

ORIGINAL

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Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:
CONSTRUCTORS TRANSPORT CO., a
California corporation, to transfer
its certificate of public convenience
and necessity and its assets and
properties to T.I.M.E. FREIGHT, INC.,
a Delaware corporation, and there-
after to merge into T.I.M.E. FREIGHT,
INC. upon approval of the Interstate
Commerce Commission of parallel
proposals.

Application No. 44882
Filed October 22, 1962

O P I N I O N

In this application T.I.M.E. Freight, Inc., seeks authorization to acquire the operative rights and properties of Constructors Transport Co., a corporation, first by lease arrangements and later by merger.

Constructors Transport Co. is a California corporation which is engaged in business as a highway common carrier of general commodities under authorization granted by Decision No. 61030, dated November 7, 1960, and Decision No. 48899, dated July 28, 1953. The company reports that its operations during the last four years have been conducted at a loss, that it is undercapitalized and has a substantial volume of accounts payable, and that it has been unsuccessful in arranging financing of its requirements under reasonable terms. For these and other reasons, those in control of the

affairs of the company have concluded to retire from the operations and have made arrangements to dispose of their rights and properties, by merger proceedings, to T.I.M.E. Freight, Inc.

The application shows that on or about September 17, 1962, Constructors Transport Co. and its shareholders entered into a merger agreement with T.I.M.E. Freight, Inc., and its directors under and pursuant to which Constructors Transport Co. would merge with T.I.M.E. Freight, Inc., and its separate corporate existence terminated, and the latter, as the surviving corporation, would succeed to all the assets and liabilities of Constructors Transport Co. and would issue 13,996 shares of its common stock of the par value of \$2 a share in exchange for the 200 shares of common stock of Constructors Transport Co. of no par value presently outstanding. T.I.M.E. Freight, Inc., will continue all through routes and joint rates which now are in effect in the operation of Constructors Transport Co.

It is set forth by applicants that the merger is subject to receiving approval by the Interstate Commerce Commission as well as appropriate authorization from the California Commission. During the pendency of the proceedings before the regulatory authorities, it is proposed that T.I.M.E. Freight, Inc., will lease and operate the rights and properties and to that end a lease contract has been entered into under date of September 17, 1962, whereby

T.I.M.E. Freight, Inc., will pay to Constructors Transport Co. each month, in advance, the sum of \$7,182.59, plus the taxes on the Los Angeles terminal, and will pay all current expenses (except terminal rents) and collect accounts receivable. The operations shall be the sole responsibility of T.I.M.E. Freight, Inc., and it shall absorb any loss and be entitled to any profits from the operations.

T.I.M.E. Freight, Inc., reports that it is a Delaware corporation, that it is engaged in business as an interstate motor carrier operating, generally, between Los Angeles and points in the Midwest area and in the South, with connections to the eastern seaboard and that it is qualified to do business in California. Its financial statements show that its business is substantial, that its operating revenues aggregated \$17,385,980 during 1961 and \$12,807,133 during the first eight months of 1962, with net profit of \$766,514 in 1961 and of \$625,035 in the 1962 period. Its balance sheet as of August 31, 1962, reveals a favorable cash and current position and a balanced capital structure consisting of long-term obligations of \$3,469,034 and common stock and surplus of \$3,955,244. A pro forma statement filed in this proceeding indicates that the carrier is of the opinion that it can effect economies in operations by consolidating the two operations and increase its net earnings accordingly.

Upon considering this matter we find that the proposed transactions will not be adverse to the public interest and that the terms and conditions of the proposed lease and merger will not impair the ability of T.I.M.E. Freight, Inc., to meet its public service obligations and to continue the combined operations.

In making our order herein, we place applicants 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, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

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

IT IS ORDERED that:

1. Constructors Transport Co., may lease its operative rights and tangible properties to T.I.M.E. Freight, Inc., and T.I.M.E. Freight, Inc., may operate such rights and properties under the terms and conditions set forth in the lease contract dated September 17, 1962 between said companies.

2. Constructors Transport Co. and T.I.M.E. Freight, Inc., may execute and enter into and carry out the terms of a merger agreement whereby Constructors Transport Co. shall be merged into T.I.M.E. Freight, Inc., and T.I.M.E. Freight, Inc., as the surviving corporation, shall succeed to all the assets and liabilities of Constructors Transport Co.

3. T.I.M.E. Freight, Inc., shall amend or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the common carrier operations here involved to show that it has adopted or established, as its own, said rates, rules and regulations. The tariff filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and to the public, and the effective date of the tariff filings shall be concurrent with the consummation of the transfer herein authorized. 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-A.

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

Dated at San Francisco, California, this 2nd day of NOVEMBER, 1962.

George H. Grover
President

J. L. Marshall

S. Lynn Fox

Evelyn Olden Page

Frederick B. Halshoff
Commissioners