

Decision No. 52124

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of GARIBALDI EQUIPMENT )  
 CO., INC., a corporation, to issue :  
 additional stock; application of )  
 GARIBALDI BROS. TRUCKING CO. :  
 and GARIBALDI EQUIPMENT CO., INC. )  
 to mortgage property; application :  
 of GARIBALDI BROS. TRUCKING CO. and )  
 GARIBALDI EQUIPMENT CO., INC., to :  
 transfer assets. )  
 ----- :

Application  
 No. 37205

Arlo D. Poe and John C. Allen  
 for applicants.

O P I N I O N

In this application the Commission is asked to enter an order authorizing (1) Garibaldi Bros. Trucking Co., a corporation, to execute two mortgages to D. Garibaldi, Jr., V. Garibaldi and J. Garibaldi, mortgagees, to secure the payment of approximately \$975,000; (2) Garibaldi Bros. Trucking Co. to transfer all its assets, including its operative rights, to Garibaldi Equipment Co., Inc.; and (3) Garibaldi Equipment Co., Inc. to issue \$275,000 par value of its common stock.

The application was filed on August 12. A public hearing was held before Examiner Coleman in Los Angeles on September 20, 1955, at which time the matter was taken under submission. The Commission has received no protests in the proceeding.

Garibaldi Bros. Trucking Co.

Garibaldi Bros. Trucking Co. is a California corporation engaged in business primarily as a highway common carrier of livestock in California, under a certificate of public convenience and necessity acquired by it under authorization granted by Decision No. 49601,

dated January 26, 1954, in Application No. 35031. It and its predecessor, a partnership by the same name, have reported revenues and net income during the last five years, as follows:

	<u>Operating Revenues</u>	<u>Net Income</u>
1950	\$ 754,152	\$40,346
1951	1,303,476	86,977
1952	1,619,559	70,007
1953	1,905,845	93,218
1954	2,380,300	61,525

The record indicates that the volume of business has been increasing. Exhibit E filed in the proceeding shows that in the first half of 1955 the carrier's operating revenues aggregated \$1,525,021, with net income of \$197,278, before provision for income tax liability estimated at \$97,084.

The application shows that the tangible capital of the corporation is stated on its balance sheet of June 30, 1955 at the net amount of \$514,835 and its common stock equity at \$529,525, segregated as follows:

Common stock	\$300,000
Unappropriated Surplus	
Earned surplus, January 1, 1955	32,247
Net profit - 1955	<u>197,278</u>
Total	\$529,525

The outstanding stock is held in equal proportions by D. Garibaldi, Jr., V. Garibaldi and J. Garibaldi.

Garibaldi Equipment Co., Inc.

Garibaldi Equipment Co., Inc. is a California corporation organized in August of 1954. It now is engaged as a radial highway common carrier of livestock and of bulk liquids in tank vehicles, excluding petroleum and petroleum products. For the period from September 14, 1954 to June 30, 1955, it reported operating revenues of \$76,061 and a net loss of \$8,031. It has reported its investment

in fixed assets as of June 30, 1955 at \$52,487 and its outstanding stock at \$20,100. It appears that D. Garibaldi, Jr. has, or will have, a 15% interest in the enterprise, with the remaining 85% being held by others not associated in the ownership of Garibaldi Bros. Trucking Co.

Agreement of July 1, 1955

It is reported that V. Garibaldi and J. Garibaldi now desire to retire from the operations of a highway common carrier and that they, together with D. Garibaldi, Jr., on July 1, 1955, entered into an agreement to sell all the outstanding stock of Garibaldi Bros. Trucking Co. to Garibaldi Equipment Co., Inc. for a base price of \$1,250,000.

The agreement provides for the payment of \$275,000 of the purchase price in cash upon delivery of the certificates representing such stock and for the payment of the remainder of the price in installments over a period of approximately five years. The deferred payments will be secured by two mortgages on the equipment and personal property, such mortgages to be given by the Garibaldi Bros. Trucking Co. to D. Garibaldi, Jr., V. Garibaldi and J. Garibaldi. The payments will also be secured by a pledge of the shares of stock and by a guaranty agreement to be executed by the shareholders of Garibaldi Equipment Co., Inc.

Transfer of Rights and Equipment

Upon consummation of the agreement of July 1, 1955, it is proposed to dissolve Garibaldi Bros. Trucking Co. and to distribute its assets, including its operative rights, to Garibaldi Equipment Co., Inc., the latter to assume the obligations of Garibaldi Bros. Trucking Co., including the two mortgages that company first proposes to execute to carry out the terms of the agreement.

Issue of Stock

Garibaldi Equipment Co., Inc. proposes to issue \$275,000 par value of stock to its shareholders in repayment of advances used to provide the cash down payment for the purchase of the shares of stock under the terms of the aforesaid agreement.

Pro Forma Balance Sheet

Applicants have filed as Exhibit 1 a pro forma balance sheet as of July 1, 1955, giving effect to the transactions referred to therein. A condensed statement of the same is as follows:

Assets

Current assets -		
Cash and deposits	\$ 194,951	
Notes and accounts receivable	284,688	
Prepayments	44,179	
Materials and supplies	<u>27,098</u>	
Total current assets		\$ 550,916
Tangible property -		
Total cost	1,347,736	
Less: depreciation reserve	<u>13,226</u>	
Net tangible property		1,334,510
Intangible property		50,000
Other assets		<u>8,250</u>
	Total	<u>\$1,943,676</u>

Liabilities and Capital

Current liabilities		\$ 440,894
Long-term debt(1)		1,215,713
Capital -		
Common stock	\$ 295,100	
Surplus account	<u>(8,031)</u>	
Total capital		<u>287,069</u>
	Total	<u>\$1,943,676</u>

(1) Including deferred payments on purchase of stock of Garibaldi Bros. Trucking Co.

( ) deficit

Write-up of Tangible Property

According to exhibits filed in this proceeding Garibaldi Equipment Co., Inc. proposes to write-up the book values of the

tangible property, in order to reflect more nearly the purchase price, as follows:

	<u>Costs</u>	<u>Depreciation Reserve</u>	<u>Net Book Value</u>
Present Book Values -			
Caribaldi Bros. Trucking Co.	\$ 649,995	\$135,160	\$ 514,835
Caribaldi Equipment Co., Inc.	<u>65,713</u>	<u>13,226</u>	<u>52,487</u>
Total	715,708	148,386	567,322
Pro Forma Book Values	\$1,347,736	\$ 13,226	\$1,334,510

Applicants assert that the tangible equipment is worth more than the present book values and that the purchase price represents the estimated market values of the equipment. Caribaldi Equipment Co., Inc. intends, upon acquiring the tangible properties, to establish the revised book values as its bases for depreciation under the provisions of the Internal Revenue Code.

#### Intangible Capital

No values appear on the balance sheet of Caribaldi Bros. Trucking Co. for operative rights and no portion of the \$1,250,000 is assigned by applicants to such rights or claimed in the application as the value of them. Exhibit 1 does show that Caribaldi Equipment Co., Inc., in setting up its pro forma balance sheets, develops a total of \$50,000 for intangible property.

#### Summary and Conclusions

The information before the Commission shows that Caribaldi Equipment Co., Inc., through the transactions outlined in this proceeding, will be acquiring a going business that has been substantial in its volume and has been increasing in size, that it will enter upon its operations with a good cash position having an ample amount of available working cash, and that its earnings based on past and present experience should be sufficient, along with depreciation accruals, to enable it to meet its obligations under the proposed purchase agreement.

The record shows that Garibaldi Equipment Co., Inc. will continue the service now offered to the public and that its officers and shareholders are experienced in the transportation business. The new operator proposes to discontinue any duplicating operating authority which may exist.

Upon reviewing the application and the evidence adduced at the hearing, we are of the opinion, and so find, that -

1. The transfer of the operative rights and equipment of Garibaldi Bros. Trucking Co. to Garibaldi Equipment Co., Inc. will not be adverse to the public interest.

2. No consideration will pass to Garibaldi Bros. Trucking Co. for the execution of the two mortgages. The execution of such mortgages for the purpose indicated does not constitute a transaction which comes within the scope of the Public Utilities Code and the application, in this respect, must be denied.

3. Garibaldi Equipment Co., Inc., in recording on its corporate books the acquisition of the properties of Garibaldi Bros. Trucking Co. must transfer to its property and depreciation reserve accounts the book balances of Garibaldi Bros. Trucking Co. at the date of transfer. The excess of the purchase price over the net book value of the properties to be thus acquired must be charged to Account 1550 - Other Intangible Property.

Our order will be entered in accordance with the foregoing findings. In making this order we place Garibaldi Equipment Co., Inc. upon 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.

We place the carrier upon notice, also, that it will be required to keep its books of account in accordance with the Uniform System of Accounts prescribed by the Commission and to file annual reports in the form to be provided and at the times to be specified.

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. In entering this order we are not accepting the claimed values for equipment and intangible capital as determining the rate base of the carrier. No authority is herein given to Garibaldi Equipment Co., Inc., to place on its books any value for the operative rights it will acquire. The present book values of the tangible capital are adequate to warrant an order authorizing the issue of the \$275,000 of stock.

O R D E R

A public hearing having been held on the above-entitled matter and the Commission being of the opinion that the application should be granted only as herein provided, that the money, property or labor to be procured or paid for through the issue of \$275,000 of stock 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, therefore,

IT IS HEREBY ORDERED as follows:

1. Garibaldi Bros. Trucking Co. may transfer its operative rights and equipment to Garibaldi Equipment Co., Inc. on or before December 31, 1955.

2. Garibaldi Equipment Co., Inc. in acquiring such rights and property may assume the payment of outstanding indebtedness and may issue not exceeding \$275,000 par value of its common stock.

3. The application of Garibaldi Bros. Trucking Co. to execute mortgages hereby is denied.

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 so as to show that Garibaldi Bros. Trucking Co. has withdrawn or canceled and Garibaldi Equipment Co., Inc., 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. Garibaldi Equipment Co., Inc. shall file a report, or reports, as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

6. Garibaldi Equipment Co., Inc. shall file with the Commission a copy of each journal entry used to record on its books the acquisition of the properties of Garibaldi Bros. Trucking Co. and the distribution of the purchase price to primary accounts, such filing to be made within 30 days after the date of such entries.

7. This order will become effective upon the date hereof.

Dated at San Francisco, California, this 25<sup>th</sup> day of October, 1955.

[Signature]  
President  
[Signature]  
[Signature]  
Commissioners

Justus F. Craemer  
Commissioner, Ray E. Untereiner, being necessarily absent, did not participate in the disposition of this proceeding.