

ORIGINAL

Decision No. 90168 APR 10 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of LOOMIS COURIER SERVICE, INC., to sell, lease or otherwise dispose of all the California intrastate authority issued to it by the Public Utilities Commission of the State of California; and of GELCO COURIER SERVICES, INC., for authority to purchase, acquire, lease or otherwise dispose of the same said authority of LOOMIS COURIER SERVICE, INC., pursuant to §§ 851-854 or such other provisions of the Public Utilities Code as are applicable.

Application No. 58669
(Filed February 13, 1979)

O P I N I O N

Loomis Courier Service, Inc. (seller) requests authority to sell and transfer, and Gelco Courier Services, Inc. (purchaser) requests authority to purchase and acquire, certificated rights authorizing operations as an express corporation and freight forwarder.

The certificate was granted by Decision No. 78585 dated April 20, 1971 in Application No. 51694 and authorized operations between all points and places within the State 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, and film subject to the establishment of door-to-door rates between all points of collection and distribution.

The agreement of sale, entered into on December 7, 1978, covers the sale and transfer of interstate authority as well as

intrastate authority issued by the States of California, Oregon, Washington, Idaho, Hawaii, and New York for a cash consideration of \$2,245,000. A value of \$675,000 is placed upon the California authority.

Consummation of the sale will occur upon final approval of federal and state regulatory agencies. On January 30, 1979, the Interstate Commerce Commission authorized purchaser to operate seller's interstate rights on a temporary basis. Pending final consummation of the sale, applicants request corresponding authority from this Commission to execute a temporary lease agreement not to exceed one year at a monthly rental of \$40,000.

Purchaser, formerly named Bankers Dispatch Corporation, is an Illinois corporation and is presently operating within the State of California pursuant to radial highway common carrier and highway contract carrier permits. An application to convert its radial authority to a statewide general commodities highway common carrier certificate has been filed with the Commission pursuant to Section 1063.5 of the Public Utilities Code.

By Application No. 58548 filed December 26, 1978, purchaser seeks authority to control International Air Couriers, Inc. for the purpose of merging and thereby acquiring the latter's operating authority as a freight forwarder and express corporation.

As of October 31, 1978, purchaser indicated a net worth in the amount of \$13,289,233.

It is alleged that: (1) the unaudited operation of seller for its fiscal year ending October 31, 1978, resulted in a pre-tax loss of \$796,000; (2) this followed a pre-tax loss for 1977 of \$575,000; (3) as a result of seller's operating losses, the consolidated earnings of Loomis, the parent, have been significantly depressed; (4) because of the continuing losses of seller, the parent company has been forced to subsidize seller

by investing capital (through advances and/or loans) aggregating approximately \$1,187,000 over the past three years to enable seller to meet its obligations and capital expenditure needs; (5) the present financial position of seller militates against continued efficient and economical operation of the authority issued by this Commission; and (6) in order that the public may continue to experience adequate service, it is necessary that the transfer be authorized.

It is requested that any exemptions or deviations held by seller be made applicable to purchaser. An exemption was granted to seller by Decision No. 85894 dated June 2, 1976. It is alleged that the circumstances resulting in the authorized exemption are also applicable to the operations conducted or to be conducted by purchaser.

It is further requested that Rule 37 of the Commission's Rules of Practice and Procedure relating to service on existing carriers be waived on the ground that no other carrier interest will be affected inasmuch as the proposed transaction contemplates the continuation of an existing service.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest and concludes that it should be authorized. 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 seller and the issuance of a certificate in appendix form to purchaser.

Pending consummation of the transfer, purchaser will be authorized to lease the operating authority according to the terms of the agreement of sale attached to the application.

All authority presently held by seller to deviate from the minimum rates will be extended to purchaser.

It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

The effective date of this order should be the date of signature because the proposed lease of all operations, both inter-state and intrastate, is scheduled for May 1, 1979.

Purchaser 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 ORDER that:

1. Loomis Courier Service, Inc. may sell and transfer the operative rights referred to in the application to Gelco Courier Services, Inc. This authorization shall expire if not exercised by March 1, 1980, or within such additional time as may be authorized by the Commission.
2. Within thirty days after the transfer the purchaser shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.
3. Purchaser 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.

4. On or before the end of the third month after the transfer, the purchaser 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 the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to Gelco Courier Services, 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.

6. The certificate of public convenience and necessity granted by Decision No. 78585 in Application No. 51694 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

7. Purchaser 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.

8. Purchaser 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.

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

10. Pending consummation of the transfer authorized by Ordering Paragraph 1, purchaser may conduct operations pursuant to the lease arrangements according to the terms of the sales agreement as set forth in Appendix H attached to the application.

11. Within thirty days after the effective date hereof and on not less than ten days' notice to the Commission and to the public, applicants shall amend the tariffs presently on file by seller to reflect the authority granted in Ordering Paragraph 10.

12. All authority presently held by seller to deviate from the Commission's minimum rates are applicable to purchaser.

13. The provisions relating to notice as set forth in Rule 37 of the Commission's Rules of Practice and Procedure are waived.

14. The highway contract carrier permit, as issued to seller on December 24, 1970 and contained in File No. T-71,663, is revoked.

The effective date of this order is the date hereof. ✓

Dated at San Francisco, California, this 10th day of APRIL, 1979.

John E. Coyne
President
James L. Thompson
Robert D. Gault
Clair D. Spring
Edward W. Jones
Commissioners

Gelco Courier Services, 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 (subject to Notes 1, 2, and 3) as defined in Section 219 of the Public Utilities Code (Code) and as a freight forwarder (subject to Notes 1 and 2) as defined in Section 220 of the Code, via the lines of air common carriers, highway common carriers, and passenger stage corporations, from, to, and between all points on and 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. Gelco Courier Services, 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 90168, Application 58669.