

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of EZ Cabs, Inc., ) APPLICATION NO. B-1894  
Sioux City, Iowa, seeking )  
authority as a common carrier of )  
passengers by taxicab over )  
irregular routes between points )  
in Dakota, Cedar, Dixon, Wayne, )  
Thurston, Cuming, and Burt ) GRANTED  
counties, and between points in )  
said counties. RESTRICTION: )  
The transportation of railroad )  
train crews and their baggage is )  
not authorized. HHS )  
Designation: No. )  
ENTERED: SEPTEMBER 22, 2015

APPEARANCES:

For the Applicant:  
William Horneber  
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For the Commission Staff:  
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BY THE COMMISSION:

B A C K G R O U N D

By application filed February 6, 2015, EZ Cabs, Inc., of Sioux City, Iowa, seeks authority to operate as a common carrier of passengers by taxicab over irregular routes between points in Dakota, Cedar, Dixon, Wayne, Thurston, 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 February 9, 2015. A protest to the application was filed by Action Taxi & Limo, Inc., on March 5, 2015. A hearing on the application was held on June 17, 2015, with appearances as listed above.

E V I D E N C E

**Applicant's Evidence:**

Mr. Brent Chamberlain testified first for the Applicant. Mr. Chamberlain is with K & B Transportation in Sioux City, Iowa. K & B Transportation uses taxi service to get some of its

drivers to different places in Iowa, Nebraska and South Dakota. The company has used EZ Cabs in the past. Mr. Chamberlain stated that he has experienced difficulty arranging for transportation in Nebraska. He believes that there is more service needed in Nebraska. He said that Action Taxi and Siouxland Taxi would not be able to meet all of his requirements.

Mr. Tom Baurichter testified next. Mr. Baurichter is the President of F & M Bank in South Sioux City, and also is the chairman of the Sioux City Area Chamber of Commerce. Mr. Baurichter said that he supports free enterprise and competition in the marketplace. He said that, in his position as bank president, he has heard from several individuals that it can be difficult to get a cab in South Sioux City.

On examination by Commissioner Tim Schram, Mr. Baurichter said that the population of the Sioux City Metropolitan Statistical Area is approximately 160,000.

Mr. Richard Brandow testified next for the Applicant. Mr. Brandow is with the Northeast Nebraska Area Agency on Aging. This organization works primarily with individuals over the age of sixty. He said that transportation is much needed in the South Sioux City and Dakota City areas. Mr. Brandow testified that the Agency struggles to find transportation services for many of the clients in the area. He said that it is essential that more transportation service be available to meet the basic daily needs of the clients of the Agency. He said that advance notice is given in about sixty percent of the cases, but that the other forty percent needs immediate service. Many of the individuals are elderly and disabled and have no other option to get out for their needs.

Mr. Brandow stated that not approving EZ Cabs would be a great disservice to the older citizens of the area. He recommends that the application be approved to allow for more options and to help fill the need that is currently present.

On examination by Commissioner Frank Landis, Mr. Brandow said that he understands that EZ Cabs would not be allowed to transport individuals under contract with the Nebraska Department of Health and Human Services. He said that the Agency had a number of private pay citizens that still have transportation needs. On examination by Commissioner Tim Schram, Mr. Brandow stated that the Agency had total care management clients numbering 600, and Medicaid waiver individuals at 340 in the area.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

APPLICATION NO. B-1894

PAGE 3

Ms. Lori Warner testified next. Ms. Warner is the president of the Chamber of Commerce in South Sioux City. As president she has heard of problems regarding transportation in the South Sioux City area. She has received information regarding these problems from the motel industry as well as from the visitor's bureau. She has also received calls from people looking for transportation.

Ms. Warner became aware of the application through Tom Barichter. He also brought up concerns regarding taxi service in the South Sioux City area.

Ms. Warner supports the application. The goals of the Chamber of Commerce are to increase business quality of life and employment in the South Sioux City area. She wants all companies to have the opportunity to succeed.

Ms. Warner has contacts in the entertainment industry such as bars and lounges. She has heard from these people and businesses that there are issues with transportation availability, particularly at closing time.

Ms. Warner said that granting the authority would expand opportunities as well as meet a current need. She has heard from the hotel next door to the Chamber offices that wait times for taxis can be frustrating and that it is not good for the business to have people waiting 30 to 45 minutes. More companies should lead to better service.

Mr. Tom Rush testified next. Mr. Rush is the center director for the Northeast Nebraska Senior Citizen Center in South Sioux City. The Center has a number of clients that cannot drive themselves and therefore need alternative transportation. Clients of the Center include people from South Sioux City as well as surrounding towns such as Dakota City, Homer and Jackson. He said he has observed inconveniences that people face long wait times to get a taxi. This has specifically been a problem at times where it gets close to closing time and the client has been waiting for 30 to 45 minutes before the cab arrives to pick up the person. This is an inconvenience to the client and the center. He believes that there is a definite need for the proposed service.

Ms. Jamie Miller, owner of the Last Stop Pub, testified next. She has been the owner for two years. She has seen that there is a need for cab service, especially at closing time. She knows of Action Taxi, and said that there are times when Action's phone line is busy or they do not answer the call. She stated that they will have to provide the ride home or call a

friend or relative to get a patron home sometimes. Ms. Miller said she cannot say how large the problem is, only that there is a problem for her getting service on occasion. She supports the application, and believes that the situation will remain a problem until there is more service available.

The next person to testify was Shane Schutt. Mr. Schutt is a dispatcher for the Applicant, and has been involved in the taxi industry in the South Sioux City area for twenty-seven years. He knows of Action Taxi and worked for Luis Nuno and Siouxland Taxi in the past. He said that Action Taxi has a procedure where not all calls are answered, but only those calls where they could provide the service. They would stop answering the phone if they became too busy. He stated that this is not the policy for the Applicant and that it answers all calls.

Mr. Schutt believes that there is a need for EZ Cabs application to be approved. On examination by Commissioner Tim Schram, Mr. Schutt said that EZ Cabs operates a total of nine vehicles.

Ms. Katherine Schleuter is a resident of South Sioux City. She and her daughter live together and have two jobs with different shifts. They have need for transportation services due to this conflict. There have been times that Action Taxi has been called and they have been very late, and in one instance did not show up to provide the requested transportation. She believes that there is a need for additional transportation services in South Sioux City and that EZ Cabs will provide reliable transportation service.

Ms. Shyril Schroeder testified next for the Applicant. She is the office manager for EZ Cabs. She stated that EZ Cabs has nine vehicles in its fleet and a sufficient number of drivers to operate those vehicles. She said that EZ Cabs has received calls from people in South Sioux City requesting service and are told that they cannot provide service within the state of Nebraska. The people tell her they have called the other cab companies and cannot get a hold of them.

Ms. Schroeder testified that EZ Cabs will be able to comply with all the requirements for intrastate service in Nebraska. She stated that she believes that the Commission should approve the application so that they can provide service to those people who call looking for transportation.

On examination by Commissioner Rod Johnson, Ms. Schroeder said that EZ Cabs has nine vehicles licensed, and 16 or 17 drivers. She did not think that EZ Cabs would add more

vehicles, but that they did have a few more vehicles that have not been converted into cabs and that they were always looking for more drivers.

On examination by Commissioner Tim Schram, EZ Cabs carries a million dollar insurance policy and that there was not anything they would need to change to be in compliance with Nebraska rules and regulations.

**Protestant's Evidence:**

Mr. Luis Nuno, the sole owner of Action Taxi & Limo, Inc., and Siouxland Taxi, testified as follows: Mr. Nuno said that provides transportation to K & B Transportation, but did say that sometimes his company does get very busy. Action Taxi provides transportation to senior citizens and does offer a senior discount. Mr. Nuno does not believe there is a problem at bar closing time and that he has enough vehicles available during those times. Mr. Nuno did admit that it can be difficult to serve all the bars and lounges at closing time.

Mr. Nuno stated that most companies follow the same policy that his company does regarding holding calls. Not everyone can be picked up at one time, and he does not want people wondering what time the cab will be there. They do keep one line open at all times, and more than one line is open most of the time.

Action Taxi provides service to Medicaid with no complaints, according to Mr. Nuno. The company also provides service to seniors and other regular customers.

Mr. Nuno said that the problem with a new company is that the area being served is small and a new company will take away trips and income from the drivers if more vehicles are running. Mr. Nuno has more than twenty vehicles operating in the South Sioux City area currently. While all companies can currently pick up in Nebraska or Iowa and take across state lines, there are seven companies in the area that are already doing that.

Mr. Nuno noted that there are currently four companies offering service in South Sioux City: Action Taxi, Siouxland Taxi, South Sioux City Taxi and Heartland Express. Mr. Nuno thought that some of the witnesses may not know of Heartland Express as another transportation option in the area.

Mr. Nuno is trying to advertise so that people and organizations are aware of the service that his companies provide. He believes that with more information available that

consumers will be able to better take advantage of the current services.

Mr. Nuno pointed out that there are only about 13,500 people in the South Sioux City area. K & B Transportation may only need one or two rides a day, and he believes that he can provide enough service to handle that traffic. He believes that there are currently enough transportation options in the area.

On examination by Commissioner Rod Johnson, Mr. Nuno said that he does provide service to the South Sioux City school district as well as other entities. He also has a contract to provide service to the Nebraska Department of Health and Human Services. He said that he has never had an issue with complaints with any of the entities that he is contracted with.

On examination by Commissioner Tim Schram, Mr. Nuno said that his companies have authority to operate in twenty Nebraska counties. He also detailed that the phone system is put on hold during peak hours, and that it is a common practice in the taxi industry. The callers are not put on hold, but the lines that are available for the public to call are reduced. The company leaves one line available for call backs to let the person know the status of the cab, and a second line is open to receive new calls. The other two lines are set on hold to reduce the number of calls being handled at a given time.

One issue is that the number of calls being received can create a situation where calls are placed and then cancelled due to the length of time that it will take to get a cab there. Action Taxi also gives preference to its time calls and their regular business accounts. This can also cause a back-up at times of peak demand.

Mr. Nuno stated that his company does work with the community on various projects. A notable one is the Safe Ride Program, which is run in conjunction with a local business. People can call for a free ride under the program, and it is very helpful to the community. The company also works with local establishments to advertise that it is better to wait for a cab than to drive home and get a ticket for driving under the influence.

On cross examination by Mr. Horneber, Mr. Nuno was asked about the testimony from Lori Warner and Jamie Miller regarding the phone not being answered at times. Mr. Nuno said that they did this procedure so that they would not be in the position of giving information to the customer regarding possible wait times that may not be accurate.

Mr. Eric Schweers testified next on behalf of the Protestant. Mr. Schweers is the head dispatcher for Action Taxi, and has been for the last seven months. He said that they have worked hard to get a good group of people to be dispatchers, and that these people should help resolve the busy line issue at bar closing time. People can get through on the one line that is kept open and are given the information that it may be a long wait. He claims that there is not a time that people cannot get through at all as was testified to by witnesses for the Applicant. There are times that the company does only have one line open but it is always open and available. This is done to allow the company to get caught up on some of the traffic that is being dispatched and get the transportation completed.

On examination by Commissioner Rod Johnson, Mr. Schweers said that Action has a main line, a rollover line and a priority line that doubles as a fax line. The priority line is not a generally listed number but is made available to special clients such as bars. The line that gets locked down is usually the secondary line.

Mr. Schweers said that he thought the Applicant was an ethical person, but that the lack of business in South Sioux City proper is the issue. He believes that there are very few trips that are point-to-point in South Sioux City. He does not think that there is enough business to support another taxi company.

On examination by Commissioner Tim Schram, Mr. Schweers said that they will receive over twenty-five calls in less than forty-five minutes. This figure does not include the number of people who call and then decline to request service due to the wait time involved.

On cross-examination by Mr. Horneber, Mr. Schweers stated that his testimony regarding the availability of phone service to the company was different than that of witnesses for the Applicant. Mr. Schweers also admitted that a tire fell off a vehicle while in operation and that another vehicle caught on fire. The wheel fell off due to an employee being negligent, and the vehicle that caught on fire was removed from service.

Ms. Tammy Barriga testified next. Ms. Barriga is the manager of Action Taxi. She said that Siouxland Taxi was added to Nebraska service in May of 2015. The companies are trying to get the information out to the public that they are both up and running and available for service.

Action Taxi has contracts with the Nebraska Department of Health and Human Services and Medicaid and has had no service issues with either entity. They also have contracts with vocational rehabilitation services.

Ms. Barriga believes that the addition of Siouxland Taxi to the area will improve service. Siouxland has vans which Action Taxi does not. This will also increase the level of service available.

Ms. Barriga did admit that there are times when it gets very busy. Some people will wait when informed it could be a forty-five minute wait, and others will not. She said that it is just not possible for the companies to get to every call at all times of the day.

Ms. Barriga pointed out that there are now four providers in the South Sioux City area, and that number has changed with the addition of Heartland Vans and Siouxland Taxi.

On examination by Commissioner Tim Schram, Ms. Barriga said that Action Taxi and Siouxland Taxi have some vehicles that are accessible for collapsible wheelchairs, and that Heartland Vans is available for the non-collapsible wheelchairs. Action Taxi does not have any vehicles equipped with lifts.

On cross-examination by Mr. Horneber, Ms. Barriga said that Action Taxi has seven or eight drivers scheduled for Friday and Saturday nights. Mr. Horneber said that the Applicant's witnesses testified that the number provided by Action Taxi was not sufficient to meet the demand of the general public. Ms. Barriga noted that Siouxland Taxi has just started operation in South Sioux City and that there may be enough now.

**Rebuttal evidence:**

Mr. Scott Schroeder was called as a rebuttal witness. Mr. Schroeder is the owner of EZ Cabs, Inc. Mr. Schroeder discussed phone systems used by companies such as Action Taxi and EZ Cabs. He said that Action Taxi only leaves open the priority line during times of peak use and that therefore people may not be able to get through. They will open up lines to take enough calls to give to available drivers, and then close the lines down again. Mr. Schroeder said that EZ Cabs does not do this. They will answer all calls and let the people know that it could be a long wait.



Mr. Schroeder has been in the taxi business since 1989. He has been a dispatcher, manager, mechanic and a driver. He noted that Siouxland Taxi has started service in Nebraska, but that they will not be dropping the service they already provide in Sioux City, Iowa that has kept them busy until now. He believes that the business is still overwhelming in the South Sioux City area.

Mr. Schroeder did state that Action Taxi has had a door fall off, a tire fall off while on the road, and that a vehicle did catch on fire. He said that his vehicles may run into some difficulties such as flat tires, but that they have not experienced this level of problems.

EZ Cabs has nine vehicles on the road and they have adequate insurance. If one vehicle has an issue, they have vehicles in their fleet that can be placed into service if necessary.

Mr. Schroeder said that EZ Cabs wants to provide service to the people of the South Sioux City area.

On examination by Commissioner Frank Landis, Mr. Schroeder stated he contacted City Hall in Sioux City about the safety concerns he had on the Action Taxi vehicles. They are the regulators that he is used to working with, so he reported the issues to them.

On examination by Commissioner Tim Schram, Mr. Schroeder said that EZ Cabs has one wheelchair lift-equipped vehicle but that they do not currently use it. They currently use sedan but would use vans if demand dictated that they do so. Mr. Schroeder also said that he is the person who maintains the vehicles.

On redirect by Mr. Horneber, Mr. Schroeder said that EZ Cabs phone lines are answered 24/7, and that they also have a back line for emergency situations.

#### 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 Dakota, Cedar, Dixon, Wayne, Thurston, Cuming, and Burt counties, on the one hand, and, other hand, points between said counties. It would be able to provide point-to-point transportation in those counties. Applicant is currently not authorized to provide 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 prove that it is fit, willing and able to provide the proposed service. From the evidence presented, the Commission finds that the Applicant has sufficiently proven it is fit, willing and able to properly perform the proposed service and able to conform to Neb. Rev. Stat. § 75-301 et seq. The Applicant is currently operating in Iowa. It has done so for a number of years. The Applicant has provided continuous service over this time period in its geographic area. The Applicant appears to have sufficient finances to operate the proposed service. It has adequate vehicle availability and the ability to service the vehicles.

Based upon the evidence before us and adduced from the record in the instant case, the Commission finds that the Applicant has met the fitness test of Neb. Rev. Stat. §75-311.

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).

The first part of the test is whether the proposed operation will serve a useful purpose responsive to a public demand or need. Given the record before us, we find that the Applicant has demonstrated a sufficient level of need and necessity to support a grant of the application. The Commission received testimony from Brent Chamberlain and Katherine Schleuter regarding their personal experiences with difficulties in arranging taxi service in South Sioux City. Richard Brandow testified on behalf of the Northeast Nebraska Area Agency on Aging concerning problems that many of the clients of his organization have with transportation issues. Tom Rush testified concerning similar difficulties with transportation in areas outside of South Sioux City. Lori Warner and Jamie Miller also testified regarding the need for the proposed service.

The Commission finds that the above evidence shows that there is a useful purpose responsive to a public demand or need that the proposed operation can help to meet.

The second part of the test is whether this purpose can or will be served as well by the existing carriers. The evidence presented shows that the Protestant is not currently meeting the needs of the general public. It therefore appears from the record that the Protestant has not shown that it either can or will fill this public purpose or need.

We now turn to the issue of whether the public demand or need 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 Protestant did not produce specific evidence as to whether the granting of the application will endanger or impair its ability to operate. Absent evidence of an impairment or endangerment to the operations of the Protestant, the Commission finds that the proposed operation can serve in the proposed manner without endangering or impairing the operations of existing carriers contrary to this overwhelming public interest.

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

1. The Applicant is fit, willing and able properly to perform the service proposed and to conform with the provisions of Neb. Rev. Stat. § 78-301 to 75-322 and the requirements, rules and regulations of the Commission thereunder.

2. The proposed intrastate service is or will be required by the present or future Public Convenience and Necessity to the following extent:

#### C E R T I F I C A T E   A U T H O R I Z E D

SERVICE AND TERRITORY AUTHORIZED: Common carrier of passengers by taxicab over irregular routes between points in Dakota, Cedar, Dixon, Wayne, Thurston, Cuming, and Burt counties, and between points in said counties. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized. HHS Designation: No.

3. The application should be granted.

#### ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1894, be, and it is hereby, granted; and that upon compliance with the terms and conditions as set forth in this Order, a Certificate of Public Convenience and Necessity shall be issued to EZ Cabs, Inc., Sioux City, Iowa, authorizing the operations as set forth in the foregoing findings.

IT IS FURTHER ORDERED that the 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. §75-305 (fees), 75-307 (insurance), and 75-308 (rates), 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 Applicant shall render reasonably continuous and adequate service to the public pursuant to the authority authorized.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

APPLICATION NO. B-1894

PAGE 13

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

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 22nd day of September, 2015.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



//s//Frank E. Landis  
//s//Tim Schram



Vice Chairman

ATTEST:



Executive Director