

**ORIGINAL**

Decision No. 60553

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of UNITED PARCEL SERVICE, INC., an Ohio corporation, to acquire through merger the certificates of public convenience and necessity and operating rights of UNITED PARCEL SERVICE, a California corporation.

Application No. 42372

O P I N I O N

This application was filed on June 17, 1960, for an order of the Commission authorizing United Parcel Service and United Parcel Service, Inc., to execute an agreement of merger.

United Parcel Service is a California corporation which is engaged in business as a highway common carrier of property between specified points and territories in California under an in-lieu certificate of public convenience and necessity, which was granted by Decision No. 59619, dated February 1, 1960, in Application No. 41377. It has \$200,000 of stock outstanding which is divided into 2,000 shares of the par value of \$100 each.

United Parcel Service, Inc., is an Ohio corporation which is engaged in interstate commerce and in intrastate operations in other states. On May 17, 1960, it received from the Interstate Commerce Commission a certificate of public convenience and necessity authorizing common carrier parcel delivery service between specified points and territories in California, on the one hand, and specified points and territories in Arizona, on the other hand. It has

\$375,000 of stock outstanding which is divided into 3,750 shares of the par value of \$100 each.

The outstanding stock of both corporations is owned by United Parcel Service of America, Inc., a Delaware corporation. In order to simplify the intercorporate operations, those in control of the affairs of the two applicants have concluded to merge the two corporations. An agreement of merger has been made whereby United Parcel Service, the California corporation, will be merged into United Parcel Service, Inc., the Ohio corporation, and the latter, as the surviving corporation, will succeed to all the rights, assets and liabilities of the California carrier. The Ohio corporation will adopt the tariffs of the California corporation and will continue the California operations with the same management, personnel and facilities as are now utilized. The \$200,000 of stock of the California corporation will be surrendered and retired and the \$375,000 of the Ohio corporation will remain as the only issued and outstanding shares of the surviving corporation.

Exhibit I, attached to the application, shows that the combined operating revenues of the two carriers, in 1959, aggregated \$48,428,608 and the combined net income, \$1,111,744. Exhibit F contains a pro forma balance sheet statement as of December 31, 1959, giving effect to the merger. A condensed statement is as follows:

Assets

Current assets	\$ 6,314,483
Tangible property	7,242,673
Deferred debits	<u>13,491</u>
Total	<u>\$13,570,647</u>

Liabilities and Capital

Current liabilities	\$ 4,066,641
Advances from affiliated company	3,035,000
Miscellaneous reserves	982,400
Capital stock and surplus	<u>5,486,606</u>
Total	<u>\$13,570,647</u>

The in-lieu certificate of public convenience and necessity now held by the California corporation was issued by the Commission after public hearings had been held in San Francisco and Los Angeles, upon notice having been given, and following the submission of briefs by the parties to the proceeding. The certificate provides for the transportation of packages, subject to certain limitations, and limits the service to manufacturers, manufacturers' agents, wholesalers, jobbers and commercial distributors only and at rates maintained on a "per package" basis.

In view of the fact that the Commission so recently has reviewed the California corporation's operating authorities, it is unnecessary to do so again at this time or to require applicants to make a showing with respect to the continuance of such present authorities. Moreover, this proceeding is not one involving a purchase and sale of operative rights. It is a merger proceeding whereby the surviving corporation will succeed to all the rights, without change, of the constituent company.

We are concerned with the effect of the merger on the public. According to the application, there will be no change in the rates, routes, facilities, management or personnel as a result of the merger. On the other hand, duplication will be avoided and the financial position of the surviving corporation will be stronger than that of the present operator. The financial statements of record in this proceeding indicate that the volume of business of the merged corporation will be substantial and profitable and that the surviving corporation will be reasonably financed and will enter upon its operations with a favorable cash position. Upon reviewing the application, we find and conclude that the proposed merger will not be adverse to the public interest and that the California shippers will not be adversely affected. Accordingly, we will enter our order granting the application.

Applicants are hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the state as the consideration for the grant of such rights. 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 as to the number of rights which may be given.

The action taken herein shall not be construed to be a finding of the value of the operative rights and properties of applicants herein authorized to be merged.

O R D E R

The Commission having considered the above-entitled matter and being of the opinion that a public hearing is not necessary, therefore,

IT IS HEREBY ORDERED as follows:

1. United Parcel Service and United Parcel Service, Inc., may execute and enter into an agreement of merger whereby United Parcel Service is merged into United Parcel Service, Inc., and United Parcel Service, Inc., as the surviving corporation, will assume the outstanding obligations of United Parcel Service.

2. On not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such merger, applicants shall supplement or reissue the tariffs on file with the Commission naming rates, rules and regulations governing the common carrier operations here involved to show that United Parcel Service, the California corporation, has withdrawn or canceled and United Parcel Service, Inc., the Ohio corporation, has adopted or established, as its own, said rates, rules and regulations. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80.

3. The authority herein granted shall become effective when United Parcel Service, Inc., has qualified to do business in the State of California and has advised the Commission that it has so qualified.

Dated at San Francisco, California,  
this 16<sup>th</sup> day of August, 1960.

*Robert A. [Signature]*  
President

*[Signature]*

*E. [Signature]*

*Theodore [Signature]*

Commissioners