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Decision No. 66672

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| In the Matter of the Application of HILLS TRANSPORTATION CO., a corporation for an Order of Exemption from certain provisions of General Order No. 84-D. | Application No. 45818 (Filed September 27, 1963) |

O P I N I O N

By this application Hills Transportation Co., a corporation, operating as a highway common carrier of general freight, seeks authority to be exempted 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 It was superseded by General Order No. 84-E, effective February 1, 1964.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.

In support of its request, applicant alleges that it has handled C.O.D. shipments for many years as a highway common carrier in an efficient and businesslike manner to the complete satisfaction of the patrons using its service. Applicant asserts that it has remitted C.O.D. collections within the five-day period specified in General Order No. 84-E in every known instance. It further asserts that it hesitates, however, to go to the expense and burden of maintaining a separate account merely for the purpose of avoiding an unintentional and technical violation of General Order No. 84-E, paragraph 7(a) which might possibly occur in the event of an injury or other catastrophe involving applicant's driver who had made collection of C.O.D. moneys but had not yet been able to advise applicant's accounting office thereof.

Applicant's statement of conditions and reasons for the sought exemption is based primarily upon conjecture that at some unspecified time it possibly may violate the provisions of paragraph 7(a) through inadvertence. We find that the showing made by applicant does not support the granting of the sought exemption from the provisions of the general order in question.

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 all of the shippers using its service for the transportation of C.O.D. shipments are aware that applicant has a surety bond on file with the Commission, that claims may be filed directly with the surety company and that the Commission will, pursuant to their request, advise them of the name and address of applicant's surety company. The endorsement of shipper's copy of each shipping document in the manner prescribed in General Order No. 84-E, paragraph 7(h) would therefore accomplish no useful purpose. Applicant also asserts that unless relief from paragraph 7(h) of General Order No. 84-E is granted, applicant may well find itself in a position where it has unintentionally violated the general order by failing in a single instance to record on or append to the shipper's copy of the shipping document the required information. This would expose applicant to the possibility or probability of imposition of fines, suspension or revocation of operating authority.

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.

Applicant requests that an ex parte order be issued. 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. 45818, as amended, is hereby 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 M. Bennett
President

WILLIAM M. BENNETT
President
EVERETT C. McKEAGE
GEORGE G. GROVER
FREDERICK B. HOLOBOFF
Commissioners

George G. Grover

Frederick 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