

ORIGINAL

Decision No. 66664

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
VALLEY EXPRESS CO., and VALLEY MOTOR)	
LINES, INC., for relief or exemptions,)	Application No. 45748
in part, from the provisions of)	(Filed September 10, 1963)
General Order No. 84-D, as directed)	
by Decision No. 65848, rendered)	
August 6, 1963, in Case No. 5432.)	

O P I N I O N

Applicants are California corporations. Valley Express Co. is an express corporation as defined in Section 219 of the Public Utilities Code, and Valley Motor Lines, Inc., is a highway common carrier as defined in Section 213 of the Code. Both handle 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.¹ 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 It was superseded by General Order No. 84-E, effective February 1, 1964.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.²

¹ Applicants refer to paragraphs 7(a) and 7(g) of Item No. 181 of Minimum Rate Tariff No. 2 which are identical to paragraphs 7(a) and 7(h), respectively, of General Order No. 84-D. Item No. 181 was incorporated in Minimum Rate Tariff No. 2 pursuant to Decision No. 65848, dated August 6, 1963, in Case No. 5432.

² General Order No. 84-E was adopted by the Commission by Decision No. 66552, dated December 27, 1963, in Case No. 7402.

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:

"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."

Applicants state that they handle approximately 6,200 shipments per working day, which includes from 75 to 100 C.O.D. shipments. Applicants allege that although the majority of C.O.D. moneys collected by them are remitted within five calendar days after delivery, there are times when, by reason of a holiday near a weekend, remittances may not be made for six or seven days. They assert that the additional accounting and other expenses that would be involved if a special bank account were established is not warranted by the few instances in which remittances are not made within five calendar days. They further allege that all remittances could be made within five working days and request that they be excused from the provisions of paragraph 7(a) to this extent.

Paragraph 10 of General Order No. 84-E provides that if, in any particular case, exemption or deviation from any of the requirements therein 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.

Applicants' statement of conditions and reasons is not persuasive that deviation from the provisions of paragraph 7(a) of General Order No. 84-E is justified in connection with its

handling of C.O.D. shipments. The Commission finds that exemption from paragraph 7(a) of the general order has not been justified.

Paragraph 7(h) of General Order No. 84-E provides that 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. moncys 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 it is practically impossible to comply with the provisions of paragraph 7(h). They state that the required information could be printed on all shipping documents furnished by them. However, applicants further state that many shippers print their own shipping documents and that applicants have no control over these. They assert that rarely are they informed at the time the call for pickup is received as to whether a shipment is to be C.O.D. and that to attempt to supply information to shippers as required by paragraph 7(h) would be burdensome, costly and impracticable.

Applicants allege that the rules and regulations governing C.O.D. shipments are published in Commission tariffs and tariffs of common carriers which are widely distributed and readily available for the public to inspect. In lieu of being required to comply with the foregoing requirements, applicants request authority to publish the substance of subparagraphs 1, 2 and 3 of paragraph 7(h) of the general order in their tariffs. They also state that they would notify in writing, upon request, any shipper of C.O.D. shipments of the rules and bonding requirements applying in connection with such shipments.

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. 66658, dated today.

The allegations in the instant application are included among those advanced in Application No. 45775. 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 of 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.

Applicants allege that this is not a matter in which a public hearing is necessary. 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. 45748, as amended, is denied.

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.

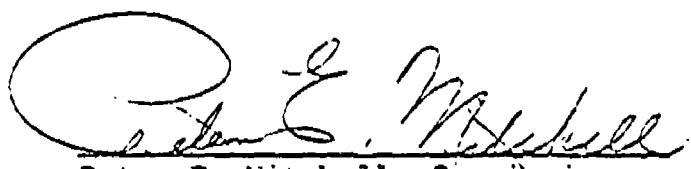
William G. Brundell
President

George T. Hoover
George T. Hoover
Fredrick B. Hallock
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