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Decision 91-03-015 March 13, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Cal Pak Delivery Service, Inc., )  
 Complainant, )  
 vs. )  
 United Parcel Service, Inc., )  
 Respondent. )

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Case 89-11-021  
(Filed November 20, 1989)

Edward J. Marnell, for Cal Pak Delivery  
 Service, Inc., complainant.  
Skaff & Anderson, by Ellis Ross Anderson,  
 Attorney at Law, for United Parcel Service,  
 Inc., respondent.  
Jerrold R. Espenshade, for the Transportation  
 Division.

O P I N I O N

Background

On November 20, 1989 complainant Cal Pak Delivery Service, Inc. (Cal Pak) filed its complaint against United Parcel Service (UPS) alleging that the Hundredweight Service rates presently set forth in Item 320 of UPS' Local Parcel Tariff No. 1 (CA PUC 22) are in violation of Commission decisions, and that the rates are unjust, unreasonable, and unduly preferential. UPS filed its answer on December 22, 1989 denying each and every allegation of the complaint. Two prehearing conferences were conducted. Evidentiary hearings were held on October 3, 4, and 5 1990 before Administrative Law Judge (ALJ) John Lemke. The proceeding was submitted subject to the filing of closing briefs on November 29, 1990.

By ruling dated July 3, 1990 the ALJ limited the issues to be addressed. Evidence was to be presented on Cal Pak's allegations of:

1. Illegal consolidation by UPS, and
2. The compensatoriness of UPS' rates.

Decisional Background

By Decision (D.) 89-09-014 dated September 7, 1989 in Application (A.) 89-03-040 the Commission granted UPS' request to eliminate all then existing restrictions set forth in its existing certificate of public convenience and necessity authorizing operations as a highway common carrier. In its application UPS had stated that elimination of the restrictions was necessary to establish competitive parity with carriers operating under more recently issued certificates. D.89-09-014 required that tariffs filed by UPS must contain rates and rules applicable in connection with all services provided under the authority granted by the decision. The decision also specified that the departure granted UPS by D.31606 dated December 27, 1938 in Case 4246 from economic (minimum) rate regulation should be continued insofar as the departure relates to parcel operations competitive with those performed by the United States Postal Service.

Cost Justification Application CJ 89-546

UPS filed Cost Justification (CJ) Application CJ 89-546 on July 28, 1989, requesting leave to file a new Item 320 in its Local Parcel Tariff. Item 320 contains volume incentive rates for any shipper tendering to UPS parcels in multiple lots (Hundredweight Service) meeting specific conditions, i.e.:

1. Only parcels historically transported by UPS are eligible for Hundredweight Service, namely, those weighing no more than 70 pounds, not exceeding 130 inches in length and girth combined, and having a length no greater than 108 inches.
2. Parcels tendered for transportation in Hundredweight Service are required to be

addressed to a single consignee at one location from a single shipper at one location on the same day; and

3. Actual aggregate weight of parcels collectively tendered in Hundredweight Service must be 200 pounds or more.

CJ 89-546 contained financial data demonstrating that rates sought to be assessed by UPS were compensatory, using standards set forth in General Order (GO) 147-A. The Commission's Transportation Division determined that the sought rates were compensatory, authorizing their publication by letter dated October 3, 1989.

On October 10, 1990 UPS filed tariffs in response to authority granted by D.89-09-014, as follows:

1. Local Parcel Tariff No. 22, Original Pages 1-14, which republished UPS single parcel rates;
2. Local Parcel Tariff No. 22, Original Page 15 (Item 320-Hundredweight Service) justified by CJ 89-546; and
3. Pacific Motor Tariff Bureau Tariffs Nos. 125, 150, and 551, governing the scope of the unrestricted certificate authority of UPS, other than the transportation covered by Local Parcel Tariff No. 22.

Cal Pak asserts that UPS was not and is not authorized to assess rates for its Hundredweight Service.

#### Evidence

Prior to the taking of evidence, UPS made a motion requesting that the ALJ take official notice of certain pertinent applications, protests, pleadings, decisions, tariffs, and other documents, copies of which are maintained by the Commission, and that the same be incorporated in this record. The motion is granted. The subject documents are contained in Exhibit 9, which is hereby received in evidence. UPS also made a Motion to Strike

Argument, and limit the scope of the proceedings to the presentation of evidence bearing upon the allegations as delineated in the ALJ Ruling of July 3, i.e. illegal consolidation and compensatoriness of UPS' rates. This latter motion has, in effect, been granted in the course of presentation of evidence by Cal Pak and UPS.

Cal Pak presented its case through the testimony of its president Edward Marnell; UPS through its vice president, Patrick Edmonds. Marnell proffered a superabundance of prepared testimony and exhibits, and cross-examined UPS' witness extensively concerning its costs and Hundredweight Service rates.

UPS' rates are named in Local Freight Tariff No. 1, CA PUC 22. Item 320 provides that Hundredweight Service is available on multiple package shipments tendered by one shipper at one location to one consignee at one location on the same day, when the aggregate weight of all packages in each shipment is 200 pounds or more, with no single package exceeding 70 pounds or 108 inches in length, or 130 inches in length and girth combined. Shipment charges are subject to a minimum charge based on an average weight of 15 pounds per package, or \$30.00 per shipment, whichever is greater. Thus, the charge for a 10-package, 20-pound per package 200 pound Hundredweight Service shipment would be \$18.30 (\$9.15 per hundredweight unit), on shipments moving at Zone 2 rates; however, the shipment is subject to a minimum charge of \$30.00.

Rates in Item 300, applicable to UPS' Standard Delivery Service, apply on a per package basis. The total charge for the same shipment of ten 20-pound packages under the standard package rates would be 10 times \$3.18 per package, or \$31.80. Shipments of twenty 20-pound packages weighing 400 pounds would cost \$36.60 under Hundredweight Service rates (4 times \$9.15), but \$63.60 under Standard Delivery Service package rates. A significant saving can be achieved in this latter case simply by the shipper requesting

the Hundredweight Service rates, provided all conditions surrounding the application of the rates are met.

D.89-09-014 (Ordering Paragraph 5) provided that the departure from observance of minimum rates granted UPS by D.31606 is continued, insofar as the departure relates to parcel operations competitive with those performed by the United States (U.S.) Postal Service. UPS maintains that its Hundredweight Service comes under that departure since the service involves the transportation of individual parcels, no one of which weighs more than 70 pounds. This is a weight limitation identical to the one applicable under UPS' traditional parcel operations, as well as the one maintained by the U.S. Postal Service in its parcel post operations. Further, the combined length and girth per parcel restriction under Hundredweight Service is identical to that applicable under UPS' individual parcel operations, and comparable with the one applicable on parcel post.

UPS maintains that its Hundredweight Service offers shippers a reduced rate for carrier cost savings created when multiple parcels are tendered at the same time and are destined to a single consignee. The U.S. Postal Service has such discounting programs, Edmonds asserts; therefore, a consignor wishing to ship multiple parcels may use UPS, the Post Office, or another carrier.

Cal Pak takes issue with no other rates assessed by UPS than those moving at Hundredweight Service rates. If these rates are not subject to GO 147-B (since GO 147-A was canceled effective March 15, 1990) there is no basis for alleging their impropriety except under other provisions of the Public Utilities (PU) Code, i.e. §§ 451, 452, or 453. If the rates are subject to GO 147-B, they must comply with the provisions of the GO relating to floor price, currently 65.5 cents per mile for less than truckload (LTL) transportation, prorated upward to shipments weighing 12,000 pounds.

Edmonds testified in Exhibit 5 that UPS' Hundredweight Service is an alternative to its long provided single package service. Once tendered to UPS in multiple lots, and thus meriting treatment as a Hundredweight Service shipment, he stated, packages are physically handled in a manner identical to any other UPS package of similar weight, length, and girth.

Edmonds also stated that Hundredweight Service merely passes on to shippers the savings UPS realizes from scale economies arising from the multiple tender of packages. As an example of such scale economies, the witness testified that in its current California parcel operations a UPS driver delivers an average of 2.0 packages to an individual consignee. By contrast, in Hundredweight Service the same driver delivers an average of 12 packages to an individual consignee. He believes the savings arising from such volume tender operations are inherent in such operations.

One of UPS' goals, he stated, is to offer an incentive to shippers in the form of cost savings, which may cause them to tender packages to UPS in its Hundredweight Service which might otherwise be handled by the Post Office.

#### Discussion

As mentioned, D.89-09-014 authorized a continuation of the traditional UPS exemption from minimum rate (currently, floor price) orders of this Commission on transportation competitive with that performed by the U.S. Postal Service. A threshold question is whether UPS' Hundredweight Service rates are competitive with those of the U.S. Postal Service.

It is apparent that if the U.S. Postal Service handles packages not exceeding 70 pounds per package, etc., and UPS handles those same packages, the transportation is competitive. If UPS elects to pass on to customers certain cost savings which it experiences in connection with the handling of volume tender shipments - those weighing at least 200 pounds - rather than rating

each package as a separate shipment, the transportation is still competitive because it could be performed by either UPS or the U.S. Postal Service. And this is so regardless of whether the transportation is performed by each carrier at identical rates. While the charges may be different, the transportation is nevertheless competitive. Webster's New Collegiate Dictionary defines competition as: "The effort of two or more parties to secure the business of a third party by the offer of the most favorable terms."

Based upon the conclusion that UPS' Hundredweight Service is competitive with transportation performed by the U.S. Postal Service, we are able to find that such transportation is exempt from GO 147-B, Rule 1.5 of which provides:

"The provisions of this General Order do not apply to rate exempt transportation by highway common carriers or highway contract carriers, nor do they apply to transportation performed by individual carriers which have been specifically exempted by Commission order."

Cal Pak alleges that the transportation performed under Hundredweight Service rates by UPS is discriminatory, in violation of PU Code § 453. The operative portion of § 453 Cal Pak would invoke is contained in paragraph (c): "No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service." (Emphasis added.) While there are differences in the transportation charges performed at UPS' parcel rates, compared with those performed under its Hundredweight Service rates, the differences are not unreasonable because they are based upon differences in shipment sizes. Furthermore, it has been long held that lower rates may be assessed if needed to attract new business, and if rates cover at least variable costs and make some contribution to fixed (overhead) costs. This Commission currently allows the filing and assessment

of rates which protect only a carrier's variable costs, under the provisions of GO 147-B.

There can be no undue discrimination in the case before us because the shipment characteristics of the Standard versus the Hundredweight Service shipments, while the same with respect to package size, are different when considered in light of other circumstances. The Hundredweight Service rates apply only in connection with shipments weighing at least 200 pounds, and are subject to a minimum charge of either \$30.00, or one based on an average weight of 15 pounds per package, whichever is greater. There is no minimum charge applicable in connection with the Standard package rates, other than the stated per parcel charge. Furthermore, Hundredweight Service rates are not applicable in connection with the transportation of hazardous materials. In the circumstances, we believe there are sufficient differences in the services provided under the Standard, as opposed to those provided under Hundredweight Service rates, to warrant the conclusion that no undue discrimination occurs in the application of the Hundredweight Service rates.

In D.47716, dated September 16, 1952 in A.33086, UPS was granted a certificate of public convenience and necessity to provide parcel delivery service in an expanded territory. The certificate was granted subject to several conditions, including:

- "2(c) Rates shall be maintained on a 'per package' basis as contrasted with the 'per shipment' basis employed by general merchandise carriers."

The reason for the condition, although not discussed in D.47716, was apparently so that UPS could not maintain an exemption from (minimum) rates on traffic which the general class of LTL carriers had to assess at minimum rates. This condition was not included in the certificate granted UPS by D.89-09-014.

The regulatory framework under which carriers of general commodities presently operate is substantially different from the



one in force during the approximate 40-year period when minimum rates were applicable. Highway common carriers and highway contract carriers filing rates now do so under rules set forth in GO 147-B. The Zone of Reasonableness within which carriers may individually set rates has, as its lower bound, or floor price, rates based on a carrier's variable costs. It is difficult to imagine a carrier competing for this traffic not being able to at least match the UPS Hundredweight Service rates, which it may do by simply filing a Floor Price Certification with applicable rates, as specified in Rule 7.4 of GO 147-B, certifying that the rates are no lower than those required by the GO, currently 65.5 cents per mile.

Cal Pak argues that UPS should not have filed its Hundredweight Service rates; yet, the filing of all appropriate rates is precisely what was required by D.89-09-014, since UPS operates as a highway common carrier.

In July 1989, GO 147-A was in effect. UPS filed its CJ 89-546 under the provisions of GO 147-A. But the cost justification-based compensatoriness issue is moot, because GO 147-A was superseded by GO 147-B on March 15, 1990. Thus, even if the Commission were to decide that Hundredweight Service may not be conducted pursuant to the exemption historically observed by UPS, the rates in question can be found to be just, reasonable, and compensatory under GO 147-B standards.

Edmonds testified extensively concerning the compensatoriness of the filed Hundredweight Service rates. His study, set forth in Exhibit 6, shows that the lowest rate charged for Hundredweight Service in each applicable rate zone will generate a favorable operating ratio of 89.5. The witness also testified that while the floor price analysis under GO 147-B was not applicable when CJ 89-546 was presented, were such an analysis conducted, Hundredweight Service rates would be found to be proper.

Although Edmonds did not perform an analysis of costs per mile under the provisions of GO 147-B, one was submitted with UPS' opening brief. The analysis, set forth in Appendix A, demonstrates that in connection with seven different shipment weight categories moving 75, 225, 450, and 800 miles, the floor price charges are far exceeded by UPS' Hundredweight Service charges in every case. The floor price charge on a 200-pound shipment moving 75 miles, for example, is merely \$0.82; while the UPS Zone 2 Hundredweight Service charge for that move is the minimum charge of \$30.00. On the same size shipment moving 800 miles, the floor price charge is \$8.75, while UPS' Hundredweight Service charge is \$37.90. The Hundredweight Service charges clearly exceed floor price charges by amounts so great as to remove any question of their propriety under the Commission's current regulatory framework applicable in connection with the transportation of general commodities as set forth in GO 147-B. Furthermore, any carrier, including Cal Pak, may assess the UPS rates, or rates lower than UPS' by filing the certification form required by GO 147-B.

While Marnell presented a plethora of information purporting to substantiate his allegations of non-compensatoriness and impropriety in UPS' filing of its Hundredweight Service rates, none of his arguments can be deemed to have merit in light of the current regulatory framework as governed by GO 147-B, and of UPS' exemption from the provisions of that GO. In the circumstances, the complaint should be dismissed.

#### Comments and Reply to Comments

Comments were filed by Cal Pak on February 14, 1991. UPS filed its reply to Cal Pak's comments on February 22, 1991, together with a Motion to Accept Late Filed Reply Comments as Timely. UPS' Motion is hereby granted.

Cal Pak's comments consist essentially of arguments already presented. The ALJ's proposed decision is well reasoned and firmly grounded and will be adopted.

#### Findings of Fact

1. Cal Pak on November 20, 1989 filed its complaint against UPS, alleging that UPS had improperly filed Hundredweight Service

rates in its common carrier tariff, in violation of PU Code §§ 451, 452, and 453, and GO 147-A. The principal allegations set forth by Cal Pak are that the Hundredweight Service transportation performed by UPS should not be considered exempt from floor price regulation, and that by transporting Hundredweight Service shipments UPS is unlawfully consolidating shipments of packages, in violation of Commission D.31606 and D.89-09-014.

2. Effective March 15, 1990 GO 147-A was superseded by GO 147-B. The floor price for rates involving transportation of LTL shipments performed pursuant to the provisions of GO 147-B is 65.5 cents per mile, prorated upward to a 12,000-pound shipment.

3. The rates filed by UPS in connection with its transportation of Hundredweight Service protect the floor price requirements set forth in GO 147-B.

4. The Hundredweight Service rates of UPS are not unreasonably different from those set forth in other provisions of UPS' tariff, because the rules surrounding the application of the Hundredweight Service rates are substantially different from those applicable in connection with the Standard service rates otherwise assessed by UPS. Therefore, UPS' Hundredweight Service rates do not violate the provisions of PU Code § 453.

5. Cal Pak has not demonstrated that UPS' Hundredweight Service rates are in violation of PU Code §§ 451, 452, or 453, nor of GO 147-B.

6. D.89-09-014 authorized the perpetuation of UPS' traditional rate exemption, initially granted by D.31606, in connection with transportation competitive with that performed by the U.S. Postal Service.

7. Transportation performed at Hundredweight Service rates is competitive with that performed by the U.S. Postal Service.

8. Transportation performed at Hundredweight Service rates, as presently conditioned in UPS' Local Freight Tariff 1, is exempt from the provisions of GO 147-B.

Conclusion of Law

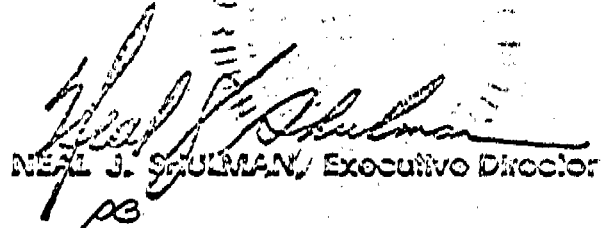
The complaint should be dismissed.

ORDER

IT IS ORDERED that Case 89-11-021 is dismissed.  
This order becomes effective 30 days from today.  
Dated March 13, 1991, at San Francisco, California.

PATRICIA M. ECKERT  
President  
G. MITCHELL WILK  
JOHN B. OHANIAN  
DANIEL WM. FESSLER  
NORMAN D. SHUMWAY  
Commissioners

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

  
NEAL J. SPULMAN, Executive Director  
ps

FLOOR PRICE CALCULATIONS  
UPS HUNDREDWEIGHT SERVICE RATES

C.89-11-021

ITEM 320			FLOOR PRICE FORMULA: AGGREGATE WEIGHT DIVIDED BY 12,000 POUNDS TIMES 65.5 CENTS PER MILE, TIMES DISTANCE TRANSPORTED							
AGGREGATE WEIGHT NOT TO EXCEED	PRO-RATE FACTOR OF 12,000 POUND LOAD	FLOOR PRICE FACTOR PER MILE OF THE DISTANCE TRANSPORTED	ZONE 2 SHIPMENT CHARGE	FLOOR PRICE @ 75 MILES	ZONE 3 SHIPMENT CHARGE	FLOOR PRICE @ 225 MILES	ZONE 4 SHIPMENT CHARGE	FLOOR PRICE @ 450 MILES	ZONE 5 SHIPMENT CHARGE	FLOOR PRICE @ 800 MILES
200 LBS.	0.016666	1.091666	\$30.00*	\$0.82	\$30.00*	\$ 2.46	\$ 30.50	\$ 4.92	\$ 37.90	\$8.73
250 LBS.	0.020833	1.364583	30.00*	1.02	30.00*	3.07	38.13	6.14	47.38	10.92
300 LBS.	0.025000	1.637500	30.00*	1.23	35.70	3.68	45.75	7.37	56.85	13.10
350 LBS.	0.029166	1.910417	32.03	1.43	41.65	4.30	53.38	8.60	66.33	15.28
400 LBS.	0.033333	2.183333	36.60	1.63	47.60	4.91	61.00	9.82	75.80	17.47
450 LBS.	0.037500	2.456250	41.18	1.84	53.55	5.53	68.63	11.05	85.28	19.65
500 LBS.	0.041666	2.729167	45.77	2.05	59.50	6.14	76.25	12.28	94.75	21.83

\*Minimum Hundredweight Charge is \$30.00

For Example, in the following calculations:

200 pounds in Hundredweight Service is transported from Anaheim to Stockton, a distance of 335 miles, a Zone 4 rate application.

- Miles are calculated from origin to destination as shown in the carrier's governing Distance Table, regardless of the route of actual movement or multiple handling that may be employed by the carrier for its own operating convenience.
- The floor price is 65.5 cents per mile (please refer to the less-than-truckload certification (Appendix D, Revised Page 16, Decision 90-02-021)).
- To comply with the requirements of Rule 7.4 of the General Order, 200 pounds is divided by 12,000 pounds which equals 0.016666 (pro-rate factor) of the 12,000 pound load, times 65.5 cents which equals 1.09166 of a cent per mile, (which becomes the multiplicand of the miles) times 335 miles equals a floor price of 365.7 cents or \$3.66 for the 200-pound tender. Thus, the formula may be calculated as:  $200/12,000 * 65.5 * 335 = \$3.66$  (rounded to the nearest cent). The Hundredweight Service charge of \$30.50 clearly exceeds the Commission's floor price.

To take that same tender to a worst case scenario, moving from Smithriver, CA to Winterhaven, CA a distance of 1,014 miles, a Zone 5 rate application. The calculation is  $200/12,000 * 65.5 * 1014 = \$11.0475$  rounded to a floor price of \$11.05 which is well below the Hundredweight charge of \$37.90. For best case scenario, the same shipment moving from Modesto to Sacramento, CA, a distance of 71 miles, at Zone 2 rates, the calculation is  $200/12,000 * 65.5 * 71 = \$0.82$  floor price, well below the \$30.00 Hundredweight Service Charge.

APPENDIX B

(END OF APPENDIX A)

APPENDIX A