

ORIGINALDecision No. 65244

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA.

Investigation into the rules and regulations for the handling of C.O.D. shipments and collection, accounting and remittance of C.O.D. moneys by Express Corporations, Freight Forwarders, Highway Common Carriers, Petroleum Irregular Route Carriers, Passenger Stage Corporations, Radial Highway Common Carriers, Highway Contract Carriers, Petroleum Contract Carriers, Household Goods Carriers, and City Carriers.

Case No. 7402

(Appearances are listed in Appendix A)

O P I N I O N

On July 17, 1962, the Commission issued an order instituting an investigation for the purpose of determining to what extent, if at all, the provisions of General Order No. 84-C should be revised and what, if any, additional rules, requirements, tariff provisions or other regulations should be established to govern the handling of C.O.D. shipments and the identification, accounting, handling and remission of C.O.D. moneys by express corporations, freight forwarders, highway common carriers, petroleum irregular route carriers, passenger stage corporations, radial highway common carriers, highway contract carriers, petroleum contract carriers, household goods carriers and city carriers; and for the purpose of establishing such rules and requirements as might be found to be appropriate.

Public hearing was held before Examiner Daly at San Francisco on September 24, 1962, upon which date the matter was submitted.

By Decision No. 21162 the Commission established General Order 84, which became effective June 10, 1929. Said order provided that, "each transportation company as defined in the Auto Stage and Truck Transportation Act and each passenger stage corporation as defined in the Public Utilities Act, handling C.O.D. shipments shall, immediately upon collection of any and all moneys, and in no event later than ten days after delivery to the consignee, unless consignor instructs otherwise, remit to the consignor all moneys collected by it on such shipments". Following an investigation instituted on November 6, 1933, the Commission established General Order 84-A, effective June 30, 1934, which made the additional requirement that each carrier handling C.O.D. shipments file with the Commission a bond in the amount of \$1,000. By Decision No. 42057, dated September 21, 1948, the Commission established General Order 84-B, effective November 15, 1948, which included all for-hire highway carriers, express corporations and freight forwarders and raised the amount of the bond to \$2,000. By Decision No. 43441, dated October 25, 1949, the Commission established General Order 84-C, effective December 1, 1949, which included two newly created carrier classifications, petroleum irregular route carriers and petroleum contract carriers. Said General Order 84-C is presently in effect.

The staff introduced Exhibit 1, which sets forth a proposed General Order No. 84-D. Said exhibit was prepared following an extensive state-wide field study conducted during October and November of 1961. A staff representative called on 48 carriers, 22 shippers and 5 carrier and shipper associations. Testifying on behalf of the staff, he expressed the opinion that the efficiency of a carrier's system for handling C.O.D. shipments has a direct relation to the amount of shipments handled. Those who handle a

large number of such shipments, he testified, have an excellent system, while those carriers who handle occasional C.O.D. shipments have either no specific system or a casual system. He further testified that the carriers of general freight, with the exception of carriers handling a limited number of C.O.D. shipments, maintain a record of C.O.D. shipments in the form of a separate ledger or accounting book, commonly termed a "C.O.D. Register". According to the witness such a register contains the name and address of the consignee and consignor, the freight bill number, the date of the freight bill, the date of delivery, the remittance check number and date of remittance.

The staff witness further testified that C.O.D. records maintained by shippers are used solely for control purposes and are usually in the form of a suspense file. He was of the opinion that most shippers handle the collection of C.O.D. shipments the same as any account receivable, by turning them over to the claims department if not paid following the customary thirty to sixty days suspense period.

The present General Order 34-C imposes only two requirements on carriers handling C.O.D. shipments: (1) a \$2,000 bond must be on file with the Commission, and (2) C.O.D. collections must be remitted within ten days. It is the position of the staff that although C.O.D. service within the State is generally good, the lack of conformity in the handling of such shipments has caused routine errors resulting in tardy remittances and occasional financial loss to shippers. The staff therefore recommends the following revisions:

(1) All C.O.D. collections should be deposited in a separate bank account, with the exception of checks and drafts payable to the shipper and moneys which are remitted by the carriers within six working days.

(2) All carriers should establish and maintain records of C.O.D. transactions in such form that all pertinent information may be readily determined.

(3) All carriers should notify shippers when C.O.D. shipments are refused or delivery cannot be effected within three days after notice.

(4) All carriers should return the shipment to the shipper in the event delivery cannot be effected within thirty days after notice.

(5) On interlined C.O.D. shipments the delivering carrier should notify the originating carrier of the remittance.

(6) The C.O.D. bond required in the current general order should be continued in effect at its present value of \$2,000.

(7) There should be a 120-day limitation for filing claims against the bond and a maximum period of one year from the date of the filing of the initial claim for the institution of court action.

(8) The filing of applications for exemption or deviation from the general order should be authorized.

(9) The C.O.D. provisions of the various minimum rate tariffs should be revised to include rules for documentation, the handling of C.O.D. shipments, and C.O.D. collections.

(10) Specific exemption from the bonding provision should be provided for (1) city carriers operating within lawfully established pickup and delivery limits as agents of a common carrier in the performance for such carrier of transfer, pickup or delivery service

provided for in the lawfully published tariff of such carrier, (2) independent contractor subhaulers, and (3) dump truck carriers.

The staff recommended a separate bank account for all funds held for more than six days because it was felt that when C.O.D. collections are retained by the carrier for periods approaching the maximum, the C.O.D. moneys should be separated from the carrier's other funds. The period of six days was selected because a number of carriers assertedly make their C.O.D. remittance once a week.

In its initial draft of Exhibit 1 the staff suggested that the amount of the bond be set at \$10,000. According to the staff witness, the staff, after consideration, was of the opinion that a \$10,000 bond would be excessive for the majority of C.O.D. carriers. He testified that of the 14,000 carriers operating within the State, 700 have C.O.D. bonds on file with the Commission. He further testified that most of the C.O.D. carriers are relatively small and many of them are the only means of transportation in the rural and mountainous areas. A substantial reduction in C.O.D. carriers, he concluded, would have a detrimental public effect.

A representative of the Hartford Accident & Indemnity Company testified that an applicant for a \$10,000 surety bond would be required to have assets of approximately ten times the value of the bond. It was his opinion that very few carriers would qualify. He further testified that although the same requirement applies to the \$2,000 bond, his company on the lesser amount will frequently write the bond as a matter of accommodation to the broker or agent of the company, even though the required ratio of 10 to 1 is not fully complied with.

A witness testifying on behalf of the California Trucking Associations, Inc., stated that bonding as a public protection is merely an illusion and constitutes an unnecessary cost to the carriers. He testified that the general order should provide for self-bonding by those carriers of sufficient financial responsibility. He also testified that the Association opposed the staff recommendation for separate bank accounts on the ground that such a requirement would be extremely impractical and would only result in added expense to the carriers. He was of the opinion that it might be more desirable for the Commission to establish standards whereby a carrier could qualify for the transportation of C.O.D. shipments and so indicate its authority in its tariff. He further testified that the staff's proposed tariff amendments should be revised as follows:

(a) C.O.D. shipments should be limited to packages for which the C.O.D. charges are applicable and not permitted in connection with split delivery shipments.

(b) Specific and definite standards should be established for C.O.D. shipments which will clearly distinguish them.

(c) The proposed provision requiring the return of a C.O.D. shipment to the consignor if it cannot be delivered within 30 days should be eliminated or allowance should be made for storage and second delivery charges. The period of 30 days is excessive.

A representative of the California Dump Truck Owners introduced late-filed Exhibit 2, which would eliminate the provision covering the return of C.O.D. shipments within 30 days from the proposed general order. He suggested the following tariff amendments:

a-MRT No. 7

"If a COD shipment is refused or cannot be delivered because of circumstances beyond the carrier's control, the consignor shall be

notified immediately. In the event of such non-delivery, and pursuant to the consignor's instructions, the shipment shall either be returned to the consignor subject to double the outbound freight charges for the roundtrip movement, or delivered to another consignee subject to the applicable distance rate, in addition to the original rate, from the point of non-delivery to the new destination.

Note: If hourly rates are applicable on deliveries involving COD shipments, such hourly rates shall supersede the rates provided in this paragraph."

d-All other minimum rate tariffs

"If a COD shipment is refused or cannot be delivered on the carrier's initial attempt, the consignor shall be notified immediately. Upon instructions from the consignor the carrier may attempt subsequent deliveries, the charge for each such delivery, or attempted delivery, being determined by the applicable freight charges from carrier's terminal to the point of destination, but in no event less than the rate provided for mileages of less than three miles. The carrier may also return the shipment to the consignor upon his request, subject to a charge equal to the applicable freight charges on the original outbound movement."

Representatives for Railway Express Agency, The Greyhound Corporation, Transcontinental Bus System, Incorporated, American Bus Lines, Continental Pacific Lines and Gibson Lines appeared as witnesses and requested exemption from proposed General Order 84-D for their respective companies. According to these witnesses their companies conduct extensive C.O.D. operations, which are governed by company procedures; many of the proposed general order provisions would conflict with existing company procedure; the effect can only cause confusion and unnecessary expense, without any additional public benefit, and their respective companies are financially capable of meeting any public claims that may arise from the transportation of C.O.D. shipments.

After consideration the Commission finds that:

1. Each C.O.D. carrier should establish a separate trust account in a bank for all C.O.D. funds which are not remitted within five days after delivery. ✓
2. No C.O.D. shipment should be made a part of a split delivery shipment. ✓

3. The staff recommendation that C.O.D. shipments be returned to the consignor if not delivered within thirty days is unreasonable in that the period is excessive and no provision is made for storage and second delivery charges. The alternative provision set forth in late-filed Exhibit 2, heretofore quoted, is reasonable and should be adopted.

4. The C.O.D. bond requirement is reasonable and the amount of the bond should be not less than \$2,000. ✓

5. The provisions of General Order 84-D as hereinafter set forth are reasonable and should supersede the present General Order 84-C.

6. The Commission's minimum rate tariffs should be amended by establishing therein the rules governing C.O.D. shipments hereinafter set forth in General Order 84-D.

7. The minimum rate tariffs should be amended by separate orders to be issued in the appropriate minimum rate proceedings. The tariff changes should be made effective concurrently with the effective date of General Order No. 84-D.

8. The need for special relief or exemption for particular carriers cannot be determined on the record made in this investigation, which involves regulatory changes affecting many types of for-hire carriers in the State of California. Carriers may seek such individual relief or exemption as they deem necessary by filing formal applications with the Commission. These applications should set forth the specific exemption or other relief sought, the need therefor, and the justification relied upon in support thereof. The timely filing of such applications will permit consideration and disposition prior to the time when the new general order and tariff rules become effective.

O R D E R

IT IS ORDERED that:

1. General Order No. 34-D, which is attached hereto and by this reference made a part hereof, is hereby adopted to become effective October 1, 1963.

2. General Order No. 34-C is hereby canceled and superseded by the general order adopted herein, effective October 1, 1963.

The Secretary of the Commission shall serve a copy of this order upon all express corporations, freight forwarders, highway common carriers, petroleum irregular route carriers, passenger stage corporations, city carriers, highway contract carriers, household goods carriers, petroleum contract carriers and radial highway common carriers.

This order shall become effective twenty days after the date hereof.

Dated at San Francisco, California, this 16th day of April, 1963.

George D. Hoover
President

[Signature]

Fredrick B. Holdhoff

William W. Bennett
Commissioners

I concur, but with the exception of the requirement of a ^{separate} special bank account.
[Signature]

APPENDIX A

LIST OF APPEARANCES

FOR RESPONDENTS

Robert L. Dupuy, for American Bus Lines, Inc., Transcontinental Bus System, Inc., Continental Pacific Lines and Gibson Lines; Edwin C. Bennett, for Ace Delivery Service; William Dobrowski, for Fortier Transportation Company and J. H. Watson; W. M. Beeler and Frederick O. Koenig, for The Greyhound Corporation, (Western Greyhound Lines Division); F. S. Kohles, for Valley Motor Lines and Valley Express Company; R. C. Ellis, for California Motor Transport Company and California Motor Express, Ltd.; Donald F. Schaefer, for Modern Delivery Service.

FOR INTERESTED PARTIES

Wilson E. Taylor and Alfred M. Garcia, for Hartford Accident & Indemnity Company; Emerson E. Boiz, for Western Union Telegraph Company; E. O. Blackman, for California Dump Truck Owners; Robert R. Ryan, for Owens-Illinois Glass Company; Eugene A. Read, for California Manufacturers Association; E. J. Langhofer, for San Diego Chamber of Commerce; J. C. Kaspar, A. D. Poe and J. X. Quintrall, for California Trucking Associations; Pillsbury, Madison & Sutro, by Neel Dyer, for Railway Express Agency, Inc.

FOR THE COMMISSION STAFF

Marcel J. Gagnon.

GENERAL ORDER NO. 34-D

(Cancels General Order No. 34-C)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

REGULATIONS GOVERNING THE HANDLING OF COLLECT ON DELIVERY SHIPMENTS AND ACCOUNTING FOR COLLECTION MADE THEREON BY EXPRESS CORPORATIONS, FREIGHT FORWARDERS, HIGHWAY COMMON CARRIERS, PETROLEUM IRREGULAR ROUTE CARRIERS, PASSENGER STAGE CORPORATIONS, CITY CARRIERS, HIGHWAY CONTRACT CARRIERS, HOUSEHOLD GOODS CARRIERS, PETROLEUM CONTRACT CARRIERS AND RADIAL HIGHWAY COMMON CARRIERS.

Adopted April 16, 1963. Effective October 1, 1963. *U.S.*

Decision No. 65244, Case No. 7402.

IT IS ORDERED that:

1. A collect on delivery shipment, hereinafter referred to as a C.O.D. shipment, means a shipment upon which the consignor has attached, as a condition of delivery, the collection of a specific sum or sums of moneys by the carrier making delivery thereon and the return of said moneys to the consignor or other payee designated by the consignor.
2. No express corporation, freight forwarder, highway common carrier, petroleum irregular route carrier, passenger stage corporation, city carrier, highway contract carrier, household goods carrier, petroleum contract carrier or radial highway common carrier as defined in the Public Utilities Code, shall handle C.O.D. shipments unless and until it has on file with the Commission a good and sufficient bond in such form as the Commission may deem proper, in a sum of not less than Two Thousand Dollars (\$2,000). The principal amount of the bond of any particular carrier may be increased from time to time where the Commission finds that the public interest so requires.
3. The bond required by ordering paragraph 2 hereof shall be filed by the carrier as principal and by a qualified surety insurer, authorized to do business in the State of California, as surety, payable to any person or persons to whom any amount may be due on any C.O.D. shipment transported by the carrier and not

remitted to the person or persons to whom it is due within 10 days after delivery of any such C.O.D. shipment; that each bond filed pursuant to the foregoing shall specify the extent to which the carrier's operations are covered thereby; that such a bond may cover more than one operative authority held by the same carrier; that when a carrier with such a bond on file with the Commission obtains additional operative authority, said bond shall be revised or reissued to show whether or not the additional operative authority is covered thereby; and that the name of the carrier's surety company in any bond filed pursuant hereto will be made public by the Commission upon reasonable request therefor.

4. The term of the bond shall include: that any person or persons to whom an amount may be due on any C.O.D. shipment transported by a carrier and not remitted within 10 days after delivery of said shipment may file a claim therefor with the surety; that upon the filing of the claim, the surety shall notify the Commission and the carrier in writing of such filing; that such notification to the Commission shall be addressed to the Public Utilities Commission of the State of California at its office in San Francisco; that suit against the surety shall be commenced within one year after the date the shipment was tendered to the carrier; and that the surety waives any rights it may have under Section 2845 of the Civil Code of the State of California.

5. The bond required herein may be canceled by the surety by written notice to the Public Utilities Commission of the State of California at its office in San Francisco, such cancellation to become effective thirty days after receipt of said notice by the Commission.

6. The bond prescribed herein shall not be required of carriers while engaged as independent-contractor subhaulers; carriers while engaged in transporting property for which rates are provided in Minimum Rate Tariff No. 7; or city carriers operating within lawfully established pickup and delivery limits as agents of a common carrier in the performance for such common carrier of transfer, pickup or delivery services provided for in the lawfully published tariffs of such common carrier.

7. Every express corporation, freight forwarder, highway common carrier, petroleum irregular route carrier, passenger stage corporation, city carrier, highway contract carrier, household goods carrier, petroleum contract carrier and radial highway common carrier handling C.O.D. shipments shall:

- (a) Establish and maintain a separate bank account or accounts wherein all moneys (other than checks or drafts payable to consignor or payee designated by consignor) collected on C.O.D. shipments will be held in trust until remitted to payee, except C.O.D. moneys which are remitted within five days after delivery. ✓
- (b) Establish and maintain a record or records of all C.O.D. shipments in such manner and form as will plainly and readily show the following information with respect to each shipment:
 - (1) Number and date of freight bill.
 - (2) Name and address of consignor or other person designated as payee.
 - (3) Name and address of consignee.
 - (4) Date shipment delivered.
 - (5) Amount of C.O.D. moneys collected.
 - (6) Date C.O.D. moneys remitted.
 - (7) Check number or other identification of remittance to payee.

- (c) Collect the full amount of the C.O.D. moneys at the time C.O.D. shipments are delivered to the consignee and remit all such collections to consignor, or to other persons designated by the consignor on such shipments, promptly and in no event later than 10 days after delivery to the consignee, unless consignor instructs otherwise in writing. All remittances for C.O.D. shipments shall refer to or otherwise identify the C.O.D. shipment or shipments covered by the remittance.
- (d) Not accept checks or drafts (other than certified checks, cashier's checks, or money orders) in payment of C.O.D. charges unless authority has been received from the consignor.
- (e) Except in situations covered by subparagraph (f), notify the consignor immediately if a C.O.D. shipment is refused or cannot be delivered on the carrier's initial attempt. Upon instructions from the consignor the carrier may attempt subsequent deliveries, the charge for each such delivery, or attempted delivery, being determined by the applicable freight charges from carrier's terminal to the point of destination, but in no event less than the rate provided for mileages of less than three miles. The carrier may also return the shipment to the consignor upon his request, subject to a charge equal to the applicable freight charges on the original outbound movement.

(f) While engaged in transporting property for which rates are provided in Minimum Rate Tariff No. 7, notify the consignor immediately if a C.O.D. shipment is refused or cannot be delivered because of circumstances beyond the carrier's control. In the event of such non-delivery, and pursuant to the consignor's instructions, the shipment shall either be returned to the consignor subject to double the outbound freight charges for the round-trip movement, or delivered to another consignee subject to the applicable distance rate, in addition to the original rate, from the point of non-delivery to the new destination.

NOTE: If hourly rates are applicable on deliveries involving C.O.D. shipments, such hourly rates shall supersede the rates provided in this subparagraph (f).

- (g) Not make a C.O.D. shipment part of a split delivery shipment.
- (h) Have recorded on, or appended to, the shipper's copy of its C.O.D. shipping document, the following information:
- (1) That the carrier has on file with the Public Utilities Commission of the State of California a C.O.D. surety bond, with an aggregate liability of not less than \$2,000. ✓
 - (2) That claims arising from failure to remit C.O.D. moneys may be filed directly against the surety company and any suits against the surety must be commenced within one year from the date the shipment was tendered.

- (3) That the name and address of the surety company may be obtained from the Public Utilities Commission, State Building, San Francisco 2, California.

8. No express corporation, freight forwarder, highway common carrier, petroleum irregular route carrier or passenger stage corporation shall handle C.O.D. shipments unless and until such carrier has published and filed tariffs which contain the rates, rules and regulations governing such service, which rules and regulations shall conform to this general order.

9. Every express corporation, freight forwarder, highway common carrier, petroleum irregular route carrier and passenger stage corporation, while acting in the capacity of a delivery carrier on C.O.D. shipments moving in interline service, shall at the time of remittance of the C.O.D. collections to the consignor or payee, notify the originating carrier of such remittance.

10. If, in any particular case, exemption or deviation from any of the requirements herein is deemed necessary by the carrier concerned, the Commission will consider the application of such carrier for such exemption or deviation when accompanied by a full statement of the conditions existing and the reasons why such exemption or deviation is considered necessary.

11. Each express corporation, each freight forwarder, each highway common carrier, each petroleum irregular route carrier and each passenger stage corporation not electing to undertake transportation of C.O.D. shipments may withdraw and cancel its rules, regulations and rates therefor and establish in their stead a tariff provision that C.O.D. shipments will not be accepted; and that each city carrier, each highway contract carrier, each household goods carrier, each petroleum contract carrier and each radial highway common carrier not electing to

undertake transportation of C.O.D. shipments shall be deemed to have given notice of such election by not filing the bond provided for herein for carriers handling such shipments.

General Order No. 84-C is hereby revoked.

This General Order shall become effective October 1, 1963.

Approved and dated at San Francisco, California, this 16th day of April, 1963.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

By
R. J. PAJALICH, Secretary