

ORIGINAL

Decision No. 85045

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of Aero Speed Mail Service, Inc.
for an order authorizing departure
from the rates, rules, and
regulations of Public Utilities
Minimum Rate Tariff 2.

Application No. 55472
(Filed January 29, 1975;
amended March 26, 1975)

In the Matter of the Investigation into
the rates, rules, regulations, charges,
allowances and practices of all common
carriers, highway carriers and city
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 No. 2).

Case No. 5432
OSH 861
(Filed June 3, 1975)

(Appearances are listed in Appendix A.)

O P I N I O N

Aero Speed Mail Service, Inc. (Aero Speed), a California corporation, operates as a radial highway common and highway contract carrier throughout the State of California. By Application No. 55472 it seeks a deviation from the minimum rates set forth in Minimum Rate Tariff 2 for the transportation of shipments weighing 100 pounds or less between points in northern and central California. The application was protested by Capital Parcel Delivery Company (Capital) and Loomis Courier Service, Inc. (Loomis).

Public hearing on Application No. 55472 was held before Examiner O'Leary at Sacramento on April 9, 1975 at which time the application was submitted. On April 30, 1975, pursuant to Aero Speed's petition the examiner set aside submission and reopened the matter for further hearing which was held at Sacramento on May 9, 1975 and the application was resubmitted.

By Decision No. 83750 dated November 26, 1974 in Application No. 54845, Aero Speed was granted authority to assess less than the minimum rates for the same commodities as requested by Application No. 55472. That authority applied to shipments between points located within a 60 air mile radius of the city of Sacramento and was to expire on December 31, 1974. By Order No. SDD-313 the authorization contained in Decision No. 83750 was extended to December 31, 1975. Application No. 55472 requests an adjustment of the rates presently authorized, for the most part a reduction, and a new scale of rates for an expanded area.

Evidence presented at the hearings in Application No. 55472 discloses that Aero Speed competes with Capital for the transportation of parcels weighing 100 pounds or less.

By Decision No. 42714 in Case No. 4808 dated April 12, 1949 Robert H. Olson and Lloyd Baines were granted an exemption from the assessment of minimum rates in connection with the transportation of shipments weighing 100 pounds or less. The exemption authorized by Decision No. 42714 was transferred to Capital pursuant to Decision No. 72252 in Case No. 5432, Petition for Modification No. 443, dated April 4, 1967.

Aero Speed's authorization to assess less than minimum rates prescribes the minimum rates to be assessed in lieu of the minimum rates set forth in the Commission's minimum rate tariffs. Capital's authorization does not contain a similar provision. Capital, therefore, may reduce its rates at will to meet competition.

Shortly after the issuance of Decision No. 83750 Capital reduced its rates in an attempt to attract additional business. The reduction of rates by Capital was one of the factors which prompted Aero Speed to file Application No. 55472.

On June 3, 1975 the Commission issued an Order Setting Hearing and Order to Show Cause (Case No. 5432, OSH 861) why the authority held by Capital pursuant to Decision No. 72252 should not be revoked, amended, or modified. Public hearing in that proceeding was held before Examiner O'Leary at Sacramento on July 14, 1975 at which time the matter was submitted.

Evidence presented by Capital discloses that its present exemption was granted to its predecessor in 1949 and has continually been in effect since that time. Aero Speed commenced transporting shipments of 100 pounds or less in November 1974. Prior to November 1974 Capital's only competitor in the transportation of shipments weighing 100 pounds or less was United Parcel Service.

The relief sought by Aero Speed in Application No. 55472 is consistent with the Commission's position as expressed in J. S. Aaronson (1961) 58 CPUC 533:

"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.)

It is apparent that if the authority sought by Aero Speed is granted Capital could again reduce its rates if its present exemption is not modified. This situation if allowed to continue places Aero Speed and other competitors of Capital at a competitive disadvantage.

With respect to Application No. 55472, Loomis requested that should the application be granted a condition be placed therein that Aero Speed not be allowed to transport commodities for which it has an exemption pursuant to Decision No. 82115 in the same equipment utilized to transport shipments which are the subject of Application No. 55472. Such a condition would require Aero Speed to operate additional equipment, possibly to the extent of operating two pieces of equipment over the same route. Operation of additional equipment would be uneconomical, would not be in the interest of conserving fuel, and would produce unnecessary exhaust fumes which would contribute to air pollution. This request will not be granted.

Findings

1. By Decision No. 83750 dated November 26, 1974 in Application No. 54845 Aero Speed was granted authority to assess less than the minimum rates for the transportation of packages weighing 100 pounds or less between points within a 60 air mile radius of the city of Sacramento. Said authority was to expire on December 31, 1974 but was extended to December 31, 1975 by Order No. SDD-313.

2. The authority sought in Application No. 55472 is in lieu of the authority set forth in Finding 1.

3. The rates, rules, and charges named in MRT 2 are not appropriate, reasonable, or otherwise proper for the parcel delivery service performed by Aero Speed Mail Service, Inc.

4. The sought exemption from the otherwise governing provisions of MRT 2 for the transportation of shipments weighing 100 pounds or less at rates and charges not less than those specified in Appendix B hereof has been shown to be justified.

5. The minimum rate exemption authority as proposed by Aero Speed fully conforms with the criteria prescribed in Aaronson.

6. Aero Speed competes with Capital for transportation of shipments weighing 100 pounds or less.

7. Capital presently holds an exemption from the assessment of minimum rates for the transportation of shipments weighing 100 pounds or less.

8. The exemption set forth in Finding 7 does not prescribe the minimum rates to be assessed in lieu of the minimum rates set forth in the Commission's minimum rate tariffs.

9. The Commission stated in Aaronson.

" . . . 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.)

10. The exemption held by Capital is susceptible of the abuse referred to in Aaronson.

Conclusions

1. Application No. 55472 should be granted to the extent set forth in the ensuing order.

2. The exemption granted to Capital Parcel Delivery Company as set forth in Decision No. 72252 should be modified to the extent set forth in the ensuing order.

O R D E R

IT IS ORDERED that:

1. Aero Speed Mail Service, Inc. is authorized to transport shipments weighing 100 pounds or less at rates less than and different from the otherwise governing minimum rates to the extent and in the manner set forth in Appendix B attached hereto and by this reference made a part hereof.

2. The exemption granted to Capital Parcel Delivery Company by Decision No. 72252 is modified as set forth in Appendix B attached hereto and by this reference made a part hereof. To the extent not modified herein Decision No. 72252 shall remain in full force and effect.

3. The authority granted to Aero Speed Mail Service, Inc. shall expire on December 31, 1976 unless sooner modified, canceled, or extended by order of the Commission.

4. The authority granted to Capital Parcel Delivery Company by Decision No. 72252 including the modification herein shall expire on December 31, 1976 unless sooner modified, canceled, or extended by order of the Commission.

5. The authority granted to Aero Speed Mail Service, Inc. set forth in Order No. SDD-313 is revoked.

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

Dated at San Francisco, California, this 28th day of OCTOBER, 1975.

I concur and dissent

[Signature], Commissioner

I dissent

[Signature] Commissioner

President

[Signature]

[Signature]

[Signature]

Commissioners

APPENDIX A

LIST OF APPEARANCES

Application No. 55472

Applicant: Bruce J. Allgier and Frank Almas.

Protestants: J. L. Glovka, Attorney at Law, for Loomis Courier Service, Inc. and Capital Parcel Delivery Company; and Ernest C. Farrington, Jr., and Richard C Hall, for Capital Parcel Delivery Company.

Interested Party: C. D. Gilbert, R. C. Broberg, and H. Hughes for California Trucking Association.

Case No. 5432 OSH 861

Respondent: Richard C. Hall and Ernest C. Farrington, Jr., for Capital Parcel Delivery Company.

Interested Parties: Bruce J. Allgier, for Aero Speed Delivery Service; and C. D. Gilbert and H. Hughes, for California Trucking Association.

Commission Staff: Harry E. Cush.

APPENDIX B
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Carriers: Aero Speed Mail Service, Inc.
Capital Parcel Delivery Company.

Application:

1. The rates set forth herein are applicable only to the transportation of packages weighing 100 pounds or less, between the points set forth herein.
2. The rate for the transportation of a shipment between points within the same zone, as described on the Zone Schedule attached hereto, shall be the rate provided for that zone: EXCEPT that shipments moving between a point which is within 60 air miles of Sacramento and another point which is within 20 air miles of Fresno will be assessed the appropriate Zone 2 rate.
3. The rate for the transportation of a shipment between points in two zones shall be the rate applicable to the highest of the zones, as prescribe in the attached Rate Schedule.

Rules:

1. The rates herein apply only when the released value or declared value is 50 cents per pound or less, and the maximum value per package or article is \$100 or less.
2. Shipments transported under the rates herein are subject to all the provisions of MRT 2, except as provided herein.
3. The rates herein do not apply to same day service.
4. An additional charge of 50 cents will be assessed for each C.O.D. shipment received for collection.
5. If the carrier is unable to deliver any shipment because of incorrect address, a charge of 65 cents will be assessed for either the subsequent delivery or carrier's attempt to deliver to the correct address.
6. The rates herein do not apply to the transportation of articles of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring temperature control or special equipment.

APPENDIX B
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<u>Weight (Pounds)</u>	<u>Zone 1</u>	<u>Zone 2</u>	<u>Weight (Pounds)</u>	<u>Zone 1</u>	<u>Zone 2</u>
1	\$.46	\$.47	43	\$2.14	2.57
2	.50	.52	44	2.18	2.62
3	.54	.57	45	2.22	2.67
4	.58	.62	46	2.26	2.72
5	.62	.67	47	2.30	2.77
6	.66	.72	48	2.34	2.82
7	.70	.77	49	2.38	2.87
8	.74	.82	50	2.42	2.92
9	.78	.87	51	2.48	2.99
10	.82	.92	52	2.52	3.04
11	.86	.97	53	2.56	3.09
12	.90	1.02	54	2.60	3.14
13	.94	1.07	55	2.64	3.19
14	.98	1.12	56	2.68	3.24
15	1.02	1.17	57	2.72	3.29
16	1.06	1.22	58	2.76	3.34
17	1.10	1.27	59	2.80	3.39
18	1.14	1.32	60	2.84	3.44
19	1.18	1.37	61	2.88	3.49
20	1.22	1.42	62	2.92	3.54
21	1.26	1.47	63	2.96	3.59
22	1.30	1.52	64	3.00	3.64
23	1.34	1.57	65	3.04	3.69
24	1.38	1.62	66	3.08	3.74
25	1.42	1.67	67	3.12	3.79
26	1.46	1.72	68	3.16	3.84
27	1.50	1.77	69	3.20	3.89
28	1.54	1.82	70	3.38	3.94
29	1.58	1.87	71	3.42	3.99
30	1.62	1.92	72	3.46	4.04
31	1.66	1.97	73	3.51	4.09
32	1.70	2.02	74	3.55	4.14
33	1.74	2.07	75	3.59	4.19
34	1.78	2.12	76	3.63	4.24
35	1.82	2.17	77	3.67	4.29
36	1.86	2.22	78	3.72	4.34
37	1.90	2.27	79	3.76	4.39
38	1.94	2.32	80	3.80	4.44
39	1.98	2.37	81	3.84	4.49
40	2.02	2.42	82	3.88	4.54
41	2.06	2.47	83	3.93	4.59
42	2.10	2.52	84	3.97	4.64

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Rate Schedule (Continued)
Rates in Dollars Per Package

<u>Weight (Pounds)</u>	<u>Zone 1</u>	<u>Zone 2</u>	<u>Weight (Pounds)</u>	<u>Zone 1</u>	<u>Zone 2</u>
85	\$4.01	\$4.69	93	\$4.35	5.09
86	4.05	4.74	94	4.39	5.14
87	4.09	4.79	95	4.43	5.19
88	4.14	4.84	96	4.47	5.24
89	4.18	4.89	97	4.51	5.29
90	4.22	4.94	98	4.56	5.34
91	4.26	4.99	99	4.60	5.39
92	4.30	5.04	100	4.64	5.44

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Zone Schedule

- Zone 1.
- a. All points within 60 air miles of the separation of Highway 160 from Interstate Highway 80 at Sacramento.
 - b. All points within 20 air miles of the intersection of Fresno Street and Van Ness Avenue in Fresno.

Zone 2. All of the following cities:

Alameda	Daly City	Livingston
Alviso	Decoto	Los Altos
Aptos	Delhi	Los Gatos
Armona	Del Rey	Marina
Ashland	Dinuba	Marin City
Asilomar	Durham	Marinwood
Atherton	Eldridge	Menlo Park
Athlone	El Granada	Merced
Atwater	El Nido	Milbrae
Bayshore	Exeter	Mill Valley
Belmont	Fairfax	Milpitas
Belvedere	Fairmead	Minturn
Ben Lomond	Farmersville	Miramar
Berenda	Felton	Mission San Jose
Brisbane	Five Points	Montara
Burlingame	Forestville	Monterey
Califa	Fort Ord	Moss Beach
Cambrian Park	Fremont	Moss Landing
Campbell	Gilroy	Mountain View
Capitola	Graton	Morgan Hill
Carmel	Greenbrae	Newark
Castle Air Force Base	Half Moon Bay	Orinda
Castroville	Hamilton Field	Orland
Centerville	Hayward	Pacheco
Ceres	Healdsburg	Pacifica
Chico	Hillsborough	Pacific Grove
Chowchilla	Hillsdale	Palo Alto
Colma	Hollister	Paradise
Corning	Jamestown	Parlier
Corte Madera	Keyes	Pebble Beach
Cotati	Kingsburg	Petaluma
Cottonwood	Lemoore	Porterville
Coyote	Lindsay	Portola Valley
Crockett	Lingard	Project City
Cupertino		
Cunningham		

Zone Schedule (Continued)

Zone 2.- Contd.

Red Bluff
Redding
Redwood City
Rohnert Park
Ross

Salinas
San Anselmo
San Bruno
San Carlos
San Francisco
San Francisco International Airport
San Jose
San Juan Bautista
San Leandro
San Martin
San Mateo
San Quentin
San Rafael
Santa Clara
Santa Cruz
Saratoga
Sausalito
Seaside
Sebastopol
Sonoma
Soquel
South San Francisco
Stanford University
Sunnyvale
Treasure Island
Turlock
Twain Harte

Union City
Watsonville
Willows
Windsor
Winton
Woodside

A. 55472 and C. 5432, OSH 361 - D. 35045

COMMISSIONER D. W. HOLMES, Concurring in Part and
Dissenting in Part

I concur with that part of the decision which grants Aero Speed Mail Service authority to deviate from the minimum rates. However, I believe it is wrong for the Commission to take the blanket deviation from Capitol Parcel Delivery, a company which has had such a deviation since 1949, and I dissent to that part of the opinion. The decision in J. S. Aaronson (1961) 53 CPUC 533 should not be lightly applied to divest Capitol of long-standing authority.

San Francisco, California
October 28, 1975


D. W. HOLMES
Commissioner