

Decision No. 81388**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
 of RALPH M. ADAMS, doing business  
 as ADAMS DELIVERY SERVICE, for  
 authority to deviate from the  
 provisions of Minimum Rate Tariff  
 Number 2 in connection with trans-  
 portation of parcels weighing less  
 than fifty pounds each.

Application No. 53854  
 (Filed February 21, 1973)

INTERIM OPINION

Ralph M. Adams, doing business as Adams Delivery Service, is a highway permit carrier of parcels and packages. He seeks authority under Section 3666 of the Public Utilities Code to provide wholesale parcel delivery service as a highway contract carrier of parcels weighing not more than 50 pounds between points within Alameda and Contra Costa Counties at rates different from and less than those prescribed in Minimum Rate Tariff 2 (MRT 2) as minimum rates for the transportation of freight between said points. Applicant requests the granting of immediate interim authority pending hearing on the application and alleges that the interim authority is justified because of emergency conditions resulting from the discontinuance of operations by Delivery Service Company, a highway common carrier of parcels in Alameda and Contra Costa Counties. California Trucking Association protests the granting of the relief sought and requests that the matter be set for hearing. In order to weigh the allegations of emergency made by applicant against the protest, the Transportation Division was requested to provide certain information and to attempt to verify the allegations made by applicant. An understanding of the alleged emergency requires a knowledge of the regulation by the Commission of the rates of parcel delivery carriers as well as the conditions in the delivery of parcels in Alameda and Contra Costa Counties.

Following the enactments of the Highway Carriers Act, the City Carriers Act, and the 1935 amendments to the Public Utilities Act, the Commission ordered proceedings for the purpose of establishing minimum rates pursuant to the provisions of those acts. By Decision No. 31606 (41 CRC 671) the Commission established the minimum rate tariff now called Minimum Rate Tariff 2. In that decision the Commission concluded that the minimum rates then being established were not suitable minimum rates for certain types of operations.<sup>1/</sup> Common carriers conducting those types of operations were exempted by name from the provisions of the minimum rate order, and Delivery Service Company and United Parcel Service were among those named. In 1966 California Trucking Association filed a petition with the Commission requesting an investigation of the exemptions of carriers named in Decision No. 31606, as amended to that time. In proceedings on that petition it was shown that the finding of the Commission in Decision No. 31606 was that the minimum rates were not suitable for services of a peculiar nature, but that by exempting carriers by name the Commission had permitted the named carriers to perform transportation services of any kind, including those neither unique nor of a peculiar nature, at any rates they desired to charge, whereas competing carriers were required to charge and assess rates no lower than those prescribed as minimum. By Decisions Nos. 71900, 71996, and 73416, in that proceeding

---

<sup>1/</sup> 41 CRC 671 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 highway specialized services in competition with the United States Parcel Post, ..."; and at Page 711: "The exemption of carriers performing peculiar types of transportation services, as recommended, appears justified, particularly when the alternative application rules are provided to permit nonexempted carriers to meet the rates of the exempted carriers."

the Commission revoked the general exemptions of the named carriers and authorized the named carriers to depart from the provisions of the minimum rates with respect to certain specified transportation operations. As it pertains to the case at hand, Delivery Service Company was authorized to depart from the rates and rules in MRT 2 in the transportation of parcels or packages, each weighing not more than 100 pounds, provided, however, that the total weight of parcels transported in a single day from a single consignor to a single consignee shall not be more than 300 pounds; and, United Parcel Service, Inc., was authorized to depart from the rates and rules in MRT 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.

In 1936, by Decision No. 29217 in Cases Nos. 4108 and 4109, the Commission established minimum rates for the transportation of property by city carriers and by highway carriers within and between the cities of Oakland, Alameda, Albany, Berkeley, Emeryville, and Piedmont (called the East Bay Drayage Area). It also established rules and regulations governing the application of those minimum rates. The minimum rates, rules, and regulations so established, and revised from time to time, are compiled in Minimum Rate Tariff 1-B (MRT 1-B). The approach taken by the Commission with respect to parcel delivery rates for the East Bay Drayage Area was different from that taken with respect to MRT 2. Initially, Delivery Service Company was the only highway common carrier conducting parcel delivery service (other than from retail stores) in the East Bay Drayage Area. The Commission adopted and approved the rates of that carrier as the minimum rates for wholesale parcel delivery service

and incorporated those rates in MRT 1-B (Item 840).<sup>2/</sup> When United Parcel Service commenced conducting wholesale parcel delivery service in the East Bay Drayage Area as a highway common carrier the rates in its tariff were adopted by the Commission as minimum rates and incorporated in MRT 1-B (Item 850). Certain rules contained in the tariffs of those carriers regarding service limitations and liability governing the application of their rates were not adopted as governing the rates in MRT 1-B.

In 1961 Joseph S. Aaronson, doing business as Peninsula Delivery and Transport Co., filed application for exemption from the requirements of MRT 2. In the proceedings in that application California Trucking Association, United Parcel Service, and Delivery Service Company pointed out that the granting of exemptions to highway permit carriers because of parcel delivery operations results in authorizing those carriers to transport property under parcel rates or freight rates as they see fit and as it is to their advantage competitively so to do. They urged that if the Commission grants exemptions to parcel delivery carriers it should make certain that the carrier can only be engaged in transportation

---

<sup>2/</sup> It would appear that the reason for the different approach was that until the repeal of the City Carriers Act, and the amendment to Section 213 of the Public Utilities Code enacted in 1968, the rates of a common carrier by motor vehicle for the transportation of property between points wholly within the limits of an incorporated city were not published in the tariffs of highway common carriers. Had the Commission exempted Delivery Service Company by name, as in the case of Decision No. 31606, its rates for transportation within any one of the incorporated cities, such as Oakland, would not have been available to other carriers under the alternative application rules in MRT 1-B.

at parcel rates. In J. S. Aaronson (1961) 58 CPUC 533, 537, the Commission held:

"We are of the opinion that henceforth, whenever any highway carrier requests authority to depart from the provisions of the established minimum rates, the order granting such relief should prescribe the minimum rates to be assessed by that carrier in lieu thereof. In the case of a parcel delivery carrier, the establishment or approval of the minimum parcel rates to be assessed by it will remove the possibility of any abuse of the exemption granted."

That holding in effect stated that there would be no more exemptions granted to highway permit carriers conducting parcel delivery operations, but that individual applications by those carriers for relief would be considered under the provisions of Section 3666<sup>3/</sup> of the Public Utilities Code and any order granting such relief would specify the minimum rates to be observed by the carrier.

In April 1960, Ralph M. Adams, doing business as Adams Delivery Service, was first issued permits authorizing the transportation of general commodities as a highway contract carrier between points within a radius of 150 miles of the city of San Leandro and as a city carrier between points within the limits of incorporated cities located within that area. In 1968 the City Carriers Act was repealed so that Adams' city carrier permit was revoked and he was issued a new permit authorizing operations as a radial highway common carrier of general commodities within a 150-mile radius of San Leandro. The application for that permit together with certain forms filed by applicant in connection therewith and memoranda prepared by members of the Commission's staff in the processing of

---

3/ "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."

that application show that the applicant was wholly engaged in parcel delivery operations, that his motor vehicle equipment consisted of passenger cars and 1/2-ton pickup trucks, and that the preponderance of his parcel delivery operation consisted of deliveries of drugs and liquor from retail stores to customers of the stores. The Commission has not established minimum rates for that type of transportation.

Applicant asserts that he also engaged in the transportation of parcels other than those sold by retail stores and for that service he charged rates slightly higher than the minimum rates set forth in MRT 1-B for wholesale parcel delivery within the East Bay Drayage Area, and pursuant to the provisions of Item 200 of MRT 2 charged rates in the same format but slightly higher than those maintained in Delivery Service Company's Tariffs Nos. 8 and 9 for transportation not within the East Bay Drayage Area. His income statement for the calendar year 1972 shows that he received revenues of \$139,298 on which he earned \$24,475 before income taxes.

Pursuant to Decision No. 80591 in Application No. 52295, Delivery Service Company suspended operations as a highway common carrier and suspended its Tariffs Nos. 8 and 9 on November 13, 1972. The decision states that the carrier intended to continue parcel delivery operations but to establish different financial relationships with its customer shippers as a permitted carrier. On or about February 16, 1973, Delivery Service Company closed its doors and ceased operations. Applicant asserts that former customers of Delivery Service Company have requested him to provide the same day parcel delivery service that they had received from that carrier. Because of the suspension of Delivery Service Company's tariffs applicant cannot provide same day parcel delivery service to points outside of the East Bay Drayage Area at parcel delivery rates. The published rates of United Parcel Service call for overnight service. Applicant is fearful that the shippers other than retail stores will

resort to proprietary operations because of the lack of same day parcel delivery service at parcel rates if for-hire transportation cannot quickly fill the gap caused by the cessation of operations by Delivery Service Company.

To the extent that applicant has performed, or is performing same day wholesale parcel delivery service from points in the East Bay Drayage Area to points outside of that area it has been, and is, required to increase its rates to the level of the minimum charges prescribed in MRT 2 which minimum charges the Commission has found in other proceedings not to be the just, reasonable, and nondiscriminatory minimum rates for carriers wholly engaged in parcel delivery operations. Shippers that are not retail stores who formerly used the service of Delivery Service Company for the same day delivery of their packages and parcels from points in the East Bay Drayage Area to other points in Alameda and Contra Costa Counties no longer have available that same day service at parcel delivery rates. Applicant is ready and willing to provide that service. Those circumstances provide the emergency alleged by applicant and indicate a need for restoring what had been the status quo before the suspension of rates by Delivery Service Company.

The application herein, however, goes far beyond the restoration of former conditions. Although applicant states that the rates he proposes are higher than those maintained by Delivery Service Company for same day delivery service, they are in fact lower than said rates in many instances. The proposed rates are only higher than those maintained by United Parcel Service for overnight service in connection with parcels weighing less than 25 pounds, and are slightly higher than Delivery Service Company's rates for overnight service. In addition, the rates maintained by Delivery Service Company covered only transportation between the East Bay Drayage Area, on the one hand, and other points in the counties, on the other hand. The tariffs of Delivery Service

Company did not offer transportation between all points in Alameda and Contra Costa counties as is proposed by applicant.

In order to go beyond the restoration of conditions pertaining to same day service parcel delivery operations as is requested by applicant, the Commission should be able to determine that the rates proposed are reasonable and, in accordance with Aaronson and Decision No. 71900, should have assurance that applicant will engage only in parcel delivery operations at parcel delivery rates. On the basis of the matters set forth in the application and of facts of which we take official notice we cannot make a determination that the proposed rates for same day parcel delivery service between all points in the aforesaid counties are reasonable. As previously pointed out, the proposed rates in a number of instances are lower than those that had been maintained by Delivery Service Company for same day service between the commercial area in the counties and points outside of that area, and that carrier discontinued service because of financial difficulties. For parcels weighing in excess of 25 pounds the proposed rates are virtually the same as those now maintained by United Parcel Service for overnight service. We take official notice of Application No. 53615 filed September 29, 1972, as amended January 2, 1973, by which United Parcel Service seeks authority to increase its rates for overnight parcel delivery between points in the counties involved. Although the profit and loss statement for the calendar year 1972 submitted by applicant shows an operating ratio of 82.4 percent before income taxes<sup>4/</sup> the operations conducted by applicant during that period primarily involved

---

<sup>4/</sup> Applicant is an individual proprietor of the business. Assuming the profit and loss statement was prepared in accordance with standard accounting principles, the expenses shown therein do not include compensation to applicant for his time and effort in the business.



deliveries from retail stores and, from the statements set forth in the application, he apparently had very little wholesale parcel delivery outside of the East Bay Drayage Area.

Although the equipment operated by applicant when considered with information set forth in the application and in the records of the Commission indicates that applicant is wholly engaged in parcel delivery operations, as matters now stand he is not precluded from conducting general freight operations now or in the future. His permits authorize him to transport shipments of general commodities regardless of size of shipment between all points within a 150-mile radius of San Leandro.

We have weighed all of the circumstances recited hereinabove and find that there is an immediate need to restore same day wholesale parcel delivery service at parcel delivery rates between points in the East Bay Drayage Area and points and places in Alameda and Contra Costa Counties. We conclude that pending public hearing<sup>5/</sup> and decision on this application, applicant should be authorized to charge rates for that transportation no lower than those which had been maintained by Delivery Service Company.

The rates per parcel which had been maintained by Delivery Service Company in its Tariff No. 9 for same day service (Item 105) varied by the number of parcels tendered during each weekly period. The rates proposed by applicant do not consider minimum weekly tenders of parcels. In the circumstances, applicant should be authorized to enter into agreements with shippers to provide same day wholesale parcel delivery service for parcels weighing less than 50 pounds each at \$1.65 per parcel plus \$.045 per pound in excess of 25 pounds, plus \$.50 for each pickup at a consignor's place of business subject to the rules and restrictions proposed by applicant. The rate of \$1.65 per parcel is the rate that had been maintained by Delivery

---

<sup>5/</sup> Public hearing on this application is set for 10:00 a.m., Friday, May 18, 1973, before Examiner Thompson at San Francisco.

Service for parcels weighing 25 pounds or less for tenders not exceeding 35 parcels per week.

INTERIM ORDER

IT IS ORDERED that Ralph M. Adams, doing business as Adams Delivery Service, is authorized pending hearing and decision by the Commission in Application No. 53854 to depart from the minimum rates, rules, and regulations in Minimum Rate Tariff 2 in performing transportation of parcels weighing less than 50 pounds each at the rates, rules, and restrictions set forth in Appendix A attached hereto and by this reference made a part hereof.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 15th  
day of MAY, 1973.

Vermon L. Stinson  
President  
[Signature]  
[Signature]  
[Signature]  
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A  
Page 1 of 2

RALPH M. ADAMS  
doing business as  
ADAMS DELIVERY SERVICE

Ralph M. Adams is authorized to enter into agreements with shippers to provide wholesale parcel delivery service for parcels weighing less than 50 pounds each, as follows:

Territory

Between points in the municipalities of Alameda, Albany, Berkeley, El Cerrito, Emeryville, Oakland and Piedmont, on the one hand, and points and places within Alameda County and Contra Costa County, on the other hand.

Rate

\$1.65 per parcel, plus \$.045 per pound in excess of 25 pounds, plus \$.50 for each pickup at a consignor's place of business.

Said rate will contemplate delivery on the day of pickup.

Rules and Restrictions

1. No package weighing in excess of 50 pounds nor measuring more than 160 inches (length and girth combined) will be accepted for delivery. A maximum weight of 100 pounds destined for a single consignee will be picked up at any one time.
2. Shipper will pay all freight charges.
3. Carrier will make pickups only on weekdays - Monday through Friday; no Saturday, Sunday, or holiday pickups will be made.
4. Carrier will be liable to shipper for loss of or damage to packages of merchandise entrusted to it for delivery in the amount of 30 percent of the selling price thereof, but not to exceed \$100 for any one package, such limitations to be effective whether or not such loss or damage has been due to the negligence of the delivery service.
5. An additional charge of \$.50 will be assessed for each C.O.D. collection.

APPENDIX A  
Page 2 of 2Rules and Restrictions - (Contd.)

6. Carrier will accept checks tendered by consignee for C.O.D. packages, unless shipper gives written instructions on C.O.D. delivery address tag and on C.O.D. manifest to collect cash only. Carrier will not assume responsibility for validity of checks tendered in payment of C.O.D. collections. If the carrier fails to collect any C.O.D. and such failure is not reported by the consignor to the carrier within 15 days after receipt by the delivery company of the package bearing such C.O.D., the consignor shall be deemed to have waived its right to hold the delivery company responsible for such failure.
7. The return of a package, which for any reason is returned to the consignor, after once having been delivered to the correct address will be charged for at the same rate as charged for the original delivery thereof, provided the order to return the package is given the carrier by, and the charges are paid by, the original consignor, or his agent.
8. The rate herein will apply only to wholesale parcel delivery service. Wholesale parcel delivery service means the transportation of packages and parcels moving between wholesalers, jobbers, dealers, distributors, industries, retail stores, offices, commercial houses, schools, hospitals, clubs, governmental agencies, and institutions.