

ORIGINAL

Decision No. 78585

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
LOOMIS COURIER SERVICE, INC., a
corporation, for a Certificate of
Public Convenience and Necessity
to Operate as an Express Corporation.

) Application No. 51694
) (Filed February 6, 1970;
) Amended August 5, 1970)

In the Matter of the Application of
LOOMIS COURIER SERVICE, INC., a
California corporation, to extend
freight-forwarder service.

) Application No. 52136
) (Filed August 17, 1970)

In the Matter of the Investigation into
the rates, rules and regulations, charges,
allowances and practices of all common
carriers, highway carriers and city
carriers, relating to the transportation
of any and all commodities between and
within all points and places in the State
of California (including, but not limited
to, transportation for which rates are
provided in Minimum Rate Tariff No. 2).

) Case No. 5432
) Petition for Modification
) No. 599

And Related Matters.

) Case No. 5435
) Petition for Modification
) No. 159

) Case No. 5439
) Petition for Modification
) No. 126

) Case No. 5441
) Petition for Modification
) No. 205

Marvin Handler, Attorney at Law, of Handler, Baker
& Greene, and George H. Hart, Attorney at Law,
of Reaugh, Hart, Allison, Prescott & Davis, for
Loomis Courier Service, Inc., applicant and
petitioner.

Karl K. Koos, Attorney at Law, of Knapp, Gill,
Hibbert & Stevens, for American Courier Corporation,
protestant.

Arthur D. Maruna, H. F. Kollmyer and Arlo D. Poe,
Attorney at Law, for California Trucking Association,
protestant and interested party.

Michael J. Stecher, Attorney at Law, Peter N. Kujachich
and Joseph C. Matson, for the Commission staff.

O P I N I O N

Loomis Courier Service, Inc. (Loomis) requests a certificate of public convenience and necessity as an express corporation for the transportation of checks, drafts, money orders, securities, transit items, sales audit items, business records, audit media, tabulation cards, data processing materials, legal documents, printed or reproduced documents or data, film and radioactive pharmaceuticals (Application No. 51694). It also seeks a certificate of public convenience and necessity as a freight forwarder of the same commodities (Application No. 52136). It also seeks an expansion of its rate exemption which was granted by Decision No. 65794 (Case No. 5432, Petition for Modification No. 599, et al.).

The applications and petitions were consolidated for hearing on a common record, which was held at San Francisco before Examiner O'Leary on October 6, 7 and 8, 1970. The matters were submitted upon the filing of concurrent briefs on November 24, 1970.

Loomis presently conducts operations pursuant to highway contract carrier and radial highway common carrier permits in addition to a certificate of public convenience and necessity authorizing operations as a freight forwarder which authorizes the transportation of some but not all of the commodities for which authority is sought in Application No. 52136.

For a number of years Loomis has utilized the lines of air common carriers in the State of California in the movement of property by two methods. One method has consisted of the movement of shipments by tendering them to the airlines as air freight, at the airline's tariff rate (air freight operation). Said operation

is conducted pursuant to Loomis' certificate of public convenience and necessity as a freight forwarder. The second method consists of the movement of shipments whereby an employee of Loomis purchases a passenger ticket and the property is transported as baggage of the employee (baggage operation). Loomis alleges that until recently it considered the baggage operation to be authorized under its certificate of public convenience and necessity as a freight forwarder.

The vice-president and general manager of Loomis testified that presently one account is utilizing the baggage operation between San Francisco and Los Angeles. In the past more accounts used the baggage operation; however, because of changes in airline schedules the accounts previously being served by the baggage operation are now being served by a charter operation. In the future, Loomis intends to utilize the baggage operation for customers presently served by the charter operations should the airline schedules change so as to meet the time requirements of customers presently being served by the charter operations.

With respect to Application No. 52136 the vice-president of Loomis testified that there have been requests from customers for the transportation of the commodities for which they presently do not have authority to transport with the exception of radioactive pharmaceuticals; he also testified that another reason for requesting an expanded certificate of public convenience and necessity as a freight forwarder was so that his company would have authority equal to that of its competitors.

Three public witnesses testified in support of the applications. They represented businesses which have occasion to use an express or freight forwarder service; however, none of the witnesses represented firms which would have occasion to ship radioactive pharmaceuticals.

By Decision No. 65794 dated July 30, 1963 Loomis and other carriers were exempted from observance of the rates, rules and regulations in various minimum rate tariffs in connection with the transportation of checks, drafts and/or money orders (moving in process of clearance between banks and/or clearing houses), legal documents, business records, audit media and tabulation cards when transported in a vehicle not exceeding a licensed weight of 4,000 pounds. Loomis, by the within petitions seeks to expand the exemption previously granted to include securities, transit items, sales audit items, data processing materials, printed or reproduced documents or data, film and radioactive pharmaceuticals. The petitions also seek to remove the restriction with respect to the movement of checks and/or money orders. In its petition Loomis alleges that a question has arisen as to whether or not the exemption from minimum rates is applicable to its freight forwarder operations or its contemplated express corporation operations. Because of this Loomis requests that the exemption be expanded to specifically apply to its operations as a highway contract carrier, radial highway common carrier, freight forwarder and express corporation should the latter be authorized by the Commission.

Loomis requests that should the applications be granted that it be authorized to publish airport-to-airport rates rather than door-to-door rates. The vice-president of Loomis testified

that airport-to-airport rates are more desirable since the requirements of individual shippers vary to such an extent that it is impractical to have uniform rates and rules applicable for all. Loomis points out in its brief that in Decision No. 77646 the Commission granted Brinks, Incorporated (Brinks) express corporation authority and authorized Brinks to publish airport-to-airport rates. The certificate of public convenience and necessity granted to Brinks was not accepted by it and the fact that Decision No. 77646 authorized the publication of airport-to-airport rates is now moot. In recent decisions granting authority similar to that applied for in the instant proceeding publication of door-to-door rates has been required. (Decision No. 77801 in re M. D. S. Courier Services, Inc. and Decisions Nos. 76236 and 76434 in re M. P. A. Courier Corporation, et al.)

As of July 31, 1970 Loomis indicated a net worth of \$452,845 and its net profit from operations for the nine-month period ending July 31, 1970 was \$179,076.

American Courier Corporation (American) opposes a grant of the applications on the grounds that the traffic presently available is not sufficient to support additional express corporation operations and that no need has been shown for the expansion of the freight forwarder certificate to include additional commodities. American also opposes Loomis' proposal to establish only airport-to-airport rates. It believes that grossly unfair competition would result if Loomis is allowed to publish airport-to-airport rates since American is required to file door-to-door rates.

No affirmative showing was made by the California Trucking Association (CTA) or the Commission' staff; however, CTA opposes a grant of the exemption from minimum rates. It believes that the Commission should upon its own initiative prescribe minimum rates, rules and regulations for the involved transportation. This proposal has previously been advanced by CTA. CTA recognizes that there is no evidence in these proceedings upon which meaningful rates, rules and regulations can be prescribed. CTA proposes that the sought exemptions be granted on a temporary basis and that the Commission staff be directed to study the involved transportation and propose minimum rates, rules and regulations therefor. If CTA believes there is a certain level below which rates should not go as their brief indicates, it should come forward with such information in a proper petition for the establishment of minimum rate regulation.

Based on the evidence adduced the Commission finds that:

1. Loomis presently holds a certificate of public convenience and necessity as a freight forwarder, a radial highway common carrier permit and a highway contract carrier permit.

2. Loomis utilizes the lines of common carriers by air in the movement of property by either tendering the property to the airline as air freight or by having the property transported as baggage accompanying an employee who has purchased a passenger ticket.

3. With the exception of film and radioactive pharmaceuticals the commodities which Loomis desires to add to its freight forwarder certificate and seeks authority as an express corporation are commodities which could be classified generally as business documents.

4. No evidence was presented to establish the need for authority to transport radioactive pharmaceuticals.

5. The minimum rate provisions in issue herein are not appropriate minimum rates, rules and regulations for the type of service Loomis provides.

6. Public convenience and necessity require the issuance of certificates of public convenience and necessity as an express corporation and a freight forwarder for all of the commodities embraced in the applications except radioactive pharmaceuticals.

7. For all practical purposes the service to be conducted by Loomis would not be a new service but rather the continuation and slight expansion of a service which preceded that being provided by American Courier Corporation.

Based upon the above findings the Commission concludes that the applications and petitions should be granted as set forth in the ensuing order.

Loomis Courier Service, 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 this 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. Certificates of public convenience and necessity are granted to Loomis Courier Service, Inc. (Loomis), a corporation, authorizing it to operate as an express corporation and as a freight forwarder, as defined in Sections 219 and 220 of the Public Utilities Code, between the points particularly set forth in Appendices A and B attached hereto and made a part hereof.

2. In providing service pursuant to the certificates herein granted, Loomis shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authorities granted by this decision.

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificates herein granted. Applicant is placed on notice that, if it accepts the certificates of public convenience and necessity herein granted, it will be required, among other things, to file annual reports of its operations.
- (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. 117.
- (e) Applicant shall comply with the requirements of the Commission's General Order No. 24-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 authorizing operations as a freight forwarder shall supersede the certificate of public convenience and necessity granted by Decision No. 70507 which certificate is revoked concurrently with the effective date of the tariff filings required by paragraph 2(b) hereof.

4. Loomis Courier Service, Inc. is exempted from observance of the rates, rules and regulations in:

Minimum Rate Tariff 2
Minimum Rate Tariff 19
Minimum Rate Tariff 1-B
Minimum Rate Tariff 5
Minimum Rate Tariff 9-B

In connection with the transportation of checks, drafts, money orders, securities, transit items, sales audit items, business records, audit media, tabulation cards, data processing materials, legal documents, printed or reproduced documents on data and film when transported in a vehicle not exceeding a licensed weight of 4,000 pounds. Said exemption also applies to Loomis' operations as a freight forwarder and express corporation when the ground portion of the transportation is performed in a vehicle not exceeding a licensed weight of 4,000 pounds.

A. 51694, et al. KB

5. The exemption granted by paragraph 4 supersedes the exemption granted to Loomis by Decision No. 65794 which exemption is revoked as to Loomis Courier Service, Inc. concurrently with the effective date of this order.

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

Dated at San Francisco, California, this 20th day of APRIL, 1971.

William Agnew, Jr. Chairman
[Signature]
Vernon L. Sturgeon
[Signature] Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Loomis Courier Service, Inc., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to operate as an express corporation, as defined in Section 219 of the Public Utilities Code, via the lines of air and land common carriers between all points and places within the State of California, subject to the following limitations:

1. The authority is limited to the following commodities: Checks, drafts, money orders, securities, transit items, sales audit items, business records, audit media, tabulation cards, data processing materials, legal documents, printed or reproduced documents or data and film.

2. Loomis Courier Service, Inc. shall establish door-to-door rates for service between all points of collection and distribution.

3. Transportation by land common carriers is authorized only in conjunction with prior or subsequent transportation by an air common carrier except that in case of an emergency such as an airport being closed because of weather conditions which would curtail the operations of air common carriers, land common carriers may be used to perform transportation between airports.

(End of Appendix A)

Issued by California Public Utilities Commission.

Decision No. 78585, Application No. 51694.

Loomis Courier Service, Inc., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to operate as a freight forwarder, as defined in Section 220 of the Public Utilities Code, between all points and places within the State of California subject to the following limitations:

1. The authority is limited to the following commodities: Checks, drafts, money orders, securities, transit items, sales audit items, business records, audit media, tabulation cards, data processing materials, legal documents, printed or reproduced documents or data and film.

2. Loomis Courier Service, Inc. shall establish door-to-door rates between all points of collection and distribution.

(End of Appendix B)

Issued by California Public Utilities Commission.

Decision No. 78585, Application No. 52136.