

ORIGINAL

Decision No. 53199

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of LOUIS MARINO, LAWRENCE MARINO and ERNEST MARINO, a copartnership, doing business as MARINO BROTHERS TRUCKING COMPANY, to sell and transfer, and MARINO BROS. TRUCKING CO., a corporation, to purchase and acquire the operative rights, equipment and other assets of Sellers, and to assume certain liabilities of Sellers.

Application
No. 37963

In the Matter of the Application of MARINO BROS. TRUCKING CO., a California corporation, for authority to issue shares of its capital stock.

Application
No. 37964

OPINION

By Application No. 37963 the Commission is requested to authorize Louis Marino, Lawrence Marino and Ernest Marino, a copartnership doing business as Marino Brothers Trucking Company, to sell and transfer operative rights, equipment and other assets to Marino Bros. Trucking Co., a corporation, and the latter to issue promissory notes to and assume certain liabilities of the partnership.

By Application No. 37964 Marino Bros. Trucking Co., a corporation, requests authority to issue and sell 3,000 shares of its capital stock, having an aggregate par value of \$30,000, for cash at its par value, and to use the proceeds to meet, in part, the purchase price it proposes to pay for the properties and operative rights of Marino Brothers Trucking Company, a partnership.

Marino Brothers Trucking Company, hereinafter referred to as the partnership, presently is engaged in the business of trans-

porting general commodities as a permit carrier and in the transportation of canned goods as a highway common carrier under authority granted by this Commission in Decision No. 46032 dated July 31, 1951, in Application No. 31983.^{1/} However, by Decision No. 53165, dated May 28, 1956, the Commission cancelled the operative rights granted by said Decision No. 46032 and issued to applicant partners a new certificate in lieu thereof, such new certificate to become effective ninety days after May 28, 1956.

The partnership income statements for the calendar year 1955, attached to Application No. 37963 as Exhibit B, and for the calendar year 1954, as contained in its annual report on file with this Commission, are summarized in the following tabulation:

	<u>1954</u>	<u>1955</u>
Revenue	\$438,690.21	\$529,971.18
Expenses		
Operation and maintenance	\$346,014.81	431,638.40
Depreciation expense	40,220.69	38,232.37
Depreciation adjustment	(10,789.28)	(9,474.90)
Operating taxes	39,492.80	44,726.02
Total expenses	<u>\$414,939.02</u>	<u>\$505,121.89</u>
Net operating income	\$ 23,751.19	\$ 24,849.29
Other income	(1,115.30)	838.92
Gross income	\$ 22,635.89	\$ 25,688.21
Income deductions	1,567.03	9,273.86
Net profit*	<u>\$ 21,068.86</u>	<u>\$ 16,414.35</u>

*Before allowance for taxes based on income but after allowing for salaries to partners totalling \$15,600 per annum.

 Red figure.

The partners now are of the opinion that it would be advantageous to change from a partnership to a corporate form of organization in order to facilitate the financing of further expansion and to secure the stability of the corporate form of operation and the advantage of limited personal liability. Accordingly, they have caused to be formed a corporation, organized under the laws of the

^{1/} Authority granted to transport canned goods, subject to certain restrictions, between Modesto, Stockton and Manteca, and between each of said points, on the one hand, and San Francisco, Richmond, Berkeley, Oakland and Alameda, on the other hand.

State of California, known as Marino Bros. Trucking Co., and have entered into an agreement of sale with the corporation covering the sale by the partnership of the operative rights and other assets to the corporation. Under the terms set forth in the agreement of sale, a copy of which is attached to Application No. 37963 as Exhibit A, the partnership would transfer to the corporation certain of its assets, including revenue equipment at an appraised value, and in exchange the corporation would assume liabilities of the partnership totalling \$106,972.02 and would issue its promissory notes in the principal amount of \$218,044.68 for the balance of the purchase price. A tabulation showing in comparative form the December 31, 1955, balance sheet of the partnership and on a pro forma basis the balance sheet of the corporation, after giving effect to the provisions contained in the agreement of sale, follows:

	<u>Partnership</u>	<u>Corporation</u>
<u>Assets</u>		
Cash	\$ 1,416.54	\$ 708.27
Other current assets	51,498.10	50,943.22
Land and land rights	20,117.37	-
Structures (Net of depreciation reserve)	17,645.17	-
Revenue equipment	128,002.95	270,019.26
Service cars and equipment	2,784.99	2,734.99
Furniture and office equip.	692.06	560.96
Shop and garage equipment	2,547.32	-
Other equipment	778.34	-
Total assets	<u>\$225,482.84</u>	<u>\$325,016.70</u>
<u>Liabilities</u>		
Notes payable	\$ 2,139.85	\$ 2,139.85
Accounts payable - Trade and subhaulers	36,996.14	36,996.14
Accounts payable - Partner	16,000.00	-
Accrued liabilities	5,659.61	5,659.61
Equipment chattel mortgages	62,176.42	62,176.42
Mortgage on real property	7,944.91	-
Partnership capital or notes payable	94,565.91	218,044.68
Total liabilities	<u>\$225,482.84</u>	<u>\$325,016.70</u>

The partnership does not propose to transfer to the corporation the land, structures or shop and garage equipment presently used

in performing the operations as a highway carrier. It has, however, entered into an agreement with the corporation whereby the corporation will lease these facilities for a five-year period at an annual rental of \$4,800.

The revenue equipment being transferred has been assigned a sales price which is \$142,016.31 in excess of the depreciated cost of such equipment as shown on the books of the partnership. In this connection, applicant corporation is placed upon notice that Instruction 182.01-19, subparagraph (f) of the Uniform System of Accounts for Class I Common and Contract Motor Carriers of Property prescribed by this Commission requires the purchaser of property to enter on its records, as the cost of property acquired and as the depreciation accrued thereon, the same amounts as those reflected on the books of the transferor as of the date the transfer was consummated and that any excess of the purchase price over such recorded cost less accrued depreciation shall be charged to Account 1550 - Other Intangible Property. If the transfer herein sought is approved, applicant corporation will be required to charge \$142,016.31 of the purchase price to Account 1550 and shall be required to amortize such balance, over a 10-year period starting in 1956, in equal annual amounts by charges to income account 7500 - Other Deductions.

To finance the acquisition of the properties herein sought to be transferred, applicant corporation proposes to issue to the partners its promissory note or notes in the principal sum of \$218,044.68. Such note or notes will be payable \$30,000 on or before December 31, 1956, with the balance of \$188,044.68 payable in equal installments annually over a period of 10 years with interest at the rate of 3% per annum on the unpaid balance. To obtain the funds

necessary to meet the initial installment on the notes, the corporation requests authority to issue and sell at par for cash 3,000 shares of its capital stock having a par value of \$30,000.

From a review of the partnership's earning record of the past two years, it appears that the corporation should have sufficient funds from operations and from depreciation and amortization accruals to finance payments on its outstanding obligations. However, because of the substantial charge to intangible capital resulting from this transfer, the Commission will require that non-negotiable notes be issued to the partners in payment for their properties.

The applications indicate that there will be no change in the management or control of the business as a result of the transfer and in our opinion the transaction will not be adverse to the public interest and should be authorized. In making our order we place applicants 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.

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

The Commission having considered the above-entitled matters and being of the opinion that public hearings are not necessary, that the applications should be granted, as herein provided, that the money, property or labor to be procured or paid for by the issue of the shares of stock and the notes 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. Louis Marino, Lawrence Marino and Ernest Marino, doing business as Marino Brothers Trucking Company, may transfer to Marino Bros. Trucking Co., a corporation, the operative authority created by Decision No. 46032, dated July 31, 1951, and by Decision No. 53165, dated May 28, 1956, and the operative properties referred to in this proceeding, and Marino Bros. Trucking Co., a corporation, may assume the outstanding liabilities of Marino Brothers Trucking Company, a partnership, as provided for in the agreement of sale attached to Application No. 37963 as Exhibit A. ✓

2. Marino Bros. Trucking Co., a corporation, in part payment for the certificate and the properties herein authorized to be transferred, may issue to the partners its non-negotiable promissory notes in an amount not exceeding \$218,044.68, such notes to be repaid \$30,000 on or before December 31, 1956, and the balance in equal annual installments over a 10-year period with interest at the rate of 3% per annum on the unpaid balances.

3. Marino Bros. Trucking Co., a corporation, may issue and sell, at par for cash, 3,000 shares of its \$10 par value capital stock and may use the proceeds to meet the initial payment of \$30,000 due in 1956 on the notes herein authorized.

4. Within 60 days after the effective date hereof and on not less than five days' notice to the Commission and the public, effective concurrently with the consummation of the transfer herein authorized, 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 Louis Marino, Lawrence Marino and Ernest Marino, doing business as Marino Brothers Trucking Company, have withdrawn or cancelled and that Marino Bros. Trucking 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 filing and construction of tariffs set forth in the Commission's General Order No. 80.

5. Within 30 days after date of execution, Marino Bros. Trucking Co., a corporation, shall file with this Commission a copy of each and every note issued under the authority herein granted.

6. Marino Bros. Trucking Co., 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.

7. Marino Bros. Trucking Co., a corporation, shall file a copy of the journal entries, within 30 days after the date of such entries, which were used to record the acquisition of the properties herein authorized to be transferred.

8. None of the stock authorized by paragraph 3 hereof shall be sold or issued unless and until the corporation first shall have selected an escrow holder and said escrow holder shall have been first approved in writing by the Commission, and when issued all documents evidencing any of said stock shall forthwith be deposited with said escrow holder, to be held as an escrow pending the further written order of the Commission. The receipt of said escrow holder for said documents shall be filed with the Commission, and the owner or persons entitled to said stock shall not consummate a sale or transfer of said stock, or any interest therein, or receive any consideration therefor, until the written consent of the Commission shall have been obtained so to do.

9. The authority herein granted will become effective when Marino Bros. Trucking Co., a corporation, has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$219.

Dated at San Francisco, California, this 12th day of June, 1956.

[Signature]
President
Justus J. Cisneros
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Commissioners

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA
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BY [Signature]