

OCT. 10. 1996

Decision 96-10-042 October 9, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of UNITED PARCEL SERVICE, INC. filing tariff pages that reflect increases in Parcel Rates without authorization from this Commission and using an out dated Decision No. 89-09-014 dated September 7, 1989, as the authority to increase rates effective February 24, 1991.

Case 92-02-026
(Filed February 13, 1992)

In the matter of the application of UNITED PARCEL SERVICE, INC. to confirm the increase to certain of its rates for exempt small package delivery service and to clarify the procedure to be utilized in implementing changes in the rates and rules applicable thereof.

Application 92-04-026
(Filed April 24, 1992)

COMMISSION ORDER TO REOPEN A.92-04-026 AND RECONSIDER DECISION 93-02-001

Pursuant to California Public Utilities (PU) Code § 1708, the Commission on its own motion hereby orders reopening Application (A.) 92-04-026. This matter concerns the Commission's order in Decision (D.) 93-02-001 holding that United Parcel Service, Inc. (UPS) had increased its rates on February 22, 1992 without having complied with PU Code § 454 and, therefore, the increase was unlawful.¹ The Commission also determined, however, that the rate was just and reasonable for prospective application as of the effective date of the decision, February 4, 1993.

¹ Unless otherwise noted, all references to statutory provisions shall be to statutes in the California Public Utilities Code.

UPS requested a rehearing claiming its equal protection rights under the California and United States Constitutions had been jeopardized by the Commission's determination that the February 22, 1992 rate increase was unlawful. UPS argued that similarly situated carriers were not subject to compliance with § 454 to raise rates in the amount UPS had increased its rates. In D.93-05-018, the Commission concluded that UPS had not been denied equal protection of the law.

On June 9, 1993, UPS filed a complaint against the Commission in the district court of the United States seeking resolution of its equal protection claim. A dismissal of UPS' complaint by the district court on res judicata grounds was recently reversed by the U.S. Court of Appeals and remanded for further proceedings in the district court. To fully examine the Commission's position in response to UPS' federal court action, the Commission will undertake on its own motion a review of the bases, both procedural and substantive, for the decision holding UPS' rate increase unlawful in D.93-02-001.

All interested parties to the proceedings of A.92-04-026 are hereby notified that written comments on this matter may be filed with the Commission on or before October 29, 1996. Reply comments may be filed on or before November 6, 1996. Parties who raise material issues of fact may also request an evidentiary hearing. However, any party who requests a hearing must substantiate the request with:

- a. A statement of specific, material factual allegations, as distinct from arguing questions of law and policy,
- b. Adequate evidence to support the factual allegations, mere assertions or conclusory statements being insufficient, and
- c. A description of the dispute that exists concerning the facts alleged, including a discussion of how that dispute is material to a determination whether UPS' rate

increase of February 1992 was unlawful and whether UPS' equal protection rights were protected in the Commission's decisionmaking.

IT IS, THEREFORE, ORDERED that:

1. Application (A.) 92-04-026 is reopened.
2. Interested parties may file comments as discussed above by October 29, 1996, and reply comments by November 6, 1996.
3. The Executive Director is directed to serve a copy of this order on parties to the consolidated service list of A.92-04-026 and Case 92-02-026. Should a party raise material issues of fact which the assigned Commissioner and the assigned Administrative Law Judge determine require an evidentiary hearing, said hearing shall be conducted as soon thereafter as the Commission's business allows.

This order is effective today.

Dated October 9, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners