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ORIGINAL

Decision No. 84968

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)
JAMES F. NIKOLAUS and DENNIS P.)
NIKOLAUS, a copartnership doing)
business as Nikolaus Transportation)
Co., for authority to sell and)
transfer operating rights and)
equipment to NIKOLAUS TRANSPOR-)
TATION, INC., a California)
corporation, and for the latter to)
issue 940 shares of its \$10 par)
value capital stock and assume)
certain liabilities.)

Application No. 55379
(Filed August 21, 1975)

O P I N I O N

James F. Nikolaus and Dennis P. Nikolaus, doing business as Nikolaus Transportation Co., seek authority to transfer their highway common carrier certificate of public convenience and necessity and related assets to Nikolaus Transportation, Inc., and the latter seeks authority to assume liabilities and to issue 940 shares of its \$10 par value capital stock.

James F. Nikolaus and Dennis P. Nikolaus operate as a highway common carrier of petroleum products under the certificate of public convenience and necessity acquired pursuant to Decision No. 62918, dated April 20, 1965, in Application No. 47323. In addition, they operate under the jurisdiction of this Commission as a petroleum contract carrier.

Nikolaus Transportation, Inc. is a California corporation incorporated on October 2, 1974. Its April 30, 1975 balance sheet, as summarized from Exhibit B attached to the application, is as follows:

Assets

Land	\$ 21,416
Buildings and improvements - net	24,535
Equipment and storage tanks - net	10,417
Self-service and service stations - net	234,246
Other assets	<u>117,851</u>
Total	<u>\$408,465</u>

Liabilities

Current liabilities	\$132,575
Long-term debt	176,481
Capital stock	70,600
Capital surplus	520
Retained earnings	<u>28,289</u>
Total	<u>\$408,465</u>

The corporation proposes to issue 940 shares of its \$10 par value capital stock to its present stockholders, James F. Nikolaus and Dennis P. Nikolaus, and to assume liabilities, in exchange for certain of their assets, which assets have April 30, 1975 net book values, as summarized from Exhibit C attached to the application, as follows:

Revenue equipment	\$116,904
Service cars and equipment	10,433
Office furniture and equipment	1,020
Operating rights, at cost	<u>7,800</u>
Total	<u>\$136,157</u>

A pro forma balance sheet as of April 30, 1975, after giving effect to the proposed transactions, is summarized from Exhibit D attached to the application, as follows:

Assets

Net property and equipment	\$413,971
Other assets	<u>125,651</u>
Total	<u>\$544,622</u>

Liabilities

Current liabilities	\$176,902
Equipment obligations	34,108
Notes payable	174,703
Capital stock	30,000
Capital surplus	615
Retained earnings	<u>23,289</u>
Total	<u>\$544,622</u>

After consideration the Commission finds that:

1. The proposed transactions 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 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.

On the basis of the foregoing findings we conclude that the application should be granted. 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 James F. Nikolaus and Dennis P. Nikolaus, and the issuance of a certificate in appendix form to Nikolaus Transportation, Inc. This certificate will be restated, but such restatement will not change or broaden the authority transferred.

Nikolaus Transportation, 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 cancelled at any time by the State, which is not in any respect limited as to the number of rights which may be given. The authorization granted shall not be construed as a finding of the value of the rights and properties authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. On or after the effective date hereof and on or before December 31, 1975, James F. Nikolaus and Dennis P. Nikolaus may sell and transfer the operative rights and property referred to in the application to Nikolaus Transportation, Inc.

2. Nikolaus Transportation, Inc., on or after the effective date hereof and on or before December 31, 1975, may assume the liabilities set forth in Exhibit C attached to the application and, for the purpose specified in this proceeding, may issue 940 shares of its \$10 par value capital stock as follows: 470 shares to James F. Nikolaus and 470 shares to Dennis P. Nikolaus.

3. Nikolaus Transportation, 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.

4. Within thirty days after the transfer Nikolaus Transportation, Inc. shall file with the Commission written acceptance of the certificate of public convenience and necessity and a true copy of the bill of sale or other instrument of transfer.

5. Nikolaus Transportation, Inc. 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 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 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 No. 80-Series. Failure to comply with the provisions of General Order No. 80-Series may result in a cancellation of the operating authority granted by this decision.

6. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 5, a certificate of public convenience and necessity is granted to Nikolaus Transportation, Inc. 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 of this decision.

7. The certificate of public convenience and necessity granted by Decision No. 42623 in Application No. 29725 and ultimately transferred to James F. Nikolaus and Dennis P. Nikolaus pursuant to Decision No. 68918 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 5.

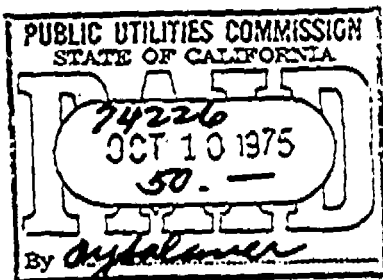
8. Nikolaus Transportation, Inc. shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

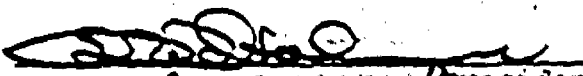
9. Nikolaus Transportation, Inc. shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission, and shall file with the Commission, on or before March 31 of each year, an annual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

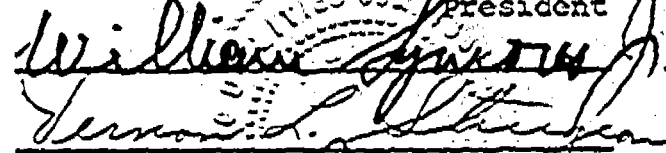
10. Nikolaus Transportation, Inc. shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If Nikolaus Transportation, Inc. elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings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


11. The authority granted by this order to issue stock will become effective when Nikolaus Transportation, Inc. has paid the minimum fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$50. In other respects the effective date of this order is the date hereof.

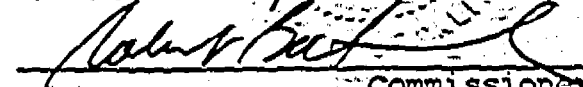
Dated at San Francisco, California, this 7th day
of OCTOBER, 1975.





President






Commissioners

Nikolaus Transportation, 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 petroleum products, in bulk, except liquefied petroleum gases and any other petroleum products requiring pressurized tanks and except liquid asphalt and hot road oils and any other petroleum products requiring insulated tanks, upon and along the following routes, including all intermediate points, with the right to make lateral departures therefrom within a radius of 50 miles of said routes:

1. U. S. Highway 101 and Interstate Highway 5 between Santa Maria and the California - Mexico line.
2. State Highway 99 and Interstate Highway 5 between Delano and the California - Mexico line.
3. U. S. Highway 395 and Interstate Highway 15 between Bishop and San Diego.
4. U. S. Highway 66, Interstate Highway 15 and Interstate Highway 40 between Los Angeles and Needles.
5. Interstate Highway 15 between Barstow and the California - Nevada state line.
6. Interstate Highway 10 between Los Angeles and the California - Arizona state line.
7. Interstate Highway 8 between San Diego and the California - Arizona state line.

End of Appendix A

Issued by the California Public Utilities Commission.

Decision No. 84968, Application No. 55879.