

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion, to investigate whether the Commission has jurisdiction to regulate Portable Storage of Nebraska, LLC, dba PODS, Omaha, Nebraska.) APPLICATION NO. MR-1020/
) PI-94
)
) ORDER CLOSING
) INVESTIGATION
) AND DIMISSING
) APPLICATION
)
) ENTERED: April 26, 2005

BY THE COMMISSION:

By order entered March 22, 2005, the Nebraska Public Service Commission (the "Commission"), on its own motion, opened a docket to investigate whether the Commission had jurisdiction to regulate Portable Storage of Nebraska, LLC d/b/a PODS ("Portable") as a household goods carrier. Interested parties were afforded the opportunity to submit comments by April 12, 2005. Comments were submitted on behalf of Portable, vonRentzell Van & Storage, Inc., Chieftain Van Lines, Inc. and I-GO Van & Storage, Inc. None of the comments submitted urged the Commission to assert jurisdiction over Portable.

Upon consideration of the comments filed by the above-referenced parties and the testimony presented at the hearing, the Commission is of the opinion and finds that it lacks jurisdiction to regulate Portable Storage of Nebraska, LLC d/b/a PODS as a household goods carrier or any other motor carrier under the Commission's jurisdiction.

The investigation stems from an application (MR-1020) filed by Portable for authority to amend the Nebraska Official Household Goods Tariffs 7F and 22. Portable sought to amend the tariff since the services which it provides do not conform nor are they similar to those provided by a household goods carrier. Portable's rate structure likewise has no relationship to Household Goods Tariffs.

Initially, Portable came to the Commission staff requesting an informal opinion as to whether its service was subject to the Commission's jurisdiction for regulation of rates and services. Due to some time line restrictions imposed on Portable, it was unable to proceed with a Petition for Declaratory ruling at that time. Instead, Portable purchased the authority of A-1 Movers of Lincoln, Inc. under Certificate M-13766. In an effort to be in compliance with the Commission's rules and regulations, the transfer of authority was approved on an emergency basis and emergency temporary rates were put in place. Subsequently, Portable filed to permanently amend the Official Household Goods Tariffs. Numerous household goods carriers opposed the application. A prehearing conference was conducted in

MR-1020 on March 11, 2005. Following that prehearing conference, the Commission on its own motion opened this investigation Docket No. MR-1020/PI-94.

The issue before the Commission simply stated is "whether the services provided by Portable constitute household goods transportation in Nebraska intrastate commerce subject to the Commission's jurisdiction." Essentially, Portable is in the business of leasing containers. Portable has purchased specialized equipment which allows it to load and unload containers while maintaining the level of the container to within five degrees. Containers can be placed at commercial customers' locations or at residential customers' homes. The customers are responsible for the loading and unloading of all contents placed in the container. No representative of Portable ever touches any of the contents of the container. The customer may purchase a padlock from Portable or supply its own padlock to secure the containers. No container is transported without being secured by a padlock. At the customers' direction, the container may remain on its site, be transferred to Portable's warehouse, or be transferred to another destination. A limit of 10,000 pounds may be loaded into any container. Signs on the containers advise customers that no hazardous materials may be placed within the container. Because of the weight limitations, the driver transporting the containers is not required to hold a CDL license.

Representatives of I-GO Van & Storage, vonRentzell Van & Storage, Inc. and Chieftain Van Lines, Inc., all certified Nebraska household goods motor carriers, testified that they believe the services of Portable are substantially different than the services they provide. All three of the household goods movers testifying believe that the Nebraska Official Household Goods Carriers Tariffs 7F and 22 were not applicable to the services provided by Portable. All three of the household goods carriers testifying indicated they believe the Commission should follow the direction of federal regulators and those of other states and decline to regulate the services provided by Portable.

Prior to Portable moving any container, each customer is provided with a contract which advises the customer that there is \$25,000 cargo insurance coverage in place in the event of an accident where there is damage to the Portable vehicle or the container. Each customer is offered the opportunity and must affirmatively sign an addendum to the contract indicating that it either declines to purchase additional insurance or that it will purchase additional insurance from a company unaffiliated with Portable. On some occasions, household goods may be loaded in the container by the customer, while on other occasions

commercial merchandise or other material may be loaded in the container. The customer pays a monthly rental charge for the use of the container and a transportation charge for the delivery and pickup of the container. If the customer requests that the loaded container be delivered to a destination outside of the zip code area in which the container is located, an additional transportation charge is applicable.

The services described above differ substantially from those historically identified as household goods movers by the Interstate Commerce Commission, the federal agency initially responsible for motor carrier regulation. The Federal Motor Carrier Safety Administration ("FMCSA"), which now is responsible for motor carrier regulation, has adopted a similar approach. Both agencies have a longstanding position which indicates that household goods motor carrier regulation focuses on the service provided rather than the commodity being transported. When a motor carrier does not perform any of the typical accessorial services provided by household goods movers, regulation is not customary. The services typically provided by movers would include loading, unloading, use of specialized household goods equipment, placement of furniture, pre-weighing of shipments, providing of estimates, packing and other related services. The customer using Portable services receives none of these services and is responsible for loading, securing and unloading the container.

It appears the services provided by Portable are not those of a household goods mover, but in reality is a service that provides storage containers for a fee for which the transportation of the containers is merely incidental. We could not deem Portable's service to be "household goods transportation" since on many occasions the contents of the container are not household goods. The Commission's authority to regulate the transportation of any freight other than household goods in Nebraska has previously been preempted by the Federal Aviation Administration Authorization Act, effective January 1, 1995. The FMCSA, in a June 13, 2001 order denying a Petition for Declaratory Order filed by the American Movers and Storage Association, addressed the issue of whether the transportation of general freight under a "you pack, we haul" type service constituted the movement of household goods. Relying on a number of Interstate Commerce Commission cases which focused on the type of service provided rather than whether the commodities fell within the statutory definition of household goods, the FMCSA determined that general freight carriers transporting articles falling within the definition of household goods as part of their operations transporting general commodities were not subject to the ICC's household goods regulations. The household goods regulations were inapplicable, unless the carrier performed specialized services typical of a household goods carrier. The FMCSA adopted the underlying rationale of the Interstate Commerce

Commission, as do we, that household goods regulation is directed at a discreet segment of the transportation industry that provides specialized service and specialized equipment.

In addition to the federal authority, the commenters provided the Commission with decisions from other states including Florida, Illinois, North Carolina, New York and Oklahoma, where those state commissions had addressed services similar to those or identical to those before the Commission in this proceeding. In each of the decisions cited in the Portable comments, the state commission determined that the services provided by the "you pack, we haul" or "no touch" container leasers did not constitute transportation of household goods and was not subject to state regulation. Testimony at the hearing indicated that some 47 states have declined to regulate services such as those provided by Portable. Based on the record before us, we find no basis to assert jurisdiction to regulate rates and services of Portable.

The services Portable offers its customers bear no resemblance to those provided by traditional household goods carriers. There is merit in the rationale used by the federal government and other state commissions in declining to regulate similar services. For these reasons, we find that the services of Portable are not subject to the Commission's jurisdiction with regard to either rates or services. Pursuant to the Commission's vote on April 20, 2005, the Commission declines any said jurisdiction.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission, pursuant to the Commission vote of April 20, 2005, that the services provided by Portable Storage of Nebraska, LLC d/b/a PODS are not subject to this Commission's jurisdiction and, having so found, the above-captioned investigation be and it is hereby closed.

IT IS FURTHER ORDERED that Application MR-1020, wherein Portable Storage of Nebraska, LLC d/b/a PODS sought to amend Official Household Goods Tariffs 7F and 22, is hereby dismissed based on the Commission's lack of jurisdiction.

MADE AND ENTERED at Lincoln, Nebraska this 26th day of April,
2005.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director