

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) ORDER PRESCRIBING PROCESS FOR
investigate and implement) TRANSITION OF HOUSEHOLD GOODS
changes to motor carrier) MOVERS AND APPROVING INTERIM
regulation resulting from the) POLICIES
passage of LB 461 [2020].)
)
) Entered: May 25, 2021

BY THE COMMISSION:

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 household goods services from the definition of regulated motor carrier and contract carrier. Effective July 1, 2021, those motor carriers are to be issued licenses before providing any transportation services in intrastate commerce.

On March 16, 2021, the Commission entered an Order to schedule a hearing to receive evidence and testimony from the affected carriers and interested persons regarding the new licensure process. Notice of the Hearing was published in The Daily Record, Omaha, Nebraska, on March 18, 2021. Hearing on this matter was held on April 14, 2021 in the Commission Hearing Room and via WebEx. Ms. Jamie Reyes and Mr. Dillon Keiffer-Johnson appeared on behalf of Commission Staff. Mr. Dennis Leslie made a statement on behalf of Chieftain Van Lines.

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 reiterated that LB 461 made several changes to the regulations of railroad train crew carriers and household goods movers that operate intrastate in Nebraska.¹ She explained that the Commission's December 15, 2020 Order detailed the transition process for the railroad train crew carriers from common or

¹ *Hrg Transcr.* 8:10 - 8:14 (April 19, 2021).

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contract carriers to licensees.² Ms. Reyes explained that this hearing was being held with the same considerations as the previous hearing, to determine how the Commission should transition carriers who currently provide household goods moving services under a Certificate of Authority or Permit of Authority to a license under the new regulatory scheme.³

Ms. Reyes described two possible options. The Commission could require all current household goods movers to reapply for a license after the July 1st effective date, rendering their certificates or permits null and void. Alternatively, the Commission could implement a transitional process that would be less extensive.⁴ She stated that these options were previously used in Commission Docket PI-10. Administrative notice of that docket was taken in this docket during the previous hearing and notice was continued within this proceeding. Ms. Reyes detailed that under that docket the household goods movers were able to transition into having a certificate or permit once the trucking industry was deregulated. Included in that transition was an affidavit process where the carriers would attest to currently providing household goods moving services within the State of Nebraska, holding themselves out as providing those services, and the intention to continue to provide those services.⁵ Ms. Reyes stated that this was the process adopted in the Commission's December 15, 2020 order relating to the railroad train crew carriers. As part of the affidavit process, the railroad train crew carriers submitted proof of current insurance as well as verification of their current equipment list. Ms. Reyes confirmed that all documentation was submitted to the Commission prior to the expiration of their certificates and they were successfully transitioned to licensees on January 1, 2021.⁶

Ms. Reyes recommended that, based on the precedent of this process being utilized, the Commission adopt the same process for the household goods movers to transition to licensees by June 30, 2021, in order to ensure a license can be issued July 1, 2021.⁷ Ms. Reyes noted there are currently 57 certificated or permitted household goods movers within the State of Nebraska who would be eligible for the transition process.⁸ She explained the department

² *Id.* at 8:15 – 8:18.

³ *Id.* at 8:19 – 9:2.

⁴ *Id.* at 9:3 – 9:11.

⁵ *Id.* at 9:18 – 10:2.

⁶ *Id.* at 10:8 – 10:25.

⁷ *Id.* at 11:1 – 11:7.

⁸ *Id.* at 11:8 – 11:18.

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would send these carriers the affidavits in which they would attest to currently providing intrastate household goods moving services, that they have held themselves out as continuously being a household goods mover within the State of Nebraska, and they intend to continue to provide household goods moving services within Nebraska as a licensed household goods mover after July 1, 2021.⁹ In addition, the carriers will confirm their principal place of business within the State of Nebraska and their mailing address, if different.¹⁰ Ms. Reyes stated that the department has proof of current insurance as well as each carrier's current equipment lists that were filed as part of the annual vehicle renewal period. Thus, the carriers would not be required to supply that information unless there has been a change.¹¹ In addition, as this would be a transition, the two-hundred fifty-dollar (\$250) application fee would be waived. Ms. Reyes reiterated that each carrier must complete this entire process no later than June 30, 2021 to meet the deadline to successfully transition.¹²

Ms. Reyes noted that those who have never held a Certificate or Permit of Authority or those who miss the deadline to submit the required documentation would have to complete an application process.¹³ The application process would include the submission of an application as well as a two-hundred and fifty dollar (\$250) application fee. Potential applicants would also be required to file Form E proof of liability insurance and Form H proof of cargo insurance. If applying as a corporation, a Limited liability Company, a Limited Liability Partnership, or other entity, a copy of the Articles of Incorporation, Organization, or Partnership must be submitted. Applicants would also be required to submit their current equipment lists as well as a fingerprint-based background check report from the Nebraska State Patrol.¹⁴ Ms. Reyes further explained these new licenses are annual licenses effective one year from the date the license is considered active. If a carrier misses the renewal date, the license expires and the carrier is no longer authorized to operate and must reapply to be reissued a license.¹⁵ In later testimony, Ms. Reyes noted that the licenses have no territory restriction and will be considered

⁹ *Id.* at 12:23 - 13:7.

¹⁰ *Id.* at 13:8 - 13:12.

¹¹ *Id.* at 13:13 - 13:19.

¹² *Id.* at 13:20 - 14:1.

¹³ *Id.* at 14:2 - 14:6.

¹⁴ *Id.* at 14:7 - 14:24.

¹⁵ *Id.* at 14:25 - 15:12.

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statewide unless a carrier specifically requests to restrict its geographical area.¹⁶

Ms. Reyes then stated that the department received questions from a household goods mover that was unable to attend the hearing regarding the principal place of business requirement. She noted that the statutory language of Neb. Rev. Stat. § 75-304.03 requires a household goods mover licensee to have a principal place of business in Nebraska as part of its operations. Ms. Reyes stated that the department would define principal place of business using the general understanding: the primary location where the Nebraska business is being conducted and where the records and management are located.¹⁷

As a final note, Ms. Reyes explained that Commission Docket Rule and Regulation 206 is open and will amend Commission rules based on LB 461.¹⁸ Ms. Reyes mentioned that many of the guidelines and rules that the household goods movers currently follow were found in the Tariff 7F and Tariff 22. Rule and Regulation 206 proposes consumer protection provisions taken out of the two tariffs so there would be guidance for the household goods movers and their interactions with the public. Ms. Reyes stated that many interactions with the public will be set by contracts; however, the proposed rules do include several requirements to ensure the company is providing certain information to its customers.¹⁹ Ms. Reyes noted that since this rule making docket is likely to go beyond the July 1, 2021 licensing implementation deadline, it would be beneficial to include some proposed guidelines as part of this docket to put the household goods movers on notice of what some requirements may be moving forward. Current rules exist regarding insurance, recordkeeping, and driver qualifications that are no different for a common carrier than for a licensee that still must be followed as well as rules regarding trip logs and hours of service that are specific to household goods movers. Ms. Reyes recommended providing some guidance to the household goods movers as it relates to some of the proposed rules and regulations that the Commission expects as we approach finalization of the proposed rules.²⁰

Commissioner Schram asks Ms. Reyes whether there exists any requirement for a household goods mover licensee to file their

¹⁶ *Id.* at 16:9 - 16:16.

¹⁷ *Id.* at 15:13 - 16:8.

¹⁸ *Id.* at 16:22 - 17:1.

¹⁹ *Id.* at 17:2 - 18:1.

²⁰ *Id.* at 18:2 - 19:13.

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rates with the Commission. Ms. Reyes confirmed no such requirement exists because the language of LB 461 eliminated the tariff requirements for household goods movers and specifically stated the Commission would not set rates for the licensees. Ms. Reyes further explained that the Commission does not set rates for transportation network companies ("TNCs"), but TNCs file and update their rates with the Commission periodically. Ms. Reyes stated that the same could be considered for the household goods movers.²¹ In response, Commissioner Schram stated that would be beneficial to everyone if the rates of the licensees were on file with the Commission. Ms. Reyes stated the if the Commission would like to keep the current rule that requires household goods movers and passenger carriers to notify the Commission of a change in their rates, that can be discussed further in Rule and Regulation 206.²²

In response to Commissioner questions, Ms. Reyes stated that having a statewide license would not necessarily create an obligation to provide service statewide as is a requirement with common carriers who have a certificate of public convenience and necessity.²³ Ms. Reyes also clarified that this discussion has no bearing on an interstate move, as this license would only be for a move that is wholly within the state of Nebraska.²⁴

Finally, Mr. Dennis Leslie with Chieftain Van Lines made a statement. Mr. Leslie stated that his understanding of the changes implemented by LB 461 would make providing household goods moving services a "free-for-all" with no tariffs.²⁵ Commissioner Watermeier clarified that the intention of LB 461 was to take away the ability for the Commission to regulate household goods movers rates but still have the Commission protect the public by overseeing proper insurance is still being maintained.²⁶

The hearing concluded with no other appearances or statements from the industry or the public.

Exhibits

Commission staff offered Exhibits one and two, which were received into evidence. Exhibit 3, copies of the Certificates of

²¹ *Id.* at 19:22 - 20:8.

²² *Id.* at 20:23 - 21:24.

²³ *Id.* at 22:7 - 23:11.

²⁴ *Id.* at 23:13 - 24:10.

²⁵ *Id.* at 28:17 - 28:24.

²⁶ *Id.* at 28:5 - 29:6.

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Public Convenience and Necessity and Permits of Authority of the 57 active household goods movers, was also offered and received into evidence. Finally, the Commission continued to take administrative notice of Commission Docket PI-10.

O P I N I O N S 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 003.01B defines a household goods moving service as consisting of all the following elements: (1) the business of carrying personal effects and property used, or to be used, in a dwelling when the transportation of such effects or property is (2) arranged and paid for (3) by any party and (4) includes transportation of property from a factory, manufacturer, or store when the property is purchased with the intent to use such property in a dwelling. Household goods movers currently operate as either common or contract carriers.

LB 461 created a new carrier category of licensee, which includes passenger carriers transporting railroad employees and property carriers transporting household goods. On December 15, 2020, the Commission dealt with the licensure procedures for the transportation of railroad employees. The focus at hand is the transition of household goods movers to licensees. As of July 1, 2021, the statutory provisions applicable to common, contract, or regulated carriers will not apply to household goods mover licensees unless specifically mentioned. Newly enacted Neb. Rev. Stat. § 75-304.03 requires a license be issued to any qualified applicant upon payment of a license fee of two-hundred fifty dollars and receipt of a completed application in which the principal place of business of the applicant in the State of Nebraska is identified and the applicant agrees and affirms to perform the service in conformance with applicable Nebraska statutory sections 75-301 to 75-322 and the rules and regulations of the Commission adopted and promulgated under such sections. The Commission will neither determine operating territory nor regulate the carrier's rates. A license issued pursuant to 75-304.03 will be valid for one year and may be renewed annually for a fee of two-hundred and fifty dollars. If a licensee fails to renew its license prior to its renewal deadline that license becomes void and the licensee must reapply for a new license. Additionally, a

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license may be suspended or revoked by the Commission after notice and hearing for failure to comply with applicable Nebraska statutory sections of 75-101 to 75-801, any Commission rule or regulation, or any order of the Commission.

The Commission wants to ensure a smooth transition for the current carriers and minimize any risk of lapse in service for the household goods movers. Commission staff proposed two options to consider: reclassification of each carrier's certificate or permit to a license effective July 1, 2021; or require each current carrier to apply for a license and void its certificate or permit on July 1, 2021. We believe that the best option is to reclassify each current carrier's certificate or permit to a license effective July 1, 2021. This allows for current carriers to continue providing services and avoiding a lapse in available services for the public.

Testimony indicates that 57 household goods movers are currently authorized to provide household goods moving services within the State of Nebraska. Only one representative of the industry appeared at the hearing but did not comment on the proposed transition procedure. Upon review of Exhibit 3, the Commission acknowledges this list of carriers as the carriers that would be eligible to participate in the transition process. No evidence was presented that the current carriers lack the qualifications to continue providing these services as licensees. Additionally, there was no opposition testimony to the proposed transition process.

Based on the above, the Commission finds that the certificates and permits of authority issued to the 57 current household goods movers should be reissued as a license to provide intrastate household goods moving service. Commission staff will notify each eligible carrier of the required transition process and provide the required affidavit. Carriers should update contact information, insurance forms, and equipment lists if necessary. Although household goods movers will no longer be subject to rate regulation, carriers will also file with the Commission a copy of the rates it intends to use. Each carrier that files all required documents with the Commission no later than June 30, 2021 will be issued a license effective July 1, 2021. Simultaneously, each carrier's certificate or permit of authority will be considered null and void on July 1, 2021 and any carrier that has not completed all steps to receive its certificate must cease and desist all operations.

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Any carrier that fails to complete the affidavit process prior to July 1, 2021, or any other carrier that has not held itself out previously to have provided intrastate household goods moving service 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 July 1, 2021. The Commission will then evaluate each complete license application upon receipt.

Additionally, the transportation department is processing two applications for household goods moving authority as of the date of this Order. Documentation received as part of the current application process would meet the application requirements for a household goods movers license. Therefore, any pending applications completed and, if granted, will be issued a license to provide household goods moving services.

Interim Policies for Household Goods Movers

During the hearing, Commission staff noted that Commission rulemaking docket, Rule and Regulation 206, was recently opened to amend Title 291, Chapter 3 Motor Carrier rules to reflect changes required due to the passage of LB 461. Rule and Regulation 206 proposes consumer protection rules for household goods movers that were present within the Official Household Goods Tariff 7F and Official Intracity Household Goods Tariff 22. However, the proposed rules will not be complete prior to the July 1, 2021 transition date.

Thus, the Commission finds it pertinent to provide the future licensees with guidance in the interim.

Commission staff recommends adoption of the following interim policies:

1. Each household goods mover should follow current rules regarding minimum insurance requirements, recordkeeping, driver qualifications, and hours of service.
2. Household goods movers should not ship items liable to cause damage to other articles or premises.
3. The mover and customer must agree to the date for pickup and delivery of the shipment.
4. Should a prospective customer request a mover store shipment prior to delivery, the mover should notify the customer of

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the period of storage and if such storage will convert to permanent storage.

5. Movers should provide prospective customers with the following documentation prior to each move, including, but not limited to, an estimate, signed order for service, complete inventory, an executed Bill of Lading, disclosure of liability and valuation options, and its complaint and claims procedures.
6. Movers should conduct a physical survey of the goods to be transported and part of a written estimate. If the household goods are more than 50 miles from a mover's location or if a customer waives the physical survey in writing, a physical survey is not required.
7. Movers should weigh each shipment that is moving under a non-binding estimate and retain the scale ticket from a certified scale.
8. Any claim for loss, damage, or injury should be made to a mover in writing. Such claims are not required to be paid by the mover unless made within the time limits stated in the Bill of Lading. Claims filed against a mover should contain sufficient facts to identify the shipment, assert liability for the alleged loss, damage, or injury, and request a specific or determinable amount of money. If the amount of the claim is uncertain, the mover should ascertain the extent of the loss or damage. Movers should satisfy claims by repairing or replacing property with like-kind materials. Movers should acknowledge receipt of claims in writing within 20 days after receiving the complaint. However, a mover's liability should only be limited to the extent provided in the agreed upon Bill of Lading.

The Commission finds that the above interim policies should be adopted. The Commission may amend these policies upon request by the industry or on its own motion during the pendency of the adoption of final rules and regulations.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that those carriers currently providing for-hire intrastate household goods moving services that complete the affidavit process shall transition from a common or contract

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carrier and be granted a license to provide household goods moving services effective July 1, 2021 as provided herein.

IT IS FURTHER ORDERED that those carriers currently providing said services that do not complete the affidavit process by June 30, 2021, or any carrier not currently providing such services that wishes to do so after July 1, 2021, will be required to complete the application process to be made available by Commission Staff on July 1, 2021.

IT IS FINALLY ORDERED that the interim policies proposed herein be, and are hereby, adopted.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 25th day of May, 2021.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Rock Johnson
Crystal Brander
Mary Kidden

Don W. [Signature]
Chair

ATTEST:

Michael S. Hyatt
Executive Director