

**ORIGINAL**

Decision No. 60110

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of ASSOCIATED FREIGHT LINES, a )  
corporation, to merge into )  
KELLOGG EXPRESS & DRAYING CO., )  
a corporation, and for KELLOGG )  
EXPRESS & DRAYING CO. to issue )  
stock. )

Application No. 42325

O P I N I O N

In this application, filed on June 6, 1960, the Commission is asked to issue its order authorizing Kellogg Express & Draying Co., a corporation, to acquire, through merger, the properties and operations of Associated Freight Lines, a corporation, and authorizing Kellogg Express & Draying Co. to issue shares of its capital stock.

Associated Freight Lines, sometimes hereinafter referred to as "Associated", operates as a highway common carrier in the transportation of general commodities, with certain exceptions, between points and places in the San Francisco Territory, on the one hand, and points and places in the Los Angeles Territory, on the other hand, pursuant to a certificate granted in Decision No. 43003, dated June 14, 1949, in Application No. 24057. Kellogg Express & Draying Co., sometimes hereinafter referred to as "Kellogg", operates as a highway common carrier in the transportation of general commodities, with certain exceptions, between San Francisco, specified East Bay points, specified Marin County points, Vallejo and Napa, and certain intermediate points, and San Jose and Los Gatos and intermediate points, and points intermediate between

between Oakland and San Jose. All of the outstanding capital stock of both Associated and Kellogg is owned by and in the name of John A. Pifer.

The application shows that Associated and Kellogg occupy joint terminal facilities in San Francisco and Oakland and that joint rates are maintained by Kellogg and Associated for the transportation of intrastate commerce in certain of the tariffs of the two corporations. Because of the close association in their operations and because of the common ownership of the outstanding stock, it is proposed to merge the two corporations under the terms and conditions of a merger agreement, which agreement provides, among other things, that the separate existence of Associated will cease and that Kellogg, as the surviving corporation, will succeed to all Associated's assets and to all its debts and liabilities and will issue its shares of stock of the aggregate par value of \$45,000 in exchange, at dollar for dollar, for the outstanding shares of stock of Associated. Upon the conclusion of the merger, Kellogg will change its name to Associated Freight Lines.

The application further shows that Kellogg will adopt the rates of Associated and will set up on its books ledger balances of Associated as of the date of the merger with the elimination, of course, of the intercompany accounts. Applicants assert that the effect of the transaction will be to unify the operations, to reduce accounting time and expense and to facilitate prompt and efficient service.

Upon a review of the application, we find and conclude that the merger will not be adverse to the public interest; that the issue of the stock by Kellogg is for a proper purpose; that the money, property or labor to be procured or paid for by such issue 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. Upon the basis of these findings, we will enter our order granting the application.

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 action taken herein shall not be construed to be a finding of the value of the operative rights and properties of applicants.

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,

IT IS HEREBY ORDERED as follows:

1. Associated Freight Lines and Kellogg Express & Draying Co. may enter into an agreement of merger whereby Associated Freight Lines is merged into Kellogg Express & Draying Co.

2. Kellogg Express & Draying Co., the surviving corporation under the terms of said merger, may acquire all the outstanding capital stock of Associated Freight Lines and may issue not to exceed \$45,000 par value of its common stock in exchange for said stock of Associated Freight Lines.

3. Kellogg Express & Draying Co. is substituted as a party to the through routes and joint rates now in effect by Associated Freight Lines.

4. Kellogg Express & Draying Co., after the consummation of the merger herein authorized, may use the name of Associated Freight Lines, when such name is adopted by amendment to its Articles of Incorporation.

5. 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 Associated Freight Lines has withdrawn or canceled and Kellogg Express & Draying Co. 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.

6. Kellogg Express & Draying Co. 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.

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

Dated at San Francisco, California,  
this 12<sup>th</sup> day of July, 1960.

*Ernest R. George*  
President

*Matthew J. ...*

*E. ...*

*Richard J. ...*  
Commissioners