

Decision No. 66566**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 DELTA LINES, INC., a corporation,)
 for exemption or deviation from the)
 requirements of General Order)
 No. 84-D.)

Application No. 45757
 (Filed September 12, 1963)

O P I N I O N

By this application Delta Lines, Inc., a corporation, 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 It was superseded by General Order No. 84-E, effective February 1, 1964.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 states that it has established and adhered to the policy of remitting C.O.D. moneys Monday, Wednesday, and Friday of each week and that remittances are made within five days after delivery. The only deviation from this practice, it alleges, has been in the case of shipments which cannot be delivered and in such cases the consignor is immediately notified by U.S. Mail. Applicant submits that in the circumstances establishment and maintenance of a separate bank account as provided in paragraph 7(a) of General Order No. 84-E would impose an undue burden upon applicant.

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 shippers' 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 a considerable financial burden and hardship. Applicant states that it employs approximately 500 drivers in pickup service daily throughout the state and that it serves thousands of shippers during the year. It further states that many of its customers regularly ship on a C.O.D. basis while others do so infrequently. To comply with the provisions of paragraph 7(h), applicant asserts, would be burdensome and expensive, would require additional time on the part of applicant's driver employees and would necessitate a constant and never-ceasing driver training program on the part of its supervisory employees. In addition, applicant states that furnishing rubber stamps to drivers would require a continual check to see that each of the 500 drivers had a stamp in his possession and that considerable money would be expended in replacing and stocking such rubber stamps which would increase pickup costs. Applicant also alleges that shippers, in general, are familiar with C.O.D. bonding requirements and that throughout the years it has handled a very large volume of C.O.D. shipments 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 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. 45757, 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.

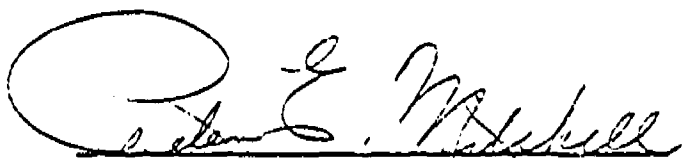
William M. Burnett
President

Robert M. Perry
George L. Grover
Fredrick B. Hollophy
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