

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application	) APPLICATION NO. B-1818
of Casino Cab Company, LLC,	)
seeking authority for the	)
transportation of passengers by	) ORDER ON MOTIONS
taxi between points in Douglas	) TO COMPEL
and Sarpy Counties over irregular	)
routes. HHS Designation: No. The	)
transportation of railroad train	)
crews is not authorized.	) ENTERED: FEBRUARY 27, 2013

BY THE HEARING OFFICER:

On April 30, 2012, an application was filed by Casino Cab Company, LLC, Council Bluffs, Iowa, seeking authority for the transportation of passengers by taxi between points in Douglas and Sarpy counties over irregular routes. The transportation of railroad train crews is not authorized, and the HHS designation is No. Protests were filed by Checker Cab Company, Happy Cab Company, and Yellow Cab Company; by City Taxi, Inc., and by Servant Cab Company through its attorney, Jack Shultz.

On February 21, 2013, the Protestant companies Happy Cab Company, Checker Cab Company, Happy Cab Company d/b/a Checker Cab Company, DonMark, Inc., d/b/a Cornhusker Cab Company, and Valor Transportation, d/b/a Safeway Cab Company (hereinafter Omaha Cab Companies) filed a Motion to Compel regarding discovery requests they propounded upon the Applicant Casino Cab Company. The Applicant submitted the name of Dr. Eric Thompson as an expert witness, and attached a seventy page report as an additional responses to the facts known and opinions held by the expert and a summary of the grounds for the opinion. The Motion cited that the Protestant's Answer to Interrogatory No. 6 was incomplete and inadequate.

On February 27, 2013, the Applicant filed a Motion to Compel regarding a Request for Production to the Omaha Cab Companies. Specifically the Applicant requested information in Request for Production No. 4. This request was for annual financial statements from the Omaha Cab Companies including income statements, balance sheets, and cash flow statements for the years 2010, 2011, and 2012. The Omaha Cab Companies responded that the requested information is not relevant to any issue raised in the proceeding nor will it be admissible nor calculated to lead to the discovery of admissible evidence. They further objected to the request for the reason that it seeks information that is proprietary and confidential business information. The Omaha Cab Companies also filed Supplemental Answers to Applicant's Interrogatories on February 20, 2013,

stated that John Davis and Lori Mitchell are listed as witnesses and that part of the testimony they will provide is that the entry of any new passenger carrier in the area served by the Omaha Cab Companies jeopardizes, endangers, and impairs the operation and business of the Omaha Cab Companies, as well as their ability to serve passengers in its service area. The Applicant states that requested financial records are relevant to some of the issues on which Ms. Mitchell and Mr. Davis will testify.

An oral argument was held on February 27, 2013, with the following present: Commissioner Anne Boyle, Hearing Officer; Steven Olson, attorney for the Applicant; Tera Tesmer Paulson, attorney for the Omaha Cab Companies; Michael Weinberg, attorney for protestant City Taxi; and Mark Breiner, Director, Motor Transportation Department.

Upon the oral arguments entered by counsel, and being fully advised in the premises, the hearing Officer makes the following findings:

The Nebraska Supreme Court rules and regulations govern discovery in matters before the Commission.<sup>1</sup> Generally, "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action" and "appears reasonably calculated to lead to the discovery of admissible evidence."<sup>2</sup> The Commission is not bound by the strict rules of evidence and therefore the admissibility of evidence is typically liberally applied by the Commission.

The Protestant's Motion to Compel regarding Interrogatory No. 6 should be denied. The Protestant states that the response of the Applicant, including a seventy page report prepared by the expert witness, does not identify the facts known and opinions held by the expert. The Applicant states that the expert witness that produced the report, Dr. Eric Thompson, will be called as a witness at the hearing and will be available for examination by the Commission and all parties. I find that the report is responsive to the protestant's request

During the oral argument on the Applicant's Motion to Compel, the Omaha Cab Companies argued that there had been no contact regarding a resolution to the Request for Production No. 4 before the Motion to Compel was filed by the Applicant. The Hearing Officer finds that the parties should be given until

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<sup>1</sup> Neb. Admin. Code, Title 291, Ch. 1 § 016.11 (1992).

<sup>2</sup> Neb. Ct. R. Disc. § 6-326(b)(1).

Friday, March 1, 2013, at 5:00 p.m., to seek resolution of the underlying issue of the Motion. In the event agreement is reached, the Applicant shall notify the hearing Officer and withdraw the Motion. If agreement cannot be reached by that time, the Hearing Officer will render a decision on the Applicant's Motion to Compel.

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer in the above-captioned matter that the Protestant's Motion to Compel regarding Interrogatory No. 6 is hereby denied.

IT IS FURTHER ORDERED that the parties shall be given until Friday, March 1, 2013, at 5:00 p.m., to seek resolution to the underlying issue of the Applicant's Motion to Compel. If agreement is reached, the Applicant shall notify the Hearing Officer and withdraw the Motion. If an agreement cannot be reached by that time, the hearing Officer will render a decision on the Applicant's Motion to Compel.

MADE AND ENTERED at Lincoln, Nebraska, this 27th day of February, 2013.

BY:

A handwritten signature in cursive script, appearing to read "Anne Boyle".

HEARING OFFICER

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

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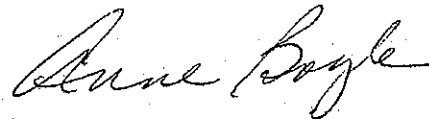
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