

**ORIGINAL**

Decision No. 60936

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
MERCHANTS REFRIGERATING COMPANY OF  
CALIFORNIA and REFRIGERATED FOOD  
SERVICES, INC. for an order (1)  
authorizing applicants to merge,  
and (2) authorizing MERCHANTS  
REFRIGERATING COMPANY OF CALIFORNIA  
to issue shares in exchange for the  
outstanding shares of REFRIGERATED  
FOOD SERVICES, INC.

Application No. 42754

O P I N I O N

This application was filed on October 14, 1960, for an order of the Commission authorizing Merchants Refrigerating Company of California and Refrigerated Food Services, Inc., to merge.

Applicants are engaged in business in California as public utility cold storage warehousemen. Merchants Refrigerating Company of California operates in Modesto and Refrigerated Food Services, Inc., in San Jose and Santa Clara, the operations of both being conducted under prescriptive operative rights.

The two corporations are controlled, through ownership of all their outstanding stock, by Merchants Refrigerating Company, a New York corporation. It appears that those in control have concluded economies can be effected in operations and greater financial strength obtained by consolidating the two companies under one ownership and to that end an Agreement of Merger, dated October 5, 1960, has been made whereby the separate

corporate existence of Refrigerated Food Services, Inc., will cease and Merchants Refrigerating Company of California, as the surviving corporation, will succeed to all the rights, privileges, powers and assets of Refrigerated Food Services, Inc., subject to all its liabilities. The surviving corporation will take over on to its books the tangible and other assets at their recorded values, subject to liabilities, and will issue its shares of stock in the aggregate amount of \$50,000 par value in exchange for the outstanding \$1,000 par value of stock of Refrigerated Food Services, Inc., with an adjustment in the earned or capital surplus to compensate for the difference in the total par value of the stock. A condensed statement of the assets and liabilities of the two applicants as of August 31, 1960, and a pro forma statement giving effect to the merger are shown in the following tabulation:

<u>Assets</u>	<u>Merchants Refrig. Co. of Calif.</u>	<u>Refrigerated Food Services, Inc.</u>	<u>Pro Forma</u>
Current assets	\$ 693,961	\$ 311,876	\$ 955,625
Other assets	77,066	8,878	85,944
Plants, less depreciation reserve	<u>2,151,345</u>	<u>1,517,988</u>	<u>3,669,333</u>
Total	<u>\$2,922,372</u>	<u>\$1,838,742</u>	<u>\$4,710,902</u>
 <u>Liabilities</u> 			
Current liabilities	\$ 197,703	\$ 405,527	\$ 553,018
Long-term debt	1,205,147	969,200	2,174,347
Reserves	68,638	56,323	124,961
Capital -			
Common stock	175,000	1,000	225,000
Capital surplus	75,000	394,000	469,000
Earned surplus	1,200,884	12,692	1,164,576
Total capital	<u>1,450,884</u>	<u>407,692</u>	<u>1,858,576</u>
Total	<u>\$2,922,372</u>	<u>\$1,838,742</u>	<u>\$4,710,902</u>

Financial statements filed with the Commission show that for the year 1959, Merchants Refrigerating Company of California reported operating revenues of \$1,348,759 and net income of \$215,719 and Refrigerated Food Services, Inc., reported operating revenues of \$1,040,367 and net income of \$22,277. The surviving corporation will adopt the rates of Refrigerated Food Services, Inc., and will continue the operations with the same management.

We have considered this matter and we find and conclude that the proposed merger will not be adverse to the public interest and we will enter our order granting the application. In making this order, we place Merchants Refrigerating Company of California upon 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 which 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 authority 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, that the application should be granted as herein provided, that the money, property or labor to be procured or paid for through the issue of the 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 to income; therefore,

IT IS HEREBY ORDERED as follows:

1. Merchants Refrigerating Company of California and Refrigerated Food Services, Inc., may enter into an agreement of merger whereby Refrigerated Food Services, Inc., is merged into Merchants Refrigerating Company of California and the assets and operative rights of Refrigerated Food Services, Inc., subject to outstanding liabilities, are transferred to Merchants Refrigerating Company of California. Applicants may carry out the terms of said Agreement of Merger.


2. Merchants Refrigerating Company of California may issue not to exceed 500 shares of its common stock of the aggregate par value of \$50,000 in exchange for the outstanding shares of stock of Refrigerated Food Services, Inc., in carrying out the terms of said agreement.

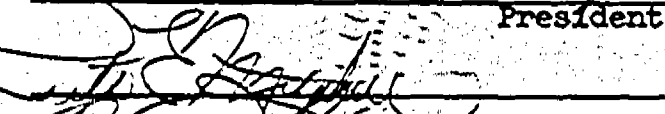

3. On not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such merger, applicants shall supplement or reissue the tariffs now on file with the Commission, insofar as they name rates, rules and regulations governing the warehouse operations here involved of Refrigerated Food Services, Inc., to show that Refrigerated Food Services, Inc., has withdrawn or canceled and that Merchants Refrigerating 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.

4. Merchants Refrigerating Company 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.

5. The authority herein granted shall become effective on the date hereof.

Dated at San Francisco, California,  
this 25<sup>th</sup> day of OCTOBER, 1960.

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
  
\_\_\_\_\_

Commissioners