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Decision No. 81685

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of REA EXPRESS, INCORPORATED to increase intrastate rates and charges for surface express service.	Application No. 53527 (Filed August 15, 1972)

John J. C. Martin, Attorney at Law, for REA Express, Incorporated, applicant.
J. C. Kaspar, Arlo D. Poe, Attorney at Law, and Herbert W. Hughes, for California Trucking Association, interested party.
Lionel B. Wilson, Attorney at Law, for the Commission staff.

O P I N I O N

This matter was heard December 11 and 12, 1972 before Examiner Thompson at San Francisco and was submitted on briefs received January 12, 1973.

REA Express, Incorporated is a Delaware corporation engaged in the transportation of express over the lines of common carriers and by means of its own motor vehicles within the State of California and thrcughout the United States. It here seeks authority to increase by $2.00 per shipment the rates and charges maintained in its Class Tariff 18, which tariff governs the surface transportation of class rated shipments and applies to an assortment of special commodities such as household goods, personal effects, lamp shades, boat models, valuable papers, jewelry, coin, currency, and art objects. No protests to the granting of the application have been received except by the Commission staff which opposes the granting of the authority on grounds mainly concerning Rule 23.1 of the Commission's Rules of Procedure.

As of December 31, 1971, applicant had a deficit in its earned surplus account in excess of $28 million and current assets of approximately $24 million with current liabilities in excess of $49 million. For the year ended December 31, 1971 applicant had a net loss of $9.7 million on revenues of $263 million. The 1971 results of operations was an improvement over prior years. Applicant does not maintain separate records with respect to its California intrastate operations. It does, however, maintain data showing the total number of shipments (intrastate and interstate combined) handled within any state, including California. In order to estimate the results of California intrastate surface express operations it is necessary to make allocations with respect to both revenues and expenses. Applicant made the allocations based upon a study of an eleven percent sample of shipments that originated in California during the month of October 1971. The sample was expanded and adjusted so as to comport with the recorded total number of shipments handled in California during 1971. From that study applicant estimates the following results of 1971 California intrastate surface express operations.

REA Express, Incorporated, Results of California Intrastate Surface Express Operations, Year 1971

Gross Revenues	$1,213,420
Operating Expenses (Excluding Purchased Transportation)	1,171,632
Cost of Purchased Transportation	38,195
Total Operating Expenses	1,209,827
Net Operating Revenue	3,593

From the same study of the eleven percent sample applicant estimated that the proposed increased rates would provide $63,840 additional gross revenue. Had the proposed increased rates been effective during the year 1971 applicant estimates that it would have received $1,277,260 for the 135,772 California intrastate surface express shipments[1/] transported during that period and, without considering any increases in expenses resulting from the increases in revenues, would have had net operating revenue of $67,433 for an operating margin of 5.3 percent.

Applicant did not project operating expenses at current cost levels. It pointed out that it has been subject to increases in costs since 1971, including such things as increases in payroll taxes and increases in costs of labor and materials, and that under its contracts with underlying common carriers any increases in revenues would have an effect upon its cost of purchased transportation.

On August 6, 1971, applicant filed with the Interstate Commerce Commission its Class Tariff 18-N which provides for the increases in rates involved herein. The proposed increases were not permitted to become effective because of the President's executive order known as the price freeze which was implemented by orders of the Interstate Commerce Commission. Following the executive order providing for Phase II of the Federal Economic Stabilization Program, the Interstate Commerce Commission by order dated November 18, 1971 in its Suspension Docket No. 8688 vacated the suspension of the increased rates and permitted them to go into effect. The order

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1/ Of the total California intrastate surface express shipments it is estimated that approximately 23.5 percent moved at the rates in Class Tariff 18.

recites that the Cost of Living Council and the Price Commission had issued regulations implementing the Economic Stabilization Act of 1970 and Executive Order No. 11627. The order states that the increased charges proposed are in conformity with the purposes of the Economic Stabilization Act of 1970, as amended, and with the rules and regulations promulgated thereunder. On September 2, 1971, when the increased rates were under suspension by reason of the freeze order, applicant requested from the Office of Emergency Preparedness an exemption from the freeze order under which it could place the increased rates into effect. On instruction from the Office of Emergency Preparedness the Internal Revenue Service conducted a financial review of applicant. Independent audit and investigation was made by the Interstate Commerce Commission and the Department of Transportation. On or about November 23, 1971 the Price Commission was made aware of the circumstances recited above. The Price Commission did not disturb the rate increases.

An associate transportation rate expert of the Commission's staff presented a comparison of applicant's proposed class rates with the rates set forth in Minimum Rate Tariff 2 and in the tariffs of United Parcel Service and Western Greyhound Lines. The comparisons show that applicant's proposed rates are higher than the rates in the other tariffs. An accountant of the Commission's staff utilized the data set forth in exhibits presented by applicant to compare the results achieved by applicant from transportation of property at the rates in Class Tariff 18 with the results from transportation of property moving under commodity rates maintained by applicant. That comparison assumed that the cost of transporting articles subject to the rates in Class Tariff 18 is the same as the cost to applicant of transporting articles subject to its other tariffs. That assumption was shown to be invalid.

Class Tariff 18 names class express rates and charges. Applicant maintains commodity express rates in other tariffs. In general, articles that are shipped regularly in day-to-day commerce and possess no unusual transportation characteristics are subject to commodity rates. Where there is no commodity rate the article is subject to Class Tariff 18. The type of traffic that moves at Class Tariff 18 rates is generally limited to articles of extraordinary value (coin, currency, and objects of art), articles of low weight density (lamp shades and rattan furniture), articles susceptible to loss or damage (boat models), and articles not in regular commerce (personal effects and live animals). With respect to the comparison of applicant's proposed rates with the rates in Minimum Rate Tariff 2, the latter names rates for all of the above-mentioned articles except personal effects and live animals. Minimum Rate Tariff 2 names minimum rates to be observed by all highway carriers; however, highway common carriers subject to those minimum rates do not publish or maintain rates on articles of extraordinary value and many of them publish and maintain rules in their tariffs so as to provide rates higher than those in Minimum Rate Tariff 2 with respect to articles of low weight density.

With respect to the comparisons of applicant's proposed rates with those of United Parcel Service, the latter's tariff applies only where the shipper elects in writing in advance to utilize the rates therein for all packages weighing 50 pounds or less tendered by said shipper to the carrier for delivery during the same calendar week. The rates do not apply to articles of unusual value or to household goods (including personal effects), do not apply to any package or article weighing more than 50 pounds or exceeding 108 inches in length and girth combined, do not apply to transportation between retail stores and their branches or warehouses or between said retail establishments and the premises of their customers, nor will any service be provided by that carrier 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.

Greyhound's express service is only between its passenger stops; store door service is not offered. Its express rates apply only to packages weighing 100 pounds or less, not exceeding 85 inches in longest measurement or 141 inches in extreme measurement. Value per package shall not exceed $50, nor shall the value of the shipment exceed $250.

In its brief applicant points out that the Price Commission had been fully cognizant of the rate increase proposed by applicant and of its approval by the Interstate Commerce Commission, and that it had permitted the increase to become effective as to interstate commerce in California as well as throughout the United States. It contends that extraordinary authority to withhold approval in California of such an increase would have to be the subject of a specific grant to this Commission, and no specific authority - in effect to reverse a previous clearance - has been granted by the Price Commission.

Staff in its brief asserts that the Commission is required to make an independent determination of whether the rate increase conforms to the general criteria set forth in the Economic Stabilization Act and the rules and regulations promulgated thereunder.

At the time of hearing, Phase II of the Economic Stabilization Program was in effect. Phase III, announced on January 11, 1973, abolished the Price Commission and the Pay Board but retained the Cost of Living Council. The Cost of Living Council has issued regulations, effective January 11, 1973, under Title 6, Economic Stabilization, Chapter 1, Part 130, which supersede previous Price Commission regulations governing public utilities. Section 130.81 sets forth standards to be applied presently by regulatory

agencies in the evaluation of rate increases proposed by public utilities.[2/] Those standards are substantially the same as had been prescribed by the Price Commission under Phase II and as prescribed by us in Rule 23.1 of our Rules of Practice and Procedure. Under Phase II, Section 300.304 of the Economic Stabilization Regulations provided for certification of regulatory agencies by the Price Commission. The certified agencies were required in every instance to consider rate increases proposed by public utilities in accordance with rules promulgated by the agency and approved by the Price Commission which encompassed the general criteria set forth hereinabove. Under either Phase II or Phase III this Commission has the duty of independently considering rate increases by public utilities in accordance with those criteria. The fact that the Interstate Commerce Commission had made a finding that the increases

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2/ Section 130.81 Rules:

"Increases in rates for public utilities effective January 10, 1973, should be consistent with the following criteria:

(a) The increase is cost-justified and does not reflect future inflationary expectations;

(b) The increase is the minimum required to assure continued adequate and safe service or to provide for necessary expansion to meet future requirements;

(c) The increase will achieve the minimum rate of return needed to attract capital at reasonable costs and will not impair the credit of the public utility; and

(d) The increase takes into account expected and obtainable productivity gains."

are in conformity with the purposes of the Economic Stabilization Act of 1970, and with the rules and regulations promulgated under Phase II of the stabilization program, and that the Price Commission had permitted the increases to become effective does not negate the duty of this Commission independently to apply the general criteria in connection with the consideration of whether the proposed increases in rates are justified for application in California intrastate commerce. The prior approval of the increases in connection with interstate commerce, however, is entitled to some weight in our determinations.

Staff argues that the proposed increases in rates do not take into consideration productivity gains. It points out that since the last increase in applicant's class rates authorized by Decision No. 76687 dated January 20, 1970, applicant's California intrastate surface express operations have moved from a deficit operation to one of marginal profitability and that during this period applicant has experienced an ever declining volume of business. It argues that those facts require a conclusion that applicant has experienced a substantial gain in productivity. Such conclusion does not necessarily follow. We note that the financial statement of applicant shows that its fixed assets are approximately 70 percent depreciated. There does not appear to have been any significant change in the manner in which applicant handles its express traffic. The evidence shows that traffic moving at commodity rates is and has been handled mechanically over the larger terminals maintained by applicant and that by far the majority of traffic that is not handled mechanically at those terminals consists of articles subject to class rates.

Staff argues that because applicant's proposed rates are higher than those maintained by highway common carriers of freight, those maintained by United Parcel Service, and those maintained by Greyhound, it is clearly and convincingly established that carriers are available who are willing and capable of providing service at the

existing rate or rates. Staff admits that applicant proportionately handles a greater volume than any other carrier of particular types of commodities that require considerably more than average care in handling, and that it regularly handles articles which ordinary freight carriers refuse. It recognizes that in a previous proceeding it was indicated that 90 percent of applicant's class rated traffic flows to or from residences of private citizens and that by reason of the foregoing circumstances it would seem that with respect to the aforesaid unusual traffic it may not be concluded that there are carriers willing and capable of providing that transportation service at existing rates. It contends, however, that this conclusion can not be made with respect to traffic subject to applicant's class rates that does not have other than ordinary transportation characteristics. Staff contends that with respect to the other than unusual traffic applicant competes with carriers that maintain lower rates and therefore it is clearly and convincingly established that other common carriers are willing and capable of providing service at the existing rate or rates. It argues that Paragraph A(5)(c) of Rule 23.1 of the Commission's Rules of Procedure requires the denial of the authority sought, if not to the full extent of the proposed increases in rates, at least with respect to the application of the increased rates to the competitive traffic.[3/]

Applicant holds itself out as a common carrier to transport between all points that it serves virtually any commodity or article that is packaged or crated in accordance with the packing requirements set forth in its tariff. Accordingly, it is required by law to publish and maintain a rate applicable to any article or commodity.

3/ Rule 23.1, Paragraph A(5)(c):

> "(c) To assure maximum benefits from productivity gains for common carriers and warehousemen where competitive conditions exist among utilities, increased rates will not be authorized if it is clearly and convincingly established that other utilities are willing and capable of providing the service at the existing rate or rates."

With respect to traffic that ordinarily moves between places of business, applicant has published and maintained commodity rates which are lower than its class rates and which are intended to be competitive with the rates of other carriers. Any other traffic would be subject to the class rates here in issue. Because of descriptions of articles and commodities in the classification and tariffs of applicant, which of necessity in many instances must be generic and broad to cover many different shapes, forms, and properties of the same article so as to assure compliance with the requirement that it publish and maintain a rate for every shipment carried, it is possible that a shipment that would be accepted by other carriers could be subject to applicant's class rates rather than a commodity rate. For example, applicant asserts that the class rates are applicable to shipments of lamp shades. It is common knowledge that there are many sizes and shapes of lamp shades, that they may be constructed from many different materials, that some are plain, whereas others have designs of various sorts, and that there is a wide range in the value of individual lamp shades. A shipment of a single cube-shaped carton less than 100 inches in length, width, and girth combined, and weighing 25 pounds containing a number of small lamp shades made of paper and brass with a value not exceeding $50, consigned from a manufacturer or jobber in downtown San Francisco to a jobber or wholesaler in downtown Los Angeles, would be accepted for transportation by applicant for surface express or by air express, by any number of highway common carriers engaged in freight operations, by at least one air freight forwarder, by railroad, by United Parcel Service, and by Greyhound. The rates that they would charge would be substantially different and it is probable in this instance that the lowest charge would probably be via United Parcel Service or Greyhound. If we change only the size of the shipment to make it 5,000 cartons of exactly the same articles, very probably the lowest charge would be provided by a highway common

carrier of freight or by railroad. For a size of shipment between those extremes it is possible that the lowest charge would be provided by an air freight forwarder or some other form of transportation. If one were to change the size of packages, the size of shipment, the nature of the lamp shades, the value of the shipment, and the identities and locations within San Francisco and Los Angeles of the consignor and consignee, applicant could not only be the low-cost carrier but might also be the only carrier that would accept the shipment. Keeping in mind that applicant holds itself out with very few limitations to transport any lamp shades packaged according to its specifications, it is readily apparent that if the Commission were to limit adjustment of applicant's rates on lamp shades so as to result in charges no greater than those provided under rates of other common carriers, applicant would have to publish many hundreds of different rates on lamp shades alone. To require that such be done with respect to each and every article that might be governed by the class rates would result in such a complicated hodge-podge of rates as to make them completely unworkable.

While it can be said that applicant's class rates in a number of instances might be applicable to transportation services regularly provided by other common carriers, those class rates are not now, and for many years have not been, competitive rates for the more service of transporting ordinary articles regularly moving between places of business. Applicant's class rates have not moved that type of traffic and it is not anticipated that they will do so in the future. In brief, with respect to traffic moving at applicant's class rates competitive conditions do not exist and it has not been shown that there are any other common carriers that are willing to provide all of the services covered by applicant's class rates or that any carrier would be capable of performing all of said services at the existing rates.

We find that:

1. REA Incorporated is an express corporation engaged in the transportation of property between points in California by surface carrier and by air carrier. It publishes and maintains rates for air express, commodity rates for surface express, and class rates for surface express in separate tariffs.

2. By this application applicant seeks authority to increase its class rates for surface express by $2.00 per shipment, which increase will result in additional gross revenues of approximately $63,840, for an increase of approximately 5.26 percent in surface express revenues. This increase is reasonable.

3. The proposed $2.00 per shipment increase in rates was approved by the Interstate Commerce Commission to be applicable to interstate commerce on November 18, 1971 and was permitted by the Price Commission to become effective.

4. During 1971 applicant had net operating revenues of $3,593 on gross revenues of $1,213,420 from California intrastate surface express operations. During the same period applicant had a loss of $64,014 from California intrastate air express operations.

5. Had the proposed rates been in effect during 1971 applicant would have had net operating revenues from surface express operations of $67,433; and had the air express rates proposed by applicant in Application No. 53528 been in effect during that same period applicant would have had total net operating revenues from all California intrastate express operations of $64,345 on total gross revenues of $1,975,460, for an operating margin of 3.26 percent. This calculation does not consider increases in expenses and taxes based upon gross revenue.

6. Since December 31, 1971 applicant has been subject to cost increases, including taxes levied on payroll.

7. The increase is cost-justified and does not reflect future inflationary expectations.

8. The increase is the minimum required to assure continued, adequate, and safe service.

9. Any return resulting from operations conducted at the proposed increased rates will be marginal and the increase will achieve the minimum rate of return, if any, needed to attract capital at reasonable costs and not impair the credit of applicant.

10. The increase takes into account obtainable productivity gains.

11. All persons interested in this proceeding were afforded full opportunity to be heard, and it has not been established that competitive conditions exist among common carriers with respect to the services provided by applicant under its proposed rates, nor has it been clearly and convincingly established that other common carriers are willing and capable of providing those services at the existing rates.

12. The increases in rates proposed herein are justified.

We conclude that the application should be granted.

O R D E R

IT IS ORDERED that:

1. REA Express, Incorporated is authorized to establish the increased rates proposed in Application No. 53527. Tariff publications authorized to be made as a result of the order herein shall be filed not earlier than the effective date of this order and may be made effective not earlier than five days after the effective date hereof on not less than five days' notice to the Commission and to the public.

2. In establishing and maintaining the rates authorized hereinabove, applicant is 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.

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

The effective date of this order is August 8, 1973.

Dated at San Francisco, California, this 31st day of JULY, 1973.

President

Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.