

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. PI-205
Public Service Commission, on)
its own motion, seeking to)
investigate transportation) ORDER RELEASING
services which may be provided) RULE INTERPRETATION
by open class carriers as)
defined by Neb. Admin. Code,)
Title 291, Ch. 3 § 010.01C.) Entered: June 28, 2016

BY THE COMMISSION:

On April 19, 2016, the Nebraska Public Service Commission ("Commission") opened this docket to investigate transportation services which may be provided by open class carriers as defined by Neb. Admin. Code, Title 291, Ch. 3 § 010.01C.

On March 11, 2016, Golden Plains Services, Inc. ("GPS") filed a Petition for Declaratory Ruling, seeking clarification of the types of transportation services which may be provided by GPS, an open class carrier, as defined by § 010.01C.¹ The Petition was filed in response to two letters sent to GPS by Mr. Mark Breiner, Director of the Commission's Motor Transportation Department, ordering GPS to cease and desist providing any services that would be considered taxi service. Specifically, GPS was ordered to discontinue picking up passengers by hail or on-demand, which the Department interpreted to be more akin to taxi service instead of open class service.²

Pursuant to the Rules of Commission Procedure, "if a petition for declaratory ruling presents a question of statewide commercial importance or such is noted during or after hearing on the petition, the Commission shall not issue a declaratory ruling but will resolve such question in an investigative proceeding."³ On April 19, 2016, the Commission found that GPS's Declaratory Ruling Petition sought a question deemed to be of statewide commercial importance, as such interpretation would affect all open class carriers.⁴ Subsequently, the Commission

¹ *In the Matter of the Petition for Declaratory Order of Golden Plains Services, Inc. seeking a determination of the transportation services which may be provided by open class carriers as defined by Neb. Admin Code, Title 291, Chap. 3, § 010.01C.*, B-1829/DR-0006, Order Finding Question of Statewide Commercial Importance (Apr. 19, 2016).

² See Dec. 17, 2015 letter to Mr. Kirby Young and February 22, 2016 (Ex. 15) and letter to Mr. Jack Shultz, (Ex. 16).

³ Neb. Admin. Code, Title 291, Chap. 1 § 019.05 (1992).

⁴ *Golden Plains Services, Inc.*, B-1829/DR-0006 at 2.

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entered an Order to open this investigation, seek written comment, and schedule a hearing.

Written comments were received from GPS and collectively from Happy Cab Company d/b/a Checker Cab Company, Happy Cab Company, and Yellow Cab Company; Donmark, Inc., d/b/a Cornhusker Cab Company; Valor Transportation d/b/a Safeway Cabs; and Airport Transportation Company (together, "Happy Cab").

A hearing was held on June 1, 2016 in the Commission Hearing Room. The following attorneys made appearances: Mr. Jack Shultz on behalf of GPS; Mr. Andy Pollock on behalf of Happy Cab; and Mr. Mark Breiner and Ms. Jamie Reyes on behalf of the Commission. The hearing was conducted in legislative format. Exhibits 1 through 16 were offered and received into evidence.

E V I D E N C E

Mr. Kirby Young testified on behalf of GPS. Mr. Young is the President of GPS. Mr. Young testified that open class carriers should be able to take on passengers no matter how the passenger comes to the carrier - either on a prearranged or on-demand basis - unless the carrier's certificate is restricted in some way. Mr. Young contended that the Commission's rules are clear in allowing open class carriers to operate in the manner in which he interprets the definition of open class.

Mr. John Davis made a statement on behalf of Happy Cab. Mr. Davis is the Director of Operations for the Happy Cab companies. Mr. Davis stated that he was not aware of any open class carrier providing transportation to passengers on demand or by street hail other than GPS. Mr. Davis testified to the differences in rules for taxi cab carriers, such as the requirement for additional licensure and background checks, signage, top lights, meters, and the payment of an annual registration fee with the Omaha Airport Authority. Open class carriers do not need to comply with these requirements.

Mr. Jim Joneson, owner of Leisure Taxi, made a statement. Mr. Joneson discussed the effect that Transportation Network Companies (TNCs) have had on his company, stating that his business has decreased since the arrival of TNCs. Mr. Joneson also stated that a majority of his business comes from on-demand passengers, and that allowing open class carriers to pick up passengers on demand would further decrease business for taxi

cabs. Finally, Mr. Joneson stated that open class carriers would have other advantages over taxi companies due to the additional requirements that taxi cab companies must comply with that open class carriers do not, such as additional background checks.

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

The Commission has original exclusive jurisdiction to determine the validity of a rule or regulation and the scope or meaning of a certificate, permit, tariff, rule or regulation unless otherwise provided in the Administrative Procedure Act.⁵

Through this docket, the Commission sought to address the declaratory ruling request of GPS and clarify the types of transportation services that may be provided by an open class carrier as defined by Neb. Admin. Code, Title 291, Ch. 3 § 010.01C. Specifically, the Commission shall interpret its definition of open class carriers and determine whether such carriers may operate and provide services like a taxi in any capacity, including but not limited to picking up passengers which hail down open class drivers to pick up the passenger at a location which was not prearranged.

Taxi carriers are in the business of carrying passengers for hire along the most direct route between the points of origin and destination or a route under the control of the person who hired the vehicle, and not over a defined regular route, on a prearranged or demand basis at a metered, mileage based or per trip fare commencing within and/or restricted to a defined geographic area.⁶ By contrast, the current Commission rule which defines open class carriers is silent as to an open class carrier's ability to pick up passengers on either a prearranged or demand basis:

"Open class service shall consist of all of the following elements: (i) the business of carrying passengers for hire by a vehicle, (ii) along the most direct route between the points of origin and destination or along a route under the control of the person who hired the vehicle and not over a defined regular route, (iii) at a mileage based or per trip fare."⁷

⁵ NEB. REV. STAT. § 75-118.01.

⁶ Neb. Admin. Code, Title 291, Chap. 3 § 010.01A (2003).

⁷ Neb. Admin. Code, Title 291, Chap. 3 § 010.01C (2003).

GPS contends that the silence in Rule 010.01C regarding passenger pick-up indicates that an open class carrier has the ability to pick up a passenger on either a prearranged or demand basis.

In 2001, the Commission recognized the need to update and clarify its rules regarding authorized types of service in order to accommodate client demand; in particular, services provided for clients of the Nebraska Department of Health and Human Services.⁸ In April 2001, the Commission entered an order to begin the process of defining "taxi service" and "open class service."⁹ In that Order, the proposed rule regarding open class service stated that services could be provided "on a prearranged or demand basis."¹⁰ At the same time, the Commission clearly stated that it did not intend to negatively impact the services provided by taxicab carriers.¹¹ Proposed rule 010.01C went through another iteration during the rulemaking process which limited open class carriers to service "on a prearranged and not on a demand basis," expressing the concerns received from several commenters that a clearer distinction should be created in order to prevent open class carriers from engaging in services competitive with taxicab carriers.¹²

However, the Commission again amended proposed rule 010.01C in its February 5, 2002 Order, which is Rule 010.01C that is codified in Chapter 3 of the Commission's Rules today.¹³ In the Order, the Commission stated that trips provided by open class

⁸ In the Matter of the Commission, on its own motion, seeking to amend Title 291, Chapter 3, Motor Carrier Rules and Regulations, Section 001, Definitions, and to harmonize existing rules, Rule and Regulation #148, Order Opening Docket; Order Setting Policy; Order Issuing Proposed Amendments to the Rules; To Seek Public Comment (Jan. 9, 2001).

⁹ In the Matter of the Commission, on its own motion, seeking to amend Title 291, Chapter 3, Motor Carrier Rules and Regulations, Section 001, Definitions, and to harmonize existing rules, Rule and Regulation #148, Order Amending Policy Previously Set and Order Seeking Public Comment (Apr. 3, 2001).

¹⁰ *Id* at 3.

¹¹ *Id*.

¹² In the Matter of the Commission, on its own motion, seeking to amend Title 291, Chapter 3, Motor Carrier Rules and Regulations, Section 001, Definitions, and to harmonize existing rules, Rule and Regulation #148, Order Issuing Amendments to the Rules; Order Setting Hearing at 3 (Jul. 24, 2001).

¹³ In the Matter of the Commission, on its own motion, seeking to amend Title 291, Chapter 3, Motor Carrier Rules and Regulations, Section 001, Definitions, and to harmonize existing rules, Rule and Regulation #148, Order Issuing a Certificate of Adoption of the Amendments to Existing Commission Rules at 5 (Feb. 5, 2002).

carriers could be made "on a "prearranged fare contract" and/or on a demand basis." The Commission intended to allow flexibility in providing service while "widening the distinction between open class and taxicab service."¹⁴

Since the service definitions were created, the Commission has sought to maintain the distinctions between taxicab service and open class service. Over time, the Commission has recognized that allowing open class carriers to pick up passengers by street hail or on demand does not widen the distinction between open class and taxis but instead narrows the distinction. With the additional requirements placed upon taxicab carriers that are not required of open class carriers, such a narrowing could have an overwhelmingly negative effect on taxicab carriers.

The situation presented with GPS has illustrated that, as written, Rule 010.01C does not clearly codify the Commission's intention of creating distinctions amongst the classes of motor vehicles under the Commission's jurisdiction. As noted at the June 1, 2016 hearing and in Mr. Breiner's letters to GPS, the Commission has interpreted the language of Commission Rule 010.01C to mean that open class carriers may not pick up passengers by a hail from the street as taxi carriers are able to do, but may only do so on a prearranged basis.

The Commission has not been persuaded to interpret the rule as recommended by GPS. Just as the Commission decided years ago to update its definitions in order to reflect the current transportation landscape, the Commission today must do the same to ensure that its rules state its true intentions. Therefore, the Commission finds that open class carriers may provide transportation to passengers for hire on a prearranged basis only. Prearranged is to be interpreted using its plain and common meaning - that the ride is arranged and agreed upon in advance of contact between the driver and the passenger. Open class carriers are not to provide on-demand transportation services to passengers for hire - including, but not limited to, by on-demand summoning, street hail, personal solicitation by the driver, or hawking. An open class carrier is not permitted to provide taxicab service unless the open class provider also obtains taxicab service authority.

¹⁴ *Id.*

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This Order is not intended to provide an exhaustive list of specific actions that an open class carrier can and cannot do, but is instead meant to provide guidance to open class carriers regarding the limitations to how their services may be provided. The Commission will continue to actively monitor the activities of both taxicab and open class carriers to ensure that the spirit of the rule is followed.

The Commission's interpretation of Commission Rule 010.01C shall be codified in a future rulemaking docket. Therefore, this investigation should be closed.

O R D E R

IT IS THEREFORE ORDERED by the Commission that Commission Rule 010.01C is defined as interpreted above.

IT IS FURTHER ORDERED that the above-captioned investigation be, and is hereby, closed.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 28th day of June, 2016.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Gould L. Vop
Capital Encoders

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

Tim Schram
Chairman

ATTEST:

Jeffrey L. Puley

Executive Director