

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE)	APPLICATION NO. B-1723
)	
APPLICATION OF BROWN'S)	ORDER GRANTING
)	MOTION TO DISMISS
CREW CAR OF WYOMING LLC)	

This matter is before the Commission on the motion of the applicant, Brown's Crew Car of Wyoming LLC (hereinafter "Brown's LLC"), to dismiss this application on the grounds that the Commission lacks jurisdiction to consider the subject matter of the application. The application seeks Commission approval for the transfer of the certificate issued to Brown's Crew Car of Wyoming, Inc., d/b/a Armadillo Express (hereinafter "Brown's Inc.") in Application No B-1144 and supplements thereto to Brown's LLC pursuant to Neb. Rev. Stat. § 75-318. In support of its motion, Brown's LLC contends that it and Brown's Inc. are one and the same legal entity, and that under the circumstances, a "transfer" of the subject certificate from Brown's Inc. to Brown's LLC is a legal impossibility. Further Brown's LLC contends that because there can be no transfer of the subject certificate from Brown's Inc. to Brown's LLC, the Commission does not have subject matter jurisdiction under Section 75-318 over the "conversion" (hereinafter described) which prompted the filing of this application.

Brown's Inc. was incorporated under the laws of the State of Wyoming on June 25, 1980, and remained a Wyoming corporation until March 31, 2008. On that date, pursuant to Wyo. Stat. Ann. § 17-16-1115 and after having taken all prerequisite actions required by Wyo. Stat. Ann. § 17-16-1115(c), Brown's Inc. filed Articles of Organization for Brown's LLC complying with the requirements of Wyo. Stat. Ann. § 17-16-1115(d) in the office of the Wyoming Secretary of State, and thereupon converted its legal status under Wyoming law from that of a Wyoming corporation to that of a Wyoming limited liability company.

The applicable sections of law in this matter are Neb. Rev. Stat. § 75-318 and § 75-320. § 75-318 as here pertinent provides:

It shall be lawful, only under the conditions specified in this section, for any regulated motor carrier or person or for two or more regulated motor carriers to:

- (1) Consolidate or merge their properties or any part thereof or certificates of public convenience and necessity or permits, or any part thereof,

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into one ownership, management, or operation of the properties, certificates, or permits theretofore in separate ownership;

(2) Purchase, lease, or contract to operate the properties or any part thereof or the certificates or permits, or any part thereof, of another regulated motor carrier; or

(3) Acquire control of another regulated motor carrier or carriers through purchase of stock.

In analyzing the current application, the Commission must apply the statute to the circumstances of the particular application. Section 75-318(1) does not appear to apply in this situation. Section 75-318(1) is concerned with the consolidation or merger of properties or certificates or permits of two or more legal entities into a single surviving entity. That is not the case here. There are no "properties, certificates, or permits theretofore in separate ownership" to consolidate or merge. There is effectively only one entity involved, Brown's Crew Car, with no changes in the owners or interests of the owners. The property remains with the ownership, obligations of the company do not change, and any lawsuits that may be in effect continue on without regard to any changes that may have occurred.

Similarly with respect to Section 75-318(2), that subsection deals with the purchase, lease or contract to operate the properties, certificates or permits of another regulated motor carrier. Here there is no other regulated motor carrier - there is only Brown's LLC, the same legal entity as the former corporation, but with somewhat different legal attributes.

Finally, it is clear that Section 75-318(3) is inapplicable, as there is no proposal on the part of anyone to acquire control of a motor carrier through stock purchase. There are no new owners or stockholders in the company, and no apparent changes in the ownership structure or stock holdings. No additional stockholders are being added, no stock is being sold and no other persons will be acquiring control of the applicant.

§ 75-320 also does not appear to apply to this application. This section states that no transfer, assignment, or sale of stock or change in stock ownership or any interest therein which will directly or indirectly result in a transfer, assignment, sale or change in the control of the corporation holding a certificate or permit, and no change of one or more of the

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partners or members . . . will be effective or valid unless the carrier or person seeking to acquire control of the corporation or unless the applicant seeking to effect a change in one or more members or partners . . . obtains approval of the commission. In this application, there is no transfer, assignment, or sale of stock or change in ownership which will result in the change in the control of the corporation. There will not be new owners or stockholders or partners, and the stockholders that currently are operating the applicant did not undergo a change in ownership, control or responsibilities.

After being duly advised in the premises, the Commission finds that the Motion to Dismiss the Application should be granted, and that Application B-1723 should be dismissed.

ORDER

IT IS THEREFORE THE ORDERED by the Nebraska Public Service Commission that Brown's Crew Car of Wyoming LLC's Motion to Dismiss is granted, and Application B-1723 be, and it is hereby dismissed.

MADE AND ENTERED at Lincoln, Nebraska, this 9th day of June, 2009.


NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:





//s// Frank E. Landis


Chairman

ATTEST:


Executive Director