

MAY 8 1979

Decision No. 90292

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Rogers Motor Express, a Cali-)
fornia corporation, to sell and)
Red Ball Motor Freight of Cali-)
fornia, Inc., a Delaware cor-)
poration, to buy a Certificate)
of Public Convenience and Neces-)
sity as a Highway Common Carrier.)

Application No. 57992
(Filed April 10, 1978)

O P I N I O N

By this application, Rogers Motor Express, a California corporation, (seller) seeks to sell and transfer and Red Ball Motor Freight of California, Inc., a Delaware corporation (purchaser) requests authority to purchase and acquire a highway common carrier certificate of public convenience and necessity.

The certificate was granted to seller by Decision 85978, dated June 22, 1976 in Application 56241. It authorizes transportation of general commodities with the usual exclusions and certain specified route restrictions between numerous points within the State generally from Roseville on the north and San Ysidro on the south, including all points and places within 25 miles of such points and routes. The certificate is registered with the Interstate Commerce Commission for coextensive interstate operations in Docket No. MC 98967 (Sub. No. 3).

Seller also holds highway carrier permits issued by this Commission. The permits are not included in the transaction.

Purchaser does not presently hold authority issued by this Commission. It is controlled through stock ownership by Red Ball Motor Freight, Inc. of Dallas, Texas, which in turn is controlled through stock ownership by RBM Transportation Systems, Inc. of Houston, Texas. Red Ball Motor Freight, Inc., conducts interstate motor carrier operations between various states, including California.

Pursuant to the agreement between the parties, the purchase price for the certificate is \$250,000 of which \$50,000 is for the intrastate rights and the balance of \$200,000 is for the certificate of registration.

A copy of the application was served on the California Trucking Association and the Department of Transportation of this State. The filing of the application was noted in the Commission's Daily Calendar of April 12, 1978.

The proposed transfer is subject to the exclusive jurisdiction of the Interstate Commerce Commission pursuant to Section 5 of the Interstate Commerce Act. The federal commission granted its approval for the transfer by its Decision No. MC-F-13536 served on January 29, 1979. The approval of the Interstate Commerce Commission is conditioned upon the implementation of the transfer within 90 days after the date of its decision. The applicants, therefore, request that this Commission's order be made effective on the date it is issued.

After consideration, the Commission finds that:

1. The proposed transfer of the certificate granted by Decision 85978 would not be adverse to the public interest of California and should be authorized.
2. We further find with certainty that there is no possibility the activity in question may have a significant effect on the environment.
3. There is an urgent need to make the authority herein granted to transfer the certificate effective on the date hereof.

The Commission concludes that the application should be granted and that the authority to transfer should be made effective immediately. No protests to the application have been received and a public hearing is not necessary. The order which follows will provide for in the event the transfer is completed, the revocation of the certificate presently held by Rogers Motor Express and the issuance of a certificate in appendix form to Red Ball Motor Freight of California, Inc., a Delaware corporation.

The restatement of the certificated operating authority will neither broaden nor lessen the scope of the intrastate, interstate or foreign commerce rights to be transferred.

Red Ball Motor Freight of California, Inc., 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.

O R D E R

IT IS ORDERED that:

1. Rogers Motor Express may sell and transfer the operating rights referred to in the application to Red Ball Motor Freight of California, Inc., a Delaware corporation. This authorization shall expire if not exercised by November 1, 1979, or within such additional time as may be authorized by the Commission.
2. Within thirty days after the transfer, 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 filing 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 the cancellation of the operating authority granted by this decision.

4. On or before the end of the third month after the transfer, the purchaser shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. 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 Red Ball Motor Freight of California, Inc., a Delaware corporation, 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.

6. The certificate of public convenience and necessity granted by Decision 85978 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

7. 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.

8. 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.

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

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The effective date of this order is the date hereof.

Dated at San Francisco, California, this 8th
day of MAY, 1979.

John E. Boyson
President

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

Thomas L. Stricker

Alfred J. Pedrick
James M. Jones
Commissioners

Red Ball Motor Freight of California, 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:

Between 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, 205 and 5, State Highway 99 and U.S. Highway 50, used consecutively, between San Francisco and Placerville.
- (4) State Highway 120 between its junction 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.
- (10) U.S. Highway 101 to its intersection with Interstate Highway 5 at Los Angeles, thence via Interstate Highway 5 to San Ysidro.
- (11) State Highway 1 between its junction with U.S. Highway 101 near Oxnard and Interstate Highway 5 near Capistrano Beach.

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- (12) State Highway 65 between Yuba City and Roseville.
- (13) State Highway 37 between Ignacio and Vallejo.
- (14) State Highway 70 between Marysville and Oroville.
- (15) Interstate Highway 15 (U.S. Highway 395) between Riverside and San Diego.
- (16) State Highway 152 between Gilroy and Califa.
- (17) State Highway 17 between Oakland and San Jose.

Restrictions:

No local service shall be rendered between points and places in the San Francisco-East Bay Cartage Zone, as described in Note A, hereof on the one hand, and points and places in Marin, Sonoma, or Napa Counties north of San Rafael, on the other hand.

No service shall be rendered locally between points or places in the Los Angeles Basin Territory as described in Note B hereof.

No service shall be rendered between the points and places enumerated in sub-paragraphs (1) through (17) inclusive, on the one hand, and the Los Angeles Basin Territory as described in Note B hereof on the other hand. Carrier is authorized to serve points and places in the said Los Angeles Basin Territory limited to the interchange of freight with authorized common carriers under published through rates.

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, briefcases, 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).

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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. Tomato plants, and fresh fruits and fresh vegetables from any point of origin to any point of destination other than a common carrier transshipping facility for further transportation; also empty containers and/or pallets when used, or shipped out for use, in connection with such movements of tomato plants, fresh fruits and fresh vegetables.
8. Cans, metal, tinplated or not tinplated, with or without ends.
9. Cotton, cotton linters and cotton notes.
10. Logs.

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11. Fertilizer compounds, (Manufactured fertilizers), fungicides, agricultural, and insecticides, agricultural, except when moving from to or between common carrier terminal facilities in connection with prior or subsequent common carrier transportation from or to points beyond such facilities.

Note A

SAN FRANCISCO-EAST BAY CARTAGE ZONE

The San Francisco-East Bay Cartage Zone includes the area embraced by the following boundary: Beginning at the point where the San Francisco-San Mateo County Boundary Line meets the Pacific Ocean; thence easterly along said boundary line to Lake Merced Boulevard; thence southerly along said Lake Merced Boulevard to South Mayfair Avenue; thence westerly along said South Mayfair Avenue to Crestwood Drive; thence southerly along Crestwood Drive to Southgate Avenue; thence westerly along Southgate Avenue to Maddux Drive; thence southerly and easterly along Maddux Drive to a point one mile west of State Highway 82; thence southeasterly along an imaginary line one mile west of and paralleling State Highway 82 (El Camino Real) to its intersection with the southerly boundary line of the City of San Mateo; thence along said boundary line to U.S. Highway 101 (Bayshore Freeway); thence leaving said boundary line proceeding to the junction of Foster City Boulevard and Beach Park Road; thence northerly and easterly along Beach Park Road to a point one mile south of State Highway 92; thence easterly along an imaginary line one mile southerly and paralleling State Highway 92 to its intersection with State Highway 17 (Nimitz Freeway); thence continuing northeasterly along an imaginary line one mile southerly of and paralleling State Highway 92 to its intersection with an imaginary line one mile easterly of and paralleling State Highway 238; thence northerly along said imaginary line one mile easterly of and paralleling State Highway 238 to its intersection with "B" Street, Hayward; thence easterly and northerly along "B" Street to Center Street; thence northerly along Center Street to Castro Valley Boulevard; thence westerly along Castro Valley Boulevard to Redwood Road; thence northerly along Redwood Road to Somerset Avenue; thence westerly along Somerset Avenue and 168th Street to Foothill Boulevard; thence northwesterly along Foothill Boulevard to the southerly boundary

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line of the City of Oakland; thence easterly and northerly along the Oakland Boundary Line to its intersection with the Alameda-Contra Costa County Boundary Line; thence northwesterly along said County Line to its intersection with Arlington Avenue (Berkeley); thence northwesterly along Arlington Avenue to a point one mile northeasterly of San Pablo Avenue (State Highway 123); thence northwesterly along an imaginary line one mile easterly of and paralleling San Pablo Avenue to its intersection with County Road 20 (Contra Costa County); thence westerly along County Road 20 to Broadway Avenue; thence northerly along Broadway Avenue to San Pablo Avenue (State Highway 123) to Rivers Street; thence westerly along Rivers Street to 11th Street; thence northerly along 11th Street to Johns Avenue; thence westerly along Johns Avenue to Collins Avenue; thence northerly along Collins Avenue to Morton Avenue; thence westerly along Morton Avenue to the Southern Pacific Company right-of-way and continuing westerly along the prolongation of Morton Avenue to the shoreline of San Pablo Bay; thence southerly and westerly along the shoreline and waterfront of San Pablo Bay to Point San Pablo; thence southerly along an imaginary line to the San Francisco waterfront at the foot of Market Street; thence westerly along said waterfront and shoreline to the Pacific Ocean; thence southerly along the shoreline of the Pacific Ocean to point of beginning.

Note B

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;

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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.

(END OF APPENDIX A)

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