

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of the Commission, on	)	RULE AND REGULATION NO. 182
Its own motion, seeking to amend	)	
Title 291, Chapter 3, Motor Carrier	)	RESPONSE TO ORDER
	)	RELEASING SECOND
Rules and Regulations, to rewrite	)	SET OF PROPOSED RULES
the chapter in its entirety.	)	FOR COMMENTS AND
	)	SCHEDULING HEARING
	)	
	)	

**Comments of Brown’s Crew Car of Wyoming**

Brown’s Crew Car of Wyoming, dba Armadillo Express (“Brown’s”) files these Comments for the Nebraska Public Service Commission’s (the “Commission”) consideration in the above captioned matter. Brown’s appreciates the opportunity to comment on the proposed rule change.

Brown’s is a Nebraska common carrier engaged in transportation of railroad personnel. Brown’s employs approximately 230 people throughout the state of Nebraska in 19 locations operating 95 vans.

To the extent any rule change endeavors to make crew hauling safer Brown’s would be in favor and support such rule changes. Brown’s is committed to the safety of its drivers and passengers, and maintains a rigorous safety program.

Brown’s vehicles are equipped with on-board cameras to help identify risky driving behaviors so drivers can be coached for improved performance. Vehicles are equipped with reflective decals on the exterior to reduce the chance other drivers fail to see our vehicles. Nebraska vehicles are equipped with GPS systems to ensure the use of the

most expedient and safest route. The interior of our passenger vehicles are modified to include a luggage restraint system to reduce the chance of passenger injury. Brown's vehicles undergo a continual and robust maintenance program to ensure they are in proper and safe operating condition.

Brown's drivers go through a rigorous hiring process. Drivers must pass a pre-employment ride along, drug and alcohol test and a motor vehicle records check. Once hired, drivers attend driver training and orientation. Drivers also have continual training such as regular ride alongs, annual training and classroom defensive driver training. Brown's has a safety and insurance program that works together, and in accordance with the rules and regulations of Nebraska, to protect our drivers and passengers.

#### **Proposed Rule 006.02A**

Brown's is opposed to the rule change in its current form:

**006.02A Carriers that provide transportation for railroad crew shall carry uninsured and underinsured motorist insurance coverage with a limit of 1 million (\$1,000,000,000) for each such railroad person being transported.**

The rule is ambiguously written. The language of the rule states a coverage limit of 1 million is required, but the monetary value denotes 1 billion dollars.

For the sake of these comments Brown's is going to assume the intent of the rule change is to require carriers of railroad crews to provide 1 million (1,000,000.00) in

uninsured and underinsured motorist insurance. Assuming a per person limit of 1 million dollars Brown's is not in favor of the rule as it is proposed.

The rule is written so narrowly it's unfair. The proposed rule specifically identifies carriers of railroad crews, and requires them to maintain higher limits of uninsured and underinsured insurance coverage. However, every other transportation carrier is only required to maintain coverage pursuant to the Uninsured and Underinsured Motorist Insurance Coverage Act. The Uninsured and Underinsured Motorist Insurance Coverage Act requires uninsured and underinsured insurance coverage in the amounts of 25,000.00 per person and 50,000.00 per accident. This is a significant disparity narrowly tailored specifically to carriers providing transportation services to railroad crews. If this heightened level of insurance coverage protects railroad crews when they are automobile passengers it would be in the best interest of the Commission, and the state of Nebraska, to revise the rule so it applies fairly to all carriers, who carry passengers, under these regulations.

The cost of this additional coverage could be a burden on existing carriers, and a barrier prohibiting other carriers from entering into crew hauling transportation. The significant increase in insurance coverage will increase the cost carriers incur when providing transportation services. The increased insurance requirements may make it cost prohibitive for other qualified, efficient and capable carriers to fairly compete for business.

Obtaining insurance under the rule in the current form is not practical or feasible. The rule states the per person limit for railroad persons being transported is 1 million dollars. The rule is silent as to the limits for other passengers which may occupy the vehicle. As written the rule would allow a separate per person limit of insurance coverage

for non-railroad passengers, but require a 1 million dollar limit for all railroad passengers. Generally uninsured and underinsured policies do not define types of permissive passengers differently to exclude them from insurance coverage available on the policy. At this time it's uncertain if such a policy can be underwritten. For additional consideration, per Nebraska Revised Statute 44-6413 section (5) *Uninsured and underinsured motorist coverages; exceptions; exclusions; requirements; rules and regulations;*

*No policy subject to the Uninsured and Underinsured Motorist Insurance Coverage Act shall define insured, for purposes of the uninsured and underinsured coverages provided in the act, so as to exclude any person occupying the insured motor vehicle with the express or implied permission of an insured.*

Requiring uninsured and underinsured coverage will not benefit railroad passengers as the coverage is duplicative of other benefits available to railroad crews. The service agreements transportation providers have with the railroads require providers such as Brown's to indemnify and hold harmless the railroad for damages crew members incur while a passenger in the vehicle, regardless of fault, and independent as to whether the collision is with a driver who is uninsured or underinsured. The service agreements between the railroads and the transportation service providers clearly detail safety, insurance and indemnity obligations of transportation providers and currently provide an adequate remedy for railroad passengers should an accident occur.

### **Conclusion**

Brown's is committed to the safe and efficient transportation of our customers. We have a safety and insurance program in place to proactively protect our drivers and passengers. Unfortunately, because of the additional cost to Nebraska railroad crew

transportation providers, the uncertain feasibility of the rule, the duplicative nature of the benefits and unfairness of the proposed rule Brown's is not in favor of rule change 006.02A.

One (1) original, five (5) paper copies and one (1) electronic copy in Word format were transmitted to the Nebraska Public Service Commission on this **31st day of January, 2014.**

Respectfully submitted,

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