

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) APPLICATION NO. B-1666
of CABS, Inc., Sioux City, Iowa,)
seeking authority as a common)
carrier of passengers by taxicab)
over irregular routes between)
points in Cedar, Dixon, Dakota,) DENIED
Wayne, Thurston, Stanton,)
Cuming, and Burt counties, on)
the one hand, and, other hand,)
points between said counties.) ENTERED: APRIL 25, 2006

APPEARANCES:

For the Applicant:

William F. Horneber
401 Douglas, Suite 500B
Sioux City, IA 51101

For the Protestant Action
Taxi & Limo, Inc.:

Rosalynd J. Koob
P.O. Box 1294
Sioux City, IA 51102

For the Commission Staff:

Mark Breiner
300 The Atrium
1200 N Street
PO Box 94927
Lincoln, NE 68509

BY THE COMMISSION:

B A C K G R O U N D

By application filed April 27, 2005, CABS, Inc., of Sioux City, Iowa, seeks authority to operate as a common carrier of passengers by taxicab over irregular routes between points in Cedar, Dixon, Dakota, Wayne, Thurston, Stanton, Cuming, and Burt counties, on the one hand, and, other hand, points between said counties. Notice of the application was published in The Daily Record, Omaha, Nebraska, on May 13, 2005. Protests to the application were filed by Action Taxi & Limo, Inc., on June 1, 2005.

A hearing on the application was held on September 1, 2005 with appearances as listed above. Notice of the hearing was also published in The Daily Record.

E V I D E N C E

Applicant's Evidence:

Applicant called several witnesses in support of its application. These witnesses testified, in pertinent part, as follows:

Mr. Morris Peterson, Iowa-Nebraska State Bank, testified that his bank has seven branch locations that would be served by CABS, if licensed. His staff frequently calls taxi services for their clients, particularly elderly clients. In addition, his branch has a community room, which frequently hosts senior citizen groups whose members rely on taxi service.

The applicant next called Ms. Kim Stub, store director of the HyVee supermarket in South Sioux City. Ms. Stub testified that patrons of her store call for taxi service at completion of their shopping. Further, because perishable goods are a common purchase, there is a need for expedited transportation service.

Ms. Maria Seaton, from Torilla's, Inc., a manufacturing facility, restaurant and bar in Sioux City, next testified. She frequently arranges taxi service for patrons of the restaurant and bar. She stated that in her experience there were sometimes delays in response time particular during peak periods.

Upon cross-examination, Ms. Seaton testified that if she is unable to get a response from Action Taxi, she will call another taxi service in the area, and thus the transportation needs of clientele are eventually met.

Mr. Scott Schroeder, a manager for the applicant, was called as Applicant's next witness. Mr. Schroeder testified that he has worked in the taxi industry for about 15 years and for the past 18 months he has served as the manager of CABS, Inc. On a daily basis Mr. Schroeder must turn down requests for taxi service in the Siouxland area because his company currently cannot pick up and drop off patrons in Nebraska. Based on his experience, he believes that there is a sufficient demand for more taxi service in the area. He further testified that his company owns five cars and would be able to operate all, if the demand in the area so required.

Mr. Lance Hedquisc, the South Sioux City Administrator, testified next that the South Sioux City Council unanimously approved a recommendation for an additional taxi service in their area. Their recommendation was based upon requests by

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local employers and citizens. Upon cross-examination, Mr. Hedquisc stated that he had not conducted studies to reach its recommendation, but he had spoke to other individuals in the last year who were concerned about the need for additional services.

Protestant's Evidence:

Protestant also called several witnesses in support of its application. These witnesses testified, in pertinent part, as follows:

Mr. Luis Nuno, the sole owner of Action Taxi & Limo, Inc., testified as follows: In 2002, Mr. Nuno purchased business and applied to the Commission for a permit to provide services in the Sioux City area and surrounding counties. Action Taxi currently has 6 to 8 vehicles available for operation and puts them in service as needed. During the winter they may operate additional vehicles but they will not do so unless there is enough demand to justify the expense of operating more vehicles.

Mr. Nuno further testified that he would be forced to reduce the number of vehicles he operates if competition is permitted in the area. Furthermore, he believes that his business will suffer. In regards to customer service, he also stated that his company is usually able to service customers within 20 minutes but at peak times a customer may have to wait up to 45 minutes. Further, Action offers transportation service to Health & Human Services clients who need transportation to medical appointments, which on occasion requires that a single car be occupied for an entire day.

On cross-examination, Mr. Nuno stated that he received a complaint letter from Sioux City requesting he clean his vehicles and that he promptly complied with the request. He has not received further complaints.

Mr. Vince Farrer, owner of Siouxland Taxi, also testified on behalf of the protestant. Mr. Farrer has operated his service for about 20 years and is restricted from picking up and dropping off within Sioux City. In his opinion there is not a need for an additional taxi service in the area. He further testified that felt Action was providing good service. On cross-examination, Mr. Farrer stated that Mr. Schroeder previously worked for him but left to start a competing taxi company.

Ms. Barbara Hodges, bookkeeper for Action Taxi, testified next on behalf of the Protestant. During the course of Ms. Hodges examination, exhibits 10 and 11 were received. Both of

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documents tracked service calls that Action received during sample weeks. Based on this information, Ms. Hodges stated that 5% to 8% of calls Action received were for point-to-point service within Nebraska.

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

In this particular case, Applicant is seeking to obtain authority so that it may provide transportation that originates in Cedar, Dixon, Dakota, Wayne, Thurston, Stanton, Cuming, and Burt Counties and so that it can provide point-to-point transportation for in those counties. Applicant is currently restricted from providing intrastate for-hire point-to-point transportation services within Nebraska.

Applications for common carrier authority are governed by Neb. Rev. Stat. § 75-311 (2000), which provides,

A certificate shall be issued to any qualified applicant authorizing the whole or any part of the operations covered by the application if it is found after notice and hearing that (a) the applicant is fit, willing, and able properly to perform the service proposed . . . and (b) the proposed service is to the extent to be authorized by the certificate, whether regular, or irregular, passenger or household goods, is or will be required by the present or future public convenience and necessity. Otherwise the application shall be denied.

In order to be successful, an applicant must provide that it is fit, willing and able to provide the proposed service and that the proposed service "is or will be required by the present or future public convenience and necessity." From the lack of evidence on this matter, we find that Applicant has not sufficiently proven it is fit, willing and able properly to perform the proposed service and able to conform to Neb. Rev. Stat. § 75-301 et seq. Applicant failed to demonstrate that it is financially fit to provide the proposed service because it did not introduce evidence regarding the financial state of its business.

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The traditional analysis for determining "need and necessity" was set forth by the Supreme Court in the case of In re Application of Nebraskaland Leasing & Assocs., 254 Neb. 583, 591 (1998), wherein the Court stated:

In determining public convenience and necessity, the deciding factors are (1) whether the operation will serve a useful purpose responsive to a public demand or need, (2) whether this purpose can or will be served as well by existing carriers, and (3) whether it can be served by the applicant in a specified manner without endangering or impairing the operations of existing carriers contrary to the public interest.

The issue of whether an applicant has met its burden of demonstrating that the proposed service is required with public convenience and necessity is ordinarily a factual issue. Id. The statute requires us to determine whether the proposed operation will serve a useful public purpose that is responsive to the public demand or need. Neb. Rev. Stat. § 75-311 (Reissue 1996).

From the evidence adduced at the hearing, we find that the Applicant has not sufficiently demonstrated an existing need for the proposed service, which would permit Applicant to provide point-to-point transportation services within the above referenced counties. First, the Applicant failed to present evidence that demonstrated a need. The witnesses that were produced were unpersuasive in this capacity. Secondly, the testimony that was introduced did not support a conclusion that there was a public need for an additional carrier. The Protestant testified that current demand does not even support putting all of his vehicles into service. While some of the evidence indicated that there might be a wait time for service, particularly during peak hours, there was no evidence to suggest that the potential wait times are unreasonable or out of the ordinary. Finally, the evidence demonstrated that existing carriers are sufficiently able to meet the current demand for service. In particular, none of the Applicant's witnesses was able to recall an incident when a need for service went unmet. Therefore, the Commission finds that Applicant has not demonstrated adequate public demand or need for the proposed service to provide point-to-point transportation within the above referenced counties.

Next, we turn to the issue of whether existing carriers would be endangered or impaired by the granting of this application. The Protestant testified that the addition of another carrier would harm his business. In addition, the Protestant's witness testified that approximately 6.5%, on average, of the Protestant's traffic comes from service within Nebraska. We find that this does not demonstrate a sufficient source of traffic to distribute with another carrier. Furthermore, the evidence indicates that the Protestant is able to handle additional traffic if it occurs. Specifically, the Protestant testified that he has additional vehicles in his fleet that can be put into service if and when necessary. Based on all of the foregoing, we conclude that it is necessary to deny the Application.

Territory Requested:

Common: Transportation of passengers in Nebraska intrastate commerce as a common carrier of passengers by taxicab over irregular routes between points in Cedar, Dixon, Dakota, Wayne, Thurston, Stanton, Cuming, and Burt counties, on the one hand, and, other hand, points between said counties.

From the evidence adduced and being fully informed in the premises, the Commission is of the opinion and finds:

1. The application should be denied.

Operations in violation of this or any other order of the Commission or operations outside the scope of Applicant's certificated area will result in civil penalties of up to ten thousand dollars per day as provided in Neb. Rev. Stat. § 75-156 (Reissue 2003), or in a suspension or revocation of Applicant's certificate.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-captioned application filed by CABS, Inc., should be denied as provided herein.

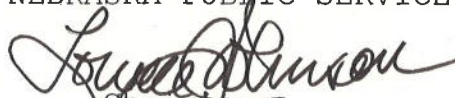
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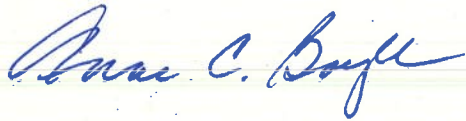
MADE AND ENTERED at Lincoln, Nebraska, this 25th day
Of April, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


Chairman





ATTEST:


Executive Director



//s// Lowell C. Johnson

//s// Frank E. Landis