffy, Jr. and Ralph J. Ritchie, as Receivers of United American Utilities, Inc. the terminal facilities and properties referred to in the Bill of Sale and Assignment dated August 21, 1934 and filed in Application No. 19594 on September 8, 1934, such transfers to be in accordance with the terms of the agreement of May 15, 1934, filed as Exhibit "B" in Application No. 19594.
2. Webb Richards may issue in acquiring said properties and rights his promissory notes in the total principal amount of not exceeding \$25,928.31, consisting of (a) six notes in favor of Ralph J. Ritchie and Henry C.

Mahaffy, Jr. as Receiver of United American Utilities, Inc., each note in the principal amount of \$2,500.00 payable in intervals of six months with interest at the rate of five percent per annum; (b) a note for \$5,000.00 in favor of DeLancey C. Smith payable in monthly installments of \$500.00 with interest at the rate of five percent per annum; and (c) notes aggregating \$5,928.31 in favor of creditors of Merchants Express & Draying Company, as shown in Exhibit "G" filed in Application No. 19603, each note payable in five semi-annual installments with interest at the rate of five percent per annum.

3. Webb Richards may transfer the operating rights and properties herein authorized to be transferred to him by E. F. Salsbury, to Merchants Express Corporation.
4. Merchants Express Corporation to pay for said rights and properties may issue not exceeding \$125,000.00 of its common capital stock and may assume, pay and discharge all the obligations assumed or incurred by Webb Richards and existing against said properties.
5. Merchants Express Corporation may execute a chattel mortgage substantially in the same form as Exhibit "I" in Application No. 19603 and may issue its ninety day six percent note, to be secured by said mortgage, in the principal amount of \$17,500.00 and may use the proceeds to pay indebtedness assumed in the amount of \$14,963.32 and to provide working capital in the amount of \$2,536.68.

6. The authority herein granted is subject to the following conditions:-
- a. 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.
 - b. Applicant E. F. Salsbury, as Receiver of Merchants Express & Draying Company, shall, within twenty (20) days after the effective date of this order, unite with applicant Merchants Express Corporation in common supplement to the tariffs on file with the Commission covering service given under certificates herein authorized to be transferred, applicant E. F. Salsbury, as Receiver, on the one hand withdrawing, and applicant Merchants Express Corporation on the other hand accepting and establishing such tariffs and all effective supplements thereto.
 - c. Applicant E. F. Salsbury, as Receiver, shall, within twenty(20) days after the effective date of the order, withdraw time schedules filed with the Railroad Commission in the name of Merchants Express & Draying Company, and applicant Merchants Express Corporation shall, within twenty (20) days after the effective date of the order, file, in duplicate, in its own name, time schedules covering service heretofore given by applicant E. F. Salsbury, as Receiver, which time schedules shall be identical with the time schedules now on file with the Railroad Commission, or time schedules satisfactory to the Railroad Commission.
 - 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 Merchants Express Corporation 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. Merchants Express Corporation shall keep such record of the issue and/or assumption of the stock and notes herein authorized, as will enable it to file a report, or reports, such as are required by the Railroad Commission's General Order No. 24.

6. The authority herein granted will become effective when the fee prescribed by Section 57 of the Public Utilities Act has been paid. Under such authority no transfers may be made nor stock and notes issued or assumed after June 30, 1935.

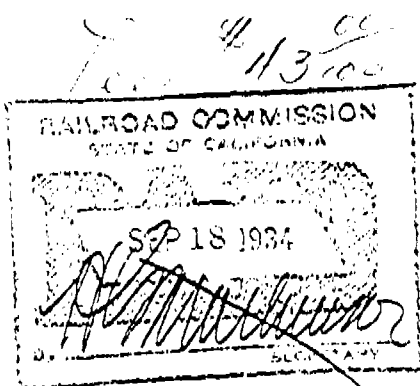
DATED at San Francisco, California, this 17th day of
September, 1934.

Leon A. ...

M. A. ...

M. B. ...

Commissioners.



Fee # 31053