

ORIGINAL

Decision No. 88626 MAR 21 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of BAYVIEW TRUCKING, INC., a California corporation, for a Certificate of Public Convenience and Necessity to extend highway common carrier service. } Application No. 56996 (Filed January 11, 1977)

Loughran and Hegarty, by Frank Loughran and Ann M. Pougiales, for applicant.

W. A. Gregory, Attorney at Law, for Pacific Motor Trucking Company; Handler, Baker and Greene, by Randall M. Faccinto, for Lodi Truck Service, Devine and Son Trucking Co., and Ted Peters Trucking Company, Inc.; protestants.

### O P I N I O N

Applicant is presently engaged in the transportation of frozen foodstuff and beverages, commodities requiring refrigeration and/or temperature or atmospheric control, all or any part of the year; and food and foodstuffs not otherwise requiring refrigeration and/or temperature or atmospheric control when tendered with a shipment of those commodities described above, in the area embraced generally by Marysville on the north; Sacramento, Fresno, Bakersfield, and Redlands on the east; San Diego and National City on the south; and the Pacific Ocean on the west. This authority was granted by Decision No. 81913, as amended by Decision No. 83252 in Application No. 54003. The authority was registered with the Interstate Commerce Commission and a Certificate of Registration was issued in Docket No. MC 121626 on October 18, 1974. Applicant

also operates as a permitted radial highway common carrier and a dump truck carrier. On January 11, 1977 applicant applied for authority to haul general commodities, with certain exceptions, in all of the areas it presently serves as a carrier of food and related items. Applicant does not seek an expansion of service area, merely an increase in the number of items to be transported. Protests were filed and all but five withdrew prior to the date of hearing, which was scheduled and held in San Francisco on June 22, 1977 before Administrative Law Judge Fraser. Applicant amended its request for operating authority on the first day of hearing and the remaining protestants withdrew and became interested parties. A copy of the application was filed with the Interstate Commerce Commission under Section 206(a)(6) of the Interstate Commerce Act and was published in the Federal Register issue of February 24, 1977 since applicant will provide transportation of goods moving in interstate and foreign commerce.

Applicant will provide a daily service in intrastate, interstate, and foreign commerce to be performed wholly within the State of California. General commodity rates presently published in Western Motor Tariff Bureau Tariffs 109 and 111 will be charged. Applicant operates 317 pieces of equipment, including 58 tractors, 70 refrigerated trailers, 99 dry vans, and 49 flat racks. Applicant has a terminal, office, and shop on 8 acres in Sacramento; a second terminal and garage in Modesto; and a repair facility and terminal in San Diego. A statement of financial condition dated March 31, 1976 reveals total assets of \$609,727 and total liabilities of \$290,624. Applicant's statement of earnings for the year 1976 shows total earnings of \$2,710,487; total expenses of \$2,602,068, and a net profit of \$108,419. Applicant's executive vice president

submitted prepared testimony as Exhibit 5. He has 42 years in trucking and 4 years in his present job. Applicant has operated under its present certificate since 1972 and as a permitted carrier since 1964. It has been hauling general commodities under its present certificate on the theory most items require some protection from the weather (temperature control). On December 13, 1976 the Commission notified applicant that it should apply for an expanded certificate if it continues to transport items not subject to temperature control. Pursuant to the Commission's letter, this application was filed on January 12, 1977. Bayview has also increased its general freight hauling from 56 shipments in April of 1976 to 190 shipments in April of 1977. Its shippers are united in requesting an extension of operating authority, due to applicant's direct overnight service from shipper to consignee. Applicant reduces transit time by eliminating cross-dock transfers.

Kimkris Trucking Co., Inc. (Kimkris) filed a petition to set aside submission and reopen the proceeding on September 28, 1977. Kimkris alleged that notice of filing the application and notice of hearing had never been received. It was further alleged that no public testimony was presented and that Kimkris would have protested had proper notice been provided. Submission was set aside on October 4, 1977, and applicant filed a petition for rehearing on the order setting aside submission and a reply to the Kimkris petition on October 11, 1977. An additional hearing was held on November 28, 1977 to determine whether the Kimkris protest should be accepted and whether proper notice had been provided.

Applicant emphasized that 12 carriers protested and 8 of these did not receive a copy of the application; that applicant served everyone on the Commission's list of carriers, which is not current, and a group of carriers certificated during and subsequent to 1974. Kimkris was not on the Commission's carrier list because it did not receive operating authority from this Commission until 1974.

The applicant mailed a copy of the application to California Trucking Association for inclusion in the association's weekly magazine, "Caltrux", which lists all applications filed in California, and to the Federal Register, which published the application on February 24, 1977. Applicant further noted that Kimkris filed Application No. 57554 to broaden its operating authority which the present applicant protested on September 22, 1977, one day prior to the Kimkris protest on the present application. Applicant's petition included the itinerary of a series of shipper witnesses who came from points as far as Chicago and Los Angeles and whose expenses were paid, but who were not called to testify due to the withdrawal of all protests on the first scheduled day of hearing. Applicant also challenges Kimkris' right to reopen this proceeding on the basis that it is not a party thereto. The petition to reopen was denied and the proceeding was resubmitted by order of the presiding administrative law judge on January 24, 1978.

Findings

1. Applicant has the experience, equipment, personnel, and financial resources to institute and maintain the proposed service.

2. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce as proposed in the application as amended and also require that applicant be authorized to engage in operations in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized by this decision.

3. Applicant provided sufficient notice of his application by serving all carriers on the Commission's lists and a number not officially listed, also by having notice of the filing of the application published in Caltrux and in the Federal Register, along with separate notice of the filing of the application and the hearing dates provided in the Commission's Daily Calendar.

### Conclusions

1. The protest and petition to set aside submission and reopen proceeding for taking of additional evidence filed by Kimkris should be denied.

2. The application should be granted as set forth in the ensuing order, which will provide for the granting of an in lieu certificate of public convenience and necessity and the revocation of all existing authority.

Applicant 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. A certificate of public convenience and necessity is granted to Bayview 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 set forth in Appendix A of this decision.

2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure so to do may result in cancellation of the authority.

(a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if it accepts the certificate it will be required, among other things, to

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

- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service and amend or 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 authorized service.
- (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-Series.
- (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 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.
- (f) Applicant shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collection delivery shipments. If applicant elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

3. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificate of public convenience and necessity granted by

Decision No. 81913 as amended by Decision No. 83252, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

4. The protest and petition to reopen filed by Kimkris Trucking Co., Inc. is denied.

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

Dated at San Francisco, California, this 21st day of MARCH, 1978.

*I alert in*  
*Plaine T. Dechick*

*Robert Batimish*  
President  
*William Lyons Jr.*  
*Vernon L. Sturgeon*  
*Michael D. Kovalik*

Commissioners

Bayview Trucking, Inc., a California 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 general commodities as follows:

Between all points on and within twenty (20) statute miles of the following routes.

1. All streets and highways between points within the San Francisco Territory as described in Note A hereof.
2. Interstate Highway 80 between Oakland and Roseville;
3. State Highway 70 between Marysville and its junction with State Highway 65 and State Highway 65 from said junction to its junction with Interstate 80.
4. State Highway 20 between Marysville and Yuba City;
5. State Highway 99, thence State Highway 113 between Yuba City and Woodland;
6. Interstate Highway 5, thence State Highway 99, between Woodland and the junction of State Highway 99 with Interstate Highway 80 in the City of Sacramento.
7. Interstate Highways 580, 205 and 5 used consecutively between Oakland and Stockton;
8. State Highway 120 between its junction with Interstate Highway 5 and Manteca;
9. State Highway 33 between Tracy and its junction with State Highway 152 near Los Banos;
10. State Highway 132 between Vernalis and Modesto;
11. State Highway 152 between Watsonville and Gilroy;
12. State Highway 129 between Watsonville and its junction with U. S. Highway 101;

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13. State Highway 99 between Sacramento and its junction with Interstate Highway 5, near Wheeler Ridge, thence Interstate Highway 5 between Wheeler Ridge and San Diego;
14. State Highway 17 between Oakland and San Jose;
15. State Highway 82 between San Francisco and San Jose;
16. U. S. Highway 101 between San Francisco and the Los Angeles Basin Territory as described in Note B hereof.
17. All streets and highways and points and places within the Los Angeles Basin Territory as described in Note B hereof.
18. State Highway 152 between Los Banos and its junction with State Highway 99 near Chowchilla.

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, brief cases, 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).
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.

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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. Commodities injurious to or contaminating to other lading.
8. Tri-sodium phosphate, in bulk, in bins.
9. Wheels, iron or steel requiring or suitable for use with, tires, without tires, in cartons, subject to Item 197592 Sub 2 of the National Motor Freight Classification No. 100-D on the issue date thereof.
10. Aluminum Castings, NOI, as described in Item 13320 Sub 1 of National Motor Freight Classification No. 100-D on the issue date thereof, when unitized or strapped on to shipper owned pallets.
11. Iron or Steel Castings NOI as described in Item 104790 Sub 2 of National Motor Freight Classification No. 100-D on the issue date thereof, when unitized or strapped on to shipper owned pallets.
12. Boxes, fibreboard, paper, paperboard or pulpboard, KD, in bundles on pallets as described in Items 29270 and 29280 of National Motor Freight Classification No. 100-D on the issue date thereof.
13. Can ends, aluminum, in paper sleeves, on pallets with shrink film overwrap.
14. Cans, sheet steel or tin, NOI as described in Item 52755 of National Motor Freight Classification No. 100-D on the issue date thereof.

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15. Can ends, sheet steel or tin, as described in Item 40250 of National Motor Freight Classification No. 100-D on the issue date thereof.
16. Tin Plate, sheets or coils, as described in Items 107140 thru 107200 of National Motor Freight Classification No. 100-D on the issue date thereof, shipped from Pittsburg, California.
17. Canned Goods as described in Items 320 on 8th Revised Page 30 effective January 9, 1973, and Item 320-1 on 15th Revised Page 31 effective February 25, 1974; of Minimum Rate Tariff No. 2 of California Public Utilities Commission, shipped from Sacramento and Sunnyvale, California.

## 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

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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.

## 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; 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;

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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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