

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska)	Docket No. PI-230
Public Service Commission, on)	
its own motion, to investigate)	
insurance requirements for)	ORDER SEEKING COMMENT
motor carriers providing)	
intrastate transportation)	
services within the state of)	
Nebraska.)	Entered: June 28, 2022

BY THE COMMISSION:

On March 10, 2020, the Nebraska Public Service Commission ("Commission"), on its own motion, opened the above-captioned docket to investigate insurance requirements for motor carriers providing intrastate transportation of passengers and household goods in the state of Nebraska.

The initial order opening this docket focused on examining the insurance minimums in Title 291 Neb. Admin. Code Chapter 3, §§ 003.03, 006.01 and 006.02. The first round of written comments received focused on the minimum amounts of uninsured/underinsured motorist coverage required by rule 006.02. One commenter advocated for an increased coverage amount for those carriers transporting railroad train crews, while three commenters stated that increasing insurance minimums for these carriers was not necessary. One additional carrier commented on the interplay between motor carriers and insurance companies.

A public hearing was held on April 22, 2020 in the Commission Hearing Room and via WebEx. The Commission received the following appearances: Ms. Jamie Reyes and Mr. Dillon Keiffer-Johnson on behalf of the Commission; Mr. Jayson D. Nelson on behalf of the Sheet Metal, Air, Rail Transportation Union ("SMART"); Mr. Andy Pollock on behalf of Camelot Transportation, Triumph Transportation, Comstock Corporation d/b/a Action Cab, and the zTrip companies; Ms. Nichole Bogen on behalf of BNSF Railway company.

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E V I D E N C E

First, Lisa Kelly made a statement on behalf of Blair Blue Cab, LLC.¹ Ms. Kelly testified to her company's difficulty in obtaining liability insurance coverage. She stated that insurance companies do not quote policies at the Commission minimum and that if the Commission set higher liability minimums, the insurance companies would continue to set higher limits of their own.²

Next, Sandy Walker made a statement on behalf of Railcrew Xpress to supplement the written comment already filed in the docket. Ms. Walker stated that the pandemic has reduced rail traffic considerably, yet the company is paying the same insurance premium amounts.³

Next, Jeff Davis made a statement on behalf of BNSF Railway Company to supplement the written comments already filed. Mr. Davis stated that the issue of uninsured/underinsured motorist coverage limits goes back to a previous rulemaking. A request was made at that time to have evidence filed of unpaid medical bills, and Mr. Davis noted that none were filed in that proceeding nor have any been filed in the present docket.⁴ Mr. Davis was then asked whether railroad employees involved in an accident could possibly not have the same ability to recover costs associated with any injury if the liable party were uninsured or underinsured. Mr. Davis answered that he was unaware of any situation where a BNSF employee had been injured in an accident and not recovered medical costs due to stacking coverage limits from multiple sources, and then deferred to legal counsel, Ms. Nichole Bogen.⁵ Ms. Bogen then answered, stating that railroad employees have several available options to recover any lost wages or medical expenses, including the Federal Employers Liability Act ("FELA") so long as the injuries arise out of their work or work time.⁶ Ms. Bogen further noted that railroad employees could also seek recovery through an on-duty injury policy and off-track insurance.⁷

¹ Note: The company at the time of hearing was named Blair Blue Cab, LLC. Subsequent to the hearing, the company changed its name to Blair Blue Community Transportation, LLC.

² Hrg. Transc. (TR) 19:6-20:23 (April 22, 2020).

³ *Id.* at 22:2-21.

⁴ *Id.* at 24:16-25:14.

⁵ *Id.* at 25:23-28:4.

⁶ *Id.* at 29:24-36:19.

⁷ *Id.* at 38:9-39:-8.

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Next, Mr. Chuck Burn with Union Pacific made a statement. Mr. Burn stated that UP was concerned that any increase in mandated minimum limits could increase costs for primary carriers and eliminate secondary carrier competitions and result in longer wait times for crews.⁸ When asked to elaborate on potential remedies for railroad employees injured in an accident, Mr. Burn stated that employees would be able to look to the transportation carrier's liability insurance, FELA, off-track vehicle benefits, Railroad Retirement Board benefits and the employee's health insurance. Mr. Burn concluded by stating UP's written comments included a chart showing the types of available coverage.⁹

Mr. Bob Borgeson then made a statement on behalf of the International Association of Sheet Metal, Air, Rail, and Transportation Workers ("SMART-TD"). Mr. Borgeson asked the Commission to consider requiring contract carriers that transport railroad employees to carry uninsured/underinsured motorist coverage at a minimum of one million dollars per person with no caps. Mr. Borgeson expressed concern that an employee would not recover under a FELA claim if the railroad or the van carrier as its agent is not found to be negligent.¹⁰ When asked about insurance limits in surrounding states, Mr. Borgeson stated he believed North Dakota and Minnesota each had a limit of one million dollars.¹¹

Mr. Jay Nelson, attorney for SMART-TD, next made a statement on behalf of the organization. Mr. Nelson stated that FELA is not applicable to the scenarios presented during the hearing since it is fault based and requires that the railroad's negligence be established, and an employee is not automatically eligible for recovery. Mr. Nelson further stated that benefits from off-track coverage are subject to subrogation and that stacking coverages is not possible under Nebraska law, which allows recovery of the maximum single policy available. Mr. Nelson concluded by reiterating SMART-TD's request to increase the uninsured/underinsured motorist coverage limits to one million dollars coverage per person.¹²

⁸ *Id.* at 40:13-41:18.

⁹ *Id.* at 41:21-43:14.

¹⁰ *Id.* at 45:7-47:1.

¹¹ *Id.* at 47:2-18.

¹² *Id.* at 52:9-60:17.

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Mr. Andy Pollock made a statement on behalf of VIP Limousine, Camelot Transportation, Triumph Transportation, Comstock Corporation d/b/a Action Cab, and the zTrip companies. Mr. Pollock stated that the carriers share concerns about potential increases to insurance requirements, but the concerns would be alleviated should the proposed changes in Commission docket Rule and Regulation 203 be adopted.¹³ As to uninsured and underinsured motorist coverage minimums, Mr. Pollock stated that the Commission should consider reducing the minimums, especially for smaller vehicles. He suggested that smaller vehicles be set to the private carriage coverage requirements of \$25,000 per person and \$50,000 in the aggregate per accident, as for-hire vehicles are no different than private vehicles in terms of potential injuries and damages resulting from an accident.¹⁴

Finally, Mr. Steve Mason made a statement. Mr. Mason testified that the uninsured and underinsured limits are above statutory minimums and are excessive.¹⁵ According to Mr. Mason, requiring different limits by service class would create more paperwork and enforcement issues.¹⁶

Post-hearing Reply Comments

After the hearing BNSF, Railcrew Xpress, and UP each filed timely comments replying to testimony produced at the hearing. The written comments received in this round focused on the recoverability of railroad employees from different insurance policies. Multiple commenters rebuked testimony from Mr. Borgenson and Mr. Nelson regarding legal precedence and the "stacking" of recovery from multiple policies.

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

This investigation was opened to gather evidence and statements related to insurance requirements for motor carriers providing intrastate transportation of passengers and household goods in the state of Nebraska. The Commission sought input from the industry on multiple topics related to the Commission's insurance requirements. Each topic will be discussed below.

¹³ *Id.* at 69:21-70:25.

¹⁴ *Id.* at 71:1-72:22.

¹⁵ *Id.* at 78:3-6.

¹⁶ *Id.* at 78:20-79:5.

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Liability Insurance Minimums

The Commission sought comment from the industry regarding whether the current liability insurance minimums listed in Commission Rules 003.03A-D are sufficient. Pursuant to Neb. Rev. Stat. § 75-307 certificated intrastate motor carriers, licensed motor carriers transporting household goods, and licensed motor carriers transporting employees of a railroad carrier shall comply with Commission rules and regulations governing insurance requirements. Commission rules require that operators of motor vehicles are required to carry minimum levels of financial responsibility.¹⁷ Passenger carrier minimums are determined by the rated seating capacity of the vehicles operated. Vehicles with a rated seating capacity of sixteen (16) passengers or more must have liability insurance of not less than five million dollars (\$5,000,000) of coverage.¹⁸ Vehicles with a rated seating capacity between eight (8) and fifteen (15) passengers must have liability insurance of not less than one million, five hundred thousand dollars (\$1,500,000) of coverage.¹⁹ Vehicles with a rated seating capacity of less than seven (7) passengers must have not less than five hundred thousand dollars (\$500,000) of coverage.²⁰ Limited testimony was received regarding the Commission's current liability insurance minimums. The bulk of testimony received regarding liability insurance detailed the inability of some carriers to obtain coverage at the minimums set by the Commission.²¹ The liability insurance coverage levels detailed in Commission Rule are minimums. Insurance companies are free to determine that a carrier's risk profile necessitates coverage in amounts higher than those prescribed by Commission rule. No testimony was received detailing the insufficiency of the Commission's current liability insurance coverage minimums. Thus, the Commission finds that no action will be taken to alter those minimum coverage levels at this time.

Uninsured/underinsured motorist coverage

The Commission sought to gather information regarding the sufficiency of uninsured/underinsured motorist coverage minimums listed in Commission Rule 006.02. The Commission further inquired whether the Commission should explore adopting differing uninsured/underinsured motorist coverage minimums

¹⁷ See 291 Neb. Admin. Code Ch. 3 § 006.01.

¹⁸ See 291 Neb. Admin. Code Ch. 3 § 003.03B.

¹⁹ See 291 Neb. Admin. Code Ch. 3 § 003.03C.

²⁰ See 291 Neb. Admin. Code Ch. 3 § 003.03D.

²¹ Hrg. Transc. (TR) 19:6-20:23.

based on carrier type. In addition to required levels of liability insurance, all carriers of passengers must also carry uninsured/underinsured motorist coverage with a minimum limit of one hundred thousand dollars (\$100,000) per person and three hundred thousand dollars (\$300,000) aggregate per accident coverage.²² Testimony received was conflicted as to the Commission's current rule regarding uninsured/underinsured motorist coverage. While some testimony discussed uninsured/underinsured applicability to common and contract carriers, the majority of testimony focused on uninsured/underinsured motorist coverage minimums for licensed motor carriers transporting employees of railroad carriers. Some commentators recommended the Commission significantly raise the current levels, while others disagreed and urged the Commission to remain status quo.

After the hearing, the Commission filed a letter requesting an opinion of the Attorney General regarding the Commission's authority to establish minimum uninsured/underinsured motorist coverage amounts for licensees. In a previous opinion, the Attorney General concluded that the Commission lacked authority to establish minimum uninsured/underinsured motorist coverage for contract carriers and that any maximum amount for common carriers must not exceed amounts required under Neb. Rev. Stat. § 44-6408(2). In its January 11, 2022 opinion, the Attorney General drew a similar conclusion as it relates to licensees—that the Commission lacked authority to require uninsured/underinsured motorist coverage amounts that exceed the maximum amounts required under § 44-6408(2). Accordingly, the Commission finds that no changes will be made to the Commission's current uninsured/underinsured motorist coverage minimums under Commission Rule 006.02.

Cargo and Liability Insurance

The Commission sought input from the industry to assess the sufficiency of the current cargo insurance minimums listed in Commission Rule 003.03A. The Commission received no comments from the industry providing feedback. However, concurrent with the information gathering within this docket, the Commission had opened Rule and Regulation Docket No. 206 to adopt rules in

²² See 291 Neb. Admin. Code Ch. 3 § 006.02.

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accordance with the passage of LB 461.²³ In that docket, the Commission proposed various amendments to its rules that contemplated the shift of household goods movers to licensees. Although the Commission was not proposing any changes to the cargo insurance minimums for licensees providing household goods moving services, several comments were received that recommended changes be made to those limits. The Commission determined that any changes to cargo insurance minimums be examined in this docket.²⁴ Therefore, the Commission will incorporate the comments received regarding cargo insurance minimums into this docket and further examine if alterations are necessary.

Based upon comments received from the industry, the Commission must determine if an increase in the cargo insurance minimums in place for licensees providing household goods moving services is appropriate. Carriers of household goods are required to carry cargo insurance of at least five thousand dollars (\$5,000).²⁵ The Federal Motor Carrier Safety Administration ("FMCSA") has requirements that mirror the Commission's.²⁶ Comments received in Rule and Regulation Docket No. 206 recommended that the Commission explore increasing the cargo insurance minimums to amounts in excess of twenty-five thousand dollars (\$25,000). Based on this information, the Commission seeks further comments from interested parties on the following:

1. Should the cargo insurance minimum listed in Rule 003.03A be increased?
 - a. If so, please indicate the recommended amount and explain the reasoning behind that amount.
2. Is the cargo insurance policy you have in place at the minimum provided in Rule 003.03A?
 - a. If no, please indicate if that was by choice or if imposed by insurance company. If no, please indicate

²³ See Rule and Regulation No. 206 *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to amend Title 291, Chapter 3, Motor Carrier Rules and Regulations, to adopt rules in accordance with Nebraska Legislative Bill 461 [2020]*, Order Opening Docket, Releasing Proposed Rules and Seeking Comment (Entered: March 16, 2021).

²⁴ See Rule and Regulation No. 206 *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to amend Title 291, Chapter 3, Motor Carrier Rules and Regulations, to adopt rules in accordance with Nebraska Legislative Bill 461 [2020]*, Order Adopting Second Set of Proposed Rules and Issuing Certificate of Adoption (Entered: January 19, 2022).

²⁵ See 291 Neb. Admin. Code Ch. 3 § 003.03A.

²⁶ See 49 CFR 387.303(c).

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the amount and how the amount of coverage was determined.

3. If your company chooses to utilize a higher coverage amount than the minimum required, please explain how often you review your policy to determine if you need to raise your coverage.
 - a. If you self-assess your limits, please describe what factors you look to determine when a higher coverage amount may be appropriate.

Interested parties should file comments regarding the issues listed herein on or before **3:00 p.m. Friday, July 29, 2022**. Parties should file one (1) original paper copy and one (1) electronic copy to psc.motorfilings@nebraska.gov.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that no further action be taken regarding liability insurance minimums or uninsured/underinsured motor coverage minimums at this time.

IT IS FURTHER ORDERED that interested parties should file comments on the above-mentioned issues on or before **3:00 p.m. on July 29, 2022**, the manner prescribed herein.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 28th day of June, 2022.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Cystal Granger
Mary Kidden
Tim Schram

Don W. H. [Signature]
Chair

ATTEST:

Thomas W. Golden
Executive Director