

L/dp

Decision 91-07-020 July 2, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Cal Pak Delivery, Inc.)

Complainant,)

vs.)

United Parcel Service, Inc.)

Respondent.)

ORIGINAL

Case No. 89-11-021
(Filed November 20, 1989)

ORDER DENYING REHEARING

Cal Pak Delivery, Inc. (Cal Pak) has filed an application for rehearing of Decision 91-03-015. In Decision 91-03-015, we dismissed Cal Pak's complaint against United Parcel Service, Inc. (UPS), finding that UPS' Hundredweight Service rates are exempt from the provisions of General Order (GO) 147-B, and that, in any event, UPS' Hundredweight Service rates are just and reasonable.

We have carefully considered all the allegations of error raised in Cal Pak's application. Although we have concluded that rehearing should be denied, upon reconsideration we believe the UPS' Hundredweight Service rates are not exempt from GO 147-B and that the decision should be modified accordingly.

Therefore, IT IS ORDERED that:

1. Decision 91-03-015 is modified as follows:
 - a. The discussion of the competitiveness of UPS' Hundredweight Service, beginning with the last paragraph on page 6 and continuing through the first full paragraph on page seven, is deleted and replaced with the following:

D.89-09-014 continued the exemption from economic regulation for operations relating to the transportation "of any package or article weighing not more than 70 pounds, or exceeding 130 inches in length and girth combined, or exceeding 108 inches in length, each package or article being considered a separate and distinct shipment." (D.89-09-014, Conclusion of Law No. 3 at p. 11. Emphasis added.) Although parcels eligible for Hundredweight Service are subject to the weight and size restrictions traditionally applied to UPS' parcel delivery service, the parcels are not rated separately, and are thus not considered to be separate and distinct shipments. Prior Commission decisions indicate that the type of "highly specialized services in competition with the United States Parcel Post" which were exempted by D.31606, are services for which rates are assessed on a per parcel, rather than a per shipment, basis. (See D.47716 (1952) 52 Cal.P.U.C. 39, 46; D.61626 (1961) 58 Cal.P.U.C. 533, 536.)

Moreover, although UPS' witness testified that the United States Postal Service had discount programs, there is no evidence to indicate that such programs include per shipment rates. Therefore, it cannot be said that UPS' Hundredweight Service meets the requirements for the exemption from economic regulation which was granted by D.31606 and continued in D.89-09-014. Although we conclude that UPS' Hundredweight Service is not exempt from economic regulation, we find that the Hundredweight Service rates are in compliance with applicable rules and general orders.

b. Delete the first sentence in the second full paragraph on page 7 and insert the following sentence:

We reject Cal Pak's allegation that the Hundredweight Service rates are discriminatory under Public Utilities Code section 453.

c. Delete the second and third full paragraphs on page 8 discussing D-47716.

d. Insert the following sentence at the beginning of the fourth paragraph, which starts at the bottom of page 8:

We also find that UPS' Hundredweight Service rates are compensatory and are well above the floor price set forth in GO 147-B.

e. Modify the last sentence in the second full paragraph on page 9 as follows:

Thus, even though the Commission has determined that UPS' Hundredweight Service is not covered by the historical exemption granted to parcel delivery service, the rates in question are found to be just, reasonable, and compensatory under GO 147-B standards.

f. Delete the following language from the first sentence in the second full paragraph on page 10:

and of UPS' exemption from the provisions of that GO.

g. Modify the last sentence in the section entitled "Comments and Reply to Comments" on Page 10 as follows:

The ALJ's proposed decision, as modified, is well reasoned and firmly grounded and will be adopted.

h. Delete Findings of Fact 7 and 8 and insert the following as new Finding of Fact 7:

Transportation performed at Hundredweight Service rates, as presently conditioned in UPS' Local Freight Tariff 1, cannot be found to be exempt from the provisions of GO 147-B under D.89-09-014.

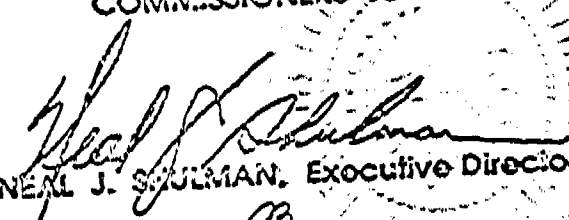
2. The rehearing of Decision 91-03-015 as modified herein is denied.

3. The stay on Decision 91-03-015 is lifted.
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


NEAL J. SOULMAN, Executive Director