

ORIGINAL

Decision No. 81049

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition of
NIKKOLA EXPRESS, INC., a California
corporation, for reinstatement of
its highway common carrier certificate
of public convenience and necessity.

Application No. 53480
(Filed July 25, 1972)

In the Matter of the Petition of
NIKKOLA EXPRESS, INC., a California
corporation, for reinstatement of
its permits to operate as a radial
highway common carrier and a highway
contract carrier.

Application No. 53481
Petition for Rehearing
and Reconsideration
(Filed October 20, 1972)

In the Matter of the Application of:

(a) K.K.W. TRUCKING, INC., for
authority to issue shares of its
common capital stock pursuant to
Section 816-830 of the California
Public Utilities Code; and

(b) K.K.W. TRUCKING, INC., a
corporation, to acquire a certificate
of public convenience and necessity,
and NIKKOLA EXPRESS, INC., a
corporation, to transfer, pursuant to
Section 851-854 of the California
Public Utilities Code.

Application No. 53522
(Filed August 10, 1972)

Donald Murchison, Attorney at Law,
for applicants,
T. H. Peceimer, for the Commission staff.

O P I N I O N

These three matters were consolidated for hearing which was
held December 4, 1972 in San Francisco.

Nikkola Express, Inc. seeks authority to transfer its highway common carrier certificate of public convenience and necessity to K,K,W. Trucking, Inc., and the latter seeks authority to issue 16-2/3 shares of its \$100 par value common stock in exchange for the 170 outstanding shares of common stock of Nikkola Express, Inc.

The consolidated pro forma balance sheet of K,K,W. Trucking, Inc. of March 31, 1972, after giving effect to the proposed transactions, shows total assets of \$262,929.

All highway carriers holding certificates of public convenience and necessity are required by General Order No. 104-A to file annual reports. Pursuant to Resolution No. L-87 fines totaling \$250 were imposed upon Nikkola for its failure to file its 1971 annual reports on a timely basis. Its operating authorities were revoked on June 27, 1972 by Resolution No. 16936 for its failure to pay the \$250 fine. On July 25, 1972 Nikkola remitted the \$250 fine and filed applications to reinstate its certificated and permitted authorities.

Nikkola's witnesses testified that they had not received notice that its annual financial report was delinquent. They also testified as to confusion about the proper forms to be used in filing said report. Nikkola has subsequently filed the report but was unaware that a \$250 fine had been imposed upon it. The staff witness, on the other hand, testified that notices had been sent to the carrier in writing and by telephone. Moreover, ordering paragraph 2(e) of Decision No. 75685 dated May 20, 1969 in Application No. 48186 which granted Nikkola a certificate placed the grantee on notice that failure to file an annual report on or before March 31 of each year may result in the cancellation of the authority granted therein.

Effective regulation requires the prompt filing of annual reports by utilities and others subject to such requirements. Resolution No. L-87 reflects the Commission's policy of "taking... appropriate punitive action for failure to file such reports on time, unless excused by authorization of the Commission based on a satisfactory showing of inability to effect compliance within the specified time".

Based upon the record herein, the Commission finds that regulatory purposes would be met by rescinding the revocation, and in lieu thereof, imposing fines under the alternative provisions of Sections 1070 and 3774 of the Public Utilities Code. The Commission further finds:

1. The proposed transfer would not be adverse to the public interest.
2. The proposed stock issue is for a proper purpose.
3. The money, property, or labor to be procured or paid for by the issue of the stock herein authorized is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.

The Commission concludes that the three applications should be granted subject to the payment of the fines imposed in the ensuing order.

The action taken herein shall not be construed as a finding of the value of the certificate to be transferred nor of the stock of applicants. So far as the operative rights are concerned, the authorization herein granted is for the transfer of a highway common carrier certificate of public convenience and necessity only. Any transfer of permitted operative rights must be the subject of a separate application or applications.

The order which follows will provide for, in the event the transfer is consummated, the revocation of the certificates presently held by Nikkola Express, Inc. and K,K,W. Trucking, Inc. and the issuance of a certificate in appendix form to the latter. This certificate will be restated, but such restatement will not change or broaden the authority.

K,K,W. Trucking, Inc. 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, these 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. The revocation of the certificate is set aside and the certificate is reinstated on the condition that on or before March 30, 1973, Nikkola Express, Inc. pays a fine of \$500 under the alternative provision of Section 1070 of the Public Utilities Code, and the revocation of the radial highway common carrier and highway contract carrier permits is set aside and the permits are reinstated on the condition that on or before March 30, 1973, Nikkola pays an additional fine of \$500 under the alternative provision of Section 3774, supra.

2. On or before September 30, 1973, Nikkola Express, Inc. may sell and transfer, and K,K,W. Trucking, Inc. may purchase and acquire, the highway common carrier certificate of public convenience and necessity referred to in Application No. 53522.

3. K,K,W. Trucking, Inc. on or after the effective date hereof and on or before September 30, 1973, for the purpose specified in the application, may issue not exceeding 16-2/3 shares of its \$100 par value common stock.

4. K,K,W. Trucking, Inc. shall file with the Commission the report required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

5. Within thirty days after the consummation of the transfer herein authorized, K,K,W. Trucking, Inc. shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.

6. K,K,W. Trucking, Inc. shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the highway common carrier operations herein to show that it has adopted or established, as its own, said 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 consummation of the transfer herein authorized. 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 No. 80-Series. Failure to comply with and observe the provisions of General Order No. 80-Series may result in a cancellation of the operating authority granted by this decision.

7. On or before the end of the third month after the consummation of the transfer herein authorized, K,K,W. Trucking, Inc. 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 Nikkola Express, Inc. for the period commencing with the first day of the current year to and including the effective date of the transfer.

8. In the event the transfer authorized in paragraph No. 2 hereof is consummated, a certificate of public convenience and necessity is granted to K,K,W. Trucking, Inc. authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points particularly set forth in Appendix A attached hereto and made a part hereof.

9. The certificate of public convenience and necessity granted in paragraph No. 8 of this order shall supersede the certificates of public convenience and necessity granted by Decision No. 75685 and by Decision No. 78311, as amended, which certificates are revoked effective concurrently with the effective date of the tariff filings required by paragraph No. 6 hereof.

10. Within thirty days after the transfer herein authorized is consummated, K,K,W. Trucking, Inc. shall file a written acceptance of the certificate herein granted. K,K,W. Trucking, Inc. 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-Series.

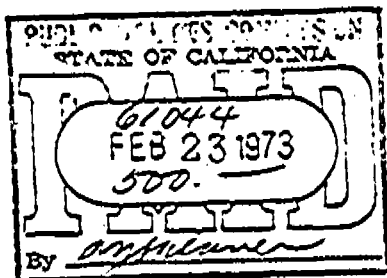
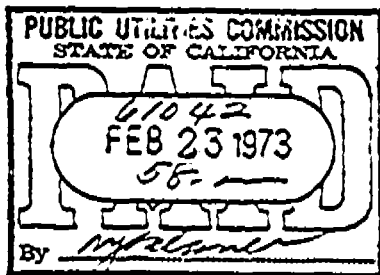
11. K,K,W. Trucking, Inc. shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

12. K,K,W. Trucking, Inc. shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If K,K,W. Trucking, Inc. elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the general order.

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13. Ordering paragraph 1 shall become effective twenty days after the date hereof. Ordering paragraphs 2 through 12, inclusive, shall become effective after Nikkola Express, Inc. has paid the fine of \$500 imposed under Section 1070 of the Public Utilities Code and after K,K,W. Trucking, Inc. has paid the fee prescribed by Section 1904.1, supra, which fee is \$58.

Dated at San Francisco, California, this 14th day of FEBRUARY, 1973.



William L. Stevenson
President
William J. ...
...
...
Commissioners

K,K,W. TRUCKING, 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:

- I. A. 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.

B. 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 14, between the Los Angeles Area and Mojave.

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2. The City of Barstow, serving all intermediate and off-route points within a lateral of 15 miles of U.S. Highway 66 (Interstate 15) and the Los Angeles Area.
3. The City of Calexico, serving all intermediate and off-route points within a lateral of 15 miles of U.S. Highway 60-70, and State Highway 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 101 (Interstate 5), 395 and State Highway 1 between said areas.
5. 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.

C. BETWEEN: ALL POINTS IN THE LOS ANGELES AREA, AS DESCRIBED IN PARAGRAPH B HEREOF ON THE ONE HAND, AND, ON THE OTHER, THE FOLLOWING POINTS:

1. The City of Santa Rosa, serving all intermediate and off-route points within a lateral of 15 miles of U.S. Highway 101, including the San Francisco Territory as described in Note A, and State Highway 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 State Highways 99, 99-E and 99-W, between the Los Angeles Area and Central Valley.

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3. Intermediate and off-route points within a lateral of 15 miles of Interstate Highways 80, 205 and 580, State Highways 4, 21, 24, 113 and 160 BETWEEN U.S. Highway 101 and State Highway 99.
 4. The City of Tracy, serving all intermediate and off-route points within a lateral of 15 miles of U.S. Highway 101, State Highways 33 and 152 BETWEEN the Los Angeles Area and Tracy.
- D. Restrictions, applicable to Part I, herein;
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.
 5. For operating convenience only, applicant may use all roads, streets and highways connecting the points and routes authorized herein.
- II. Uncrated new furniture, blanket-wrapped, between all points and places within the Los Angeles Basin Territory, as described in Note B.

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Note A

SAN FRANCISCO TERRITORY

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 Line meets the Pacific Ocean; thence easterly along said County Line to a point one mile west of State Highway 82; southerly along an imaginary line one mile west of and paralleling State Highway 82 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 two 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 Division Street; easterly along Division Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific right-of-way to the Campbell-Los Gatos City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof to White Road; northwesterly along White Road to McKee Road; southwestly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along 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; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including 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 shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning.

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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 and its prolongation to the Los 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.

(END OF APPENDIX A)

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