Decision No. 25565

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the investigation on the Commission's own motion into the rates, rules, regulations, contracts, schedules, practices, operations, and service, or any of them, of UNITED PARCEL SERVICE OF LOS ANGELES, INC., a corporation, operating a common carrier transportation service by auto truck between points in California.

CASE NO. 3381

ORIGINAL

Fred G. Athearn and Douglas Brookman, for Respondent.

Phil Jacobson, appearing in his own behalf as Interested Party.

H. A. I. Wolch, for Louis M. Goodman Delivery Service, Interested Party.

Wallace K. Downey, for Motor Freight Terminal Company, Interested Party.

Frank P. Doherty and Wm. R. Gallagher, for 20th Century Delivery Service, Inc., Interested Party.

BY THE COMMISSION.

O P I N I O N

The above proceeding is an investigation upon the Commission's own motion into the rates, rules, regulations, contracts, schedules, practices, operations and service, or any of them, of the United Parcel Service of Los Angeles, Inc.

Public hearings on this investigation were conducted by Examiner Kennedy at Los Angeles and the matter, having been duly submitted, is now ready for decision.

United Parcel Service of Los Angeles, Inc., a public utility, operates a pick-up and delivery service of parcels for the general wholesale and retail trade of Southern California. The operations of this carrier extend to San Diego

on the south, Santa Barbara on the north, Redlands on the east and beach cities on the west.

The United Parcel Service, Wholesale Division, an alleged non-public utility, performs all of the pick-up and the delivery service in the downtown area of Los Angeles for the United Parcel Service of Los Angeles, Inc. These two companies are controlled by the same holding company, United Parcel Service of America, Inc. In view of the fact that these two local companies operate a coordinated business under certain agreements which, among other things, prescribe rates which the utility shall pay the non-utility company for performing a portion of the service in making a delivery of parcels picked up in the downtown section of Los Angeles, it was concluded that the best method of testing the reasonableness of the rates of the utility company was to consider the operations of the two companies as a single organization. Respondent offered no objection to this plan and made available all the records of both companies.

The rate base and results of operation for the United Parcel Service of Los Angeles, Inc., and United Parcel Service, Wholesale Division, for the years 1931 and 1932, as shown by Commission's Exhibits Nos 12 and 14, are as follows:

	1931	1932*
RATE BASE	$ 501,448.00	$494,395.
OPERATING REVENUE	$1,019,358.04	$778,450.
OPERATING EXPENSES		
Automobile Expense	$232,099.10	$183,674.
Drivers, Helpers & Messengers,	327,420.13	249,612.
Other Delivery Expense	40,142.01	23,557.
Inside Salaries,	93,125.19	75,916.
Occupancy Expense	55,313.91	52,533.
Inside & General Expense	86,309.20	79,440.
Federal Tax	-	-
All Other Tax	3,595.17	4,484.
Sub-total	$838,004.71	$669,216.
(1) Transportation Tax	11,631.22	8,090.
(2) Management Expense	109,784.66	68,732.
Total,	$959,420.59	$746,038.

	1931	1932*
OPERATING INCOME	$59,937.45	$32,412.
OTHER GAINS	7,320.49	1,678.
OTHER LOSSES	2,982.41	389.
NET PROFIT OR LOSS	64,275.53	33,701-
RATE OF RETURN	12.82%	6.82%

*Estimated for the months of November and December

Previous to June 30, 1932, it was the practice to base the state transportation tax upon 60 per cent of the inter-city gross revenue of the United Parcel Service of Los Angeles, Inc. The state tax is based upon 5 per cent of the gross earnings from utility operations. There is now pending tax litigation in the California Supreme Court, which is the outgrowth of a demand upon this utility by the State of California to pay a transportation tax on its entire revenue, including both inter- and intra-city business. If the State's position is supported in this litigation, it will result in increasing the carrier's transportation taxes for 1932 from $8,090 to $39,754. With the existing management fee, this increase in state tax would reduce the rate of return to 3.61 per cent for 1932.

It should be pointed out that the rate of return of 12.82 per cent for 1931 and 6.82 per cent for 1932, shown above, are based upon the company's plan of management fee and taxes. This utility, like other subsidiary companies of the holding company, pays to the United Parcel Service of America, Inc., parent company, a management fee based upon 4½ per cent of the gross revenue plus one-half of the net profits. As shown above, the management fees, paid by the two companies operating in Los Angeles, amounted to $109,785 in 1931 and will amount to $68,732 in 1932 under the present plan of operation and employing the utility's method of computing state taxes. The Commission cannot subscribe to the payment of such large sums for management fees, as the record does not

warrant the conclusion that the utility receives service that justifies such annual expenditures.

Exhibits 12 and 14 also show the results of studies of different methods of computing management fee based upon various percentages of gross revenue, together with taxation under the plan that has been in use previous to June, 1932, and also the plan urged by the State. The rate of return upon the utility property under these various methods for 1932 range from 3.6 per cent to 8.8 per cent.

Respondent operates under a tariff which, in many respects, is impossible of interpretation. It is composed of Sections numbered 1 to 6 inclusive. Sections1 to 5 contain the rules by which it is governed; Section 6 defines the territory served; the remaining Sections 2, 3 and 4 contain the rate basis.

Section 2 is subdivided into parts (a), (b) and (c). These parts are preceded by the phrase "Except as otherwise provided." By giving effect to this phrase sub-sections (b) and (c) could not be used for the reason that rates are provided in paragraph (a), which is unrestricted as to kind, size or destination of package. But neither could paragraph (a) be used in connection with articles for which rates are provided in paragraphs (b) or (c) for the same reason. As a practical matter, paragraph (a) is used primarily in connection with deliveries to points outside the City of Los Angeles, (b) to points within the City, while (c) is seldom employed at all. The use of these provisions is furthermore confined to wholesale shippers, while Sections 3 and 4 are extended exclusively to retailers. There is nothing in the tariff, however, restricting the use of these various provisions in such a manner. No minimum is observed in applying paragraph (a) rates on shipments delivered to respondent's place of business, but pick-up service is not performed unless a weekly minimum provided for in Rule 6, Section 1, is maintained. This rule, however, does not provide a minimum in instances where

regular daily pick-up service is not requested, nor does the rate section make exception to Rule 1, Section 1, which reads, "except as otherwise provided, rates include store door receipt and delivery."

Section 3 contains rates per package and is dependent upon weekly minima guaranteed for a period of at least one year. It applies only to commodities specified provided the merchant forwards all such commodities via respondent's line. Classification is made according to what a merchant ordinarily ships, and all of a merchant's shipments are given the same rate. The classification, however, is confusing and ambiguous.

Section 4 names specific rates per package plus one cent per pound on various articles including "merchandise of department store and other stores selling diversified lines of merchandise which because of widely varying weights and sizes may not be readily classified." These rates are also based on weekly minima guaranteed for a period of at least one year, and may be used only if all the commodities on which the rate applies are forwarded via respondent's line.

Except for scattered shipments which are brought to its place of business, respondent's transportation services are performed under contracts with over 600 shippers. Two of these contracts are verbal; the others are executed on nine different forms. This number of forms could well be reduced, and respondent has indicated a willingness to do so.

All of the contracts contain provisions not set forth in respondent's tariff filed with the Commission. Among them are rules providing that if an uncollected C.O.D. shipment is not reported within fifteen days, the right to hold respondent responsible is assumed to have been waived; that in the event of absence of customer when delivery is attempted, a second and, if necessary, third attempt will be made without additional charge; that packages

refused will be returned without additional charge, and that incorrect address will, if possible, be corrected and delivery again attempted and regular charge made therefor. Those contracts executed on the forms of the Wholesale Company furthermore show radical departures from the established tariff. The contracts of the Los Angeles Company, on the other hand, except in the respects just noted, adhere closely to respondent's interpretation of the tariff and show no willful disregard thereof.

Although there is no tariff provision for using any other than carrier's actual weights, such weights are seldom obtained. In substantially all cases, respondent either accepts the shipper's weight or uses an estimated average.

Sections2(b), 3 and 4 are dependent upon the proportion of its shipments a merchant gives to the carrier. This clearly discriminates against merchants who for any reasnn find it more expedient to deliver a substantial portion of their packages or forward them via other carriers. While we see no objection to the gradation of rates according to the volume transported, we believe it to be an unjust discrimination to make rates dependent upon the relation the articles forwarded via one carrier bear to the total a merchant has for shipment.

Respondent should immediately reissue its tariff in a manner that will remove all doubt as to its application, eliminate the discrimination hereinbefore referred to, and establish a definite method of ascertaining weights in instances where it does not actually weight the shipments. The forms of the contracts to be used should be reproduced in the tariff and all the provisions thereof fully set forth.

The verbal contracts, heretofore referred to, should be executed in written form in accordance with one of the new contract forms to be adopted.

Respondent should file an additional rate for an on-call service and has indicated its willingness to do so. It also appears that the public would be better served if additional stations were established in the downtown area of Los Angeles where shippers may leave their parcels for delivery, without extra charge or the payment of a guaranteed minimum amount.

The record shows that prior to May 16, 1932, respondent accepted parcels brought to it by certain transportation companies,[1] for delivery in the territory outside of the City of Los Angeles, and that on and after that date respondent refused to accept and deliver parcels brought to it by such companies. These companies were engaged primarily in an intra-city business, but in order to successfully conduct the intra-city business for the merchants of Los Angeles it was necessary in some instances to arrange for the handling of their customers' shipments destined to points beyond the city limits. Respondent contends that these companies were operating illegally, they having no certificate of public convenience and necessity to transport shipments by truck beyond the city limits, nor did they have tariffs on file with the Commission if they were operating as express corporations within the meaning of Section 2(k) of the Public Utilities Act. Respondent refused to accept the shipments on the theory that it would be liable for the penalties provided in the Auto Truck Transportation Act and the Public Utilities Act for aiding and abetting an illegal operation.

The method of operation of some of the companies

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[1] The expression "transportation companies" is not used in the limited sense of a "transportation company" as defined in the "Auto Truck Transportation Act."

heretofore referred to, in so far as it involves the making of shipments over respondent's lines, leads to the conclusion that they may have been acting as express corporations within the meaning of Section 2(k),[2] and as such should have filed their tariffs with the Commission.[3] However, there may have been some justifiable doubt in their minds, and the record does not show clearly in each instance, as to whether they were acting as express corporations or as agents for shippers in forwarding shipments via United Parcel Service. The record discloses that the Wholesale Division, heretofore referred to, was making shipments over the line of respondent in substantially the same manner as some of the other companies mentioned without having filed a tariff.

Respondent, as a common carrier, is under the duty of accepting and transporting parcels tendered to it at its tariff rates and under its rules and regulations as filed with the Commission, whether such shipments are made in the name of or tendered by an individual shipper, by an agent for such shipper, or by one lawfully acting as an "express corporation" within the meaning of Section 2(k) of the Public Utilities Act. Whether a particular express corporation or corporations should be afforded other than tariff rates, or be accorded special facilities in

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2 In Re E. E. Frost & Co., 31 C.R.C. 668, this Commission held that whether a rail carrier performs service for an express corporation under contract or at the regular tariff rates is not material to the determination of the status of the latter under Section 2(k).

3 See United Parcel Service vs. 20th Century Delivery Service, Inc., Decision No. 25274 (October 24, 1932) in Case No. 3299. 20th Century Delivery Service, Inc., and Louis Goodman ("Goodman Delivery Company") have since filed express tariffs covering service to points beyond Los Angeles but over the lines of common carriers other than respondent.

the handling of its shipments is a matter of contract between respondent and the express corporation. Any such contract or contracts which respondent may enter into should be filed with the Commission.

In any event, the record shows that respondent, prior to May 16, 1932, held itself out to transport parcels tendered to it by other transportation companies referred to herein. They relied upon this holding out of respondent to perform service to points beyond the city limits and built their business accordingly. Unless they are successful in obtaining a certificate of public convenience and necessity to perform themselves the service heretofore performed by respondent their business would suffer materially.

We conclude that it is the duty of respondent to continue to accept packages from carriers who now fully comply with all legal requirements pertaining to their method of conducting business. However, where the handling of shipments of these local companies operating under an express tariff is not covered by a contract between themselves and the respondent on file with the Commission, the respondent should and would have the authority to establish and file an appropriate and reasonable rule or regulation as a part of its tariff, insuring the proper remittance and accounting for C.O.D. collections made by the respondent for the account of such other companies.

After carefully considering all of the evidence in this proceeding, it is concluded that with the carrying out of the changes referred to above, which may slightly decrease respondent's net

income, the Commission cannot reasonably order a reduction in rates under present operating conditions, even though it reduces the allowance for management fee to a point which would be considered reasonable, therefore, the order will prescribe only those changes to which reference is made above.

O R D E R

The above entitled case having been instituted on the Commission's own motion, public hearings having been held and the Commission being duly apprized of the facts,

IT IS HEREBY ORDERED that respondent, United Parcel Service of Los Angeles, Inc., be and it is hereby directed to file with the Commission, within thirty (30) days from the effective date of this order, a new tariff embodying the changes outlined in the foregoing opinion, which tariff shall be subject to approval by the Commission and shall in no case contain increases over the rates now on file, unless specific authority is previously obtained.

IT IS HEREBY FURTHER ORDERED that United Parcel Service of Los Angeles, Inc., receive and transport parcels tendered it by carriers operating in compliance with the law governing their operations and which meet with the requirements of respondent's rules and regulations on file or which may be filed with the Commission.

The effective date of this order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 16th day of January, 1933.

Commissioners.