

ORIGINAL

Decision No. 59100

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of J. A. CLARK DRAYING)
COMPANY, LTD., and CONSOLIDATED)
FREIGHTWAYS, INC. To Transfer and)
of CONSOLIDATED FREIGHTWAYS, INC.)
and CONSOLIDATED WAREHOUSE COMPANY)
OF CALIFORNIA To Acquire the)
Operating Authorities.)

Application No. 41503

O P I N I O N

J. A. Clark Draying Company, Ltd., Consolidated Freightways, Inc., and Consolidated Warehouse Company of California have filed this application for an order authorizing the transfer of highway common carrier and warehouse operative rights.

J. A. Clark Draying Company, Ltd., is a California corporation which is engaged in business as a highway common carrier under certificates of public convenience and necessity granted by the Commission and by the Interstate Commerce Commission, and as a radial highway common carrier, a highway contract carrier, a city carrier and a household goods carrier under permits, and, also, as a public utility warehouseman in San Francisco and Los Angeles.

Consolidated Freightways, Inc., is a Washington corporation which is engaged in interstate and intrastate commerce as a highway common carrier, as a petroleum irregular route carrier and as a permitted carrier. It owns all the outstanding stock of Consolidated Warehouse Company of California, a California corporation which is engaged in the public utility warehouse business in San Francisco.

The application shows that the Interstate Commerce Commission has authorized Consolidated Freightways, Inc., to acquire the stock of J. A. Clark Draying Company, Ltd., in exchange for shares of its capital stock and has authorized J. A. Clark Draying Company, Ltd., to merge into Consolidated Freightways, Inc. Applicants have filed the pending application for appropriate authorization from this Commission for the transfer of intrastate operative rights in carrying out the terms of the merger.^{1/} Consolidated Freightways, Inc., being a foreign corporation, immediately will transfer the warehouse operative rights to its California warehouse subsidiary and has requested permission so to do.

It appears that J. A. Clark Draying Company, Ltd., is being managed by Consolidated Freightways, Inc., under a management contract dated October 17, 1958. Under the terms of the merger agreement all its assets will be transferred to, and its liabilities will be assumed by, Consolidated Freightways, Inc., and it appears that there will be no change in the operation or management as the result of the transfer and that the same facilities will be available for the highway common carrier and warehouse services as at present. We are of the opinion, and so find, that the proposed transfer will not be adverse to the public interest.

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The intrastate common carrier rights were acquired by J. A. Clark Draying Company, Ltd., pursuant to Decision No. 37249, dated August 8, 1944, Decision No. 50864, dated December 14, 1954, and Decision No. 55393, dated August 13, 1957. The warehouse rights in San Francisco were acquired pursuant to Decision No. 41066, dated December 22, 1947, while the warehouse rights in Los Angeles are prescriptive rights.

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.

The authorization herein granted shall not be construed to be a finding of the value of the operative rights herein authorized to be transferred.

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, therefore,

IT IS HEREBY ORDERED as follows:

1. J. A. Clark Draying Company, Ltd., may transfer and assign to Consolidated Freightways, Inc., its highway common carrier and warehouse operative rights.

2. Consolidated Freightways, Inc., shall immediately transfer to Consolidated Warehouse Company of California the warehouse operative rights which it will acquire from J. A. Clark Draying Company, Ltd.

3. On not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, 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 J. A. Clark Draying Company, Ltd., has withdrawn or canceled and Consolidated Freightways, Inc., 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. On not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, applicants shall supplement or reissue the tariffs now on file with the Commission, insofar as they name rates, rules and regulations governing the warehouse operations here involved of J. A. Clark Draying Company, Ltd., to show that J. A. Clark Draying Company, Ltd., has withdrawn or canceled and that Consolidated Warehouse Company of California concurrently has adopted or established, as its own, said rates, rules and regulations. The tariff filings made pursuant to this order in all respects shall comply with the regulations governing the construction and filing of warehouse tariffs set forth in the Commission's General Order No. 61.

5. Consolidated Freightways, Inc., may be substituted for J. A. Clark Draying Company, Ltd., as a party to certain through routes and joint rates with other carriers as set forth in California Common Carriers Tariff No. 1, California Public Utilities Commission No.1, published by the Interstate Freight Carriers Conference Inc.

6. The authorization herein granted shall become effective 20 days after the date hereof and shall expire if not exercised within 90 days thereafter.

Dated at San Francisco, California, this 6th
day of October, 1959.

Paul L. Agutshall President
E. Lynn Fox
Theodore J. Jernigan
Commissioners