



of the State of California, whereby Asbury Transportation Co. will be the surviving corporation, and pursuant thereto, it is therefore agreed that such merger be made; that operative rights, as well as other assets, belonging to the constituent corporation, not transferred to the surviving corporation by operation of law, shall be transferred to the surviving corporation in consideration of which the surviving corporation shall surrender all of the issued and outstanding capital stock of said constituent corporation to be cancelled by it.

It is proposed in the application to transfer the operative rights heretofore created by Decisions Nos. 14404, 18958, 27787, 18150, 18487, 19067, 26279, 26503 and 28012.

The right created by Decision No. 14404 was later transferred to White Truck and Transfer Company, a corporation, under the authority of the Commission's Decision No. 18958, subsequently acquired by applicant Asbury Truck Company under authority of Decision No. 27787, dated March 4, 1935.

Decisions Nos. 18150 and 18487 were rescinded and set aside by the Commission on August 15, 1927, and the application therein involved set down for further hearing, following submission of which the Commission, on December 1, 1927, issued its Decision No. 19067, granting certain operative rights to Asbury Truck Company, which was later interpreted and construed by Decision No. 23490. Decision No. 26279, dated August 21, 1933, as amended by Decision No. 26503, dated November 6, 1933, and Decision No. 28012, dated June 3, 1935, granted a certificate to Asbury Truck Company, as therein set forth, in lieu of the right theretofore conferred by Decision No. 19067, and cancelled such certificate. It will therefore be seen that no operative rights are now in existence as formerly created by Decisions Nos. 18150, 18487 and 19067.

This is not a matter requiring a public hearing and we are of the opinion that the authority requested is in the public interest and will be granted.

Asbury Transportation Co. is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. 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 to the number of rights which may be given.

#### O R D E R

IT IS ORDERED that Asbury Truck Company, a corporation, is hereby authorized to transfer to Asbury Transportation Co., a corporation, and said Asbury Transportation Co. is hereby authorized to acquire the operative rights referred to in the foregoing opinion in accordance with the terms of the merger agreement, marked Exhibit "A," attached to the application herein and made a part thereof, and to hereafter operate thereunder, subject to the following conditions:

1. The authority herein granted shall lapse and be void if applicant shall not have complied with all of the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the Commission.

2. The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission, or any other rate fixing body, as a measure of value of said property for rate fixing, or for any purpose other than the transfer herein authorized.

3. Applicant Asbury Truck Company shall within thirty (30) days after the effective date of the order herein and upon not less than one (1) day's notice to the Commission and the public unite with applicant Asbury Transportation Co. in common supplement to the tariffs on file with the Commission covering the service given under the operative rights herein authorized to be transferred, applicant Asbury Truck Company withdrawing and applicant Asbury Transportation Co. accepting and establishing such tariffs and all effective supplements thereto.

4. Applicant Asbury Truck Company shall within thirty (30) days after the effective date of the order herein and upon not less than one (1) day's notice to the Commission and the public withdraw all time schedules filed in its name with the Railroad Commission and applicant Asbury Transportation Co. shall within thirty (30) days after the effective date of the order herein and upon not less than one (1) day's notice to the Commission and the public file in duplicate in its own name time schedules covering service heretofore given by applicant Asbury Truck Company which time schedules shall be satisfactory to the Railroad Commission.

5. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been obtained.

6. No vehicle may be operated by applicant Asbury Transportation Co. unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

7. Applicant shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all of the provisions of this Commission's General Order No. 91.

8. Applicant Asbury Transportation Co. shall keep its general books of account in the state of California.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 27<sup>th</sup> day of

June, 1939

*Paul J. Kelly*  
*Paul J. Kelly*  
*Paul J. Kelly*

COMMISSIONERS