

ORIGINAL

Decision No. 51100

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of
MALCO TRANSPORTATION COMPANY,
a California corporation,
and
L. P. EELES, an individual
doing business as Malco Trans-
portation Company,
for permission to issue stock; to
issue a \$54,152.39 note; and for
transfer of permits.

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Application
No. 36627

Frank H. Love, for applicants.

O P I N I O N

This is an application for an order of the Commission authorizing L. P. Eeles, an individual doing business as Malco Transportation Company, to transfer operative rights and equipment to Malco Transportation Company, a corporation, and authorizing the corporation to issue a note in the principal amount of \$54,152.39 and 2,000 shares of stock, without par value, at a price of \$10 a share.

A public hearing was held before Examiner Coleman in Los Angeles on January 27, 1955, at which time the matter was taken under submission. The Commission has received no protests in the proceeding.

For some years applicant Eeles has been engaged in the operation of tank trucks for the transportation of petroleum products in bulk generally throughout the state. He has reported his revenues and expenses for 1952 and 1953 as follows:

	<u>1952</u>	<u>1953</u>
Operating revenues	\$159,034	\$143,753
Less -		
Operation and maintenance	102,871	103,371
Depreciation	12,551	13,941
Operating taxes	11,177	10,302
Operating rents	2,100	2,100
Total expenses	<u>128,699</u>	<u>129,714</u>
Net carrier operating income	<u>30,335</u>	<u>14,039</u>
Other income	4,219	4,200
Income deductions	<u>(894)</u>	<u>(535)</u>
Net income	<u>\$ 33,610</u>	<u>\$ 17,704</u>

The testimony shows that during 1954 the operating revenues had continued at approximately the 1953 level and that the net income for the 11 months ended November 30, 1954, was \$15,567.

Applicant Eeles' investment in assets and his outstanding liabilities as of November 30, 1954, are set forth in Exhibit C filed in this proceeding. A summary of the same is as follows:

Assets

Tangible assets, less depreciation	\$54,152.39
Current assets -	
Cash	\$23,643.67
Accounts receivable	11,962.26
Inventories	2,182.10
Prepaid expenses	<u>3,456.40</u>
Total current assets	<u>41,244.43</u>
Total	<u>\$95,396.82</u>

Liabilities and Capital

Current liabilities	\$ 9,122.18
Net worth -	
Capital, January 1, 1954	\$91,072.89
Profit--11 months	15,567.01
Capital withdrawn	<u>(20,365.26)</u>
Total net worth	<u>86,274.64</u>
Total	<u>\$95,396.82</u>

The properties of applicant Eeles include certificates of public convenience and necessity acquired by him pursuant to authorization granted by Decision No. 42623, dated March 15, 1949, Decision No. 43049, dated June 28, 1949, Decision No. 44557, dated July 18, 1950, and Decision No. 44597, dated August 1, 1950, together with 10 trucks and trailers, a pick-up truck, office furniture, and miscellaneous equipment. The \$54,152.39 appearing in the balance sheet

represents the original cost of the tangible assets less the depreciation reserve.

It appears that applicant Eeles has concluded it is to his advantage to conduct his operations by means of a corporate form of organization. Accordingly, he has caused the incorporation of Malco Transportation Company, a corporation, and he proposes to transfer to it his operative rights and his tangible assets, free and clear of indebtedness, together with \$20,000 in cash. He will retain the other current assets and will pay the current liabilities referred to in the preceding balance sheet.

It is intended that the new corporation will issue to applicant Eeles its promissory note in the principal amount of \$54,152.39 in payment for the properties to be transferred by him, and will sell to him 2,000 shares of common stock, at \$10 a share, to provide itself with \$20,000 of working capital. The note will be unsecured and will be payable on or before three years after date of issue with interest at the rate of 5% per annum.

The testimony shows that the equipment now operated by applicant Eeles has been adequate to meet demands for service, that all of such equipment will be transferred to the corporation and will be continued in use. It appears that there will be no change in the operating personnel or in the rates and service to the public as a result of the proposed transfer. It is true that the new corporation, at the outset, will have outstanding notes of approximately \$54,000, as contrasted with equity investment of \$20,000, but it is clear that upon the basis of the past operations the new corporation should be able to reduce the principal amount of the note within a reasonably short time. Under the circumstances set forth in this proceeding we are of the opinion, and so find, that the proposed transfer will not be adverse to the public interest.

In making this order we wish to 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, 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 rights and properties herein authorized to be transferred.

O R D E R

A public hearing having been held on the above entitled matter, and the Commission having considered the evidence and being of the opinion that the application should be granted, as herein provided, that the money, property or labor to be procured or paid for by the issue of the note and the shares of stock herein authorized is reasonably required by applicant corporation for the purposes specified herein, and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS HEREBY ORDERED as follows:

1. L. P. Beles, doing business as Malco Transportation Company, may transfer to Malco Transportation Company, a corporation, free and clear of all indebtedness, his highway common carrier and petroleum irregular route carrier operative rights, together with his equipment, under the terms set forth in this application.

2. Malco Transportation Company, a corporation, in payment for the properties herein authorized to be transferred, may issue its

promissory note in the principal amount of not exceeding \$54,152.39 and, for the purpose of providing working capital, may issue and sell not exceeding 2,000 shares of its common stock at \$10 a share.

3. Malco Transportation Company, a corporation, shall file with the Commission monthly reports as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

4. On not less than five days' notice to the Commission and to the public, 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 L. P. Beles, doing business as Malco Transportation Company, has withdrawn or canceled and Malco Transportation Company, a corporation, 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.

5. The authority herein granted will become effective when Malco Transportation Company, a corporation, has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$55.00.

Dated at San Francisco, California, this 15th day of February, 1955.

[Signature]
President

[Signature]

[Signature]

[Signature]

Commissioners

