

ORIGINAL

Decision No. 81566

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 highway 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 2).

Case No. 5432
 Petition for Modification
 No. 722
 (Filed November 3, 1972)

In the Matter of the Application of)
 PENINSULA PARCEL SERVICE, INC., a)
 California corporation, for)
 authority to depart from certain)
 minimum rates, rules, and regula-)
 tions established by the Public)
 Utilities Commission of the State)
 of California.

Application No. 53255
 (Filed April 11, 1972)

In the Matter of the Application of)
 SAN FRANCISCO PARCEL SERVICE, INC.,)
 a California corporation, for)
 authority to depart from certain)
 minimum rates, rules, and regula-)
 tions established by the Public)
 Utilities Commission of the State)
 of California.

Application No. 53396
 (Filed June 13, 1972)

ORDER OF DISMISSAL OF PETITION NO. 722 AND
ORDER TO SHOW CAUSE WHY CERTAIN OUTSTANDING
MINIMUM RATE EXEMPTIONS SHOULD NOT BE REVOKED

The California Trucking Association, petitioner, requests the issuance of an Order to Show Cause why the general exemptions and/or departures from the rates, rules, and charges of Minimum Rate Tariff 2, granted to certain highway carriers listed in Exhibit A appended to its petition, should not be canceled or, alternatively, modified so as to comply with Commission policy expressed in J. S. Aaronsen (1961) 58 CPUC 533.

By Decision No. 80965 dated January 16, 1973, Petition 722 was consolidated with Application No. 53255 (Peninsula Parcel Service, Inc.) and Application No. 53396 (San Francisco Parcel Service, Inc.) for public hearing. Copies of the order for consolidated hearing of these matters were served upon petitioner, applicants, and the following respondent highway carriers:

1. Ace Delivery Express, Inc.
2. Bay Rapid Transit Co.
3. Bus Express Service
4. Delivery Service Company
5. Merchants Delivery
6. Minute Man Delivery Service
7. Peninsula Parcel Service, Inc.
8. Rapid Radial Transport
9. San Francisco Parcel Service
10. Tri-City Delivery

On April 6, 1973 petitioner, applicants, and the respondent highway carriers listed above were notified that a hearing in the above-entitled consolidated matters was scheduled for Wednesday, May 9, 1973, at 10:00 a.m. in the Commission Courtroom, State Building, San Francisco. Pursuant to Rule 49 of the Commission's Rules of Practice and Procedure, the aforementioned interested parties were duly notified on April 23, 1973 that a prehearing conference, in lieu of the previously announced public hearing, would be held before Examiner Gagnon on May 9, 1973 at San Francisco.

The purpose of the prehearing conference was to formulate and simplify the issues involved, provide for the order of submission of evidence, the nature of the burden of proof, determine whether a public hearing was necessary, and such other matters as may expedite orderly conduct and disposition of the proceeding.

While petitioner, applicants, and certain respondent highway carriers attended the May 9, 1973 prehearing conference, the following carriers were unrepresented:

1. Ace Delivery Express, Inc.
2. Delivery Service Company
3. Merchants Delivery
4. Minute Man Delivery Service
5. Tri-City Delivery

A summary of the understanding reached by the parties in attendance at the prehearing conference follows:

1. Request Commission to affirm that the decision reached in J. S. Aaronson (1961) 58 CPUC 533 constitutes the current Commission policy when granting general exemptions and/or departures from the otherwise governing minimum rates for shipments weighing 100 pounds or less.

2. To the extent that the applicants involved in this consolidated proceeding advise the Commission that they are, or will, bring their existing operating authorities in compliance with the Aaronson decision, no further hearing will be necessary in connection with said operations.

3. All future requests for general exemptions and/or departures from the otherwise governing minimum rates by so-called parcel carriers should conform with the criteria set forth in the so-called Aaronson decision. It being understood, however, that any requests for general exemptions and/or departures from the minimum rates not in conformity with the Aaronson decision must be fully justified by evidence received at a duly noticed public hearing.

4. The respondent highway carriers who failed to appear at the prehearing conference must show that their parcel carrier service is within the framework of the Aaronson decision or, alternatively, justify their existing operations on the basis of formal evidence to be adduced at public hearing within approximately 90 days after the effective date of the order herein. Failure of such carriers to respond to the Commission's order and make such filings as deemed necessary in the circumstances will constitute sufficient grounds to revoke their outstanding relief.

5. With the apparent consensus of the parties in attendance at the prehearing conference, petitioner believes that a public hearing in this consolidated proceeding will not be necessary. In the event the aforementioned understanding of the parties is adopted by the Commission, petitioner requests that its Petition 722 be dismissed without prejudice.

J. S. Aaronson (1961) 58 CPUC 533

A summary of the Commission's policy relative to minimum rate exemptions and/or departures as enunciated in the Aaronson decision follows:

"The ultimate issue herein is whether the petitioner should be exempted from the requirements of Minimum Rate Tariff 2. A granting of such exemption presupposes that the established minimum rates are not suitable, reasonable, or proper for the operations by petitioner. . . . We have found that minimum rates in Minimum Rate Tariff 2 are not the minimum reasonable rates for parcel delivery service by carriers wholly engaged in conducting parcel delivery operations and, hence, have exempted carriers operating solely as parcel delivery carriers from said minimum rates. . . . Exemptions were first granted in 1939 by Decision No. 31606. Those carriers granted exemptions were common carriers maintaining tariffs naming the rates they assessed. Since that time, exemptions have been granted to highway permit carriers who do not maintain schedules of rates. Ordinarily the operating permits of those carriers have been restricted to the transportation of shipments not exceeding 100 pounds... It appears that such restriction is not sufficient to restrict the operation to a parcel service at parcel rates.

". . . 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 minimum parcel rates to be assessed by it will remove the possibility of any abuse of the exemption granted." (Emphasis supplied.)

The Commission has no information which would move it to either alter or cease to adhere to its policy as established in the Aaronson decision for granting minimum rate exemptions to parcel delivery carriers.

IT IS ORDERED that:

1. The Commission's position expressed in J. S. Aaronson (1961) 58 CPUC 533 is "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." Except as otherwise found to be fully justified and reasonable, this procedure is the current policy adhered to by the Commission whenever it considers granting minimum rate exemptions to parcel delivery carriers, other than highway common carriers, for shipments weighing 100 pounds or less.

2. Pursuant to the agreement reached by all appearances at the May 9, 1973 prehearing conference, no public hearing of Petition 722 and Applications Nos. 53255 and 53396, as directed by Decision No. 80965, is necessary. The order of consolidation for public hearing in Decision No. 80965 is, therefore, vacated. Further revision of the Commission's orders in Decision No. 81113 (Application No. 53255) and Decision No. 80285 (Application No. 53396) will be made by separate orders of the Commission.

3. Petition 722 of the California Trucking Association is dismissed without prejudice.

4. The Commission has granted general exemptions and/or departures from its otherwise governing minimum rates to the following parcel delivery carriers of shipments weighing 100 pounds or less:

<u>Carrier</u>	<u>Authority</u> <u>(Decisions Nos.)</u>
1. Ace Delivery Express, Inc.	57063
2. Delivery Service Company	71900, 80591
3. Merchants Delivery	71900
4. Minute Man Delivery Service	80022
5. Tri-City Delivery	52820

5. The outstanding authorities granting the highway carriers listed in Ordering Paragraph 4 hereof general exemptions and/or departures from the Commission's otherwise governing minimum rates are rescinded, effective November 4, 1973, unless on or before that date said carriers file appropriate pleadings with the Commission requesting an opportunity to show cause why their existing relief should not be revoked.

6. The application of Ordering Paragraph 5 hereof shall be stayed effective with the seasonable filing of an appropriate pleading by a respondent parcel delivery carrier as specified in said ordering paragraph.

7. Copies of this order shall be served upon the California Trucking Association, applicants in Applications Nos. 53255 and 53396, and the respondent highway carriers previously served with a copy of the Commission's Decision No. 80965 in this proceeding.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 3rd
day of JULY, 1973.

Vernon L. Stinson
President
William L. Stinson
John L. Stinson
Commissioners