

Decision No. 22808

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
PASADENA-OCEAN PARK STAGE LINE, INC. (1)  
to sell, and ORIGINAL STAGE LINE, INC.,  
to purchase an automobile passenger  
line operated between Pasadena, Holly-  
wood, Culver City, Ocean Park, Los  
Angeles and Mount Wilson, California.

ORIGINAL

Application No. 22808

BY THE COMMISSION:

O P I N I O N

Pasadena-Ocean Park Stage Line, Inc., a corporation, hereafter sometimes called the constituent corporation, has petitioned the Railroad Commission for an order approving the sale and transfer by it, to Asbury Rapid Transit System, a corporation, hereafter sometimes called the surviving corporation, of certain operative rights for the automotive transportation, as a common carrier, of passengers and property in general, between Pasadena, Ocean Park, Los Angeles, Mount Wilson and other points proximate thereto, as particularly described in the decisions of the Commission, as hereinafter set forth, creating the operative rights therefor. Asbury Rapid Transit System has jointly petitioned for authority to purchase and acquire said operative rights and to hereafter operate thereunder.

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(1) On September 7, petitioners filed a supplemental application setting forth that subsequent to the filing of the original application herein, one of the petitioners, Original Stage Line, Inc., the surviving corporation, did, to-wit: on August 31, 1939, change its corporate name to "Asbury Rapid Transit System" by amending its Articles of Incorporation, a certified copy of which is attached to said supplemental application.

The application recites that the sale and transfer is to be made in accordance with a merger agreement, a copy of which, marked Exhibit "A" is attached to the application herein and made a part thereof. The agreement sets forth that all assets, operative rights and other things of value belonging to the constituent corporation not transferred to the surviving corporation, by operation of law, if any, shall be transferred by appropriate conveyances or orders to the surviving corporation, and in consideration for the transfer of all assets, operative rights and other things of value, the said surviving corporation shall cause to be surrendered to the constituent corporation all of the issued and outstanding capital stock of said constituent corporation, to be cancelled by it. The surviving corporation agrees to and assumes all of the liabilities and debts of the constituent corporation. Applicants allege that the surviving corporation will not issue any of its capital stock in respect to said merger or the transfer of said assets, and its present issued and outstanding capital stock, consisting of 618 shares, will remain as is.

No apportionment of the consideration for the transfer has been made as between the intangibles and equipment or other assets transferred, since said transfer is a result of a merger made pursuant to the laws of the State of California. The paid in capital reflected on the books of the constituent corporation for the 755 shares issued and outstanding will be reflected on the books and records of the surviving corporation as "Paid in Surplus."

The operative rights herein proposed to be transferred were created in, or acquired by Pasadena-Ocean Park Stage Line, Inc. by the following decisions, or amendments thereto, of the Railroad Commission:

<u>Decision No.</u>	<u>Date</u>	<u>Application No.</u>
17544	October 29, 1926	13174
21718	October 28, 1929	16030
23569	April 6, 1931	17283
27546	November 26, 1934	19679
27838	March 25, 1935	13174
29085	August 31, 1936	20647
29408	December 28, 1936	20798
30666	February 28, 1938	21606
30972	June 13, 1938	21982
31111	July 19, 1938	22079
31367	October 17, 1938	22104
31593	December 27, 1938	22221

No authority is sought to consolidate the operative rights of the constituent corporation with those now held by the surviving corporation. Until such time as such authority is sought and obtained from the Railroad Commission, said rights must be operated separately and distinctly from those now owned and operated by the surviving corporation.

Petitioners have also requested that the surviving corporation be substituted for the constituent corporation in numerous applications and supplemental applications now on file with the Railroad Commission, upon which no decisions have yet been issued. Such substitution should be applied for by a supplemental application in each of such matters.

This is not a matter requiring a public hearing and we are of the opinion that the authority sought is in the public interest and an order will be issued authorizing the execution of the merger agreement.

Asbury Rapid Transit System 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 Pasadena-Ocean Park Stage Line, Inc., a corporation, and Asbury Rapid Transit System, a corporation, may within thirty (30) days from the effective date hereof, execute a merger agreement similar in form to the merger agreement filed in this proceeding as Exhibit "A," 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 involved herein 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 merger herein authorized.
3. Applicant Pasadena-Ocean Park Stage Line, Inc. shall within thirty (30) days after the effective date of the order herein unite with applicant Asbury Rapid Transit System in common supplement to the tariffs on file with the Commission, covering service given under the rights involved herein, applicant Pasadena-Ocean Park Stage Line, Inc. withdrawing and applicant Asbury Rapid Transit System accepting and establishing such tariffs and all effective supplements thereto.
4. Applicant Pasadena-Ocean Park Stage Line, Inc. shall within thirty (30) days after the effective date of the order herein withdraw all time schedules filed in its name with the Railroad Commission, and applicant Asbury Rapid Transit System shall within thirty (30) days after the effective date of the order herein file, in duplicate, in its own name time schedules covering service heretofore given by applicant Pasadena-Ocean Park Stage Line, Inc. 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 Rapid Transit System 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.

IT IS FURTHER ORDERED that within thirty (30) days after the execution of the aforesaid merger agreement, Asbury Rapid Transit System, shall file with the Railroad Commission a certified copy of said merger agreement.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 19<sup>th</sup> day of September, 1939.

Paul W. Shepard  
Frank D. Bennett  
Carl L. Kelley  
W. H. Bates  
Justin J. Cooney  
 COMMISSIONERS