

ORIGINALDecision No. 71900

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation
 into the rates, rules, 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 provided in Minimum
 Rate Tariff No. 2).

Case No. 5432
 Petition for Modification
 No. 414
 Filed March 30, 1966

Arlo D. Poe, Richard W. Smith and H. F. Kollmyer,
 for California Trucking Association, petitioner.
Roger L. Ramsey, for United Package Service;
Robert N. Lowry, for Yosemite Park and Curry
 Co.; Phillip A. Winter, for Delivery Service Co.,
 respondents.
John T. Reed, Hatch Morrison, Lester D. Hinkley,
Russell Bevans, Daniel W. Baker, Kenneth C.
Delaney, John P. Hellman, E. H. Griffiths,
Edward J. Maurer, W. M. Cheatham, Harriet H.
Adams, E. F. Westberg and Norman I. Molaug, for
 various interested parties.
B. I. Shoda, for the Commission staff.

O P I N I O N

California Trucking Association has petitioned the Commis-
 sion to issue its order or orders directed to all carriers now
 completely exempted from observing the rates and rules in Minimum
 Rate Tariff No. 2 to show cause why such exemption should not be
 terminated and revoked. The carriers having such exemptions, and
 who would be respondents to such orders to show cause, are listed
 below together with the decision of the Commission authorizing
 such exemption:

	<u>Exemption Authorized By Decision No.</u>
Delivery Service Co.	31606
Eagleville-Cedarville Stage Line, J. Raymond Morgan, dba (originally granted to Gordon L. Doss, dba)	32401
Merchants Delivery (Originally granted to Sequeria, Frank P., Jr., and Kirksey, Don)	39174
Merrimac Stages, Margaret E. Waugh, dba (Restricted to shipments transported between Oroville and Buck's Lake Lodge and intermediate points)	49080
Charles H. Olds, Jr.	56691
Peninsula Delivery Service Corp. (Originally granted to Menlo Park and San Francisco Parcel Delivery, Violet M. Keller, dba)	31606
Petrolia Stage, Leonard E. Shaha, dba	65692
Snapp, Charlie	45423
20th Century Delivery Service, Inc.	31606
United Parcel Service, Inc.	31606
Western Parcel	31606
Yosemite Park & Curry Co.	40915

The above-named carriers, hereinafter called respondents, were served with a copy of the petition and with notice of hearing.

The petition was heard and submitted September 13, 1966, before Examiner Thompson, at San Francisco. Of the respondents, only Delivery Service Co., United Parcel Service and Yosemite Park & Curry Co. appeared at the hearing.

No testimony was received at the hearing. The material facts are findings, conclusions and orders set forth in a number of decisions of the Commission. Counsel for the various parties stated their respective positions in this matter and pointed out certain procedural pitfalls that they believe should be avoided. At the outset counsel for petitioner explained that its purpose in

filing the petition is to persuade the Commission to investigate the bases for the exemptions that have been granted to respondents and, after such investigation to restate the exemptions to describe specifically the transportation performed, by each respondent, that should be exempted from the application of the rates and rules prescribed in Minimum Rate Tariff No. 2. Its position is that exemption by naming the carrier, and not by description of the transportation to which the minimum rates should not be applicable, is inconsistent with the apparent intentions of the Commission revealed by the findings and conclusions in its decisions; and, that said type of exemption affords opportunity for the respondents to perform transportation services, not contemplated by the Commission at the times that the exemptions were granted, at rates of which competitors and the Commission have no knowledge and which may be unreasonable and discriminatory.

The respondents appearing at the hearing were not opposed to having their respective exemptions restated provided the restatement authorizes the type of operations being conducted by them, and they are afforded opportunity to be heard with respect to any proposed restatement.

The matter of exemptions arose at the time the Commission established minimum rate and rules in Highway Carriers' Tariff No. 2 (Minimum Rate Tariff No. 2): At that time it was the conclusion of the Commission that the minimum rates then being established were not suitable minimum rates for certain types of

operations conducted by certain carriers. Relevant portions of the opinion in the Commission's Decision No. 31606 (41 C.R.C. 671) are set forth in the margin.^{1/}

Finding No. 14 of the aforesaid Decision No. 31606 sets forth the form of exemption from the minimum rates.^{2/} It lists carriers by name under three categories. The first category (a) provides a complete exemption; the second category (b) exempts the monthly tonnage rates, rules and regulations for the transportation of express packages, not exceeding 50 pounds in weight each, published by certain carriers; and the third category (c) exempts the rates, rules and regulations for the transportation of shipments weighing 100 pounds or less maintained by certain carriers.

The order in Decision No. 31606, in effect, requires all carriers other than those listed in Finding No. 14 to observe the minimum rates and rules set forth in the minimum rate tariff attached to the decision.

1/ At Page 710: "Certain carriers rendering services of a peculiar nature were proposed to be exempted from the order herein. In general, these were (1) express and parcel delivery carriers offering highly specialized services in competition with the United States Parcel Post, (2) carriers engaged primarily in passenger stage operations but transporting shipments weighing 100 pounds or less in connection therewith, and (3) inland water carriers transporting vehicles or property on vehicles, and (4) highway common carriers performing non-competitive services in rural areas."

At Page 711: "The exemption of carriers performing peculiar types of transportation services, as recommended, appears justified, particularly when alternative application rules are provided to permit nonexempted carriers to meet the rates of the exempted carriers."

2/ "14. 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) [omitted]
(b) [omitted]
(c) [omitted]."

The language of the finding and of the opinion, together with the identities of the carriers listed in Finding No. 14, provides a strong inference that the rates being exempted were published rates.

From the time Decision No. 31606 was issued (December 27, 1938) to the present time a number of the carriers listed in Finding No. 14 have gone out of business or have had their business acquired by another carrier. During that period the Commission heard and decided a number of applications by carriers for exemption from the minimum rates. Until 1955, when those applications were granted the order was usually in the following form:

"IT IS ORDERED that Decision No. 31606, in Case No. 4246, as amended, is further amended by adding (name of carrier) to the list of carriers contained in paragraph (a) of Finding No. 14 thereof."

On November 7, 1955 the Commission issued its Decision No. 52199 in Case No. 5432 amending Decision No. 31606 by substituting for the lists of carriers named in Finding 14 thereof, the lists of carriers named in Appendices A, B and C attached to said Decision No. 52199. Appendix A listed the carriers than holding general exemption from the minimum rates and rules in Minimum Rate Tariff No. 2, Appendix B listed carriers exempted from observing the rates and rules in Minimum Rate Tariff No. 2 for shipments of 100 pounds or less and Appendix C listed carriers having certain special exemptions from the rates and rules in said Minimum Rate Tariff. The decision also canceled certain exemptions that had been granted by Decision No. 31606 and subsequent decisions.

While the carriers originally listed in Finding No. 14 (a) appeared to have published the rates for which exemption was granted, such is not the case with all of the carriers who later

received exemption. It also appears that while the language of Finding No. 14 could have been construed, and possibly should have been construed, to exempt from the minimum rates the transportation performed at the rate then maintained by the carriers listed therein, such was not the construction given by the Commission. It is evident that the Commission has considered the carriers listed in Finding No. 14 (a) (or Appendix A of Decision No. 52199, as amended) to be fully exempted from the rates and rules in Minimum Rate Tariff No. 2 with respect to any transportation performed by them. Under the circumstances, if any of the respondents listed by name in Paragraph (a) of Finding No. 14, as amended, holds a highway contract carrier permit to transport property statewide, it is authorized to transport any kind of freight (for which rates are provided in Minimum Rate Tariff No. 2) at any rates that it desires to charge, provided that it does not publish rates in a tariff applicable to such transportation, whereas competitors are not so authorized.

Clearly the exemptions that were authorized in Finding No. 14 (a), as amended, were not intended to apply to certain types of transportation, such as the transportation of canned goods or sugar in truckload lots between San Francisco and Los Angeles. Yet each of the carriers listed in said finding, if it holds or acquires a highway permit, may perform such transportation at any rate it desires to charge, and other carriers may not meet that rate. Whether or not any respondent is using the authority for transportation for which it was not intended has not been shown. It has been demonstrated, however, that the exemptions could be used for such purposes and it is therefore apparent that the authorities should be further investigated, modified or revoked.

The circumstances relating to each of the respondents must be considered in determining the procedures to be followed in accomplishing that result. We take official notice of the decisions issued by the Commission conferring the exemptions upon the respondents and of the operative authorities granted by the Commission to each of the respondents and to their predecessors and successors.

Delivery Service Company, a corporation, received its exemption by Decision No. 52428, dated June 4, 1956, in Case No. 5432, which decision amended Decision No. 52199, which in turn amended Finding No. 14 of Decision No. 31606. In essence, its exemption is derived from Finding No. 14 (a). It holds a certificate of public convenience and necessity authorizing operations as a highway common carrier for the transportation of general commodities between certain specified points in the area of Alameda and Contra Costa Counties. There are restrictions in said certificate which, in effect, authorize respondent to conduct only parcel delivery operations (shipments weighing 100 pounds or less). It holds a permit authorizing highway contract carrier operations statewide in the transportation of any and all commodities without restriction and a permit authorizing operation as a radial highway common carrier in the transportation of general commodities within a 50-mile radius of Oakland. At the hearing counsel for respondent made it clear that this company is engaged exclusively in the business of transportation as a parcel delivery carrier. It appears evident that the exemption should be modified so as to be applicable only to shipments weighing 100 pounds or less.

J. Raymond Morgan, dba Eagleville-Cedarville Stage Line, was listed in Appendix A to Decision No. 52199. In essence, the exemption is derived from Finding No. 14 (a). He acquired from Gordon L. Doss, pursuant to Decision No. 39567, dated October 29, 1946, in Application No. 27872, an operative right authorizing the transportation of passengers, express and freight between Eagleville and Cedarville (Modoc County) and intermediate points. Said operative right was revoked by Decision No. 58534, dated June 2, 1959 in Application No. 27872. J. Raymond Morgan does not hold permits from the Commission authorizing highway permit carrier operations. The records of the Commission disclose that Eualio Martin Miura, dba Eagleville-Cedarville Stages had a permit authorizing highway contract carrier operations and that such permit was revoked at his request on July 24, 1962. It is evident that the exemption should be revoked.

Appendix A to Decision No. 52199 lists "Sequeria, Frank P. Jr., and Kirksey, Don" which listing indicates a partnership. This is an error. Decision No. 39174, dated July 9, 1946, in Case No. 4246, recites,

"Frank P. Sequeria, Jr., and Don Kirksey request exemption therefrom [minimum rates] on shipments weighing 100 pounds or less. Sequeria operates a parcel delivery service between Palo Alto, Redwood City, San Mateo and Burlingame; Kirksey operates a similar service within a five mile radius of Baldwin Park."

The order in said decision provides that Decision No. 31606, as amended, be further amended by adding to paragraph (a) of Finding No. 14 thereof, Frank P. Sequeria, Jr., and Don Kirksey (Emphasis added). It is readily apparent that the underscored was a typographical error or an inadvertence because what the two carriers sought were exemptions on shipments weighing 100 pounds

or less which type of exemption was provided for in Paragraph (c) of Decision No. 31606 (presently Appendix B to Decision No. 52199, as amended).

Sequeria, doing business as Merchants Delivery, holds a permit authorizing operations as a radial highway common carrier within a radius of 50 miles from Menlo Park. We find that the exemption was intended solely for the transportation of shipments weighing 100 pounds or less within the area Sequeria is authorized to serve. The exemption should be modified accordingly.

The records of the Commission disclose that Don Kirksey has not held any operating authority from the Commission for at least four years. His exemption should be revoked.

Margaret E. Waugh, doing business as Merrimac Stages, is listed in Appendix A of Decision No. 52199 with the following comment "(Restricted to shipments transported between Oroville and Buck's Lake Lodge and intermediate points)". Said comment is in accordance with the exemption originally granted to Waugh in Decision No. 49080, dated September 15, 1953, in Case No. 5432 (Petition No. 13).

At the time Decision No. 49080 was issued, Waugh held authority to operate as a common carrier in the transportation of passengers and freight between Oroville and Buck's Lake Lodge and intermediate points. By Decision No. 51970, dated September 19, 1955, in Application No. 37218, the operative rights were restated and revised in a new certificate of public convenience and necessity authorizing the operation as a highway common carrier in the transportation of freight between Oroville and Elks Retreat. An authorized routing is via the Oroville-Buck's Lake-Quincy Road. Pursuant to Decision No. 54696, dated March 19, 1957, in

Application No. 38772, Waugh sold this operation to Melba A. Holt and Joyce L. Holt. Pursuant to Decision No. 62798, dated November 14, 1961, in Application No. 43813 the operation was transferred to Hedwig D. Kala, dba Merrimac Stages. Records of the Commission disclose that no permits have been issued to Kala and that the only operative right held by this carrier is the highway common carrier certificate described above.

We take notice of the geography of the area along the Oroville-Buck's Lake-Quincy Road and find that it has not changed so substantially since 1953 as to result in any significant changes in transportation conditions. In the authorizations to transfer the certificate the transferees were directed to adopt or reissue the rates of the transferor. While Kala does not have a specific exemption from the minimum rates, compliance with the aforesaid directive implies the necessity for such exemption. Waugh presently does not hold any operating authority from the Commission. We conclude that Hedwig D. Kala should be authorized to depart from the rates and rules in Minimum Rate Tariff No. 2 in the transportation of property between Oroville and Elks Retreat and intermediate points via the Oroville-Buck's Lake-Quincy Road; and that the exemption granted to Margaret E. Waugh, and any implied exemption held by Melba A. Holt and Joyce L. Holt as a result of Decision No. 54696, should be revoked.

By Decision No. 56691, dated May 13, 1958, in Application No. 39907, as amended by Decision No. 63077, Charles H. Olds, Jr., was granted a certificate of public convenience and necessity authorizing him to operate as a highway common carrier in the transportation of general commodities, limited to shipments not in

excess of 150 pounds each between Big Pine and the California-Nevada State Line and intermediate points via U. S. Highway 6, including the off-route point Benton; and in the transportation of general commodities limited to shipments not in excess of 500 pounds each between Big Pine and the California-Nevada State Line and intermediate points via Oasis over an unnumbered highway. The decision also provides,

"That Decision No. 52199, as amended, in Case No. 5432, is further amended by adding Charles H. Olds, Jr., to the list of carriers in Appendix "A" to said Decision No. 52199 limited to transportation covered by the certificate granted herein."

In essence the exemption is derived from Finding No. 14 (a). Pursuant to authority granted in Decision No. 68575, dated February 9, 1965, in Application No. 47132, the operative right was transferred to Mitchell M. Vassar, dba Mitch Vassar. Finding No. 2 in said decision states, "It is reasonable for transferee to adopt the transferor's presently approved tariff filings on thirty days' notice to the Commission and to the public." Ordering paragraph 3 therein provides that Mitchell M. Vassar shall amend the tariffs on file with the Commission to show that he has adopted said rates as his own.

The records of the Commission disclose that neither Olds nor Vassar hold permits from the Commission authorizing highway permit carrier operations.

Official notice is taken of the geography of the area covered by the certificate. We find that there is presently little likelihood of any substantial changes in the conditions of transportation performed pursuant to said certificate from those existing in 1958. We conclude that the exemption granted to Charles

H. Olds, Jr., should be revoked and that Mitchell M. Vassar should be authorized to depart from the rates and rules in Minimum Rate Tariff No. 2 in the publication and maintenance of rates for transportation performed pursuant to the certificate of public convenience and necessity acquired by him from Charles H. Olds, Jr.

Peninsula Delivery Service Corp. is listed in Appendix A of Decision No. 52199 as follows:

"Peninsula Delivery Service Corp. (Originally granted to Menlo Park and San Francisco Parcel Delivery, Violet M. Keller, dba.)"

This carrier holds a certificate of public convenience and necessity granted by Decision No. 60188, dated May 24, 1960, in Application No. 41899 authorizing operations as a highway common carrier in the transportation of general commodities between all points on either side of San Francisco Bay extending generally from Oakland and San Francisco to San Jose. Said certificate is a restatement of operative rights previously acquired and held by respondent. One of said operative rights was that acquired from Violet M. Keller which authorized the transportation of packages weighing not over 100 pounds between San Francisco and Menlo Park and shipments weighing not over 50 pounds between Menlo Park and Palo Alto. Respondent also holds permits authorizing statewide operations as a highway contract carrier and as a radial highway common carrier in the transportation of general commodities.

As a successor to Violet M. Keller, respondent's authority cannot be construed to exceed that which was granted to her. Whether the exemption from the minimum rates is or has been utilized, or is still necessary, cannot be determined herein. We conclude that further investigation is required for the purpose of making such determination. Pending such determination respondent

should be authorized to continue in effect any rates published in its tariffs for the transportation of packages weighing not over 100 pounds between San Francisco and Menlo Park and for the transportation of shipments weighing not over 50 pounds between Menlo Park and Palo Alto.

By Decision No. 65692, dated July 9, 1963, in Case No. 5432 (Petition No. 296), Leonard E. Shaha, dba Petrolia Stage, was authorized "to deviate from the minimum rates and tariff rules otherwise applicable for the transportation of property between points on and within one mile laterally of the highway connecting Ferndale and Honeydew, inclusive, via Petrolia." The opinion recites that Shaha operates under a radial highway common carrier permit in the transportation of property between Ferndale and Honeydew via Petrolia, serving ranchers and small country stores as an accommodation in conjunction with the delivery of United States mail which he performs under contract. It further states that there is an absence of competitive considerations in the relatively remote area served. The aforementioned exemption is not one derived directly from Finding No. 14. The exemption is specific with respect to the points covered thereby. We conclude that cancellation or modification of the exemption is not warranted and that further investigation at this time is unnecessary.

Charlie Snapp is listed in Appendix A of Decision No. 52199. He holds a certificate of public convenience and necessity authorizing operations as a highway common carrier of freight between Etna and Somes Bar and intermediate points. He does not hold any permits from the Commission. We conclude that the exemption granted to respondent should be restated as being applicable only to the transportation of property between Etna and Somes Bar and intermediate points and that further investigation at this time is not required.

Twentieth Century Delivery Service, Inc. is listed in Appendix A of Decision No. 52199. It, together with Goodman Delivery Service, Inc., was also listed in Finding 14 (a) in Decision No. 31606. Since 1939 there have been a number of acquisitions and severances of operative rights involving respondent. It would appear that all of the highway common carrier operative rights involved have been vested in 20th Century Trucking Company, a corporate subsidiary or affiliate of respondent; and that all of the operative rights authorizing operations as an express corporation were vested in respondent. With respect to the latter, Decision No. 46530 in Application No. 32761 recites that respondent had acquired the express rights of Goodman and that such rights duplicated those already held by it. The order in said decision voided the express rights derived by the respondent through acquisition of Goodman and canceled the Goodman express tariff which respondent had adopted. By Resolution No. 111, dated October 5, 1965, the express tariff of respondent was canceled. It appears that respondent does not have a tariff on file covering transportation as an express corporation. Respondent holds permits authorizing operations as a radial highway common carrier and as a highway contract carrier, however, restrictions in said permits prohibit the transportation of property which 20th Century Trucking Company is authorized to transport under its highway common carrier certificate.

20th Century Trucking Company has extensive operative rights as a highway common carrier. It is authorized to transport general commodities throughout most of Southern California, including within and between Los Angeles Basin Territory and San Diego Territory. It participates in tariffs issued by Western Motor

Tariff Bureau for most of the transportation it performs, however, it publishes rates also in its Local Parcel Tariff No. 1 governing the transportation of drugs and cosmetics in packages not exceeding 50 pounds nor 108 inches in length and girth combined from Monrovia to points and places in Southern California. Said rates are different from, and in some instances lower than, the rates named in Minimum Rate Tariff No. 2.

In view of the apparent termination of operations as an express corporation and the restrictions in its permits which would seem to prohibit any transportation throughout most of Southern California by respondent of commodities subject to rates and rules in Minimum Rate Tariff No. 2, it is difficult to see why respondent should be exempted from said minimum rates; in any event, it is apparent that any such exemption should be restricted to parcel delivery. Its affiliate, 20th Century Trucking Company, apparently does require such authority. It is not the purpose of this proceeding to cause operations conducted in apparent good faith for a considerable length of time to cease. We conclude that further investigation is required for the purpose of determining whether, and to what extent, 20th Century Delivery Service, Inc., and 20th Century Trucking Company should be authorized to depart from the requirements of Minimum Rate Tariff No. 2, and that pending such determination 20th Century Trucking Company should be authorized to continue the rates and rules maintained by it in its Local Parcel Tariff No. 1.

United Parcel Service, Inc., and United Parcel Service (originally granted to United Parcel Service of Los Angeles, Inc.) are listed in Decision No. 52199. United Parcel Service, Inc. and United Parcel Service merged pursuant to authority granted by

Decision No. 60553, dated August 16, 1960, in Application No. 42372 with United Parcel Service, Inc., respondent herein, as the surviving corporation. The respondent's operations are described in Decision No. 70125, dated December 21, 1965, in Application No. 47874. It holds a certificate of public convenience and necessity authorizing the transportation of general commodities between all points in California, via any and all available routes, subject to the following restrictions:

- (a) No service shall be rendered in the transportation of any package or article weighing more than 50 pounds or exceeding 108 inches in length and girth combined, and each package or article shall be considered as a separate and distinct shipment.
- (b) No service shall be provided in the transportation of packages or articles weighing in the aggregate more than 100 pounds from one consignor at one location to one consignee at one location during a single day.
- (c) No service shall be rendered between retail stores and their branches or warehouses, on the one hand, and the premises of the customers of such stores, on the other hand.

The decision also states that a specialized retail store delivery service is provided by respondent in Los Angeles, San Francisco, San Diego and the surrounding metropolitan areas, and in smaller cities. The service is performed under contract with certain selected retail department stores and retail speciality shops, for transportation between the retail stores and their customers, or between the stores and their branches or warehouses. The highway common carrier service is one that should be exempted from the requirements of Minimum Rate Tariff No. 2. With respect to the specialized service for retail stores, the rates and rules in Minimum Rate Tariff No. 2 are not applicable to:

- (a) shipments of any size transported between points for which minimum rates are named in Minimum Rate Tariff No. 1-B (East Bay Drayage Area), Minimum Rate Tariff No. 9-B (San Diego Drayage Area), Minimum Rate Tariff No. 5 (Los Angeles Drayage Area), between Sacramento and North Sacramento and certain areas in the immediate vicinity thereof, and within the Metropolitan Areas of Fresno, Modesto, Crescent City, Watsonville and Stockton;
- (b) commodities which have been sold at retail by a retail merchant, and transported from a retail store or retail store warehouse to residences of retail customers, or transported from residences of retail customers to retail stores or retail store warehouses, and such transportation is performed in vehicles in the exclusive use of the retailer and providing no shipment exceeds 2,000 pounds in weight; further, that the merchandise is for the use or consumption of retail customers and is not for use in the furtherance of an industrial or commercial enterprise; and provided that the retailer shall certify on the shipping document for each delivery that the merchandise was sold at retail to a retail customer;
- (c) furniture, household appliances and other home furnishings which have been sold at retail by a retail merchant, transported for distances not exceeding 35 constructive miles from retail stores or retail store warehouses, or transported from retail customers to retail stores or retail store warehouses;
- (d) shipments weighing 100 pounds or less when delivered from retail stores or retail warehouses where the property has been sold at retail by a retail merchant, or when returned to the original retail store shipper via the carrier which handled the outbound movement, provided the distance between point of origin and destination does not exceed 35 constructive miles.

From the description in Decision No. 70125 of the operations conducted by respondent, it appears that the majority, if not all, of the transportation performed by it under contract with retail stores is not covered by any rate in Minimum Rate Tariff No. 2. Whether or not there is any necessity for respondent to be exempted from said minimum rates for transportation other than that

performed at its highway common carrier rates cannot be determined here. We conclude that further investigation is required and that pending a determination after said investigation respondent should be authorized to depart from the rates and rules in Minimum Rate Tariff No. 2 for the transportation performed under contract with retail stores of shipments between said retail stores and their branches and warehouses and between said retail stores, their branches and warehouses, on the one hand, and customers of said retail stores, on the other hand.

Western Parcel Service is listed as Appendix A in Decision No. 52199. The records of the Commission disclose that Russell S. Stowell, dba Western Parcel Service, was granted a certificate of public convenience and necessity in Decision No. 25979, dated May 29, 1933, in Application No. 18535, for the transportation as a highway common carrier of property between San Diego, San Ysidro, El Cajon, Coronado and intermediate points. The rates in Minimum Rate Tariff No. 2 are not applicable to transportation between said points. The opinion in Decision No. 25979 states,

"The rates to be charged will be in accordance with Exhibit "A" attached to and made a part of the application; the commodities are to consist entirely of small packages, limited in size and not to weigh in excess of 100 pounds for any individual package. The rates also embrace a guaranteed weekly minimum to be paid by the shipper, based upon the volume of business handled."

It is apparent that Western Parcel Service was included in Finding No. 14 (a) because it was conducting a parcel delivery service. Russell S. Stowell, dba Western Parcel Service, Western Van and Storage and Western Transfer and Storage, holds permits authorizing statewide operation as a radial highway common carrier and as a highway contract carrier. Whether any parcel delivery

operations are conducted pursuant to said permits between points not within the San Diego Drayage Area cannot be determined from this record. We conclude that further investigation is required and that pending a determination therein respondent should be authorized to depart from the rates and rules in Minimum Rate Tariff No. 2 for the transportation of shipments weighing not in excess of 100 pounds.

Yosemite Park and Curry Co. is listed in Appendix A of Decision No. 52199. It holds a certificate of public convenience and necessity, granted in Decision No. 31396, amended by Decision No. 38091 in Application No. 21861, authorizing operations as a highway common carrier in the transportation of property; (a) between Yosemite Park, on the one hand, and Lake Tahoe and intermediate points on the other hand; (b) between Yosemite Park and Merced and intermediate points provided, however, that except for newspapers all shipments must have point of origin or destination east of Midpines. As a practical matter the terms of the certificate authorize transportation only to and from Yosemite Park. Minimum Rate Tariff No. 2 is not applicable to the transportation of newspapers. Respondents do not hold any permits from the Commission. We conclude that respondent's present exemption should be revoked and it should be authorized to depart from the rates and rules prescribed in Minimum Rate Tariff No. 2 in the transportation of property performed pursuant to its certificate.

In summation, we conclude that:

1. Exemptions from the requirements of Minimum Rate Tariff No. 2 authorized by Finding No. 14 (a) of Decision No. 31606, as amended, in Case No. 4246, should be revoked.

2. The names of all carriers listed in Appendix A of Decision No. 52199, as amended, in Case No. 5432, should be deleted from said Appendix A.

3. No further investigation is required of the authority granted to Leonard E. Shaha by Decision No. 65692, in Case No. 5432, Petition No. 296.

4. Delivery Service Company, Frank P. Sequeria, Jr., dba Merchants Delivery, Hedwig D. Kala, dba Merrimac Stages, Charlie Snapp, Mitchell M. Vassar, United Parcel Service, Inc., and Yosemite Park and Curry Co., should be authorized to depart from the rates and rules in Minimum Rate Tariff No. 2 to the extent specified in the foregoing opinion.

5. Further investigation is necessary in order to determine to what extent, if at all, Peninsula Delivery Service Corp., 20th Century Delivery Service, Inc., 20th Century Trucking Company, United Parcel Service, Inc. with respect to its operations conducted under permits, and Russell S. Stowell, dba Western Parcel Service, should be authorized to depart from the rates and rules in Minimum Rate Tariff No. 2; and that pending such determination after investigation, said carrier should be authorized to depart from the rates and rules prescribed in Minimum Rate Tariff No. 2 to the extent specified in the foregoing opinion.

Having concluded that further investigation is required with respect to the carrier's named in paragraph 5, above, consideration will be given to the procedure to be followed in having the facts presented to the Commission from which it can make its determination. The respondents possess the facts pertaining to their respective operations and should be in a position to present evidence in the form of shipping documents, freight bills and contracts which will disclose the type and extent of transportation

performed by them at rates and rules different from those prescribed in Minimum Rate Tariff No. 2. The burden of justifying any modification or extension of the interim authority to depart from the minimum rates should be placed upon respondents. Therefore, we conclude that the carriers named in paragraph 5 above should be ordered to show cause why the interim authority should not be canceled or revoked.

O R D E R

IT IS ORDERED that:

1. Decision No. 31606, in Case No. 4248, as amended, is further amended by deleting therefrom the names of all carriers listed in Finding No. 14 (a).
2. Decision No. 52199, in Case No. 5432, as amended, is further amended by deleting therefrom the names of all carriers listed in Appendix A of said decision.
3. Delivery Service Company, a corporation, is authorized to depart from the rates and rules in Minimum Rate Tariff No. 2 in the transportation of shipments weighing not more than 100 pounds.
4. Frank P. Sequeria, doing business as Merchants Delivery, is authorized to depart from the rates and rules in Minimum Rate Tariff No. 2 in its transportation of shipments weighing not more than 100 pounds between points within a radius of 50 miles from Menlo Park.
5. Hedwig D. Kala, doing business as Merrimac Stages, is authorized to depart from the rates and rules in Minimum Rate Tariff No. 2 in the publication and maintenance of rates in its tariff and schedule of rates governing the transportation of

property authorized by a certificate of public convenience and necessity granted by the Commission in Decision No. 51970, dated September 19, 1955, in Application No. 37218, and acquired by Hedwig D. Kala pursuant to authority granted in Decision No. 62798, dated November 14, 1961, in Application No. 43813.

6. Charlie Snapp is authorized to depart from the rates and rules in Minimum Rate Tariff No. 2 in the publication and maintenance of rates in his tariff and schedule of rates governing the transportation of property between Etna and Somes Bar and intermediate points.

7. Mitchell M. Vassar, is authorized to depart from the rates and rules in Minimum Rate Tariff No. 2 in the publication and maintenance of rates in his tariff and schedule of rates governing the transportation of property authorized by a certificate of public convenience and necessity granted by the Commission in Decision No. 56691, dated May 13, 1958, as amended by Decision No. 63077, dated January 9, 1962, in Application No. 39907, and acquired by Mitchell M. Vassar pursuant to Decision No. 68575, dated February 9, 1965, in Application No. 47132.

8. Yosemite Park and Curry Company, a corporation, is authorized to depart from the rates and rules in Minimum Rate Tariff No. 2 in the publication and maintenance of rates in its tariff and schedule of rates governing the transportation of property authorized in a certificate of public convenience and necessity granted by the Commission in Decision No. 31396, dated October 31, 1938, as amended by Decision No. 38091, dated July 27, 1945, in Application No. 21861.

9. United Parcel Service, Inc., is authorized to depart from the rates and rules in Minimum Rate Tariff No. 2 in the publication and maintenance of rates in its tariff and schedule of rates governing the transportation of property authorized in a certificate of public convenience and necessity granted by the Commission in Decision No. 70125, dated December 21, 1965, in Application No. 47874.

10. United Parcel Service, Inc., is authorized to depart from the rates and rules in Minimum Rate Tariff No. 2 in its transportation as a radial highway common carrier and as a highway contract carrier of shipments transported under contract with retail stores, between said retail stores and their branches and warehouses, on the one hand, and the premises of the customers of such stores, on the other hand.

11. Peninsula Delivery Service, a corporation, is authorized to depart from the rates and rules in Minimum Rate Tariff No. 2 in the publication and maintenance of rates in its tariff and schedule of rates for the transportation of packages weighing not more than 100 pounds between San Francisco and Menlo Park and intermediate points and for the transportation of shipments, weighing not more than 50 pounds, between Menlo Park and Palo Alto.

12. 20th Century Trucking Company is authorized to depart from the rates and rules in Minimum Rate Tariff No. 2 in the publication and maintenance of rates in its Local Tariff No. 1 for the transportation of drugs and cosmetics in packages not exceeding 50 pounds.

13. 20th Century Delivery Service, Inc., is authorized to depart from the rates and rules in Minimum Rate Tariff No. 2 in the transportation of shipments weighing not more than 100 pounds.

14. Russell S. Stowell is authorized to depart from the rates and rules in Minimum Rate Tariff No. 2 in the transportation of shipments weighing not more than 100 pounds.

15. United Parcel Service, Inc., Peninsula Delivery Service, 20th Century Trucking Company, 20th Century Delivery Service, Inc., and Russell S. Stowell shall appear before the Commission, or such Commissioner or Examiner as may be designated, at a public hearing to be held at times and places to be set by the Commission, and then and there show cause why the authorities granted to them respectively in paragraphs 10 to 14, inclusive, should not be revoked.

The Secretary shall cause a copy of this order to be served upon United Parcel Service, Inc., Peninsula Delivery Service, 20th Century Trucking Company, 20th Century Delivery Service, and Russell S. Stowell, and the effective date of this order with respect to the above-named shall be twenty days after completion of such service. In all other respects the order herein shall become effective twenty days after the date hereof.

Dated at San Francisco, California, this 24th day of JANUARY, 1967.

Robert E. Stowell
President

William M. Bennett

Augusta

Fred P. ...

Commissioners

Commissioner WILLIAM SIMONS, JR. did not participate in the disposition of this proceeding.