

Decision No. 66677**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 FRANK E. WILLS and GEORGE A. )  
 SCHIMMELPFENNIG, a copartnership, )  
 doing business as WILLS DELIVERY )  
 SERVICE, for exemption or deviation )  
 from certain requirements of General )  
 Order No. 84-D. )

Application No. 45879  
 (Filed October 13, 1963)

O P I N I O N

Applicants, a copartnership, operate as a highway common carrier of furnaces, stoves, refrigerators, electrical appliances and equipment, machinery, and related articles between certain points in the Counties of Alameda, Contra Costa, San Francisco, San Mateo and Santa Clara. By this application they seek authority to be exempted from, or to deviate from, the provisions of paragraph 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 It was superseded by General Order No. 84-E, effective February 1, 1964.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.<sup>1/</sup>

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

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."

Applicants allege that compliance with the provisions of paragraph 7(h) of General Order No. 84-E will impose a hardship and undue burden on them and that, as a practical matter, compliance is not possible in all cases. They state that the required information could be printed on all shipping documents furnished by them. However, applicants further state that in those instances where the shipper prepares the shipping document on its own form, it would be necessary to furnish applicants' drivers with printed statements or rubber stamps including the required information to be attached to or stamped on such document. Either of these methods, it is alleged, would require additional time on the part of applicants' drivers and unnecessarily increase the cost to applicants in performing pickup service.

In lieu of being required to comply with the foregoing requirements, applicants request authority to publish the provisions set forth in General Order No. 84-E in their tariff. Applicants

assert that publication of the proposed tariff provision would constitute appropriate notice to the public of the duties and responsibilities of the carrier in connection with C.O.D. shipments.

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. 66858, dated today.

The allegations in the instant application are included among those advanced in Application No. 45775. The instant application does not show that applicants' operations are unusual or that their 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.

Applicants allege 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 applicants an opportunity to seek public hearing if they are 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. 45879, as amended, is 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 21<sup>st</sup> day of JANUARY, 1964.

Hollis W. Bennett  
President

Robert J. Reag

George H. Trover

Fredrick B. Halaloff  
Commissioners