

**ORIGINAL**Decision No. 54006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 MERCHANTS EXPRESS OF CALIFORNIA, a )  
 corporation, for authority to purchase )  
 (a) the highway common carrier certifi- )  
 cates and other operating authority, )  
 (b) the automotive equipment, and (c) )  
 other miscellaneous supplies and )  
 assets used in the operation of WAY'S )  
 FREIGHT LINE, a corporation. )

Application No. 38025

Douglas Brookman, for applicant.Marvin Handler and Harold A. Black of Dinkelspiel & Dinkelspiel, for John O. England, Trustee in Bankruptcy of Way's Freight Line, a corporation, bankrupt.Scott Elder, for Intercity Motor Lines, Intercity Transport Lines, Way's Freight Line, A. W. Way and D. F. Way, protestants.Edward M. Berol, for Callison Truck Lines, Inc.; William Meinhold and Frederick E. Fuhrman, for Northwestern Pacific Railroad, Southern Pacific Company and Pacific Motor Trucking Company, interested parties.O P I N I O N

Merchants Express of California requests authority to purchase and acquire the operative rights and equipment of Way's Freight Line.

Way's Freight Line is authorized to transport general commodities between San Francisco Bay points (San Francisco, South San Francisco and East Bay cities) and Crescent City along U. S. Highway 101, serving certain intermediate and off-route points.

Way's Freight Line was seized by the U. S. Treasury Department Internal Revenue Service in order to pay transportation, payroll and withholding taxes properly due and payable. A public auction was held on May 8, 1956, and Merchants Express of California was the highest bidder.

Pending a public hearing this Commission by Decision No. 53090 dated May 16, 1956, granted Merchants Express of California authority temporarily to conduct the Way's Freight Line operations until October 1, 1956. On September 18, 1956, the Commission extended the temporary authority to May 1, 1957.

Public hearing was held before Examiner Thomas E. Daly at San Francisco and the matter was submitted on oral argument on September 25, 1956.

In addition to the operative rights applicant acquired approximately 84 pieces of equipment including trucks, tractors, semi and full trailers. Other property was also acquired such as a great variety of automotive parts, tools and other miscellaneous material including office furniture and supplies. Applicant paid \$106,449.76 to the government in the form of a certified check. The money was advanced by Ward G. Walkup, Sr., applicant's sole stockholder. The following is an allocation of the purchase price:

Fair Market Value of Auto- motive Equipment	\$224,658.10	
Less: First Liens Paid	<u>151,408.10</u>	\$ 73,250.00
Fair Market Value of Office Equipment and Miscellaneous Supplies	8,000.00	
Less: Conditional Sales Contracts	<u>4,800.24</u>	3,199.76
Highway Common Carrier Certifi- cates and other Operating Authority		<u>30,000.00</u> \$106,449.76

Protest to the granting of the application was based upon two grounds. First that applicant failed to establish its financial ability and second that this matter must first be acted upon by the Interstate Commerce Commission. The second ground of protest is predicated on the fact that both carriers are engaged in interstate commerce by virtue of having registered their intrastate

rights with the Interstate Commerce Commission pursuant to the provisions of the second proviso of Section 206 (a) (1) of Part II of the Interstate Commerce Act. It is contended, therefore, that the matter is one subject to the provisions of Section 5 of Part I of the Interstate Commerce Act, which requires the authority of that Commission for any carrier to purchase the properties or any part thereof of another.

With respect to the first ground, it appears that applicant was organized in the latter part of 1954 for the purpose of taking over the properties and operations of Joe Machado, an individual then conducting a highway common carrier service generally between San Francisco and Los Angeles and other points; that during the first year the operations were conducted at a loss; but that with the entrance of new interests into the ownership, following the transfer to the corporation, additional business was developed, new lines were established, and the operating facilities were expanded with the result that the enterprise was placed on a paying basis and for the first six months of 1956 produced net income of \$41,096.59. In addition to the support of its sole stockholder, applicant has the support of two affiliates; i.e., Merchants Express Corporation and Walkup Drayage & Warehouse Co. As for the second ground it is clear that the intrastate operative rights are of prime importance to this Commission. It created said rights, and their use and disposition in the public interest are properly subject to its jurisdiction.

After consideration, the Commission is of the opinion and so finds that the sale and transfer will not be adverse to the public interest. The action taken herein shall not be construed to be a finding of the value of the rights and properties herein authorized to be transferred.

O R D E R

Application having been filed and the Commission being advised in the premises,

IT IS ORDERED:

(1) That Merchants Express of California is hereby authorized to purchase and acquire the automotive equipment and miscellaneous supplies and assets of Way's Freight Line as set forth in the application as well as the operative rights granted by the following decisions:

<u>Decision No.</u>	<u>Date</u>	<u>Application No.</u>
39081	6-11-46	27412
41400	3-30-48	27412 1st Supplemental
45102	12- 5-50	30203
49348	11-17-53	27412 2nd Supplemental
50629	10-13-54	35836

(2) That after the effective date hereof, and on not less than five days' notice to the Commission and to the public, applicant shall amend tariffs on file with this Commission naming rates, rules and regulations governing the common carrier here involved to show that Way's Freight Line has withdrawn and Merchants Express of California has adopted as its own said rates, rules and regulations.

(3) That after the effective date hereof the temporary authority heretofore granted by Decision No. 53090 dated May 16, 1956, and as subsequently extended is hereby revoked.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 30<sup>th</sup> day of OCTOBER, 1956.

*[Handwritten Signature]*  
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 President  
*[Handwritten Signature]*  
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*[Handwritten Signature]*  
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Commissioners

Commissioner JUSTUS F. CRAEMER, being necessarily absent, did not participate in the disposition of this proceeding.