

ORIGINAL

Decision No. 58546

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
CONSOLIDATED FREIGHT LINES, INC., a)
Delaware corporation, for an order)
authorizing it to assume indebtedness,)
enter into a modification of Credit)
Agreement with BANK OF AMERICA NATIONAL)
TRUST AND SAVINGS ASSOCIATION and incur)
and assume indebtedness as provided in)
said Credit Agreement;)

and)

Application No. 41139

In the Matter of the Application of)
CONSOLIDATED FREIGHTWAYS COMPANY for)
an order of exemption pursuant to)
Section 829 of the Public Utilities)
Code.)
-----)

O P I N I O N

In this application, filed on May 13, 1959, the Commission is asked to enter orders with respect to a proposed reorganization of the affairs of Consolidated Freightways, Inc., as hereinafter set forth.

Consolidated Freightways, Inc., is a Washington corporation which is engaged in business as an interstate highway carrier and as an intrastate carrier in California under certificates of public convenience and necessity granted by this Commission. In addition, in order to diversify its activities, it has acquired control, through stock ownership, of a number of corporations engaged in a variety of enterprises, substantial in amount, of a non-carrier nature.^{1/}

^{1/} Information filed in this proceeding shows, for the carrier and its subsidiaries, carrier operating revenues during 1958 of \$72,189,298 and other operating revenues of \$12,660,324.

It appears that the Interstate Commerce Commission, which has jurisdiction over the carrier's security issues, will not permit it to use proceeds of its securities for non-carrier activities and that for this reason the directors and shareholders of the carrier have approved a plan of reorganization whereby the carrier and non-carrier operations will be separated on a corporate basis in order to permit public financing of such non-carrier operations and thereby implement the diversification program.

In brief, the proposed plan contemplates, as its end result, among other things, the placing of the non-carrier operations in a new Delaware corporation to be known as Consolidated Freightways Company and the transfer of the highway operative rights and properties, at their book values, to a second new Delaware corporation to be named Consolidated Freight Lines, Inc.

As a part of the proposed plan, this second Delaware corporation (Consolidated Freight Lines, Inc.) will assume the obligations of the present carrier incurred under and pursuant to a credit agreement with Bank of America National Trust and Savings Association, providing for borrowings up to \$27,500,000, heretofore approved by the Commission by Decision No. 57446, dated October 15, 1958, Decision No. 57543, dated October 29, 1958, and Decision No. 58383, dated May 12, 1959. It will assume such obligations by a new agreement with the bank, substantially in the same form as the present agreement, and will incur the indebtedness provided therein in the place and stead of Consolidated Freightways, Inc., as now authorized.

The plan of reorganization has been submitted to the Interstate Commerce Commission for its approval and for authorization

of the issue and exchange of shares of stock as required to complete the program.^{2/} In the present application, which is now before us, the assumption of liability, which is not included in the Interstate Commerce Commission proceeding, is presented for our approval and in Application No. 41163, filed on May 25, 1959, authorization is sought for the transfer of the California intrastate operative rights. A separate decision will be entered in Application No. 41163.

As to the other new Delaware corporation, that is, Consolidated Freightways Company, which is the non-carrier corporation under the reorganization plan, its articles of incorporation specifically provide that it shall not engage in the business of transporting passengers or property for compensation. The corporation, however, is a party to the plan, as successor to certain of the operations of the present carrier, and in order to avoid any adverse effects, which might follow if at some future time some court should hold that the Commission has jurisdiction over its security issues, it has requested specific exemption from the provisions of the Public Utilities Code, with respect to its securities, as provided in Sections 829 and 853 of the code.

Article 5, Chapter 4, Part 1, Division 1 of the Public Utilities Code defines this Commission's jurisdiction over the issuance of securities by public utilities, and Article 6 of said

^{2/} After hearing before the Interstate Commerce Commission, a Report and Order, dated March 31, 1959, was issued by the Hearing Examiner recommending approval of the plan of reorganization. This recommendation is pending the order of the Commission.

Chapter 4, over the transfer or encumbrance of utility property.

Section 829 of Article 5 reads as follows:

This article shall not apply to any person or corporation which transacts no business subject to regulation under this part, except performing services or delivering commodities for or to public utilities or municipal or other public corporations primarily for resale or use in serving the public or any portion thereof but shall nevertheless apply to any public utility if the commission finds, in a proceeding to which the public utility is or may become a party, that the application of this article is required by the public interest. The commission may from time to time by order or rule, and subject to such terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from the provisions of this article if it finds that the application thereof to such public utility or class of public utility is not necessary in the public interest.

Section 853 contains similar language with respect to exemption from the provisions of Article 6.

Upon review, it appears to us that the application merely relates to an internal adjustment of the affairs of the carrier and its subsidiaries and that the requested authority will not adversely affect the service to the public. Accordingly, we will issue an appropriate order granting applicants' requests.

O R D E R

The Commission has considered the above-entitled matter and is of the opinion, and so finds, (1) that a public hearing is not necessary; (2) that the application of Articles 5 and 6, Chapter 4, Part 1, Division 1 of the Public Utilities Code to Consolidated Freightways Company is not necessary in the public interest; and (3) that the money, property or labor to be procured or paid for by the execution of the credit agreement and evidence of indebtedness authorized herein is reasonably required for

the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS HEREBY ORDERED as follows:

1. Consolidated Freight Lines, Inc., may assume the obligations of Consolidated Freightways, Inc., a Washington corporation, incurred under and pursuant to its credit agreement with Bank of America National Trust and Savings Association heretofore authorized by the Commission, may enter into a credit agreement with said bank in substantially the form of the credit agreement filed in this proceeding as Exhibit A, and may incur and assume indebtedness thereunder all as provided in said credit agreement for the purpose of financing equipment purchases or for reimbursement for expenditures for equipment purchases.

2. If and to the extent that this Commission has or may have jurisdiction, Consolidated Freightways Company, a Delaware corporation, hereby is exempted from the provisions of Articles 5 and 6, Chapter 4, Part 1, Division 1 of the Public Utilities Code.

3. This order shall become effective on the date hereof.

Dated at San Francisco, California, this 8th day of June, 1959.

E. L. Fox
President
W. E. [unclear]
W. E. [unclear]
Theodore [unclear]
Commissioners