

ORIGINAL

Decision No. 54598

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of MERCHANTS EXPRESS CORPORATION, a corporation, to merge into MERCHANTS EXPRESS OF CALIFORNIA, a corporation, and for authority of MERCHANTS EXPRESS OF CALIFORNIA to issue stock.

Application No. 38623

O P I N I O N

In this application, Merchants Express Corporation and Merchants Express of California seek an order of the Commission approving an agreement of merger and authorizing the issue of shares of stock.

Applicants are engaged in business as highway common carriers in California. In general, Merchants Express Corporation operates between San Jose and Monterey on the south, Stockton and Sacramento on the east, and Healdsburg, Calistoga, and Redding on the north, with certain exceptions, and Merchants Express of California operates between San Francisco and Los Angeles, and certain intermediate points, and between Los Angeles and San Bernardino, Redlands, and Santa Ana, and also between the San Francisco Bay Area and East Bay cities and Crescent City.^{1/}

^{1/} The operative rights of Merchants Express Corporation were acquired under authorization granted by Decisions Nos. 41240, 44269, 45232, 45354, 47066 and 47333.

The two corporations are controlled through stock ownership by the same interests.^{2/} Those in control of the affairs of the corporations have concluded that economies can be effected and operations simplified by a merger of the two corporations into one and an agreement of merger, dated November 14, 1956, has been made whereby the separate existence of Merchants Express Corporation will cease and Merchants Express of California, as the surviving corporation, will succeed to all its assets and operations and to all its debts and liabilities. All the outstanding shares of stock of Merchants Express Corporation will be surrendered for cancellation and Merchants Express of California thereupon will issue, in exchange, 2,140 shares of its no par value stock, being at the rate of 2.14 shares of Merchants Express of California stock for each 100 shares of Merchants Express Corporation stock.

^{2/} The outstanding shares of stock, all without par value, are reported held as follows:

	<u>Merchants Express of California</u>	<u>Merchants Express Corp.</u>
W. G. Walkup, Sr.	360	9,000
W. G. Walkup, Jr.	<u>-</u>	<u>1,000</u>
Total	360	10,000

Statements of the assets, liabilities and capital of the present corporations as of September 30, 1956, and a pro forma statement giving effect to the consolidation and to the elimination of intercompany accounts, are as follows:

<u>Assets</u>	<u>Merchants Express of California</u>	<u>Merchants Express Corporation</u>	<u>Pro Forma</u>
Tangible property	\$1,445,842	\$1,240,822	\$2,686,664
Other investments	107,573	242,899	266,856
Current assets	328,536	548,441	850,428
Deferred debits	<u>233,908</u>	<u>4,371</u>	<u>238,279</u>
Total	<u>\$2,115,859</u>	<u>\$2,036,533</u>	<u>\$4,042,227</u>
<u>Liabilities and Capital</u>			
Current liabilities	\$ 152,164	\$ 319,457	\$ 445,072
Other liabilities	2,003,014	1,438,610	3,358,038
Deferred credits	6,811	24,850	31,661
Capital -			
Common stock	3,600	100,000	103,600
Surplus	<u>(19,760)</u>	<u>153,616</u>	<u>103,856</u>
Total capital	<u>(46,160)</u>	<u>253,616</u>	<u>207,456</u>
Total	<u>\$2,115,859</u>	<u>\$2,036,533</u>	<u>\$4,042,227</u>

Financial statements filed with the application show that for the first nine months of 1956, Merchants Express of California had operating revenues of \$1,584,989 and net income of \$40,938 and that Merchants Express Corporation had operating revenues of \$3,091,027 and a net loss of \$29,428.

The merging of the two organizations will eliminate the necessity of keeping separate sets of books and of making separate reports and maintaining joint rates between the two corporations. Upon a review of the application, it appears

that there will be no curtailment of service to the shippers and we are of the opinion that the transaction, as proposed, will not be adverse to the public interest.

Applicants are hereby placed on 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.

While we have entered orders on our own motion instituting investigations into the practices of these carriers, our action in approving this merger by an ex parte order in no way affects any penalties which lawfully may be assessed at the conclusion of such investigations. A merger proceeding, of course, differs from a case where the operations are transferred by sale and purchase from an individual to a corporation.

The action taken herein shall not be construed to be a finding of the value of the properties referred to in this proceeding.

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, that the application should be granted, as herein provided, that the money, property or labor to be procured or paid for by the issue of stock herein authorized is reasonably required for the purpose specified herein, and that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or income; therefore,

IT IS HEREBY ORDERED as follows:

1. Merchants Express Corporation and Merchants Express of California may enter into an agreement of merger whereby Merchants Express Corporation is merged into Merchants Express of California and may carry out the terms of said agreement.

2. Merchants Express of California may issue not exceeding 2,140 shares of its common stock, without par value, in exchange for all the outstanding stock of Merchants Express Corporation.

3. Merchants Express of California is substituted as a party to the through routes and joint rates now in effect by Merchants Express Corporation.

4. On not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such merger, applicants shall supplement or reissue the tariffs on file with the Commission naming rates, rules and regulations governing the common carrier operations here involved to show that Merchants Express Corporation has withdrawn or canceled and Merchants Express of California has adopted or established, as its own, said rates, rules and regulations. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80.

5. Merchants Express of California shall file with the Commission a report, or reports, as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

6. The authority herein granted will become effective on the date hereof.

Dated at San Francisco, California, this 25th day of FEBRUARY, 1957.

John E. Mitchell
President
Paul Lawrence
Matthew Love
E. L. Fox
Commissioners