

86424

ORIGINAL

Decision No. \_\_\_\_\_

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
 of KING DELIVERY, INC., a cor- )  
 poration, for authority to )  
 acquire a Certificate of Public )  
 Convenience and Necessity, and )  
 SWIFT TRANSPORTATION COMPANY, a )  
 corporation, to transfer pursuant )  
 to Sections 851-854 of the )  
 California Public Utilities Code. )

Application No. 56561  
 (Filed June 16, 1976)

O P I N I O N

Swift Transportation Company, a California corporation (Seller), requests authority to sell and transfer and King Delivery, Inc., a California corporation (Purchaser) requests authority to purchase and acquire a certificate of public convenience and necessity authorizing operations as a highway common carrier.

The certificate was granted by Decision 85727, dated April 20, 1976, in Application 56281 and is registered in part with the Interstate Commerce Commission in Docket MC-99497 (Sub-No. 4). It authorizes transportation of general commodities, with the usual exceptions, between points and places within the Los Angeles Basin Territory, between said territory and Banning and between the Los Angeles Basin Area and the San Diego Territory via Interstate Highway 5 and points and places within five statute miles of such route. Seller has applied to the Interstate Commerce Commission (ICC) for a Certificate of Registration covering the portion of the intrastate certificate authorizing operations between the Los Angeles Basin Area and the San Diego Territory.

Applicants allege that the proposed transaction will promote the public interest for the following reasons: (a) Purchaser desires to conduct the operations as they were conducted by Seller

and is able to both on the basis of financial consideration and personnel operate more efficiently and render a better service to the shipping public; and (b) Purchaser holds permits issued by this Commission. Its personnel have had many years experience in the trucking business; (c) Seller for economic and other reasons, intends to retire from transportation operations, to, from and between points and places in the certificated area of service and purchaser seeks to carry on such common carrier activity in the future.

Pursuant to the Purchase and Sale Agreement of June 2, 1976 between the parties, the total consideration to be paid for the operating rights is one hundred fifty five thousand dollars (\$155,000) allocated as follows:

1.	Intrastate authority	- \$ 90,000
2.	Certificates of Registra-	
	tion including that	
	to be issued	- <u>65,000</u>
	Total	\$155,000

Applicants propose to seek corresponding authority from the Interstate Commerce Commission to transfer the Certificate of Registration and certificate to be issued. Consummation will be effected after approval of both this application and that filed with the Interstate Commerce Commission.

The sum of seven thousand five hundred dollars (\$7,500) has been placed into escrow and the balance of the purchase price will be evidenced by a promissory note and secured by a security agreement. The note provides for interest on the unpaid balance at the rate of 9% per annum and payment of principal and interest of \$1,328 per month for a period of 20 years.

Purchaser's balance sheet of March 31, 1976 shows net worth of \$272,186.97 and it operates a large fleet of highway equipment (Appendix "E" to the application). Seller is party to Western Motor Tariff Bureau, Inc., Agent, tariff publications as are

necessary to cover operations under the rights to be transferred. Purchaser proposes to adopt the tariffs.

Applicants request relief from the provisions of the Commission's Rules of Practice and Procedure which require wide dissemination of the application. A copy of the application was served on the California Trucking Association and notice of the filing of the application was made in the Commission's Daily Calendar of June 17, 1976. No protests to the application have been received.

After consideration, the Commission finds:

1. The proposed transfer and encumbrance of the certificate would not be adverse to the public interest.
2. The requested deviation from the Commission Rules of Practice and Procedure should be authorized.
3. The money, property or labor to be procured or paid for by the note issuance herein authorized is reasonably required for the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

The Commission concludes that the proposed transaction should be authorized as set forth in the ensuing order. A public hearing is not necessary. The operating rights will be restated in the form of a new certificate. The new certificate issued to the purchaser will not broaden or change the interstate or foreign commerce rights heretofore held by the seller. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Swift Transportation Company and the issuance of an in-lieu certificate in appendix form to King Delivery, Inc.

Purchaser is 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. The authorization granted shall not be construed as a finding of the value of the rights authorized to be sold and transferred.

O R D E R

IT IS ORDERED that:

1. On or before April 1, 1977, Swift Transportation Company may sell and transfer the operative rights issued by this Commission and referred to in the application to King Delivery, Inc.
2. Within thirty days after the transfer the purchaser shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.
3. Purchaser shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that it has adopted or established, as its 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 filings 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 filing 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 by 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, a certificate of public

convenience and necessity is granted to King Delivery, Inc., authorizing it to operate as a highway common carrier as defined in Section 213 of the Public Utilities Code, between the points and over the routes set forth in Appendix A, attached hereto and made a part hereof.

5. The certificate of public convenience and necessity granted by Decision 85727 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Purchaser 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. Purchaser shall maintain its 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 April 30 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

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

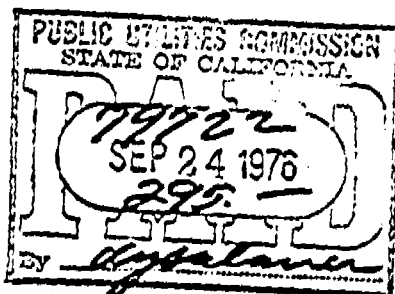
9. The applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested.

10. On or after the effective date hereof and on or before April 1, 1977, purchaser, for the purposes specified in this proceeding may issue a promissory note aggregating an amount not exceeding \$147,500 and may execute and deliver a security agreement, such note and agreement to be in substantially the same form as those attached to the application in Exhibits "D" and "E" respectively.

11. The issuer of the securities authorized by this order shall file with the Commission a report, or reports, as required by General Order 24-Series.

The authority granted by this order to issue a promissory note will become effective when the issuer has paid the fee, prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$295. In all other respects the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 21<sup>st</sup> day of September, 1976.



\_\_\_\_\_  
President  
*William J. Gannon*  
\_\_\_\_\_  
*Vernon L. Sturgeon*  
\_\_\_\_\_  
*Edward H. ...*  
\_\_\_\_\_  
*Robert Bateman*  
Commissioners

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

King Delivery, Inc., 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 statute 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.

Operations along Interstate Highway 15 are 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, overnight or boston bags, brief cases, hat

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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.

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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.

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## 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.

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## 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 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)

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