

ORIGINAL

Decision No. 67090

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
EDWIN C. BENNETT, an individual,)
doing business as ACE DELIVERY)
SERVICE, for exemption from, or for)
authority to deviate from, certain)
provisions of General Order No.)
84-D.)

Application No. 45786
(Filed September 18, 1963)

E. H. Griffiths, for applicant.

Arthur F. Burns, for the
Commission staff.

O P I N I O N

Edwin C. Bennett, an individual doing business as Ace Delivery Service, is authorized to operate as a city carrier within the City and County of San Francisco and as a highway contract carrier. He is engaged in the transportation of parcels, under contract, in shipments less than 100 pounds, from wholesalers and commercial distributors located in San Francisco to various merchants, retail stores and other consignees in San Francisco, Daly City and Westlake.^{1/} By this application he seeks an exemption from the provisions of paragraphs 7(e) and 7(h) of General Order No. 84-E.^{2/} The general order prescribes rules for the handling of

^{1/} Applicant occasionally transports shipments from San Francisco to one consignee in the East Bay. Such shipments are not handled on a C.O.D. basis, and this transportation is not involved in the application.

^{2/} General Order No. 84-E, adopted February 1, 1964 by Decision No. 66552, dated December 27, 1963 in Case No. 7402, superseded General Order No. 84-D. The application, initially filed seeking relief from General Order No. 84-D, was orally amended at the hearing to seek relief from General Order No. 84-E. The provisions of paragraphs 7(e) and 7(h) of both general orders are identical insofar as this application is concerned.

C.O.D. (Collect on Delivery) shipments and for the collection, accounting and remittance of C.O.D. moneys.

Public hearing in this matter was held in San Francisco on February 7, 1964, before Examiner Mooney, at which time the matter was submitted. Evidence was introduced in support of the sought exemption through applicant. The Commission staff assisted in the development of the record. No one opposed the granting of the application.

Applicant testified that he has been in business for over 10 years and that he performs a specialized parcel delivery service. He stated that he operates six three-quarter ton walk-in van trucks over five routes which are served daily. He further testified that he handles approximately 1,800 shipments per week, of which approximately 100 are C.O.D. shipments; that the average weight per shipment is 20 pounds and many do not exceed one to three pounds in weight; and that 75 percent of all C.O.D. shipments handled are under \$10 in value. He also stated that he serves approximately 22 shippers; that he has a written contract with each shipper; and that the majority of the shippers are beauty supply companies and the remainder are suppliers of phonograph records, TV and radio parts and similar commodities.

Paragraph 7(e) of General Order No. 84-E provides that highway contract carriers and city carriers, among others, shall:

"...notify the consignor immediately if a C.O.D. shipment is refused or cannot be delivered on the carrier's initial attempt. Upon instructions from the consignor the carrier may attempt subsequent deliveries, the charge for each such delivery, or attempted delivery, being determined by the applicable freight charges from carrier's terminal to the point of destination, but in no event less than the rate provided for mileages of less than three miles. The carrier may also return the shipment to the consignor upon his request, subject to a charge equal to the applicable freight charges on the original outbound movement."

According to the evidence, applicant makes three attempts to effect delivery of a C.O.D. shipment on successive business days, where necessary, and if the third attempt is unsuccessful, the shipment is returned to the shipper. This service and the return of refused shipments is performed without additional charge and is provided for in the written contract which applicant has with each shipper, as follows:

**"DELIVERIES ATTEMPTED THREE TIMES WITHOUT
EXTRA CHARGE**

In case the Delivery Company is unable to make delivery of a package because of the absence of the Merchant's customer, a non-delivery notice card will be left at the customer's address stating that delivery has been attempted. Thereafter a second and, if necessary, a third attempt to deliver the package will be made without additional charge.

"REFUSED PACKAGES RETURNED FREE

Packages refused by customers, or which for any other reason cannot be delivered, will be promptly returned to the Merchant without additional charge."

Applicant testified that occasionally it is necessary to make additional delivery attempts or return C.O.D. shipments if the consignee is not available or refuses the shipment. He stated that the value of the average C.O.D. shipment is not sufficient to warrant additional transportation charges for this service and that if applicant were required to make a charge, most of the traffic handled by applicant would be shifted to proprietary means of transportation. In this connection, he asserted, salesmen employed by the shippers have station wagons and now make many of the deliveries themselves. He alleged that no special trip or handling is required for the subsequent delivery or return of shipments because each consignee and shipper is served a number of times each week and the subsequent delivery or return can be made on the next regular call.

Applicant further testified that United Parcel Service was granted similar relief to that herein sought and that he is in competition with United Parcel Service.^{3/}

Paragraph 7(h) of the general order requires that applicant when 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 2, California."

Applicant alleges that over a period of time he has developed a workable streamlined system of documentation, which system is used uniformly for all shippers. Under this system applicant provides all shippers with books of shipping documents. The books contain an original and duplicate copy of each document. Each set of original and duplicate copy is consecutively numbered. The documents are made out by the shipper. Each document provides for the entry of 20 separate parcel shipments and includes space to identify C.O.D. shipments and to record the amount of C.O.D. moneys to be collected. The original is removed from the book and given to the driver at time of pickup. The duplicate copy is the shipper's permanent record and remains in the book.

^{3/} United Parcel Service was granted relief from paragraph 7(c) similar to that herein sought by Decision No. 66574, dated January 7, 1964, in Application No. 45735.

Applicant alleges that should he be required to comply with the provisions of Section 7(h) of the general order he would be presented with problems which would affect his present efficient operation; that the documents do not allow sufficient space for recording the wording of paragraph 7(h); and that to include the wording would result in a complete revision of applicant's present documentary system, both as to size of paper and size of filing facilities which are designed for the present size of records.

Applicant proposes to mail to each of his customers a letter advising them of the information set forth in paragraph 7(h) of the general order in lieu of including such information on the shipper's copy of the shipping document. It developed at the hearing that as an alternative, the required information could be printed or stamped on or affixed to the inside cover of each book of shipping documents. This, it further developed, would be a more prominent place than having it printed on the shipper's copy of the shipping document.

Based on the evidence, we find that:

1. Applicant operates a specialized delivery service for the transportation of parcels from wholesalers and commercial distributors located in San Francisco to various merchants, retail stores and other consignees in San Francisco, Daly City and Westlake.
2. An essential part of this service is that applicant make three attempts to deliver shipments (including C.O.D. shipments) and return undelivered and refused shipments without specific instructions or additional charge as provided in the written contract that applicant has with each shipper.
3. Applicant should be relieved from complying with paragraph 7(e) of General Order No. 84-E to the extent described in Finding 2.

4. Notifying shippers by letter of the information required by paragraph 7(h) of General Order No. 84-E to be included on the shipper's copy of shipping documents is not an acceptable substitute for the general order requirements.

5. Printing, stamping or affixing the information required by paragraph 7(h) of General Order No. 84-E on or to the inside cover of the books of shipping documents furnished by applicant to shippers will give the type of notice contemplated by the general order.

6. Applicant should be relieved from complying with the requirements of paragraph 7(h) of General Order No. 84-E in the manner described in Finding 5.

The Commission concludes that the application should be granted to the extent set forth in the ensuing order and that in other respects it should be denied.

O R D E R

IT IS ORDERED that:

1. Edwin C. Bennett, an individual doing business as Ace Delivery Service, is authorized in connection with C.O.D. shipments weighing 100 pounds or less transported under written contracts from wholesalers and commercial distributors in San Francisco to consignees in San Francisco, Daly City and Westlake to:

- (a) Deviate from the requirements of paragraph 7(e) of General Order No. 84-E to the extent that he may attempt delivery of a shipment three times without special instructions or additional charge and may return refused or undelivered shipment to shippers without additional charge.
- (b) Deviate from the provisions of paragraph 7(h) of General Order No. 84-E to the extent that he may print, stamp or affix the information required by said paragraph 7(h) on or to the inside cover

of books of shipping documents he furnishes to his shippers in lieu of printing or affixing such information on the duplicate copy of each shipping document retained by the shipper in said books.

2. In all other respects, Application No. 45786, as amended, is denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 14th day of APRIL, 1964.

William W. Bennett
President

John E. B. ...

Robert W. ...

George H. Trover

Frederick B. Holcomb
Commissioners