

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

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 APPLICANT'S  
taxi between points in Douglas ) MOTION TO COMPEL  
and Sarpy Counties over irregular )  
routes. HHS Designation: No. The )  
transportation of railroad train )  
crews is not authorized. ) ENTERED: MARCH 5, 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 (hereinafter Omaha Cab Companies); by City Taxi, Inc., and by Servant Cab Company through its attorney, Jack Shultz.

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.

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.

The Hearing Officer found in the Hearing Officers Order of February 27, 2013, that the parties should be given until Friday, March 1, 2013, at 5:00 p.m., to seek resolution of the underlying issue of the Applicant's Motion to Compel Answer to Interrogatory No. 4. The parties were not able to reach an agreement of the underlying issues of the Applicant's Motion. As agreement was not reached, the Hearing Officer will render a decision on the Applicant's Motion to Compel.

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 have stated in discovery that John Davis and Lori Mitchell, two of its listed witnesses, will testify 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 the requested financial records are relevant to some of the issues on which the said witnesses will testify. The Omaha Cab Companies argued that the information is not relevant to any issue raised in the proceeding and will be neither 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.

Request for Production No. 4 appears to be reasonably calculated to lead to the discovery of admissible evidence regarding the claim by the Omaha Cab Companies that the entry of any new passenger carrier in the area served by them jeopardizes, endangers, and impairs their operations and business, as well as their ability to serve passengers in its service area. The Hearing Officer finds that the Motion to Compel Answer to Interrogatory No. 4 should be sustained, and that Omaha Cab Companies shall provide the documentation requested by the Applicant in Interrogatory No. 4.

Concurrently, the Hearing Officer will enter a Protective Order in this matter. The Hearing Officer finds that the Omaha Cab Companies have stated that the information sought is proprietary and confidential. Therefore, the Hearing Officer finds that a Protective Order shall be entered to protect any confidential or proprietary information in this matter. The

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

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

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Answers to Interrogatory No. 4 shall be answered by the Omaha Cab Companies and received by the relevant parties pursuant to this Protective Order. All parties will receive and employ the information considered confidential in accordance with said Protective Order.

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer in the above-captioned matter that the Applicant's Motion to Compel regarding Interrogatory No. 4 is hereby sustained.

IT IS FURTHER ORDERED that Applicant must comply with this Order by or before 5:00 p.m. on March 11, 2013.

MADE AND ENTERED at Lincoln, Nebraska, this 5th day of March, 2013.

BY:



HEARING OFFICER

