

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. B-1453
Powder River Transportation Services,))
Inc. d/b/a Pixley Transportation,))
Gillette, Wyoming, seeking authority))
as a contract carrier in Nebraska))
intrastate commerce for Burlington))
Northern Santa Fe Railroad, in the) GRANTED AS MODIFIED
transportation of passengers and))
their baggage between points in Ne-))
braska under continuing contract(s)))
with Burlington Northern Santa Fe))
Railroad.) Entered: June 9, 1998

APPEARANCES

For the Applicant:
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For the Protestant Brown's
Crew Car of Wyoming, Inc.:
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For the Protestant
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BY THE COMMISSION:

By application filed November 12, 1997, Powder River Transportation Services, Inc. d/b/a Pixley Transportation (hereinafter referred to as "Powder River" or "Applicant") of Gillette, Wyoming, seeks authority to transport passengers and their baggage between points in Nebraska under continuing contract(s) with Burlington Northern Santa Fe Railroad (BNSFR). Notice of the application was published in The Daily Record, Omaha, Nebraska on November 14, 1997. Protests to the application were filed by Brown's Crew Car of Wyoming d/b/a Armadillo Express, and by Renzenberger, Inc. A hearing on the application was held February 5, 1998, in the Commission Hearing Room with appearances as shown above.

EVIDENCE

In support of its application, Powder River produced two witnesses, Mike Pixley and Terry D. Smith. Mr. Pixley testified as follows:

Mr. Pixley is employed by Powder River and is responsible for new business and customer relations. Powder River is owned by Coach USA, which is a publicly traded company on the New York

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Stock Exchange. Coach USA owns 53 other transportation entities and is headquartered in Houston, Texas. Powder River's headquarters are located in Gillette, Wyoming. Powder River has approximately 260 employee drivers. Drivers are compensated by the mile, waiting time and hourly wages. Drivers are eligible for safety bonuses and paid vacation, as well as other fringe benefits, including a 401(k) plan. Powder River employs seven full-time mechanics and two full-time safety advisors. Mr. Pixley has been involved in the transportation of railroad train crews for over 21 years. He was the former owner of Pixley Transportation. Coach USA acquired Powder River and subsequently acquired the assets of Pixley Transportation. Powder River has transported BN and BNSFR crews in South Dakota, Wyoming, Montana, Idaho, Washington and North Dakota. Powder River dedicates its vans exclusively for the transportation of train crews. The vans are clean, safe and fitted with safety equipment. Powder River holds authority to transport train crews in South Dakota, Wyoming, North Dakota, Montana, Idaho and Washington. It also holds authority to transport train crews on an interstate basis. Exhibit 4 contains Powder River and Pixley's interstate certificates of public convenience and necessity. Exhibit 5 is a listing of Powder River's equipment, showing 136 van vehicles. If the application is granted, Powder River will station eight or nine vehicles in Alliance, and four or five in Ravenna to meet BNSFR's needs. Some additional vehicles may need to be purchased, which Powder River is in a position to do. All vehicles would be 1997 or 1998 models. Currently each van is furnished with cargo nets to prevent injury from the shifting of luggage in the storage area. The vehicles are equipped with two different radios, one at BNSFR's frequency, and one at the private dispatch frequency of Powder River. The vehicles are also equipped with first-aid kits, triangle flares, and carry coolers equipped with ice during the summer. Powder River has built special bumpers out of ten inch channel iron and form fits them to the vans by bolting the grill guard to the vehicle's frame. The purpose of this modification is to reduce the damage to the front of the vans and to reduce the danger of injury to the driver and passengers. All the Applicant's vehicles are designated as "non-smoking". Drivers who violate the policy receive a 48 hour suspension and repetitive violations lead to termination. The vehicles are cleaned and inspected every shift by the driver, and the van is inspected by management personnel at least three days a week.

Mr. Pixley described the dispatch process as follows: The railroad calls the Applicant providing the date, time and location where the crew needs to be picked up. The Applicant then dispatches a driver to go to the designated pick-up point. The driver performs his pre-inspection and begins the trip. The

driver contacts the dispatcher when he reaches the pick-up point. Logs are kept reflecting the time the company gets the call, the time the driver calls, arrives and departs, as well as every stop that is made. The driver then transports the crew to the designated destination and advises the dispatcher how many miles he or she drove. The majority of the maintenance and repair work is performed by the company's full-time mechanics. If repairs are required on the road, the Dodge dealer or a certified mechanic would be contacted. The Applicant has a satisfactory safety rating from the Department of Transportation. Collectively, the two safety directors have in excess of 50 years involvement in safety related positions. All of the Applicant's drivers are put through an eight hour defensive driving course sponsored by the National Safety Council. One of the safety directors is a certified instructor. Drivers are trained, not only in the classroom, but also on the road, and they get training in interstate, two-lane and city driving. Safety supervisors ride with every driver at least annually to review and evaluate their driving capability. Drivers are subjected to random, post-accident and probable cause drug testing. Each fall, drivers are trained regarding winter driving habits. Exhibit 6 is the accident register, which includes all the Applicant's buses and vans for 1997. Approximately nine million miles were logged in during the time frame depicted on Exhibit 6.

Exhibit 7 demonstrates the Applicant currently carries five million dollars in liability coverage and Exhibit 8 demonstrates that the umbrella coverage carried by Coach USA on its subsidiaries, inclusive of Powder River, is one hundred million dollars. The Applicant has provided service previously provided by Renzenberger, Inc. at Gillette, Sheridan, Guernsey and Wheatland, Wyoming, as well as Edgemont, South Dakota. On those occasions where the Applicant replaced Renzenberger, it retained approximately 50% of the Renzenberger drivers. The remainder did not meet the Applicant's driving qualifications. Exhibit 9 demonstrates that the Applicant was a profitable operation in 1997 and that the Applicant is financially fit to provide the proposed service. If the application is granted, Applicant will exclusively dedicate its equipment to the use of BNSFR. It would provide the same specialized services as outlined above, as it does to BNSFR at other locations. The applicant has not been subject to complaints or investigative proceedings related to the transportation services it provides in any jurisdiction. If the application is granted, the applicant will comply with all statutory requirements and rules of the Commission.

The Applicant will charge 65 cents a mile for round trip miles, \$15 an hour for waiting time, with a minimum trip charge of \$30 or \$35. The rates which it proposes to provide to BNSFR

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are higher than it currently pays. The Applicant would enter a contract with the railroad through its agent, Outsource Administrators, Inc. (OAI). OAI arranges for BNSFR's transportation contracts. The Applicant has contracted with OAI at other locations.

BNSFR has requested the Applicant to handle traffic east out of Ravenna, if the Applicant would have equipment in Ravenna when the need for transportation arises. Generally, however, the service from Ravenna would be to points west. The Applicant's vans are categorized as 15 passengers, but they generally remove one of the seats to store baggage, thus, they are capable of transporting 12 passengers. The application is consistent with the public interest, convenience and necessity.

Terry D. Smith, Superintendent of Operations for the Powder River Division of BNSFR testified on behalf of the Applicant as follows:

Mr. Smith is based in Alliance, Nebraska. The Powder River Division is made up of trackage from Ravenna, Nebraska to Sheridan, Wyoming to the Powder River Basin, the Orin Line from Gillette, Wyoming to Guernsey, Wyoming, down to Sterling, Colorado. Mr. Smith is in charge of the eastern side of the railroad from Ravenna to Edgemont to Guernsey, as well as to Sterling, Colorado. Mr. Smith is responsible for overseeing the operation and transportation of all train crews in his area. Train crews are, under federal regulations, allowed to work no more than 12 hours, at which time they must be relieved. If the crews run out of time before they reach a terminal point, the railroad shuttles relief crews out to the train and hauls the crews with expired time back to the terminal. Mr. Smith also requires the hauling of crews from terminal to terminal in order to facilitate crew balancing. The crew is normally comprised of two to a maximum of three employees. Multiple crews are transported at the same time. From Ravenna, he customarily will move four crews, or eight employees at a time. Movement of the crews is a daily event, but its frequency can fluctuate. In Nebraska, he would be responsible for moving crews from Alliance to Ravenna and from Alliance to Norfolk, as well as any station where a crew might have to be relieved on line. Generally, the movement from Ravenna to Lincoln is under the jurisdiction of a separate supervisor in the Nebraska division.

Currently, BNSFR obtains crew transportation from Renzenberger, Inc. Renzenberger has provided the service since approximately June, 1996. BNSFR has experienced van shortages, driver shortages, and inconsistent levels of service with Renzenberger. With regard to the Alliance and Ravenna movements, there was a problem with transporting crews from Ravenna to

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Alliance. The crews would meet at Thedford, Nebraska where the crews would swap vans, and the Ravenna van would return to Ravenna, the Alliance van would return to Alliance. However, at the Alliance terminal, Renzenberger was using minivans which could not handle eight crew members and their luggage. This created great inefficiency. The railroad was forced to reduce the size of its crews to meet the van capacity. Eventually, Renzenberger did put full-size vans on after several complaints. The Applicant has experienced circumstances with Renzenberger where vans were not available, drivers were not available and BNSFR would not be advised of the shortage until the last minute. Complaints have been registered with Renzenberger regarding the size of their fleet, and only recently has that fleet been expanded. There have been other occasions where crews sat for an extended period of time waiting for vans to arrive. Because of BNSFR's agreement with its engine men, the second crew designated to go out are not dispatched until the first crew has departed the terminal. If the first crew has been unable to depart because of the unavailability of van equipment, both crews sit idle. BNSFR experienced a service problem with Renzenberger as recently as one week prior to the hearing on an interstate movement. Crew members have indicated they did not believe Renzenberger's first-aid kits in the vehicles were adequate. Once Mr. Smith showed Renzenberger representatives a first-aid kit which he had been given by one of the crew members. Renzenberger neither denied, nor acknowledged that such kits were being utilized. BNSFR offered to put Renzenberger in touch with its first-aid kit supplier. On another occasion, a Renzenberger driver asked if one of the train crew members could take over driving the vehicle, because he was too tired to continue. On another occasion, Mike Dafney, the Mayor of Alliance, reported to Mr. Smith that, twice during a trip, he had to reach over and grab the steering wheel from the Renzenberger driver to avoid going in the ditch. In a separate incident, the Renzenberger driver was reported to Mr. Smith as having engaged in erratic driving. On another occasion, the Renzenberger driver was barred from the BNSFR's premises because of what a female train master considered to be sexual harassment. Another Renzenberger driver was barred from the Guernsey, Wyoming terminal due to the smell of alcohol on his breath. The railroad requires that all of its employees, anytime they are off a paved surface, wear safety glasses, and Mr. Smith has asked that the drivers transporting BNSFR crews likewise comply with that safety measure. One of Renzenberger's drivers in Alliance was wearing slipper-type footwear and slipped and fell on ice. Mr. Smith had raised a concern about inappropriate footwear with Renzenberger and requested the usage of steel-toed boots by drivers. Renzenberger responded that steel-toed boots would cause the foot to fall asleep and inhibit a driver's feel on the throttle and brake. The issues regarding

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erratic driving and asking crew members to drive the vehicle were discussed with Renzenberger personnel, because train crew members are not fit to be driving vehicles after their 12 hour shifts have expired. Renzenberger was asked in late 1996 if it would install grill protection devices on its vehicles, as used by the Applicant. Roughly, one month before the hearing, some grill guards were installed which Mr. Smith believes to be inferior to that used by the Applicant. Mr. Smith believes that one hundred million dollars in liability coverage would be important to his company in the event of a serious accident. Mr. Smith has used the service of Powder River in Guernsey, Wyoming and has experienced no problems with that service. When Renzenberger was advised that it would be replaced in Guernsey, Wyoming, it immediately pulled some of its vans out of service which created problems for the railroad. The Applicant also replaced Renzenberger at the Edgemont terminal. Mr. Smith believes the service proposed by the Applicant would better meet its transportation requirements. The service requirements under this application would be the same as those required at other locations. After having discussed the perceived deficiencies in Renzenberger's service, eventually Renzenberger addressed the railroad's concerns. On some occasions, when Renzenberger did not have equipment available, the railroad relied on Armadillo Express. When the railroad experienced the difficulties with the Renzenberger minivans, it took six months to get the issue resolved. Following the request that bumpers similar to the Applicant's be installed, it took 15 months for some of the vans to be equipped with the bumper guards. BNSFR switched from Renzenberger to the Applicant in Guernsey, Wyoming to obtain the level of service that they need and desire for their operations. Mr. Smith deems the current service provided by Renzenberger in Nebraska as inadequate. Mr. Smith told the local Renzenberger manager about service problems he had experienced on a number of occasions. Mr. Smith is not familiar with Armadillo, but is familiar with Powder River and has had a good experience with their service.

On behalf of the Protestant, Renzenberger, Inc., Bill Smith, President of Renzenberger, Inc., testified as follows:

Mr. Smith has been President of Renzenberger since February, 1991. Renzenberger operates a fleet of 860 vans in 22 states at approximately 150 locations. Renzenberger is owned by Peterson Manufacturing Company. The company has a strong financial position. Renzenberger has a safety program that includes pre-employment drug testing, review of drivers' records, employment references and written, as well as driving tests. Any driver who fails to pass the National Safety Council defensive driving course twice is disqualified. Winter driving training and random drug testing are also conducted.

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Maintenance on all vehicles is tracked on a computer system, and daily inspections by the drivers are made. Phone numbers are placed on the rear of vehicles, and toll-free calls can be made to report unsafe driving. Renzenberger's authority is to transport BNSFR train crews and their baggage within 300 miles of Alliance. The authority in Alliance was purchased from Transport Services, Inc. in 1996. When Renzenberger purchased Transport Services' authority, it increased the fleet in Alliance to eight vans, and in Ravenna, to four vans. Renzenberger purchased the authority after being informed by BNSFR of its availability. The original investment made in authority and equipment was approximately \$140,000. Since that time, it has replaced the older and smaller vans, bringing the total investment to somewhere between \$300,000 and \$500,000. Renzenberger vans are probably utilized about 30% of the time. Renzenberger's current contract with OAI expires in May, 1998. If the application is granted, Renzenberger would expect to layoff its employees and lose its investment which has not been recovered. Renzenberger currently charges 56 cents per round trip mile, \$13 an hour for dedicated vans in the yard, \$13 an hour for waiting time, and \$25 as a minimum trip charge. The rates which Renzenberger charges are substantially lower than those proposed by the Applicant. The contract providing for service to BNSFR did not specify the size of the van, the need for safety bumpers or steel-toed boots. Renzenberger generally discusses service problems or issues with OAI twice a week. Renzenberger has an internal policy that its local managers are to meet with local railroad personnel on a regular basis. Renzenberger divisional managers at each location are to meet with the railroad's divisional managers at least quarterly. Mr. Smith was not aware of any problems at the Guernsey, Wyoming service point until he was advised that they were being replaced. Renzenberger has a policy prohibiting drivers from wearing slippers. No one from BNSFR has ever indicated that the grill guards that have been installed by Renzenberger are inadequate. Renzenberger provides \$21,500,000 in coverage, but the contract with OAI only requires five million dollar liability coverage. Mr. Smith knows of no issues that are not currently resolved with regard to the service in Nebraska. It is possible that complaints regarding the smaller vans were made to a former employee, Mr. Duncum, and not passed on to his superiors. It is possible that the inferior first-aid kits reported by BNSFR were, in fact, the first-aid kits placed in the vehicle at that time. The small, sample first-aid kit is obviously not what BNSFR required. There are a number of locations in Wyoming where Renzenberger replaced the Applicant, and the Applicant subsequently replaced Renzenberger at higher rates. Renzenberger would not pay more for the same services it obtains if the service levels were comparable. Mr. Smith testified there were not service problems of a serious nature;

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but, acknowledged that a passenger being required to drive because the driver is too tired to continue is a serious problem. He further acknowledged that the driver who engages in appropriate touching of a customer's employee is a serious problem. When passengers have to seize the wheel to prevent an accident, that is also a serious problem. None of the above circumstances were ever brought to his attention. It is possible that all the circumstances referred to in Exhibit 10 regarding service deficiencies were, in fact, reported to Renzenberger, but not to Mr. Smith. Mr. Smith concluded at one point that steel-toed boots were unsafe. However, in response to a question from Commissioner Boyle, Mr. Smith indicated he doesn't know that steel-toed boots are unsafe and that in fact, Renzenberger now outfits its drivers with steel-toed boots. Although an employee was terminated for a sexual harassment complaint, Mr. Smith had no knowledge involving the circumstances.

Larry Armijo, Regional Manager for Renzenberger, testified on behalf of the Protestant Renzenberger, Inc. as follows:

Mr. Armijo lives in Cheyenne, Wyoming and is charged with customer relations, van inspections and day-to-day contact with drivers. There is a lead driver who has daily contact with crews, supervisors, and managers of BNSFR. Mr. Armijo began his employment in February, 1997. The driver who smelled of alcohol, passed an alcohol test; but, apparently had been drinking the night before and wore the same clothes to work. He was subsequently terminated. The driver who engaged in the alleged sexual harassment also was terminated. Mr. Armijo was present at a meeting with Terry Smith, of BNSFR, one week before this application was filed, at which time, Mr. Smith told him everything was fine. Mr. Armijo was unable to investigate the driver who asked the crew members to drive because the crew chose not to give the driver's name. A driver referenced in Exhibit 10 was also terminated for driving too fast through town. After the December 10, 1997 meeting with BNSFR, grill guards were installed on some vehicles within 30 days, boots were purchased for drivers, and safety glasses were also distributed to drivers, all subsequent to the filing of this application. There were complaints prior to the application which were handled by Mr. Armijo which were unknown to Bill Smith. Initially, Mr. Armijo characterized the complaints as minor, but on reflection acknowledged that sexual harassment, erratic driving and the odor of alcohol on a driver were all serious complaints. Four drivers have been terminated under Mr. Armijo's supervision since February, 1997. Mr. Armijo feels drivers should not be allowed to sleep in the yard, which is contrary to the position taken by his boss, Mr. Smith. There

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was discussion between BNSFR and Renzenberger about installation of the bumper guards prior to December 10, 1997.

On behalf of the Protestant Renzenberger, Inc. James Hart, Divisional Manager for Renzenberger testified as follows:

Mr. Hart has served as a Divisional Manager for roughly two years. Mr. Hart's goal is to meet four times a year with someone in Terry Smith's position. While Mr. Hart tries to make four visits per year, since February, 1997, he has visited Terry Smith twice; on November 4 and December 10, 1997. Mr. Hart stated other priorities came up and other matters had to be taken care of. Mr. Hart met with Mr. Smith on November 4, 1997, and there was no discussion of any problems. Two weeks later, by telephone, he was notified that a Renzenberger driver asked one of the crew members to take over because he was too tired to drive. On December 10, 1997, Mr. Hart was at a meeting with representatives of the railroad, and issues raised at the meeting included safety glasses, footwear for drivers and the extended bumper guards. Problems are reported at the local level that Mr. Hart never hears about. Mr. Hart stated he never knew about the bumper guard issue until December 10, 1997, but ten days later, three of the bumper guards had been fabricated and already installed. Only ten of the sixteen vehicles which Renzenberger operates in Alliance and Ravenna had the bumper guards installed.

Joe Brown testified on behalf of the Protestant Brown's Crew Car of Wyoming, d/b/a Armadillo Express (Armadillo) as follows:

The company's primary business is in transporting railroad train crews. The company has been in business since 1976. The company transports train crews from Minnesota to California in 25 cities. Armadillo holds Nebraska intrastate authority under Docket B-1144 to transport train crews on a statewide basis as a common carrier. Armadillo does not operate at capacity, and additional business would be attractive. Armadillo holds authority in other states, as well as authorization to provide interstate transportation, as identified in Exhibit 15. Exhibit 17 is Armadillo's equipment list. Armadillo generally runs their vehicles four years before replacement. Union Pacific Railroad requested additional services from Armadillo, but subsequently reduced their demand by seven vehicles, leaving Armadillo with excess capacity. Armadillo receives dispatch requests from either the railroad or an OAI representative to pick up crews and to replace them with fresh train crews. Armadillo drug tests its drivers and requires they undergo physicals, written exams and defensive driving courses. Armadillo has first-aid kits in every vehicle, as well as fire

extinguishers and chains and shovels for inclement weather. Drivers inspect the vehicles for safety compliance. Armadillo has five million dollars in insurance liability coverage. Armadillo provides service in Nebraska at Lincoln, Grand Island, Wymore and North Platte. Of the revenue generated by Armadillo in Nebraska intrastate commerce, only a small portion is within the Powder River Division of BNSFR. If the application were granted on a statewide basis, approximately 20% of Armadillo's revenue would be subject to diversion. Armadillo submitted a bid for Powder River Division's traffic in 1996, but was unsuccessful. Armadillo would put grill guards on their vehicles if requested. All of Armadillo's equipment is either radio or cellular phone dispatch. Armadillo has a "no-smoking" policy while in the vehicle. Mr. Brown did not hear any testimony regarding any types of services his company could not provide that was being offered by the Applicant. Armadillo's present BNSFR contract is for six passengers or less, not eight. Of its equipment in Nebraska, 66 vans and seven or eight suburbans are not suitable for transportation in the Powder River Division because of their small size. Armadillo has only transported crews on one occasion in the Powder River Division on an intrastate basis. Armadillo made no effort to submit a bid for providing service to the Powder River Division after finding out about this application.

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

Applications for contract carrier authority are governed by Neb. Rev. Stat. Section 75-311(2). We note Protestant Renzenberger offered Exhibit 20, which is the Nebraska Supreme Court case of *Kilthau v. Molasses Haulers*, 236 Neb. 811, 464 N.W.2d 162(1991), to provide the Commission with guidance on the issue of public convenience and necessity. Renzenberger's reliance is misplaced. The issue of public convenience and necessity is not the standard by which the present application must be measured. A common carrier under Section 75-311(1) must prove public convenience and necessity. However, the burden of proof for a contract carrier application, such as the one before us is different. Contract carrier applications are governed by Section 75-311(2) which provides:

(2) A permit shall be issued to any qualified applicant therefore authorizing in whole or in part the operations covered by the application if it appears after notice and hearing from the application or from any hearing held on the application that (a) the applicant is fit, willing and able properly to perform the service of a contract carrier by motor vehicle and to conform to the provisions of such sections and the lawful requirements, rules, and regula-

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tions of the commission under such section and (b) the proposed operation, to the extent authorized by the permit, will be consistent with the public interest by providing services designed to meet the distinct needs of each individual customer or a specifically designated class of customers as defined in subdivision (6) of section 75-302. Otherwise the application shall be denied.

The Applicant here is fit, willing and able to provide the proposed service and to comply with the lawful requirements and rules of the Commission. The Applicant has the financial wherewithal from its own operation or those of its parent to meet the financial fitness test. Applicant represents that it will comply with all the rules of this Commission. Applicant has 20 years of experience in the transportation of railroad train crews. Applicant has demonstrated it is fit, willing and able to perform the proposed service.

The Applicant intends to execute a contract with an agent of the BNSFR identified as OAI. It is clear from this record that the railroad not only has the authority to control such contracts, but has done so in the past and has indicated it would do so in this situation. It is undisputed that the railroad pays for the transportation service. Therefore, even if the Applicant contracts with OAI to serve BNSFR, it is doing so in OAI's capacity as the railroad's agent subject to its direction.

The proposed operation, to the extent authorized, will be consistent with public interests. Applicant's entire operations are designed to meet the distinct needs of the railroad. Applicant will dedicate its equipment to the exclusive use of BNSFR by stationing equipment at Alliance and Ravenna. No other customers will be served with that equipment. Additionally, Applicant identified various specifically tailored services which it provides to BNSFR at other locations which it would provide at Alliance and Ravenna. For example, all the equipment utilized by the Applicant to serve BNSFR in Nebraska would be equipped with the specifically installed bumper guards. The Applicant would operate ten passenger vans fully equipped with safety equipment and would provide the same safe, satisfactory, timely service it provides BNSFR at other locations.

To determine what is consistent with the public interest, we look to existing legal precedent. The Nebraska Supreme Court in *Samaradick of Grand Island-Hastings, Inc. V. B.D.C. Corp.*, 183 Neb. 228, 159 N.W.2d 310 (1968), previously examined this issue. In *Samaradick* the court stated:

The term "consistent with the public interest" is quite

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different in its meaning than the term "public convenience and necessity". The former means only that the proposed contract carrier service does not conflict with the legislative policy of the state in dealing with transportation by motor carriers, while the latter requires a consideration of the present service being rendered in the territory, the need of additional service, and the facilities which the applicant can provide. Consistent with the public interest simply means that it is not contrary to the public policy of the state as expressed in the Motor Carrier Act. *Hagen Truck Lines, Inc. v. Ross*, 174, Neb. 646, 119 N.W.2d 76 (1963).

Id., 183 Neb. 261 at 237, 159 N.W.2d 310 (1968).

The court also examined this issue in the case of *In re Application of Northland Transportation*, 239 Neb. 918, 479 N.W.2d 764 (1992), when it held:

The fact that existing common carriers will lose revenue if the permit is granted is not necessarily dispositive. The proposed service may still be consistent with the public interest if it is needed and the applicant can meet the shipper's distinct needs better than can the protesting common carriers.

Id. at 929.

It is apparent BNSFR has experienced service serious problems with Renzenberger, Inc. The fact that it is willing to pay a higher rate than what it pays to Renzenberger currently is indicative of the poor service it has received. The witness for BNSFR testified of occasions regarding unsafe driving, a driver who smelled of alcohol and a driver who engaged in sexual harassment. The BNSFR witness also identified problems with the availability of equipment, equipment which was not suited for its needs, and concerns regarding various safety factors of the vehicles. We acknowledge some of the safety features desired by the BNSFR witness may have been personal preferences, as opposed to contractual requirements. However, it seems clear that service problems have been experienced by BNSFR with using Renzenberger. Local management was notified of problems by BNSFR; however, it appears attention was not given by or reported to the management chain at Renzenberger. Any revenue lost by Renzenberger by virtue of a grant of the application is justified as consistent with the public interest based on its unsatisfactory service level.

With regard to Protestant Armadillo, a review of its equipment indicates that much of its vehicles are seven

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passenger or less vans which are not suitable for Applicant's transportation needs. Armadillo's contract with BNSFR is for seven passengers or less. Furthermore, Armadillo has not provided service to the Applicant except on rare occasions. Any loss of revenue resulting to Armadillo by a grant of this application would be on those rare occasions where Applicant requires service from Ravenna to Lincoln in order to balance crews. This revenue is minuscule in comparison to Armadillo's total Nebraska operations.

The purpose of the Nebraska Motor Carrier Act was not to stifle legitimate competition, but to permit it for public convenience and necessity, or, as in this case, consistency with the public interests. *Petroleum Transport Service, Inc. v. Wheeler Transport Service, Inc.* 188 Neb. 400, 197 N.W.2d 8 (1972). We find the purposes of Neb. Rev. Stat. Section 75-301 will best be met by a grant of this application.

After due consideration of the evidence and being fully advised in the premises, the Commission is of the opinion and finds:

1. Applicant is fit, willing and able to properly perform the requested service and to conform to the provisions of Neb. Rev. Stat. Sections 75-301 to 75-322.04 (Reissue 1996), as amended, and the requirements, rules and regulations of the Commission thereunder.
2. The proposed intrastate permit is consistent with the public interests by providing services designed to meet the distinct needs of each individual customer or a specifically designated class of customers.
3. The permit for authority should be granted as modified.

Applicant has requested authorization to provide service between all points in Nebraska. A review of the evidence indicates support only for the Powder River Division, specifically to and from Alliance and Ravenna with occasional movements from Ravenna to Lincoln. Therefore, the contract carrier authority granted by this application should be restricted geographically so that Applicant is not authorized to serve points statewide, as no such evidence was offered. The authority should be restricted to the transportation of passengers and their baggage between Alliance and Ravenna and between Alliance and Ravenna on the one hand, and, on the other, points within a 300 mile radius thereof. The restriction imposed by this application is justified based on the evidence presented and is the mirrors the territory previously being served by Protestant Renzenberger.

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PERMIT TO AUTHORIZE

Passengers and their baggage between Alliance and Ravenna and between Alliance and Ravenna on the one hand, and, on the other, points within a 300 mile radius thereof, under continuing contract(s) with the Burlington Northern Santa Fe Railway.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1453 be, and is hereby granted; and upon compliance with the terms and conditions set forth in this order, a permit shall be issued to Powder River Transportation Services, Inc. d/b/a Pixley Transportation, Gillette, Wyoming, in Application B-1453, authorizing the operations of the contract carrier as set forth in the foregoing findings.

IT IS FURTHER ORDERED that Applicant shall not be issued the permit authorized by the Commission unless and until Applicant has fully complied with, within a reasonable time from the effective date of this order, with Neb. Rev. Stat. Sections 75-305(fees); 75-307(insurance); and 75-308(rates)(Reissue 1996), with the rules and regulations of this Commission; and upon expiration of such time Applicant has not complied with such terms and conditions, this order shall, after reasonable notice to Applicant, be of no further force and effect.

IT IS FURTHER ORDERED that Applicant shall not conduct operations until a permit is issued.

IT IS FURTHER ORDERED that Applicant shall render continuously and adequate service pursuant to the authority authorized.

IT IS FINALLY ORDERED that the permit for contract carrier authority shall be subject to the terms, conditions and limitations which have been or may hereafter be prescribed by the Commission.

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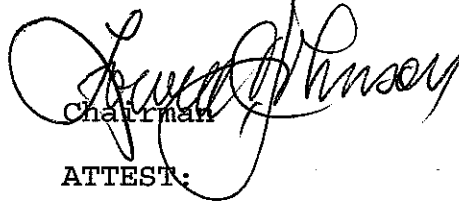
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MADE AND ENTERED at Lincoln, Nebraska, this 9th day of June, 1998.

COMMISSIONERS CONCURRING:

NEBRASKA PUBLIC SERVICE COMMISSION




Chairman



ATTEST:

//s//Lowell C. Johnson
//s//Daniel G. Urwiller


Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION
