

Decision No. 59134

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into)
the rates, rules and regulations, charges,)
allowances and practices of all common)
carriers, highway carriers and city)
carriers relating to the transportation of)
any and all commodities between and within)
all points and places in the State of)
California (including but not limited to,)
transportation for which rates are pro-)
vided in Minimum Rate Tariff No. 2).

Case No. 5432
Petition for Modification
No. 146

E. H. Griffiths and George B. Dill, for Edwin C. Bennett, dba Ace Delivery Service, petitioner.
Norman R. Moon, for Highway Transport, Inc.;
Russell Bevans, for Draymen's Association of San Francisco, Inc.; Roger L. Ramsey, for United Parcel Service; R. D. Toll, A. D. Poe, and J. X. Quintrall, for California Trucking Associations, Inc., protestants.
Phillip A. Winter, for Delivery Service Co., interested party.
Robert E. Walker and A. R. Day, for the Commission staff.

O P I N I O N

Edwin C. Bennett, doing business as Ace Delivery Service, holds a permit authorizing operations as a highway contract carrier in the transportation of general commodities within a radius of 100 miles, and a permit authorizing transportation of general commodities as a city carrier in the City of San Francisco. By petition filed on March 19, 1959, he seeks to be exempt from the minimum rates provided in Minimum Rate Tariff No. 2 for shipments of wholesale drugs, wholesale beauty supplies, wholesale electronics and electrical supplies and equipment weighing 100 pounds or less for delivery within the area of San Francisco and south thereof to and including San Jose, bounded on the west by State Highway No. 5 (Skyline Boulevard) and on the east by San Francisco Bay.

Public hearing was held before Examiner J. E. Thompson on June 17 and 25, 1959 at San Francisco. Petitioner was granted leave to file two late-filed exhibits. A one-page document measuring 8½ inches by 11 inches entitled "Transportation Contract" is received in evidence as Exhibit No. 146-2. A one-page document measuring 8½ inches by 13 inches purporting to be a form of contract is received in evidence as Exhibit No. 146-3. This petition was taken under submission on July 7, 1959, which was the date said documents were received by the Commission.

Petitioner has been engaged in the business of transporting property for 5½ years. He operates four ¾-ton "walk-in" type trucks. His present operations consist principally of the transportation of packages and parcels within San Francisco and between San Francisco and Daly City (including Westlake). Exhibit No. 146-1 shows that the average weight of shipments transported is 17½ pounds and the average weight of parcel handled is 13 pounds. The largest intercity shipment transported by petitioner was 200 pounds.

Petitioner testified that the reason for the filing of the petition is that a number of business establishments have moved their places of business from San Francisco to points in San Mateo and Santa Clara counties and that the exemption sought is necessary in order to allow him to compete with other carriers, namely, Howard Wilson, doing business as Ace Delivery, United Parcel Service, Inc., Tri-City Parcel Delivery and Merchants Delivery, all of whom allegedly have been granted exemption from the minimum rates.

Petitioner testified that in the transportation of parcels from wholesalers to retail stores and beauty parlors, all shipments transported have originated in San Francisco. The exemptions granted to Tri-City Parcel Delivery and to Ace Delivery extend to shipments

between South San Francisco and San Jose. Exemption has not been granted to "Merchants Delivery". Merchants Parcel Delivery has been granted exemption in connection with shipments from retail stores only. The exemptions granted these three carriers cannot be used in competition with petitioner's service from wholesalers in San Francisco. United Parcel Service is a highway common carrier with rates on file with the Commission. Under Section 3663 of the Public Utilities Code and Item No. 200 of Minimum Rate Tariff No. 2, petitioner may charge and assess the rates published by United Parcel Service.

Under cross-examination, petitioner testified that there was only one firm that he had served that had moved from San Francisco to San Mateo County or Santa Clara County and that he had not been informed by any of the wholesalers he presently serves of an impending move. He stated that he had not served the two drug houses named in his petition and that he was not presently transporting drugs sold at wholesale. He stated that he had not negotiated with the two wholesale drug houses for their transportation business but was of the opinion that he might secure their business if the sought exemption is granted.

Petitioner contends that his operation in the parcel delivery business is no different from that of other carriers who have been granted exemption under Finding 14 of Decision No. 31606.

The minimum rates contained in Minimum Rate Tariff No. 2 were first established by Decision No. 31606, dated December 27, 1938, in Case No. 4246 (41 CRC 671). Finding 14 of that decision states in part:

"That this record does not show to what extent, if at all, the following rates, rules and regulations are unreasonable, discriminatory, unjustified by transportation conditions, or otherwise unlawful,

and that, therefore, none of such rates, rules or regulations should be required to be changed or established by the order herein.

Rates, rules and regulations of

- (a) ...United Parcel Service, Inc.,...
- (b) Monthly tonnage rates...published by Sausalito, Mill Valley and San Francisco Express Co.
- (c) Rates, rules and regulations for the transportation of shipments weighing.. 100 pounds or less maintained by... Woodland-Ramsey Auto Stage."

All of the carriers listed in subparagraph (c) were common carriers maintaining schedules of rates published and on file with the Commission.

Since the issuance of Decision No. 31606, a number of carriers, including highway permit carriers engaged in special types of operations, including parcel delivery service or special messenger service, have been granted exemption from the minimum rates in connection with those operations. Highway Permit Carriers are not required to publish and file a schedule of rates. Where exemptions have been granted to parcel delivery carriers, however, the Commission has been assured, either from restrictions in their permits, from the rates proposed to be assessed, or, from territorial restrictions in the exemption being sought, that the operations at rates lower than the minimum rates will not injure or be disruptive of the services of common carriers in the field. We do not have such assurance in this instance. Petitioner proposes to provide service as a highway contract carrier between San Francisco and peninsula points. His normal operation is the transportation of small packages and parcels as indicated by Exhibit No. 146-1; however, as indicated by the record, he apparently is willing to accept shipments greater than 100 pounds. One form of contract which is used, Exhibit No. 146-3, limits the

size of shipment to 70 pounds and has terms similar to those required by United Parcel Service, Inc., in its tariff; the other, Exhibit No. 146-2, has no restrictions as to size or weight of shipments. Petitioner was vague concerning the operations he proposes to conduct and the rates he will assess. He was of the opinion that most of this traffic would originate at San Francisco and that with respect to such traffic he would assess 16 cents per package plus 3 cents per pound or the applicable rate in Minimum Rate Tariff No. 2, whichever is the lower. Provided certain terms and conditions governing the rates in the tariff of United Parcel Service, Inc., are met, petitioner can assess those rates without the exemption sought here. With respect to transportation from San Mateo and Santa Clara counties points to San Francisco, or between points in said counties, petitioner would not state what operations are contemplated and, when asked respecting the rates he proposed to assess, stated that he had not figured those rates as yet.

The operating authority of petitioner is not restricted to parcel delivery operations. The granting of the exemption sought would provide him a carte blanche to acquire business by selective rate cutting in a field presently served by common carriers engaged in parcel delivery and the transportation of small shipments.

Upon consideration of all the facts and circumstances of record, the Commission is of the opinion and finds that the authority sought has not been shown to be justified and that the petition should be denied.

ORDER

Based on the evidence of record and on the findings and conclusions set forth in the preceding opinion, IT IS ORDERED that the petition of Edwin C. Bennett is denied.

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

Dated at San Francisco, California, this 6th day of October, 1959.

Edwin C. Bennett President
E. L. Fox
Richard H. ...
Commissioners

Everett C. McKeage

Commissioner Matthew J. Dooley being necessarily absent, did not participate in the disposition of this proceeding.