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Decision No. \_\_\_\_\_

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of E. J. McSWEENEY, Agent, for )  
authority to depart from the )  
Requirements of General Order )  
No. 84-D. )

Application No. 45775  
(Filed September 16, 1963)

John MacDonald Smith and E. J. McSweeney, for  
applicants.

C. D. Gilbert, A. D. Poe and J. X. Quintrall, for  
California Trucking Association; Aaron H. Glickman,  
for California Motor Tariff Bureau; J. McSweeney,  
for Delta Lines; Jerome M. Sivesind, for United  
Parcel Service; and Phillip A. Winter, for Delivery  
Service Company; interested parties.

Frank Loughran, in propria persona; interested party.  
John F. Specht, for the Commission staff.

O P I N I O N

This application was heard before Examiner Lane at San Francisco on October 18, 1963, on which date it was submitted.

Applicant, on behalf of all carriers parties to his Local and Joint Freight and Express Tariff No. 1, seeks authority to depart from the provisions of paragraph 7(h) of General Order No. 84-D. That general order prescribes rules for the handling of C.O.D. (Collect on Delivery) shipments and for the collection, accounting and remittance of C.O.D. moneys. It was superseded by General Order No. 84-E, effective February 1, 1964. 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.<sup>1/</sup>

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

Paragraph 7(h) of General Order No. 84-E provides that every express corporation and every highway common carrier (among others) handling C.O.D. shipments shall:

"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, California 94102."

The relief sought is requested in connection with local shipments handled by Pacific Motor Trucking Company and Pacific Motor Transport Company and interline shipments originating on the lines of those carriers and destined to points on the lines of the other carriers parties to the tariff in question.<sup>2/</sup>

Testimony in support of the application was given by a general accountant for Pacific Motor Trucking Company and Pacific Motor Transport Company (hereinafter referred to collectively as PMT) and by applicant, McSweeney. Various interested parties appeared at the hearing. The Commission staff assisted in the development of the record. None of the parties opposed granting of the sought authority.

The general accountant testified, in substance, that PMT is financially sound.

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<sup>2/</sup> The carriers involved are listed in Appendix "A" to the application.

Applicant's testimony relating to the requested relief is summarized below.

The PMT carriers are common carriers by motor vehicle of general freight. They are among the largest of such carriers in California. Each month they serve approximately 30,000 California shippers and transport many times that number of shipments, including C.O.D. shipments. The experience of these carriers in relation to paragraph 7(h) of the general order is exactly the same as other large highway common carriers of general freight.

PMT has found it impractical to print the required information on its bill of lading forms because no uniform bill of lading form has been prescribed by the Commission and because 72 percent of the shipments handled by PMT are tendered on bill of lading forms other than those furnished by PMT to shippers.

PMT has issued written instructions to terminal managers and drivers outlining action to be taken to comply with paragraph 7(h) of the general order. Drivers have been issued gummed labels carrying the information specified in paragraph 7(h). On receipt of a C.O.D. shipment, drivers are instructed to affix one of the labels to the shipper's copy of the bill of lading. The use of rubber stamps was considered for this purpose but rejected in favor of the gummed labels.

During August 1963, PMT handled 129,199 shipments of which 1,158 were C.O.D. shipments involving \$101,932.63 of C.O.D. collections. Because of the number of C.O.D. shipments handled, affixing the gummed labels to shipper's copies of bills of lading is extremely burdensome. Shippers are generally aware that PMT handles C.O.D. shipments under a bond on file with the Commission.

The provisions in question require that the driver stop and annotate the shipper's copy of the bill of lading with resultant increases in operating costs. Moreover, the driver normally is not aware that a C.O.D. is involved when he stops to pick up a shipment. If the driver does not have the stickers with him, and experience indicates that it is unlikely that he will, the driver will have to return to the truck to secure the stickers. This will further increase operating expenses. As the information contained on the sticker is known to most if not all of PMT's shippers, the additional expense is not offset by any advantage to the public.

Based on extensive experience with highway common carrier operations, drivers cannot be relied upon to affix the stickers to the shipper's copies of the bills of lading. The carriers have no way to compel the drivers to do so, thus exposing PMT to possible penalty action by the Commission for violation of its order. Compliance with this requirement cannot be policed as the document which is requisite to a determination that the requirement was or was not met in a particular instance would be in the hands of the consignee and not accessible to either the Commission or the carrier.

Because of PMT's fine record in handling C.O.D. remittances and its stability, the requirement is unnecessary insofar as the carriers are concerned. PMT is financially stable and has been handling C.O.D. shipments without loss to the shipper for many years. There has never been a claim against the C.O.D. bond of PMT. Moreover, in those few instances where PMT has omitted collection of C.O.D. moneys upon delivery it is and has been the policy to make payments to the shipper whether or not PMT subsequently is able to collect the amounts due from the consignee.

Discussion and Conclusion

The record shows that the number of C.O.D. shipments handled by PMT is, in fact, relatively small. Such shipments represent only about 9/10 of one percent of the total number of shipments handled by these carriers. On the basis of the volume of shipments, it cannot be concluded that the requirement to affix or append the required information on the shipper's copy of the bill of lading places any unreasonable burden on these carriers.

The record also shows that applicant is unaware of any instance where drivers have failed to affix the stickers on the bills of lading where required. Nor was the witness aware of any complaints respecting failures of drivers in this respect. The placing of stickers on C.O.D. bills of lading is not fundamentally different from various other functions required of drivers in the normal course of their employment. There is nothing to show that a driver would be more or less reliable in performing one such function than another. The opinion of applicant concerning a driver's reliability in this instance is not persuasive.

With respect to compliance with the Commission order, the responsibility rests with the carrier. The carrier should have no more difficulty in this respect than with other Commission orders. The fact that the Commission may or may not have difficulty in policing its own order is not grounds of itself for relieving a carrier or other party from complying with a Commission order.

It is well established as the rule rather than the exception for carriers to remit C.O.D. moneys promptly and in full. PMT's record in these respects is not unusual.

Based upon the evidence, the Commission finds that the sought authority to depart from paragraph 7(h) of General Order No. 84-E has not been justified.

The Commission concludes that this application should be denied.

O R D E R

IT IS ORDERED that Application No. 45775, as amended, is hereby denied.

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

Dated at San Francisco, California, this 21st day of January, 1964.

William L. Burnett  
President

John E. Mitchell

Walter J. Rago

George B. Dwyer

Fredrick P. Holloff  
Commissioners