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Decision No. 82346

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of ROGERS MOTOR EXPRESS, a California corporation, and WESTERN TRUCK LINES, a California corporation, and PUBLIC FREIGHT SYSTEM, a California corporation, for authority for WESTERN TRUCK LINES to purchase a portion of authority evidenced by a certificate of public convenience and necessity from ROGERS MOTOR EXPRESS.	Application No. 53977

ORDER PARTIALLY GRANTING
PETITION FOR MODIFICATION

Rogers Motor Express (Rogers), a corporation, has been authorized by Decision No. 81798 dated August 28, 1973 in this proceeding to sell and transfer to Western Truck Lines (Western), a corporation, a portion of the certificate of public convenience and necessity to operate as a highway common carrier granted to it by Decision No. 59826 dated March 22, 1960 in Application No. 41314, as amended.[1/] The sale has not as yet been consummated. The certificate granted to Rogers by Decision No. 59826, as amended, is a general commodity certificate with certain exceptions. The routes and areas over and within which it is authorized to operate are set forth in paragraphs (a) and (b) of the certificate. Paragraph (a) authorizes Rogers to operate between all points and places on or within 25 miles of specifically designated routes generally

1/ The operating rights in issue were initially granted to Karlson Bros. Trucking Service, a corporation, but by Decision No. 80780 dated December 5, 1972 in Application No. 49887, the corporation was authorized to change its name to Rogers Motor Express.

between the San Francisco Bay Area, Santa Rosa, Chico, and Placerville, on the north, and San Ysidro, on the south. Paragraph (b) authorizes it to operate between all points and places in the Los Angeles Basin Territory, on the one hand, and, on the other hand, all points and places embraced by paragraph (a). Restrictions in the certificate provide that no service shall be rendered locally between points and places in the Los Angeles Basin Territory nor between points and places in the San Francisco - East Bay Cartage Zone, on the one hand, and points and places in Marin, Sonoma, or Napa Counties north of San Rafael, on the other hand. The portion of the certificate authorized to be transferred to Western by Decision No. 81798 is that embraced by paragraph (b). The decision provided that in the event the transfer is completed, certificates of public convenience and necessity are granted to Western and Rogers as set out in Appendices A and B, respectively, to the decision and for the revocation of the certificate granted to Rogers by Decision No. 59826, as amended. Appendix A includes the operating authority in paragraph (b) of Rogers' current certificate, and Appendix B includes that stated in paragraph (a). Western presently operates as a highway common carrier between numerous points in southern California.

By Petition for Modification filed jointly by Western and Rogers on September 17, 1973, petitioners request that certain modifications be made in Appendices A and B to Decision No. 81798.

The petition points out that the certificate granted to Rogers by Decision No. 59826, as amended, authorizes service to all points and places on or within 25 miles of various specified routes; whereas in Appendices A and B of Decision No. 81798, the new certificates restate this provision as all points and places on or within 25 miles laterally of the routes. It asserts that the original provision for off-route service clearly authorized service

within 25 miles in any direction from any terminus point of the named routes. The petition states that the addition of the word "Laterally" could be interpreted as prohibiting service at terminal points beyond a line formed by laterals off the related route and requests that the word "laterally" be deleted from the certificates, or, in the alternative, that the Commission issue its order interpreting the authority granted as authorizing service within 25 miles in any direction of any terminus point on the routes specified.

We agree with petitioners that the addition of the word "laterally" limits the off-route service areas from that authorized by the certificate granted to Rogers by Decision No. 59826, as amended. As used in describing operating rights, the term "laterally" has been consistently understood and interpreted to mean perpendicular from and parallel to the sides of the routes specified. It would not include any of the area which, although within a radius of the stated off-route distance from any terminal point of a route, was beyond the area perpendicular and parallel to the route. It is a word of limitation, and its purpose is to prohibit any extension of routes beyond the terminal points specified in the certificate. However, the terminology "all points and places on or within 25 miles of stated routes", as used in the certificate in question, is not so limited. This certificate includes all of the off-route area within 25 miles from the listed routes, including a 25-mile radius in all directions from the named terminal points. While this does result in an extension of the routes, this is not an issue in this proceeding. In the circumstances, the word "laterally" will be deleted from the route descriptions in Appendices A and B of Decision No. 81798.

The other modification of Decision No. 81798 requested by the petition relates to Appendix B which restates the operating authority that would be retained by Rogers if the transfer is consummated. Specifically, it is requested that the restriction therein

prohibiting service between points in the Los Angeles Basin Territory, on the one hand, and points on the various described routes and off-route areas, on the other hand, be deleted. The petition asserts that the operating rights described in paragraphs (a) and (b) of the current certificate held by Rogers are in effect two separate authorities, each authorizing an entirely different type of service; that the authority stated under paragraph (a), which is to be retained by Rogers, is a non-radial authority contemplating service between all points along the described routes and within 25 miles thereof; that the authority stated under paragraph (b), which is to be transferred to Western, is a radial authority which allows service within the area described in paragraph (a) only in connection with shipments originating at or destined to the Los Angeles Basin Territory; that the restriction would prohibit Rogers from continuing this non-radial service, and Western could not perform it because of the limitation that transportation handled by it must originate at or be destined to the Los Angeles Basin Territory; that the Commission in Decision No. 77270 dated May 22, 1970 in Application No. 51807 authorized Asbury Transportation Co. (Asbury) to sell unrestricted general commodities operating rights to Victory Transportation Service, Inc. (Victory), while retaining operating rights which approximate general commodities authority between the same points and areas and over the same routes; that the Asbury transfer involved the same considerations as those herein; and that the same result should prevail here.

We do not concur with the request that the restriction in Appendix B should be removed. Certain of the routes in paragraph (a) of the current certificate held by Rogers and in its new certificate set forth in Appendix B of Decision No. 81798 traverse the Los Angeles Basin Territory and because of the 25-mile off-route authority would cover all or substantially all of this

territory. Therefore, if the restriction were deleted, it could operate between this territory, on the one hand, and all points it is authorized to serve beyond the territory, on the other hand, which is the very authority to be sold to Western. The net result would be that two carriers could perform this service in place of one. Furthermore, we are not persuaded by the assertions in the petition that paragraph (a) of the current certificate contemplates one type of service between the Los Angeles Basin Territory and the other areas while paragraph (b) contemplates another type of service between them. There are no such restrictions or limitations in either paragraphs (a) or (b) of the current certificate held by Rogers. It is a general principle of transportation law that only one certificate to perform a particular type of service between specified points or areas will be granted to a single carrier. The fact that it may be convenient, or desirable for the sake of clarity, in the mechanical description of operating rights to repeat all or a part of the rights in the same or different paragraphs cannot be taken to mean that the Commission intended to grant the carrier any more than one such right. (H. P. Welch Co. - Purchase - E. J. Scannell, Inc. (1939) 25 MCC 558.)

As to our decision in the Asbury - Victory Case referred to in the petition, Asbury was authorized to sell part of its highway common carrier certificate and retain part of it. The part sold and the part retained covered substantially the identical operating areas. However, the part sold covered the transportation of general commodities; whereas, the part retained was restricted to the transportation of property for oil, gas, or water wells, pipelines, and refineries, equipment and material used in construction, equipment used in farming, and certain petroleum products requiring pressurized or insulated tanks. While it could be argued that Victory could, under the general commodity rights transferred to it, perform some

of the transportation performed by Asbury under the retained rights, it is generally recognized that the service performed by Asbury under the retained rights is a specialized type of common carrier service not performed by the general commodity carrier. Furthermore, Asbury could no longer perform the same general commodities service transferred to Victory. If we were to remove the restriction in Appendix B to Decision No. 81798 as requested, Rogers could continue to perform the identical service as Western between all, or substantially all, points in the Los Angeles Basin Territory, on the one hand, and points on the routes and areas listed, on the other hand.

In accordance with petitioners' request, the time within which the transfer authorized by Decision No. 81798 may be made is extended to April 1, 1974.

The Commission finds that the word "laterally" should be deleted from the off-route description in Appendices A and B of Decision No. 81798 and that the requested deletion of the restriction in issue in Appendix B of the decision should be denied.

The Commission concludes that Decision No. 81798 should be amended as provided in the order which follows.

IT IS ORDERED that:

1. The time period within which Rogers Motor Express, a corporation, may sell and transfer the operative rights referred to in Ordering Paragraph 1 of Decision No. 81798 dated August 28, 1973 in Application No. 53977 to Western Truck Lines, a corporation, is extended to April 1, 1974.

2. Appendices A and B of Decision No. 81798 are amended by incorporating the First Revised Page 1 for each appendix, attached hereto, in revision of the Original Page 1 in each appendix.

3. In all other respects Decision No. 81798 shall remain in full force and effect.

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

Dated at San Francisco, California, this 15th day of JANUARY, 1974.

President

Commissioners

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Appendix A
(Dec. 31798)

WESTERN TRUCK LINES
(a corporation)

First Revised Page 1
Cancels
Original Page 1

Western Truck Lines, 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:

Between any and all points and places in the Los Angeles Basin Territory, as described in Note A, on the one hand, and, on the other hand, all points and places on or within 25 miles of:

(1) Interstate Highway 80 between San Francisco and Roseville.

(2) State Highway 99 to its intersection with Interstate Highway 5, Interstate Highway 5 to its intersection with Interstate Highway 10, and Interstate Highway 10, between Sacramento and Redlands.

(3) The route constructed via Interstate Highways 80, 580 and 205, State Highway 99 and U.S. Highway 50, used consecutively, between San Francisco and Placerville.

(4) State Highway 120 betwen its junctions with Interstate Highway 5 at Mossdale Wye and State Highway 108 at Yosemite Junction.

(5) State Highway 108 between Yosemite Junction and Dardanelle.

(6) State Highway 12 between Suisun City-Fairfield and Clements.

(7) State Highway 88 between Clements and Jackson.

(8) State Highway 4 between its intersection with Interstate Highway 80, near Pinole, and Stockton.

(9) State Highway 33 between its intersection with Interstate Highway 205, near Tracy, and Maricopa.

Issued by California Public Utilities Commission.

Amended by Decision No. 82346, Application No. 53977.

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Appendix B
(Dec. 81798)

ROGERS MOTOR EXPRESS
(a corporation)

First Revised Page 1
Cancels
Original Page 1

Rogers Motor Express, 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:

Between all points and places on or within 25 miles of:

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