

ORIGINAL

Decision No. 51659

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

| | | |
|---|---|-------------|
| In the Matter of the Application of |) | |
| Eldred Northup, J. L. Belyea, | : | |
| John MacLeod and Highland Corporation, |) | |
| a partnership, doing business as Belyea | : | Application |
| Truck Co., to transfer operating rights |) | No. 37027 |
| to Belyea Truck Co., a corporation; and | : | |
| of Belyea Truck Co., a corporation, for |) | |
| authority to issue capital stock. | : | |
| ----- |) | |

O P I N I O N

This is an application for an order authorizing Eldred Northup, J. L. Belyea, John MacLeod and Highland Corporation, to transfer operative rights and tangible properties to Belyea Truck Co., a corporation, and authorizing said corporation to issue \$50,000 par value of common stock.

The application shows that Eldred Northup, J. L. Belyea, John MacLeod and Highland Corporation, hereinafter called transferors, are partners doing business as Belyea Truck Co. and as such are engaged as highway common carriers of property and as petroleum irregular route carriers, in both interstate and intrastate business, under certificates of public convenience and necessity granted by the Interstate Commerce Commission and by this Commission. The California operating authority was acquired from predecessor operators pursuant to Decision No. 49751, dated March 2, 1954, in Application No. 35196, and, in general, permits the transportation of petroleum and petroleum products.

It appears that the operations of the partners have been profitable. A statement of their operating revenues and net income

for the last four calendar years is as follows:

| | <u>Operating Revenues</u> | <u>Net Income</u> |
|------|-------------------------------|-----------------------|
| 1951 | \$1,580,583 | \$202,212 |
| 1952 | 1,712,109 | 176,792 |
| 1953 | 2,169,476 | 227,950 |
| 1954 | 2,151,387 | 132,905 |

The financial position of the partnership as reflected by its balance sheet of March 31, 1955, is as follows:

Assets

| | | |
|---------------------------------|---------------|------------------|
| Current assets - | | |
| Cash and deposits | \$195,606 | |
| Accounts receivable | 192,477 | |
| Prepayments | 13,810 | |
| Materials and supplies | <u>64,154</u> | |
| Total current assets | | \$466,047 |
| Tangible property, less reserve | | 121,639 |
| Intangible property | | 2,140 |
| Other investments | | <u>2,140</u> |
| Total | | <u>\$591,966</u> |

Liabilities and Capital

| | | |
|-----------------------|---------------|------------------|
| Current liabilities | | |
| Equipment obligations | \$190,024 | |
| Total liabilities | <u>31,549</u> | |
| Total liabilities | | \$221,573 |
| Partnership capital | | <u>370,393</u> |
| Total | | <u>\$591,966</u> |

The transferors now desire to dispose of their operations and have agreed to sell their operative rights, equipment and other assets to Belyea Truck Co., a corporation, subject to outstanding liabilities, for a consideration of \$550,000, of which \$50,000 was paid upon execution of the agreement, \$95,000 will be payable upon consummation of the transaction, and \$405,000 will be payable in installments with final payment on April 1, 1958, the deferred balances to bear interest at the rate of 4-1/2% per annum. The operative rights and current assets will be conveyed upon the date of consummation, and the tangible properties upon receipt of the

installment payments, the interest of the parties to be reflected in and by conditional sales contracts. It appears that such contracts will cover not only motor vehicle equipment but also shop equipment, furniture and fixtures.

Of the total purchase price, applicants allocate \$538,250 to tangible property, \$11,000 to interstate rights and \$750 to California intrastate rights. Although the reported book value of the operative equipment is \$121,639, as shown in the preceding balance sheet, applicants assert that an independent appraisal indicates a value at this time of \$526,000.

Belyea Truck Co., the transferee, is a California corporation. It will be a wholly-owned subsidiary of Macco Corporation, a Nevada organization which is engaged in construction and contracting activities throughout the United States and elsewhere. Macco Corporation, according to the application, is a company of substantial size. At the close of February of this year, it reported its total investment in assets at \$9,944,013, and its outstanding liabilities at \$3,600,524, leaving net worth, represented by stock and surplus, of \$6,937,489. It reported current assets of \$7,577,053, including cash of \$1,340,428, as compared with current liabilities of only \$2,183,809.

Information filed with the Commission shows that Highland Corporation and John MacLeod, two of the partner transferors, own in excess of 54% of the outstanding stock of Macco Corporation and that said MacLeod and Eldred Northup, also a partner transferor, are officers of Macco Corporation. It appears that under the arrangements which have been made, the operating partners will become officers of the new corporate operator, the personnel now employed in the business will continue in the transferee's employment, and there will be no change in the rates and service offered the public. Macco

Corporation will purchase \$50,000 of the capital stock of Belyea Truck Co. and will guarantee payment of the obligations to be assumed by the transferee upon the execution of the agreement of purchase and sale of the properties, if for any reason the transferee should be unable to meet its requirements.

It is noted that the applicant corporation has contracted to pay \$550,000 for partnership interests having a reported book value of \$370,393. If the transferee is willing to pay more than the recorded book costs it may do so if the terms of the transaction are not so burdensome as to impair the utility service and thereby adversely affect the public.

The application shows that the transferee is acquiring not only operative rights, equipment and current and other assets, but also a volume of business which has generated substantial operating profits. A review of the present carrier's financial history indicates an earnings capacity more than adequate to permit the transferee to meet the obligations created by its agreement to purchase. Moreover, the application indicates that the corporation, as the new operator, will embark upon the enterprise with a substantial volume of cash working capital and a favorable current relationship. Upon the basis of the information before us we therefore conclude, and so find, that the transfer as proposed will not be adverse to the public interest.

The action taken herein shall not be construed to be a finding of the value of the properties herein authorized to be

transferred nor as binding the Commission to recognize the agreed purchase price or the appraisal values as bases for orders fixing rates or authorizing the issue of stock. We hereby 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.

Under the provisions of the Uniform System of Accounts prescribed by the Commission for highway carriers of property, the transferee shall enter in its property and depreciation reserve accounts the amounts reflected on the books of the transferors as of the date the transfer is consummated and shall enter in Account 1550, Other Intangible Property, any portion of the cost of acquisition not includible in such property and reserve accounts.

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, 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 stock and the execution of conditional sales contracts herein authorized is reasonably required by applicant corporation for the purpose specified herein, and that such purpose, except as otherwise authorized, is not, in whole or in part, reasonably chargeable.

to operating expenses or to income, therefore,

IT IS HEREBY ORDERED as follows:

1. Eldred Northup, J. L. Belyea, John MacLeod and Highland Corporation may transfer their certificates of public convenience and necessity and operative equipment to Belyea Truck Co., a corporation, on or before October 31, 1955, in accordance with the terms and conditions set forth in this application.

2. Belyea Truck Co., a corporation, may acquire said certificates and equipment and in payment may assume the payment of outstanding indebtedness of the transferors, may issue \$50,000 par value of common stock, and may execute conditional sales contracts providing for deferred payments of \$500,000 in principal amount as set forth in the agreement of purchase and sale.

3. 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 Eldred Northup, J. L. Belyea, John MacLeod and Highland Corporation have withdrawn or canceled and that Belyea Truck Co., 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.

4. Belyea Truck Co. 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. It shall also file a copy of each journal entry used to record on its books the acquisition

of the rights and equipment of Eldred Northup, J. L. Belyea, John MacLeod and Highland Corporation, such filing to be made within 30 days after such acquisition.

5. The authority herein granted will become effective when Belyea Truck Co., a corporation, has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$500.

Dated at San Francisco, California, this 12th day of July, 1955.

Justin J. Caena
President
Ray B. Lutz
Walter J. Kelly
W. H. Hardy

Commissioners

