

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission) APPLICATION NO. PI-10
investigation into the exigency)
of revoking those intrastate) ORDER TO PRESCRIBE PROCESS
motor carrier authorities nullified) FOR REVOCATION OF HOUSEHOLD
by passage of Public Law 103-305) CARRIER CERTIFICATES
)
) ENTERED: MAY 16, 1995

BY THE COMMISSION:

OPINION AND FINDINGS

The Commission, upon its own motion, reopened the docket in this proceeding to receive evidence to investigate the practicalities involved in the Commission's proposal to reissue certificates to general commodity carriers by substituting household goods for general commodities in each certificate and permit for which a request had been received from the carrier. Notice of public hearing setting the matter for hearing on March 13th was originally served on all affected general commodities carriers pursuant to the Commission's Order for Hearing dated February 21, 1995. The hearing was subsequently continued by notice published March 8, 1995, setting the hearing for March 28, 1995. A hearing was held March 28, 1995 in the Commission Hearing Room, Lincoln, Nebraska to satisfy any statutory requirement that may be applicable before the Commission can alter an authority.

Background

The Public Service Commission Director of Transportation Rob Logsdon testified that this proceeding was commenced as a result of the passage of Public Law 103-305, which nullified intrastate motor carrier authorities issued to all carriers except those to transport passengers and household goods. The effective date of Public Law 103-305 was December 31, 1994.

As the Commission proceeded to revoke intrastate motor carrier authorities, it recognized that general commodity carriers, by definition, had the ability to haul household goods. This investigation was commenced in anticipation of the Commission amending all general commodities certificates and permits held by motor carrier engaged in the intrastate transportation of household goods. After reviewing the authorities of those carriers who held general commodities authority, it was determined that 44 general commodities carriers had an interest in subscribing to the household goods tariff, and thus could be issued household goods carrier certificates and permits and be regulated by this Commission.

Public Service Commission staff attorney Hal Hasselbalch testified that this is the second hearing which had been conducted under this docket, and the staff determined an additional hearing

might be necessary because the statute requires a hearing before an authority can be changed. Exhibit C was entered in the record demonstrating 44 carriers who held general commodities certificates to whom consideration of issuing household goods certificates should be given.

The purpose of the hearing was to determine whether it was a legitimate and adequate method of disposing of this issue. Any carrier wishing to obtain household goods authority at some later date will be required to invoke a different procedure. The proposal was to simply rewrite the certificates of those carriers who held general commodities authority by deleting the reference to general commodities and inserting household goods. Based on a previous hearing, the 44 carriers identified in Exhibit C had responded and indicated they wanted to preserve household goods authority, and thus a hearing was scheduled to determine if such action by the Commission was appropriate. No changes would be made in the authorized service area under any new certificates which might be issued. Likewise, any restrictions which were imposed upon the previous certificate or permit would still be applicable to any newly-issued certificates or permits.

Testimony

Not a single witness appeared in support of the Commission's proposed reissuance of household goods certificates to general commodities carriers.

Ten witnesses appeared in opposition, one witness was neutral, and their testimony is summarized below.

Jack Shultz: an attorney appearing on behalf of a number of carriers in opposition to the Commission's proposed action testified as follows.

Each of the 44 certificates contemplated to be reissued should be looked at individually. Initially, this proposal only addresses those carriers who hold solely general commodities authority. Presumably, carriers who held household goods authority would retain that authority. There are carriers who held household goods authority, as well as general commodities authority, which authorized the movement of household goods in a different geographic area. To revoke a portion of a general commodities carrier's authority without substituting household goods would result in the Commission not treating all certificate holders equally.

Further, the process of this investigation was started by contacting carriers who held only general commodities authority and asking whether they wished to have household goods certificates substituted for their former general commodities certificates. No

APPLICATION NO. PI-10

PAGE 3

notification of the proceeding went to household goods carriers who were most interested in the process. Does the restriction against the use of special equipment mean that a particular carrier is prohibited from using padded vans or air ride trailers?

There is an issue of dormancy for carriers who transported no household goods previously. Traditionally, the issue of dormancy would be raised in a transfer application, which would give potential protestants an opportunity to be heard. This proceeding is not a transfer proceeding. It is a unique circumstance brought about by federal deregulation and the Commission's response thereto. It is unique in the sense that the Commission has not encountered a circumstance like this previously where it contemplated rewriting certificates pursuant to federally mandated deregulation.

It is important for the Commission to determine what operations these carriers conducted previously. To do otherwise would be to interject an incredibly large number of competitors into the household goods arena without ever knowing whether they had been in the market previously. The Commission should consider, in analyzing the certificates, how many times a carrier may have moved household goods in the past. Was the carrier a participant in the household goods carriers tariff? If not, what rate was charged? Was equipment suitable for the movement of household goods licensed by the carrier seeking to have its certificate reissued? Did the carrier do any advertising that indicated it was in the household goods moving business? Some carriers are going to hold onto the certificates for the sole purpose of transferring them at some future date. Without reviewing the certificates individually, the Commission would be introducing 44 new certificates into the household goods market without any sort of evaluation of the impact it might have on existing household goods carriers. If all the certificates were reissued, the number of certificated household goods carriers in the state would virtually double. The issuance of 44 certificates without further analysis would negatively impact the competitive atmosphere in the household goods carrier industry.

John Wavra testified: He is President of Gordon Moving and Storage, an Omaha based company that has been in the moving and storage business since 1887. Mr. Wavra agreed with comments made by Mr. Shultz. He is opposed to issuing all 44 carriers authority to transport household goods. He is concerned that carriers will hold the authority until they can transfer it for monetary gain. One carrier on the list, Mike's Moving and Storage, is currently restricted to transporting general commodities between Omaha and Lincoln on the one hand and between all points in the state on the other for Sears & Roebuck. The witness believes it would be ridiculous to issue this carrier a piece of authority to move household goods for Sears & Roebuck. He urges that some sort of

APPLICATION NO. PI-10

PAGE 4

hearing be held on each one of the applications to determine if the carrier is serious about becoming a household goods carrier. If a hearing were held, it would provide an opportunity for opposing carriers to protest the applications. His company has actively protested applications over the years, and he believes too many certificates have already been granted. He has seen a 75% reduction in business under his intrastate certificate, and he wonders if it is even worth it to protest these matters anymore.

Harlan Weiderspan, Ford Van Lines in Lincoln, Nebraska testified: He agreed with the other witnesses. He thinks that less than 50 household goods movers exist which he considered active. His company has been in business since 1915, has offices in Lincoln and Omaha and engages in every intrastate movement it possibly can. His company averages about 38 intrastate moves a year. If 44 additional certificates were issued, he fears it might get to the point where it is not worth buying intrastate plates and making intrastate moves. Of the list of 44 carriers which are the subject of this proceeding, he does not believe that there are more than two or three that are actively engaged in the movement of household goods, but he is concerned that others will take the certificate and attempt to sell it.

Ed Schneider is Vice President of I-Go Van & Storage, with offices in Omaha, Lincoln and Sioux City. His company is not here to protest anyone who currently has household goods authority, but only those carriers whose authority was general commodities and did not exclude household goods who were not previously in the market. His company was granted authority on April 1, 1936, and they have been serving Nebraska on an intrastate basis since that time. Due to the passage of the federal law, a grant of authority to all carriers which are the subject of this proceeding would give his company a lot more competition and flood the market with more service than is needed. His company operates 90 pieces of equipment, has three offices and 45 employees to give service. His total intrastate moves last year were approximately 30. A grant of a certificate to all 44 certificates would be adding a large number of carriers which would further flood the market and result in unhealthy competition, especially when there has been no need demonstrated for the issuance of the certificate.

Tom Coffey with Ford Van Lines of Omaha also agreed with the previous witnesses and stated that many of the 44 carriers on the list have not been in household goods moving and have not been one of his competitors or a member of the tariff in the past. He is chairman of the Movers Division of the Nebraska Motor Carriers and based on his contact with his members, he does not feel that these carriers should automatically be granted authority and allowed to compete without a need. He believes there are adequate movers to serve the people of the state of Nebraska. Other carriers who he contacted who could not attend the hearing but also support his

APPLICATION NO. PI-10

PAGE 5

position include Select Van & Storage, Metro Moving Services, Ace Moving & Storage and three others whose names he could not recall.

Dennis Leslie testified: He is Vice President of Chieftain Van Lines. His company has been in business for about 75 years. He is the third generation of the company. The company operates 60 pieces of air ride equipment. His company has pads, dollies and everything necessary to perform household goods movements. His people know how to pack and move households. He questions whether people who enter the market by virtue of this proceeding could be trusted to pack properly or move furniture in a safe fashion. He has protested applications and will continue to do so. Mr. Leslie agreed that Bekins Van & Storage was in the moving business. Select Van & Storage and Borley Moving & Storage are also recognized as household goods movers. It is not relevant whether they moved household goods under general commodities authority or household goods authority as long as they have been carrying household goods in the past.

Sandy Bergman testified on behalf of Truck Services, Inc. as the publisher of the intrastate tariff Household Goods State Tariff 7-E. As of December 31, 1994, there were 50 participants in tariff 7-E. Of those 50 carriers, 12 held general commodities authority. Therefore, 12 of the 44 carriers which are the subject of this applications have been participants in the tariff in the past, and specifically mentioned were Bekins and Borley, who were tariff participants. Since January 1, 1994, 18 additional carriers have subscribed to the household goods tariff currently on file and are listed on Exhibit G.

John Bekins, Bekins Van & Storage of Omaha testified: His company was established four generations ago in 1891. His company has authority for general commodities which is now null and void. His company is a subscriber to the 7-E tariff and the majority of the 44 carriers on the list have not subscribed to the tariff. The majority of these carriers are freight haulers. If the number of the household goods carriers were to double by virtue of this proceeding, there is not enough work for all of the existing carriers, let alone the newly certificated carriers. Those carriers that were not previously moving household goods could proceed through the customary application process.

Dennis Bauder Borley Moving & Storage, Hastings, Nebraska, testified: His company is one of those identified on the list of 44 carriers. Ninety-five to 98% of his business is household goods. He is one of the general commodities carriers that does nothing but household goods. His company is 120 years old and he, as well as some of the other carriers, have equipment sitting idle which is available to the public. Twenty-one and a half percent of his gross revenues are derived from intrastate movements of household goods. His company subscribed to tariffs 1, 4, 7 and 10

APPLICATION NO. PI-10

PAGE 6

for intrastate traffic and his company is active. The company operates in a community of less than 30,000. He needs the availability to continue to move household goods.

Jack Andrews representing Star Warehousing testified: His company dates back to 1904. He thinks there is a question of dormancy and that is something the Commission must address. Experience is an issue in handling household goods. Equipment is another issue that is important in the movement of household goods. He believes there is no public need or necessity to grant all 44 household goods certificates because no carriers are operating at capacity.

Steve Westerfield testified: He is Vice President of Benson Transfer & Storage, which has been operating in Omaha since 1926. He believes no household goods carriers are currently operating at capacity with regard to intrastate traffic. He is afraid the household goods movement pie will be divided so small there isn't enough to go around for anyone. He has no problem with carriers who can demonstrate that they have been in the household goods business and they have been properly doing business and charging the appropriate tariff amount.

John Schmidt with the Nebraska Public Service Commission Rates and Services Division, Department of Transportation, testified: He has gone through the list of carriers named on Exhibit C and has identified 16 of those carriers who subscribed to the Official Household Goods Tariff 7-E, as referenced in Exhibit E. Not all of those who participated in the tariff were actively engaged in the movement of household goods. Household goods could also have been moved under general class and commodity tariff 4-D and items 16-80 and would have moved pursuant to a class 100 rating.

Discussion and Analysis

Due to the passage of Public Law 103-305, the Commission is required to confront a unique circumstance regarding the reissuance of authority to transport household goods. Our staff has identified 44 carriers who previously held general commodities authority who have expressed an interest in having their authority reissued authorizing the transportation of household goods. Following the enactment of Public Law 103-305, the only transportation a state may regulate is that involving the transportation of passengers or the movement of household goods. General commodities certificates previously held by these 44 carriers became null and void on December 31, 1994, pursuant to federal law. It is undisputed that carriers who were authorized to transport general commodities were also authorized to transport household goods, unless the certificate specifically restricted the movement of household goods.

APPLICATION NO. PI-10

PAGE 7

It appears from the testimony at the hearing in this matter that some carriers who held authority to transport general commodities used that authority to actively engage in the transportation of household goods. If we fail to reissue authority to those carriers who previously were engaged in the transportation of household goods, we will impose an unjust hardship on these carriers.

There appear to be other carriers who previously held authority to transport general commodities who never engaged in the transportation of household goods. If we reissue certificates or permits to these carriers to transport household goods, they would be the beneficiary of a windfall. If certificates and permits were issued on a blanket basis to all 44 carriers, the potential exists to substantially alter the household goods marketplace. There was testimony that current carriers do not operate at capacity. No witness appeared at the hearing from either the general public or any carrier who had not previously been engaged in the movement of household goods. To simply authorize 44 additional carriers to transport household goods without further inquiry would be contrary to our regulatory charge.

Conclusion

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

Any of the 44 carriers who requested that its certificate be reissued should be queried about their respective prior operations. If a carrier can establish that it held itself out as a household goods carrier, was qualified to make such movements and did in fact participate in the movement of household goods traffic in the past, it should be reissued a household goods certificate or permit.

Conversely, if a carrier of general commodities did not hold itself out to transport household goods, did not participate in the applicable tariff, does not possess suitable equipment, did not engage in the transportation of household goods in the past, we cannot issue a new certificate or permit to that carrier in this proceeding. A carrier always has the option of making application to the Commission for new operating authority which will be granted upon a showing of public convenience and necessity. Each of the 44 subject carriers must be individually evaluated.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that:

1. Each of the 44 carriers which are the subject of this proceeding will be served with a copy of this Order.

APPLICATION NO. PI-10

PAGE 8

2. Each of the 44 carriers will be interviewed by Commission Inspectors and queried regarding the matters addressed on Appendix A attached hereto.


3. Each of the 44 carriers who can establish proof of prior operations through responses to the questions raised on Appendix A will be granted household goods authority to coincide territorially with the general commodities certificate or permit which the carrier previously held.

4. Each of the 44 carriers who are unable to establish prior operations or who fail to respond to the questionnaire will be the subject of an order directing them to show cause why their certificate or permit should not be revoked for willful failure to transport household goods.

Made and entered at Lincoln, Nebraska this 16th day of May, 1995.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


//s//Rod Johnson
//s//Frank E. Landis
//s//James F. Munnelly
//s//Daniel G. Urwiller



Chairman

ATTEST:



Executive Director

APPENDIX A

NEBRASKA PUBLIC SERVICE COMMISSION

You have requested that a certificate to transport household goods be issued to coincide with the "general commodities" certificate you previously held. You must respond to the following questions in order for the Commission to determine whether you qualify for that authority. The Commission will evaluate your responses and determine whether a household goods certificate should be issued to you. Any references to "you," "your" or "yourself" in the following questions refers to the carrier, whether it be sole proprietor, partnership or corporation.

1. Please identify in detail the type of trailers you either used or held out to use to transport household goods in Nebraska intrastate commerce during the period of time from January 1, 1992 to December 31, 1994.

2. Do you own any dollies, pads, straps, or walkboards? If so, what number of each?

| | | | |
|---------|-------|------------|-------|
| Dollies | _____ | Straps | _____ |
| Pads | _____ | Walkboards | _____ |

3. Please attach copies of or describe any advertising which would tend to prove your willingness to transport household goods in Nebraska intrastate commerce between January 1, 1992 and December 31, 1994.
4. Please attach proof of your participation in the Nebraska Public Service Commission household goods state tariff No. 7-E prior to December 31, 1994.
5. If you were not a participant in Nebraska PSC household goods state tariff No. 7-E, under what PSC approved tariff did you transport household goods?

6. Please attach copies of at least six bills of lading dated between January 1, 1992 and December 31, 1994 which would demonstrate that you transported household goods in Nebraska intrastate commerce.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

I hereby verify under penalty of perjury that the above responses and the attached documents are true and accurate to the best of my knowledge.

Carrier Representative - Title

The foregoing information was obtained pursuant to my contact with the carrier.

PSC Inspector

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