

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the) APPLICATION NO. LR-279
Prescription of Reasonable Rates)
and Charges for Motor Carriers) GRANTED ON AN EMERGENCY
Passengers and Property for Hire) BASIS
Subject to the Provisions of)
Neb. Rev. Stat. (Reissue 1996),)
Chapter 75, Articles 1 and 3.) ENTERED: APRIL 25, 2007

BY THE COMMISSION:

O P I N I O N A N D F I N D I N G S

On March 30, 2007, Brown's Crew Car of Wyoming, Inc., d/b/a Armadillo Express, Cheyenne, Wyoming, filed an application for authority to revoke its existing rates and establish rates pursuant to contractual agreement between the applicant and Outsource Administrators, Inc., acting for BNSF Railway Company in Nebraska intrastate commerce for the transportation of passengers and their baggage between points in Nebraska as set forth in the attached Exhibit A.

Emergency action is requested.

Applicant is an authorized common carrier holding operation authority from the Commission in Certificate B-1144 and supplements thereto. The authority granted permits the transportation of passengers and their baggage between points in Nebraska.

In support of this application, the Applicant states that the proposed changes are made at pursuant to a contractual agreement made by and between the Applicant and Outsource Administrators, Inc. The rates and charges are anticipated to go into effect immediately upon approval by the Commission. The Applicant further represents to the Commission that the rates and charges for other customers served will not be affected by the granting of this Application.

Commission staff has reviewed the contract that is the basis for the application. The application does embody the terms of the contract as agreed by the parties.

Upon consideration of the application and being fully advised in the premises, the Commission is of the opinion and

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

APPLICATION NO. LR-279

PAGE 2

finds that the application should be granted on an emergency basis effective April 30, 2007.

O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that effective April 30, 2007, Brown's Crew Car of Wyoming, d/b/a Armadillo Express, Cheyenne, Wyoming, be, and it is hereby, authorized to amend its rates for its use as set out in Appendix A attached hereto.

IT IS FURTHER ORDERED by the Nebraska Public Service Commission that public notice of this action be published in The Daily Record, Omaha, Nebraska pursuant to the provisions of Section 75-121, R.R.S. 2003, and the Commission's rules.

MADE AND ENTERED at Lincoln, Nebraska, this 25th day of April, 2007.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Gerald Fleg
Tom Schram

Chairman

Rod Johnson

ATTEST:

Executive Director

Frank E. Landis

//s// Rod Johnson
//s// Frank E. Landis

APPENDIX "A"

Part I. Mileage Rates:

- A. Rate per round trip mile for the transportation of passengers and their baggage between points in Nebraska \$0.65

- B. For trips dispatched from Alliance, Falls City, Lincoln, McCook, Omaha, Ravenna, Superior, or the facilities of or used by BNSF Railway Company at Grand Island, the rate set forth in Paragraph A shall be adjusted based upon the vehicle requested as follows:
 - (i) 8-10 passenger (2WD) No adjust.
 - (ii) 8-10 passenger (4WD) +.03 per mile
 - (iii) 15 passenger (2WD) +.10 per mile
 - (iv) 15 passenger (4WD) +.15 per mile
 - (v) 5-7 passenger (2WD) -.02 per mile
 - (vi) 5-7 passenger (4WD) -.015 per mile

- C. Minimum charge per trip
 - (i) For trips dispatched from Alliance, Falls City, Lincoln, McCook, Omaha, Ravenna, Superior, or the facilities of or used by BNSF Railway Company at Grand Island \$32.50
 - (ii) For all other trips \$24.35

- D. If service for a trip is requested by a customer and the trip is subsequently canceled after a vehicle has been dispatched and is under way but before any passengers have been transported, a canceled trip charge will be applicable equal to the greater of carrier's minimum charge per trip or the mileage rate for each round trip mile the vehicle is operated as the result of the customer's request for service.

- E. When due to no disability, fault or negligence on the part of the carrier, the carrier's vehicle is detained (which term includes loading and unloading) at or on the premises of the customer, or if at the request of the customer an

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

APPLICATION NO. LR-279

PAGE 4

interruption occurs during the course of a trip, the following shall apply:

- (i) Free time for loading, unloading, and any one or more interruptions caused by an official stop or interruption of trip at customer's request shall be thirty (30) minutes per trip in the aggregate.
- (ii) Time consumed in loading and unloading shall be computed from the time of arrival until the departure of the vehicle, including waiting time in reaching the loading or unloading point. Time consumed in any interruption shall be computed from the time the vehicle is stopped at customer's request to the time the trip is resumed.
- (iii) Except as provided in Subparagraph (iv) below, if the vehicle is dispatched from Fremont, Grand Island (except from the facilities of or used by BNSF Railway Company), North Platte or South Morrill and is detained beyond the free time provided in Subparagraph (i) above, a charge of 25 cents per minute for the time consumed due to loading, unloading and interruptions beyond the free time shall be made.
- (iv) If the vehicle is dispatched from Fremont, Grand Island (except from the facilities of BNSF Railway Company), North Platte or South Morrill and at the time service is requested the trip is designated as an "Assist" by the customer, no free time shall be allowed and a charge of 27.5 cents per minute for the time consumed due to loading, unloading and interruptions shall be made.
- (v) Except as provided in Subparagraphs (iii) and (iv) above, if the vehicle is detained beyond the free time provided in Subparagraph (i) above, a charge of .30 cents per minute consumed by such detention beyond the free time shall be made.
- (vi) If the vehicle is dispatched from Alliance, Falls City, Lincoln, McCook, Omaha, Ravenna, Superior, or the facilities of or used by BNSF Railway Company at Grand Island and at the time service is requested the trip is designated as an "Assist" by the customer, no

free time shall be allowed during the time carrier is assisting, and a charge of \$4.00 per quarter hour for each quarter hour or fraction thereof that carrier is assisting shall be made in addition to the rate specified in Paragraph A above for all miles from point of dispatch to point of initial assist and from point of final assist back to point of dispatch.

(vii) As used in subparagraphs (iv) and (vi) above, the term "Assist" means a trip movement going to a train then assisting at location;

- F. The mileage rate specified in Paragraph A is applicable only for trips begun in any calendar month in which the average retail cost of regular gasoline for the immediately preceding month, determined based on the previous month's average price for Regular Conventional Gasoline published by the U.S.
- G. Department of Energy in the Midwest Index, does not exceed \$1.45 per gallon. For any month during which average daily retail cost of regular unleaded gasoline as so determined exceeds \$1.45 per gallon, the applicable mileage rate shall be the mileage rate specified in Paragraph A, increased by one cent per mile for each 10 cents or fraction thereof that the retail cost of regular gasoline as so determined exceeds \$1.45 per gallon; provided however, that the provisions of this Paragraph F shall not apply to trips dispatched from Alliance, Falls City, Lincoln, McCook, Omaha, Ravenna, Superior, or the facilities of or used by BNSF Railway Company at Grand Island.

NOTE: For purposes of Part I, (a) "trip" means the movement of a vehicle under dispatch by carrier at the request of a customer from a designated starting point to point of destination and back to designated starting point, inclusive of any out-of-route miles traveled at customer request, without regard to whether the vehicle is occupied by passengers during all or any part of such trip; (b) "round trip mile" means each mile traveled by a vehicle under dispatch by carrier at the request of a customer in the course of a trip; and (c) "interruption" means any stopping of a vehicle at customer request during the course of a trip.

Part II. Dedicated Vans.

- A. Yard Vans. Where carrier is requested by a customer in writing to furnish one or more vans to be stationed at a railroad yard located at Alliance, Falls City, Lincoln, McCook, Omaha, Ravenna, Superior, or the railroad yard of

BNSF Railway Company at Grand Island on a 24 hours per day, seven days per week basis to be used to provide service exclusively within said railroad yard, each van so requested and stationed shall be a "yard van" and carrier's rate for each yard van shall be \$4.00 per quarter hour for each quarter hour or fraction thereof from the time such yard van is initially stationed at the railroad yard until such time as it is removed from service as a yard van.

- B. Radius Vans. Where carrier is requested by a customer in writing to furnish one or more vans to be stationed at a railroad yard located at Alliance, Falls City, Lincoln, McCook, Omaha, Ravenna, Superior, or the railroad yard of BNSF Railway Company at Grand Island on a 24 hours per day, seven days per week basis to be used to provide service exclusively within a 70 mile radius of the customer-designated starting point located within the railroad yard at which such van is stationed, each van so requested and stationed shall be a "radius van" and carrier's rate for each radius van shall be \$5.00 per quarter hour for each quarter hour or fraction thereof from the time such radius van is initially stationed at the railroad yard until such time as it is removed from service as a radius van.
- C. Standard Dedicated Vans. Where carrier is requested by a customer in writing to furnish one or more vans to be stationed at a railroad yard (other than a railroad yard located at Alliance, Falls City, Lincoln, McCook, Omaha, Ravenna, Superior, or the railroad yard of BNSF Railway Company at Grand Island) on a 24 hours per day, seven days per week basis to be used to provide service exclusively within a 25 mile radius of the customer-designated starting point located within the railroad yard at which such van is stationed, each van so requested and stationed shall be a "standard dedicated van" and carrier's rate for each standard dedicated van shall be \$16.50 per hour for each hour or fraction thereof from the time such standard dedicated van is initially stationed at the railroad yard until such time as it is removed from service as a standard dedicated van.
- D. Designated Shift Dedicated Vans. Where carrier is requested by a customer in writing to furnish one or more vans to be stationed at a railroad yard (other than a railroad yard located at Alliance, Falls City, Lincoln, McCook, Omaha, Ravenna, Superior, or the railroad yard of BNSF Railway Company at Grand Island) for not less than

eight consecutive hours per day, seven days per week, but for less than 24 hours per day, seven days per week, to be used to provide service exclusively within a 25 mile radius of the customer-designated starting point located within the railroad yard at which such van is stationed, each van so requested and stationed shall be a "designated shift dedicated van" and carrier's rate for each designated shift dedicated van shall be \$20.00 per hour for each hour or fraction thereof such designated shift dedicated van is used in service of the customer.

- E. Extended Dedicated Vans. Where carrier is requested in writing to furnish one or more vans to be stationed at a railroad yard (other than a railroad yard located at Alliance, Falls City, Lincoln, McCook, Omaha, Ravenna, Superior, or the railroad yard of BNSF Railway Company at Grand Island) on a 24 hours per day, seven days per week basis to be used to provide service exclusively within a 50 mile radius of the customer-designated starting point located within the railroad yard at which such van is stationed, each van so requested and stationed shall be an "extended dedicated van" and carrier's rate for each extended dedicated van shall be \$20.00 per hour for each hour or fraction thereof from the time such extended dedicated van is initially stationed at the railroad yard until such time as it is removed from service as an extended dedicated van.
- F. Vehicle Substitution. In the event (i) carrier, at customer's request, has stationed in a railroad yard (other than a railroad yard located at Alliance, Falls City, Lincoln, McCook, Omaha, Ravenna, Superior, or the railroad yard of BNSF

Railway Company at Grand Island) both one or more standard dedicated vans and/or designated shift dedicated vans and also one or more extended dedicated vans, and (ii) said customer requires the use of a dedicated van to perform service beyond the 25 mile radius of the customer-designated starting point located within the railroad yard at which such van is stationed at a time when carrier has no extended dedicated van immediately available to perform such service, and (iii) carrier is then using fewer vans to perform service beyond said 25 mile radius than the number of extended dedicated vans then stationed at said railroad yard pursuant to such railroad's request, carrier shall use

any available standard dedicated van or designated shift dedicated van then stationed at said railroad yard to perform the required service beyond said 25 mile radius; PROVIDED, carrier shall not at any one time operate more of the dedicated vans stationed at such railroad yard beyond such 25 mile radius than the total number of extended dedicated vans then stationed at such railroad yard at the request of railroad; and PROVIDED FURTHER, that carrier's charges to railroad for dedicated vans shall not be affected by any such substitution of a standard dedicated van or designated shift dedicated van for an extended dedicated van.

- G. Termination of Dedicated Van Service. Standard dedicated van service, designated shift dedicated van service and extended dedicated van service, once requested by railroad, shall not be terminated with respect to any one or more vehicles except upon 30 days advance written notice; PROVIDED, HOWEVER, that any designated shift dedicated van shall be converted to either a standard designated yard van or an extended designated yard van and any standard designated yard van shall be converted to an extended designated yard van at any time at the written request of railroad. In the event carrier is denied access to railroad's facilities or is otherwise precluded or hindered by railroad from providing such service during any such 30 day notice period, carrier's charges with respect to such 30 day notice period shall be determined as if carrier's service was continued without preclusion or hindrance for the entire 30 day notice period.
- H. Short-Turn Vans. Where carrier is requested in writing to furnish a dedicated van (other than a standard dedicated van, a designated shift dedicated van, or an extended dedicated van) to provide service at any location (other than at Alliance, Falls City, Lincoln, McCook, Omaha, Ravenna, Superior, or the railroad yard of BNSF Railway Company at Grand Island), carrier's rate for providing service using such dedicated van shall be \$24.00 per hour for each hour or fraction thereof from the time such dedicated van is initially placed in service for railroad until the use thereof by railroad is concluded, subject to a minimum charge of \$192.00.

- I. Fuel Surcharge. For any calendar month in which the average retail cost of regular gasoline for the immediately preceding month, determined based on the previous month's average price for Regular Conventional Gasoline published by the U.S. Department of Energy in the Midwest Index, exceeds \$1.45 per gallon, a fuel surcharge shall be added to the per-hour rates specified in this Part II. For purposes of determining this fuel surcharge, it shall be conclusively presumed that 1.4 gallons of fuel are consumed for each hour of service provided subject to per-hour rates. The fuel surcharge shall be computed (1) by first multiplying the number of hours of service provided subject to per-hour rates by 1.4 gallons per hour to determine the total number of gallons consumed subject to the fuel surcharge, and then (2) multiplying the total number of gallons so determined by the difference between (i) the retail cost per gallon of regular gasoline at the beginning of the month for which the fuel surcharge is to be

applied, as determined from the Gasoline and Diesel Fuel Update as aforesaid, and (ii) \$1.45 per gallon; provided however, that the provisions of this Paragraph G shall not apply to trips dispatched from Alliance, Falls City, Lincoln, McCook, Omaha, Ravenna, Superior, or the facilities of or used by BNSF Railway Company at Grand Island.

- J. Alternation of Rates. Notwithstanding any other provision of this Part II, carrier's charges for each trip provided using dedicated vans requested by railroad as provided in this Part II shall be the greater of either the charges determined in accordance with the applicable hourly rate specified in this Part II or the charges determined in accordance with the mileage rates specified in Part I, in each case taking into account any applicable fuel surcharge or fuel cost reimbursement.

- K. Electronic Transmissions. Written notices required or permitted by this Part II may be transmitted via fax, e-mail, or any other available means of electronic communication, the authenticity whereof may be reasonably verified.

Part III. Other Provisions.

- A. For trips dispatched from Alliance, Falls City, Lincoln, McCook, Omaha, Ravenna, Superior, or the facilities of or

used by BNSF Railway Company at Grand Island, in addition to the applicable rates and charges specified in Part I and Part II above, carrier shall charge customer the cost of carrier's fuel consumed in the providing transportation for customer. For purposes of this paragraph, carrier's cost of fuel shall be determined as follows:

- (i) For each month, carrier's cost per gallon for fuel shall be determined based on the previous month's average

price for Regular Conventional Gasoline published by the U.S. Department of Energy in the Midwest Index.

- (ii) For service to which the provisions of Part II, Paragraph A are applicable, carrier's fuel consumption shall be calculated based on 10 miles per gallon.
- (iii) For all other service, carrier's fuel consumption shall be calculated based on 16 miles per gallon.

B. Carrier's charges for service provided for a railroad customer for trips dispatched from Alliance, Falls City, Lincoln, McCook, Omaha, Ravenna, Superior, or the railroad yard of BNSF Railway Company at Grand Island which is subject to the provisions of Part I or Part 2.B of this tariff shall be further subject to an on-time performance ("OTP") adjustment which shall be calculated as follows:

- (i) With respect to any particular railroad customer for any month of service, the base volume will be determined as the average of the monthly volume of movements for the customer for the immediately preceding three month period plus an additional 20% volume.
- (ii) Standard OTP shall be 90%. With respect to any particular railroad customer for any month of service, carrier shall accrue one half of one percent (.5%) for each one percent (1%) incremental OTP improvement above ninety percent (90%) for the customer up to a maximum of five percent (5%), and shall accrue a negative one half of one percent (-.5%) for each one percent (1%) incremental OTP measurement below ninety

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

APPLICATION NO. LR-279

PAGE 11

- (iii) percent (90%) for the customer up to a maximum of negative five percent (-5%).
 - (iv) Total the accrued percentages determined under (ii) and (iii) above, and multiply the sum by the amount of that part of carrier's charges for the customer for the month determined under Part 1.A, Part I.B and Part II.B to determine the OTP adjustment for the month.
- C. If a railroad customer served by carrier at Alliance, Falls City, Lincoln, McCook, Omaha, Ravenna, Superior, or the railroad yard of BNSF Railway Company at Grand Island shall notify carrier that the customer is experiencing a service interruption and requests carrier to provide additional vehicles and drivers at the location experiencing the service interruption, then in addition to all other charges determined in accordance with this tariff, carrier shall make a charge of \$100 per day for each vehicle dispatched to the location of the service interruption at customer's request and customer shall provide lodging at customer's expense for all drivers dispatched to such location.
- D. In the event carrier shall identify a backhaul opportunity to a railroad customer served by carrier at Alliance, Falls City, Lincoln, McCook, Omaha, Ravenna, Superior, or the railroad yard of BNSF Railway Company at Grand Island and the customer on the basis of information provided by carrier thereafter avails itself of the backhaul opportunity so identified, carrier shall make a charge of \$10 to customer in addition to all other charges determined in accordance with this tariff.
- E. Notwithstanding any other provision of this tariff, if carrier at the request of a customer stations a van at Superior, carrier's charges for services provided using such van shall be the greater of (i) the charges determined in accordance with other provisions of this tariff or (ii) \$5,000 per month.
- F. For all trips dispatched from Alliance, Falls City, Lincoln, McCook, Omaha, Ravenna, Superior, or the railroad yard of BNSF Railway Company at Grand Island, carrier's charges determined under Part I of this tariff shall be reduced by an amount equal to 2.5% of the charges so determined. For all service provided by yard vans and radius vans] at or from Alliance, Falls City, Lincoln, McCook, Omaha, Ravenna, Superior, or the railroad yard of

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

APPLICATION NO. LR-279

PAGE 12

BNSF Railway Company at Grand Island, carrier's charges determined under Part II of this tariff shall be reduced by an amount equal to 2.0% of the charges so determined. Charges made pursuant to the provisions of this Part III of this tariff shall not be subject to such reductions.

- G. As used in this tariff, the term "railroad" includes third persons acting on the part of a railroad, whether or not any such third person is an agent of the railroad.