

**ORIGINAL**

Decision No. 57945

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

|                                       |                       |
|---------------------------------------|-----------------------|
| In the Matter of the Application of ) |                       |
| FORTIER TRANSPORTATION COMPANY, a )   |                       |
| corporation, and SACRAMENTO FREIGHT ) |                       |
| LINES, INC., a corporation, for )     | Application No. 40090 |
| authority of the former to purchase ) | (First Supplemental)  |
| the stock of the latter, and to )     |                       |
| transfer operating rights and )       |                       |
| property. )                           |                       |

FIRST SUPPLEMENTAL OPINION

By Decision No. 57228, dated August 26, 1958, Fortier Transportation Company was authorized to acquire and thereafter hold all of the outstanding stock of Sacramento Freight Lines, Inc. In the opinion of said decision it was stated, as follows:

With respect to the ultimate transfer of the operative rights, it is not clear if this will be accomplished by a dissolution of Sacramento Freight Lines, Inc., and the distribution of its assets, or by merger proceedings, or by other means. While the exhibits indicate that a merger is contemplated, applicants have not definitely so stated nor have they filed a copy of the proposed agreement of merger. We will hold in abeyance the request of applicants for an order authorizing the transfer of the operative rights and properties pending receipt of further information.

On October 29, 1958, under the authorization granted by Decision No. 57228, Fortier Transportation Company acquired all of the outstanding capital stock of Sacramento Freight Lines, Inc., and thereafter undertook the management of the operations of that company. It now desires to complete the integration through the medium of a statutory merger proceeding whereby it, as the surviving corporation, will succeed to all the assets and will assume all the liabilities of

Sacramento Freight Lines, Inc. Accordingly, applicants filed a first supplemental application on December 17, 1958, for authorization to consummate the merger and to continue in effect, on behalf of the surviving corporation, the joint rates of both applicants which heretofore have been authorized by the Commission and now are in effect.

To effect the merger, the Board of Directors and shareholders of each corporation have adopted a Plan of Merger and Liquidation and an Agreement of Merger. Copies of the two documents are attached to the supplemental application as Exhibit T and Exhibit U, respectively.

Applicants further report that in an order dated October 24, 1958, in Docket No. MC-F-6874, the Interstate Commerce Commission authorized the acquisition by Fortier Transportation Company of control of Sacramento Freight Lines, Inc., through the purchase of its capital stock, with the provision that the carriers shall be merged within one year from the effective date of its order without further authority of the commission.

The application shows that certain accounting adjustments were recorded on the books of Sacramento Freight Lines, Inc., in May, 1958, and that it is the intent of Fortier Transportation Company to carry over to its books the adjusted book balances of Sacramento Freight Lines, Inc., at the effective date of the merger and that any excess of the purchase price paid for the stock over the net book value of the assets acquired will be charged to Account 1550, Other intangible property.

A review of the application shows that, in the opinion of applicants, savings in operating expenses of approximately \$96,000 per annum can be effected as a result of the merger through the elimination of certain duplications and the consolidation of certain activities and facilities. Upon reviewing the verified application and the first supplemental application thereto, we are of the opinion, and so find, that the merger will not be adverse to the public interest and should be authorized.

Fortier Transportation Company, the surviving corporation, is 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.

The action taken herein shall not be construed to be a finding of the value of the rights and properties herein authorized to be merged.

FIRST SUPPLEMENTAL ORDER

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

IT IS HEREBY ORDERED as follows:

1. Sacramento Freight Lines, Inc., and Fortier Transportation Company are authorized to merge pursuant to the provisions of the Corporations Code as set forth in the First Supplemental Application in this proceeding. Upon completion of the merger, the operative rights of Fortier Transportation Company shall be subject to such decisions as may be issued by the Commission in its Case No. 6031.

2. Fortier Transportation Company shall record the acquisition of the properties of Sacramento Freight Lines, Inc., on its books in accordance with the provisions contained in the applicable uniform system of accounts adopted or prescribed by this Commission.

3. On not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of the merger, applicants shall supplement or reissue the tariffs on file with the Commission naming rates, rules and regulations governing the operations here involved to show that Sacramento Freight Lines, Inc., has withdrawn or canceled and Fortier Transportation Company 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.

4. Fortier Transportation Company is substituted as a party to the authorized through routes and joint rates now in effect by Sacramento Freight Lines, Inc.

5. This First Supplemental Order shall become effective 20 days after the date hereof.

Dated at San Francisco, California, this 3rd day of February, 1959.

[Signature]  
President

[Signature]

[Signature]

[Signature]

[Signature]

Commissioners