

92456

DEC 2 - 1980

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Brink's Incorporated)
for the issuance of a certificate of)
public convenience and necessity to)
operate as an express corporation)
in both directions between points in)
the State of California.)

Application No. 59635
(Filed May 5, 1980;
amended August 11, 1980)

Chandler L. van Orman, Attorney at Law, for
Brink's Incorporated, applicant.
Ellis Ross Anderson, Attorney at Law, for
Gelco Courier Services, Inc., protestant.

O P I N I O N

By this application Brink's Incorporated (Brink's), a Delaware corporation, seeks a certificate of public convenience and necessity to operate between all points within the State of California as an express corporation, as defined in Section 219 of the Public Utilities Code, and as ordered by D.90984 in C.9606. Brink's also seeks to continue its air express services, via commercial airlines, of insured valuable property for certain California financial institutions which have contracted with it for such services. ✓

Brink's currently operates as a highway contract carrier pursuant to a highway carrier permit issued under File No. T-72807 on May 14, 1962. Its primary operations involve highway transportation by armored truck. In addition, Brink's provides an interstate and intrastate air express service. In this applicant we are solely concerned with Brink's intrastate air express operations. ✓

In support of its application Brink's adopts Findings of Fact 1 through 8 and 14 through 20 of D.90984 and Conclusions of Law 2 through 9 of that decision. (See Appendix A.) The essence of these findings and conclusions is that Brink's is ✓

operating as an express corporation without a certificate of public convenience and necessity as required by Section 1010 of the Code and that the public interest required that Brink's be afforded a reasonable time in which to apply for appropriate operating authority before the cease and desist order of D.90984 becomes effective.

Additionally, Brink's points out that it is presently engaged in providing a similar service within four other states, between the several states, and within foreign countries. Extension of Brink's air express service to intrastate operations within California assertedly would benefit the public in that it will make available an integrated air express service capable of serving all of the needs of the shipping public requiring an expedited surface-air service in the movement of insured valuable cargo. Brink's is currently providing this service in California to more than 50 banks, 90 stock brokerage firms, and 10 dealers in precious metals. ✓

A minimum charge of \$10 per shipment is proposed. ✓

Brink's alleges that the rendition of air express service for cash and other valuable property which is transported in the cargo hold of an already scheduled commercial aircraft makes it certain that there is no possibility that the project in question may have a significant adverse effect on the environment. ✓

Brink's requests ex parte handling.

A protest was filed by Gelco Courier Services, Inc. (Gelco) on June 6, 1980.

A prehearing conference was scheduled and held on August 11, 1980 in San Francisco. At the conference Brink's requested permission of the Administrative Law Judge to amend its application in accordance with an agreement reached with Gelco. Gelco's protest was grounded on the fact that Brink's application appeared to seek authority to transport not only commodities of unusual value, but also general commodities, and it was the latter to which Gelco objected.

Brink's clarified its application by submitting a document entitled "Amendment" which reads as follows:

"Applicant, Brink's Incorporated, seeks a certificate of public convenience and necessity authorizing operations as an express corporation in the transportation of coin, currency, bullion, precious metals and stones, jewelry, stamps, narcotics, negotiable instruments, securities, stocks, bonds, and other rare and valuable documents and objects and other commodities of unusual value between all points in California."

Gelco withdrew its protest and agreed that the matter may be decided without further hearing. No other protests have been filed.

Findings of Fact

1. A public hearing is not necessary.
2. Brink's air express operation involves the consolidation of shipments of valuable cargo for several shippers for movement by air. ✓
3. Firms which assemble and ship air freight are "indirect air carriers" subject to regulation by the Civil Aeronautics Board under Title IV of the Federal Aviation Act of 1958, as amended.
4. This Commission is permanently enjoined from regulating the rates, routes, or services of any air carrier having authority or holding an exemption under Title IV of the Federal Aviation Act of 1958, as amended, pursuant to the order of the U.S. District Court for the Northern District of California. (Sierra Flite Service, Inc. et al. v California P.U.C., et al., Civil No. 079-0840 SW, June 1, 1979.).
5. The federal district court order has been appealed by this Commission.
6. This application should be dismissed because the jurisdictional issue raised on appeal may not be finally resolved for some time.

If the jurisdictional issue is resolved in favor of California, the application may be refiled.

7. Finding 17 of D.90984 (cease and desist operations) should not be implemented.

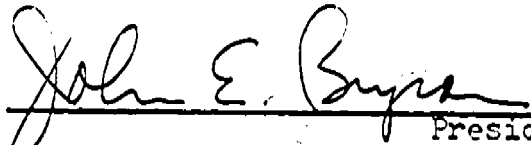
O R D E R

IT IS ORDERED that:

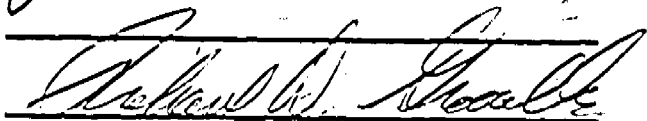
1. Application No. 59635 is dismissed without prejudice.
2. Pending resolution of the jurisdictional issues raised in Sierra Flite Service, Inc., the cease and desist order in D.90984 will not be implemented.

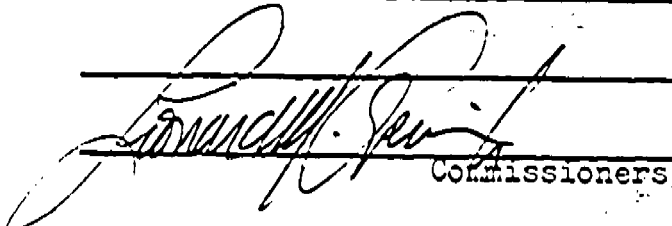
The effective date of this order shall be thirty days after the date hereof.

Dated DEC 2 - 1980, at San Francisco, California.



President





Commissioners

Commissioner Vernon L. Sturgeon, 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.

APPENDIX A
Page 1 of 4

"Findings of Fact

"1. Brink's holds a highway contract carrier permit which was issued on May 14, 1962 and is in File No. T-72807. This is the only operating authority granted Brink's by the Commission.

"2. Brink's conducts its air courier operations in the following manner. Shipments of cash and/or other valuables are picked up by armored trucks, which may have more than one pickup along its route. Three or more armed men are dispatched with the armored truck. Shipments are tendered to Brink's in sealed packages. The shipper prepares a form indicating the number of pieces being shipped, the value thereof and the consignee. An armed messenger, who is part of the armored truck crew and who has previously been identified to the shipper enters the vault or other secured area on the shipper's premises. He receives the shipment, checks the items against the shipping form, and if everything is in order he signs a receipt for the shipment. The messenger returns to the armored truck with the shipment. When the shipment is aboard the truck, the messenger places certain information about the shipment on a Brink's air courier pickup sheet. The armored truck generally picks up several shipments at different locations. When all the shipments have been picked up, the armored truck proceeds to an airport. Brink's has made arrangements with various airport authorities and airlines which permit the armored truck and armed personnel to proceed to an area near the airplane on which the shipment will be loaded. About 15 minutes before the departure of the airplane, the shipment is placed in the baggage compartment, under the protection of the Brink's armed employees, as the last loaded item of baggage. When the cargo door is closed, the courier boards the aircraft. The armored truck crew maintains constant surveillance of the cargo door until the aircraft departs. The armored truck crew remains at the airport for 15 minutes after the plane is airborne to be available in the event it is forced to return to the airport.

APPENDIX A
Page 2 of 4

"Brink's is in contact with the airlines which it uses. It receives frequent information about the progress of scheduled flights, delays, cancellations, rerouting, or other contingencies. When Brink's is advised that a flight will be delayed, it determines whether the shipment should remain in the armored truck or be returned to a vault at a Brink's terminal. When Brink's is notified that a flight has been diverted to a different destination, it dispatches an armored truck and crew to the new airport to meet the incoming aircraft.

"When an airplane carrying a Brink's shipment lands, it is met by an armored truck crew at the arrival gate. The courier is the first person to deplane from the aircraft and he proceeds immediately to the cargo area underneath the plane where he is joined by the armored truck crew. The shipment is the first one unloaded from the airplane. The number of items in the shipment is verified by the courier and the shipment is placed in the armored truck. The shipment is either delivered directly by the armored truck crew or taken to a Brink's office where it is prepared for subsequent delivery.

"3. Brink's operates its air courier service on a regular basis, Monday through Friday, in both directions between the following points: Los Angeles-San Francisco, Los Angeles-Sacramento, Los Angeles-Oakland, and Los Angeles-San Jose.

"4. Brink's conducts its air courier operations utilizing aircraft operated by regularly scheduled airlines, which are common carriers.

"5. On August 10, 1971, the Commission entered Decision No. 79027 in Case No. 9229. No findings of fact or conclusions of law were made in that decision. The decision stated that 'On the basis of the facts disclosed by our staff we find that there is insufficient evidence on which to make a finding of public utility status and thus no reason to continue the course of this proceeding.' Decision No. 79027 is not determinative of the issues raised herein.

APPENDIX A
Page 3 of 4

"6. Brink's has contracts with 75 financial institutions which encompass the providing of air courier service. At the time of hearing, Brink's furnished air courier service to 13 banks and 32 stockbroker firms on a regular basis. Many of these financial institutions are multi-branch organizations. Some of the material transported in the sealed packages involves transactions for customers of these institutions.

"7. The financial institutions for which Brink's provides air courier service constitute a portion of the public as defined in Sections 207 and 216(a).

"8. The insured transportation of high value shipments is consonant with express operations from their beginnings in the United States."

* * *

"14. Brink's has held out and dedicated its air courier service to recognized financial institutions for the transportation of insured shipments of high value, from areas that are without high risk, among the following points: Los Angeles-San Francisco, Los Angeles-Sacramento, Los Angeles-Oakland, and Los Angeles-San Jose.

"15. Brink's is a common carrier and has held out and dedicated its service to a portion of the public, thereby subjecting it to regulation as a public utility under Section 216(a).

"16. Brink's is operating as an express corporation as defined in Section 219 without having secured a certificate of public convenience and necessity as required by Section 1010.

"17. Brink's should be ordered to cease and desist from operating as an express corporation without having secured appropriate operating authority from the Commission.

"18. Brink's is the only carrier presently providing air courier service to California financial institutions for the insured transportation of shipments having high value. Brink's has provided this service under a bona fide, but erroneous, belief that it could

APPENDIX A
Page 4 of 4

do so without appropriate authority from this Commission. Brink's cooperated with the staff during the course of this investigation.

"19. It would be in the public interest to allow Brink's a reasonable period of time in which to apply for appropriate operating authority before the cease and desist order becomes effective.

"20. Brink's is not operating as a freight forwarder as defined in Section 220.

"Conclusions of Law"

* * *

"2. The financial institutions for which Brink's provides air courier service constitute a portion of the public as defined in Sections 207 and 216(a).

"3. Brink's is an express corporation as defined in Section 219.

"4. Brink's is a common carrier as defined in Section 211.

"5. Brink's is a public utility as defined in Section 216(a).

"6. Brink's is operating as an express corporation without having secured a certificate of public convenience and necessity as required by Section 1010.

"7. Brink's is not operating as a freight forwarder as defined in Section 220.

"8. Brink's should be ordered to cease and desist from operating as an express corporation unless it secures appropriate operating authority from this Commission.

"9. The public interest requires that Brink's be afforded a reasonable time in which to apply for appropriate operating authority before the cease and desist order becomes effective."