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Decision No. 89206 AUG 8 - 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
KIMKRIS TRUCKING CO., INC., for an  
extension of, and removal of restrictions  
from, its certificate of public convenience  
and necessity authorizing transportation of  
general commodities between certain points  
within the state of California.

Application No. 57554  
(Filed September 6, 1977)

Handler, Baker & Greene, by Ray Greene and  
William D. Taylor, Attorneys at Law,  
for applicant.

Loughran & Hegarty, by Ann M. Pougiales,  
Attorney at Law, for Bayview Trucking,  
Inc., interested party.

### O P I N I O N

This is an application for a certificate of public convenience and necessity authorizing operations as a highway common carrier and concomitant authority to operate as a motor carrier in interstate commerce. Public hearing was held before Administrative Law Judge Thompson at San Francisco on April 24, 1978 and the matter was submitted. Several protests to the granting of the application were made prior to the hearing but were subsequently withdrawn.

Applicant presently holds a certificate granted in Decision No. 84094 in Application No. 54988, and Certificate of Registration No. MC 121759 dated June 2, 1975, authorizing it to transport general commodities in shipments of 20,000 pounds or more by motor vehicle in intrastate and interstate commerce, (1) between points and places in San Francisco Territory, (2) between San Francisco Territory, on the one hand, and Sacramento, Stockton, Modesto, and Vallejo, on the other hand, (3) between San Francisco

Territory and points on or within 5 miles laterally of U.S. Highway 101 and State Highways 1, 9, 17, 68, 129, 152, and 156, within the area bounded generally by the Pacific Ocean, U.S. Highway 101 from San Francisco to Salinas, and State Highways 68 and 1 from Salinas to Carmel to the Pacific Ocean. By this application it requests the removal of the restriction against transporting frozen foodstuffs, frozen beverages, and other commodities requiring refrigeration and/or temperature or atmospheric control--all or any part of the year; it requests the removal of the restriction that shipments weigh 20,000 pounds or more; and it requests the geographical extension of its certificate to include routes in the San Joaquin Valley as far south as Coalinga and Visalia.

Because of amendments to the Public Utilities Code embodied in Statutes 1977, Chapter 840, and at the suggestion of the Administrative Law Judge, applicant's showing was directed principally towards its request for interstate authority. Testimony was presented by applicant's president, a custom house broker and international freight forwarder, and representatives of Standard Brands, Inc., Campbell Soup, and General Foods Corporation. The evidence shows a need for applicant's services as proposed.

#### Findings

1. Applicant is a highway common carrier authorized to transport general commodities in shipments of 20,000 pounds or more within San Francisco Territory and between said territory, on the one hand, and Sacramento, Stockton, Modesto, Vallejo, points and places along prescribed routes in San Mateo, Santa Clara, Santa Cruz, and Monterey counties as far south as Carmel, on the other hand. It is restricted against transporting frozen foodstuffs, frozen beverages, and other commodities requiring refrigeration and/or temperature or atmospheric control. It also holds permits authorizing operations as a radial

highway common carrier and as a highway contract carrier statewide excluding transportation for which it is authorized to provide as a highway common carrier. It holds a certificate of registration from the Interstate Commerce Commission covering the transportation between the points it is authorized to conduct as a highway common carrier.

2. Applicant has operated continuously under said authorities since 1975; and during the 12 months ended June 30, 1977, it had net income of \$46,400 before income taxes from such operations.

3. By this application it seeks an extension and enlargement of its authorities to transport property as a highway common carrier in intrastate and in interstate commerce as follows:

- a. Removal of the 20,000-pound weight restriction;
- b. Removal of the restriction against transportation of frozen foodstuffs, frozen beverages, or any other commodities requiring refrigeration and/or temperature or atmospheric control; and
- c. Authorize transportation between San Francisco Territory, on the one hand, and points and places located on or within 25 miles laterally of the following routes:
  1. Interstate Highway 80 between Richmond and Sacramento, inclusive;
  2. Interstate Highway 5 between Sacramento and its intersection with State Highway 198, inclusive;
  3. Interstate Highway 580 between Oakland and its junction with Interstate Highway 5, inclusive;
  4. Interstate Highway 205 between its junction with Interstate Highway 5 and its junction with Interstate Highway 580, inclusive;
  5. State Highway 198 between its intersection with Interstate Highway 5 and its intersection with State Highway 99, inclusive;

6. State Highway 99 between Sacramento and its intersection with State Highway 198, inclusive; and
7. State Highway 4 between its intersection with Interstate Highway 80 and Stockton, inclusive.

4. Notice of the filing of this application was served by applicant on September 8, 1977 upon all common carriers with which the proposed service is likely to compete. Notice of the filing of this application was published in the Federal Register issue of October 6, 1977. Notice of hearing was provided in accordance with the Commission's procedural rules. Two letters of protest were received but the protests were withdrawn prior to the date of hearing. Public hearing was held at San Francisco on April 24, 1978. No opposition to the granting of this application was presented at that hearing.

5. Applicant is fit, willing, and able to institute and maintain the service it proposes.

6. There is a need for the services which applicant proposes.

7. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce as proposed in the application 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.

#### Conclusion

Applicant's proposal published in the Federal Register provides for a new certificate to be issued setting forth its existing rights together with the new authorities requested herein. We conclude that the application should be granted and a new certificate be issued which will supersede the certificates previously issued as set forth in the ensuing order. The territorial description

and routes of the authority granted reflect the names of redesignated highways and roads and do not in any way exceed the geographical scope of the proposed operation as published in the Federal Register.

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 Kimkris Trucking Co., 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 collect on 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. 84094 in Application No. 54988 which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

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

Dated at San Francisco, California, this 8th  
day of AUGUST, 1978.

Robert B. Berman  
President

Vernon L. Sturgeon  
Charles D. Gould

Commissioners

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

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.

Kimkris Trucking Co., 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:

- I. Between all points and places in the San Francisco Territory, as described in Note A hereto; and
- II. Between all points and places in the San Francisco Territory, on the one hand, and, on the other hand, points and places located on or within five statute miles laterally of the following routes:
  - (a) U.S. Highway 101 between San Jose and Salinas, inclusive;
  - (b) State Highway 17 between San Jose and Santa Cruz, inclusive;
  - (c) State Highway 1 between San Francisco and Carmel, inclusive, including the off-route point of Carmel Valley;
  - (d) State Highway 9 between Los Gatos and Santa Cruz, inclusive;
  - (e) State Highway 152 between Gilroy and State Highway 1, at Watsonville, inclusive;
  - (f) State Highway 156 between Castroville and its intersection with U.S. Highway 101 south of Gilroy, inclusive;
  - (g) State Highway 129 between its intersection with U.S. Highway 101 and State Highway 1 at Watsonville, inclusive;
  - (h) State Highway 68 between Salinas and Monterey, inclusive;

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III. Between all points and places in the San Francisco Territory, on the one hand, and, on the other hand, points and places located on or within twenty-five statute miles laterally of the following routes:

- (a) Interstate Highway 80 between Richmond and Sacramento, inclusive;
- (b) Interstate Highway 5 between Sacramento and its intersection with State Highway 198, inclusive;
- (c) Interstate Highway 580 between Oakland and its junction with Interstate Highway 5, inclusive;
- (d) Interstate Highway 205 between its junction with Interstate Highway 5 and its junction with Interstate Highway 580, inclusive;
- (e) State Highway 198 between its intersection with Interstate Highway 5 and its intersection with State Highway 99, inclusive;
- (f) State Highway 99 between Sacramento and its intersection with State Highway 198, inclusive; and
- (g) State Highway 4 between its intersection with Interstate Highway 80 and Stockton, inclusive.

IV. In performing the service herein authorized, carrier may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of said service.

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).

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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. Logs.
8. Articles of extraordinary value.
9. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
10. Fresh fruits and vegetables.
11. The following commodities between points on or within twenty-five statute miles laterally of routes specified in paragraph III above (except between points in the San Francisco Territory on the one hand, and, Vallejo, Sacramento, Stockton and Modesto and points within five statute miles of those cities, on the other hand):
  - (a) Commodities in ocean containers and empty ocean containers having an immediately prior or subsequent movement by water;

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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. Logs.
8. Articles of extraordinary value.
9. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
10. Fresh fruits and vegetables.
11. The following commodities between points on or within twenty-five statute miles laterally of routes specified in paragraph III above (except between points in the San Francisco Territory on the one hand, and, Vallejo, Sacramento, Stockton and Modesto and points within five statute miles of those cities, on the other hand):
  - (a) Commodities in ocean containers and empty ocean containers having an immediately prior or subsequent movement by water;

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- (b) Commodities having an immediately prior or subsequent movement in rail piggyback service.

## 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 Company 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

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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.

(END OF APPENDIX A)

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