

ORIGINAL

Decision No. 89016 JUN 27 1978.

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation for the purpose of considering and determining minimum rates for transportation of any and all commodities statewide including, but not limited to, those rates which are provided in Minimum Rate Tariff 2 and the revisions or reissues thereof.

Case No. 5432, OSH 1004  
(Filed December 20, 1977)

In the Matter of the Investigation for the purpose of considering and determining minimum rates for transportation of general commodities within San Diego County as provided in Minimum Rate Tariff 9-B and the revisions or reissues thereof.

Case No. 5439, OSH 318  
(Filed December 20, 1977)

In the Matter of the Investigation for the purpose of considering and determining minimum rates for transportation of general commodities in the Counties of Contra Costa, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Mateo, Santa Clara, Santa Cruz, Solano and Sonoma, and in the County of Alameda and in the City and County of San Francisco as provided in Minimum Rate Tariffs 1-B and 19 respectively, and the revisions or reissues thereof.

Case No. 5441, OSH 403  
(Filed December 20, 1977)

And Related Matters.

Case No. 5432, Pet. 1007

Case No. 5439, Pet. 320

Case No. 5441, Pet. 405  
(Filed January 5, 1978)

William R. Haerle, Attorney at Law, Joel Anderson, and Herbert Hughes, for California Trucking Association, petitioner in Case No. 5432, Petition 1007 et al., and interested party in Case No. 5432, OSH 1004, et al.  
John Lemke, for the Commission staff.

O P I N I O N

Minimum Rate Tariffs 2, 1-B, 9-B, and 19, (MRTs 2, 1-B, 9-B, and 19) respectively, set forth, among other things, minimum rates for the transportation of parcel delivery shipments within the metropolitan Los Angeles area, the East Bay, San Diego, and San Francisco drayage areas. The parcel delivery rates named in the minimum rate tariffs have, until recently, been maintained on a competitive basis with the rates of United Parcel Service, Inc. (UPS).

In Application No. 57629 filed October 13, 1977, UPS seeks authority to increase its rates for parcel delivery shipments between points in California. OSH 1004 in Case No. 5432 (and related matters) issued December 20, 1977 ordered that a hearing in the OSH proceedings be held concurrently with hearings in Application No. 57629 for the purpose of determining to what extent the minimum rate tariffs should be modified and whether common carriers, which maintain rates on a competitive basis with UPS rates which are below the specific minimum rate level otherwise applicable, should be authorized and directed to increase such rates to the level of the UPS rates established pursuant to decision in Application No. 57629, or to the level of the specific minimum rates, whichever is lower.

Petition 1007 in Case No. 5432 (and related matters) filed January 5, 1978 by California Trucking Association (CTA) requests that the matter be set for public hearing concurrently and on a common record with Application No. 57629 and OSH 1004 in Case No. 5432 et al. The petitions seek cancellation of the parcel delivery rates in MRTs 2, 1-B, 9-B, and 19.

The OSH proceeding was severed from Application No. 57629 and was consolidated for hearing with CTA's petitions. A duly noticed public hearing in the consolidated proceeding was held before Administrative Law Judge Mallory in San Francisco on March 20, 1978 and the matter was submitted. Evidence was offered by CTA and the Commission staff. Although notice of hearing was given to parcel carriers and shippers employing their services, no respondent carriers or shippers appeared at the hearing.

CTA's witness recited the history of the parcel rates in the minimum rate tariffs and concluded that maintenance of such rates is no longer required in order to allow other parcel carriers to compete with UPS; therefore, he recommended that the parcel rates be canceled. The CTA witness concluded that since UPS has been authorized a statewide certificate, any competing parcel carrier could assess UPS rates under the minimum rate tariff provisions permitting the alternative application of common carrier rates in lieu of the minimum rates when such common carrier rates produce a lower aggregate charge for the same transportation than would result from the application of the minimum rates.<sup>1/</sup> The record shows that since the parcel rate items were established for application in the drayage areas, UPS has been granted authority to operate as a common carrier within the local areas.

On the other hand, the staff proposed that a new item be added to MRT 2 incorporating parcel delivery rates substantially on the same level as UPS's parcel rates. The basis for that recommendation is that the present code provisions under which common carrier rates may be applied in lieu of minimum rates may be canceled; or the Commission may

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<sup>1/</sup> The tariff provisions stem from Section 3663 of the Public Utilities Code which reads as follows:

"3663. In the event the commission establishes minimum rates for transportation services by highway permit carriers, the rates shall not exceed the current rates of common carriers by land subject to Part 1 of Division 1 for the transportation of the same kind of property between the same points."

Implement the provisions of Senate Bill 860 (SB 860) in such a way as to prevent the use of UPS rates by other carriers.<sup>2/</sup>

Discussion

Both the situations that serve as a basis for the staff recommendation herein are speculative. Recent attempts in the Legislature to annul the provisions of Section 3663 of the Public Utilities Code have failed. We see little chance of the passage of new legislation removing Section 3663 from the Public Utilities Code. The staff proposal is made in the face of Commission decisions which failed to increase the present parcel rates applicable in local drayage areas to the level of UPS rates. Publication of a statewide level of parcel rates on the UPS level, without assurance that such rates will be increased when the corresponding UPS rates are increased, would defeat the staff's purpose and thus would be an idle act.<sup>3/</sup>

The basic justification for establishing parcel delivery rates in the drayage areas on a competitive basis with the intercity rates of UPS is set forth in Decision No. 48269 in Cases Nos. 4084, 4108, and 4109 dated February 10, 1953 (unreported). By Decision No. 70125 dated December 21, 1965 in Application No. 47874 (unreported), the Commission

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<sup>2/</sup> SB 860 (1977), among other things, requires that carriers holding radial highway common carrier permits to file for conversion of that operating authority to either a highway common carrier certificate or a contract carrier permit by December 31, 1978.

<sup>3/</sup> Decision No. 87876 dated September 20, 1977 in Application No. 56871 directed that highway common carriers maintaining rates on the level of UPS parcel rates raise their rates to the UPS rates granted in those decisions, but no corresponding orders were issued in the minimum rate proceedings raising the local parcel rates in the minimum rate tariffs to the level of the UPS rates. The current minimum rates are below the corresponding UPS rates.

authorized UPS to extend its service to all points and places within California, subject to certain limitations. As a result of the extended authority, the Commission, in Decision No. 71040 dated July 26, 1966 in Case No. 5441 (Pet. 103) et al., amended the application of the minimum rates on parcel delivery to bring the rates into greater conformity with the existing competitive rates of UPS and to establish uniform tariff rules in the local drayage tariffs. CTA contends that since the issuance of a statewide highway common carrier certificate to UPS, any other highway carrier may apply UPS parcel rates under the alternative application of common carrier rate provisions of the minimum rate tariffs in issue. Therefore, it is unnecessary to publish the UPS rates in Commission minimum rate tariffs to ensure equality of competitive opportunity between other highway carriers and UPS.

Findings

1. The parcel delivery tariff items in issue in Case No. 5432 (OSH 1004) and related matters were initially established to provide rates on a competitive basis with UPS. At that time UPS did not operate as a common carrier within the local drayage areas.
2. The Commission has not maintained the parcel rates in its minimum rate tariff on the same level as the rates authorized to UPS.
3. UPS now operates and publishes rates statewide as a highway common carrier of parcels.
4. UPS's published parcel rates may be applied by any other highway carrier under the alternative application of common carrier rate provisions of the minimum rate tariff in issue.
5. The publication of parcel rates in the Commission's minimum rate tariffs is no longer necessary to allow other carriers to assess the rates maintained by UPS.
6. The minimum rate tariff provisions in issue should be canceled.

Conclusions

1. Case No. 5432 (Petition 1007), Case No. 5439 (Petition 320) and Case No. 5441 (Petition 405) should be granted and the proceeding in Case No. 5432 (OSH 1004), Case No. 5439 (OSH 318), and Case No. 5441 (OSH 403) should be discontinued.

2. MRT 2 should be amended as provided in the order which follows.

3. MRTs 1-B, 9-B, and 19 should be amended by separate order to facilitate tariff distribution.

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff 2 (Appendix D to Decision No. 31606, as amended) is further amended by incorporating therein, to become effective thirty-nine days after the date hereof, Fifty-second Revised Page 3 and Tenth Revised Page 27-D attached hereto and by this reference made a part hereof.

2. Common carriers subject to the Public Utilities Act, to the extent that they are subject to Decision No. 31606, as amended, are hereby authorized to establish in their tariffs the revisions necessary to conform with the further adjustments ordered herein.

3. Tariff publications authorized to be made by common carriers as a result of the order herein shall be filed not earlier than the effective date of this order and may be made effective not earlier than the tenth day after the effective date of this order, on not less than ten days' notice to the Commission and to the public if filed not later than sixty days after the effective date of the minimum rate tariff pages incorporated in this order.

4. Common carriers, in establishing and maintaining the amendments authorized hereinabove, are hereby authorized to depart from the provisions of Section 461.5 of the Public Utilities Code to the extent necessary to adjust long- and short-haul departures now maintained under outstanding authorizations, such outstanding authorizations are hereby modified only to the extent necessary to comply with this order, and schedules containing the amendments published under this authority shall make reference to the prior order authorizing long- and short-haul departures and to this order.

5. In all other respects Decision No. 31606, as amended, shall remain in full force and effect.

6. The proceedings in Case No. 5432 (OSH 1004), Case No. 5439 (OSH 318), and Case No. 5441 (OSH 403) are hereby discontinued.

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

Dated at San Francisco, California, this 27<sup>th</sup> day of JUNE, 1978.

William J. Quinn President  
Veronica L. Sturgeon  
Richard D. Goveals  
David J. Schindler Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.

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§ Change )  
 \*\* Eliminated ) Decision No. **89015**

EFFECTIVE

Correction ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.



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