

ORIGINAL66665
Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 CONSOLIDATED FREIGHTWAYS CORPORATION)
 OF DELAWARE, for exemption or)
 deviation from the requirements of)
 General Order No. 84-D.)

Application No. 45749
 (Filed September 10, 1963)

O P I N I O N

By this application Consolidated Freightways Corporation of Delaware, operating as a highway common carrier of general freight, seeks 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 It was superseded by General Order No. 84-E, effective February 1, 1964.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 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."

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

Applicant alleges that all C.O.D. moneys collected by applicant throughout its system, including the State of California, are remitted to payee through applicant's Central Revenue Accounting Office in Portland, Oregon. It further states that moneys collected on delivery by applicant's California terminals, and the supporting papers, are forwarded to Portland the day after delivery and that Central Revenue Accounting then processes the collections and issues drafts to payees not later than the second day after receipt in the Portland office. Applicant asserts that there are no instances wherein C.O.D. moneys are retained for periods in excess of five days and that the only deviation from this practice is in connection with shipments which cannot be delivered and in these instances the consignee is immediately notified by the delivering terminal.

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 the payee by the carrier within five days after delivery of the shipment. Also, paragraph 7(a) has no application in connection with C.O.D. shipments which have not been delivered. Inasmuch as under applicant's procedure, as outlined in the application, C.O.D. collections are remitted within five days after delivery and the requested relief involves shipments which cannot be delivered, no exemption from the provisions of 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 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."

Applicant alleges that compliance with the provisions of paragraph 7(h) of General Order No. 84-E will subject it to an undue burden and hardship and that such requirement appears to be inconsistent with other provisions of the general order. Applicant states that in order to record the required information on the shipping documents, applicant's pickup and delivery drivers would be required to be supplied with a rubber stamp or a printed statement containing the required information. Either of these methods, it is alleged, would require additional time on the part of applicant's drivers and unnecessarily increase the cost to applicant in performing pickup service.

Applicant submits that its patrons are generally well aware of the C.O.D. bonding requirements. Applicant also asserts that compliance with the provisions of paragraph 7(h) is superfluous in view of applicant's long established practice of remitting C.O.D. collections promptly upon receipt and since it publishes in its tariff a provision identical to paragraph 7(a) of the general order which governs the collection and remittance of C.O.D. moneys.

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 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 applicant's operations are unusual or that its experiences under paragraph 7(h) of General Order No. 84-E are significantly different from those of the usual highway common carrier. 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.

Applicant alleges that this is not a matter in which a public hearing is required. Public hearing would appear to serve

no useful purpose. However, to afford applicant an opportunity to seek public hearing if it is 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. 45749, 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.


Hallam W. Bennett
President

George H. Trover
Fredrick B. Holoboff
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