

Decision No. 82509**ORIGINAL**

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
Petition to Stay Revocation
(Filed October 30, 1973;
amended December 26, 1973)

OPINION AND ORDER

By Decision No. 57063 dated July 29, 1958 (Petition 107), Ace Delivery Express, Inc. (Ace Delivery), a highway contract carrier operating a parcel delivery service, was authorized to transport "wholesale drugs, wholesale electronics, and electrical supplies and equipment in shipments of 100 pounds or less between points within the area between South San Francisco and San Jose and the Skyline Boulevard (State Route 5) and San Francisco Bay" at rates less than and different from the otherwise governing minimum rates.

Decision No. 81566 dated July 3, 1973 provides for the revocation of Ace Delivery's minimum rate exemption. Ace Delivery seeks a stay of the revocation and also requests that its existing minimum rate exemption be revised so as to apply to the transportation of shipments weighing less than 100 pounds between points within a radius of 100 miles of San Jose subject to the package or parcel rates specified in Exhibit A of its amended petition.

The Commission's order in Decision No. 81566 provides:

- "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.

* * *

- "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."

The petition to stay was filed with the Commission on October 30, 1973. The filing of such petition prior to November 4, 1973 effectively stayed the revocation of Ace Delivery's minimum rate exemption.

While all of the packages transported by Ace Delivery weigh less than 100 pounds, a majority of them weigh less than 10 pounds. The petitioner submits that the historical exemption of its parcel delivery service attests to the Commission's continuous recognition that the established minimum rates are not designed for such service. It is contended that the level of rates prescribed in Minimum Rate Tariff 2 are too high for the parcel delivery service involved. In addition, petitioner notes that the applicable minimum rates are higher than the rates which may be assessed by competing carriers who currently enjoy an exempt status from the otherwise governing provisions of Minimum Rate Tariff 2. Ace Delivery contends it is imperative that the sought amended minimum rate exemption be authorized in order to retain existing traffic and provide continuous and uninterrupted service as required by the carrier's medical and surgical supply customers.

It is not the intention of Ace Delivery to endeavor to serve its competitors' customers but, on the contrary, only to serve the traffic it now enjoys on an equal basis with such competing carriers. Ace Delivery has submitted, therefore, a proposed schedule of package or parcel rates and charges which it proposes to assess under the sought amended minimum rate exemption. The proposed schedule of rates and charges are the same as or substantially similar to the level of rates and charges required to be observed by other competing parcel delivery carriers operating under like minimum rate authority.

A summary of the Commission's policy relative to minimum rate exemptions and/or departures as enunciated in J. S. Aaronson (1961) 58 CPUC 533 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 amended minimum rate exemption now sought by Ace Delivery fully conforms with the criteria prescribed in the Aaronson decision. Moreover, if the sought minimum rate exemption were authorized, Ace Delivery would then enjoy an equality of competitive opportunity with other parcel delivery carriers serving the same general area.

The certificate of service indicates that copies of the Petition to Stay Revocation, as amended, were served upon known competing parcel delivery carriers and the California Trucking Association. The petition and amendment thereto were listed on the Commission's Daily Calendar for November 1 and December 26, 1973, respectively. No protest or requests for public hearing have been received.

The Commission finds that:

1. The rates set forth in Minimum Rate Tariff 2 are not suitable, reasonable, or proper for the package delivery service performed by Ace Delivery Express, Inc.
2. The sought exemption from the otherwise governing provisions of Minimum Rate Tariff 2 for the transportation of shipments weighing 100 pounds or less at rates and charges not less than those specified in Appendix A hereof has been shown to be justified.
3. The minimum rate exemption as now proposed by Ace Delivery Express, Inc. fully conforms with the criteria prescribed in J. S. Aaronson (1961) 58 CPUC 533.

The Commission concludes that the amended relief sought by Ace Delivery Express, Inc. should be granted as provided by the order herein. Since transportation conditions might change, however, the minimum rate exemption to be authorized by the order which follows should be made subject to an expiration date of December 31, 1974. A public hearing is not necessary.

IT IS ORDERED that:

1. Ace Delivery Express, Inc. is authorized to transport shipments weighing 100 pounds or less between points within a radius of 100 miles of San Jose, California, at rates less than and different from the otherwise governing minimum rates but not less than the rates, rules, and charges set forth in Appendix A attached hereto and by this reference made a part hereof.

2. The minimum rate exemption granted herein is in lieu of the like authority granted in Decision No. 57063.

3. The authority granted herein shall expire on December 31, 1974 unless sooner modified or canceled by order of the Commission.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 20th
day of FEBRUARY, 1974.

Veronica L. Sturgeon
President
William J. Quinn
William J. Quinn
William J. Quinn
William J. Quinn
Commissioners

APPENDIX A

MINIMUM RATES TO BE CHARGED BY
ACE DELIVERY EXPRESS, INC.

Application

These rates are applicable only to the transportation of shipments weighing 100 pounds or less between points within a radius of 100 miles of San Jose, California.

Rules

Maximum weight per package, 100 pounds.

Maximum size per package, 108 inches in length and girth combined.

Minimum charge for a package measuring over 84 inches in length and girth combined will be equal to the charge for a package weighing 34 pounds.

C.O.D. delivery, an additional charge of 65 cents each.

Address correction, an additional charge of 65 cents each.

RATES IN DOLLARS PER PACKAGE OR PARCEL

<u>Weight</u> <u>Not to</u> <u>Exceed</u>	<u>Rate</u>	<u>Weight</u> <u>Not to</u> <u>Exceed</u>	<u>Rate</u>	<u>Weight</u> <u>Not to</u> <u>Exceed</u>	<u>Rate</u>
2 lbs	\$.50	36 lbs	\$1.67	70 lbs	\$2.97
4 "	.55	38 "	1.74	72 "	3.04
6 "	.62	40 "	1.80	74 "	3.12
8 "	.70	42 "	1.88	76 "	3.20
10 "	.78	44 "	1.96	78 "	3.27
12 "	.84	46 "	2.04	80 "	3.35
14 "	.90	48 "	2.12	82 "	3.43
16 "	.97	50 "	2.20	84 "	3.50
18 "	1.05	52 "	2.28	86 "	3.58
20 "	1.12	54 "	2.35	88 "	3.65
22 "	1.19	56 "	2.43	90 "	3.73
24 "	1.27	58 "	2.51	92 "	3.80
26 "	1.35	60 "	2.59	94 "	3.88
28 "	1.41	62 "	2.67	96 "	3.97
30 "	1.47	64 "	2.75	98 "	4.06
32 "	1.54	66 "	2.82	100 "	4.15
34 "	1.60	68 "	2.90		