

Decision 88 12 064

DEC 19 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Lawlor Motor Express,)
 Inc. dba Package Delivery Express)
 and PDX, requesting authorization)
 of departure from General Order)
 147-A, as provided in Rule 2)
 thereof, authorizing applicant to)
 increase the rates and charges)
 found in Cal. P.U.C. No. 3 to equal)
 or exceed United Parcel Service)
 (UPS) Rates and publish in new)
 Tariff, Cal. P.U.C. No. 4. Said)
 tariff contains provisions of this)
 common carrier for the transporta-)
 tion of Small Package Rates and)
 other services related thereto,)

Mailed

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Application 88-04-026
 (Filed April 8, 1988;
 amended July 20, 1988
 and August 17, 1988)

- AND -

For authority to depart from the)
 terms of Section 452, 454, 461.5)
 and 491 of the Public Utilities)
 Code when accomplishing such)
 publication.)

Silver, Rosen, Fischer & Stecher, by Michael J. Stecher, Attorney at Law, for applicant.
Edward J. Marnell, for Adams Delivery Service and for himself, protestants.
 Skaff and Anderson, by Dwight C. Donovan, Attorney at Law, interested party.
Edmond J. Jamieson, for the Transportation Division.

O P I N I O N

Lawlor Motor Express, Inc. (Lawlor), a California corporation doing business as Package Delivery Express, requests authority to depart from the provisions of General Order (GO) 147-A of the Public Utilities Commission to permit it to publish and make effective a parcel tariff limited to the transportation of any

package or article weighing 70 pounds or less and not exceeding 130 inches in length and girth combined or not exceeding 108 inches in length.

The purpose of the application is to allow Lawlor the opportunity to provide parcel service in competition with United Parcel Service (UPS) and other parcel carriers which have previously been authorized to depart from the Commission's rate regulation as set forth in GO 147-A.

A protest to the application was filed by Edward J. Marnell (Marnell) and the matter was presented at a duly noticed public hearing before Administrative Law Judge Orville I. Wright in San Francisco on August 11, 1988 and submitted for decision on September 8, 1988. In a letter dated August 18, 1988, Marnell withdrew his protest on condition that applicant's parcel rates would, in fact, be competitive with those of UPS. Applicant submitted a letter brief and Transportation Division (staff) filed an instructive brief and statement in support of the application which we quote in full.

"Introduction

"By this amendment to its application, Lawlor Motor Express, Inc. dba Package Delivery Express (PDX) seeks to depart from the provisions of General Order 147-A by satisfying the conditions of Rule 2. The staff understands that a small package service tariff will subsequently be filed by PDX with the Commission reflecting exempt rates and rules competitive with United Parcel Service (UPS) restricted to the specified territory to be served upon approval of their application as amended. The present Lawlor/PDX Tariff No. 3, CA PUC 3 would be cancelled at this time. The staff is fully supportive and encourages the applicant's efforts to publish small package service rates competitive with those already authorized for another rate exempt highway carrier, UPS.

"Small Package Service has historically been rate exempt

"The staff's position in this proceeding is consonant with that expressed by the Commission in various decisions and practices in the past. UPS was grandfathered as a rate exempt parcel carrier by D. 31606 (41 CRC 724) 1938. There were other parcel carriers at that time which also were authorized a similar rate exemption. By use of alternative rate application rival highway small package operators were provided equal treatment under Public Utilities Code Sections 726 and 3663 (D. 89016, C. 5432, OSH 100 et al.) 1978.

"The aforementioned code sections only applied to Commission established minimum rates. D. 90663 (1979), as amended, by canceling certain of the Commission's Minimum Rate Tariffs and renaming them as Transition Tariffs in effect canceled the alternative rate application practice.

"In 1982 General Order 147 was inaugurated. It allowed a competitive rate to be placed on file without cost justification if all conditions of the cost justified rate was met. The result was that UPS competitive rates were published by small package carriers without formal application.

"General Order 147-A, effective March 1, 1987 (D.86-12-102) provided in Rule 1.5 that transportation previously rate exempt would be continued. New parcel service rates or carriers planning such a service were not accorded any rate exemption. These carriers must now either meet all conditions of the GO 147-A, the same as for general commodity carriers, or submit a formal application for a Departure under Rule 2 of that GO.

"Criteria for Small Package Service outline in Staff White Paper

"The staff's White Paper on '...Transportation of Packages Weighing Up to 70 Pounds Be Added to the Commission's Exempt List' issued in October, 1987 described some of the conditions which make up the framework of a potentially rate exempt parcel service. Furthermore, regardless of type of equipment used or other

commodities that may possibly be transported in the same vehicle, a highway carrier that has a small package operation should be allowed a rate and rule exemption for that specific service if certain tenants are present.

"The following characteristics should be present in any proposal for rate exemption by a carrier offering a small package service:

- "1. Transportation of property weighing no more than 70 pounds per package or article.
- "2. Packages not exceed 108 inches in length and girth combined.
- "3. Each package or article shall be considered as a separate and distinct shipment.

"Another important distinction is that the level of the rates to be filed with the Commission and reviewed by the staff prior to their acceptance should be closely related to those accorded the competitive rate exempt carrier (UPS). For example, zip code based zone rates that are filed should be either identical or more restrictive than those of the applicant's competitor.

"The staff fully intends to place a similar if not identical description in the Commission's publication titled 'Commodities and Geographic Areas Exempt from Rate Regulation' in the near future.

"It should be understood that the staff support for this Departure is predicated upon the applicant fully cost justifying any UPS non-competitive rate reductions as required by General Order 147-A. By the same token, rate increases would have to meet PUC Code Section 454 requirements.

"Conclusion

"Applicant has demonstrated a need for the proposed departure from General Order 147-A as provided for in Rule 2. The Amendment to the Application should be approved with the aforementioned restrictions."

For the reasons set forth in the foregoing brief, we will adopt staff's recommendations.

Findings of Fact

1. GO 147-A provides the applicable rules for general freight carriers to increase or lower rates.
2. Lawlor operates as a highway common and permit contract carrier under file T-71559.
3. Pursuant to said authority, Lawlor operates as a parcel carrier picking up and delivering parcels weighing 70 pounds or less in competition with other parcel carriers in California.
4. The largest competitor of all small parcel carriers is UPS which has previously been granted authority to depart from the Commission's rate regulation and is therefore not subject to GO 147-A provisions.
5. Lawlor should be offered an opportunity to provide parcel service in competition with UPS and other parcel carriers under similar authority to depart from the provisions of GO 147-A.
6. The departure authority requested will enable Lawlor to provide the public a competitive and comparable parcel service.
7. The proposal contained in this application is not a major action significantly affecting energy efficiency within the meaning of § 3502.1 of the Public Utilities Code.
8. As the protest to this application has been withdrawn, this decision should be effective immediately.

Conclusions of Law

1. Lawlor should be authorized to depart from the provisions of GO 147-A with respect to its transportation of parcels weighing 70 pounds or less.
2. Lawlor should be authorized to file exempt rates and rules for parcel delivery which are competitive with UPS, subject to staff's prior review and approval.

ORDER

IT IS ORDERED that:

1. Lawlor Motor Express, Inc. (Lawlor) may depart from the provisions of General Order 147-A with respect to its transportation of parcels weighing 70 pounds or less.

2. Lawlor may file exempt rates and rules for parcel delivery which are competitive with United Parcel Service, subject to Transportation Division prior review and approval.

This order is effective today.

Dated DEC 19 1988, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.



Victor Weissler, Executive Director

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