

BP

Decision No. 83365

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of PENGUIN TRUCKING CO., INC., a)
California corporation, to acquire)
a portion of the Certificate of)
Public Convenience and Necessity)
of ALCO TRANSPORTATION CO., and)
ALCO TRANSPORTATION CO. to)
transfer same.)
_____)

ORIGINAL

Application No. 54817
(Filed April 17, 1974)

ORDER DENYING REHEARING AND
MODIFYING DECISION NO. 82979

On July 17, 1974, Penguin Trucking Co., Inc., (Penguin) and Alco Transportation Co. (Alco) filed a joint petition for rehearing and reconsideration of Decision No. 82979. The Commission, after considering each and every allegation of the petition, is of the opinion that good cause for rehearing or reconsideration of Decision No. 82979 has not been shown. However, the Commission is also of the opinion that Decision No. 82979 should be modified. Therefore,

IT IS ORDERED that:

1. Rehearing or reconsideration of Decision No. 82979 is hereby denied.
2. The third and fourth paragraphs of Decision No. 82979, mimeo, are hereby modified as follows:

"Alco is a 'highway common carrier,' as described by by Section 213 of the Public Utilities Code. Section 851 of the Public Utilities Code precludes the sale or assignment of Alco's franchise or permit or 'any right thereunder' without prior authorization of the Commission. The primary question for the Commission in a transfer proceeding is whether the proposed transfer would be adverse to the public interest. (See Application of Radio Paging Co., 65 CPUC 635, 637 (1966); American Transit, Inc., 70 CPUC 576, 577 (1970).) The Commission has consistently held that an operative right is indivisible; that public policy does not favor the splitting or dividing of an operative right, either by sale or lease; and that the

proper procedure for relief is through an application to abandon the service or part thereof which the certificated carrier no longer desires to perform. (See United Motor Transport Lines, Inc., 43 CRC 69, 76, (1940); California Transit Co., 32 CRC 567 (1929).)

"It is true that the Commission has on a few occasions sanctioned the lease or sale of part of an operative right. However, in each case the applicant for the transfer presented peculiar facts and circumstances which impelled such action in the public interest. (See, for example, C. Snapp, 44 CRC 388 (1942); El Dorado Motor Transp. Co., 43 CRC 667 (1941).) The joint application herein, which requested relief ex parte, presented no peculiar facts warranting any deviation from the general Commission policy against allowing the splitting of operative rights. Applicants based their request for a partial transfer on (1) the 'experience' of Penguin in the transportation of commodities requiring the use of special refrigeration or temperature control; (2) Penguin's adequate financial position; (3) Penguin's possession of 'the necessary equipment' to conduct the specialized services conducted by Alco; and (4)

the fact that separation of the transportation of 'refrigerated' commodities from Alco's general commodity authority would better enable it to do a more adequate job in the transportation of 'dry freight.' These facts do not support a finding by the Commission that a splitting of Alco's operative rights under its general commodity certificate would be in the public interest, especially where applicants have failed to show that Alco is not providing adequate service in the transportation of either 'refrigerated' commodities or 'dry freight,' and these facts are not sufficient to overcome the Commission's policy against allowing public utilities to traffic portions of their certificates.

"Based on the foregoing, the Commission concludes that the proposed transfer would be adverse to the public interest and should be denied. A public hearing is not necessary."

In all other respects, the provisions of Decision No. 82979 remain in full force and effect.

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

Dated at San Francisco, California, this 27th day of AUGUST, 1974.

*I dissent.
William Symons, Jr.*

Vernon L. Sturgeon

[Signature]
[Signature]
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.