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ORIGINAL

Decision No. 76948

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the application of UNITED PARCEL SERVICE, INC., for authority to depart from the minimum rates and rules of MRT 2, MRT 4-B, CCT 1-A, MRT 1-B, MRT 5, MRT 8, MRT 9-B, MRT 11-A, and MRT 15 under the provisions of the City Carriers Act and of the Highway Carriers Act.

Application No. 51400
(Filed October 1, 1969)

And Related Matters.

- Case No. 5432, Petition No. 556
- Case No. 5330, Petition No. 43
- Case No. 5435, Petition No. 132
- Case No. 5438, Petition No. 72
- Case No. 5439, Petition No. 101
- Case No. 5441, Petition No. 175
- Case No. 5603, Petition No. 74
- Case No. 7783, Petition No. 20

Roger L. Ramsey, for United Parcel Service, Inc., applicant and petitioner.
Richard W. Smith, Arthur F. Maruna, H. F. Kollmyer and A. D. Poe, for California Trucking Association; and Handler, Baker and Greene, by Daniel W. Baker, for A & B Garment Delivery Service; interested parties.
John W. Henderson, Robert W. Stich and B. I. Shoda, for the Commission staff.

O P I N I O N

United Parcel Service, Inc. (United Parcel) requests an extension of the authority, under Section 3666 of the Public Utilities Code, granted by Decision No. 75289, dated February 4, 1969, in Application No. 50158 to depart from the minimum rates with respect to transportation performed for May Department Stores Company, Macy's California, The Emporium, and H. C. Capwell Company, when such transportation is performed between retail stores and their branches or warehouses, in vehicles assigned on a time basis.^{1/} Said authority

1/ Said minimum rates are those set forth in Minimum Rate Tariffs Nos. 1-B, 2, 4-B, 5, 8, 9-B, 11-A, 15 and 19.

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is scheduled to expire on May 1, 1970 in the case of transportation performed for H. C. Capwell Company and on June 1, 1970 in the case of the other three companies.^{2/}

The rate deviation granted by Decision No. 75289 permits United Parcel to apply rates specified in contracts entered into with the aforementioned retail stores for transportation between the stores and their branches and warehouses.

Public hearing was held before Examiner Mallory at San Francisco on December 22, 1969 and January 29, 1970 and the matters were submitted on the latter date. Evidence was presented by United Parcel's assistant secretary-treasurer, and by a vice president. Other parties participated through cross-examination of these witnesses.

Applicant's assistant secretary-treasurer introduced 30 exhibits, which include extracts from United Parcel's contracts with the retail stores, results of operations under the rate deviation heretofore authorized; and details of several items of expense, including labor expense and depreciation on automotive equipment.

The record shows that the contracts between United Parcel and the retail stores are for terms of five years; that said contracts specify: the territories covered, the services to be performed, the methods of recording the count of merchandise received for delivery, and the bases for assessing and collecting charges. The contracts call for charges to be computed on a base rate per package-count for each fiscal quarter which is equal to United Parcel's average cost per package-count of performing such service for the immediately preceding three-month period. The

^{2/} Pursuant to Decision No. 76688, dated January 20, 1970, in these proceedings.

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contracts call for cost sharing in the event the amount of money received by United Parcel in any three-month period falls below its total costs of providing the service, and for profit sharing when the amount of money received by United Parcel in any quarter is in excess of its costs plus a predetermined profit factor.

The record shows that the interstore and warehouse operations conducted by United Parcel under the deviation granted by Decision No. 75289 (supra) were profitable, as indicated by the following:

<u>Exhibit No.</u>	<u>Store</u>	<u>Year Ended</u>	<u>Operating Ratios</u>
9	Emporium	August 31, 1969	96.1
13	Macy's	August 31, 1969	96.1
17	H. C. Capwell	July 31, 1969	94.6
21	May Company	August 31, 1969	96.1

The record shows that detailed accounting records are employed by United Parcel, a review of the profitability of each operation is made each quarter, the quarterly operating results are reviewed by a certified public accountant, and cost and profit sharing provisions are included in contracts. Because of the foregoing, United Parcel's charges for miscellaneous hauling (interstore and warehouse service) must result in a profit, and such profit over a period of time falls within predictable limits.

Position of the Parties

None of the parties herein contend that the transportation subject to the sought rate deviation will not be profitable. However, A & B Garment Delivery of San Francisco (A & B) argued that the authority sought herein cannot be granted under Section 3666 of the Code, which reads as follows:

"Sec. 3666. If any highway carrier other than a highway common carrier desires to perform any transportation or accessorial service at a lesser rate than the minimum established rates, the commission shall, upon finding that the proposed rate is reasonable, authorize the lesser rate."

A & B contends that the contracts under which United Parcel operates do not provide specific rates. A & B argued that the language of the statute requires that the Commission specify the rate (or rates) which it finds to be reasonable. A & B asserted that the Commission cannot make such finding in the instant proceeding as United Parcel seeks approval of the formula for determining charges as set forth in its contracts with the retail stores. A & B suggested that the requirements of the code section can be met if the contracts are revised so as to adjust charges on an annual basis rather than on a quarterly basis. A & B further argued that under the existing "flexible" formula, no one knows exactly what United Parcel is charging; therefore, other parcel carriers cannot compete for the interstore and warehouse hauling involved herein.

California Trucking Association (CTA) also argued that competing carriers cannot offer a shipper their services at charges commensurate with those assessed by United Parcel, because United Parcel's charges cannot be determined by competing carriers under its existing authorization.

United Parcel argued that the statute should not be applied in the manner urged by A & B. United Parcel pointed out that a prior decision of this Commission had authorized a contract carrier to deviate from minimum rates, subject to an adjustment of charges at the end of the period should the assessed rates not be profitable [Binswanger Services, Inc., 60 Cal. P.U.C. 117, (1962)]. United Parcel stated that it is possible to offer a flat rate applicable

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for a year, but that if such rate were offered it necessarily would be higher than rates now offered or too low, as the case might be, in order to cover all possible contingencies during the one-year period.

The Commission staff took no position with respect to matters here in issue.

Discussion

Applicant clearly has sustained the burden of proving that its interstore and warehouse operations here in question were profitable in the past and reasonably can expect to be profitable in the future. Thus, such prerequisite to the statutory finding that the charges to be assessed will be reasonable has been established. The issue to be determined is whether the so-called formula for assessing charges proposed by United Parcel is contrary to Section 3666 and, if so, what revisions in existing contracts would be required to bring them into conformity with the statute.

It is our conclusion that the principal concern of A & B and CTA is the fact that competing carriers cannot determine the basis of charges to be assessed during any quarterly period. If the charges to be collected during the initial quarterly period and each revision thereof, for each store, are filed and made public the aforementioned problem would be resolved. It is also our conclusion that Section 3666 of the Public Utilities Code should not be applied in the manner urged by A & B; it is sufficient that an applicant for relief show the method of determining charges for the transportation services to be performed and that such method of assessing rates will be reasonable.

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Based on the record herein, we find that the bases of charges proposed to be assessed for the interstore and warehouse transportation services to be performed by United Parcel for Emporium, Macy's, H. C. Capwell and the May Company, as set forth in the contracts entered into between said carrier and retail stores, will be compensatory and will be reasonable for the ensuing year.

We conclude that the application and related petitions should be granted, subject to the condition that United Parcel file with this Commission its miscellaneous hauling rates applicable for the quarterly periods beginning May 1, 1970 for H. C. Capwell and June 1, 1970 for The May Company, Macy's and Emporium, and each revision thereof.

O R D E R

IT IS ORDERED that:

1. United Parcel Service, Inc., is authorized to depart from the rates and rules established in the minimum rate tariffs listed below, and in reissues thereof, for the transportation of property at hourly, daily or weekly rates for:

- (a) May Department Stores Company;
- (b) Macy's California, a division of R. H. Macy and Co.;
- (c) The Emporium, a division of The Emporium Capwell Company;
- (d) H. C. Capwell, a division of The Emporium Capwell Company;

as set forth in a formula for miscellaneous hauling in the written contracts entered into between applicant and said companies, respectively, when such property is transported between the retail store, its branches or warehouses: Minimum Rate Tariffs Nos. 1-B, 2, 4-B, 5, 8, 9-B, 11-A, 15 and 19, subject to the condition that

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during the time vehicles are assigned to a store said vehicles shall be used exclusively for the transportation of the property of said store.

2. United Parcel Service, Inc. shall file with this Commission, on or before ten days before the effective date of such rates, a statement, which shall be open for public inspection, of its miscellaneous hauling rates applicable under its written contracts for the fiscal quarter beginning May 1, 1970 in the case of transportation performed for H. C. Capwell Company and beginning June 1, 1970 in the case of transportation performed for the three other companies listed herein, and each revision of said miscellaneous hauling rates.

3. The authority granted above shall expire May 1, 1971 in the case of transportation performed for H. C. Capwell Company and on June 1, 1971 in the case of transportation performed for the other three companies listed therein.

4. In addition to the service of this decision to be made upon the parties herein, the Secretary shall cause a copy of this order to be served by first class mail upon:

May Department Stores Company (Los Angeles)
Attention: Traffic Department

Macy's California (San Francisco)
Attention: Traffic Department

The Emporium (San Francisco)
Attention: Traffic Department

H. C. Capwell Company (Oakland)
Attention: Traffic Department

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5. The authority granted in paragraph 1 shall, on and after the effective date hereof, supersede the authority granted in Decision No. 76688, herein.

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

Dated at San Francisco, California, this 17th day of MARCH, 1970.

William Symons
President
Augusta
Richard
Thomas
James L. Sturgeon
Commissioners