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Decision No. 74488

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of United Parcel Service, Inc., for authority to increase certain of its rates for common carrier parcel delivery service.	Application No. 50030 (Filed February 20, 1968)
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 (Order Setting Hearing dated April 9, 1968)
And related matters.	Cases Nos. 5435, 5439 and 5441 (Order Setting Hearing dated April 9, 1968)

Roger L. Ramsey and Irving R. Segal, for United Parcel Service, Inc., applicant.
John T. Reed, for California Manufacturers Association; N. I. Molaug, for J. C. Penney Co.; Harriet H. Adams, for Macy's California; E. H. Griffiths, for Aero Special Delivery Messenger Service; Richard W. Smith, H. F. Kollmyer and A. D. Poe, for California Trucking Association; interested parties.
Phillip A. Winter, for Delivery Service Company, respondent.
R. J. Carberry and Dale R. Whitehead, for the Commission staff.

O P I N I O N

These matters were heard and submitted May 8, 1968, before Examiner Thompson at San Francisco. Notice of hearing was made in accordance with the Commission's procedural rules.

United Parcel Service is a statewide highway common carrier of small packages. It seeks authority to increase its rates by five

cents per package.[1/] It asserts that the requested increase is necessary because of substantial increases in the cost of doing business since the present parcel rates were established. The proposed basic rate of 29 cents per package was made effective on interstate traffic on January 14, 1968.

On April 9, 1968 the Commission ordered hearings in the minimum rate proceedings to determine whether the present 24 cents per package plus 3 cents per pound parcel rate maintained in the minimum rate tariffs should be adjusted if the application is granted.

Applicant and the Commission staff presented evidence. The staff opposes the granting of the application and recommends that applicant be authorized to increase the basic rate to 28 cents per package rather than the 29 cents sought. Interested parties did not indicate their positions with respect to the issues.

Applicant's vice-president described the operations of the company and its rate structure. He said that applicant provides a common carrier parcel delivery service throughout California, including transportation within incorporated cities, at rates which will permit shippers to ship packages at a cost no greater than they would incur by using uninsured parcel post. He stated that the rate structure uses the same zones as parcel post. The common carrier service does not cover deliveries from retail stores or retail store warehouses. Applicant serves a number of retail department stores and retail specialty shops under contract for delivery of merchandise between the stores and their customers and between the stores, their branches and their warehouses. This is done under written contracts with the stores as a contract carrier. This application involves

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1/ Applicant's present rates are 24 cents per package plus 3 cents per pound within its first zone with certain higher rates per pound for other zones. It seeks here only to increase the basic rate of 24 cents per package to 29 cents per package.

only the rates for its common carrier service and does not cover the rates assessed for the retail store service.

Applicant's rates were last adjusted pursuant to authority granted by the Commission in Decision No. 72241, dated April 4, 1967, in Application No. 49009. Applicant's assistant treasurer sponsored a series of exhibits which are in the same form as those presented by him in Application No. 49009. They purport to show the operating results of applicant for the twelve months ended September 30, 1967, what those results would have been if adjusted for current wage, fringe benefits, and payroll tax levels, and, based upon such results, a forecast of operations under the proposed rates. It was estimated that the proposed increase will provide $2,130,086 additional gross revenue, an increase of 7.1 percent.

A senior transportation engineer of the Commission's staff testified concerning an exhibit he prepared setting forth estimated results of applicant's California intrastate common carrier operations. He stated that the format used by applicant's treasurer in making his estimates followed procedures approved by the Commission except in two respects, namely: (1) adjustment of depreciation expense on revenue equipment to reflect normal service lives and (2) adjustment of income tax expense to reflect estimates on the basis of taxes paid. He said that he accepted the revenue and expense figures, other than depreciation expense and income taxes, offered by applicant because they apparently conform with the format and procedure approved by the Commission in Decision No. 72241, however he made certain adjustments in depreciation expense and income taxes to conform with procedures also set forth and approved in that decision. He made a study of applicant's records to determine its working cash capital requirements and of the amount of that requirement that must be contributed by stockholders. He also examined

applicant's dues and donations account and is of the opinion that if all of the expense in that account were excluded from total expense it would not have any significant effect upon the operating results.

The engineer made what is commonly called a lead-lag study of applicant's accounts to determine the average number of days after accrual of expenses before payment is made, and the number of days after service is performed before the carrier receives revenue for such service. He determined the revenue lag to be 10-1/2 days by taking one-half of the accrual period or 3-1/2 days (applicant bills for its services weekly) and adding seven days which is the credit period provided in applicant's tariff. Cross-examination of the engineer and testimony of applicant's treasurer discloses that the 10-1/2 days is not sufficient. Applicant's weekly billing period closes at the end of business on Fridays. The bill for that period is not made up until the following Thursday or Friday and is usually mailed on Friday. Under ordinary circumstances the shipper would not receive the bill until the next Monday. Applicant's tariff provides a credit period of seven days after <u>receipt</u> of the bill and therefore the shipper has until the following Monday to mail his remittance. The treasurer testified that in most instances shippers take longer than seven days to make remittances, however, a longer period will not be allowed because under its tariff rules applicant must collect within the prescribed period or discontinue extending credit to the shipper. Allowing one day for the remittance to be in the mail, under ordinary circumstances applicant should receive the remittance by Tuesday for a lag period of 20-1/2 days instead of 10-1/2 days. This has the effect of increasing the amount of working cash capital estimated by the engineer to be furnished by the stockholders by $838,330.

The engineer also made a deduction of $159,401 from working cash not supplied by the investors as being the average month-end balances of unremitted C.O.D.'s. He said that he made this deduction because it is his understanding that the C.O.D. float would contribute amounts to minimum bank balances necessary to offset account activity charges. General Order No. 84-F prescribes regulations for the handling of C.O.D. monies by highway common carriers. Applicant has been exempted from paragraph 9(d) of that order to permit it to accept checks and drafts in payment of C.O.D. charges, however, it is subject to the regulations concerning the establishment of trust accounts and the times within which C.O.D. monies shall be remitted. The express purpose of General Order No. 84-F is to prohibit co-mingling of C.O.D. funds with general funds and the use of C.O.D. monies by carriers to meet their own cash requirements. In determining working cash capital requirements, C.O.D. monies should not be considered as being available for use by the carrier. With respect to considering the monies as a bank deposit which would eliminate or reduce service charges by the bank, there is no evidence that such is the case, nor is there any evidence of what the service charges would be if the C.O.D. deposits were not considered.[2/]

Another item the engineer considered to be a source of funds for working cash capital is the amounts withheld from employees for federal income taxes, social security taxes and the unemployment taxes. The engineer considered a suitable estimate of the amount of those funds available to the company to be the average of the month-end balances in those accounts which amounted to $158,772. He

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2/ Using the 10 percent rate of return recommended by the staff. The earnings on the $159,401 would be $15,940 which, on its face, appears to be somewhat high for bank service charges.

did not give consideration to the timing of when such employee tax funds were actually remitted, or required to be remitted by applicant. This record does not disclose applicant's practices with respect to such remittances nor does it reveal the pay periods for the employees. From the testimony it is apparent that the substantial portion of the funds involved are federal income taxes withheld and F.I.C.A. taxes withheld. We take official notice of the United State Internal Revenue Code and Treasury Department Regulations Service, and more particularly Reg. Sect. 31.6302(c)-1(a) 1(ii).[3/]

Depending upon the pay periods established by applicant for its employees and the practice of applicant with respect to making deposits within the times prescribed by law, the average daily balance of unremitted employee tax funds could be greater or less than the average month-end balances used by the engineer. This record does not permit us to make an accurate determination of the average daily balance of employee tax funds available to applicant as working cash; however, it is readily apparent that under any set of circumstances such average daily balance would not be less than one-half of the average month-end balances. Considering that the unemployment insurance tax is required to be deposited quarterly, and in order to avoid any possibility of error adverse to applicant, we find that for the purposes of this proceeding the sum of $80,000 is a reasonable estimate of the amount of employee tax fund available to applicant as working cash capital.

Applicant disagreed with the engineer concerning the basis for determining income taxes. It contends that the effect of allowing

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3/ Under this regulation an employer is required to deposit his payroll taxes in a Federal Reserve Bank or authorized depository within 3 banking days after the close of the semi-monthly period during which the wages to which such taxes relate are paid. Semi-monthly period means the first 15 days of a calendar month or the portion of a calendar month following the 15th day of such month.

only normal depreciation as an operating expense and considering accelerated depreciation and investment tax credits for income tax purposes defeats the policy of the Federal Government in its treatment of corporations. We have held that the advantages and benefits derived from liberalized depreciation methods allowed for income tax purposes should flow through to the ratepayer. The development of income taxes by the method employed by the engineer is reasonable and is proper for rate making purposes.

As stated above, except for depreciation expense, income taxes and working cash capital and minor adjustments in other accounts related thereto, the engineer accepted the estimate of applicant. The adjustments with respect to depreciation expense and depreciation reserve are consistent with our findings in Decision No. 72241 and are not challenged by applicant. The other adjustments and the issues involved therein have been discussed hereinabove.

An associate transportation rate expert of the Commission's staff testified that it is his opinion that an increase in the basic rate to 28 cents, rather than the 29 cents sought by petitioner, would provide sufficient revenue to offset labor cost increases. He recommended that a rate of 28 cents be authorized and that authority to increase the rate to 29 cents be denied. The only basis for his recommendation is that the 28-cent rate will provide sufficient revenues to offset wage increases that went into effect on October 1, 1967 and April 1, 1968, and related payroll expenses. He had no opinion concerning the rate of return or the operating ratio that would be reasonable for this carrier. Applicant is not seeking an increase in rates merely to offset increases in labor costs. Under California law applicant is entitled to charge the maximum reasonable rate for its services. If the proposed 29-cent rate is reasonable, applicant should be authorized to establish that rate regardless of

whether the revenue so provided will be greater than or less than the increases in its labor costs.

The following tabulation sets forth our estimates of the results of operation of United Parcel Service, Inc. at the proposed rates and at April 1, 1968 expense levels for a future rate year.

Operating Revenues	$32,201,016
Operating Expenses	29,953,651
Net Operating Revenues	$ 2,247,365
Income Taxes	794,325
Net Income	$ 1,453,040
Operating Ratio Before Income Taxes	93.02%
Operating Ratio After Income Taxes	95.49%
Rate Base	$13,047,510
Rate of Return	11.1%

There was no testimony offered concerning the rate of return or operating ratio that would be reasonable for this applicant. In Decision No. 62344, dated July 25, 1961, in Application No. 42924 the Commission found that increases in rates that would provide an operating ratio of 94.6 percent after income taxes and a rate of return of 11.5 percent would produce greater revenues than were justified. It found that rate increases resulting in an operating ratio of 95.1 percent after income taxes and a rate of return of 10.4 percent were justified. In Decision No. 72241, dated April 4, 1967, in Application No. 49009 the Commission found that rate increases providing operating results not more favorable than those found reasonable in Decision No. 62344 were reasonable. Here the estimate is an operating ratio of 95.49 percent after income taxes which is less favorable than that found to be reasonable in the prior proceedings, and a rate of return of 11 percent after income taxes which

is more favorable than that found to be reasonable for this carrier. There are two reasons for this apparent anomaly, one is that the development of the rate base by the engineer is more sophisticated than the development used in the prior proceedings and the other is that the carrier has been utilizing equipment that has been almost fully depreciated on its books.[4/]

There is nothing in this record which provides a comparison of applicant with any other carrier or business insofar as risk and financial requirements are concerned. We take notice of the general financial climate wherein the prices of United States Treasury Bonds have increased and interest rates measured by the bank discount rates have risen. We note the present concern of the Federal administration and of the Congress regarding fiscal actions to stabilize the economy.

The evidence herein is that the collective bargaining agreement between applicant and some of its employees expires October 1, 1968. Unless there is some event of great magnitude which will interrupt recent trends, there is no reason to believe that the wages and benefits negotiated in a new contract will be reduced and there is a reasonable basis to believe that as a result thereof applicant will have at least some increase in expense. We also take notice that the results of operation consider expense levels of April 1, 1968.

We find that:

1. For the purposes of rate making in this proceeding the operating results set forth in the preceding tabulation providing an operating ratio of 95.49 percent after income taxes and a rate of return of 11 percent reasonably represent the results of operation by applicant under the proposed rates.

4/ The rate base in Decision No. 72241 was $13,139,550.

2. In prior proceedings involving the rates of applicant the Commission found that increases in rates which would provide an operating ratio of 95.1 percent after income taxes and a rate of return of 10.4 percent were justified.

3. Giving due consideration to the circumstances recited in the foregoing opinion the results of operation under the proposed rates will be similar to, and not significantly more favorable than, the results previously found by the Commission to be reasonable for this carrier.

4. Establishment of the proposed 29-cent-per-package rate will provide uniformity with the rate presently maintained by applicant on interstate commerce and will obviate the confusion that sometimes results from the maintenance of different rates on interstate and intrastate commerce.

5. No shipper opposed the granting of the authority sought by applicant.

6. The 28-cent-per-package rate recommended by the staff was suggested as being sufficient for applicant to recover increases in labor costs, however, the results of operation under such rate would provide an operating ratio of 96.22 percent and a rate of return of 9.2 percent which results are significantly less favorable than those found heretofore by the Commission to be reasonable for the operations of this carrier.

7. The increase resulting from the establishment of the proposed 29-cent-per-package rate has been shown to be justified.

In proceedings in Cases Nos. 5432, 5435, 5439 and 5441 the Commission has found that for certain types of wholesale parcel delivery applicant is the rate-making carrier for the purpose of establishment of minimum rates, and has included in certain of its minimum rate tariffs the 24-cent-per-package rate now maintained by

applicant. In view of our findings herein regarding the increase of said 24-cent rate, the reasonable minimum rate for such services to which the 24-cent rate is now applicable is, and for the future will be, the 29-cent-per-package rate. The minimum rate tariffs should be amended accordingly.

In some instances the rates of United Parcel Service, Inc. are lower than the minimum rates for parcel delivery service established in the Commission's minimum rate tariffs. Under the so-called "alternative rate provisions" of such tariffs, other common carriers have published rates at the level of the rates maintained by applicant. The relationship between applicant's rates and said rates of other common carrier rates should be continued and maintained (See Decision No. 72918, dated August 15, 1967, in Case No. 5432).

We conclude that:

1. The application to establish the proposed 29-cent-per-package-rate on not less than ten days' notice should be granted.

2. In order to avoid duplication of tariff distribution Minimum Rate Tariffs Nos. 1-B, 5 and 9-B, and City Carrier Tariff No. 1-A should be amended by separate orders.

3. Common carriers now maintaining, under outstanding authorizations permitting the alternative use of common carrier rates, parcel delivery rates comparable to the rates of United Parcel Service, Inc., but otherwise below the minimum rates established by the Commission, should be authorized and directed to increase such rates, on not less than 10 days' notice, to the level of the increased rates of United Parcel Service, Inc., authorized herein, or to the level of the minimum rates specified and established in the minimum rate tariffs, whichever is the lower.

4. Common carriers should be authorized to continue to depart from the long- and short-haul provisions of Section 460 of the Public

Utilities Code to the extent necessary to establish the rate increases provided for in the preceding paragraphs.

O R D E R

IT IS ORDERED that:

1. United Parcel Service, Inc. is authorized to establish the increased rates proposed in Application No. 50030. Tariff publications authorized to be made as a result of the order herein may be made effective not earlier than ten days after the effective date hereof on not less than ten days' notice to the Commission and to the public.

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

3. Common carriers maintaining, under outstanding authorizations permitting the alternative use of common carrier rates, parcel delivery rates comparable to the rates maintained by United Parcel Service, Inc., but otherwise less than the minimum rates established by the Commission applicable thereto, are authorized and directed to increase such rates to the level of the rates authorized in paragraph 1 hereof, or to the level of the minimum rates specified and established in the Commission's minimum rate tariffs, whichever is the lower. Tariff publications authorized and required to be made by common carriers as a result of the order herein may be made effective not earlier than the tenth day after the effective date of this order, on not less than ten days' notice to the Commission and to the public, and shall be made effective not later than September 14, 1968.

4. Common carriers, in establishing and maintaining the rates authorized hereinabove, are hereby authorized to depart from the provisions of Section 460 of the Public Utilities Code to the extent

necessary to adjust long- and short-haul departures now maintained under outstanding authorizations; such outstanding authorizations are hereby modified only to the extent necessary to comply with this order; and schedules containing the rates published under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

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

Dated at San Francisco, California, this 6th day of AUGUST, 1968.

William Symons, Jr.
President

Commissioners