

in Application No. 33105, for the sum of \$9,500. The partners have reported their revenues and expenses for the year 1954 and for the first five months of 1955 as follows:

	<u>1954</u>	<u>1955 5 Months</u>
Operating revenues	\$163,234	\$82,182
Operating expenses and taxes	<u>143,891</u>	<u>70,612</u>
Net carrier income	19,343	11,570
Interest deductions	<u>1,216</u>	<u>686</u>
Net income before income taxes	<u>\$ 18,127</u>	<u>\$10,884</u>

The members of the partnership report their assets and liabilities as of May 31, 1955, as follows:

Assets

Current assets -		
Cash	\$3,419	
Accounts receivable	<u>6,222</u>	
Total current assets		\$ 9,641
Tangible property, less reserves		135,610
Intangible property		9,500
Deferred debits		<u>7,578</u>
	Total	<u>\$162,329</u>

Liabilities and Capital

Current liabilities	\$ 7,136
Other liabilities	46,925
Partnership account	<u>108,268</u>
	Total
	<u>\$162,329</u>

It appears that applicants Simonoff now desire to conduct their operations by means of a corporate form of organization, that they have organized Swift Transportation Company, a corporation, and that they propose to transfer their operative rights and equipment to it in consideration of the assumption by the corporation of the outstanding liabilities and the issue of shares of stock of the aggregate par value of \$108,200. It appears that the corporation will continue the operations without interruption of service and with the same equipment and under the same rates.

It is noted that the amount of stock proposed to be issued by applicant corporation is measured by the partners' reported investment in the properties and business, as reflected by their balance sheet of May 31, 1955, appearing in this decision. The applicants, in arriving at the amount to be capitalized through the issue of stock, have included among the assets intangible capital of \$9,500 which, according to information before us, represents the purchase price paid by the partners for the certificate of public convenience and necessity they now hold. In effect, then, applicants are seeking to capitalize the operative rights referred to in this proceeding at their agreed sale and purchase price at the time the present owners acquired them.

Section 820 of the Public Utilities Code reads as follows:

"The Commission shall have no power to authorize the capitalization of the right to be a corporation, or the capitalization of any franchise or permit, or the right to own, operate, or enjoy any such franchise or permit, in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the grant of such franchise, permit, or right. No contract for consolidation or lease shall be capitalized, nor shall any public utility issue any bonds, notes, or other evidences of indebtedness against or as a lien upon any contract for consolidation or merger."

We are of the opinion, and so find, that the transfer to the corporation and the operation of the business by it will not be adverse to the public interest and should be authorized. However, because of the provision of the Public Utilities Code to which reference has been made, we cannot recognize the \$9,500 item as a proper base for an order authorizing the issue of stock. Accordingly, we will authorize the transfer but will permit the issue of not exceeding \$98,700 par value of stock and the assumption of liabilities in payment for the properties and business. If it is intended for the corporation to pay said sum of \$9,500 to applicants

Simonoff, it must finance the same from some source other than securities requiring the Commission's authorization.

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 rights and properties herein authorized to be transferred.

O R D E R

The Commission having considered the application of William Simonoff and Sam Simonoff and Swift Transportation Company, a corporation, for an order authorizing the transfer of operative rights and properties and the issue of \$108,200 of stock 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 \$98,700 of stock is reasonably required by applicant corporation 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. William Simonoff and Sam Simonoff, copartners doing business as Swift Transportation Company, may transfer to Swift Transportation Company, a corporation, on or before December 31, 1955, their certificate of public convenience and necessity and their operative equipment, as set forth in this application.

2. Swift Transportation Company, a corporation, in payment for said operative rights and equipment, may assume the payment of outstanding indebtedness of William Simonoff and Sam Simonoff, as set forth in this proceeding, and may issue not exceeding \$98,700 par value of its common stock.

3. None of the stock authorized by paragraph 2 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.

4. The application of Swift Transportation Company, a corporation, so far as it involves the issue of the remaining \$9,500 of stock, is denied.

5. 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 William Simonoff and Sam Simonoff have withdrawn or canceled and Swift 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.

6. Swift 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.

7. Except as otherwise stated, this order will become effective 20 days after the date hereof.

Dated at San Francisco, California, this 2nd day of August, 1955.

W. E. ...
 President

Justin J. ...

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 Commissioners