

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. B-1441,
of R & F Hobbies, Inc., dba) Supplement 3
Prince of the Road, Ravenna,)
seeking to acquire, through) PLANNING CONFERENCE ORDER
transfer, the authority granted)
to Roland C. Gressley dba Aquila)
Limo Service, in Certificate B-) Entered: August 18, 2003
1432.

BY THE HEARING OFFICER:

On March 31, 2003, an application was filed by R & F Hobbies, Inc., seeking to acquire, through transfer, the authority granted to Roland C. Gressley dba Aquila Limo Service, in Certificate B-1432. Protests were timely filed by Alford Oil Company d/b/a VIP Limousine; Omaha Limousine; A-1 Ambassador Limousine, Haymarket Limousine, A-1 Special Services and Lincoln Limousine (collectively referred to as A-1) through its attorney Elaine Waggoner; Extreme Limousine; and A Class Act Limousine Service.

In order to process the application, the Commission held a planning conference in this matter on August 18, 2003, at 10:00 a.m. at the Commission, 300 The Atrium, 1200 N Street, Lincoln, Nebraska and via telephone conference with the Protestants A-1, Omaha Limousine and Extreme Limousine. The following persons were present at the conference: the Hearing Officer Commissioner Gerald Vap, staff counsel Shana Knutson, John Boehm attorney for the applicant, and Jack Shultz attorney for VIP Limousine. Elaine Waggoner attorney for A-1, Jeff Hall attorney for Extreme Limousine and Jerry Sena attorney for Omaha Limousine joined the planning conference by telephone.

A Class Act Limousine filed a notice withdrawing its protest on August 12, 2003. Omaha Limousine also verbally withdrew its protest at the planning conference. Omaha Limousine also promised to file written notice confirming its intention to withdraw from this proceeding.

As a result of the planning conference, several issues were decided. First, because the issue of dormancy was raised by the protestants, the question of the standard of proof was raised by the applicant. Should the Commission should decide that the authority the applicant is seeking to acquire is not dormant, then the applicant would have to show it is fit, willing and able, that the proposed transfer is consistent with public interest and does not unduly restrict competition. If the Commission should decide the authority is dormant, then the applicant would be also be required to demonstrate that the

transfer is or will be required by the present and future public convenience and necessity in the same manner as provided in § 75-311. Therefore, after discussion with the parties, it was decided that this application should be bifurcated as follows. On August 28, 2003, a hearing shall be held to determine the issue of dormancy. After the hearing is complete and the Commission has made its ruling as to this issue, a second planning conference will be held to discuss the need for and/or schedule a hearing and procedural timeline with respect to the transfer.

In response to the applicant's motions to compel, the Hearing Officer ruled that the applicant should be required to demonstrate that it has used reasonable means to work with opposing counsel to obtain responses but was unable to reach an accord pursuant to Rule 3-5 of the Lancaster District Court Rules. Responses to discovery should be filed within fourteen days. If no responses are filed within fourteen days and a Rule 3-5 showing is made by the applicant, I will rule on all motions to compel filed by the applicant.

Any subpoena requests for the August 28, 2003 hearing must be filed no later than August 25, 2003. Any exhibits the applicant or the protestants intend to offer must be exchanged amongst the parties and filed with the Commission no later than August 25, 2003. Parties should also exchange witness lists and file their witness lists with the Commission on or before August 25, 2003.

Finally, the hearing on the dormancy issue raised in Application No. B-1441, Supplement 3 will be held on August 28, 2003, at 8:30 a.m., CDT in the Commission Library, 300 The Atrium, 1200 N Street, Lincoln, Nebraska and via video conference to the Kearney Public Library, 2020 First Avenue, Kearney, Nebraska.

Following the hearing, parties should submit proposed closing arguments within the time frame established by the Commission at the close of the August 28, 2003 hearing.

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer in the above-captioned matter that the foregoing schedule for submission and service of the items discussed above is hereby adopted.

IT IS FURTHER ORDERED that a hearing in Application No. B-1441, Supp. 3 will be held on **August 28, 2003, at 8:30 a.m.** in

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the Commission Library, 300 The Atrium, 1200 N Street, Lincoln, Nebraska and via video conference to the Kearney Public Library, 2020 First Avenue, Kearney, Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 18th day of August 2003.

BY:



HEARING OFFICER

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