

**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 FOURTH
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 contract 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. The proposed changes to Section 006.02 do not promote safety, but merely increase costs to transportation providers and the railroad.

Brown’s vehicles are equipped with on-board cameras to help identify at risk 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 and criminal records check. Once hired, drivers attend driver training and orientation. Drivers also complete continual training, such as regular ride a-longs, 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 crews shall carry uninsured and underinsured motorist insurance coverage with a minimum limit of five hundred thousand (\$500,000.00) per person, two million (\$2,000,000.00) aggregate per accident coverage.**

Brown's respectfully seeks clarification from the Commission on why this level of coverage is proposed? Rule 006.02A has undergone three iterations and each has a different limit of coverage both per person and per accident. The first version of the rule change would have required one million (\$1,000,000.00) for each railroad person being transported. The second version of the rule change required coverage with a minimum limit of fifty thousand (\$50,000.00) per person, one hundred thousand (\$100,000.00) in the aggregate per accident. This present version of the rule change would require five hundred thousand (\$500,000.00) per person, two million (\$2,000,000.00) aggregate per accident coverage. The proposed rule changes reflect a vast difference in the levels of coverage required, and appear to be arbitrary and capricious. What data, or objective evidence is the Commission relying on to support each rule change and the current proposed level of coverage? If the data or evidence suggests railroad crewmembers have a need to be protected from uninsured or underinsured motorists shouldn't this benefit be extended to all commercial passengers? Additionally if there is a compelling need to protect commercial passengers from uninsured or underinsured motorists this benefit should be extended to all Nebraska automobile passengers.

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 automobile passengers it seemingly would be in the best interest of the Commission, and the state of Nebraska, to revise the Uninsured and Underinsured Motorist Insurance Coverage Act so it applies fairly to all passenger carriers 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 may not be practical or feasible. Current uninsured and underinsurance policy forms in Nebraska require a carrier to purchase uninsured and underinsurance limits equal to the liability limits or equal to the minimum limits under the Uninsured and Underinsured Motorist Insurance Coverage Act.

The rule, as written, raises questions as to what type of railroad crew carrier the rule seeks to include. Does the rule seek to include any carrier of railroad crews, regardless of the incidental nature or infrequency of their service to the railroad, or only regular and frequent carriers of railroad crews? The rule, as written, could restrict otherwise competent and safe carriers from providing urgent or emergency service to railroad crews on an infrequent basis merely because they don't have uninsured or underinsurance limits in accordance with the proposed rule.

Because the rule creates a separate class of insured passengers the rule is adverse to Nebraska uninsured and underinsured rules and regulations. Generally uninsured and underinsured policies do not define types of permissive passengers differently to exclude them from insurance coverage available on the policy. 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 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 proposed changes are unnecessary as railroad crews are already protected should an accident occur due to the language in the service agreements between the transportation provider and the railroad. As stated the service agreements require the transportation provider to indemnify the railroad for any injury to a railroad employee, regardless of fault or the amount of insurance the at-fault party has.

The service agreements between the railroads and the transportation service providers clearly detail safety, insurance and indemnity obligations of the 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. The proposed rule change is unnecessary, ineffectual and arbitrary; it will only result in additional cost to railroad crew transportation providers and will not improve safety. Brown's is not in favor of the proposed rule change due to the increased cost, it's arbitrary and not supported by objective evidence, the duplicative nature of the benefits and unfairness of the proposed rule.

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 **5th day of December, 2014.**

Respectfully submitted,

Bryan K. Taylor

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