

ORIGINAL

Decision No. 59072

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of BRAKE DELIVERY SERVICE)
to amend its Local Parcel Tariff) Application No. 40389
No. 1, Cal. P.U.C. No. 1.)

W. J. Knoell and Harold M. Brake, for applicant.
Arlo D. Poe, J. C. Kaspar and James Quintrall,
for California Trucking Associations, Inc.,
interested party.

O P I N I O N

Brake Delivery Service is engaged in the business of transporting general commodities as a highway common carrier between points in and about the City of Los Angeles and between points in Los Angeles and vicinity on the one hand and points in the City of San Diego or intermediate thereto on the other hand. A substantial portion of its operations are performed as a "parcel" carrier within the Los Angeles general area. By this application it seeks authority to effect increases in its rates for its parcel delivery services.

Public hearing on the application was held before Examiner C. S. Abernathy at Los Angeles on April 7, 1959. Evidence was submitted by applicant's president and by its tariff agent. The California Trucking Associations, Inc., participated in the proceeding as an interested party.

A principal question which is involved in this matter is whether or to what extent the propriety of the rate increases which applicant seeks must be demonstrated by a specific showing of justification before the increased rates may be authorized and lawfully established. This question stems from the provisions of the State Constitution and of the Public Utilities Code which require a showing of justification for rate increases before carriers such as applicant may put said increases into effect.¹ Notwithstanding applicant's request in this matter for authority to make the rate increases which are hereinafter indicated, applicant's position basically is that establishment of the increases is required by the minimum rate orders of the Commission, and that specific justification and authorization of the increases is not necessary. Brake Delivery Service has nevertheless filed this application in order to comply with what appears to it to be recent changes in the Commission's requirements concerning steps to be taken in the establishment of increased rates.

The question concerning the justification of the sought rates relates mainly to rates which applicant assesses for transportation between points within Los Angeles and points located in

I "No railroad or other transportation company shall raise any rate or charge for the transportation of freight or passengers or any charge connected therewith or incidental thereto, under any circumstances whatsoever, except upon a showing before the railroad commission provided for in this Constitution, that such increase is justified ..."

Article XII, Section 20, California State Constitution.

"No public utility shall raise any rate or so alter any classification, contract, practice, or rule as to result in an increase in any rate except upon a showing before the commission and a finding by the commission that such increase is justified."

Section 454, Public Utilities Code.

adjacent areas. Applicant's basic rate for this transportation is 16 cents per package plus $2\frac{1}{2}$ cents per pound of the weight of the package. This rate is lower than the applicable rates named in Minimum Rate Tariff No. 2, which tariff governs applicant's operations with respect to the transportation involved. The rate was originally established under authority of the so-called alternative provisions of the tariff to correspond to a rate for like services that was being assessed at the time by United Parcel Service, a highway common carrier which is also engaged in parcel delivery operations in and about Los Angeles, but which is not subject to the provisions of Minimum Rate Tariff No. 2.² The alternative provisions under which applicant published its rates to correspond to those of United Parcel Service are as follows:

"Common carrier rates ... may be applied in lieu of the rates provided in this tariff, when such common carrier rates produce a lower aggregate charge for the same transportation than results from the application of the rates herein provided ..."
(Item No. 200, Minimum Rate Tariff No. 2.)

On September 8, 1958, pursuant to authority granted by Decision No. 56950, United Parcel Service increased its basic rate to 16 cents per package plus 3 cents per pound of the weight of the package. Applicant seeks to make corresponding increases in its own rates. Applicant alleges in effect that the rates of United

² In the establishment of Minimum Rate Tariff No. 2 United Parcel Service and a number of other carriers were exempted from observance of said tariff on the grounds that the record then adduced did not show to what extent, if at all, the rates of said carriers were unlawful and should be changed.

Decision No. 31606, 41 C.R.C. 671, 724.

Parcel Service measured the extent that it could depart from the requirements of Minimum Rate Tariff No. 2 in the original establishment of its rates. Therefore, said rates of United Parcel Service, as increased, continue to delineate the limits of departures from the minimum rate provisions which it lawfully may make. On this basis it asserts that increases in its rates to correspond to the increases of United Parcel Service are mandatory rate increases, not rate increases of the type for which specific justification and authorization are prerequisites.

According to applicant's witnesses, the Commission's policies which have prevailed until recent years would have permitted applicant -- in fact would have required it -- to increase its rates to conform to the increased rates of United Parcel Service. The requirement that applicant should now seek authorization for, and justify, such increases before putting them into effect represents an apparent change in policy. In compliance with such change applicant sought authority on the Commission's special docket to effect the increases. However, this request was denied. As a consequence applicant has renewed its request by the filing of the instant application.

In addition to the increases by which applicant seeks to make its rates conform to those of United Parcel Service for corresponding services, applicant also seeks authority to effect like increases in its rates for parcel delivery services which it performs within the Los Angeles Drayage Area (as defined in Minimum Rate Tariff No. 5) and for such other of its highway common carrier parcel delivery services in and about Los Angeles which are not

otherwise encompassed by the above proposals. Applicant's basic rate for these services is likewise 16 cents a package plus $2\frac{1}{2}$ cents per pound of the weight of the package. This rate is the same as a rate which, prior to December 8, 1958, was set forth in Minimum Rate Tariff No. 5 as a minimum rate for the transportation of packages within the Los Angeles Drayage Area. On December 8, 1958, the package rate in Minimum Rate Tariff No. 5 was increased to 16 cents a package plus 3 cents a pound of the weight of the package. Applicant has not undertaken heretofore to adjust its rates to the higher level. Its president pointed out that were such adjustments to be made without concurrently effecting the other rate increases which are sought herein, applicant's rates for transportation within the Los Angeles Drayage Area would exceed those to points beyond, and would thereby be in violation of the long- and short-haul prohibitions of the Constitution and of the Public Utilities Code.³ Applicant has not been authorized to depart from these prohibitions.

Because of its basic contention that establishment of the sought rates is made necessary by the Commission's minimum rate orders, applicant did not undertake to submit other justification for its proposals. Assertedly applicant has experienced the same increases in operating costs that were the basis of the increases in the rates of United Parcel Service and in the package rates in

³ Article XII, Section 21, California State Constitution
Section 460, Public Utilities Code.

Minimum Rate Tariff No. 5. However, no showing was made of the effect of these increases in costs upon applicant's own operations.

The California Trucking Associations, Inc., participated in the proceeding as an interested party on the grounds that the issues which are presented are not issues which arise solely from the rate adjustments which applicant seeks but are issues of wide-spread bearing upon numerous other rate increases under the Commission's minimum rate orders generally. The position of the Associations in this matter is that a determining factor is whether the increases of the type involved herein are within the framework of the Commission's minimum rate orders. If so, counsel for the Associations declared, the Commission has before it the essential basis for finding that the increases are justified. Consequently, it is not necessary for a carrier to support an application for authority to make such increases by a showing of justification in the usual sense in order to comply with the requirements of Article XII, Section 20, of the Constitution and of Section 454 of the Public Utilities Code. With respect to the rate increases which applicant seeks in order to bring its rates to the level of those of United Parcel Service, counsel for the Associations concurred with applicant that with the establishment of the increased rates of United Parcel Service, said rates became the minimum rates which applicant may assess.

Discussion, Findings and Conclusions

At the outset of this discussion, it should be stated that we do not agree with applicant's view that authorization of the sought increases is not a necessary prerequisite to lawful

establishment of the increased rates. As indicated hereinabove, applicant's view is based on the belief that compliance with the minimum rate provisions requires that the increases be made as proposed. However, in view of the nature of the rate increases which are involved, it appears that they are subject to the provisions of Article XII, Section 20, of the State Constitution and of Section 454 of the Public Utilities Code, and that they must be shown to be justified before the increased rates may be established.

Nevertheless, the relationship of the minimum rates to applicant's present rates for the parcel delivery services has a bearing upon the showing required herein. If applicant's rates are less than the minimum rates, and if the sought increases would do no more than restore applicant's rates to the level of the minimum rates, the increases should be authorized. As applied to highway common carrier operations, the minimum rates represent the lowest rates that are reasonable and sufficient and justified by the rates of competing carriers. Thus, a finding that applicant's rates are below a reasonable and sufficient level, not justified by competitive rates of competing carriers or by the cost of other means of transportation, may be made upon a determination that they are less than the minimum rates.

Applicant has here filed for authority to increase its rates to the level of the rates of United Parcel Service, the rates that assertedly are the minimum rates for its parcel delivery services (except those which are performed within the Los Angeles Drayage Area and certain areas within the City of Los Angeles). However, it has overlooked the fact that the minimum rate level for the transportation in question is that of 20th Century Delivery Service, Inc., whose tariff rates are lower than those of United Parcel Service. In these circumstances, it cannot be concluded that

from a minimum rate standpoint that applicant's rates for transportation outside of the Los Angeles Drayage Area are insufficient and that the sought increases are, therefore, justified.

Applicant's allegations of increased costs, standing alone and without evidence to show present operating results from the services involved, also do not establish that the rates are insufficient and that the sought increases are justified.

Although applicant's showing of itself does not provide grounds for a finding that the sought increases are justified, it appears that the increases should be authorized on another basis. As has been pointed out hereinbefore, on December 8, 1958, the minimum rate in Minimum Rate Tariff No. 5 for the transportation of packages or parcels within the Los Angeles Drayage Area was increased to 16 cents a package plus 3 cents a pound of the weight of the package. Since as a minimum rate this rate represents the lowest rate that has been found to be reasonable for the transportation of packages within the drayage area (under the conditions under which the rate applies), it seems indisputable that the same rate represents the lowest reasonable and sufficient rate for the transportation of packages from points within the drayage area to the points which applicant serves outside of the drayage area. Moreover, it appears that this rate is the lowest rate that applicant may assess to numerous points outside of the drayage area and comply both with the long- and short-haul provisions of the Constitution and of the Public Utilities Code and with the Commission's directive to apply the rate as the minimum package rate for transportation within the drayage area. Although common carriers may, in special cases, be authorized to depart from the long- and short-haul requirements, it does not appear that applicant holds such authority with respect to its parcel rates.

Upon consideration of the foregoing relationship of applicant's rates to the minimum drayage rates, and other factors bearing upon its rates, including the requirements that its charges be nondiscriminatory, the Commission is of the opinion and finds that the increased rates which applicant seeks to establish are justified. They will be authorized. In connection with its request, applicant also asked that it be authorized to establish the increased rates on five days' notice to the Commission and to the public. This request also appears justified in the circumstances shown and will be authorized.

O R D E R

Based on the findings and conclusions set forth in the preceding opinion,

IT IS HEREBY ORDERED that:

1. Brake Delivery Service be, and it hereby is, authorized to amend its Local Parcel Tariff No. 1, on not less than five days' notice to the Commission and to the public, to establish for the transportation of parcels or packages (a) a base rate of 16 cents per package plus 3 cents a pound of the weight of the package, and (b) to make corresponding changes in other of its package rates to the extent that such increased rates, including the base rate, are set forth in Appendix A attached hereto and by this reference made a part hereof.

2. The authority herein granted shall expire unless exercised within ninety days after the effective date of this order.

This order shall become effective twenty days after the date hereof.

Dated at San Francisco, California, this 29th day of September, 1959.

Ernest R. B...
President
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Commissioners

Commissioner Theodore H. Jenner, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A to Decision No. 59072Minimum RequirementAuthorized Rates

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| (a) Where the number of deliveries consigned to places of business during any calendar week is equal to or more than 95 percent of the total number of deliveries tendered carrier by consignor during the same period, or where the total number of deliveries to places other than places of business does not exceed 5 during said period. | 16 cents per package plus 3 cents for each pound or fraction thereof of its weight. |
| (b) Where Section (a) does not apply and the number of deliveries consigned to places of business during any calendar week is equal to or more than 75 percent of the total number of deliveries tendered carrier by consignor during the same period. | 19 cents per package plus 3 cents for each pound or fraction thereof of its weight. |
| (c) Where the number of deliveries consigned to places of business during any calendar week is less than 75 percent but equal to or more than 50 percent of the total number of deliveries tendered carrier by consignor during the same period. | 24 cents per package plus 3 cents for each pound or fraction thereof of its weight. |
| (d) Where the number of deliveries consigned to places of business during any calendar week is less than 50 percent of the total number of deliveries tendered carrier by consignor during the same period. | 34 cents per package plus 3 cents for each pound or fraction thereof of its weight. |

End of Appendix A