

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In re Robert R. Logsdon, Director )  
of the Nebraska Public Service )  
Commission Transportation )  
Department, )

MOTOR CARRIER  
COMPLAINT  
MCC-3083

Complainant, )

vs. )

Rite Way Milk, Inc., Holdrege, )  
Nebraska, )

Defendant. )

**FILED**

**JUL 29 1993**

EXECUTIVE DIRECTOR  
NEBRASKA PUBLIC SERVICE  
COMMISSION

COMES NOW Robert R. Logsdon, complainant in the above-captioned cause, pursuant to Neb. Rev. Stat. Section 75-322.02 (1990 Reissue), and for complaint against Rite Way Milk, Inc., defendant, alleges as follows:

1. Complainant is the Director of the Transportation Department of the Nebraska Public Service Commission (Commission) and is the custodian of the Commission's Motor Transportation Department documents and records.

2. Defendant, Rite Way Milk, Inc., is a motor carrier conducting for-hire intrastate carriage of property in the State of Nebraska. Examination of the Transportation Department's records and documents reveals that defendant does not currently possess intrastate authority; however, defendant filed an application on April 22, 1993, seeking authority as a common carrier in Nebraska intrastate commerce in the transportation of sand, gravel, road and dam construction materials, feed, and feed ingredients by open top, hopper bottom trailers between points in Nebraska over irregular routes.

3. On or about April 22 or 23, 1993, the defendant willfully violated the Nebraska statutes and rules and regulations of the Commission by transporting fertilizer in Nebraska intrastate commerce for compensation without a certificate or permit of authority, or without leased authority to a regulated intrastate motor carrier with the requisite authority to transport fertilizer.

4. The defendant committed said violation by transporting granular urea from the Farmland Industries Omaha terminal and delivering said commodity to the Edison Non-Stock Coop Association in Hendley, Nebraska. Defendant was paid \$596.28 for the movements complained of above.


5. Defendant also violated Neb. Rev. Stat. Sections 75-124, 75-308, and 75-126(1)(e) for nonconformance in charging the applicable tariff rate established for intrastate shipments of fertilizer.

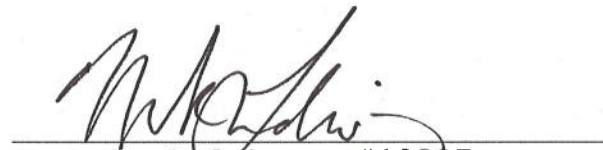
6. On February 11, 1993, defendant was sent a Transportation Department letter ("Exhibit A") informing him that he needed authority to transport regulated commodities for hire in Nebraska intrastate commerce. Said letter was followed up by a telephone call on March 18, 1993. Subsequent to the telephone consultation, the defendant agreed to file for rock authority in satisfaction of a potential

complaint being filed against him for an illegal rock movement on or about November 12, 1992. On April 6, 1993, a second Transportation Department letter was sent to defendant regarding defendant's intention to file for authority ("Exhibit B"). Defendant, therefore, had full knowledge of the intrastate rules and regulations regarding the transportation of commodities for hire in Nebraska prior to the movements made on or about April 22 or 23, 1993. Defendant's pending application does not even include the request for authority to transport fertilizer.

WHEREFORE, complainant prays the Commission for an order levying a civil penalty against the defendant pursuant to Neb. Rev. Stat. Section 75-322.02, as amended, and Title 291, Chapter 1, Rule 027.02 of the Commission's rules in an amount not less than seven hundred and fifty dollars (\$750.00) and any other order the Commission deems appropriate and which is within its jurisdiction to render, including, but not limited to, an order that the defendant cease and desist from further transporting regulated commodities without authority in Nebraska intrastate commerce.

DATED this 29th day of July, 1993.

  
Robert R. Logsdon  
Complainant  
NPSC Transportation Department

  
Mark A. Ludwig #19207  
Attorney for Complainant  
P.O. Box 94927  
Lincoln, NE 68509  
(402) 471-3101

VERIFICATION

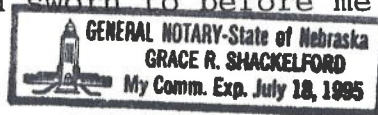
STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF LANCASTER )

Robert R. Logsdon, being first duly sworn on oath, deposes and says that he is the duly appointed and qualified Director of the Transportation Department of the Nebraska Public Service Commission; that he is the Complainant in the foregoing pleading; that he has read the allegations contained therein and understands them to be true to the best of his knowledge and belief.

  
Robert R. Logsdon, Complainant

Subscribed and sworn to before me this 29<sup>th</sup> day of July, 1993.

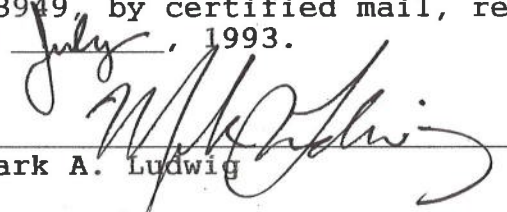
S E A L



  
Notary Public

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing complaint was served on the defendant, Rite Way Milk, Inc., RR 1, Box 677, Holdrege, Nebraska, 68949, by certified mail, return receipt requested, this 29<sup>th</sup> day of July, 1993.

  
Mark A. Ludwig

NOTICE

1. Pursuant to Title 291, Ch. 1, Rule 027.03A(5), defendant is hereby notified that the Commission will set a hearing date for this complaint and give notice to the defendant of said date and location of the hearing. Defendant is further notified that failure to file an answer to this complaint within twenty (20) days from the date of service will be construed as an admission of the allegations stated therein.
2. Failure by the defendant to file an answer or to appear at the hearing allows the Commission to (a) immediately enter an order assessing a civil penalty as provided for by law, or (b) to proceed with the hearing and receive evidence of the alleged violation(s) and thereby assess civil penalties as provided for by law.
3. Upon failure to pay any civil penalty determined by the Commission, such civil penalty unpaid shall constitute a debt to the State of Nebraska and be collectible by civil action in the District Court of Lancaster County, Nebraska.