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Decision 91-07-016 July 2, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of United Parcel Service, Inc. to)
assess a handling charge for the)
transportation of hazardous)
materials.)
_____)

ORIGINAL
Application 90-12-033
(Filed December 17, 1990)

Edward G. Poole, Attorney at Law, for United
Parcel Service, applicant.
Donald J. Sweeney, Attorney at Law, for
McCarthy, Sweeney & Harkaway, and Mark K.
Suzumoto, Attorney at Law, for Pillsbury,
Madison & Sutro, protestants.
Jerrold R. Espenshade, for Transportation
Division.

OPINION

In this application United Parcel Service, Inc. (UPS) seeks an increase in rates applicable to intrastate transport of packages containing hazardous materials in order to recover costs incurred in complying with federal hazardous materials regulations.¹ The proposed rate increase is \$5 per package.

The matter was first filed on November 19, 1990 as Item SPTD 494 on the Commission's Shortened Procedure Tariff Docket (SPTD) and appeared in the Commission's Transportation Calendar on November 28, 1990. A joint protest was filed with the Transportation Division on December 14, 1990 by the National Small Shipments Traffic Conference Inc. and Health and Personal Care Distribution Conference Inc. (NSSTCI/HPCDCI). In consideration of the protest, the Commission's Transportation Staff removed the

¹ The requirements are set forth at length in 49 CFR 172.200 et seq.

application from the SPTD and caused it to be filed as a formal rate increase application. Notice of the refiled application appeared in the Commission's Daily Calendar on December 19, 1990. The original protest of NSSTCI/HPCDCI was redocketed on December 21, 1990. An additional protest was filed by Scripto-Tokai Corporation (Scripto) on January 16, 1991.²

The matter was set for hearing on March 27, 1991 and was submitted on filing of concurrent closing briefs on April 5, 1991. The proposed decision of the assigned administrative law judge (ALJ) was filed on May 29, 1991.

UPS's Proposed Rate Increase

In its initial application on the SPTD, UPS did not provide a detailed breakdown of its anticipated costs for handling hazardous materials packages. At the hearing, however, UPS's witness, Edwin H. Reitman, furnished a pro forma cost study.³ UPS testified that its annual costs will total \$1,795,861 or \$4.74 per package based on a count of intrastate hazardous materials packages delivered. UPS estimates that it will carry 379,000 such packages in intrastate service annually. This figure is equal to

2 UPS filed a motion to strike the protest of Scripto on the basis that it was filed more than 30 days after the November 28, 1990 notice published in the Transportation Calendar. The motion to strike, along with UPS's comparison motion to set aside hearing, was withdrawn at the hearing (Tr. p. 88, l. 26 to p. 89, l. 4).

3 The SPTD filing requested an increase in revenues of \$2,820,000 based on the assumption that UPS would handle 564,000 hazardous materials packages in intrastate service. The volume estimate was revised downward at the hearing to 379,000 based on an actual count of UPS's current volume of hazardous materials delivery (Exhibit 1, p. 16, Question and Answer 31; Exhibit 26). The resulting cost per package is \$4.74 plus profit or \$5 per package. The per-package charge did not change because both the program cost and the estimated volume of transportation were reduced.

about 0.2% of UPS's total intrastate packages. A summary itemization of the proposed revenue and costs is presented below:

	<u>Amount Per Year</u>
<u>Proposed California Intrastate Hazardous Material Revenue</u> (379,000 pkgs/yr x \$5)	\$1,895,000
<u>Special Costs Applicable to California Intrastate Hazardous Material Packages</u>	
1. Package Handling Operations	131,928
2. Employee Training, Testing and Orientation	820,735
3. Region and District Coordination	132,310
4. Audit and Processing of Data on Certification Forms, and Customer Contact	406,195
5. Special Equipment, Disposal and Damaged Package Expense	134,143
6. Medical Expense Due to Toxic Materials Exposure	34,110
7. Printing of Forms, Posters, Envelopes, Manuals, etc.	60,640
8. Business Service Expense	<u>75,800</u>
<u>Total Intrastate Cost</u> ($\$1,795,861 \div 379,000 \text{ pkgs/yr} = \4.74)	\$1,795,861
Net Operating Revenue	99,139
Operating Ratio	94.8

UPS also presented a 35-minute video tape (Exhibit 12) depicting the process by which UPS handles hazardous materials packages from initial pickup, sorting and shipment assembly, transport, and end delivery.

In support of the proposed rates, UPS argues that it should be allowed to "unbundle" the special costs which stem from compliance with Federal Department of Transportation regulations

governing the movement of hazardous materials. Until now such costs were recovered in rates generally, and no special accessorial charge was levied. UPS believes that a separate \$5 charge should be levied on hazardous materials shippers and that these special handling costs should not be paid by other shippers who do not benefit from the service.

UPS states that with the proposed revenue increase of \$1,895,000 UPS will obtain an accessorial operating ratio of 94.8. UPS compares this with our recent Decision (D.) 91-01-034 wherein we approved a 10.6% rate increase which allowed UPS to meet recent employee payroll increases. D.91-01-034 resulted in an overall operating ratio of 92.8. UPS argues that its proposed \$5 per package charge has been approved by the Interstate Commerce Commission and is in effect in all states except California, Texas, and Alabama.

UPS takes the position that its hazardous materials service is within the exemption from common carrier rate regulation first established in D.31606 (1938). The exemption was made because UPS chiefly competes with the U.S. Parcel Post, an element of the federal postal service. The Commission continued this special exemption recently in D.89-09-014 (September 30, 1989). On this basis, UPS claims its hazardous materials service is exempt from General Order 147-B and Distance Table 8 and subject only to Public Utilities Code §§ 451 and 454.

To this UPS adds that it continues to be desirable for UPS to charge uniform rates throughout all the states it serves. To have a different rate structure for even a single state would

increase UPS billing and accounting expenses and would impose an administrative burden on some shippers.⁴

Protest of NSSTCI/HPCDCI
and Scripto-Tokai, Inc.

At the hearing Daniel Patterson testified on behalf of all protestants. Protestants vigorously challenged the proposed rate increase as unreasonable. Protestants concede that UPS should be allowed to recover its special handling costs but disagree that the costs actually amount to \$5 per package (Tr. p. 50, l. 22 to p. 63, l. 10). Protestants argue that most of the handling and labeling costs required by 49 CFR 172.200 fall upon shippers rather than carriers.

At the hearing, the protestants' witness argued that most of UPS's costs of handling these packages, especially training costs, should be lumped in with UPS's ongoing costs and that an additional charge of \$1 per package would cover UPS's actual incremental cost.

In its closing brief, protestant Scripto criticized UPS's cost showing as an after-the-fact rationale.⁵ Scripto cites two examples it believes undermine the credibility of UPS's entire cost study. Scripto argues that UPS's assumption that 7,000 new employees will be hired and trained each year is unreasonable

4 (See D.89-09-014 and most recently D.91-01-034 in which we acknowledged this principle.) It does not follow, of course, that the Commission is constrained to approve a rate which is otherwise unreasonable simply because another jurisdiction has approved it.

5 Scripto says that UPS first filed its application on the Commission's SPTD without a detailed cost work-up and produced its cost study "only after UPS's application was challenged..." (Scripto Closing Brief, p. 3).

because UPS's employee turnover rate is not that high.⁶ Scripto also claims that UPS's cost item for auditing and processing the shipper's certification form is overstated. Scripto says that UPS's estimate of these costs is underlain by a time factor of 3 minutes per package, whereas, all of the steps in the delivery process itself require only an average of 0.923 of a minute. Scripto does not believe that it should take three times longer to audit shipper certification forms than it does to handle the package in delivery.

Protestants believe that the \$5 per package charge will result in shipping costs increases of 40-307% for packages ranging from 1-25 lbs. According to protestants, the charge for a typical package weighing 11 lbs. within Zone 2 of UPS's current rates would increase from \$2.45 to \$7.45 with the new rate. Protestants claim that such increases in shipping costs will be ruinous to many small shippers who will be unable to find an alternative to UPS's small package delivery service.

Protestants say that the Commission should not apply its long-standing departure from minimum rate regulation of UPS because UPS does not compete with the U.S. Postal Service in the carriage of hazardous materials packages. This so, according to Scripto, because the postal service does not allow cigarette lighters to be mailed. Therefore, the postal service does not provide an alternative to UPS service.⁷

6 Scripto also attacked the reasonableness of two additional items but that discussion was stricken from the record by ruling of the ALJ. See ALJ Ruling Denying Request for Official Notice, April 19, 1991.)

7 Scripto first raised the postal service issue in its response to UPS's motion to set aside the hearing on grounds of the departure for services which are competitive with the U.S. Postal

(Footnote continues on next page)

Finally, protestants argue that if the proposed unbundling of UPS's hazardous materials package costs is approved, UPS should also be required to reduce its rates to all other carriers. Until now UPS did not levy a special charge, but recovered its costs for this service in rates charged to all shippers. To allow the new \$5 charge without a rate reduction to other shippers would allow double recovery and windfall profits to UPS.

Discussion

At the outset we agree with UPS that the special handling costs involved in the carriage of hazardous materials packages may be properly recovered as an accessorial charge. These charges are not substantially different in kind from UPS's other special services such as Acknowledgment of Delivery (\$.50), C.O.D. Service (\$3.75), and Correction of Wrong Address (\$3.25) (see D.91-01-034). That only those who receive such services should pay for them is only fair. Therefore, we will approve the unbundling of such costs so that they may be reflected as a separate charge to those who utilize the service.

Although protestants believe that this unbundling requires that rates to all other shippers should be concomitantly reduced, we do not believe that it is appropriate. The revenue increase of \$1,895,000 which UPS projected in its recent rate increase proposal in Application (A.) 90-12-017 was not actually included in the rate increase approved in D.91-01-034. These revenues were shown in the application only as a part of the

(Footnote continued from previous page)

Service. While the motion was withdrawn removing the argument, the availability of a postal service alternative was raised again at the hearing (Tr. p. 81, l. 11 to p. 84, l. 2).

development of the resultant overall operating ratio of 92.8.⁸ UPS did not include these costs in its general rates established under D.91-01-034 because it intended to file to separate authority for its hazardous materials service, hoping to have them in place by January 1, 1991 (Exhibit 1, Testimony of Reitman, p. 17, Q. 33, p. 78, Q. 34; see also Tr. p. 31-35).

Protestants attack the reasonableness of UPS's proposed increase on two flanks: that the cost figures are overstated and that they are unreasonable because protestants have no good alternative to UPS's small package service. Taking up the latter point first, we are not convinced that protestants have no alternatives. The cross-examination of the protestants' witness Patterson revealed that the Parcel Post Service rules do not present an outright ban on the mail carriage of cigarette lighters. The witness admitted that other highway carriers who compete with UPS are available.⁹ (Tr. pp. 48-49, 63-72, 80-84. See also our discussion of UPS competitors in D.89-09-014, mimeo. pp. 3, 4.) If UPS's proposed handling charge proves excessive in the market, we would expect the market to respond. Specifically, shippers will seek other carriers, including the U.S. Postal Service; they may also adjust their shipping practices to minimize the costs. Competition may force UPS in turn to develop cost-cutting measures

8 Theoretically some portion of the costs of hazardous materials package service may be carried over into the present rates. This is so because the rate increase approved in D.91-01-034 on January 25, 1991 merely added revenue to existing revenues to cover labor cost increases which occurred in 1990. Protestants do not seek a rate rollback beyond the presently effective rates. We note that to do so would also require hazardous materials shippers to be retroactively charged for the difference.

9 On motion by UPS official notice is taken of the authority granted to Roadway Package System Inc. (D.88-10-009).

of its own to reduce any uneconomical elements in its special handling program.

Turning now to Scripto's specific challenges to the pro forma cost items in Exhibit 26, we believe that, overall, the cost items are not unreasonable.

We do not agree with Scripto's criticism of UPS's program of annually training its 26,382 employees, including 7,000 new hires per year, who handle hazardous materials packages. The sole basis for the attack is UPS's witness Reitman's statement on cross-examination that UPS's employee turnover percentage is "reasonably small." (See Tr. p. 29.) Scripto argues that 7,000 new employees constitute 26% of UPS's work force and could not be considered a "small turnover." Reitman, however, also testified that not all its 7,000 anticipated new hires are replacements, but that some are hired to fill new positions (Tr. p. 29, l. 3-16). Reitman stated further that the training program is under continual revision due, in part, to changes in federal regulations (Tr. pp. 17-18).

We find nothing in the record to show that UPS's employee training program is unreasonable, nor do protestants offer any evidence tending to show that it is reasonable to train only the 7,000 new hires. On the contrary, the need to revise and update the program would clearly justify an ongoing program for all UPS employees who handle these packages.

As to Scripto's argument that auditing customer certification forms should not require three times the total time involved in handling hazardous materials packages during delivery, we observe that Scripto's comparison is persuasive only to the degree that the auditing and inspection tasks are identical. The evidence provided by UPS, however, clearly shows that they are not.

The shipper certification form is involved only at the pickup stage of delivery and not a part of the unloading, sorting, reloading, and final delivery stages (Exhibits 12, 13, 14, 15, 16,

and 26). At the pickup stage the driver only makes an initial check of the form and turns it in on return to a UPS facility.

The auditing process requires different steps and involves counter clerks, record clerks, billing personnel, and customer service representatives. In the event of an improper form, these personnel will contact the shipper to obtain corrections or solve repeated problems. It is reasonable to conclude that the costs of auditing might exceed those of inspection at pickup.

In addition, Scripto's argument is based on a comparison of the time shown by UPS on a per-package basis for pickup to delivery with a time-per-package which Scripto itself calculates for the audit process (Exhibit 26). UPS estimated the audit cost on the basis of employee hours per day for each of its seven California districts rather than as a cost per package. Exhibit 26 shows that about ten hours per day, or slightly more than one person/day is required in each district. It does not appear unreasonable that UPS should assign one or more employees in each district to the task of auditing and recording shipper certification forms.

In conclusion, protestants have not presented facts or argument sufficient to cast substantial doubt on the reasonableness of UPS's cost showing. Therefore, based on the evidence and testimony presented, UPS has sustained its burden of proof.

Comments

The period for comment and reply pursuant to Public Utilities Code § 311 closed on July 1, 1991. Scripto filed comments substantially reiterating its position and, therefore, no modifications are required to the proposed decision. UPS relied to Scripto's comments and recommended that the proposed decision be adopted by the Commission.

Findings of Fact

1. In D.91-01-034 the Commission granted UPS an overall rate increase of 10.6% to recover increased costs.

2. D.91-01-034 did not include a separate charge for the UPS's special handling costs of transporting packages containing hazardous materials.

3. UPS filed this application for the purpose of establishing an unbundled charge for the cost incurred in transporting hazardous materials.

4. UPS requires an accessorial charge of \$5 per package to recover its hazardous materials handling costs.

5. A \$5 per package charge will produce annual revenues of \$1,895,000.

6. UPS presently assesses a \$5 per package charge in all states except California, Texas, and Alabama.

7. UPS incurs special costs in the inspection of hazardous materials containers and labels, maintaining records, auditing, emergency procedures, and training its employees.

8. UPS's hazardous materials delivery service is competitive with that of the Parcel Post Service.

9. A \$5 per package charge will result in increased shipping costs of 40-307% depending on the weight of the package and shipping zone.

10. Other carriers exist who compete with UPS for hazardous materials transportation in California.

11. This application was protested by the NSSTCI/HPDCI and by Scripto.

Conclusions of Law

1. The proposed \$5 per package charge is reasonable.

2. It is not necessary that UPS reduce its present rates to nonhazardous materials shippers.

3. UPS's hazardous materials delivery service is within the scope of the Commission's departure from minimum rate regulation.

4. The application for authority to assess a charge of \$5 per package for the transportation of hazardous materials should be approved.

5. The protests of NSSTCI/HPCDCI and Scripto should be denied.

6. To enable UPS to recover its hazardous materials delivery costs, this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. United Parcel Service (UPS) is granted authority to assess a charge of \$5 per package for the transportation of hazardous materials as set forth in this opinion.

2. UPS is authorized to file tariff revisions in the form attached as Appendix 1 to A.90-12-033 to be effective on not less than 5 days' notice.

3. The departure from minimum rate regulation set forth in D.89-09-014 shall apply to UPS's hazardous materials delivery service.

4. The protests of the National Small Shipments Traffic Conference, Inc., the Health and Personal Care Distribution Conference, Inc., and Scripto-Tokai, Inc. are denied.

5. This order concludes the proceeding.

This order is effective today.

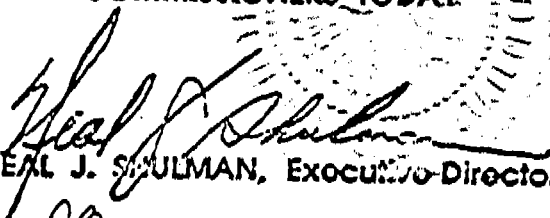
Dated July 2, 1991, at San Francisco, California.

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

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NEAL J. SHULMAN, Executive Director