

ORIGINALDecision No. 66675

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 PACIFIC INTERMOUNTAIN EXPRESS CO.,)
 a corporation, for exemption or)
 deviation from the requirements of)
 General Order No. 84-D. }

Application No. 45869
 (Filed October 16, 1963)

O P I N I O N

By this application Pacific Intermountain Express Co., 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 It was superseded by General Order No. 84-E, effective February 1, 1964.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 its stations throughout California are required by company policy to remit C.O.D. moneys to the consignor on the same day of collection or, when the late hour of collection prohibits remittance on the same day, on the next regular working day. According to the application, C.O.D. moneys collected and deposited by applicant must, by company policy and directive, be off-set by disbursement draft to consignor or designated payee in an equal amount on the same day deposited. By this process, applicant says, a daily balance of C.O.D. collections and disbursements is accomplished and remittance is forwarded to consignor or payee within 24 hours of collection, with the exception of late-hour collections on Friday, which are remitted on the next regular working day.

Applicant submits that in view of these circumstances, maintenance of a separate bank account in compliance with paragraph 7(a) of General Order No. 84-E imposes an undue burden upon applicant in additional banking costs and the expense of training personnel, continually, in the procedures necessary to be followed when and if the occasion should arise that a C.O.D. collection could not be remitted within five days after delivery.

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. Under applicant's procedures, as outlined in the application, its C.O.D. collections appear to be remitted within five days after delivery of C.O.D. shipments. Under these circumstances, 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 subject it to an undue burden. Applicant says that in order to record the required information on the shipping documents, applicant's 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 time consuming and costly training of personnel in addition to time lost by drivers picking up C.O.D. shipments.

Applicant further alleges that it employs approximately 288 drivers who perform pickup service daily throughout the state,

serving thousands of shippers throughout the year on a regular or frequent basis, any of whom may, from time to time, ship intrastate C.O.D. shipments intermingled with C.O.D. interstate shipments on which certification of C.O.D. bond is not required. According to applicant, driver personnel must be instructed almost daily of the certification requirements to be applied on shipper documents for intrastate shipments and not on interstate shipments.

Applicant asserts that shippers generally are familiar with C.O.D. bonding requirements and applicant, throughout the years, has handled an undetermined volume of C.O.D. shipments to the satisfaction of, and without loss to, its shipping public. In lieu of inserting the required information on the shippers' copies of bills of lading, applicant is willing to establish a C.O.D. bond of \$20,000.00 or more.

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. 65358, 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. 45869, 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 31st day of January, 1964.

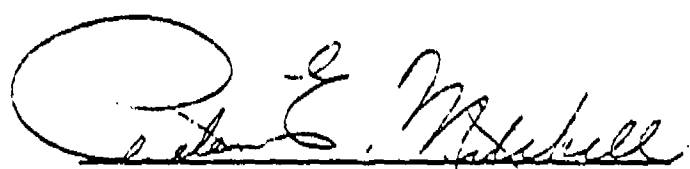
William L. Bennett
President

Robert W. Page
George H. Hoover
Fredrick B. Hulshoff
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