

ORIGINAL

Decision No. 50000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 RALPH S. NEWCOMER, an individual,
 doing business as REAL TRANSPORTA-
 TION COMPANY, for authority to sell
 and transfer certain property and
 operative rights; and SWIFT TRANSPOR-
 TATION COMPANY, a corporation, to
 purchase and acquire said property and
 rights.

Application No. 41375

OPINION AND ORDER

The Commission is requested to authorize Ralph S. Newcomer, who is engaged in the transportation of property as a highway common carrier (Decisions Nos. 48394 and 58266) between Los Angeles Drayage Area, on the one hand, and San Bernardino, Riverside and Redlands, on the other hand; between Pomona and Riverside; between Riverside and San Bernardino; between Redlands and Yucaipa; and serving the points of El Monte and Corona subject to a restriction prohibiting transportation of shipments in excess of 500 pounds except for shipments originating in Pomona and destined to points east of Garey Avenue, to transfer such operative right and equipment to Swift Transportation Company, a corporation.

The application sets forth allegations which may be summarized as follows:

1. That the purchase price for the transfer of the operative right is the sum of \$3,000, cash, payable in full on or before seven days after the effective date of an order by the Commission authorizing the proposed transfer.
2. That the purchase price for the transfer of the equipment (3 trucks, 6 tractors, 5 semi-vans and 2 pickup trucks) is the sum of

\$16,700, cash, payable in full on or before seven days after the effective date of an order by the Commission authorizing the proposed transfer.

3. That Swift Transportation Company for many years has been and now is transporting property pursuant to a radial highway common carrier permit issued by the Commission.

4. That Ralph S. Newcomer believed he could integrate and correlate his permitted and certificated operations; that in fact such integration and correlation could not be perfected; that the certificated operation has resulted in a consistent pecuniary loss due, among other things, to the 500 pound weight restriction.

5. That Swift Transportation Company possesses the financial ability, equipment, shops and terminals to render the service within the area delineated by the certificate, authority to transfer which is sought herein.

6. That the public interest will be better served by Swift Transportation Company.

7. That Ralph S. Newcomer is not a party to through routes and joint rates with any other carrier.

8. That Swift Transportation Company will continue operating on the same schedules over the same routes and at the same rates as presently conducted and maintained by Ralph S. Newcomer.

The Commission, upon consideration of all the allegations of the application and the exhibits thereto attached, finds and concludes that the public interest will not be adversely affected by approval of the transfer of the operative right and equipment here involved.

The application will be granted. No finding is made as to the value of such operative right and equipment. A public hearing is not necessary.

Swift Transportation Company is placed on notice that it cannot engage in the transportation of property as a highway common carrier and as a radial highway common carrier over the same routes or between the same points.

Swift Transportation Company is further 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, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

An application having been filed and based upon the evidence therein set forth,

IT IS ORDERED:

1. That, on or before November 30, 1959, Ralph S. Newcomer may sell and transfer and Swift Transportation Company, a corporation, may purchase and acquire the operative right and equipment referred to in the application in accordance with the terms of the agreement attached thereto as Exhibit "A-1".
2. That, within thirty days after the consummation of the transfer herein authorized, Swift Transportation Company shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.
3. That, on not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, applicants shall amend or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the operations here involved to show that Ralph S. Newcomer has withdrawn or canceled, and Swift Transportation Company has adopted

or established as its own, said rates, rules and regulations. The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 18th day of August, 1959.

E. W. R. Boyd
President

Arthur E. Mitchell

E. Lynn Fox

Theodore J. Turner
Commissioners