

Decision No. 85727**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
 of: SWIFT TRANSPORTATION)
 COMPANY, a California corpora-)
 tion, to purchase, and of S & M)
 FREIGHT LINES, a California)
 corporation, to sell, a portion)
 of a certificate of public con-)
 venience and necessity issued by)
 the California Public Utilities)
 Commission, authorizing the)
 transportation of general commod-)
 ities, with specified exceptions,)
 between certain points in)
 Southern California.)

Application No. 56281
 (Filed February 18, 1976)

O P I N I O N

S & M Freight Lines, a California corporation (seller) requests authority to sell and transfer, and Swift Transportation Company requests authority to purchase and acquire a portion of a certificate of public convenience and necessity authorizing operation as a highway common carrier.

The certificate was granted by Decision 60842 dated October 4, 1960 in Application 41856 and is registered with the Interstate Commerce Commission in Docket MC-10381 (Sub 3). It authorizes the transportation of general commodities, with specified exceptions, between points and places in the Los Angeles Basin Area and between points in the Los Angeles Basin Area, on the one hand, and on the other hand, (a) the San Diego Territory and certain intermediate and off-route points; (b) Santa Barbara and certain intermediate and off-route points; and (c) Indio and certain intermediate and off-route points. The applicants propose the sale and transfer of that portion of the certificate authorizing operations between the Los Angeles Basin Area, on the one hand, and on the other hand, the San Diego Territory over and along U.S. Highway 101

and U.S. Highway 395 serving designated intermediate and off-route points on and along U.S. Highway 101. The proposed transfer, insofar as the interstate Certificate of Registration is concerned was approved by the Interstate Commerce Commission pursuant to Section 5 of the Interstate Commerce Act in Docket MC-F-12654.

The applicant purchaser holds the following certificate of public convenience and necessity authorizing operations as a highway common carrier.

Transportation of general commodities with specified exception, between points in Los Angeles Basin Territory and between points in said Los Angeles Basin Territory, on the one hand, and Banning and certain intermediate points on the other hand, granted by Decision 60773 dated September 20, 1960 in Application 42271 as amended by Decision 74082 dated May 7, 1968 in Application 48547.

Consideration for the sale of the operating authority is the sum of \$75,000.00 of which \$15,000.00 is to be paid upon the issuance of a final order of the Interstate Commerce Commission, or other required regulatory agency, approving the transaction. The balance of \$60,000 is to be paid in monthly installments of \$1,000 or more per month.

Seller and Purchaser are both members of Western Motor Tariff Bureau, Inc. Purchaser will continue its participation in the same tariffs with expansion as necessary to cover the transferred authority.

The applicants request relief from the provisions of Rule 37 of the Commission's Rules of Practice and Procedure which

requires wide dissemination of the application. The relief is requested on the basis of Rule 87 which permits deviation from the rules in order to secure just, speedy and inexpensive determination of the issues presented. In support thereof, the applicants allege that the transactions will have no adverse effect on the shipping public or any other carriers. No protests to the application have been received.

After consideration, the Commission finds:

1. The requested deviation from its Rules of Practice and Procedure should be authorized;
2. The proposed transfer would not be adverse to the public interest.

The Commission concludes that the application should be granted as set forth in the ensuing order. A public hearing is not necessary. The operating rights will be restated in new certificates. The new certificates issued to the applicants will not broaden or change the interstate or foreign commerce rights held by the carriers. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificates presently held by S & M Freight Lines and Swift Transportation Company, and the issuance of in lieu certificates in appendix form to S & M Freight Lines, and Swift Transportation Company.

The Commission further concludes that the effective date of this order should be the date on which it is signed because the transfer has heretofore been approved by the Interstate Commerce Commission under its exclusive and plenary jurisdiction pursuant to Section 5 of the Interstate Commerce Act. Under the provisions of that order the transfer must be consummated on or before April 28, 1976 or said order shall be of no force and effect.

Applicants are 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. 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.

O R D E R

IT IS ORDERED that:

1. On or before April 28, 1976, S & M Freight Lines, a California corporation, may sell and transfer the operating rights referred to in the application, as amended, to Swift Transportation Company, a corporation.
2. Within thirty days after the transfer, applicant shall file with the Commission written acceptance of the certificates and the purchaser shall file with the Commission a true copy of the bill of sale or other instrument of transfer.
3. Applicants shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the authority granted by this decision to show that they have adopted or established, as their own, the rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of this order on not less than five days' notice to the Commission and the public, and the effective date of the tariff filing shall be concurrent with the transfer. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filings of tariffs set forth in the Commission's General Order 80-Series. Failure to comply with the provisions of General Order 80-Series may result in a cancellation of the operating authority

granted in this decision.

4. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, certificates of public convenience and necessity are granted to S & M Freight Lines and Swift Transportation Company authorizing them to operate as highway common carriers as defined in Section 213 of the Public Utilities Code, between the points and over the routes set forth in the Appendices attached hereto and made a part hereof.

5. The certificates of public convenience and necessity granted by Decision 60842, and Decision 60773 as amended, are revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Applicants shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order 100-Series.

7. Applicants shall maintain their accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

8. Applicants shall comply with the requirements of the Commission's General Order 84-Series for the transportation of collect on delivery shipments. If they elect not to transport collect on delivery shipments, they shall make the appropriate tariff filings as required by the General Order.

9. The applicants are granted a deviation from Rule 37 of the Commission's Rules of Practice and Procedure to the extent requested.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 20th day of April, 1976.

President
William J. ...

Vernon L. ...

L. ...

Robert ...
Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.

Swift Transportation Company by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of general commodities as follows:

- a. Between all points and places in Los Angeles Basin Territory as described in Note A hereof.
- b. Between all points and places in Los Angeles Basin Territory on the one hand and Banning, California on the other hand via Interstate Highway 10 serving intermediate points between Redlands, California, on the one hand and Banning, California, on the other hand.

RESTRICTION: Does not include the right to render local service between points between Redlands and Banning.

- c. Between all points and places in Los Angeles Basin Area as described in Note B hereof on the one hand, and San Diego Territory as described in Note C hereof on the other hand, via Interstate Highway 5, serving all intermediate points on Interstate Highway 5 and all points within 5 miles laterally of that portion of Interstate Highway 5 extending from Los Angeles Basin Area to the San Diego Territory as described in Note C hereof, including Camp Pendleton.

Operation along Interstate Highway 15 is authorized as an alternate route between Los Angeles Basin Area as described in Note B hereof and San Diego Territory as described in Note C hereof, serving no intermediate points on Interstate Highway 15.

Except that pursuant to the authority herein granted carrier shall not transport any shipments of:

1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in salesmen's hand sample cases, suitcases,

Issued by California Public Utilities Commission.

Decision 85727, Application 56281.

- overnight or boston bags, brief cases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags (jute, cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton, burlap, gunny, fibreboard, or straw matting).
2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis, freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.
 3. Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine or wethers.
 4. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
 5. Commodities when transported in bulk in dump-type trucks or trailers or in hopper-type trucks or trailers.
 6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
 7. Logs.
 8. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
 9. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.

Issued by California Public Utilities Commission.

Decision 85727, Application 56281.

In performing the service herein authorized, carrier may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of said service.

NOTE A

LOS ANGELES BASIN TERRITORY

Los Angeles Basin Territory includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County Boundary Line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway 118, approximately two miles west of Chatsworth; easterly along State Highway 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary of the City of San Fernando to Maclay Avenue; northeasterly along Maclay Avenue and its prolongation to the Angeles National Forest Boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest Boundary to Mill Creek Road (State Highway 38); westerly along Mill Creek Road to Bryant Street; southerly along Bryant Street to and including the unincorporated community of Yucaipa; westerly along Yucaipa Boulevard to Interstate Highway 10; northwesterly along Interstate Highway 10 to Redlands Boulevard; northwesterly along Redlands Boulevard to Barton Road; westerly along Barton Road to La Cadena Drive; southerly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to State Highway 60; southeasterly along State Highway 60 and U.S. Highway 395 to Nuevo Road; easterly along Nuevo Road via Nuevo and Lakeview to State Highway 79; southerly along State Highway 79 to State Highway 74; thence westerly to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to The Atchison, Topeka & Santa Fe right-of-way; southerly along said right-of-way to Washington Road; southerly along Washington Road through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to Winchester Road (State Highway 79) to Jefferson Avenue; southerly along Jefferson Avenue to U.S. Highway 395; southerly along U.S. Highway 395 to the Riverside County-San Diego County Boundary Line; westerly along said boundary line to the Orange County-San Diego County Boundary Line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to point of beginning, including the point of March Air Force Base.

Issued by California Public Utilities Commission.

Decision 85727, Application 56281.

NOTE B

LOS ANGELES BASIN AREA

Los Angeles Basin Area includes the area embraced by the following boundary:

Beginning at the intersection of State Highway 27 and State Highway 1; northerly on State Highway 27 to U.S. Highway 101; westerly on U.S. Highway 101 to a point where the city limits of the City of Los Angeles are intersected thereby; northerly and easterly along said city limits of Los Angeles to a point from which an imaginary line drawn easterly intersects Interstate Highway 405; easterly from such point along such imaginary line to Interstate Highway 405; southerly along Interstate Highway 405 to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary to McClay Avenue; thence northeasterly along McClay Avenue and its prolongation to the Angeles National Forest boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest boundary to State Highway 38; westerly along State Highway 38 to Bryant Street north of Yucaipa; southerly along Bryant Street to and including the unincorporated community of Yucaipa; westerly along Redlands Boulevard to Interstate Highway 10; northwesterly along Interstate Highway 10 to and including the City of Redlands; westerly along Interstate Highway 10 to Interstate Highway 15; southerly along Interstate Highway 15 to Alessandro near March Air Force Base; westerly along Van Buren Boulevard to Arlington; southwesterly along Magnolia Avenue to State Highway 91; southwesterly and westerly along State Highway 91 to State Highway 55; southerly along State Highway 55 to the Pacific Ocean; westerly and northerly along the shoreline of the Pacific Ocean to a point directly south of the intersection of Sunset Boulevard and State Highway 1; thence northerly along an imaginary line to the point of beginning.

Included within the territory immediately above described are all places within the corporate limits of any city which is bisected by state and interstate highways and county roads constituting the boundary of such territory between Yucaipa and Newport Beach.

NOTE C

SAN DIEGO TERRITORY

The San Diego Territory includes that area embraced by following an imaginary line starting at a point approximately four miles north of La Jolla on the Pacific Coast shoreline running

Issued by California Public Utilities Commission.

Decision 85727, Application 56281.

east to Miramar on U.S. Highway 395; thence following an imaginary line running southeasterly to Lakeside on State Highway 67; thence southerly on County Road S 17 (San Diego County) and its prolongation to State Highway 94; easterly on State Highway 94 to Jamul; thence due south following an imaginary line to the California-Mexico Boundary Line; thence westerly along the boundary line to the Pacific Ocean and north along the shoreline to point of beginning.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision 85727, Application 56281.

S & M Freight Lines, a California corporation by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of general commodities as follows:

1. Between all points and places in the Los Angeles Basin Area as described in Note A hereof.
2. Between all points and places in the Los Angeles Basin Area on the one hand and on the other hand,
 - (a) Santa Barbara via U. S. Highway 101 and State Highway 1 serving all intermediate points on said highways and all points laterally within 5 miles of said highways between the Los Angeles Basin Area as described in Note A hereof and Santa Barabara.
 - (b) Indio via Interstate Highway 10 serving all intermediate points on said highway and all points laterally within five miles of said highway between the Los Angeles Basin Area and Indio.

Except that pursuant to the authority herein granted carrier shall not transport any shipments of:

1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in salesmen's hand sample cases, suitcases, overnight or boston bags, brief cases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags (jute, cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton, burlap, gunny, fibreboard, or straw matting).

Issued by California Public Utilities Commission.

Decision 85727, Application 56281.

2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis, freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.
3. Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine or wethers.
4. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailer or a combination of such highway vehicles.
5. Commodities when transported in bulk in dump-type trucks or trailers or in hopper-type trucks or trailers.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
8. Logs.

NOTE A

LOS ANGELES BASIN AREA

Los Angeles Basin Area includes the area embraced by the following boundary:

Beginning at the intersection of State Highway 27 and State Highway 1; northerly on State Highway 27 to U.S. Highway 101; westerly on U.S. Highway 101 to a point where the city limits

Issued by California Public Utilities Commission.

Decision 85727, Application 56281.

of the City of Los Angeles are intersected thereby; northerly and easterly along said city limits of Los Angeles to a point from which an imaginary line drawn easterly intersects Interstate Highway 405; easterly from such point along such imaginary line to Interstate Highway 405; southerly along Interstate Highway 405 to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary to McClay Avenue; thence northeasterly along McClay Avenue and its prolongation to the Angeles National Forest boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest boundary to State Highway 38; westerly along State Highway 38 to Bryant Street north of Yucaipa; southerly along Bryant Street to and including the unincorporated community of Yucaipa; westerly along Redlands Boulevard to Interstate Highway 10; northwesterly along Interstate Highway 10 to and including the City of Redlands; westerly along Interstate Highway 10 to Interstate Highway 15; southerly along Interstate Highway 15 to Alessandro near March Air Force Base; westerly along Van Buren Boulevard to Arlington; southwesterly along Magnolia Avenue to State Highway 91; southwesterly and westerly along State Highway 91 to State Highway 55; southerly along State Highway 55 to the Pacific Ocean; westerly and northerly along the shoreline of the Pacific Ocean to a point directly south of the intersection of Sunset Boulevard and State Highway 1; thence northerly along an imaginary line to the point of beginning.

Included within the territory immediately above described are all places within the corporate limits of any city which is bisected by state and interstate highways and county roads constituting the boundary of such territory between Yucaipa and Newport Beach.

(END OF APPENDIX B)

Issued by California Public Utilities Commission.

Decision 85727, Application 56281.