

DEC 16 1992

Decision 92-12-035 December 16, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
United Parcel Services, Inc., for)
authority to increase certain of)
its rates for the transportation of)
general Commodities in Hundredweight)
Service.)

ORIGINAL
Application 92-03-048
(Filed March 30, 1992)

Anderson, Donovan & Poole, by Ellis Ross
Anderson, Attorney at Law, for United
Parcel Service, Inc., applicant.
Edward Marnell and Randy Marnell, for Cal
Pak Delivery, protestant.
Diana L. Lee, Attorney at Law, for Division
of Ratepayer Advocates.

O P I N I O N

Background

On March 30, 1992 United Parcel Service, Inc. (UPS) filed this application requesting authority to increase certain of its rates for transportation of general commodities in hundredweight Service. UPS provides Hundredweight Service in conjunction with its common carrier parcel delivery services in California. Hundredweight Service rates apply when multiple package shipments from one shipper at one location are tendered on the same day to one consignee at one location, and the following conditions are met:

1. Packages must be addressed to a single consignee at one location from single shipper at one location on the same date;
2. No single package may exceed 70 pounds, 130 inches in length plus girth, or 108 inches in length;
3. The actual aggregate weight of each shipment must be 200 pounds or greater;
and,

4. Each shipment will be subject to a minimum charge calculated on the average weight of 15 pounds per package or \$30 per shipment, whichever is greater.

The rates are assessed per hundred pounds of weight and vary according to which of the four California zones the shipment is destined for.

On April 14, 1992 Cal Pak Delivery, Inc. (Cal Pak) filed a protest, alleging that the application is incomplete, that UPS does not have a Hundredweight Service tariff, and that UPS is violating various Commission decisions, rules, and filing requirements. Cal Pak requests that we do not authorize the rate relief requested since it would be unfair to over 30,000 highway and contract carriers who transport packages that are identical to those transported by UPS.

On May 1, 1992, UPS filed a motion to strike the Cal Pak protest, requesting issuance of an order granting the application.

On May 8, 1992, Cal Pak filed a motion responding to and opposing the UPS motion.

On June 2, 1992, a prehearing conference (PHC) was held in San Francisco, attended by representatives from UPS, Cal Pak, and the Commission Transportation Division staff (TD).

On June 24, 1992, the assigned administrative law judge (ALJ) issued a ruling which in part found the application to be deficient with regard to justification of the rates requested. The ruling set the matter for evidentiary hearing commencing September 9, 1992.

On August 14, 1992, UPS presented its evidentiary package. Also on August 14, 1992, UPS filed a motion for issuance of an order granting the application, or alternatively accelerating the hearings.

On August 25, 1992, UPS sent a letter to the ALJ requesting immediate hearings and citing hardships in offering witnesses at later dates.

We observe that UPS has repeatedly requested that this proceeding be expedited, suggesting that the delay between filing and decision is excessive and unfair, considering the loss in revenues to UPS of \$60,000 per month. Yet UPS apparently disregarded the ALJ ruling of June 24 which requested specific information to justify the request, and stated that the application could not be processed until the deficiencies were corrected. No additional information was furnished until August 14, 1992, over 50 days after the ruling. That information was largely unresponsive to the June 24 ruling. Such a delay is incongruous with UPS' repeated pleas for expedited handling of the application.

An ALJ ruling on August 27, 1992 set forth the deficiencies in the August 14 package, and indicated that the ALJ would not recommend action to the Commission until satisfied that adequate information had been provided by UPS. The ruling also denied the May 1 UPS motion asking the Commission to strike the Cal Pak protest and to issue an instant order, and denied the August 14 UPS motion.

On September 4, 1992, UPS filed response to the August 27 ALJ ruling.

Evidentiary hearings were held on September 9 and 10, 1992. The proceeding was submitted subject to receipt of transcripts, which were received on September 14, 1992.

Decisional Background

In Decision (D.) 89-09-014 dated September 7, 1989 in Application (A.) 89-03-040, we granted authority to UPS to operate as a highway common carrier and held it to be exempt from economic regulation for parcel operations that compete with those performed by the United States Postal Service (Postal Service). The protest of Edward J. Marnell, president of Cal Pak, which alleged various shortcomings of the filing, but failed to comply with the Commission's Rules, was denied.

In D.91-01-034 dated January 25, 1991 in A.90-12-017, we authorized UPS to increase certain rates for common carrier delivery service and continued the exemption from economic regulation for parcel operations that compete with the United States Postal Service. Cal Pak protested the application on the grounds that Hundredweight Service is discriminatory, not compensatory, and in violation of Commission decisions. Those issues were deferred to complaint case (C.) 89-11-021.

In D.91-03-015 dated March 15, 1991 in C.89-11-021, we denied the complaint of Cal Pak, concluding that despite "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...."

In D.91-07-020 dated July 2, 1991, in the same case, we denied rehearing requested by Cal Pak, but concluded that Hundredweight Service rates are not exempt from economic regulation under GO 147-B, and modified D.91-03-015 to so reflect.

Evidence

UPS offered the testimony of Patrick G. Edmonds, UPS Vice-President, Carroll D. Smith, a consultant and retired Commission TD employee, Robert F. Lautze, a Certified Public Accountant, and Robert Grietz, President of Western Traffic Services, Inc., and Tariff Issuing Officer of Pacific Motor Tariff Bureau, Inc.

Edmonds testified regarding the differences in operating ratios requested, 97.2 for standard Hundredweight Service, 87.7 for Note 5 Hundredweight Service, and 92.9 company-wide. The difference between 100 and the operating ratio is the percent net operating income. Explaining the reason for requesting different rates for Note 5 service, in his opinion the differences in operating ratios between the Hundredweight categories and company-wide are not substantial or unusual.

Edmonds also explained that the on-road pickup and delivery costs for Hundredweight Service are significantly less than for single parcel service since on average 11.3 Hundredweight packages are delivered at a delivery stop, compared to about 2.1 per delivery stop for single parcel service. These are the reasons for the lower Hundredweight rates since the non-road handling and costs are the the same.

Edmonds further explained the basic differences between Note 5 Hundredweight and regular Hundredweight parcels. Note 5 parcels have a National Motor Freight Classification of 150 and above and consist of lighter and bulkier items such as silk flowers and bicycles. The average Hundredweight parcel occupies approximately 2.6 cubic feet (cf) while the average Note 5 Hundredweight parcel occupies 4.98 cf. For comparison purposes, the average single parcel occupies about 1 cf. While it is hard to precisely quantify the additional costs of handling the bulkier Note 5 parcels compared to regular Hundredweight parcels, it is obvious that they can cause trailers to fill in volume before reaching maximum weight, and therefore if enough Note 5 parcels are handled, they will necessitate additional tractor-trailers than would otherwise be required.

Edmonds testified that as a result of his review of the application and an ALJ ruling ordering further information on the varying operating ratios requested, he developed updated and more accurate financial tables.

Smith testified that in his opinion, the rates requested by UPS are not predatory and are consistent with rates charged by other carriers competing for the same traffic. Smith notes that the Commission determined in approving GO 147-B that this transportation service is competitive. This was reaffirmed when the Commission later issued GO 147-C. Smith believes the UPS request to be justified, but if the rate increases are too large, the competitive market will correct the imbalance as other carriers will get more business because shippers seek to minimize costs. On the other hand, if the increases are justified, other carriers may also raise their rates to similar levels.

Smith also noted that the rates requested are consistent with rates charged by UPS for interstate transportation, which have been approved by the Interstate Commerce Commission.

Lautze testified regarding operating ratios, that competition effectively takes care of overly high rates. Considering that rate information is widely disseminated to shippers, they would likely know of competing carriers who have lower rates and take advantage of them. Lautze himself is a consultant who provides such information to shippers.

Greitz explained a cost study he performed to compare the requested rates with competing carriers and to develop the Item 5 rates based expenses. In his opinion, operating ratios in the 87 range are more appropriate than the high 90 range, considering that the ratios are pre-tax. After taxes, the net margin must be large enough to attract capital if a firm is to survive in the long-term.

Cal Pak offered the testimony of Edward Marnell, which essentially was in the form of argument and statements alluding to lack of information and support by UPS of its request. Cal Pak made no affirmative evidentiary showing to support its contentions or to refute UPS' evidence.

Discussion

Protestant Cal Pak, while essentially offering no testimony of its own, cross-examined at length all the UPS witnesses and attempted repeatedly to enter into irrelevant areas. Cal Pak attempted to show that UPS' request is not justified, that it has not presented adequate or proper support and documentation, and that it has operated without proper Commission authority since 1989. Cal Pak further attempted to show that the documentation and development of cost data is suspect and cannot be verified. For example, Cal Pak tried to show through UPS witnesses, or through statements and argument thinly disguised as questions, that UPS has been and is now operating illegally, that it does not have valid tariffs in effect for Hundredweight Service, and that certain of its rates are in violation of General Orders (GO) or rules. Because this application is a request for rate

increases that exceed the 10% allowed under GO 147-C without filing an application, only the rate increases are at issue. The validity of currently effective tariffs accepted and on file at the Commission are not at issue, having been challenged and decided in earlier decisions as indicated above. Therefore, the ALJ prevented Cal Pak from repeatedly attempting to pursue that issue.

While at first look it is not apparent why Cal Pak would oppose a rate increase by a competitor, which would seem to benefit Cal Pak by allowing it to better compete for the service, some of the statements made by both the Marnells may help in understanding their motives. Randy Marnell stated "We don't feel the tariff is correct in the first place. We are going to do everything in our power to prevent them (UPS) from entering the LTL market.... If it was just a rate increase and they had a lawful tariff on file, ...we wouldn't be here.... But we are here to prevent them from getting something that we don't feel that they justifiably deserve." (Tr. 233-4.) Edward Marnell stated "I have come to the conclusion that there is no way that Cal Pak is going to be able to verify any of these filings. And therefore, we will continue and try to show some other problems with these figures." (Tr. 245.) Cal Pak apparently desires to delay approval of the application, if it cannot justify denying it.

Cal Pak faults UPS for not providing adequate information for its use in evaluating the application. Yet the only request it made for additional data is in a footnote in Appendix A of its April 14 protest, where it stated that "actual data is needed for parcels and Hundredweight Service in order...to verify the figures submitted in the application." UPS is understandably uncertain as to what Cal Pak wants; for example, does it want every shipping document in California for the year? UPS questioned whether such information available to a competitor as Cal Pak could be used for purposes other than this proceeding, such as soliciting UPS' customers. We believe that if Cal Pak actually felt it needed additional data it should have requested specific data and not the broad blanket request for "actual data". We too are not sure what Cal Pak would consider actual data, given its distrust of UPS.

Cal Pak claims to represent concerns that are common to 30,000 carriers in California; however, no other protests have been filed by either carriers or shippers.

The existing rates have been found earlier to be compensatory, far exceeding the variable floor prices considered to be the minimum allowable levels. Therefore, based upon UPS's summary and the record before us, we conclude that the rates requested remain clearly compensatory, notwithstanding Cal Pak's protest. The reasons for the increases stated by UPS are generally increased costs, especially labor, since 1989 when Hundredweight rates began. UPS has not yet increased these rates. Whether the proposed rates may be too high is not an area of great concern to the Commission in a competitive transportation environment. The requested rate increases only slightly exceed the 10% allowed by GO 147-C without filing an application. But if they are too high, competitors such as Cal Pak will be able to take away some of UPS' business by undercutting its rates, and likely force UPS to lower its rates to be competitive.

We conclude that it is appropriate to approve the rates requested by UPS. The resulting rates will be consistent with the interstate rates UPS charges, and allow greater ease of billing and accounting for both UPS and its shippers.

Comments

No comments on the ALJ's proposed decision were received.

Findings of Fact

1. The rates requested are the same as currently in effect and approved by the Interstate Commerce Commission for UPS' interstate Hundredweight Service.
2. The only protest, filed by Cal Pak, failed to prove any of the various allegations of violations of Commission decisions, rules and requirements.
3. Hundredweight Service is less costly to administer than single parcel service, since more parcels are picked up and delivered at each stop; the other handling is the same for Hundredweight as for single parcel service.

4. Note 5 Hundredweight Service is more costly than other Hundredweight Service because of the bulky, lightweight nature of the parcels.

5. The rates requested are compensatory and reflect the increased costs to UPS since they were implemented in 1989.

6. This order should be effective on the date signed, because of the need to implement these rates promptly.

Conclusions of Law

1. The protest of Cal Pak is without merit and should be denied.

2. It is reasonable to charge higher rates for Note 5 than for standard Hundredweight Service due to increased handling costs.

3. The rates authorized herein are reasonable.

O R D E R

IT IS ORDERED that:

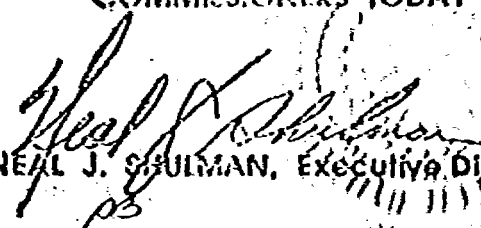
1. UPS is authorized by increase its rates by filing tariff revisions in the form attached as Appendix A to its application on not less than 5 days notice.

2. The protest of Cal Pak Delivery, Inc. is denied.
This order is effective today.

Dated December 16, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director