

ORIGINAL

Decision No. 67729

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In The Matter of The Application
of DELIVERY SERVICE COMPANY for
Exemption from General Order 84-D. }

Application No. 45779
(Filed September 17, 1963)

Philip A. Winter, for applicant.

Arthur F. Burns, for the Commission staff.

O P I N I O N

Delivery Service Company, a corporation, is authorized to operate as a highway common carrier, radial highway common carrier, highway contract carrier and city carrier. It transports parcels weighing not over 100 pounds within the East Bay Drayage Area and parts of Solano, Contra Costa and Alameda Counties. By this application, as amended, it seeks, in connection with its parcel delivery service, an exemption from the provisions of subparagraphs (a), ^{1/}(b), (c), (d), (e) and (h) of paragraph 7 of General Order No. 84-E. The 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.

1/ General Order No. 84-E, adopted February 1, 1964 by Decision No. 66552, dated December 27, 1963 in Case No. 7402, superseded General Order No. 84-D. The application, initially filed seeking relief from General Order No. 84-D, was orally amended at the hearing to seek relief from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 the two general orders are identical insofar as this application is concerned.

A public hearing in this matter was held in San Francisco before Examiner Mooney on February 5, 1964, at which time the matter was submitted. Evidence in support of the sought authority was presented by applicant's auditor, executive vice president and office manager. The Commission staff assisted in the development of the record. The granting of the application was not opposed.

The record shows that applicant has been in business since 1922 and that it performs a specialized parcel delivery service. It serves wholesalers, retailers and other customers and has separate tariffs for each phase of its operation.^{2/} In addition, a small portion of its retail drug delivery service to outlying areas is performed under contract. Applicant operates numerous pickup and delivery routes and employs 33 drivers. Customers in the East Bay cities are served three times a day, and customers in the outlying cities are served twice daily. After pickup, shipments are brought to the carrier's terminal where they are immediately sorted according to the delivery route on which the consignee is located and are sent out on the next delivery on that route.

The record further shows that applicant serves approximately 150 regular customers and only infrequently serves occasional shippers; that an average of 8,000 packages are delivered for wholesale customers and 1,700 for retail customers each week; and that wholesale deliveries average from 15 to 25 pounds in weight, and most retail deliveries, such as drug prescriptions, have very little weight.

^{2/} Applicant has the following tariffs on file with the Commission: Tariffs Nos. 6 and 8 which govern deliveries for retailers and for wholesalers and business establishments, respectively, between and within Alameda, Oakland, Piedmont, Emeryville, Berkeley, Albany and El Cerrito; and Tariff No. 9 which governs deliveries between wholesalers, businesses, schools and the like from the aforementioned East Bay cities to certain outlying cities in Solano, Contra Costa and Alameda Counties.

The office manager presented an exhibit in which was tabulated the volume of C.O.D. shipments and collections handled by applicant for the weeks ending September 6, 1963 and January 31, 1964. The witness testified that the two weeks selected were representative of applicant's experience in handling C.O.D. shipments. According to the exhibit, applicant handles approximately 650 C.O.D. shipments and \$9,000 in C.O.D. collections per week. The average collection is approximately \$14. About 60 percent of the C.O.D. shipments are from retail stores to retail customers, and the average collection for such shipments is \$6. The average C.O.D. collection on shipments between wholesalers and other businesses is \$28. Of the total collections on C.O.D. shipments, checks payable to the consignor account for over 40 percent, and the balance is in cash.

Paragraph 7(a) of General Order No. 84-E provides that highway common carriers, radial highway common carriers, highway contract carriers and city carriers (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."

The office manager testified that all C.O.D. collections made during the week are remitted to each consignor or the payee designated by the consignor on Wednesday of the following week. If Wednesday is a holiday, remittance is made on the next day. A memorandum showing the shipping document number, name of consignee and C.O.D. amount for each collection made together with consignee's checks payable to the consignor or party designated and the applicant's check to cover cash collections are placed in an envelope. The amount

of consignee's checks, applicant's check and the total remittance are recorded on the lower half of the envelope. The remittance memoranda and envelopes are prepared on Monday and Tuesday and are sent out on Wednesday. At the request of one shipper, the remittance envelope is mailed to it. For all other shippers, the envelopes are delivered by applicant's drivers. The top half of the envelope, which is signed by the payee and shows the amount and date of remittance, is torn off and returned to applicant and is its record that remittance has been made.

The vice president and the office manager testified as follows: applicant's present system of remitting C.O.D. collections has been in use for over 10 years; it has proved to be efficient and economical; no problems or losses have been experienced in connection with it. It was alleged that if applicant were required to maintain a separate bank account for all C.O.D. moneys not remitted within five days after delivery, applicant's procedure for handling C.O.D. shipments would become cumbersome; its check costs and bank service charge costs would be substantially increased; and it would be necessary to hire additional personnel to perform the added accounting and clerical duties that would be required, thus further increasing operating costs.

Paragraph 7(b) of the general order requires that applicant, when handling C.O.D. shipments, shall:

"Establish and maintain a record or records of all C.O.D. shipments in such manner and form as will plainly and readily show the following information with respect to each shipment:

- (1) Number and date of freight bill.
- (2) Name and address of consignor or other person designated as payee.
- (3) Name and address of consignee.
- (4) Date shipment delivered.
- (5) Amount of C.O.D. moneys collected.
- (6) Date C.O.D. moneys remitted.
- (7) Check number or other identification of remittance to payee."

The office manager testified that the records maintained by applicant include all information listed in paragraph 7(b) except the date of delivery as required by subsection (4) thereof. He stated that shipments are generally delivered on the same day as the date shown on the shipping document unless the consignee is not available to accept delivery and a call back on the following day is necessary.

The witness further testified that each shipping document is consecutively numbered and shows the consignor, consignee and C.O.D. amount; that each day applicant posts the shipping document number, consignee's name and amount collected for each C.O.D. shipment to the remittance tag for each shipper and also posts the number of C.O.D. shipments in the journal maintained for each consignor; and that from these records, it is determined each week the total amount of cash C.O.D. collections that have been made for each consignor and a check for the requisite amount is sent to the consignor or party designated. All shipping documents are bundled in groups according to date and shipper with the C.O.D. documents at the back of the bundle.

The office manager stated that applicant's system of record keeping has been used for many years and is ideal for the type of operation it performs; that any inquiries regarding C.O.D. shipments can be speedily and easily traced; and that to set up an additional new set of records that would include all information listed in paragraph 7(b) would increase labor and other costs.

Under paragraph 7(c) of the general order, applicant is required, when handling C.O.D. shipments, to:

"Collect the full amount of the C.O.D. moneys at the time C.O.D. shipments are delivered to the consignee and remit all such collections to consignor, or to other persons designated by the consignor on such shipments, promptly and in no event later than 10 days after delivery to the consignee, unless consignor instructs otherwise in writing. All remittances for C.O.D. shipments shall refer to or otherwise identify the C.O.D. shipment or shipments covered by the remittance."

The vice president and the office manager testified that the shipping document is prepared by the consignor; that the document includes space to fill in the amount if the shipment is a C.O.D. and a box labeled "O.K." which is to be checked by the shipper if the driver is authorized to deliver the shipment in the event the C.O.D. amount cannot be collected; and that the document also includes a box labeled "Charge" which is to be checked by the consignor if the shipment is not a C.O.D.

According to the testimony of the witnesses, when "O.K." has not been checked and the consignee claims the C.O.D. instructions on the document are in error, the driver immediately telephones the consignor for verification. If the consignor approves the change in instructions from a C.O.D. to a "Charge" shipment, the verbal authorization is noted on the shipping document and also on the remittance memorandum which provides a written record for all parties.

It was alleged that applicant has built up its business by showing that it can perform delivery services for its customers faster and cheaper than the customer could and that if applicant cannot meet these standards, the transportation it performs will be lost to proprietary transportation. It was further alleged that if applicant were required to comply with paragraph 7(c) and obtain written authorization from the consignor before changing the instructions on a shipment from C.O.D. to "Charge", it would not be able to give the expedited service demanded by its customers, and its cost of performing the service would be increased. The record points out that no problems have ever been encountered with the procedure followed by applicant.

Paragraph 7(d) of the general order requires that applicant, when handling C.O.D. shipments, shall:

"Not accept checks or drafts (other than certified checks, cashier's checks, or money orders) in payment of C.O.D. charges unless authority has been received from the consignor."

The vice president and the office manager testified that it is applicant's procedure to accept checks on all C.O.D. shipments unless the consignor has notified it not to accept checks, or not to accept checks from particular consignees; that the list of such consignors and consignees is small and is carried by the driver; that if a check is not to be accepted on a particular shipment, it is noted on the delivery tag; that the drivers have never failed to follow such instructions; that no loss has ever occurred; and that applicant is competing with proprietary operations in which checks are usually accepted.

Applicant is required by paragraph 7(e) of the general order, when handling C.O.D. shipments, to:

". . . 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."

The office manager testified that applicant's tariffs provide that three attempts shall be made to deliver C.O.D. shipments, where necessary, and if the third attempt is unsuccessful, the shipment is to be returned to the shipper without additional charge; that charges in applicant's tariff are on a per parcel basis from

the consignor to the consignee, and it is not possible to calculate an extra charge for additional delivery attempts; that United Parcel Service was granted similar relief to that herein sought from paragraph 7(e); ^{3/} and applicant is in competition with United Parcel Service.

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 it 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 (original and duplicate copy) is consecutively numbered. The documents are made out by the shipper. Each document provides 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/} Decision No. 66574 dated January 7, 1964, in Application No. 45735, unreported.

Applicant alleges that should it be required to comply with the provisions of paragraph 7(h) of the general order it would be presented with problems which would affect its 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.

It was proposed in the application that each customer be advised in writing of the provisions of 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 weighing not over 100 pounds for wholesalers, retailers and other similar customers within the East Bay Drayage Area and parts of Solano, Contra Costa and Alameda Counties.
2. Applicant's system for handling C.O.D. shipments is designed to meet the requirements of its customers for an expedited parcel delivery service.
3. Applicant's present accounting and banking systems, collection and remittance procedures and policy of accepting checks from consignees for C.O.D. shipments have been in effect for over ten years. No complaints have been received from customers and no financial losses have occurred during this period.

4. An essential part of applicant's parcel delivery service is that it make three attempts to deliver shipments (including C.O.D. shipments) and return undelivered and refused shipments without specific instructions or additional charge.

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.

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.

Except to the extent that deviations are authorized herein, applicant is placed on notice that paragraph 8 of General Order No. 84-E requires that tariff rules governing C.O.D. shipments in its common carrier tariffs conform to the general order.

ORDER

IT IS ORDERED that:

1. Delivery Service Company, a corporation, is authorized in connection with C.O.D. shipments weighing 100 pounds or less to deviate from the following subparagraphs of paragraph 7 of General Order No. 84-E to the extent authorized herein:

- (a) Deviate from the requirements of subparagraph (a) to the extent that it may remit C.O.D. moneys collected during one week to the designated payee thereof on Wednesday (Thursday if Wednesday is a holiday) of the following week without the necessity of establishing a separate bank account for holding such funds in trust until remittance has been made to the designated payee.
- (b) Deviate from the provisions of subparagraph (b) to the extent that it may be excused from showing the date on which a C.O.D. shipment was delivered in its records of C.O.D. shipments.
- (c) Deviate from the provisions of subparagraph (c) to the extent that it may deliver C.O.D. shipments without collecting the C.O.D. amount upon receipt of verbal authorization by telephone from the shipper to do so and noting said authorization on the shipping document.

- (d) Deviate from the provisions of subparagraph (d) to the extent that it may accept checks or drafts in payment of C.O.D. charges without authority from the consignor.
- (e) Deviate from the requirements of subparagraph (e) to the extent that it may attempt delivery of a shipment three times without special instructions or additional charge and may return refused or undelivered shipments to shippers without additional charge.
- (f) Deviate from the provisions of subparagraph (h) to the extent that it may print, stamp, or affix the information required by said subparagraph (h) on or to the inside cover of books of shipping documents it furnishes to its 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. Tariff publications authorized to be made as a result of the order in paragraph 1 above may be made effective not earlier than ten days after the effective date hereof and on not less than ten days' notice to the Commission and to the public.

3. In all other respects, Application No. 45779, as amended, is denied.

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

Dated at San Francisco, California, this 18th day of August, 1964.

Frederick B. Halaloff
President

George L. Thayer
Commissioners

William M. Bennett
Commissioners