

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

---

## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Docket No. MR-1023/PI-234  
Public Service Commission, on )  
its own motion, seeking to )  
investigate the prescription ) ORDER ESTABLISHING GROUND  
of reasonable rates and ) TRANSPORTATION FEE  
charges for regulated motor )  
carriers providing ground )  
transportation for passengers )  
at Eppley Airfield. ) Entered: December 15, 2020

BY THE COMMISSION:

On September 1, 2020, the Nebraska Public Service Commission ("Commission"), on its own motion, opened the above-captioned docket to investigate the implementation of a proposed ground transportation fee assessed by the Omaha Airport Authority ("OAA") to certificated and permitted carriers that provide ground transportation for passengers to and from Eppley Airfield in Omaha, Nebraska.

A workshop was held on October 7, 2020 to discuss possible options for regulatory treatment of the fee. Based upon workshop discussion, the Commission entered an order on October 20, 2020 seeking comment on expenses related to administering and remitting the OAA fee. Additionally, hearing was scheduled for November 17, 2020.

On November 17, 2020, hearing in the above-captioned matter was held in the Commission Hearing Room and virtually via Webex and telephone. Ms. Jamie Reyes and Mr. Dillon Keiffer-Johnson appeared on behalf of the Commission.

## E V I D E N C E

### *Hearing Testimony*

Ms. Jamie Reyes, Director of the Motor Transportation Department, began by making a statement on behalf of the department. She explained this hearing was held to determine the Commission's treatment of the ground transportation fee approved by the Omaha Airport Authority that will be assessed to all passenger carriers providing ground transportation at the Omaha Eppley Airfield effective January 1, 2021.<sup>1</sup> Ms. Reyes reiterated three options presented at the October 2020 workshop that the

---

<sup>1</sup> Hrg. Transcr. 10:2 - 10:12 (November 17, 2020).

## SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

---

Docket No. MR-1023/PI-234

Page 2

Commission could consider. First, the fee could be treated as an embedded fee built into the passenger carrier's base rate, becoming a part of the carrier's existing rate. Second, rather than including the fee into a carrier's base rate, it would instead be listed as a separate identifiable fee that all passengers would be able to recognize on their receipt. Lastly, the fee would be absorbed into a carrier's operating expense and would not be offset or collected from the passenger.<sup>2</sup>

Ms. Reyes recommended that the Commission move forward allowing carriers to collect this fee from the passengers as an offset, listed as a separate and identifiable fee excluded from a carrier's base rate.<sup>3</sup> She explained the department's recommendation is rooted in transparency. Ms. Reyes discussed the Commission tends to be transparent across all departments to ensure those who are charged various fees, surcharges, and taxes are aware of what is included in the cost of the service provided. She noted that such transparency aligns with the public interest of ensuring passengers are aware of all costs related to the transportation services provided and that everything is being done above board.<sup>4</sup> Later, Ms. Reyes noted that such transparency currently exists with the ground transportation fee currently assessed by Transportation Network Companies ("TNCs"). She explained a passenger can see the ground transportation fee just like other fees, like surge pricing, that may be imposed on your trip.<sup>5</sup>

Ms. Reyes described the difficulty in using other jurisdictions for guidance in how they handle ground transportation fees since very few jurisdictions regulate rates on a statewide basis like the Commission. She mentioned that in many jurisdictions, carrier rates are either locally regulated or entirely unregulated. Ms. Reyes stated that in some jurisdictions, regardless of who holds rate making oversight, ground transportation fees are easily identifiable allowing passengers to know the exact rate they are paying.<sup>6</sup> She noted that Colorado seems to be the only jurisdiction that has affirmatively established a rate that coincides with an airport fee, but their rate regulation does not necessarily align with that of the Commission.<sup>7</sup> Ms. Reyes noted that even in

---

<sup>2</sup> *Id.* at 10:13 - 11:14.

<sup>3</sup> *Id.* at 11:15 - 11:22.

<sup>4</sup> *Id.* at 12:1 - 12:18.

<sup>5</sup> *Id.* at 14:22 - 15:7.

<sup>6</sup> *Id.* at 12:24 - 13:22.

<sup>7</sup> *Id.* at 13:23 - 14:15.

## SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

---

Docket No. MR-1023/PI-234

Page 3

jurisdictions where rate making is absent, there still seems to be a tendency towards transparency and having a fee that passengers are readily made aware of.<sup>8</sup>

Ms. Reyes stated that although concerns were raised at the October 2020 workshop regarding potential administrative costs that could be associated with the processing and collection of such a fee, the Commission received no written comments detailing what those costs would be. She explained that without feedback from the industry, it is difficult for the department to ascertain what any associated costs would be. As such, Ms. Reyes recommended that without such information from the industry the Commission move forward without imposing the ability for carriers to add in an administrative fee on top of the ground transportation fee to be assessed.<sup>9</sup>

Ms. Reyes stated that if the Commission were to accept her recommendation, she would further recommend that the Commission allow the carriers who provide service to Eppley Airfield to update their published rates in order to reflect the addition of that fee without charging the carriers the usual cost associated with a rate change application. She explained that this would allow carriers to immediately operate at the airport on January 1, 2021 by adding that rate as part of their rate structure.<sup>10</sup> Ms. Reyes concluded her statement by stating that if a carrier would like to have an additional discussion regarding an associated administrative fee, supporting documentation would be required to determine why an additional fee in conjunction with the ground transportation fee would be necessary.<sup>11</sup>

In response to questions from Commissioners, Ms. Reyes confirmed that the ground transportation fee approved by the Omaha Airport Authority was two dollars and seventy-five cents (\$2.75) for pickups and drop-offs made by certificated carriers at Eppley Airfield. Furthermore, TNCs implemented a fee for this exact amount in June 2020 without collecting any additional administrative fees.<sup>12</sup> Ms. Reyes also reiterated that if a carrier wanted to charge an additional fee above and beyond the amount of the ground transportation fee, they would need to specifically ask for that with supporting documentation to

---

<sup>8</sup> *Id.* at 14:16 - 14:21.

<sup>9</sup> *Id.* at 15:12 - 16:17.

<sup>10</sup> *Id.* at 16:18 - 18:6.

<sup>11</sup> *Id.* at 18:7 - 18:22.

<sup>12</sup> *Id.* at 19:2 - 19:25.

## SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

---

Docket No. MR-1023/PI-234

Page 4

justify such a fee.<sup>13</sup> Ms. Reyes stated that the application to add on the ground transportation fee to a carrier's rate schedule would provide the Commission with an easy way to ascertain who exactly is entering into agreements with the Omaha Airport Authority to provide services.<sup>14</sup> Ms. Reyes further explained that she used the term application in loose sense and that any documentation could be used to facilitate the administrative updating of the carrier's rate structures.<sup>15</sup> Ms. Reyes also stated in its research, the department did not see any jurisdiction add-on an additional administrative fee.<sup>16</sup>

Mr. Andy Pollock made a statement on behalf of WHC NE, LLC d/b/a zTrip. Mr. Pollock began by stating that zTrip would support Ms. Reyes' recommendation, and stated such at the October workshop.<sup>17</sup> Mr. Pollock then discussed that zTrip did not submit written comments because of its inability to ascertain what additional costs would be. He explained that zTrip was surprised by the complexity of trying to reconfigure its pricing and charging system. He noted that typically with airport charges, like the one at issue, the airport does more of the administrative work. However, the Omaha Airport Authority has shifted that burden entirely on the carriers and it has proved to be cumbersome and complicated.<sup>18</sup> Mr. Pollock stated that there will be a significant expense associated with this fee that will have to be passed along to the customer and he would ask the Commission to reconsider allowing carriers to recover such associated costs. He stated that hopefully by January 1, 2021, zTrip would know what those costs would be ask that carriers be allowed to recoup that costs.<sup>19</sup>

In response to Commissioner questions, Mr. Pollock stated that the concept of allowing the carriers to charge their customers more than what the Omaha Airport Authority has set for ground transportation fee is something the Commission should consider.<sup>20</sup> Mr. Pollock also requested that the record in this proceeding be left open, at least through the first week of December, to allow for carriers to provide the Commission will

---

<sup>13</sup> *Id.* at 20:9 - 21:2.

<sup>14</sup> *Id.* at 21:3 - 21:25.

<sup>15</sup> *Id.* at 23:7 - 25:8.

<sup>16</sup> *Id.* at 25:24 - 26:6.

<sup>17</sup> *Id.* at 31:22 - 32:9.

<sup>18</sup> *Id.* at 32:10 - 32:23.

<sup>19</sup> *Id.* at 32:24 - 33:9 and 34:8 - 35:16.

<sup>20</sup> *Id.* at 36:8 - 37:11.

## SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

---

Docket No. MR-1023/PI-234

Page 5

more information.<sup>21</sup> Mr. Pollock opined about possible process options and stated his willingness to work with Commission staff to find a solution.<sup>22</sup>

Mr. William Alford then provided a statement on behalf of VIP Limousine. Mr. Alford began by stating that the ground transportation fee will impose some degree of costs that would have to be supplemented by an additional fee to help offset the costs to their affiliates.<sup>23</sup> Mr. Alford stated that unlike taxis or TNCs, the limousine business has extended periods of time when they do not get paid, if at all, and therefore would have to front load most of the cost.<sup>24</sup> Mr. Alford concluded his statement by requesting that the Commission allow the carriers a small fee to help offset any additional costs. He stated that he could try and give the Commission the best estimate of those costs.<sup>25</sup>

### *Exhibits*

Commission staff offered Exhibits one through five, which were received into evidence. No other exhibits were offered.

### *Written Comments*

During the hearing, additional time was requested to file written comments to address the questions raised in the October 20, 2020 Order related to costs associated with administering and remitting the OAA ground transportation fee. Interested parties were given until December 1, 2020 to file any additional comments.

Written comments were received from WHC NE, LLC zTrip d/b/a Airport Transportation d/b/a Van GO and My Sedan; WHC NE, LLC d/b/a Cornhusker Cab Company and zTrip; WHC NE, LLC d/b/a Happy Cab and zTrip; WHC NE, LLC d/b/a Checker Cab Company and zTrip; WHC NE, LLC d/b/a Yellow Cab Company and zTrip; and WHC NE, LLC

---

<sup>21</sup> *Id.* at 38:2 - 38:24. See also Docket No. MR-1023/PI-234 *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to investigate the prescription of reasonable rates and charges for regulated motor carriers providing ground transportation for passengers at Eppley Airfield*, Order Seeking Comment (Entered November 24, 2020).

<sup>22</sup> *Id.* at 43:5 - 43:23.

<sup>23</sup> *Id.* at 49:1 - 49:7.

<sup>24</sup> *Id.* at 49:8 - 49:16.

<sup>25</sup> *Id.* at 49:17 - 49:25.

## SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

---

Docket No. MR-1023/PI-234

Page 6

d/b/a Safeway Cabs and zTrip (collectively, "zTrip"); Blair Blue Cab, LLC; VIP Limousine; and City Taxi, Inc.

In its comments, Blair Blue Cab stated that its administrative costs include additional fees and increased insurance premiums due to adding OAA as an additional insured. It further stated that the administrative fee should be considered on per-carrier basis as taxi carriers may have differing costs.

VIP Limousine commented that its best guess estimate of a fee amount would be \$5 in addition to the \$2.75 ground transportation fee. VIP further commented that it would like either a delay in the ground transportation fee implementation or whatever reasonable fixed additional surcharge determined by the Commission to cover additional costs of compliance.

City Taxi commented that it would like a six month hold on implementation of the ground transportation fee.

Finally, zTrip commented that it does not expect or estimate its costs to administer the fee to be high enough to justify a separate assessment to recoup the costs. However, if the Commission determines a surcharge is necessary, zTrip believes that the fee should be a single amount for all carriers under the same line item as the OAA ground transportation fee. The OAA fee should also be a separate line item on a flat rate receipt, including any administrative surcharge.

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

The Commission opened this docket in response to recent actions undertaken by the OAA as it relates to the provision of transportation services at Eppley Airfield. At its November 17, 2020 board meeting, the OAA took actions to adopt a resolution relating to a For Hire Trip User Fee as well as to make changes to its rules and regulations. Under the resolution, all carriers operating at Eppley must remit a for hire trip user fee in the amount of \$2.75 for each pick-up and drop-off completed. The remittance of this fee to the OAA is to be made monthly. In addition, the OAA made several updates to its rules and regulations. Under its rules, the OAA requires all passenger carriers and drivers utilizing the Eppley Airfield roadway systems to have permission to so operate pursuant to a Passenger Carrier Permit issued by the OAA. Moreover, the OAA shall be

## SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

---

Docket No. MR-1023/PI-234

Page 7

named as an additional Insured on each providers' insurance policy.

The Commission has jurisdiction over common carriers pursuant to Neb. Rev. Stat chapter 75 Articles 1 and 3. However, the OAA has jurisdiction pursuant to the Nebraska Cities Airport Authorities Act to undertake the actions described herein as it relates to services provided at Eppley Airfield.<sup>26</sup> The Commission, however, has jurisdiction pursuant to Neb. Rev. Stat. § 75-118 to fix all necessary rates and charges regulating the transportation of passengers by any common carrier in Nebraska intrastate commerce. That puts the question as to whether a common carrier may collect the fee from their passengers squarely within the jurisdiction of the commission.

The Commission recognizes the difficulties that may be associated with the collection and remittance of the ground transportation fee assessed to those carriers providing services at Eppley. However, the issues related to the costs a carrier may incur to meet their obligations with the OAA are ancillary to the issue in this proceeding. The issue at hand is whether the ground transportation fee that will become effective January 1, 2021, is a cost that carriers can pass along to their passengers.

Upon consideration of the testimony and comments received and being fully advised in the premises, the Commission finds that those passenger carriers providing ground transportation services at Omaha Eppley Airfield may charge a ground transportation fee of \$2.75 per pick-up and drop-off trip to offset the ground transportation fee assessed to passenger carriers by OAA effective January 1, 2021. This charge would be applicable to a pick-up and drop-off at any location at Eppley Airfield. Carriers should ensure that such charge is clearly identifiable on a receipt or contract for services. Carriers that wish to assess the offset ground transportation fee must file written notice of its intent to the Commission prior to assessing the fee to passengers. No application fee is required so long as notice is received before January 1, 2021. Written notice may be filed by mail or by email to [psc.motorfilings@nebraska.gov](mailto:psc.motorfilings@nebraska.gov). Commission staff will update any published rates for those carriers that file proper notice by January 1, 2021. Those carriers that wish to assess the offset fee after January 1, 2021 must file a rate application to amend its rates pursuant to Commission rules.

---

<sup>26</sup> See Neb. Rev. Stat. § 3-501-514.

## SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

---

Docket No. MR-1023/PI-234

Page 8

Additionally, the Commission finds that the flat rates charged by taxicab carriers to transport passengers between Eppley Airfield and Omaha area hotels and motels will be adjusted to include the ground transportation fee. Flat Rate Schedule notices will clearly state that the flat rate includes the ground transportation fee.

Finally, the Commission finds that further investigation is necessary to determine whether passenger carriers may assess a supplemental administrative fee or surcharge to recoup costs associated with administering and remitting the ground transportation fee to OAA. Such investigation may result in future comment requests and proceedings.


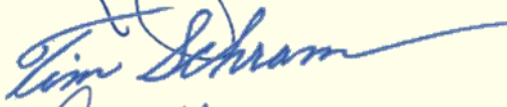

### O R D E R

IT IS THEREFORE ORDERED by the Commission that carriers may assess a ground transportation fee to its passengers effective January 1, 2021 as described herein.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 15<sup>th</sup> day of December, 2020.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

  
Chair

ATTEST:

  
Executive Director



## SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

---

Docket No. MR-1023/PI-234

Page 9

Commissioner Rhoades, dissenting:

I dissent and disagree with the approach laid out in the Commission order. A more reasonable and fair approach would be to allow each carrier to be given more time to apply for a rate increase that would include the ground transportation fee and any administrative costs associated with collecting the fee.

There do not appear to be any relevant statutes that permit the airport authority to supersede the authority of the Commission, or to tack random charges on common carriers. Absent any such statute, I believe the Commission is setting dangerous precedent. Should the Commission accept the implementation of a similar fee from entities like Amtrak or bus stations? Would hotels or entertainment districts also be permitted to apply such fees and set arbitrary timelines for common carriers to comply? There's a potential to create unintended consequences without a clear process for how any of these costs are absorbed or passed on to the customer.

Therefore, while the airport authority may assess the fee, the costs of implementing that fee and the fee itself should be calculated by the individual carriers as an operational expense and should be captured in the rate structure of each carrier. Further, it was improper to impose such a fee without providing the carriers adequate time to make the necessary adjustments to their fee structure. It is unreasonable and imprudent to order carriers to collect such a fee without allowing them to recover the implementation costs of collecting the fee and without giving the Commission adequate time to process the rate increases of the carriers. This fee should look more like the carrier fuel surcharge that is implemented when gas prices are high. Permitting a third party to arbitrarily demand the carriers put a pass-through fee on customers to generate revenue for that third party without giving them an opportunity to adjust to the change and cost associated with the change, and be kept whole, is unfair and unreasonable.

Finally, common carriers and Transportation Network Companies have different responsibilities to the public, and as such cannot, and should not, have the same standards applied. How the airport authority interacts with each class of carrier must be consistent with how they are treated by statute and rules and regulations of the Commission. The airport authority's ability to assess a ground transportation fee to the TNC providers is not a compelling or relevant reason to justify the

## SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

---

Docket No. MR-1023/PI-234

Page 10

airport authority's assessment of the same fee in the same manner to common carriers.

  
Commissioner Crystal Rhoades