

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) APPLICATION NOS. B-1121, B-
of Happy Cab Company dba Checker) 1122, B-1215, B-1410, and
Cab Company, seeking authority) B-1744
as a common carrier in Nebraska)
intrastate commerce in the)
transportation of passengers by)
taxi in Lancaster County, and)
between points in Lancaster) ORDER DENYING APPLICANTS
County, on the one hand, and on) MOTION FOR RECONSIDERATION
the other hand, points in)
Nebraska over irregular routes.)
RESTRICTION: The transportation)
of railroad train crews and)
their baggage is not authorized.)
HHS Designation: Yes.) ENTERED: APRIL 10, 2012

BY THE HEARING OFFICER:

Applicants Happy Cab Company d/b/a Happy Cab Co., Happy Cab Company d/b/a Checker Cab Co., Happy Cab Company d/b/a Yellow Cab Co., DonMark, Inc., d/b/a Cornhusker Cab Co., and Valor Transportation Company d/b/a Safeway Cab, (Applicants) in the above-captioned matter, filed with the Commission a Motion to Compel on certain discovery requests on March 28, 2012. In the Motion, the Applicant alleges that its First Set of Interrogatories and Requests for Production of Documents were served upon the Protestant, Servant Cab Company d/b/a Yellow Cab Company and Checker Cab Company, on or about February 22, 2012. The Applicant received Protestant's Answers to Applicants' Interrogatories (First Set) and Protestant's Responses to Applicants' Requests for Production of Documents (First Set), in which the Protestant objected to Applicants' Interrogatories Nos. 11 and 15 and Applicants' Request for Production Nos. 9 and 11.

Counsel for the Applicants and the counsel for the Protestant discussed these issues but were unable to resolve the outstanding issues. The Protestant objects to answering the Interrogatories and Requests on the grounds that they seek proprietary confidential information as well as the relevancy of the requests.

Oral arguments on the pending Motion to Compel were held on March 29, 2012. Present at the oral argument were Commissioner Rod Johnson, Hearing Officer; Andy Pollock, attorney for the Applicants; Jack Shultz, attorney for Servant Cab Company; and Mark Breiner. Protestant High Plains Cab Company was notified of the oral argument but declined to participate. The data

requests at issue are Applicants' Interrogatories Nos. 11 and 15 and Applicants' Request for Production Nos. 9 and 11.

On March 29, 2012, the Hearing Officer entered an Order that denied the Motion to Compel. The Order found that requested information is not relevant to the issues in this proceeding. The Protestant's financial fitness is not at issue, and the information requested is not material or relevant to any proposed rates that the Applicants have applied for.

On March 30, 2012, the Applicant filed a Motion for Reconsideration of the Hearing Officer's order denying its Motion to compel. In that Motion, the Applicant stated that rates are an issue in this proceeding and that the information sought is necessary in the Commission's rate considerations. The Applicant further stated that the information is highly relevant in the proceeding in determining rates to be applied, and that the Commission should, at a minimum, review this information under seal in camera.

OPINION

Use of discovery in proceedings before the Commission is governed by the rules and regulations of the Nebraska Supreme Court. NEB. ADMIN. R. & REGS. Title 291, Chapter 1, Rule 016.11. Generally, "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action" and "appears reasonably calculated to lead to the discovery of admissible evidence."¹

The Applicant is requesting information and documentation related to information regarding the total revenues (Interrogatory No. 11, Request No. 9) and the total business expenses for the Protestant (Interrogatory No. 15, request No. 11). The Applicants are seeking this information in relation to the consideration of rates that the Commission will be addressing in a related rate application. The Protestant objected on the grounds that the information sought by the Applicants is proprietary, confidential business information and is irrelevant to these proceedings.

The Hearing Officer found that requested information is not relevant to the issues in this proceeding. The Protestant's financial fitness is not at issue in this proceeding, and the information requested is not material or relevant to any proposed rates that the Applicants' have applied for.

¹ Neb. Ct. R. Disc. § 6-326(b)(1).

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

APPLICATION NOS. B-1121, B-1122, B-1215, B-1410, B-1744 PAGE 3

After being fully advised in the premises, the Commission finds that the Hearing Officer made the correct findings in this matter in that the rates of the Applicant are irrelevant to this proceeding. Whether those rates should be approved is not dependent on the rates as charged by the Protestant in this proceeding. The Commission finds that the Motion for Reconsideration should be denied.

ORDER

IT IS THEREFORE ORDERED by the Commission that the Applicant's Motion for Reconsideration of the Hearing Officer's Order in the above-captioned matter is denied.

MADE AND ENTERED at Lincoln, Nebraska, this 10th day of April, 2012.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



Chairman





ATTEST:



Executive Director



//s// Rod Johnson
//s// Frank Landis