

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Docket No. PI-227/B-1679  
Public Service Commission, on )  
its own motion, seeking to ) ORDER RELEASING FINDINGS  
investigate the safety ) AND CLOSING DOCKET  
procedures of RailCrew Xpress )  
Corp., Lenexa, Kansas. ) Entered: June 2, 2020

For Intervener: Jayson D. Nelson  
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For the Commission: Jamie Reyes  
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BY THE COMMISSION:

## B A C K G R O U N D

On September 6, 2019, the Nebraska Public Service Commission ("Commission") received information related to a vehicle incident involving RailCrew Xpress Corp. ("RXC"), Lenexa, Kansas. RXC is a common carrier authorized to provide passenger transportation services over various routes within Nebraska for railroad train crews, including Union Pacific Railroad Company ("UPRR") train crews. The incident involved the alleged failure of the front hood latch for a RXC van carrying several UPRR railroad train crew members from North Platte, Nebraska to Fremont, Nebraska. While traveling on the interstate outside of Lincoln, Nebraska, the hood released and smashed the front windshield. The van went off the road and into a ditch; no one was injured. Shortly thereafter, another RXC van took the group to their destination.

The Commission Transportation Department ("Department") conducted an informal investigation and informed the Commission

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of its findings. On October 29, 2019, the Commission entered an Order opening a formal investigation into the incident and scheduling a Hearing for December 10, 2019. On December 4, 2019, the Hearing Officer entered an Order rescheduling the Hearing for January 14, 2020 in order to ensure sufficient notice and time for interested parties to file petitions for formal or informal intervention. Notice of the Hearing was published in The Daily Record, Omaha, Nebraska, on December 6, 2019. A petition for formal intervention was filed by the International Association of Sheet Metal, Air, Rail and Transportation Workers ("S.M.A.R.T.") and granted January 8, 2020.

A Hearing on the investigation was held on January 14, 2020, in the Commission Hearing Room with appearances as shown above.

### E V I D E N C E

#### *Department Witnesses*

Mr. Gregory Rocke testified first on behalf of the Commission's Transportation Department ("Department"). Mr. Rocke has been the Senior Investigator for the Department since 2005. His duties include performing safety checks, background checks, and investigating complaints of certified carriers.<sup>1</sup> Mr. Rocke testified that he prepared an investigative report summarizing an interview he did with Mr. Dustin Dimmitt at the RXC terminal building in North Platte, Nebraska on September 6, 2019.<sup>2</sup> In his report, Mr. Rocke noted that Mr. Dimmitt indicated that he had no notification or knowledge of the incidents prior to Mr. Rocke contacting him, but since then had gathered information about the incidents from the drivers. Mr. Rocke reported that, according to Mr. Dimmitt on September 4, 2019, the vehicle in question suffered a hood latch failure that the driver attended to on the side of the interstate before returning to the North Platte terminal. The following day, the same vehicle was headed eastbound on I-80 when the hood latch broke, causing the hood to pop up and shatter the windshield.

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<sup>1</sup> *Id.* at 12:22 - 13:7.

<sup>2</sup> *Id.* at 13:8 - 14:7 and Exhibit 6.

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Mr. Rocke's report noted that the vehicle was then taken out of service and another vehicle was used to transport the crew to their destination.<sup>3</sup> Mr. Rocke concluded his testimony discussing the six to seven vehicle inspections conducted in North Platte by Commission Inspectors prior to the September incidents. The vehicle involved in the incidents was not part of the inspection group, but plans had been made to inspect this vehicle and the rest of RXC's fleet.<sup>4</sup>

Mr. Glenn Elwell testified next on behalf of the Department. Mr. Elwell was an investigator for the Department and assisted in the investigation of the incident in question.<sup>5</sup> He testified that he prepared an investigative report detailing the chronology of the events regarding the September 2019 incidents. Mr. Elwell also conducted an interview on September 9, 2019 with Mr. Granger, the driver of the RXC vehicle during the September 5, 2019 incident and prepared a report of the interview.<sup>6</sup> Mr. Elwell clarified that he, not Mr. Rocke, retrieved the vehicle inspection report for the vehicle in question from Mr. Dimmitt. He also stated that he had requested a copy of the inspection report completed by Mr. David Jacobs on September 4, 2019, but Mr. Dimmitt told him that the report was unavailable.<sup>7</sup>

In the investigative report, Mr. Elwell noted that Mr. Granger outlined the pre-trip inspection procedures and detailed the events of September 5, 2019. Mr. Elwell's report noted that Mr. Granger described the hood failure as due to an extreme amount of side draft produced off a semi-truck he had passed. The side draft caused the hood to shake so violently that the radiator guard came loose from the cross-members underneath the hood, resulting in the hood popping up and shattering the windshield. Mr. Granger took evasive action and ended up in the median. He reiterated that no one was injured, but a second vehicle had to come and take the passengers the rest of the way.<sup>8</sup> Mr. Elwell concluded his testimony by noting that the pre-trip inspection report that Mr. Granger completed did not require a

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<sup>3</sup> *Id.* at 15:9 - 21.

<sup>4</sup> *Id.* at 16:12 - 17:5.

<sup>5</sup> *Id.* at 20:5 - 20:15.

<sup>6</sup> *Id.* at 20:16 - 21:3 and Exhibits 7 and 8.

<sup>7</sup> *Id.* at 21:4 - 22:1.

<sup>8</sup> *Id.* at 23:8 - 24:2.

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driver to inspect the hood or any other mechanical component relating to the malfunction that caused the incident.<sup>9</sup>

In response to questions from Commissioner Rhoades regarding the reporting of the September incidents, Mr. Elwell explained that Mr. Dimmitt stated he was not made aware of the September 4<sup>th</sup> incident until after the September 5<sup>th</sup> incident. He further noted that to his knowledge, Mr. Jacobs never reported the initial hood failure. Mr. Elwell added that Mr. Granger was aware of the zip-tie prior to departing. However, Mr. Granger indicated that he checked for information about the zip-tie and, finding none, did nothing and went about his trip as planned.<sup>10</sup>

### *RailCrew Xpress Witnesses*

The first witness produced on behalf of RXC was Dustin Dimmitt, the area manager in North Platte and Broken Bow.<sup>11</sup> As manager, he is in charge of all vehicles, driver hires, driver training, and all-around safety.<sup>12</sup> Mr. Dimmitt testified that on September 4, 2019, RXC driver David Jacobs was called out on a trip from North Platte, Nebraska, to Marysville, Kansas, when he experienced an issue with the vehicle's hood. According to Mr. Dimmitt, Mr. Jacobs had to pull the vehicle over, determined the plastic hood latch broke, and told the passengers he had to get a new vehicle. Not wanting to wait for a new vehicle to arrive, a crew member named Mr. Clayton Kaps provided Mr. Jacobs with a zip-tie to reattach the hood so they could finish the trip.<sup>13</sup> Mr. Dimmitt explained he was not called when the incident occurred, and should have received a call according to RXC safety procedures. In addition, he noted that the vehicle should have been immediately taken out of service. Mr. Dimmitt stated that all RXC drivers know to report such incidents because it is included in all training materials.<sup>14</sup>

Mr. Dimmitt further explained that when Mr. Jacobs arrived back to the North Platte location at approximately 7:00 a.m., he wrote about the incident on the bottom of his inspection sheet

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<sup>9</sup> *Id.* at 24:3 - 24:12.

<sup>10</sup> *Id.* at 24:22 - 26:23.

<sup>11</sup> *Id.* at 31:23 - 32:2.

<sup>12</sup> *Id.* at 32:3 - 32:7.

<sup>13</sup> *Id.* at 32:17 - 33:13.

<sup>14</sup> *Id.* at 33:20 - 34:3.

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and handed it in to the starter, but did not say anything about the incident. At the time of the incident, the starters were not required to look over the safety inspection sheets but instead set them on Mr. Dimmitt's desk for his review.<sup>15</sup> At approximately 7:38 a.m., a trip from North Platte to Fremont came in. On or around 8:16 a.m., Mr. James Granger arrived and completed his pre-trip inspection on the same vehicle Mr. Jacobs used without mention of the zip-tie.<sup>16</sup> Mr. Dimmitt noted on that day, he had a meeting with a new hire and had the intention to check the vehicle inspection sheets afterwards; however, the incident in question occurred during his meeting. Mr. Dimmitt testified that Mr. Granger told him about the zip-tie during the after-incident call. Mr. Dimmitt then called Mr. Jacobs to inquire about the zip-tie. Mr. Dimmitt stated that at first Mr. Jacobs told him that the zip-tie was used because a piece of the front grille had come loose and was making noise. However, in a subsequent meeting, Mr. Jacobs admitted that the zip-tie was used because the hood had come loose on the September 4, 2019 trip. Mr. Dimmitt further testified that Mr. Jacobs told him that he did not relay this information out of fear he would be terminated.<sup>17</sup>

Mr. Dimmitt further explained to the Commission the process RXC has in place regarding the vehicle inspection books. He stated the inspection book consists of inspection forms with a white copy with a carbon copy underneath. After the driver completes the white copy, the carbon copy is brought into the office and saved. Mr. Dimmitt clarified that the reason he could not provide Mr. Elwell with a copy of the requested inspection sheet was because the white copy was thrown away after review pursuant to practice. The carbon copy was still in the van at the time of the incident that occurred in Lincoln, so Mr. Dimmitt was never able to retrieve the booklet with the carbon copy.<sup>18</sup>

In response to a question from Commission staff regarding the frequency of vehicle inspection reports, Mr. Dimmitt

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<sup>15</sup> *Id.* at 34:7 - 34:18.

<sup>16</sup> *Id.* at 34:25 - 35:5.

<sup>17</sup> *Id.* at 35:10 - 36:16.

<sup>18</sup> *Id.* at 36:17 - 37:9.

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explained that these reports are completed by each driver before they leave on a trip.<sup>19</sup> Later, Mr. Dimmitt clarified that the driver does not sign the pre-trip inspection until the completion of the trip so that the driver can indicate the ending miles and other necessary comments.<sup>20</sup> Mr. Dimmitt further explained that the drivers who complete these pre-trip inspections do not go through any mechanical training to recognize specific issues.<sup>21</sup> Mr. Dimmitt also testified that a vehicle is pulled out of service after receiving a singular "not satisfactory" on the pre-trip inspection sheet.<sup>22</sup> Later, Mr. Dimmitt stated that he could not provide how many times RXC has had to pull a vehicle out of service, but testified that it has been "a lot" over his three years at RXC. It is a regular occurrence because RXC "run their vehicles a bunch of miles."<sup>23</sup>

Responding to questions from Commissioners, Mr. Dimmitt stated that if a vehicle has an issue during a trip the driver is supposed to immediately call him to discuss the incident, and if a new vehicle is required one will be dispatched out to finish the trip.<sup>24</sup> Later, Mr. Dimmitt noted that if the issue is related to a safety concern the vehicle is immediately pulled out of service.<sup>25</sup> Further, a copy of these procedures are located on the driver's side visor and drivers review these procedures during training.<sup>26</sup> Mr. Dimmitt also explained that the inspection form review practice has changed so that dispatchers read the white copies of the pre-trip inspections and can pull vehicles out of service if they recognize a safety issue.<sup>27</sup> Mr. Dimmitt noted that he completes the monthly vehicle inspections between the 1<sup>st</sup> and the 10<sup>th</sup> of every month. He further stated that if a mechanical issue is found on a vehicle, it is taken to a local shop in North Platte.<sup>28</sup> Mr. Dimmitt testified that Mr. Jacobs is no longer with RXC, but he was

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<sup>19</sup> *Id.* at 37:18 - 38:11.

<sup>20</sup> *Id.* at 53:19 - 57:16.

<sup>21</sup> *Id.* at 38:14 - 38:21.

<sup>22</sup> *Id.* at 39:4 - 40:13.

<sup>23</sup> *Id.* at 62:9 - 62:18.

<sup>24</sup> *Id.* at 44:5 - 44:19.

<sup>25</sup> *Id.* at 57:17 - 58:19.

<sup>26</sup> *Id.* at 46:3 - 46:17.

<sup>27</sup> *Id.* at 45:13 - 46:2.

<sup>28</sup> *Id.* at 46:23 - 47:18.

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unsure if he was terminated or if he resigned because he did not review Mr. Jacobs' personnel record in preparation for this hearing.<sup>29</sup>

Mr. Andrew Beck, Vice President of operations at RXC, testified next. Mr. Beck oversees the overall operations and handles RXC's fleet department and dispatch center.<sup>30</sup> Mr. Beck stated that he first became aware of the September 5<sup>th</sup> incident after receiving an email. Later, he testified that he did not know the exact date when he became aware of the incident that transpired on September 4<sup>th</sup>.<sup>31</sup> He testified that he agreed with Mr. Dimmitt's reiteration of the procedures that should have been followed. Responding to questions about how he determined that the September 5<sup>th</sup> incident was "non-preventable," he explained that an internal decision was made whether the driver was at-fault. If an incident is deemed "preventable" then the driver could have done something to prevent the incident from happening; if deemed "non-preventable" it was out of the driver's control.<sup>32</sup> Mr. Beck confirmed that if an incident is deemed non-preventable it is highly unlikely that disciplinary action would be taken against a driver.<sup>33</sup> Later, Mr. Beck identified that his review of this incident took approximately two days.<sup>34</sup> Mr. Beck clarified that he made this determination solely in regards to the September 5<sup>th</sup> incident.<sup>35</sup> Mr. Beck testified that he would not change his determination that this incident was non-preventable based on what he heard at the hearing.<sup>36</sup>

Responding to Commissioner examination, Mr. Beck reiterated Mr. Dimmitt's testimony when describing the changes RXC has made since the incidents in question. He stated that he could not speak to any changes to driver training regarding the pre-trip inspections, but he noted that drivers are trained to ensure

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<sup>29</sup> *Id.* at 48:1 - 53:12.

<sup>30</sup> *Id.* at 64:1 - 64:16.

<sup>31</sup> *Id.* at 67:5 - 67:8.

<sup>32</sup> *Id.* at 65:22 - 66:24.

<sup>33</sup> *Id.* at 72:2 - 72:12.

<sup>34</sup> *Id.* at 67:18 - 68:18.

<sup>35</sup> *Id.* at 66:25 - 67:4.

<sup>36</sup> *Id.* at 78:22 - 79:15.

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they are properly completing the inspection.<sup>37</sup> He further explained that during initial driver training sessions the drivers sign documentation confirming they understand RXC's rules of procedure.<sup>38</sup> Mr. Beck noted that RXC's handbook is updated periodically.<sup>39</sup> Mr. Beck further stated that he was unsure if Mr. Jacobs resigned or was terminated.<sup>40</sup>

Commissioner Rhoades questioned Mr. Beck regarding whether RXC's vehicles are equipped with cameras. Mr. Beck testified that each vehicle has both an internal and external facing camera that is triggered to record upon the happening of a specified event.<sup>41</sup> Mr. Beck clarified that the camera is always recording, but a clip is only saved if there is a triggering event. Once an event triggers the camera to record, it records three and a half seconds before the event and three and a half seconds after the event.<sup>42</sup> He further explained that Lytx, the company that runs the cameras, determines what events trigger a recording. The recordings are uploaded each night at midnight pacific time and RXC receives the clips that rise to the level of a safety issue each day.<sup>43</sup>

Finally, Ms. Sandy Walker, Vice President of Human Resources, testified on behalf of RXC. Her duties include the hiring of drivers and the continual monitoring of driver qualifications, RXC policies and procedures, driver orientation and training, and payroll.<sup>44</sup> Ms. Walker testified that Mr. Jacobs was hired on February 7, 2017 and ultimately resigned from RXC after he was put on suspension during the investigation of the September incidents.<sup>45</sup> She noted Mr. Granger was also suspended, but he is still currently employed.<sup>46</sup> Ms. Walker explained that pursuant to the employee handbook, an employee involved in an incident is suspended pending the result of an

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<sup>37</sup> *Id.* at 68:22 - 69:25.

<sup>38</sup> *Id.* at 71:10 - 71:17.

<sup>39</sup> *Id.* at 70:3 - 70:17.

<sup>40</sup> *Id.* at 71:1 - 71:6.

<sup>41</sup> *Id.* at 75:1 - 75:13.

<sup>42</sup> *Id.* at 85:18 - 86:14.

<sup>43</sup> *Id.* at 86:18 - 88:22.

<sup>44</sup> *Id.* at 89:17 - 90:25.

<sup>45</sup> *Id.* at 95:13 - 96:7.

<sup>46</sup> *Id.* at 96:22 - 97:2.



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investigation. A determination is then made regarding that individuals' future employment.<sup>47</sup>

Ms. Walker stated that other than the acknowledgements made for their initial training, drivers make no other acknowledgements as to other training they receive throughout their employment. She further noted that in addition to quarterly safety meetings, branches are asked to do supplementary training as the company deems necessary.<sup>48</sup> In her discussion of the orientation notebook, received as Exhibit 12, Ms. Walker stated that this document was revised in December 2019, and that she could not speak to any changes between the current version and the version in effect at the time of the September incidents. She explained that changes are made to both the orientation notebook and employee handbook as a result of daily events that make a change in safety policy and procedures necessary.<sup>49</sup>

In response to questions from Commissioner Rhoades, Ms. Walker stated that to the best of her knowledge there was not a substantial change to the handbook or orientation guide that would have affected the handling of the September incidents. She noted that the critical safety standards, in terms of inspections and reporting, have been in effect throughout her employment with RXC.<sup>50</sup> Additionally, Ms. Walker explained that a police report was not filed on September 4<sup>th</sup> because it did not qualify as an incident under RXC standards. Ms. Walker further noted that the safety claims department is responsible for ensuring a police report has been filed, and because there was no third-party involved and the events were known, there was also no need to file a police report on September 5<sup>th</sup>. In her testimony, Ms. Walker outlined that after an incident occurs the driver in question has eight hours to complete a breath alcohol test and twenty-four hours to complete a drug test. Neither test were required of Mr. Jacobs, but Mr. Granger completed both tests.<sup>51</sup>

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<sup>47</sup> *Id.* at 96:8 - 96:21.

<sup>48</sup> *Id.* at 97:6 - 98:1.

<sup>49</sup> *Id.* at 98:15 - 99:8.

<sup>50</sup> *Id.* at 99:16 - 100:12.

<sup>51</sup> *Id.* at 100:13 - 102:18.

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Finally, Mr. Brian O'Hara testified on behalf of RXC. Mr. O'Hara has been the president and CEO for RXC for nine years.<sup>52</sup> Mr. O'Hara discussed that it is the driver's responsibility to report incidents and that Mr. Jacobs should have utilized RXC's 24/7 accident line to report the events on September 4<sup>th</sup>. Mr. O'Hara explained that without a driver taking these required steps, a record is not created. In this instance, Mr. O'Hara testified that Mr. Jacobs did not follow the proper procedures and Mr. Granger, even following the proper procedures, had no reason to know something was wrong with the vehicle.<sup>53</sup>

Mr. O'Hara also noted that RXC is in the process of moving towards an automated system for inspection reports, eliminating paper forms and enabling real-time notification of vehicle issues. He stated that more than half of RXC has an automated system.<sup>54</sup> Mr. O'Hara outlined that the automated system in place for BNSF Railway Company transmits the pre-inspection to BNSF, giving BNSF and RXC the ability to pull a vehicle out of service.<sup>55</sup> Mr. O'Hara then discussed how the cameras in the RXC vehicles work and how RXC cannot manipulate or edit the recordings.<sup>56</sup> Mr. O'Hara then outlined the factors that RXC's examines when determining whether to retire a vehicle.<sup>57</sup> Mr. O'Hara concluded his testimony stating that in his ten years with RXC he has never had to come before the Commission for any reason, let alone regarding the safety of a vehicle, nor has he had a complaint before the Commission.<sup>58</sup>

### *S.M.A.R.T. Witnesses*

Next, Interveners offered witnesses. First, Mr. Bob Borgeson testified on behalf of SMART. Mr. Borgeson is the state legislative director for S.M.A.R.T. in Nebraska. Mr. Borgeson testified that he contacted the Commission after

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<sup>52</sup> *Id.* at 107:6 - 107:17.

<sup>53</sup> *Id.* at 113:14 - 114:8.

<sup>54</sup> *Id.* at 114:8 - 114:15.

<sup>55</sup> *Id.* at 115:5 - 115:9.

<sup>56</sup> *Id.* at 125:3 - 126:8.

<sup>57</sup> *Id.* at 124:5 - 124:24.

<sup>58</sup> *Id.* at 115:10 - 117:14.

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becoming aware of the September incidents.<sup>59</sup> He concluded his testimony by describing how dependent S.M.A.R.T.'s members are on safe transportation.<sup>60</sup>

Mr. Clayton Kaps next testified on behalf of S.M.A.R.T. Mr. Kaps has been a conductor for Union Pacific Railroad since January 2000.<sup>61</sup> Mr. Kaps testified that on September 4, 2019, he was a passenger in a RXC van headed to Marysville, Kansas, when the hood of the van popped up as they were going east down I-80 near Overton overpass. He stated that the driver immediately pulled off the road to inspect the vehicle. Mr. Kaps stated that when the driver got back into the van he told the passengers that the hood latch had broken but he thought it would hold. When the driver attempted to get back up to speed, the hood again popped up and the driver slowly progressed to the Elm Creek truck stop.<sup>62</sup> Mr. Kaps testified that when they got there, he suggested the driver purchase a ratchet strap to hold down the hood. He noted that the driver was apprehensive about purchasing such equipment with his own money. Mr. Kaps then testified that he offered a zip strip to the driver to secure the latch and they continued on their trip. Mr. Kaps noted that they completed their trips with no further issues with the hood and he assumed the vehicle would be taken out of service once it returned to North Platte.<sup>63</sup> Later, Kaps stated that to his knowledge, the driver failed to report this incident.<sup>64</sup>

Mr. Kaps noted that this is not the first safety issue he has had with RXC vehicles and drivers. He stated that he was previously involved in an instance where an unsecured fire extinguisher was inadvertently hit with a passenger's bag setting off the fire extinguisher inside the vehicle.<sup>65</sup> Later, Mr. Kaps testified that he reported this incident to the railroad and to his knowledge action was taken against the driver.<sup>66</sup> He noted that the vehicles are unclean and have in

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<sup>59</sup> *Id.* 128:6 - 128:16.

<sup>60</sup> *Id.* at 129:4 - 129:7.

<sup>61</sup> *Id.* at 133:4 - 133:8.

<sup>62</sup> *Id.* at 133:15 - 134:5.

<sup>63</sup> *Id.* 134:6 - 135:9.

<sup>64</sup> *Id.* at 139:10 - 139:23.

<sup>65</sup> *Id.* at 135:24 - 136:3.

<sup>66</sup> *Id.* at 140:2 - 140:13.

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excess of three hundred thousand miles. In addition, the drivers are constantly engaging in activities that distract them from the road.<sup>67</sup> Mr. Kaps concluded his testimony by asking the Commission to encourage RXC to take steps to ensure the safe transport of railroaders.<sup>68</sup> In response to Commissioner examination, Mr. Kaps noted that since the September incident he has been a passenger in a RXC ten times and has not experienced a similar situation since then.<sup>69</sup>

Finally, Mr. Barry Turgeon testified on behalf of S.M.A.R.T. Mr. Turgeon has been a conductor for Union Pacific Railroad since September 2006, and often utilizes RXC vans to get back and forth from work sites. Mr. Turgeon testified to his experience as a passenger in the RXC van involved in the September 5, 2019 incident. Mr. Turgeon stated that, during the trip, he noticed the hood on the van was shaking and appeared not to be closed all the way. Mr. Turgeon asked the driver about the hood and the driver mentioned that he had noticed a zip tie holding the hood down but his supervisor had told him that the vehicle had been inspected and it was good to go.<sup>70</sup> He stated that throughout the trip the hood seemed fine, just a little bit of a rattle, but otherwise the zip-tie was holding the hood pretty tight. Just outside of Lincoln, he noticed the hood was starting to shake more violently and it appeared as if something on the front end had become loose. The driver told the passenger in the front seat that he would stop at the next exit. The driver then attempted to pass a semi-truck when the hood came loose and shattered the windshield. The driver then pulled off into the median and stopped the vehicle.<sup>71</sup>

Mr. Turgeon stated that this was not his first time a RXC vehicle has experienced safety issues when he was a passenger. He stated that oftentimes drivers struggle to stay awake.<sup>72</sup> He mentioned that the vehicle seats will not lock into place and it

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<sup>67</sup> *Id.* at 136:7 - 136:12.

<sup>68</sup> *Id.* at 136:20 - 137:2.

<sup>69</sup> *Id.* at 141:16 - 141:24.

<sup>70</sup> *Id.* at 143:3 - 143:20.

<sup>71</sup> *Id.* at 143:21 - 145:2.

<sup>72</sup> *Id.* at 145:3 - 145:22.

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is common for fire extinguishers to be unsecured.<sup>73</sup> Mr. Turgeon concluded his testimony by asking the Commission to provide greater oversight of the van companies, conduct regular inspections of the vehicles, and have safety audits performed by outside sources of the van companies.<sup>74</sup> Later, Mr. Turgeon stated that he always reports his complaints to the Fremont starters but he has no knowledge if they follow through on his complaints nor does he know if these complaints are passed onto the Commission.<sup>75</sup>

In response to Commissioner questions, Mr. Turgeon reiterated that the driver told him that he noticed the zip tie during inspection and reported it to the supervisor, who told the driver that the vehicle had been inspected and was good to go.<sup>76</sup> Responding to a question concerning discrepancies in whether Mr. Granger had such a conversation with the crew onboard, Mr. Turgeon testified that Mr. Granger's fear of losing his job could be an explanation. He stated that most drivers at RXC are fearful they would be terminated if they report incidents. Mr. Turgeon stated that drivers tell him this on a daily basis.<sup>77</sup>

Mr. Jay Nelson ended S.M.A.R.T.'s presentation of evidence by providing a closing statement summarizing the Union's concerns and requesting the Commission take whatever action it deems appropriate.<sup>78</sup>

### *Public Comment Witnesses*

Mr. Alfredo Montes was a passenger in the RXC van on September 5, 2019. He stated that Mr. Turgeon's testimony of the events for that day were accurate. He further noted that he was not aware of the presence of the zip-tie until after the incident. Mr. Montes also repeated the belief that RXC drivers are afraid to report incidents out of fear of termination.<sup>79</sup>

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<sup>73</sup> *Id.* at 145:23 - 146:6.

<sup>74</sup> *Id.* at 146:7 - 146:14.

<sup>75</sup> *Id.* at 147:15 - 148:15.

<sup>76</sup> *Id.* at 149:25 - 150:12.

<sup>77</sup> *Id.* at 150:19 - 152:14.

<sup>78</sup> *Id.* at 152:20 - 158:11.

<sup>79</sup> *Id.* at 163:12 - 164:21.

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Mr. Brain McCoy, the chairman of the local Brotherhood of Locomotive Engineers and Trainmen chapter, told the Commission that immediately after the incident on September 5<sup>th</sup>, Mr. Granger told him on a telephone call that he had reported the zip-tie to the starter and they told him to complete the trip anyway. He further emphasized that he also believes that RXC drivers are afraid to report problems with the vehicles out of fear of termination. He also noted that most of RXC's vehicles have some sort of warning light on indicating various issues wrong with the vehicles.<sup>80</sup>

Mr. Pat Pfifer, a state legislative board chairman for his organization, made comments focused on the concern for the RXC drivers as well as stating that union members should also be able to take vehicles out of service.<sup>81</sup>

Mr. Joseph Buel, the legislative representative for S.M.A.R.T. Local 367 out of Omaha, repeated the concerns for the RXC drivers. He also commented on how in the future he believes it would be beneficial for Commission investigators to reach out to passengers to get their side of the story.<sup>82</sup>

Finally, the public comment period closed with a statement from Mr. Medeiros regarding the recent fumigation of RXC vans due to the presence of bedbugs in the vehicles.<sup>83</sup>

### *Exhibits*

Commission staff offered Exhibits 1 through 8, which were received and entered into the record. The following RXC exhibits were received into evidence: Exhibit 11, the Driver Employee Handbook; Exhibit 12, the Orientation Handbook; Exhibit 13, Mr. Jacob's RailCrew Form; Exhibit 14, Mr. Granger's RailCrew Form; Exhibit 15, RXC Accident Reports and Statements; Exhibit 16, RXC Accident and Maintenance Procedure; and Exhibit 17, RXC Vehicle Service History. Subsequent to the hearing, RXC filed Late-Filed Exhibit 9, Mr. Jacob's Personnel Record; Late-Filed Exhibit 10, Drive-Cam Footage of the September 5, 2019

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<sup>80</sup> *Id.* at 165:11 - 167:1.

<sup>81</sup> *Id.* at 167:16 - 169:4.

<sup>82</sup> *Id.* at 171:11 - 173:5.

<sup>83</sup> *Id.* at 173:24 - 174:6.

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incident; and Late-Filed Exhibit 18, Phone records to the RXC helpline. Exhibit 9 showed that Mr. Jacobs voluntarily left the company dissatisfied with this pay rate and suspension.<sup>84</sup> Exhibit 10 showed Drive-Cam footage of three and a half seconds prior to and after the hood on the RXC van shattering the windshield.<sup>85</sup> Exhibit 18 showed all of the calls to the RXC accident hotline on September 4<sup>th</sup> and 5<sup>th</sup>.<sup>86</sup>

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

The Commission opened the above-captioned investigation in response to information received from interested parties relating to an incident involving a RXC vehicle in September 2019. Pursuant to Neb. Rev. Stat. § 75-301, the Commission shall enforce all provisions of Neb. Rev. Stat. § 75-126 and Chapter 75, Article 3, so as to promote, encourage, and ensure a safe, dependable, responsive, and adequate transportation system for the public as a whole.

The record shows that the facts surrounding the incidents are not in dispute. However, questions still exist as to whether RXC knowingly allowed an unsafe vehicle to continue transporting passengers in violation of Nebraska statutes and/or Commission rules and regulations. The fortuitous result that no one was harmed in the September 5, 2019 incident should not overshadow the flaws in the reporting and vehicle inspection procedures uncovered in its wake. Due to the serious nature of the events and in light of the evidence presented, we believe that it is necessary going forward to closely monitor the ongoing changes RXC has implemented to ensure passenger safety is improved.

As explained through testimony, RXC had reporting and vehicle inspection procedures in place that should have prevented the events on September 5, 2019. RXC admits that the procedures were not properly followed during the first hood latch incident on September 4, 2019. RXC driver Mr. Jacobs, aware that the hood was secured via a zip-tie, never verbally reported the incident to anyone, but instead only noted the incident on the vehicle inspection sheet that he turned in after

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<sup>84</sup> See Exhibit 9.

<sup>85</sup> See Exhibit 10.

<sup>86</sup> See Exhibit 18.

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returning to North Platte. The company procedures in place at that time required drivers to immediately report such issues to a supervisor and the supervisor and driver would decide on a course of action. Mr. Dimmitt, RXC's North Platte area manager, was not notified of the September 4<sup>th</sup> incident and was unaware of an issue with the vehicle until his conversation with driver Mr. Granger after the September 5<sup>th</sup> incident. Mr. Dimmitt did not have the white copy of the van's inspection sheet because it was thrown away prior to him having an opportunity to review it and the carbon copy was still in the vehicle when it was retired following the September 5<sup>th</sup> incident.

Since the September 2019 incidents and prior to the opening of this docket, RXC made efforts to implement new procedures in order to prevent similar instances moving forward. The Commission is unable to determine the adequacy of these changes in the relatively short amount of time that has passed since their implementation. The Commission commends RXC for recognizing the weaknesses in their procedures and attempting to reconcile those flaws. However, those improvements do not excuse the fact that railcrew passengers onboard the vehicle on September 5, 2019 had their lives put in immediate danger in a preventable scenario.

The testimony received from various railcrew employees regarding uncleanliness and safety concerns is extremely troubling to the Commission. Although the inspections conducted by Commission Transportation Inspectors in late August 2019 did not reveal any of the issues stated by the railcrew employees, we believe that the allegations should be taken seriously. For the foreseeable future, the Commission finds that RXC's procedures relating to incident reporting and vehicle inspections will be monitored to ensure RXC is operating safe vehicles on Nebraska roadways. Additionally, pursuant to Commission Transportation Rule 005.08, the Commission has the power to inspect RXC's vehicles at any time and any place, and the Commission intends to utilize that power to the upmost degree.<sup>87</sup> RXC is reminded that if the Commission determines after an inspection that a vehicle is unsafe or poses a significant risk to public safety, it will order the carrier to take the vehicle out of service until repairs have been made and

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<sup>87</sup> 291 Neb. Admin. Code, Chapter 3, § 005.08.



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the vehicle is re-inspected by Commission personnel.<sup>88</sup> No further action is necessary at this time, but the Commission will revisit the issues presented in this investigation again in the future. Should these issues remain, RXC is on notice that it could be subject to any and all Commission action and penalties that is deemed appropriate.

Based on the above, the Commission finds that the above-captioned investigation should be closed.

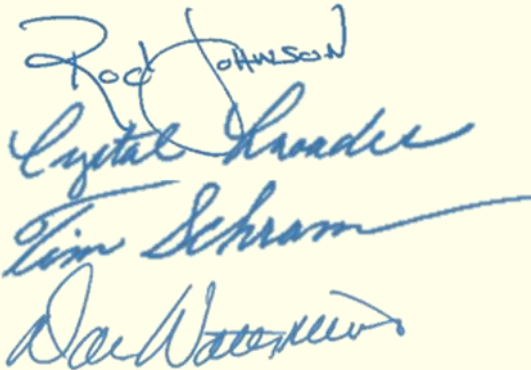
O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-captioned investigation be, and is hereby, closed.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 2<sup>nd</sup> day of June, 2020.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



  
Chair

ATTEST:

  
Executive Director

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<sup>88</sup> 291 Neb. Admin. Code, Chapter 3, § 005.10.