

Decision No. <u>28589</u>

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of UNITED PARCEL SERVICE for authority to Transfer to UNITED PARCEL SERVICE BAY DISTRICT an operative right to transport merchandise between San Francisco, San Jose and intermediate points, and an operative right to transfer merchandise between San Francisco and points on the East Bay; and of UNITED PARCEL SERVICE BAY DISTRICT to acquire these operative rights.

Application No. 20355.

BY THE COMMISSION:

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United Parcel Service, a Washington corporation has petitioned the Railroad Commission for an order approving the sale and transfer by it to United Parcel Service Bay District, a California corporation, of operating rights for the automotive transportation as a highway common carrier of proparty between San Francisco and San Jose and intermediate points; and between San Francisco, on the one hand, and Oakland, Berkeley, Alameda, Piedmont, Emeryville, Albany, Richmond, San Leandro, Hayward and intermediate points, on the other hand; and United Parcel Service Bay District, a California corporation has petitioned for authority to purchase and acquire said operating rights and to hereafter operate thereunder, the sale and transfer to be in accordance with the agreement as set forth in the application.

The consideration to be paid for the property herein proposed to be transferred is given as \$100.00, all of which sum is alleged to be the value of the intangibles.

The operating rights herein proposed to be transferred

are separate rights and the authority for transfer hereby given is not to be construed as in any way authorizing the consolidation or joining together of such rights which were established as follows:

By Decision No. 15446 dated September 23, 1925 in Application No. 11709 United Parcel Service was authorized to acquire the operative right between San Francisco, and San Jose and intermediate points. The operative right between San Francisco, on the one hand, and certain east bey points, on the other hand, is a prescriptive right enlarged by Decision No. 15467, dated September 25, 1925, in Application No. 10874.

United Parcel Service Bay District is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

ORDER

IT IS HEREBY ORDERED that the above entitled application be, and the same is hereby granted, subject to the following conditions:

1. The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission, or any other rate fixing body, as a measure of value of said property for rate fixing, or for any purpose other than the transfer herein authorized.

2. Applicant united Parcel Service shall within twenty (20) days after the effective date of the order herein unite with applicant United Parcel Service Bay District in common supplement to the teriffs on file with the Commission, covering service given under the certificate herein authorized to be transferred, applicant United Parcel Service withdrawing and applicant United Parcel Service Bay District accepting and establishing such tariffs and all effective supplements thereto.

3. Applicant United Parcel Service shall within twenty (20) days after the effective date of the order herein withdraw all time schedules filed in its name with the Railroad Commission and applicant United Parcel Service Bay District shall within twenty (20) days after the effective date of the order herein file, in duplicate, in its own name time schedules covering service heretofore given by applicant United Parcel Service which time schedules chall be identical with the time schedules now on file with the Railroad Commission, in the name of applicant United Parcel Service or time schedules satisfactory to the Railroad Commission.

4. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service therounder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been obtained.

5. No vehicle may be operated by applicant United Parcel Service Bay District unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

6. The authority herein granted to sell and transfer the rights and/or property shall lapse and be void if the parties hereto shall not have complied with all the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the Commission.

Dated at San Francisco, California, this 247 day

of February, 1936.

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