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ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 MERCHANTS EXPRESS OF CALIFORNIA, a)
 corporation, for exemption or)
 deviation from the requirements of)
 General Order No. 84-D.)

Application No. 45740
 (Filed September 4, 1963)

O P I N I O N

By this application Merchants Express of California, 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 It was superseded by General Order No. 84-E, effective February 1, 1964.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 although the majority of C.O.D. moneys collected by it are remitted within three business days after delivery, there are times when, by reason of legal holidays, remittances cannot be made within the five-day period specified.

Applicant states that it operates 16 terminals and 2 sub-terminals located throughout the State. All C.O.D. moneys collected by the terminals or by carrier employees operating out of such terminals are deposited each day in the local branch of a state-wide bank in the city in which the terminal is located, for credit to applicant's account at the bank's office in San Francisco. At the time of deposit the bank is informed of the exact amount of the C.O.D. funds included in each deposit, and although commingled with other funds of applicant, applicant asserts that it and its bank are at all times in possession of information as to the amount of C.O.D. funds deposited.

According to the application, advice of the amounts deposited in the branch banks by each terminal is teletyped each day to applicant's general office in San Francisco and whenever a deposit includes C.O.D. funds, all information necessary to identify applicant's freight bill, the names of the consignee and consignor, together with the name of the payee designated by consignor if the C.O.D. funds are to be paid to a party other than the consignor, and the amount of the C.O.D. funds collected are recorded by means of electronic data processing equipment. Checks in payment of C.O.D. moneys collected are issued by applicant's general office in San Francisco no later than the third business day after the date of collection and such checks are designated "C.O.D. Account". By reason of intervening Saturdays and Sundays applicant is unable to remit some of such C.O.D. funds until the fourth or fifth day following collection.

Applicant alleges that in the event of a holiday falling on a Friday or Monday, including holidays which fall on a Sunday and the following Monday is observed as the holiday, it would, in conformity with paragraph 7(a) of General Order No. 84-E, be required to establish a separate bank account in which to deposit C.O.D. moneys because of the relatively infrequent occasions when it is unable to remit C.O.D. funds within five days after delivery.

Applicant submits that under such circumstances the establishment of a separate bank account in which to deposit C.O.D. moneys which cannot be remitted within five days after delivery will be and is unduly burdensome and unreasonable when considered in relation to the procedure which it has, of its own volition, established for the prompt payment of all C.O.D. moneys it collects.

Paragraph 10 of General Order 84-E provides that if, in any particular case, exemption or deviation from any of the requirements therein is deemed necessary by the carrier concerned, the Commission will consider the application of such carrier for such exemption or deviation when accompanied by a full statement of the conditions existing and the reasons why such exemption or deviation is considered necessary.

Applicant's statement of conditions and reasons is not persuasive that deviation from the provision of paragraph 7(a) of General Order No. 84-E is justified in connection with its handling of C.O.D. shipments. The Commission finds that exemption from paragraph 7(a) of the general order has not been justified.

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 the general order 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 additional time on the part of applicant's drivers and unnecessarily increase the cost to applicant in performing pickup service.

In lieu of being required to comply with the foregoing requirements, applicant requests authority to publish the substance of subparagraphs 1, 2 and 3 of paragraph 7(h) of the general order in its tariffs.

In this connection, applicant asserts that publication of the proposed tariff provision would constitute appropriate notice to the public and should thus obviate any need to record or append similar information on or to the shipper's copy of the C.O.D. shipping document. Since applicant is a common carrier, and is required by law to publish and file a tariff or tariffs naming all the rates, charges and rules pertaining to the services which it is authorized to provide, it alleges that the publication of the proposed note in its tariff will in reality be a far more appropriate form of notice to the public than if attached to or stamped upon the bill of lading. Applicant further submits that shipping documents (bills of lading) are prepared by shippers on forms which they generally provide and, that, invariably, there is not sufficient space on the bill of lading form to permit recording thereon the information which the Commission has prescribed.

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 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.

ORDER

IT IS ORDERED that Application No. 45740, 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 21st day of January, 1964.

William W. Bennett
President

George W. Rye

George T. Grover

Commissioners

In this case, I would grant the sought
exemption from the requirements of paragraph 7(a).
I concur otherwise.

Frederick B. Holdhoff,
Commissioner.

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