

ORIGINAL

Decision No. 68779

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into the rules and regulations for the handling of C.O.D. shipments and collection, accounting and remittance of C.O.D. moneys by Express Corporations, Freight Forwarders, Highway Common Carriers, Petroleum Irregular Route Carriers, Passenger Stage Corporations, Cement Carriers, City Carriers, Highway Contract Carriers, Household Goods Carriers, Petroleum Contract Carriers, Radial Highway Common Carriers and Cement Contract Carriers.

Case No. 7402
(Petition for Modification
of Decision No. 65244
and Decision No. 66552)
(Filed March 19, 1964)

A. D. Poe, C. D. Gilbert and E. F. Kollmyer,
for petitioner.

Robert C. Ellis, W. N. Greenham, F. S. Kohles,
John McSweeney; Pillsbury, Madison & Sutro,
by Dudley A. Zinke; and Roger L. Ramsey, for
various carrier respondents.

John F. Specht, for the Commission staff.

O P I N I O N

This petition was heard before Examiner Lane at San Francisco on May 22, 1964, on which date it was submitted. Copies of the petition were served upon all appearances listed in Appendix A to Decision No. 65244 dated April 16, 1963 in this proceeding (60 Cal. P.U.C. 737) and upon California Brewers Association, California Farm Bureau Federation, California Manufacturers Association, Cannery League, California Retailers Association, Furniture Retailers Association of California, Industrial Traffic Association, Western Traffic Association, Traffic Managers Conference of Southern California and the Traffic Manager of the State of California. There are no protests to the petition.

By this petition, the California Trucking Association (CTA) requests that paragraph 7(h) of General Order No. 84-E be canceled or, as an alternative, that a charge be established for the service required under the paragraph.^{1/} Paragraph 7(h) provides that every carrier subject to the general order handling C.O.D. shipments shall:^{2/}

"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."

Testimony in support of the petition was adduced by a staff member of CTA and by the chairman of CTA's Standing Rate Committee.

The staff member testified that in order to comply with paragraph 7(h) carriers' drivers must on pickup of C.O.D. shipments append certain specified information on shipper's copy of the shipping document. Some carriers use either a rubber stamp or preprinted gummed stickers. Other carriers have gone to the expense of having their bills of lading imprinted with the required information. However, in any case when the document is furnished by the shipper, the driver must add the required information either by use of a rubber stamp or a sticker.

^{1/} At the hearing, petitioner limited its evidence to its request for cancellation of paragraph 7(h) of the general order.

^{2/} The general order provision is applicable to express corporations, freight forwarders, highway common carriers, petroleum irregular route carriers, passenger stage corporations, city carriers, highway contract carriers, household goods carriers, petroleum contract carriers, radial highway common carriers and cement contract carriers.

He said that shippers rarely notify carriers in advance that shipments to be picked up include C.O.D. consignments. A driver does not ordinarily carry the rubber stamp or gummed labels on his person in the ordinary course of picking up shipments. Consequently, a driver must take extra time to return to his truck to get his stamp or stickers. At a wage of approximately \$4.25 per hour for a driver, this added pickup time can be costly to the carrier. In addition, the carrier has the cost of supplying the rubber stamps or gummed stickers, of constantly checking to see that a driver has the stamp or stickers in his possession, and of replacing those that are lost.

In order to recover these extra costs, the staff member stated it would be necessary for carriers to establish an additional special tariff charge for such service in the C.O.D. rules, or to include the additional cost in the general rate structure. Discussion with interested shippers and their representatives reveals that the protection afforded them by paragraph 7(h) is of little or no value and does not warrant such additional cost.

The testimony of the chairman of petitioner's Standing Rate Committee, who is also general traffic manager of Valley Motor Lines, Inc. and Valley Express Company, may be summarized as follows: When the general order was initially adopted in its current form, various carriers objected to different features of the order.^{3/} Because of these differences, it was decided that each carrier should handle requests to the Commission for relief from the general order on an

^{3/} The general order provisions in their current form were adopted effective October 1, 1963 in General Order No. 84-D (60 Cal. P.U.C. 787 1963). General Order No. 84-D was superseded by General Order No. 84-E, effective February 1, 1964 (Decision No. 66552, dated December 27, 1963 in Case No. 7402). General Order No. 84-E changed the provisions of General Order No. 84-D only to the extent of making cement carriers and cement contract carriers, established by the 1963 Legislature, subject to the general order provisions.

individual carrier basis.^{4/} Subsequently, a number of applications, each of which sought exemption or relief from paragraph 7(h), were filed by various carriers. In the main, these applications were denied.^{5/} Following the disposition of the applications of individual carriers, the committee studied the problems experienced by carriers generally in complying with the general order. The committee concluded that, while the general order is fundamentally fair, relief from paragraph 7(h) was required on an industry-wide basis because of difficulties and added operating costs experienced by carriers in complying with the general order provisions in question. Means available to affix the required notice to the shipper's copy of the shipping document are neither feasible nor practical. It is infeasible for carriers to print the required notice on shipping documents in general use because the documents are now fully covered with finely printed material leaving insufficient room for the notice. The use of rubber stamps or preprinted labels is not practical. It is not the practice of shippers to notify carriers in advance that shipments to be picked up involve C.O.D. consignments. Because of the equipment which drivers must carry to handle and receipt for normal shipments, they do not ordinarily carry on their persons the rubber stamps or printed notices.

^{4/} Paragraph 10 of General Order No. 84-E provides:

"If, in any particular case, exemption or deviation from any of the requirements herein 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."

^{5/} The Commission records show that 35 applications, involving from 1 to 28 carriers each, were filed seeking exemptions from paragraph 7(h) of the general order. Some of the applications also sought relief from other provisions of the order. Three of these applications were dismissed, 25 were denied, 6 were granted in part and 1 is scheduled for public hearing. Rehearing has been requested of 2 applications which were denied. The above does not include applications for relief from the general order by carriers performing specialized services or services for one or a limited number of designated shippers.

Thus, when they are tendered C.O.D. shipments they usually must return to the vehicles to get the forms or equipment to affix or imprint the required notices to the shippers' copies of the C.O.D. shipping documents. C.O.D. shipments are extremely repetitive in nature. A relatively small number of shippers make virtually all of the C.O.D. shipments. Shippers often tender many separate C.O.D. shipments at one time and the tender of 75 or more C.O.D. shipments simultaneously is not uncommon. The result is that, except in rare instances, carriers in complying with paragraph 7(h) give C.O.D. shippers duplicate notices over and over again. When multiple C.O.D. shipments are made at one time, separate identical notices for each shipment are given to the shipper in a body. The occasional shipper of an isolated C.O.D. shipment would not be disadvantaged by cancellation of the requirement for carriers to affix notices to shippers' copies of shipping documents. Experience shows that, because of lack of familiarity with shipping procedures, the occasional C.O.D. shipper must contact the carrier's office as a matter of necessity and the carrier is required to give the shipper detailed information on many aspects of the shipment. On C.O.D. shipments specific additional information relating to the handling of C.O.D. shipments including information relating to paragraph 7(h) would also be given. Compliance with paragraph 7(h) increases the time required by carriers to make pickup of shipments. Moreover, in the case of multiple C.O.D. shipments from one shipper, a driver may spend an hour or more merely affixing numerous duplicate notices on numerous copies of the C.O.D. shipping documents of a single shipper. The additional time required to handle C.O.D. shipments is costly to the carrier. The additional costs are not reflected in the minimum rates or the accessorial charges established for handling C.O.D. shipments. CTA representatives held a number of meetings with shippers in various places in California

to consider problems encountered by carriers as a result of paragraph 7(h). The witness attended all of these meetings. Shippers from all parts of the State were in attendance.^{6/} At these meetings, shippers informed the carriers that the notices were neither desired nor required by them. They did not express any concern about petitioner's proposal to have the requirements of paragraph 7(h) canceled. However, they evinced strong opposition to any increase in rates or charges which may be occasioned by increased carrier costs in complying with the provisions in question of the general order.

Based on studies of carrier experience and the results of meetings with shippers, the witness asserted that recording or affixing the notice required by paragraph 7(h) on or to the shipper's copy of the C.O.D. shipping document is of no value to or required by shippers and is a matter of additional cost to carriers, and that the benefits, if any, to be derived from the requirements of paragraph 7(h) are of little or no consequence and do not warrant the added expense to carriers.

Counsel for petitioner argued that a general order of the Commission has the same effect as a statute; that in this respect it is similar to carriers' tariffs or the minimum rate tariffs; that the public is presumed to have access to them and know what is in them; that when a shipper tenders a shipment, a carrier is not required to give the shipper a copy of the tariff, the Public Utilities Code or all of the general orders that might have a bearing on the operations of the carrier; that this is an instance where a very narrow, limited type of service has been singled out for requiring a burdensome, costly procedure of advising a few shippers who desire to use the carriers as

^{6/} Among others, representatives of the California Manufacturers Association, Cannery League, Dried Fruit Association of California, California Grape and Tree Fruit League, Traffic Managers Conference of Southern California and Industrial Traffic Association attended the meetings.

their collection agents; that this service is not distinguishable from everything else that surrounds the charge made by a public carrier to a shipper and to require carriers to advise the shipping public in connection with this one narrow type of service is absurd on its face; that if it costs anything, it is an expense; and that if it is an expense, it is an unnecessary expense.

The California Manufacturers Association supports the request of petitioner. No one appeared at the hearing in opposition to the petition.

Discussion, Findings and Conclusions

It is not disputed and the record shows that the requirement that carriers record on, or append to, the shipper's copy of its C.O.D. shipping document the information prescribed in paragraph 7(h) of General Order No. 84-E entails significant expense to carriers in addition to those normally associated with the handling of C.O.D. shipments prior to the promulgation of paragraph 7(h). In some cases, this additional expense is substantial.

According to the evidence the benefits to the shipping public from the required procedure are limited. In the majority of cases, compliance with paragraph 7(h) of the general order requires carriers to give the same information to the same shippers over and over again. The evidence indicates that the ordinary shipper of C.O.D. shipments does not desire or require this information to be appended to its copies of the shipping documents. The requirement that carriers give repetitious advisory information of this type without apparent benefit to the recipients or themselves is to a large extent purposeless.

Benefits to be derived from the required procedure relate primarily to isolated C.O.D. shipments made by the occasional shipper. Such shipments are few in number. They are of insufficient volume or significance to warrant continuation of the requirements for carriers to record on, or append to, the shipper's copy of a C.O.D. document the information in question.

It is not urged or suggested on this record that the information contained in paragraph 7(h) is undesirable or should be withdrawn. There is no question concerning the desirability of disseminating the information. Only the means are in question. The information should be available to the public. This purpose would be served by continuing to publish it in the Commission's minimum rate tariffs and requiring common carriers undertaking to handle C.O.D. shipments to publish provisions similar to paragraph 7(h) of General Order No. 84-E in their tariffs.

This petition has been served on and the proposals brought to the attention of a large number of shippers and other parties. All parties known or believed to be interested have been given notice of the petition. Nonetheless, no one has protested granting of the sought relief.

The California Trucking Association has requested also that all filings involving General Order No. 84 series, whether for deviation, exemption or revision, be filed as petitions for modification in Case No. 7402 and that each such filing be identified with a separate petition number. It alleges that this procedure will eliminate confusion in the minds of interested parties in following matters relating to adjustments of or deviations from the general order. The Transportation Division concurs in this recommendation to the extent that modifications of General Order No. 84 series are concerned.

The Commission finds that:

1. Cancellation of the requirement that carriers record on, or append to, the shipper's copy of the C.O.D. shipping document the information prescribed in paragraph 7(h) of General Order No. 84-E is reasonable and has been justified.

2. The submission of Case No. 7402 should be set aside and the investigation therein held open as a continuing case for consideration of future petitions for modification of General Order No. 84 series. Authority to deviate from the provisions of the general order by individual carriers should be sought by separate applications.

3. The provisions of General Order No. 84-F, attached hereto, are reasonable.

4. The Commission's minimum rate tariffs should be amended by separate orders to be issued in the appropriate minimum rate proceedings by establishing therein the rules governing C.O.D. shipments set forth in said General Order No. 84-F, effective concurrently with the effective date of said General Order No. 84-F.

The Commission concludes that:

1. Submission of Case No. 7402 should be set aside and said proceeding held open as a continuing investigation.

2. General Order No. 84-F, attached hereto, should be adopted and should supersede General Order No. 84-E.

3. This petition for modification of Decision No. 65244 and Decision No. 66552 should be granted to the extent set forth in the ensuing order.

When General Order No. 84-E was promulgated, reference to "cement carrier" was inadvertently omitted from paragraphs 8 and 9 thereof. These omissions will be corrected in the order which follows.

O R D E R

IT IS ORDERED that:

1. Submission of Case No. 7402 is set aside and Case No. 7402 is reopened as a continuing investigation into the rules, requirements, and tariff provisions to govern the handling of C.O.D. (collect-on-delivery) shipments and the identification, accounting, handling, and remission of C.O.D. moneys by express corporations, freight forwarders, highway common carriers, petroleum irregular route carriers, passenger stage corporations, cement carriers, city carriers, highway contract carriers, household goods carriers, petroleum contract carriers, radial highway common carriers and cement contract carriers.

2. All of the carriers hereinbefore specified are hereby made respondents to this proceeding.

3. A present or future carrier not now included among those carriers described in the first ordering paragraph hereof shall, upon becoming a carrier as so described, thereby become a respondent to this proceeding.

4. Public hearings in this investigation shall be held before such Commissioners or Examiners as shall hereafter be designated, at times and places hereafter to be set.

5. General Order No. 84-F, which is attached hereto and by this reference made a part hereof, is hereby adopted to become effective June 1, 1965, superseding General Order No. 84-E, which is hereby cancelled effective June 1, 1965.

6. All carriers heretofore authorized, as of the effective date of the general order herein established, to deviate from the provisions of General Orders Nos. 84-D or 84-E are hereby authorized to continue such deviation under the conditions and for the duration of periods of time specified in the orders granting such authorities.

7. The Secretary of the Commission shall serve a copy of this order on each express corporation, freight forwarder, highway common carrier, petroleum irregular route carrier, passenger stage corporation, cement carrier, city carrier, highway contract carrier, household goods carrier, petroleum contract carrier, radial highway common carrier and cement contract carrier.

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

Dated at San Francisco, California, this 23rd day of MARCH, 1965.

Frederick B. Holcomb
President
Arthur E. [Signature]

William [Signature]
Commissioners

Commissioner A. W. GATOV
present but not voting.

I dissent.

It is argued that most shippers are already aware of the existence of the C.O.D. bonds and that it is inconvenient to them to require that shipping documents contain the information in question. But such shippers could easily be exempted from the requirement - once they have advised a carrier, in writing, that they do not need such notification. I would support such a revision of the General Order.

On the other hand, occasional C.O.D. shippers who do not otherwise know of the existence of the C.O.D. bonds are likely to be the very persons who most need their protection. Without knowledge that such protection is available, these shippers are not in a position to take advantage of it. The suggestion in the majority opinion that this information is made available to the public by its publication in the applicable tariffs is not realistic; the uninformed, occasional C.O.D. shipper is seldom familiar with the fine print in the tariffs.

George E. Grover

Commissioner.

GENERAL ORDER NO. 84-F

(Cancels General Order No. 84-E)

PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

REGULATIONS GOVERNING THE HANDLING OF COLLECT ON DELIVERY SHIPMENTS AND ACCOUNTING FOR COLLECTION MADE THEREON BY EXPRESS CORPORATIONS, FREIGHT FORWARDERS, HIGHWAY COMMON CARRIERS, PETROLEUM IRREGULAR ROUTE CARRIERS, PASSENGER STAGE CORPORATIONS, CEMENT CARRIERS, CITY CARRIERS, HIGHWAY CONTRACT CARRIERS, HOUSEHOLD GOODS CARRIERS, PETROLEUM CONTRACT CARRIERS, RADIAL HIGHWAY COMMON CARRIERS AND CEMENT CONTRACT CARRIERS.

Adopted MARCH 23, 1965. Effective June 1, 1965.

Decision No. 68779, Case No. 7402.

IT IS ORDERED that:

1. A collect on delivery shipment, hereinafter referred to as a C.O.D. shipment, means a shipment upon which the consignor has attached, as a condition of delivery, the collection of a specific sum or sums of moneys by the carrier making delivery thereon and the return of said moneys to the consignor or other payee designated by the consignor.
2. No express corporation, freight forwarder, highway common carrier, petroleum irregular route carrier, passenger stage corporation, cement carrier, city carrier, highway contract carrier, household goods carrier, petroleum contract carrier, radial highway common carrier or cement contract carrier as defined in the Public Utilities Code, shall handle C.O.D. shipments unless and until it has on file with the Commission a good and sufficient bond in such form as the Commission may deem proper, in a sum of not less than Two Thousand Dollars (\$2,000). The principal amount of the bond of any particular carrier may be increased from time to time where the Commission finds that the public interest so requires.

3. The bond required by ordering paragraph 2 hereof shall be filed by the carrier as principal and by a qualified surety insurer, authorized to do business in the State of California, as surety, payable to any person or persons to whom any amount may be due on any C.O.D. shipment transported by the carrier and not remitted to the person or persons to whom it is due within 10 days after delivery of any such C.O.D. shipment; that each bond filed pursuant to the foregoing shall specify the extent to which the carrier's operations are covered thereby; that such a bond may cover more than one operative authority held by the same carrier; that when a carrier with such a bond on file with the Commission obtains additional operative authority, said bond shall be revised or reissued to show whether or not the additional operative authority is covered thereby; and that the name of the carrier's surety company in any bond filed pursuant hereto will be made public by the Commission upon reasonable request therefor.

4. The term of the bond shall include: that any person or persons to whom an amount may be due on any C.O.D. shipment transported by a carrier and not remitted within 10 days after delivery of said shipment may file a claim therefor with the surety; that upon the filing of the claim, the surety shall notify the Commission and the carrier in writing of such filing; that such notification to the Commission shall be addressed to the Public Utilities Commission of the State of California at its office in San Francisco; that suit against the surety shall be commenced within one year after the date the shipment was tendered to the carrier; and that the surety waives any rights it may have under Section 2845 of the Civil Code of the State of California.

5. The bond required herein may be canceled by the surety by written notice to the Public Utilities Commission of the State of California at its office in San Francisco, such cancellation to become effective thirty days after receipt of said notice by the Commission.

6. Claims arising from failure to remit C.O.D. moneys may be filed by any person or persons to whom an amount may be due directly against the surety company and any suits against the surety must be commenced within one year from the date the shipment was tendered.

7. The name and address of the surety company may be obtained from the Public Utilities Commission, State Building, San Francisco, California 94102.

8. The bond prescribed herein shall not be required of carriers while engaged as independent-contractor subhaulers; carriers while engaged in transporting property for which rates are provided in Minimum Rate Tariff No. 7; or city carriers operating within lawfully established pickup and delivery limits as agents of a common carrier in the performance for such common carrier of transfer, pickup or delivery services provided for in the lawfully published tariffs of such common carrier.

9. Every express corporation, freight forwarder, highway common carrier, petroleum irregular route carrier, passenger stage corporation, cement carrier, city carrier, highway contract carrier, household goods carrier, petroleum contract carrier, radial highway common carrier and cement contract carrier handling C.O.D. shipments shall:

- (a) 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.

- (b) 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.
- (c) 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.
- (d) 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.

- (e) Except in situations covered by subparagraph (f), 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, 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.
- (f) While engaged in transporting property for which rates are provided in Minimum Rate Tariff No. 7, notify the consignor immediately if a C.O.D. shipment is refused or cannot be delivered because of circumstances beyond the carrier's control. In the event of such nondelivery, and pursuant to the consignor's instructions, the shipment shall either be returned to the consignor subject to double the outbound freight charges for the round-trip movement, or delivered to another consignee subject to the applicable distance rate, in addition to the original rate, from the point of nondelivery to the new destination.

NOTE: If hourly rates are applicable on deliveries involving C.O.D. shipments, such hourly rates shall supersede the rates provided in this subparagraph (f).

- (g) Not make a C.O.D. shipment part of a split delivery shipment.

10. No express corporation, freight forwarder, highway common carrier, petroleum irregular route carrier, passenger stage corporation or cement carrier shall handle C.O.D. shipments unless and until such carrier has published and filed tariffs which contain the rates, rules and regulations governing such service, which rules and regulations shall conform to this general order and shall include provisions that:

- (a) 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.
- (b) The name and address of the surety company may be obtained from the Public Utilities Commission, State Building, San Francisco, California 94102.

11. Every express corporation, freight forwarder, highway common carrier, petroleum irregular route carrier, passenger stage corporation and cement carrier, while acting in the capacity of a delivery carrier on C.O.D. shipments moving in interline service, shall, at the time of remittance of the C.O.D. collections to the consignor or payee, notify the originating carrier of such remittance.

12. If in any particular case, exemption or deviation from any of the requirements herein 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.

13. Each express corporation, each freight forwarder, each highway common carrier, each petroleum irregular route carrier, each passenger stage corporation and each cement carrier not electing to undertake transportation of C.O.D. shipments may withdraw and cancel its rules, regulations and rates therefor and establish in their stead a tariff provision that C.O.D. shipments will not be accepted; and that each city carrier, each highway contract carrier, each household goods carrier, each petroleum contract carrier, each radial highway common carrier and each cement contract carrier not electing to undertake transportation of C.O.D. shipments shall be deemed to have given notice of such election by not filing the bond provided for herein for carriers handling such shipments.

General Order No. 84-E is hereby revoked.

This General Order shall become effective June 1, 1965.

Approved and dated at San Francisco, California, this
23rd day of MARCH, 1965.

PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA

By NOEL COLEMAN
Acting Secretary