

ORIGINAL

Decision No. 88800 MAY 2 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of UNITED PARCEL)
SERVICE, INC. to amend its cer-)
tificate of public convenience and)
necessity by removing a restric-)
tion against delivery of small)
packages between retail stores,)
their branches and warehouses and)
the premises of customers of such)
stores.)

Application No. 57776
(Filed December 29, 1977)

O P I N I O N

By this application, United Parcel Service, Inc., an Ohio corporation authorized to conduct business in California, seeks authority to amend its highway common carrier certificate by removing therefrom a certain restriction which now prohibits the delivery by applicant of small packages between retail stores, their branches and warehouses and the premises of customers of such stores.

Applicant is now engaged in the non-retail store delivery of small packages (not exceeding 50 pounds in weight or 108 inches in length and girth combined) between all points in California as a highway common carrier pursuant to its in-lieu certificate of public convenience and necessity granted by the Commission in Decision 70125 dated December 21, 1965, in Application 47874, as amended by Decision 82826 dated May 7, 1974 in Application 54701. This common carrier service is available to all types of shippers and consignees except that service between retail stores and their customers is now precluded by the following restriction contained in applicant's certificate:

- (c) "No service shall be rendered between retail stores and their branches or warehouses, or between retail stores and their branches or warehouses, on the one hand, and the premises of the customers of such stores, on the other hand."

The aforesaid restriction was included in applicant's certificate so that it could provide a delivery service for selected retail stores in California under its highway contract carrier permit, File T-68429, issued by this Commission. This contract carrier service consists of the delivery of packaged merchandise (also furniture merchandise in the case of two Los Angeles department stores, The May Co. and J. W. Robinson), between said stores, their branches and warehouses, and the premises of their customers, pursuant to individual written contracts entered into by applicant with each store so served. In addition, under its contract with The May Co., applicant also furnishes vehicles and drivers which are assigned to the store on a time basis for that company's exclusive use in transferring merchandise between the store and its branches and warehouse.

Applicant requests the Commission to amend the aforesaid restriction in its common carrier certificate to read as follows:

- (c) "No service shall be rendered (1) in the delivery of furniture or other articles requiring the protection of quilts or pads or other special handling in order to be transported without danger of damage, or requiring unpacking or any other servicing by the carrier at point of delivery, between retail stores, their branches and warehouses, and the premises of the customers of such stores; (2) in the transfer of merchandise between retail stores and their branches and warehouses by vehicles and drivers assigned to the store on a time basis for its exclusive use."

Applicant's stated purpose in seeking such amended authority is (1) to enable itself to provide the aforesaid retail store package delivery service under its highway common carrier certificate; and (2) to continue handling the delivery of furniture and the interstore transfer of merchandise, as described above, under its contract carrier permit for those department stores whose contracts with applicant now provide for such a personalized service. It would be economically impossible, applicant declares, for it to provide such a unique and specialized service, as a common carrier, at tariff rates which would be available to any and all retail store shippers. This modification

will enable applicant to deliver small packages for retail stores and their customers between all points in California, as a highway common carrier, in the same manner that it now serves all other types of shippers under its certificate.

The parcel rates for this expanded common carrier service will be those set forth in applicant's Local Parcel Tariff, Cal. PUC No. 20, on file with this Commission.

Simultaneously, with the aforesaid modification of said restriction in its highway common carrier certificate, applicant proposes to amend its contract carrier permit so as to specifically exclude the additional certificated authority requested herein.

Applicant alleges that public convenience and necessity require the modification of its certificated authority for the following reasons:

- (a) The existing service to retail stores under its contract carrier permit has been necessarily limited to certain selected stores;
- (b) There are a large number of other retail stores, many small in size, who would then be able to utilize the service provided by applicant, under its certificate, for the delivery of parcels to their customers. Such retail stores must now send their deliveries via the U.S. Government's parcel post service which has proven somewhat inadequate and deficient for their shipping needs;
- (c) Years ago, retail store package deliveries represented a major part of applicant's total California origin volume. But, with the inception of suburban shopping centers and the establishment of retail branch stores thereat, there was a tendency for shoppers to carry their packages home with them resulting in a drastic reduction in the volume of retail package deliveries handled by applicant;
- (d) About the same time, applicant's common carrier service for other types of shippers was being extended to new areas of California, while also growing rapidly in volume. As a consequence, the volume of retail store package deliveries has become progressively a smaller portion of applicant's overall package volume; and
- (e) As an example of the decline in applicant's retail store delivery traffic volume, during the year 1960 California retail stores tendered to applicant more than 13,000,000 package deliveries, or nearly 30% of its total package

volume originating in California. In direct contrast, during the year 1976 the volume of packages tendered to applicant by its retail store shippers amounted to less than 3.7% of the aforesaid volume, and as late as the month of September of 1977, this volume had declined further to less than 3% of applicant's overall California origin volume.

In view of these changes in the transportation conditions affecting the volume and nature of applicant's overall operations, especially its transportation mix, applicant now desires to hold itself out to serve any and all retail stores that might wish to avail themselves of UPS's statewide common carrier parcel delivery service at its published parcel tariff rates. Such a change if made in the intrastate operations, UPS points out, would be consistent with its existing inter-state common carrier operations on the west coast which make no distinction between package deliveries from retail stores and those from other types of shippers.

Applicant likewise points out that the proposed amendment of its California certificate would also make it consistent with the carrier's own intrastate operations in Arizona, Oregon and Washington. In those states, applicant declares that it formerly maintained a like separate service at special rates for retail store package deliveries. However, it eventually applied for and received authority from those states to provide statewide service to retail stores on exactly the same basis as that which applied to all other common carrier shippers.

Applicant's income statement for the calendar year 1976 shows that operating revenues totaled almost \$1 1/2 billion, and that its net income, after taxes, was over \$24 million. It is apparent that applicant possesses the financial ability and operational capabilities necessary to provide the proposed service.

To summarize, applicant states that (a) the authority sought herein will permit its present retail store shippers to utilize its common carrier service as a "matter of right" for the delivery of packages now tendered to applicant under its contract carrier authority;

(b) that it would also benefit many other retail stores which now must rely on an inadequate U. S. Parcel Post Service for the delivery of their packages; and (c) that it will likewise enable many other retail stores to use applicant's parcel delivery service on the same basis as that now used by only a limited number of other types of shippers.

Applicant indicates that the proposed authority will not be competitive, to any significant degree, with the operations of other highway common carriers regulated by this Commission, and therefore it does not consider a public hearing on this matter to be necessary. Accordingly, it urges the Commission to decide the matter by ex parte action inasmuch as there is no known opposition.

A notice about the proposed amendments of its operating authorities was mailed by applicant to all California highway common carriers, and copies of the application itself were mailed to the northern and the southern California offices of the California Trucking Association. Notice of the filing of said application appeared in the Commission's Daily Calendar of December 30, 1977. No protest to the granting of the application has been received.

After consideration, the Commission finds that:

1. Applicant presently serves as a highway common carrier of general commodities between all points in California under appropriate intrastate and interstate authority.
2. Applicant also conducts operations under its statewide highway contract carrier permit.
3. Applicant is financially and operationally able to perform the services as specifically proposed in the application.
4. Public convenience and necessity require that applicant be authorized to engage in certificated operations as specifically proposed in the application.

The Commission concludes that the application should be granted as set forth in the ensuing order. A public hearing is not necessary. The order which follows will provide for the revocation of the certificate presently held by applicant and the issuance of an in-lieu certificate, in appendix form, to United Parcel Service, Inc. The order here-

in will also provide for the concurrent amendment of United Parcel Service, Inc.'s contract carrier permit as proposed in the application.

United Parcel Service, Inc., is placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to United Parcel Service, Inc., a corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between all points in California as set forth in Appendix A of this decision.

2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure to do so may result in cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if it accepts the certificate it will be required, among other things, to comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.
- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service and amend or file tariffs, in triplicate, in the Commission's office.
- (c) The tariff filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the authorized service.

- (d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-Series.
- (e) Applicant shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts, as prescribed or adopted by this Commission, and shall file with the Commission, on or before April 30 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.
- (f) Applicant shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicant elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

3. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificate of public convenience and necessity granted by Decision 70125 and amended by Decision 82826, which certificate is hereby revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

4. The Executive Director shall cause amendment of the highway contract carrier permit held by United Parcel Service, Inc., in the manner proposed in the application, said amendment to become effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

The effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 2nd day of MAY, 1978.

Robert Bateman
President

William Symons Jr.

George L. Sturgeon

John D. Swails

Walter J. Deibel
Commissioners

United Parcel Service, Inc., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to conduct operations as a highway common carrier, as defined in Section 213 of the Public Utilities Code, for the transportation of general commodities, except articles of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring temperature control or special equipment, between all points in California, via any and all available routes, subject to the following restrictions:

- (a) No service shall be rendered in the transportation of any package or article weighing more than 50 pounds or exceeding 108 inches in length and girth combined, and each package or article shall be considered as a separate and distinct shipment.
- (b) No service shall be provided in the transportation of packages or articles weighing in the aggregate more than 100 pounds from one consignor at one location to one consignee at one location during a single day.
- (c) No service shall be rendered (1) in the delivery of furniture or other articles requiring the protection of quilts or pads or other special handling in order to be transported without danger of damage, or requiring unpacking or any other servicing by the carrier at point of delivery, between retail stores, their branches and warehouses, and the premises of the customers of such stores; (2) in the transfer of merchandise between retail stores and their branches and warehouses by vehicles and drivers assigned to the store on a time basis for its exclusive use.
- (d) No service shall be rendered within the area comprising Los Angeles, Orange, San Bernardino, San Diego, and Ventura Counties in the transportation of packages or articles which are delivered or intended to be delivered on the same business day as tendered.

(End of Appendix A)

Issued by California Public Utilities Commission.

Decision 88800, Application 57776.