

Decision No. 5040S**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:)
 CONSOLIDATED COPPERSTATE LINES, a Cali-)
 fornia corporation, to purchase, and of)
 the ESTATE OF HAROLD B. FRASHER, De-)
 ceased, and HATTIE HARM, a copartnership)
 doing business as TERMINAL WAREHOUSE CO.,)
 to sell a certificate of public conven-)
 ience and necessity authorizing the)
 transportation of bulk petroleum products)
 over regular routes and certain other)
 properties and goodwill.)

Application No. 35489

O P I N I O N

On June 4, 1954, applicants Consolidated Copperstate Lines, and the executors of the Estate of Harold B. Frasher and Hattie Harm, a copartnership doing business as Terminal Warehouse Co., filed the application herein for an order of this Commission authorizing Terminal Warehouse Co., to sell and transfer and Consolidated Copperstate Lines to purchase and acquire the certificate of public convenience and necessity granted Terminal Warehouse Co., by Decision No. 42623 in Application No. 29472 and authorizing Terminal Warehouse Co., to engage in the transportation of petroleum and petroleum products in tank trucks and tank trailers as a highway common carrier between the points and places, described in said Decision No. 42623, together with the other assets of said Terminal Warehouse Co., subject to its liabilities as provided in the purchase contract attached to the application herein as "Exhibit "A". No proceedings were ever taken before this Commission by the Estate of Harold B. Frasher, deceased, to substitute the executors as parties to the copartnership Terminal Warehouse Co. Applicants have also requested (1) that the Commission authorize and approve the acquisition by Consolidated Copperstate Lines of control through purchase of capital stock of Valley Motor Lines, Inc., and of Valley Express Co., and (2) hereafter to the extent that minority

shareholders in Valley Motor Lines, Inc., may be willing to sell their shares in Valley Motor Lines, Inc., that Consolidated Copperstate Lines be authorized by this Commission to acquire such minority shares.

Consolidated Copperstate Lines presently is engaged in the transportation of property primarily in interstate commerce between points in California, on the one hand, and points in Arizona, on the other hand. Valley Motor Lines, Inc., operates in intrastate, interstate or foreign commerce, as a motor common carrier of general commodities, with certain exceptions including commodities in bulk, wholly within California, over regular routes, generally between San Francisco and Sacramento, via Oakland; between San Francisco and Fresno, via Los Banos; between Sacramento and Tulare, over U. S. Highway 99, via Fresno, Fowler, and Kingsburg; and between the junction of California Highway 198 and U. S. Highway 99 south of Goshen junction, and Hanford, serving in connection with the described routes most intermediate points and a number of off-route points. Valley Express Co., is an express company within the meaning of the California Public Utilities Code which serves approximately 2,800 points in California by using other carriers to perform over-the-road operations between those points. Valley Express Co., under a certificate issued by the Interstate Commerce Commission is also authorized to conduct operations wholly within California, in interstate or foreign commerce, as a motor common carrier of general commodities, with certain exceptions including liquids, in bulk, over irregular routes, between points within the municipal limits of San Francisco, Sacramento, Stockton, Oakland, Berkeley, Emeryville, Alameda, Modesto, Merced, Fresno, Los Banos, and San Leandro.

The Estate of Harold B. Frasher, Mrs. Harm, and the Harm Trust control Valley Motor Lines, Inc., and Valley Express Co., and

through Valley Motor Lines, Inc., control United Motor Transport Lines, Inc.; and the Estate of Harold B. Frasher and Mrs. Harm have an equal interest in Terminal Warehouse Co., the partnership.

Under three interdependent agreements of July 5, 1951, between Consolidated Copperstate Lines, on the one hand, and the executors of the Estate of Harold B. Frasher and Mrs. Harm individually and as the sole trustee of the Harm Trust, on the other, Consolidated Copperstate Lines would purchase for a base consideration of \$919,012.80, (a) 817.08 shares (53.3 per cent) of a total of 1,531.3 shares of the capital stock of Valley Motor Lines, Inc., (b) all of the capital stock (2,641 shares) of Valley Express Co., and (c) the rights and property of Terminal Warehouse Co. The agreed value placed on the stock of Valley Motor Lines, Inc., by the parties is \$367.23 a share, or a total of \$300,056.29 for 817.08 shares, and the agreed value placed on the stock of Valley Express Co., by the parties is \$196.50 a share, or a total of \$518,956.51 for 2,641 shares.

Under the agreement (Exhibit A attached to the application herein) with the owners of Terminal Warehouse Co., Consolidated Copperstate Lines would purchase all of its assets, consisting of intrastate rights, accounts receivable, material and supplies, 9 trucks, 3 tractors, 4 semi-trailers, 13 complete trailers, and prepaid taxes, licenses and insurance. As consideration therefor, Consolidated Copperstate Lines would assume all of the liabilities of Terminal Warehouse Co., as of the closing date and pay \$100,000, provided, that if the net assets of Terminal Warehouse Co., which, as of April 30, 1951, aggregated \$54,165.69, should be less upon the consummation date, the purchase price would be adjusted downward by an amount equal to such decrease, and if the net assets should have increased, then the owners might withdraw cash in amounts equal to such increase or the purchase price would be adjusted accordingly. No

amount is recorded on the books of Terminal Warehouse Co. for intangibles. The obligations of Terminal Warehouse Co. shown on Exhibit "C" attached to the application amount to \$20,811.99. The closing date would be the second Wednesday following approval of the sale of the assets of the Frasher estate by a court having competent jurisdiction and approval of the transactions by the Interstate Commerce Commission and this Commission.

Of the base purchase price of \$568,353 agreed to be paid to the Frasher estate for stock of Valley Motor Lines, Inc., and Valley Express Co., and its interest in the properties of the Terminal Warehouse Co., \$30,918 has been placed in escrow. On the closing date the amount in escrow and an additional \$158,533 would be paid in cash, leaving a balance of \$378,902. This amount would be evidenced by a promissory note payable in six equal annual installments of \$63,150.35 each, plus interest at the rate of 5 per cent per annum on the unpaid balances. Of the base purchase price of \$350,660 agreed to be paid to Mrs. Harm and the Harm trust for the stock of Valley Motor Lines, Inc., and Valley Express Co., and their interest in the properties of Terminal Warehouse Co., \$20,033 has been placed in escrow. On the closing date that amount would be delivered and an additional \$96,854 in cash would be paid. The balance of \$233,773 would be evidenced by a promissory note payable in six annual installments of approximately \$38,962 each, plus interest of 5 per cent on the unpaid balances. The stock of Valley Motor Lines, Inc., and Valley Express Co., to be acquired would be pledged as security for the aforementioned notes. To aid in financing the initial payments required, Consolidated Copperstate Lines would borrow \$80,000 from the Hollywood State Bank with interest of 4-1/2 per cent per annum. The loan would be evidenced by an unsecured promissory note repayable in three equal annual installments.

The Interstate Commerce Commission by its decision and order dated January 12, 1954, in No. MC-F-5054 has found the above proposed transactions to be just and reasonable and consistent with the public interest and approved and authorized such transactions provided (1) that, if the authority granted by the Interstate Commerce Commission is exercised, Consolidated Copperstate Lines shall immediately write off the amount assigned to its "Other Intangible Property" account as a result of the purchase of the operating rights and property of the Estate of Harold B. Frasher, deceased, and Mrs. Hattie Harm, a partnership, doing business as Terminal Warehouse Co., and the amount by which the amount recorded in its "Investments and Advances - Affiliated Companies" account for the capital stock of Valley Motor Lines, Inc., and Valley Express Co., exceeds the net book value thereof, exclusive of intangibles, as of the date of consummation; (2) that, concurrently with the exercise of the authority granted by the Interstate Commerce Commission, United Motor Transport Lines, Inc., shall be merged into Valley Motor Lines, Inc., or liquidated, and its corporate existence terminated; and (3) that, beginning with the date of consummation, and extending for a period of 60 days thereafter, Consolidated Copperstate Lines shall purchase, at a price of \$367.23 a share, all the outstanding stock of Valley Motor Lines, Inc., which may be offered for sale to it at that price during that period. The opinion of the Interstate Commerce Commission states that the evidence of practically all of the shippers and consignees was to the effect that upon acquisition of control of Valley Motor Lines, Inc., by Consolidated, the through service which would be performed by them under common control would meet their transportation requirements between points in California, on the one hand, and, on the other, points in Arizona, New Mexico, and El Paso as a gateway, and that they would continue to utilize such service.

In an action before the Superior Court of Fresno County, the Court held in favor of the plaintiff Consolidated Copperstate Lines that the agreements here under consideration are in full force and effect and are binding on all parties thereto, and that said plaintiff is entitled to performance in full of said agreements.

An examination of the financial statements attached to the application discloses that Consolidated Copperstate Lines has sufficient financial responsibility to enable it to conduct operations under the rights it is seeking to acquire.

The application herein was originally set for hearing in Los Angeles before Examiner Wilson E. Cline on July 28, 1954, but prior to the hearing all protests to the granting of the authority requested were withdrawn. Applicants' request for ex parte handling of the application is herein granted.

The Commission finds that the substitution of the executors of the Estate of Harold B. Frasher, deceased, in the place and stead of said Harold B. Frasher as parties to the copartnership formerly composed of said Harold B. Frasher and Hattie Harm, doing business as Terminal Warehouse Co., and the proposed transfer by the executors of Harold B. Frasher, deceased, and Hattie Harm, copartners doing business as Terminal Warehouse Co., to Consolidated Copperstate Lines, of the highway common carrier operative rights and the equipment and other property hereinbefore referred to and the exercise of said highway common carrier operative rights by said Consolidated Copperstate Lines as authorized by the Interstate Commerce Commission will not be adverse to the public interest. The Commission further finds that the acquisition by Consolidated Copperstate Lines of control through purchase of the capital stock of Valley Motor Lines, Inc., and of Valley Express Co., and thereafter, and to the extent that minority shareholders in Valley Motor Lines, Inc., may be willing to

sell their shares in Valley Motor Lines, Inc., the acquisition of such minority shares, all subject to the conditions imposed and as authorized by the Interstate Commerce Commission, are not adverse to the public interest. The Commission further finds that the money, property and labor to be procured or paid for through the assumption by Consolidated Copperstate Lines of the obligations of Terminal Warehouse Co., set forth in the financial statement attached to the application (Exhibit "C") and through the issuance by Consolidated Copperstate Lines of the following hereinbefore referred to promissory notes: (1) note in the amount of \$378,902 payable to the Frasher Estate, (2) note in the amount of \$233,773 payable to Mrs. Harm and the Harm Trust, and (3) note in the amount of \$80,000 payable to the Hollywood State Bank, are reasonably required by said Consolidated Copperstate Lines for the acquisition of the highway common carrier operative rights and other properties of Terminal Warehouse Co., and the controlling capital stock of Valley Motor Lines, Inc., and Valley Express Co.; and that such purposes are not in whole or in part, reasonably chargeable to operating expense or to income.

The action taken herein shall not be construed to be a finding of the value of the highway common carrier operative rights and other properties herein authorized to be transferred.

Applicants are hereby placed upon 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, 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 as to the number of rights which may be given.

O R D E R

The Commission having considered the above-entitled matter and being of the opinion that a public hearing is not necessary and that the application should be granted as herein provided,

IT IS HEREBY ORDERED as follows:

1. Isabelle F. Frasher, Ernest E. Frasher, Morris A. Atkins and Gail H. Crawford, Executors of the Estate of Harold B. Frasher, deceased, may be substituted in the place and stead of said Harold B. Frasher as parties to the copartnership formerly composed of said Harold B. Frasher and Hattie Harm, doing business as Terminal Warehouse Co., and as owners of the interest of said Harold B. Frasher in said partnership.

2. Said Isabelle F. Frasher, Ernest E. Frasher, Morris A. Atkins and Gail H. Crawford, Executors of the Estate of Harold B. Frasher, deceased, and Hattie Harm, a copartnership doing business as Terminal Warehouse Co., may transfer to Consolidated Copperstate Lines, a corporation, the highway common carrier operative rights granted to said Terminal Warehouse Co., by Decision No. 42623 dated March 15, 1949 on Application No. 29492 together with the equipment and other property of said Terminal Warehouse Co., and Consolidated Copperstate Lines may acquire and thereafter exercise said highway common carrier operative rights and may acquire said equipment and other property, pursuant to the agreement hereinbefore referred to and subject to the conditions set forth in the Interstate Commerce Commission Decision and Order in No. MC-F-5054 dated January 12, 1954, a copy of which is attached to the application herein.

3. Consolidated Copperstate Lines, pursuant to agreements dated July 5, 1951, between Consolidated Copperstate Lines, on the one hand, and the executors of the Frasher estate, Mrs. Harm individually, and Mrs. Harm as the sole trustee of the Harm Trust, on the

other, may purchase 1,531.3 shares of the capital stock of Valley Motor Lines, Inc., and all of the capital stock of Valley Express Co., subject to the conditions set forth in said Interstate Commerce Commission Decision and Order in No. MC-F-5054; and pursuant to such conditions in said Interstate Commerce Commission Decision and Order, Consolidated Copperstate Lines may purchase and acquire the shares of capital stock of Valley Motor Lines, Inc., now held by minority stockholders to the extent that such minority shareholders may be willing to sell their shares.

4. Consolidated Copperstate Lines is authorized to assume the obligations of Terminal Warehouse Co., as set forth in Exhibit "C" attached to the application, and may issue the following promissory notes more fully described in the opinion above: (1) note in the amount of \$378,902 payable to the Frasher Estate, (2) note in the amount of \$233,773 payable to Mrs. Harm and the Harm Trust, and (3) note in the amount of \$80,000 payable to the Hollywood State Bank, for the purposes set forth in the opinion above.

5. Within thirty days after the completion of the transfers herein authorized, Consolidated Copperstate Lines shall notify the Commission in writing of that fact and file with it a true copy of any bill of sale or other instrument of transfer executed to effect the same.

6. Consolidated Copperstate Lines shall file with the Commission a report, or reports, as required by General Order No. 24-A, which order, in so far as applicable, is made a part of this order.

7. Prior to the effective date of said transfer applicants shall, on not less than five days' notice to the Commission and the public, supplement or reissue tariffs on file with the Commission in so far as they name rates, rules and regulations which pertain to the operative rights herein authorized to be transferred to show that the copartnership known as Terminal Warehouse Co., has withdrawn

or canceled the same and that Consolidated Copperstate Lines has concurrently adopted or established said rates, rules and regulations as its own. The tariff filings made pursuant to this order shall in all other respects comply with the regulations governing the construction and filing of highway common carrier tariffs set forth in the Commission's General Order No. 80.

8. The authority herein granted may be exercised after the effective date hereof and will terminate if not exercised on or before December 31, 1954, unless said date is extended by order of this Commission.

9. This order shall become effective when Consolidated Copperstate Lines has paid the fee prescribed by Section 190+ (b) of the Public Utilities Code, which fee is \$693.

Dated at San Francisco, California, this 17th day of August, 1954.

Robert L. [Signature]
President
Maxwell J. [Signature]
Kenneth [Signature]
Gene [Signature]

Commissioners

