

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition) Application No. DR-0009/
for Declaratory Ruling of Golden) B-1829
Plains Services, Inc. d/b/a GPS)
Transportation, Lincoln, seeking)
determination that)
Neb.Admin.Code, Title 291, Chap.)
3, §001.01(E) and §001.01(F))
permit on-demand transportation)
services for open class carriers)
that were engaging in on-demand)
transportation services prior to)
changes approved in Rule and)
Regulation Docket No. 199) ORDER DECLINING ISSUANCE
effective January 16, 2019;) OF DECLARATORY ORDER
search all open class carriers)
for any and all carriers that)
have provided on-demand services)
and would be adversely affected)
by the rule changes approved in)
Rule and Regulation Docket No.)
199; investigate and schedule a)
hearing on the effect on)
carriers of any service)
classification regarding the)
observation of precedent; and)
define the criteria for)
observing precedent when a)
change is made to rules and)
regulations.) Entered: May 21, 2019

BY THE COMMISSION:

On January 18, 2019, Golden Plains Services, Inc. d/b/a GPS Transportation ("GPS"), Lincoln, filed an application requesting a declaratory ruling from the Commission for the following: to determine whether N.A.C. Title 291, Chap. 3, §001.01(E) and §001.01(F) permit on-demand transportation services for open class carriers that were engaging in on-demand transportation services prior to changes approved in Rule and Regulation Docket No. 199 effective January 16, 2019; search all open class carriers for any and all carriers that have provided on-demand services and would be adversely affected by the rule changes approved in Rule and Regulation Docket No. 199; investigate and schedule a hearing on the effect on carriers of any service classification regarding the observation of precedent; and

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define the criteria for observing precedent when a change is made to rules and regulations.

Notice of the declaratory ruling petition was published in The Daily Record, Omaha, Nebraska, on January 24, 2019. No protests or interventions were filed.

On January 29, 2019, GPS filed a request for stay of Commission enforcement of the recent rule amendments approved in Rule and Regulation No. 199, effective January 16, 2019, against GPS during the pendency of the declaratory ruling petition. On February 5, 2019, the Commission entered an order denying the request for stay.

Hearing on this matter was held March 26, 2019 in the Commission Hearing Room. Mr. Kirby Young made a statement on behalf of GPS. Additionally, Ms. Jaydon Pence of Rembolt Ludtke LLP entered an appearance and made a statement on behalf of Camelot Transportation and Comstock Corporation d/b/a Action Cab supporting the Commission's actions in Rule and Regulation No. 199. Commission Exhibits 1 through 5 were offered and received into evidence.

O P I N I O N A N D F I N D I N G S

Pursuant to Neb. Rev. Stat. § 75-118.01, the Commission has original exclusive jurisdiction to determine the scope and meaning of its rules and regulations. Neb. Rev. Stat. § 84-912.01 states that any person may petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule or order within the primary jurisdiction of the agency.

Title 291, Chapter 3 §§ 001.01(E) and 001.01(F) were adopted in Rule and Regulation No. 199. Rule 001.01(E) defines "on demand" as:

"Service requested by street hail; offered at a cab stand, airport feeder lines, bus stations, or similar staging area; personal summoning by a passenger; or personal solicitation by a driver of the vehicle or an employee, contractor, or agent of the carrier."

Additionally, Rule 001.01(F) defines "prearranged" as:

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"Service requested and arranged in advance of the time that the service is to be performed. Nothing in this definition will be construed to allow on demand services. This definition will not replace the definition of prearranged in § 012.02(I) of the rules pertaining to Transportation Network Companies."

GPS is a motor carrier holding a Certificate of Public Convenience and Necessity as a common carrier providing intrastate transportation services for passengers throughout the state of Nebraska. In its Petition, GPS requested that the Commission search all open class carriers for any and all carriers that have provided on-demand services and would be adversely affected by the rule changes approved in Rule and Regulation Docket No. 199; investigate and schedule a hearing on the effect on carriers of any service classification regarding the observation of precedent; and define the criteria for observing precedent when a change is made to rules and regulations. These requests fall beyond the scope of a declaratory ruling petition and will not be addressed. GPS's request for a determination of the applicability of rules 001.01(E) and 001.01(F) fell within the scope of a declaratory ruling and could have been addressed had a proper record been made.

As the petitioner, GPS was provided an opportunity at the hearing to provide a statement in support of its petition. Mr. Young, on behalf of GPS, declined to make any argument in support of his petition. Instead, Mr. Young's statement centered on his feelings of unfair treatment by the Commission as opposed to furthering the petition. Since Mr. Young is not an attorney, his limited representation of GPS did not include the ability to call witnesses or enter any documents into evidence. The petition itself was also void of any explanatory information other than referencing the existence of what GPS believed to be Commission precedent for "grandfathering" carriers to provide transportation services for the Nebraska Department of Health and Human Services and railroad train crews that were affected by past rule changes.¹

Rule and Regulation No. 199 consisted of three public hearings and public comment periods. GPS, via Mr. Young, participated fully and voiced objection to the inclusion of

¹ See Commission Exhibit 1. Mr. Young's Declaratory Ruling Petition did not specify which Commission rulemaking dockets created the precedent he is referencing.

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rules 001.01(E), 001.01(F), and other rules that dealt with the operations of open class carriers during those proceedings. The Commission approved the rules and the rules were adopted.² This declaratory ruling proceeding gave Mr. Young the avenue by which he could seek the relief that he requested multiple times throughout the course of Rule and Regulation No. 199 and other dockets.³ However, neither Mr. Young's request nor his statement at the hearing presented the Commission adequate information to grant such relief. As the rules in question have been vetted through the rulemaking process and no support for the declaratory petition was provided during the hearing, the Commission declines to enter a declaratory order regarding Title 291, Chapter 3, Sections 001.01(E) and 001.01(F).

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the petition for declaratory ruling be, and is hereby, denied.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 21st day of May, 2019.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Crystal Unadue
Reel Jensen
Don Waters
Vin Schram

Mary Piddel
Chair

ATTEST:

Michael H. O'Connell
Executive Director

² See *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to amend Title 291, Chapter 3, Motor Carrier Rules and Regulations, to amend provisions of the rules, Rule and Regulation No. 199, Adopted January 16, 2019.*

³ See *Id.*; See also *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to investigate transportation services which may be provided by open class carriers as defined by Neb. Admin. Code, Title 291, Ch. 3 § 010.01C, Docket No. PI-205.*