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ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 CALIFORNIA MOTOR EXPRESS, LTD. and)
 CALIFORNIA MOTOR TRANSPORT CO., both)
 corporations, for exemption or)
 deviation from the requirements of)
 General Order No. 84-D. }

Application No. 45714
 (Filed August 26, 1963)

O P I N I O N

Applicants are California corporations. California Motor Express, Ltd., is an express corporation operating over the lines of highway common carriers. California Motor Transport Co. is a highway common carrier. Both transport general freight. By this application, they seek authority to be exempted from, or to deviate from, the provisions of paragraphs 7(a) and 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 It was superseded by General Order No. 84-E, effective February 1, 1964.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.^{1/}

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

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

"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."

According to the application, applicants' destination terminal managers are provided with a supply of bank drafts and immediately upon delivery of C.O.D. consignments, the destination manager issues and mails to the shipper or payee designated by the shipper, a draft for the amount of the C.O.D. Under this procedure, C.O.D. funds are not held or retained by the applicants. As a matter of internal accounting, the destination manager offsets his C.O.D. remittance by reference to the draft number when remitting cash collected to applicants' General Accounting Office.

Paragraph 7(a) of General Order No. 84-E does not require a separate bank account in connection with C.O.D. moneys remitted to payee by the carrier within five days after delivery of the shipment. Under the procedures outlined in the application, applicants' C.O.D. collections appear to be remitted within the five-day period. In these circumstances, no relief from paragraph 7(a) of the general order has been shown to be required.

The Commission concludes that the request for relief from paragraph 7(a) of General Order No. 84-E should be dismissed without prejudice.

Paragraph 7(h) of General Order No. 84-E provides that every express corporation and 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."

Applicants allege that compliance with the provisions of paragraph 7(h) of General Order No. 84-E would impose a considerable financial burden and that the provisions are to a considerable degree impractical in applicants' operations. According to the application, applicants employ approximately 700 drivers in pickup service daily throughout the state, and serve thousands of different shippers throughout the year, many of them on a regular basis, many more at varying frequencies, some of them once only, any of whom may, from time to time, ship C.O.D. consignments. Applicants state that it is obvious that to disseminate the information required by paragraph 7(h) of General Order No. 84-E to these thousands of shippers would be burdensome and expensive. Suggestions have been made that the information be included in shipping document forms furnished by the carriers; many shippers print shipping documents for their own use. Another suggestion is the use of rubber stamps by drivers on C.O.D. shipping documents. Assertedly, this type of stamp is expensive and the attrition rate

of loss by drivers would be tremendous, and it would be necessary, if this method were adopted, to verify daily the existence of a stamp in each driver's possession. Applicants assert that shippers generally are familiar with C.O.D. bonding requirements. In addition applicants allege that throughout the years they have handled a tremendous volume of C.O.D.'s to the satisfaction of and without loss to the shipping public.

The requirements of paragraph 7(h) of the general order were established following public hearing and full consideration of the record in Case No. 7402. They were prescribed for the purpose, among others, of insuring insofar as possible that carriers advise shippers specifically of the coverage under the carriers' C.O.D. bonds and the procedures to be followed by shippers to recover in the event of carriers' failure to remit C.O.D. moneys. These are desirable and reasonable requirements for carriers generally. Relief therefrom should be authorized only when it is affirmatively shown that the requirements are unduly burdensome.

A request for similar relief was considered by the Commission, following public hearing, in Application No. 45775. The record in that proceeding shows that the experiences of the usual highway common carriers or express corporations of general freight with respect to paragraph 7(h) are substantially the same. The request for relief in Application No. 45775 was denied by Decision No. 66058 dated today.

The allegations in the instant application are included among those advanced in Application No. 45775, except that relating to an alleged need to notify all potential C.O.D. shippers of the

provisions of paragraph 7(h). Paragraph 7(h) makes no such requirement. What is required is that the carrier transcribe or append the information outlined by the paragraph on the shippers' copies of shipping documents covering actual C.O.D. shipments. The instant application does not show that applicants' operations are unusual or that their experiences under paragraph 7(h) of General Order No. 84-E are significantly different from those of the usual highway common carrier or express corporation operating over the highway and transporting general freight. 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 the application should be denied with respect to the requested authority to depart from the provisions of paragraph 7(h) of General Order No. 84-E.

Applicants submit that this is not a matter on which a public hearing is required. Public hearing would appear to serve no useful purpose. However, to afford applicants an opportunity to seek public hearing if they are of the opinion one is now warranted, provision will be made to stay the order if a written request for a public hearing is made within thirty days from the date hereof.

O R D E R

IT IS ORDERED that Application No. 45714, as amended, is dismissed with respect to the request for authority to depart from the provisions of paragraph 7(a) of General Order No. 84-E, and is denied in all other respects.

The effective date of this order shall be the thirtieth day after the date hereof, unless before such effective date there shall have been filed with this Commission a written request for a public hearing, in which event the effective date of this order shall thereby be stayed until further order of the Commission.

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

William M. Bennett
President

WILLIAM M. BENNETT
President
FRANCIS C. BRITAGE
Commissioner
FREDERICK B. HEDGECOCK
Commissioners

George T. Traver

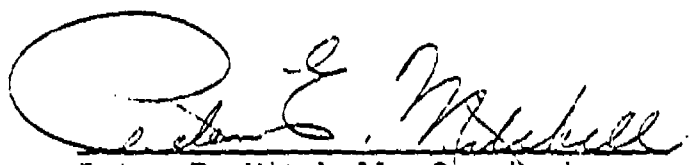
George T. Traver

Fredrick B. Hedgcock
Commissioners

A 45713; ~~A 45714~~; A 45739; A 45740; A 45748; A 45749; A 45757;
A 45767; A 45791; A 45796; A 45812; A 45818; A 45819; A 45850;
A 45869; A 45878; A 45880; A 45896; A 45931.

COMMISSIONER PETER E. MITCHELL dissenting:

I dissent to that portion of this order which denies exemption or deviation from Paragraph 7(a) of General Order No. 84-D. This is consistent with my action in Decision No. 65244, Case No. 7402.


Peter E. Mitchell, Commissioner