

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Valor ) APPLICATION NO. B-1744  
Transportation, Company, Omaha, )  
seeking to acquire through )  
transfer the certificate held by )  
Safeway Transportation LLC, ) GRANTED AND CERTIFICATE  
in Certificate Number B-1684, ) B-1684 REVOKED  
which reads: Passengers and )  
baggage of passengers )  
in the city of Omaha and )  
vicinity. ) ENTERED: NOVEMBER 24, 2009

APPEARANCES:

For the Applicant

Valor Transportation Company

Michael F. Polk  
Patrick J. Sullivan  
ADAMS & SULLIVAN, P.C.  
1246 Golden Gate Drive, Suite 1  
Papillion, NE 68046

Safeway Transportation LLC

Andrew S. Pollock, 19872  
REMBOLT LUDTKE, L.L.P.  
1201 Lincoln Mall, Suite 102  
Lincoln, Nebraska 68508

For the Commission Staff:

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PO Box 94927  
Lincoln, NE 68509

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BY THE COMMISSION:

On August 4, 2009, an application was filed by Valor Transportation Company seeking the transfer of the certificate of authority from Safeway Transportation, LLC, B-1684. Notice of the application was published in The Daily Record, Omaha, Nebraska on August 6, 2009. A timely protest was filed by Scott Miller. Hearing on the application was held on October 8, 2009 at 10:00 am.

PRELIMINARY MATTERS

Prior to hearing the evidence on the application, hearing was held on the Applicant's Motion to Dismiss the Protest filed by Scott Miller. Applicant Valor Transportation Company's motion was submitted and considered based upon the written arguments contained therein. Safeway Transportation Company joined in supporting the motion. Mr. Miller did not appear at the hearing. Upon review of the written argument and the statements contained in the Protest filed, Commissioner Schram sustained the motion and Mr. Miller's protest was dismissed.

APPLICANT VALOR TRANSPORTATION'S EVIDENCE

Valerie Bellino was called and testified on behalf of Valor Transportation Company. She is a fifty-percent owner of the company along with Lori Mitchell. Ms. Bellino is also a fifty percent owner of Donmark, Inc. d/b/a Cornhusker Cab Company. As owner Cornhusker Cab Company she takes part in managing day-to-day operations, making financial decisions, buying assets, and managing insurance claims. Her co-owner, Lori Mitchell, is a manager at Happy Cab Company.

Ms. Bellino further testified that, if the Commission approves the transfer of authority, the purchase of Safeway Transportation LLC will be financed through a loan. She noted, however, that the owners could self finance the purchase if necessary. Upon transfer of authority, Valor Transportation will have the ability to self-insure the first \$25,000 in any liability claims made against the company. This ability to self-insure allows access to affordable insurance for the company. In fact and upon approval, Valor Transportation will have access to the insurance pool for Happy Cab Company vehicles. Valor also plans to share dispatch services, mechanics, building space and other overhead costs with Happy

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Cab. Such an arrangement creates a significant financial advantage to the company.

She also noted that all current Safeway Cab drivers will be able to apply and keep driving for Valor Transportation. Finally, Ms. Bellino stated that she will be requesting that the Commission later approve a management agreement between Happy Cab Company and Valor Transportation Company to operate Safeway Cabs.

Under questioning by the Commission, Ms. Bellino stated that Valor will operate thirty cabs, the present capacity of Safeway Cabs. Mr. Breiner, from the Commission, questioned whether the company would maintain a pool of funds for the \$25,000 of self insurance. Ms. Bellino noted that a fund will be maintained for the self insurance in a manner similar to that used by Cornhusker Cab Company. Upon further questions from Mr. Breiner, she stated that Happy Cab Company would direct the day-to-day operations of the company and address any driver issues that occur.

Applicant Valor Transportation Company next called John Davis on its behalf. Mr. Davis is the Director of Operations for the affiliated "Happy Cab" companies. Those companies include Happy, Yellow, Checker, and Cornhusker Cab Companies. He testified that he was aware of the proposed management agreement between Happy Cab and Valor Transportation and that Happy Cab could easily manage an additional thirty cabs. He noted that there is a financial advantage for Happy Cab and Valor to share overhead resulting from a shared insurance pool, support services, dispatch service, body shop, and mechanics. Mr. Davis stated that the \$25,000 in self insurance allows access to affordable insurance rates by the company. As for operation of Valor Transportation, the drivers will be independent contractors and not employees. Mr. Davis testified that Happy Cab has no intention of flooding the Omaha metropolitan market with cabs and will maintain the current level of service offered by the Happy Cab companies and Safeway Cabs.

Commissioner Schram questioned Mr. Davis on how Happy Cab determines the number of cabs needed to meet public demand. He stated that Happy Cab looks at the monthly data generated and compares those numbers to historical data. The company considers quality standards, the number of current drivers, and

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response time in determining how many drivers are needed. He further testified that during special events in Omaha the number of drivers and available vehicles are increased. Mr. Davis also noted that Happy Cab has an established procedure to handle complaints regarding its service.

SAFEWAY TRANSPORTATION'S EVIDENCE IN SUPPORT OF APPLICANT

Safeway Transportation Company presented evidence in support of Valor Transportation's application for transfer of authority. John Houlihan was called and testified that he is the owner of Safeway Transportation LLC d/b/a Safeway Cabs. He noted that the current finances of the company were poor and that it was losing money. The reason for the company's poor performance stems from a spike in insurance premiums in July of 2009. The company made a few changes to get close to a break even point and then started looking for potential purchasers for the business. The company met with a few different parties and subsequently started talking with the Happy Cab Company about a purchase. Valor Transportation, as an affiliated company with Happy Cab, made an offer to purchase and Safeway accepted that offer.

Mr. Houlihan testified that he thought it was in the best interest of Safeway Cab drivers and the company to accept the purchase offer and support Valor in its application for transfer of authority. He further stated that it is in the public's interest to allow the transfer because Valor will be able to maintain a high level of service.

Safeway Cabs next called Pete Hanley. Mr. Hanley is a representative of Silverstone Group Insurance, a company that has provided insurance services to Safeway Cabs since 2006. He testified that the insurance premiums for Safeway Cabs increased by twenty percent in July of 2009. Mr. Hanley noted that a company with a strong financial position and ability to fund a \$25,000 self insured retention will see significant lower insurance rates than Safeway Cabs.

EVIDENCE FROM PUBLIC COMMENT

At the close of the evidence from the Applicant and Safeway Transportation Company, Commissioner Schram allowed public comment. Terry Fowler introduced himself as an owner/operator currently contracting with Happy Cab Company of

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Omaha. Mr. Fowler proceeded to read a written statement. At the conclusion of that statement, Mr. Pollock, attorney for Safeway Cabs, objected to those portions of his statement wherein Mr. Fowler purported to speak as a representative on behalf of other individuals or the Midwest Professional Taxi Drivers Association. Mr. Polk, for Valor Transportation, joined in the objection. Commissioner Schram sustained the motion and struck any part of Mr. Fowler's statement where he attempted to represent opinions of other individuals or organizations. The comments allowed into the record mirrored his later opinions in answer to questions by the Commissioners.

Subsequently, Mr. Fowler generally made comments regarding how much time he works and his ability to earn a living driving a cab. He testified that drivers work long hours. Under questioning by Commission attorney, Mr. Breiner, Mr. Fowler admitted that the present economy has impacted cab business. Fowler went on to comment about possible public dissatisfaction with cab business but did not provide any specific examples. Commissioner Boyle then discussed with Mr. Fowler how complaints are filed and what detailed information is contained in a cab to direct the public on how to file a complaint. Under further questioning by Mr. Breiner, Mr. Fowler discussed how the Happy Cab companies reserve cabs for vacationing drivers and his involvement with the Midwest Professional Taxi Drivers Association. In conclusion, Mr. Fowler provided the general opinion that drivers were having difficulty making a living under the current arrangement with the Happy Cab Companies.

#### APPLICANT'S REBUTTAL EVIDENCE

In rebuttal to the comments made by Mr. Fowler, the Applicant recalled John Davis. Mr. Davis testified that all cabs are clearly marked. Riders have a variety of means to identify a cab if they wish to file a complaint. As for how Happy Cab reserves cabs for vacationing drivers, Mr. Davis stated that the company only charges drivers a fee if they wish to reserve a specific cab while on vacation. The fee is neither punitive nor mandatory. As with any public service company, he noted that he does receive complaints but he disagreed with Mr. Fowler's representations that the public in general is dissatisfied with the cab service.

Mr. Davis stated that each driver is an independent contractor and is free to build his or her own business. Happy

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Cab Company has no plans to flood the market with taxis and such a strategy would be counter productive in the long run. He also testified that the company has voluntarily met with Mr. Fowler's organization to discuss driver concerns. Under questioning from Commissioner Boyle, Mr. Davis agreed to provide the Commission with samples of the stickers placed in each cab informing riders of where to file complaints. Commissioner Schram then asked about the number of cabs currently operating in the Omaha metro area. Mr. Davis stated that the Happy Cab companies currently operate 143 cabs and noted the earlier testimony of 18 cabs operated by Safeway. He also noted that cab rides in Omaha were up around eight percent (8%) since last year.

#### OPINION AND FINDINGS

Applications for transfer of carrier authority are governed by Neb. Rev. Stat. § 75-318, which 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, 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.

Whenever a consolidation, merger, purchase, lease, operating contract, or acquisition of control of the properties, certificates, or permits is proposed, the carrier or carriers or person seeking authority therefore shall present an application to the commission, and thereupon the commission shall notify such carriers and other parties known to have an interest of the time and place for a public hearing in accordance with the rules of the commission. If, after such hearing, the commission finds that the

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transaction proposed will be consistent with the public interest and does not unduly restrict competition and that the applicant is fit, willing, and able to properly perform the proposed service, it may enter an order approving and authorizing such consolidation, merger, purchase, lease, operating contract, or acquisition of control of the properties, or any part thereof, or certificates or permits of the whole, or any part thereof, upon such terms and conditions as it deems just and reasonable. If any of the certificates or permits proposed to be merged, consolidated, transferred, or leased are dormant, the commission may approve an application for consolidation, merger, transfer, or lease only upon proof of and a finding that such merger, consolidation, transfer, or lease is or will be required by the present and future public convenience and necessity, in the same manner as provided in section 75-311. If the proposed merger, consolidation, transfer, or lease of the certificates or permits will permit or result in a new or different service or operation as to territorial scope than that which is or may be rendered or engaged in by the respective parties or, as to passenger motor carriers, will tend to enlarge competition over that then existing, the commission may approve an application for merger, consolidation, transfer, or lease only upon proof of and a finding that the proposed merger, consolidation, transfer, or lease is or will be required by the present and future public convenience and necessity, in the same manner as provided in section 75-311. Any restrictions, qualifications, or conditions applicable to and contained in a particular certificate of public convenience and necessity or a permit at the time of the issuance thereof or thereafter made a part of such certificate or permit, excluding any restrictions, qualifications, or conditions of general application applicable to all regulated motor carriers or a segment thereof as a class and imposed by regulation of the commission, proposed to be merged, consolidated, transferred, or

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leased shall not be changed, altered, or removed without the proof required in section 75-311 for certificates and permits.

When authority is transferred as provided in this section, the commission shall simultaneously cancel the authority of the transferor which is transferred.

In this matter, the Commission must find that the proposed transaction will be consistent with the public interest, does not unduly restrict competition and that the applicant is fit, willing, and able to properly perform the proposed service. If the certificate [proposed to be transferred] is dormant, the Commission may only approve of the transfer upon proof of and a finding that the transfer is or will be required by the present and future public convenience and necessity. The Commission must also examine whether the proposed transfer will permit or result in a new or different service or operation as to territorial scope that that which is or may be rendered or engaged in by the respective parties, or whether the proposed transfer will tend to enlarge competition then existing. If it finds that the proposed transfer would result in either of these two outcomes, then the Commission may approve the transfer only after proof of and a finding that the proposed transfer is or will be required by the present and future public convenience or necessity.

The Commission's consideration of an applicant's fitness is comprised of two tests. The first part of the test is whether the applicant is fit, willing and able to properly perform the service of a carrier by motor vehicle and to conform to the provisions of such sections and the lawful requirements, rules and regulations of the Commission under such sections.

Applicant provided sufficient evidence as to financial fitness and the ability to operate a taxi cab business. The two owners are currently involved with the operation of Cornhusker Cab Company and Happy Cab Company. Based upon the evidence presented, the Commission finds that the Applicant did prove that it is fit, willing and able to perform the services now provided by Safeway Transportation LLC.



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We next will turn to the issue of dormancy. The testimony clearly establishes that the certificate proposed to be transferred is not dormant. The current certificate holder has operated continuously since its inception. The Commission finds that the certificate is not dormant and therefore that application of public convenience and necessity is not applicable for this purpose.

The evidence shows that the applicant intends to operate in the territorial area of the current certificate holder. There is no showing that the service to be provided by the applicant will be different in service provided or in territorial scope. The Commission therefore finds that the application of public convenience and necessity is not required on these grounds.

The evidence further shows that the applicant is planning to continue to offer services with approximately the same number of cabs on the street that the current certificate holder operates. While there will be a change in how those cabs are operated (independent contractors versus employees) the number of cabs placed in service is stated to remain the same. Therefore, the Commission finds that the proposed service will not enlarge competition over that currently existing, and that the public convenience and necessity proof is not required on this ground.

The Commission must find that the transaction proposed will be consistent with the public interest. In Canada v. Peak (184 Neb. 52, 57, 165 N.W.2d 587, 591 (Neb. 1969) the courts addressed the purposes of the Nebraska Motor Carrier Act. In applying the purposes of the Act to this transfer, the Commission finds that the transfer does not violate the public policy as set forth. The transfer would not stifle legitimate competition. The transfer will not result in discrimination or in unfair or destructive competitive practices. The market is one that is regulated and subject to Commission oversight.

The management and ownership of the applicant appears to be solid, fit, willing and able to operate the proposed service. There is evidence that the failure to transfer the authority could result in the loss of the certificate and of the cabs in operation. This could result in service disruptions for the public in Omaha. The current

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certificated holder performed due diligence in trying to sell the operation to potential buyers. The testimony is that Safeway did enter into negotiations with other companies, but that the best buyer it had is the applicant.

The Commission therefore finds, on the basis of the above set forth grounds, that the proposed transaction will be consistent with the public interest and will not unduly restrict competition.

The Commission does have concerns regarding some of the evidence brought to it in this hearing. The issues before the Commission in this application are narrow. These concerns lie outside of the considerations that the Commission is considering in this application. The Commission will investigate these matters in another docket.

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 service of a common carrier by motor vehicle and to conform to the provisions of Neb. Rev. Stat. §§ 75-301 to 75-322 and the requirements, rules and regulations of the Commission thereunder.
2. The proposed transfer of authority is or will be required by the present or future Public Convenience and Necessity to the following extent:

TRANSFER AUTHORIZED

Certificate of Authority B-1684, Safeway Transportation, LLC, is hereby transferred to Valor Transportation Company. Service authorized:

COMMON: Transporting passengers and their baggage in the City of Omaha and vicinity.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1744, be, and it is hereby

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granted, authorizing the services of a common carrier as set forth above.

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1744 be, and it is hereby, granted; and that upon compliance with the terms and conditions set forth in this Order, a Certificate of Public Convenience and Necessity shall be issued to Valor Transportation Company, Omaha, Nebraska, in Application B-1744 authorizing the operations set forth in the foregoing findings; and that to avoid a lapse of authority, the Certificate of Public Convenience and Necessity issued in Application B-1684, shall be revoked and canceled simultaneously with the issuance of a Certificate of Public Convenience and Necessity in Application B-1744.

IT IS FURTHER ORDERED that applicant shall not be issued the Certificate of Public Convenience and Necessity authorized by the Commission unless and until applicant has fully complied, within a reasonable time from the effective date of this Order, with Neb. Rev. Stat. sections 75-305 (fees), 75-207 (insurance), and 75-308 (rates) (Reissue 2003), and with the rules and regulations of the Commission, and if 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 Certificate of Public Convenience and Necessity is issued.

IT IS FURTHER ORDERED that the Certificate authorized shall be subject to the terms, conditions, and limitations which have been, or may thereafter be, prescribed by the Commission.

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MADE AND ENTERED at Lincoln, Nebraska, this 24<sup>th</sup> day of  
November, 2009.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Robert Johnson*  
*Aune C. Laefke*

*Tim Schram*

//s// Frank E. Landis

*Frank E. Landis*  
Chairman

ATTEST:

*Shirley H.*  
Executive Director