

Decision No. 78311

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
K.K.W. TRUCKING, INC., a California
corporation, for an extension of its
Certificate of Public Convenience
and Necessity to operate as a highway
common carrier for the transportation
of property in intrastate commerce,
and for an In Lieu Certificate of
Public Convenience and Necessity
therefor.

Application No. 51551
(Filed December 10, 1969)

Donald Murchison, Attorney at Law, for
applicant.

Russell & Schureman by Carl H. Fritze,
for Lads Furniture Freight, Inc.,
and North American Van Lines, Inc.,
protestants.

R. C. Fels, for Furniture Manufacturers
Association of California, interested
party.

O P I N I O N

This application was heard before Examiner DeWolf on
May 5, 6 and 7 and September 29 and 30, 1970, at Los Angeles,
California, and submitted on September 30, 1970. Copies of the
application have been forwarded to the California Trucking Association
and notice of the hearing has been served in accordance with the
Commission's procedural rules. The protestants are Lads Furniture
Freight, Inc., and North American Van Lines, Inc.

Applicant is a highway common carrier presently transporting uncrated new furniture and household radios, televisions, refrigerators, stoves, laundry machines and parts thereof generally from the Los Angeles area within 35 miles of First and Main Streets to certain points on certain highways in northern California and the San Francisco territory, and in the reverse direction for shipments of returned, damaged or rejected merchandise only.

The applicant is presently operating pursuant to Decision No. 52881, dated April 10, 1956 in Application No. 36410 which was transferred to applicant by Decision No. 65435 dated May 21, 1963 in Application No. 44999 and applicant holds permits as Radial Highway Common Carrier and Highway Contract Carrier File No. T-74182 issued November 5, 1962.

Applicant requests authorization to extend such highway carrier operations so as to transport the same kind of commodities generally on the same routes and to extend said routes to serve generally all intermediate and off-route points within a lateral of 15 miles along certain highways between all points in the Los Angeles area and the City of Mojave along State Highway No. 14, the City of Barstow along U. S. Highway No. 66 (Interstate No. 15), City of Calexico along U. S. Highway No. 60 - 70 and State Highway No. 86, and the San Diego territory along U. S. Highway No. 101 (Interstate No. 5), 395 and State Highway No. 1, and also between the Los Angeles area and the City of Santa Rosa, along U. S. Highway No. 101 and State Highway No. 1, City of Central Valley along U. S. Highways Nos. 99, 99 E and 99 W, and also off route points along U. S. Highways Nos. 40, 40 Alternate, and 50 and State Highway No. 24, between

U. S. Highways Nos. 101 and 99, the City of Tracy along U. S. Highway No. 101, State Highways Nos. 33 and 152. The local service is subject to certain restrictions within the City of Los Angeles.

The service proposed by applicant is to be "on call" and to be conducted daily between two (2) or more of the points hereinabove proposed to be served, except on Sundays.

Applicant presently has on file its individual tariff under the name of K.K.W. TRUCKING, INC., Cal. P.U.C. No. 1 (Series of Lloyd B. Turner, dba Blue Truck Line). Applicant proposes that the rates to be assessed for this service, and the rules and regulations governing them, shall be the same as those contained in Minimum Rate Tariff No. 11-A and other tariffs applicable to the transportation of the commodities proposed to be transported.

Applicant alleges that it has operated to the additional points proposed to be served herein for a considerable period of time as a permitted carrier and has received numerous requests from various shippers having movements of the commodities to points and places proposed to be served, to furnish regular route service. Applicant further alleges that there has been substantial increase in population and industry in the points and places presently served and proposed to be served and that there exists a lack of adequate highway common carrier transportation service of the type rendered by applicant from, to and between the points requested.

The president, who is manager and sole owner of applicant, testified that he has been in the transportation business since 1963 and described the applicant's present operations, the authority sought and proposed service, financial status, and its physical assets. Applicant introduced into evidence Exhibits Nos. 1 through 8 which are copies of applicant's Permits, Certificate authority, financial statements and a list of applicant's operating equipment which described 138 trucks, 17 tractors, 20 trailers, and 3 service cars. Exhibit No. 6 is applicant's statement of financial condition, and shows total assets of \$271,035 and total operating revenue of \$859,586.70 at closing on December 31, 1969. Exhibit No. 5 is a map of the proposed areas to be served and Exhibit No. 8 in evidence is a photograph of applicant's terminal.

Applicant's president further testified that it is serving shippers under its permits and its present certificate and does not solicit or advertise for any business which is outside of its present certificated authority and has not dedicated its property for any regular service for which it is not authorized and that applicant has no intent to violate any regulations required under its certificate and permits and that much of its operations are conducted on call and under its radial and contract permits, and that the extended authority would enable applicant's shippers to get better service to the requested areas, reduce dock congestion and generally improve available service.

Nineteen manufacturers and substantial shippers of new furniture of the commodities transported had witnesses who testified at the hearing; twelve of these are presently served by applicant

and favored the application and seven were served by protestant, Lads Furniture Freight, Inc., and opposed the applicant.

The shipper witnesses represent important businesses, both small and large, and well illustrates the condition existing in shipping this type of freight described by the witnesses as blanket wrapped new furniture. The large majority of the shippers have used Lads and describe them as the largest carrier in this field and also claim that applicant's services are needed by them on a daily basis, and while one of two other carriers are known by these shippers to be certificated they are not relied on in any substantial way by any of the shippers in this proceeding. The business of many of these shippers is increasing and they testified they are expanding and will require the services of applicant to the territory requested in the application. All of the shippers have their own trucks for certain local shipments and for delivery to the carriers dock but most, on occasion, will call for shipments to be picked up. The witnesses testified that there are seasonal problems of increased shipping which cause congestion at the docks of both Lads and applicant. Several shippers testified that the furniture manufacturing business is highly competitive in California and that prompt shipping service without undue breakage is essential; and in the absence of sufficient reliable common carriers, that they are able to and would have to put on their own trucks to make deliveries. Several shippers testified that they previously discontinued Lads service on account of difficulties at their dock, late shipments, breakage and in one case a lost shipment; witnesses testified that dock congestion is no longer a problem at Lads.

In support of the application, twelve public shipper witnesses testified that for a period of from one to three years they used and are now using the service of applicant; that the service has been rendered with efficiency, has been very satisfactory, and that the proposed changes and new service area would be of great benefit to them. The main problem described by the applicant and shippers is that applicant's territories are divided where part of the deliveries are within applicant's presently authorized service area as a common carrier, and part of the deliveries are outside the area, all of which places a rate burden upon applicant's regular shipper customers. The shippers further testified they have difficulty getting service for small shipments and that there is congestion due to seasonal urgency, and that the proposed new service is needed to enable the shippers to get next-day prompt delivery and reduce dock congestion.

Protestants oppose the application on the ground that public convenience and necessity do not require the proposed service, and that installation of it will cause protestants to be unable to render adequate service to its customers.

The executive vice president of protestant Lads Furniture Freight, Inc. testified in opposition to the proposed service, and identified Exhibits Nos. 12 through 20 which describe protestant's operating authority, routes and equipment. This protestant has authority to serve the areas applied for by applicant under permits and a certificate. The witness testified that Lads operate 53 semi trailers, 42 of which are 40 foot, high-cube trailers. Protestant's witness testified that the cost of its peddle runs will increase if

its traffic is reduced and this would cause an increase in rates to its customers and cause a trend to proprietary carriage.

Upon consideration of the evidence the Commission finds that:

1. Applicant possesses the experience, equipment, personnel and financial resources to institute and maintain the transportation service hereinafter authorized.

2. The merchants and shippers who testified that they utilize applicant's transportation service do not now have and have not had adequate transportation service available from protestants to satisfy their requirements in an efficient and speedy manner.

3. The shippers of those certain commodities described in the testimony will be afforded shipping advantages, reduced dock congestion, and more efficient service by extension of applicant's authority over the routes herein authorized.

4. The evidence does not demonstrate that the extension of applicant's territory as requested will adversely affect other carriers or result in an impairment of their existing service.

5. The population, business, and industrial growth in the Los Angeles Basin Territory in recent years has been extensive, and this has caused expansion of traffic and transportation from the Los Angeles Basin Territory to San Francisco and San Diego and the proposed new territory. The extension of applicant's routes thereto will enable applicant to render more efficient service.

6. It is necessary to authorize applicant to provide the proposed transportation service to these territories in order to enable shippers to obtain improved service during peak periods and

during emergencies, so that at least two substantial and reliable carriers will be available to the new furniture shippers in this entire territory.

7. It is necessary to authorize applicant to provide the proposed transportation service in order to enable the shippers supporting the application to obtain the same quality of service afforded to the other shippers in the areas involved.

8. Public convenience and necessity require that applicant be authorized to transport the special commodities on the new routes, as more particularly set forth in the ensuing order.

The Commission concludes that the application should be granted as specified in the subsequent order.

As applicant has heretofore been authorized to revise its routes on several occasions, it is deemed advisable to restate its certificate in order to clarify its operating authority. Accordingly, a new certificate will be issued which will include all of the applicant's present authority, and the new authority herein authorized for intrastate service.

K.K.W. Trucking, Inc., a corporation, is hereby 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 particular route. 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. A certificate of public convenience and necessity is granted to K.K.W. Trucking, Inc., a 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 particularly set forth in Appendices A and B attached hereto and hereby made a part hereof.

2. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede all the certificates of public convenience and necessity granted by Decision No. 52881 in Application No. 36410, and Decision No. 65435 in Application No. 44999, which certificates are superseded effective concurrently with the effective date of the tariff filings required by paragraph 3(b) hereof.

3. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations. Failure to do so may result in a cancellation of the operating authority granted by this decision.

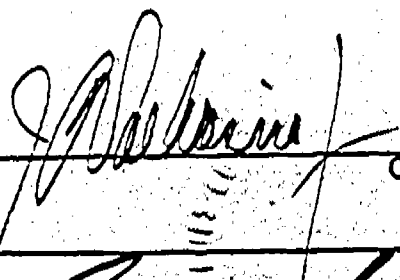
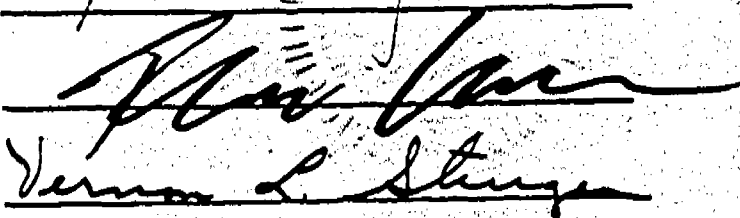

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. Applicant is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-F.

- (b) Within one hundred twenty days after the effective date hereof, applicant shall establish the service herein authorized and file tariffs, in triplicate, in the Commission's office.
- (c) The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the service herein authorized.
- (d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-A.
- (e) Applicant 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 March 31 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.

- (f) Applicant shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If the applicant elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

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

Dated at San Francisco, California, this 17th
day of FEBRUARY, 1971.


Chairman

Vernon L. Sturgeon

Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

K. K. W. TRUCKING, INC., a 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:

1. Uncrated new furniture and parts thereof;
 2. Uncrated new lamp standards and electric lamps and shades combined, and parts thereof;
 3. Uncrated household refrigerators and parts thereof;
 4. Uncrated radio receiving sets, radio receiving sets and talking machines combined, television sets, vision receiving sets, television or vision receiving sets and talking machines or radio sets combined, including necessary equipment of tubes and loud speakers and parts thereof;
 5. Uncrated new household laundry machines, including drying machines, ironing machines, washing machines, with or without dish washing attachment and parts of any thereof;
 6. Ironing boards, ironing tables, ironing machine covers and parts of any thereof; and
 7. Uncrated new stoves or ranges, electric, gas, gasoline or oil.
- A. BETWEEN: ALL POINTS IN THE LOS ANGELES AREA, DESCRIBED AS THE CITY OF LOS ANGELES AND ALL POINTS AND PLACES WITHIN 35 MILES OF FIRST AND MAIN STREETS OF SAID CITY, AND THE FOLLOWING DESCRIBED CITIES AND TERRITORY, WITH SERVICE TO, FROM AND BETWEEN SAID TERMINI, INTERMEDIATE AND OFF-ROUTE POINTS:
1. The City of Mojave, serving all intermediate and off-route points within a lateral of 15 miles of State Highway No. 14, between the Los Angeles Area and Mojave.
 2. The City of Barstow, serving all intermediate and off-route points within a lateral of 15 miles of U. S. Highway No. 66 (Interstate No. 15) and Barstow.

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3. The City of Calexico, serving all intermediate and off-route points within a lateral of 15 miles of U. S. Highway No. 60-70, and State Highway No. 86, between the Los Angeles Area and Calexico.
 4. The San Diego Territory as described in the next succeeding paragraph, serving all intermediate and off-route points within a lateral of 15 miles of U. S. Highways Nos. 101 (Interstate No. 5), 395 and State Highway No. 1 between said areas.
 5. The San Diego Territory includes that area as embraced by the following imaginary line starting at the northerly junction of U. S. Highways Nos. 101-E and 101-W (4 miles north of La Jolla); easterly to Miramar on U. S. Highway No. 395; thence southeasterly to Lakeside on the El Cajon-Ramona Highway; thence southerly to Bostonia on U. S. Highway No. 80; thence southeasterly to Jamul on State Highway No. 94; thence due south to the International Boundary Line, west to the Pacific Ocean and North along the coast to the point of beginning.
- B. BETWEEN: ALL POINTS IN THE LOS ANGELES AREA, AS DESCRIBED IN PARAGRAPH A HEREOF ON THE ONE HAND, AND, ON THE OTHER, THE FOLLOWING POINTS: (See restrictions in Paragraph C hereof).
1. The City of Santa Rosa, serving all intermediate and off-route points within a lateral of 15 miles of U. S. Highways Nos. 101, including the San Francisco Territory as described in Appendix B, and State Highway No. 1, between the Los Angeles Area and Santa Rosa.
 2. The City of Central Valley, serving all intermediate and off-route points within a lateral of 15 miles of U. S. Highways Nos. 99, 99-E and 99-W, between the Los Angeles Area and Central Valley.
 3. Intermediate and off-route points within a lateral of 15 miles of U. S. Highways Nos. 40, 40 Alternate, and 50, and State Highway No. 24, between U. S. Highways Nos. 101 and 99.
 4. The City of Tracy, serving all intermediate and off-route points within a lateral of 15 miles of U. S. Highway No. 101, State Highways Nos. 33 and 152, between the Los Angeles Area and Tracy.

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C. RESTRICTIONS:

1. Applicant shall not provide any local service between points located within the City of Los Angeles, and points and places within 35 miles of First and Main Streets in the City of Los Angeles.
2. Local Service is defined as service between any two points, both of which are located in the Los Angeles Area as hereinabove described in Paragraph 1.
3. Applicant may establish through routes and rates between all points and territories except as restricted herein.
4. Transportation of the same commodities in the reverse direction (from Northern to Southern California) may be performed for shipments of returned, damaged, or rejected merchandise only.

For operating convenience only, applicant may use all roads, streets and highways connecting the points and routes authorized herein.

(END OF APPENDIX A)

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APPENDIX B TO DECISION NO. 78311

SAN FRANCISCO TERRITORY includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County boundary line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U.S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U. S. Highway 101 to its intersection with Southern Pacific Company right of way at Arastradero Road; southeasterly along the Southern Pacific Company right of way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to E. Parr Avenue; easterly along E. Parr Avenue to the Southern Pacific Company right of way; southerly along the Southern Pacific Company right of way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U. S. Highway 101; northwesterly along U. S. Highway 101 to Tully Road; northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U. S. Highway 40 (San Pablo Avenue); northerly along U. S. Highway 40 to and including the City of Richmond; southwesterly along the highway extending from the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco Waterfront at the foot of Market Street; westerly along said waterfront and shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to point of beginning.