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Decision No. _____

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
United Parcel Service for exemption)
from or for authority to deviate)
from certain provisions of General)
Order No. 84-D.)

Application No. 45735
(Filed September 3, 1963)
(Amended October 2, 1963)

Roger L. Ramsey, for applicant.
Leonard Diamond, for the Commission staff.

O P I N I O N

By this application United Parcel Service, a corporation, seeks exemption from the requirements of General Order No. 84-D, relating to bonding on C.O.D. shipments and from certain other provisions relating to collection of C.O.D. moneys and handling of C.O.D. shipments. General Order No. 84-D was adopted by the Commission April 16, 1963, and became effective October 1, 1963. Effective February 1, 1964, General Order No. 84-E supersedes General Order No. 84-D. As General Order No. 84-E makes no change in General Order No. 84-D which is material to the issues in this proceeding, the application will be considered as an amended application seeking relief from General Order No. 84-E.¹

A public hearing in this matter was held before Examiner Lane on October 23, 1963, in Los Angeles. Evidence was adduced by applicant (United Parcel) in support of the application. A member of the Commission staff participated extensively in the development of the record. No one appeared in opposition to the granting of the application.

The specific relief sought by applicant is exemption from the bonding requirements of paragraphs 1 through 5 and related provisions of paragraph 7 (h) of the General Order; and authority to

¹ General Order No. 84-E was adopted by the Commission by Decision No. 66552, dated December 27, 1963, in Case No. 7402.

continue current procedures with respect to the acceptance of consignees' checks in payment of C.O.D. amounts and with respect to the handling of refused or undelivered shipments in lieu of those prescribed in paragraphs 7 (d) and (e), respectively.

Applicant is engaged in providing a specialized common carrier parcel delivery service throughout the major part of this State under certificates of public convenience and necessity and a city carrier permit from this Commission. In addition, applicant provides a specialized contract carrier service for a number of retail department stores and retail specialty shops in the San Francisco Bay area, Los Angeles-Long Beach-Pasadena area, San Diego area, and certain other cities and metropolitan areas in California.

According to the testimony of applicant's Assistant Secretary-Treasurer, United Parcel's intrastate common carrier parcel delivery service in California is integrated with its interstate service between California and Arizona. Applicant also provides a specialized delivery service similar to its California service within and between certain other states.

Paragraphs 1 through 5 and 7 (h) of the General Order are related and have specific reference to the C.O.D. surety bond requirements. For the purposes of the relief sought, the salient requirements are contained in paragraph 2 which provides, in part, that no highway common carrier, city carrier or highway contract carrier,

"... 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 Assistant Secretary-Treasurer outlined applicant's procedures for the collection of, accounting for and remission of C.O.D. moneys.

Each of applicant's shippers is provided with books of shipping document forms consecutively numbered in duplicate. Each shipping document provides space for listing 15 separate packages and contains a specific space to identify C.O.D. shipments and to

record the amount of C.O.D. moneys to be collected. In addition to appropriate entries on the shipping document, a special C.O.D. tag is required to be affixed to each package on which C.O.D. moneys are to be collected. The shipments and the shipping documents are taken to a terminal of United Parcel where the shipments are routed to delivery trucks for delivery. The shipping document referred to above, after necessary delivery documents are prepared, is routed to applicant's central accounting office in Los Angeles where accounting is accomplished by electronic data processing equipment.

The delivery driver, upon collecting the amount of C.O.D. moneys due, removes the C.O.D. tag and returns it and the C.O.D. collection to applicant's cashier at one of its terminals. The cashier's record of all C.O.D. money collections received at the terminal and the appropriate C.O.D. tags are dispatched daily to the central accounting office in United Parcel equipment. These records are normally delivered in the central accounting office no later than the morning following the day of collection. If the C.O.D. collection is in cash or check payable to applicant, the moneys are deposited into a special bank account maintained solely for such moneys. Upon receipt of the records in the central office, a voucher is drawn in favor of the shipper, to whom it is mailed or delivered by United Parcel messenger. If the C.O.D. collection is by check payable to the shipper, the cashier at the terminal forwards the check usually not later than the next working day following the day of collection direct to the shipper by mail or United Parcel messenger.

According to the witness, applicant handles more than 2,500,000 C.O.D. shipments each year in California. During the year 1962, applicant collected on C.O.D. shipments and remitted to consignors in California in excess of \$20,000,000. The witness said that so far as is known, no complaint ever has been made to the Commission that United Parcel Service has been found unwilling or

unable to satisfy any legitimate C.O.D. claim.

Applicant's Assistant Secretary-Treasurer stated that applicant is highly solvent as shown in its annual reports on file with the Commission. Moreover, the witness introduced an exhibit which indicated that applicant had total assets as of June 30, 1963 of about \$21,000,000, a surplus of \$11,000,000, and had experienced a net income for the 12-month period ended June 30, 1963 of \$3,298,397.

The C.O.D. bond required by General Order No. 84-E is primarily for the purpose of ensuring that C.O.D. moneys collected by for-hire carriers will be returned promptly and in full to the consignor or his agent. Based upon the evidence, we find that:

1. C.O.D. shipments constitute a large proportion of the total shipments handled by applicant.

2. Applicant, in the regular course of its business, collects C.O.D. moneys well in excess of the amount of the bond of \$2,000 required by General Order No. 84-E.

3. Applicant is in sound financial condition and promptly remits C.O.D. moneys collected by it.

4. A C.O.D. bond is not required of applicant in order to protect the public and ensure prompt remittance of C.O.D. moneys collected by it.

5. The sought exemption from paragraphs 1 through 5 of General Order No. 84-E has been justified.

Paragraph 7 (h) requires that each carrier record on the shipper's copy of a shipping document covering a C.O.D. shipment certain information relating to the filing of the carrier's C.O.D. bond. These requirements are without effect absent the requirements of paragraphs 1 through 5 of the General Order. It logically follows, therefore, that the sought exemption from paragraph 7 (h) of the General Order is also justified.

Applicant also requests exemption from paragraph 7 (e) of General Order No. 84-E, which provides that a carrier handling C.O.D. shipments shall:

"(e) ... 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."

The Assistant Secretary-Treasurer of United Parcel testified that observance of such a rule would require a disruptive departure from the procedure applicant has followed in its California operations for more than 40 years. Applicant's Local Parcel Tariff Cal. P.U.C. No. 16 provides in Items Nos. 180 and 170, respectively:

"Deliveries Attempted Three Times Without Extra Charge. In case the Carrier is unable to make delivery of a package because of the absence of the consignee, a non-delivery notice card will be left at the consignee's address stating that delivery has been attempted. Thereafter a second and, if necessary, a third attempt to deliver the package will be made without additional charge."

"Refused Packages Returned. Packages refused by consignees or which for any other reason cannot be delivered, will be promptly returned to the shipper without additional charge."

Similar provisions are contained in tariffs filed by applicant with the Interstate Commerce Commission covering operations between California and Arizona, and in tariffs of applicant covering similar intrastate or interstate operations in other states. In addition, applicant furnishes a written explanation of service to each of its customers which contains a statement of these rules. Under these rules three attempts on successive business days are made automatically by applicant if necessary to effect delivery of a package. After the third attempt at delivery, undelivered packages are automatically

returned to the shipper. There is no need to get the shipper's permission to make additional attempts at delivery or to return refused or undeliverable shipments, because no separate or additional charge is assessed therefor. This procedure is followed whether or not the shipment is a C.O.D.

The same procedure is followed by applicant in its interstate operations in California and in its operations in other states and allegedly it would be extremely confusing to the users of its service if applicant were required to observe a different set of rules on California intrastate C.O.D. shipments. Moreover, the witness said that actually it is easier and more efficient for applicant to make the extra attempts at delivery and to return refused or undeliverable packages automatically, than to contact the consignor and await special permission.

The provisions of paragraph 7 (e) of General Order No. 84-E are designed to require that the carrier will promptly deliver or return shipments which cannot be delivered upon the initial attempt or shipments which have been refused. The portion of the rule dealing with charges for subsequent deliveries or nondelivery was established so that carriers would be compensated for the additional service performed. Based on the evidence, we find that:

1. Applicant operates a specialized delivery service designed to meet the special needs of its patrons.
2. Three attempts to deliver shipments (including C.O.D. shipments) and free return of undelivered shipments are essential parts of its specialized service.
3. The request for exemption from the provision of Section 7 (e) has been justified.

Applicant, also, asks to be relieved from the provision of paragraph 7 (d) of the General Order which requires that a carrier handling C.O.D. shipments shall:

"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."

Applicant's witness stated that applicant's procedure regarding acceptance of consignees' checks is set forth in its Local Parcel Tariff Cal. P.U.C. No. 16 which provides in Item No. 190:

"Checks -- Acceptance of: Unless instructions to collect cash only are written on the C.O.D. tags accompanying C.O.D. packages, the Carrier will accept checks from consignees in payment of C.O.D's. Such checks, accepted at the risk of the consignor, will be transmitted to the consignor together with the Carrier's own check for amounts collected in cash."

A statement of this rule is contained in the written explanation of service which applicant furnishes to each shipper. In addition, applicant's shipping document makes specific reference to the rule.

Under its procedure, applicant will accept ordinary checks from consignees in payment of C.O.D's. unless the shipper notes on the C.O.D. tag an instruction to collect cash only. Applicant asserts it has followed this same procedure during its many years of intrastate operations in California. In addition, the identical rule applies to its interstate service to and from California, and is observed by applicant and affiliated United Parcel Service companies wherever they operate throughout the country.

According to the witness, to require the shipper to give a specific authorization in each instance before a check or draft, (other than a certified check, cashier's check or money order) may be accepted by United Parcel in payment of a C.O.D., would require a radical departure by applicant from the procedure it has followed uniformly for many years in California and other parts of the country.

The witness stated that on only approximately 5 percent of the more than 2,500,000 C.O.D. shipments it handles annually is applicant instructed by its shippers to collect cash only. Applicant alleges that it would be an unreasonable and unnecessary burden on its shippers to require them to make a notation specifically authorizing acceptance of consignees' checks on 95 percent of the 2½ million C.O.D. shipments they tender to applicant each year, in lieu of noting a "cash only" instruction on but 5 percent of these C.O.D. shipments. It is further alleged that it would be extremely confusing to applicant's employees and shippers if they were required to observe a different rule on California intrastate shipments than applies on other traffic handled by applicant.

Upon consideration of the evidence, the Commission finds that the sought exemption from paragraph 7 (d) is justified.

Based upon the foregoing findings, the Commission concludes that the application, as amended, should be granted.

O R D E R

IT IS ORDERED that Application No. 45735, as amended, is hereby granted.

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

Dated at San Francisco, California, this 9th day of JANUARY, 1969.

[Signature] President
[Signature]
[Signature]
[Signature] Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.