

ORIGINALDecision No. 66671

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 FORTIER TRANSPORTATION COMPANY, a)
 corporation, for exemption from)
 certain requirements of General)
 Order No. 84-D.)

Application No. 45812
 (Filed September 27, 1963)

O P I N I O N

By this application Fortier Transportation Company, 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 It was superseded by General Order No. 84-E, effective February 1, 1964.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 alleges that it has always adhered to the policy of remitting C.O.D. moneys within five days from the date collected; that it only deviates from this practice in connection with shipments that it cannot deliver; and that in such cases, the consignor is immediately notified by United States mail. According to the application, compliance with this provision in order to deposit the small amounts which could be involved would require applicant to open multiple bank accounts at each of its many terminal offices. This assertedly would necessitate additional bookkeeping detail and cause applicant to incur the expense incident thereto. Applicant urges that the provisions of paragraph 7(a) would impose an unjustifiable burden and expense upon it.

Paragraph 7(a) has no application in connection with C.O.D. shipments which have not been delivered. Inasmuch as applicant's request for relief involves such shipments only, 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 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 impose a financial burden and hardship upon it. Applicant says that compliance with the provisions of paragraph 7(h) would consume valuable driver time to determine whether or not C.O.D. shipments were being received and, when they were, to prepare additional documentation as required by the order. In addition, it is asserted, the driver supervisors of applicant would be required to maintain constant watch over the drivers to see that the required documentation was provided and to make certain driver employees fully understood what they were supposed to do. Since applicant's drivers handle both interstate and intrastate shipments, the practices would vary with the type of traffic that was picked up. Assertedly, this would cause confusion to applicant's drivers.

Applicant alleges that the great bulk of its customers have full knowledge of the fact that applicant has a bond on file with the Public Utilities Commission and that in the event applicant should default in payment of C.O.D. charges which it collected, the injured party may proceed directly against the bonding company. Applicant further alleges that throughout the many years of its operation, it has handled a large volume of C.O.D. shipments and

has never defaulted in payment nor been subjected to a suit for failure to meet its obligation to remit C.O.D. charges entrusted to it.

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. 6658, 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 a public hearing would serve no useful purpose. Public hearing does not appear to be necessary. However, to afford applicant an opportunity to seek public hearing if it is of the opinion one is now warranted, provisions 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. 45812, 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 L. Bunnell
President

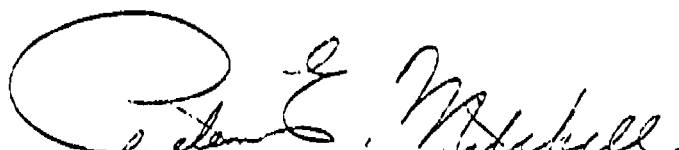
George A. Drower
Fredrick B. Helberoff
Commissioners

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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