

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Docket No. MT-0002/PI-235
Public Service Commission, on)
its own motion, seeking to)
investigate and implement) ORDER TO PRESCRIBE PROCESS
changes to motor carrier) FOR TRANSITION OF RAILROAD
regulation resulting from the) EMPLOYEE CARRIERS TO
passage of LB 461 [2020].) LICENSEES
)
)
) Entered: December 15, 2020

BY THE COMMISSION:

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

On October 6, 2020, the Nebraska Public Service Commission ("Commission"), on its own motion, opened the above-captioned docket to investigate actions that may be required in response to the passage of LB 461, passed by the Nebraska Legislature and signed by the Governor during the 2020 Legislative session.

LB 461 amended several statutes, including the removal of motor carriers that solely provide passenger transportation services to railroad employees from the definition of regulated motor carrier and contract carrier. Effective January 1, 2021, those motor carriers are to be issued licenses before providing any transportation services in intrastate commerce.

On November 4, 2020, the Commission entered an Order Scheduling a Hearing to receive evidence and testimony from the affected carriers and interested persons regarding the new licensure process pursuant to the passage of LB461. Hearing on this matter was held on November 18, 2020, in the Commission Hearing Room and simultaneously via electronical means in accordance with the local public safety guidelines issued as a result of the COVID-19 pandemic. Notice of the Hearing was published in The Daily Record on November 6, 2020. Ms. Jamie Reyes and Mr. Dillon Keiffer-Johnson appeared on behalf of Commission Staff and the Commission recognized the following representatives: Mr. Ryan Parker on behalf of Professional Transportation, Inc.; Mr. Mark Knickerbocker on behalf of Renzenberger; and Mr. Jeff Davis on behalf of BNSF Railway Company.

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E V I D E N C E

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 consider how the Commission should move forward with those carriers who currently provide passenger transportation services within the State of Nebraska pursuant to contracts with the railroad carrier operators within the state.¹ Ms. Reyes noted there are three such carriers that are currently permitted to provide such services in Nebraska: Armadillo/RailCrew Xpress, Hallcon/Renzenberger, and Professional Transportation Incorporated. Ms. Reyes further noted that these specified carriers have been providing the aforementioned services in Nebraska for decades and the Commission must determine how it will transition these carriers to their new status as licensees created under LB 461 passed during this past legislative session.² In later testimony, Ms. Reyes testified that each of these carriers have certificates or permits of authority that detail each carrier's respective authority.³

Ms. Reyes explained that LB461 created a new licensing classification for these carriers and changes how these carriers have traditionally interacted with the Commission. She noted that LB461 eliminated the Commission's ability to establish rates for these carriers as well as outlined a licensing process. She explained the licensing process is like the permitting process for Transportation Network Companies ("TNC"). As such, a qualified applicant would need to submit certain information to the Commission in order to receive the license. Ms. Reyes also stated that the license must be renewed annually with a Two-Hundred Fifty dollar (\$250) application fee or it would be null and void.⁴

Ms. Reyes provided alternative options the Commission could consider for licenses taking effect on January 1, 2021. Ms. Reyes stated that the Commission could allow the carriers to retain their current authority by reclassifying them from contract carriers to licensees. This process would allow the carriers to provide continuous service up and through the

¹ *Hrg Transcr.* 10:6 - 10:17 (November 18, 2020).

² *Id.* at 11:1 - 11:12.

³ *Id.* at 12:6 - 12:20.

⁴ *Id.* at 11:13 - 12:5; see also Neb. Rev. Stat. § 75-304.04 (operative January 1, 2021).

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previously mentioned effective date. Ms. Reyes also noted the Commission could consider the carrier's certificates or permits null and void and require the carriers in question to reapply for a licensing authority and go through that process of acquiring a license prior to the effective date.⁵ Ms. Reyes recommended that the Commission move forward by reclassifying the three carriers to ensure no lapse in the services provided. Ms. Reyes explained that those carriers interested in providing those services that do not currently offer them would be required to apply under the new licensing process that Commission staff will develop in order to ensure they receive their license in a timely manner once the effective date begins on January 1, 2021.⁶

Ms. Reyes then explained Commission precedent for engaging in such a reclassification process, asking that administrative notice be taken of Commission Docket PI-10.⁷ Ms. Reyes described that in 1994 and 1995, the Commission was tasked with answering a similar question when President Clinton signed into law the 1994 Federal Transportation Deregulation bill, which was part of the Federal Aviation Administration Authorization Act of 1994 ("The Act").⁸ Ms. Reyes explained the Act preempted state regulation of property transportation with the exception of household goods moving services. As such, the Commission had to determine how it would move forward with taking those property carriers who were not providing household goods moving services out of Commission regulation and keeping those carriers who were exclusively providing such services within its purview.⁹ Ms. Reyes stated that the Commission laid out a process where Commission staff first identified those carriers providing household goods moving services. Then, carriers were required to file affidavits stating that they were continuing to provide services, had always held themselves out to be household goods moving service providers, and that they intended to continue providing those services in the future.¹⁰ She further explained that carriers meeting the criteria were reclassified from certificated property transportation providers to certificated carriers of household goods. Carriers who did not meet the

⁵ *Id.* at 13:12 – 14:3.

⁶ *Id.* at 16:18 – 17:1.

⁷ See *Application No. PI-10, In the Matter of the Commission Investigation into the exigency of revoking those intrastate motor carrier authorities nullified by passage of Public Law 103-305*, opened November 1, 1994.

⁸ *Id.* at 14:19 – 15:2.

⁹ *Id.* at 15:3 – 15:12.

¹⁰ *Id.* at 15:14 – 15:25.

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criteria had their certificates and permits considered null and void as of the effective date of the federal law.¹¹

Commissioner Schram then asked Ms. Reyes if the Commission still possesses the authority to field complaints about the fitness of rail crew transportation providers and household goods movers. Ms. Reyes confirmed the Commission's ability to field complaints regarding a licensee's fitness, explaining that rail crew transportation providers must attest to comply with Commission rules regarding driver qualifications, equipment safety, operating standards, and record keeping. She further explained that the Commission already has rules in place regarding these standards and would anticipate that a future rulemaking would adapt those requirements to the Commission's rail crew carrier licensees.¹²

In response to further Commissioner questions, Ms. Reyes described the advantages and disadvantages of the two alternatives. Ms. Reyes explained that the biggest advantage of reclassification is the avoidance of any potential lapse in services for carriers currently providing rail crew transportation services within the state. She noted the disadvantage of reclassification would be potentially overlooking a carrier. Ms. Reyes dismissed this as strong consideration because the universe of carriers providing this service is well known by the department. As it relates to the alternative option of voiding current certificates and requiring reapplication, Ms. Reyes noted the advantage of this option would be the receipt of updated carrier information sooner. She reiterated the disadvantage requiring reapplication would be the risk of a gap in the provision of service.¹³ Commissioner Ridder then inquired whether the Commission would be able to combine the advantages of each option by receiving updated information while reclassifying each carrier in order to receive the benefits of both options while avoiding the respective disadvantages. Ms. Reyes then agreed that could be accomplished.¹⁴ Ms. Reyes also stated that she does not foresee any difference in how the Commission's inspectors currently interact with these carriers as it relates to this new licensing process.¹⁵ She further noted that there would also be no change in a licensee's obligation regarding insurance coverage and the

¹¹ *Id.* at 16:1 - 16:9.

¹² *Id.* at 17:7 - 18:17.

¹³ *Id.* at 19:13 - 21:9.

¹⁴ *Id.* at 21:10 - 21:17.

¹⁵ *Id.* at 21:23 - 22:19.

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requirement for a licensee's insurance provider to inform the Commission if a licensee's coverage has or will be cancelled.¹⁶

Mr. Ryan Parker, the vice president and general counsel with Professional Transportation Incorporated ("Professional"), made a statement. Mr. Parker reiterated that Professional is a certificate holder that has provided rail crew transportation services for the last forty years in the State of Nebraska.¹⁷ Mr. Parker stated that Professional agrees with the recommendation of Ms. Reyes, explaining that reclassifying the company's authority to a license would be the most efficient and expedient transition.¹⁸ Mr. Parker further noted that it is his view that as a current certificate holder, both Professional and the Commission would agree that his company is qualified to provide these services.¹⁹ Mr. Parker concluded his testimony by stating that it is the company's preference to ensure an uninterrupted continuation of services to Professional's rail transportation providers and that reclassification should be undertaken by the Commission.²⁰

Next, Mr. Mark Knickerbocker made a statement on behalf of Renzenberger. Mr. Knickerbocker is the director of safety and risk management with Renzenberger.²¹ Mr. Knickerbocker stated that Renzenberger has been providing railroads with employee transportation service since 1946.²² Mr. Knickerbocker stated that to ensure there is no disruption in service, Renzenberger would ask the Commission to reclassify its authority to a license effective January 1, 2021 without requiring the company to reapply.²³ In addition, Mr. Knickerbocker further requested the Commission allow rail crew transportation providers operating under such license to operate throughout the entire State of Nebraska without geographical barriers.²⁴ In response to Commissioner questions, Ms. Reyes confirmed that the language in LB461 would make the licenses a statewide license, akin to the TNC permits.²⁵

¹⁶ *Id.* at 22:20 - 23:3.

¹⁷ *Id.* at 25:4 - 26:6.

¹⁸ *Id.* at 26:7 - 26:13.

¹⁹ *Id.* at 26:14 - 26:17.

²⁰ *Id.* at 26:19 - 27:16.

²¹ *Id.* at 28:11 - 28:15.

²² *Id.* at 28:20 - 28:21.

²³ *Id.* at 29:1 - 29:7.

²⁴ *Id.* at 29:8 - 29:11.

²⁵ *Id.* at 29:15 - 30:16.

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Mr. Brian O'Hara, president of Railcrew Xpress, was next to provide a statement. Mr. O'Hara stated that Railcrew Xpress agreed with Ms. Reyes' reclassification recommendation. Mr. O'Hara pointed out that the last thing Railcrew Xpress wants to see is an interruption in services.²⁶

Mr. Bob Borgeson, state legislative director for S.M.A.R.T., made a statement. Mr. Borgeson stated that S.M.A.R.T. union represents the individuals that are transported by these vans throughout the state. Mr. Borgeson further commented that during the negotiations for LB461, it was the understanding that the licensing at issue be passed from a certificate to a license and the union supported that transition.²⁷

Finally, Mr. Jeff Davis, on behalf of BNSF Railway, stated that BNSF supported the recommendation by Ms. Reyes as well as the comments of Renzenberger, Railcrew Xpress, and Professional Transportation, Inc.²⁸

Exhibits

Commission staff offered Exhibits 1 through five, which were received into evidence. Exhibit 4 was a copy of written comment filed by Union Pacific Railroad indicating its recommendation to transfer current carrier authority to a new license. The Commission also took administrative notice of Commission Docket PI-10. No other comments or exhibits were received into evidence.

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

Neb. Rev. Stat. § 75-118.01 grants the Commission original exclusive jurisdiction to determine the scope or meaning of a certificate, permit, tariff, rule or regulation. The Commission engages in this exercise when necessary, evidenced by the creation of service classifications and service restrictions in its Motor Transportation rules and regulations. Title 291 Chapter 3, Rule 003.02B requires carriers wishing to transport railroad crews to apply for a special designation from the Commission to provide such transportation. The passage of LB 461 has put the Commission in a position to determine how best to

²⁶ *Id.* at 31:14 - 32.1.

²⁷ *Id.* at 33:3 - 33:16.

²⁸ *Id.* at 36:18 - 36:21.

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transition this service from the current special designation for common and contract carriers to a stand-alone passenger carrier category.

LB 461 created a new carrier category of licensee, which includes passenger carriers transporting railroad employees and property carriers transporting household goods. Our current inquiry deals only with the transportation of railroad employees, and the transition for household goods movers to licensees shall be dealt with in future proceedings.²⁹ The statutory provisions applicable to common, contract, or regulated carriers will not apply to licensees unless specifically mentioned. Newly enacted Neb. Rev. Stat. § 75-304.04 requires a license be issued to any qualified applicant upon payment of a two-hundred fifty dollar (\$250) application fee and submitting a completed application including the carrier's principal place of business in Nebraska, an agreement to perform its services in conformance with Commission rules and regulations related to driver qualifications, equipment, operating standards, recordkeeping, and § 75-307 regarding insurance. The Commission will neither determine routes or fixed termini, nor regulate the carrier's rates.

Testimony indicates that three passenger carriers are currently certificated and authorized under special designation to provide transportation to railroad crews: Hallcon/Renzenberger, Armadillo/Railcrew Xpress, Inc., and Professional Transportation, Inc. These three carriers have continuously provided services under contract with railroad carriers operating in the state, and each carriers' representative expressed desire to continue providing these services in the future. These carriers do not engage in any other for-hire intrastate passenger transportation services. No party has suggested that the current carriers lack the qualifications to continue providing said services as licensees. In fact, the state's two Class I railroad carriers, Union Pacific Railroad and BNSF Railway Company, indicated their desire for the Commission to allow the current carriers to continue providing services moving forward as licensees.

The Commission wants to ensure a smooth transition for the current carriers and minimize any risk of lapse in service for railroad employees. Commission staff proposed two options to

²⁹ Note: LB 461 created an effective date of July 1, 2021 for provisions pertaining to property carriers transporting household goods for-hire.

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consider: reclassification of each current carrier's certificate or permit to a license effective January 1, 2021; or require each current carrier to apply for a license and void its certificate or permit on January 1, 2021. We believe that the best option is to reclassify each current carrier's certificate or permit to a license effective January 1, 2021. This allows for current carriers to continue providing services pursuant to their contracts.

Based on the above, the Commission finds that the certificates and permits of authority issued to Armadillo/Railcrew Xpress, Inc., Hallcon/Renzenberger, and Professional Transportation, Inc. should be reissued as a license to provide intrastate transportation for hire of employees of a railroad carrier to or from their work locations. Each carrier will work with Commission staff to file an affidavit attesting to their respective operations and ensuring that all required contact information and compliance documents, such as insurance and equipment lists, are up to date. Upon receipt of affidavits and compliance documents, each carrier listed above will be reissued a license to be considered effective January 1, 2021. Simultaneously, each carrier's certificate or permit of authority will be considered null and void on January 1, 2021.

Any currently designated carrier that fails to complete the affidavit process prior to January 1, 2021, or any other carrier that has not held itself out previously to have provided intrastate transportation for hire of railroad employees and now wishes to do so must make application for a license to provide such services. The required application form and instructions will be made available by request and on the Commission website by January 1, 2021. The Commission will then evaluate each complete license application upon receipt.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that those carriers currently providing intrastate passenger transportation services for railroad employees that complete the affidavit process shall transition from a common or contract carrier and be granted a license to provide passenger transportation for railroad employees effective January 1, 2021.

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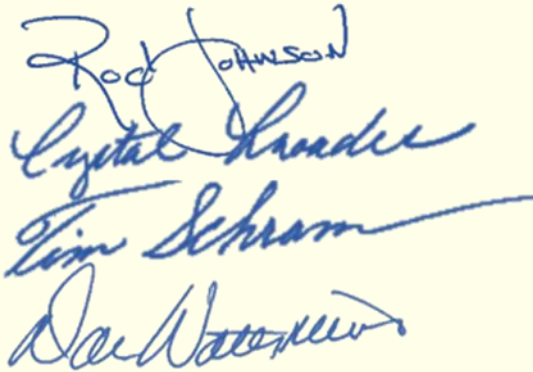
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IT IS FURTHER ORDERED that those carriers currently providing said services that do not complete the affidavit process by January 1, 2021, or any carrier not currently providing such services that wishes to do so after January 1, 2021, will be required to complete the application process to be made available by Commission staff by January 1, 2021.

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

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:




Chair

ATTEST:


Executive Director