

BEFORE THE
NEBRASKA PUBLIC SERVICE COMMISSION

In the matter of the Commission on)	Rule & Regulation No. 182
its own motion, seeking to amend)	
Title 291, Chapter 3, Motor Carrier)	
Rules and Regulations, to rewrite)	
the chapter in its entirety.)	

**COMMENTS ON
PROPOSED RULEMAKING**

By order entered June 1, 2011, the Nebraska Public Service Commission (the “Commission”) opened the above docket and seeks comments with regard to the amendment of the Motor Carrier Rules and Regulations. The Commission order invited comments of interested parties and directed them to submit the comments by June 24, 2011. The following constitutes the undersigned’s comments with regard to the proposed rules.

Rule 002.01E. The proposed rules have stricken the language of what was formerly Section 002.01E with regard to tacking of authority. There is still need for a rule which prohibits the tacking of irregular route authorities or the tacking of irregular authority with regular route authority. There is still some confusion among some passenger carriers who believe they can tack irregular route authorities or that a regular route authority can be tacked with irregular route authority in order to extend their service area. It is therefore respectfully requested that the Commission consider retention of Rule 002.01E so that there is a published rule making it clear that tacking of authorities except regular to regular route authority is prohibited.

Rules 003.01D and 003.01E. Many carriers have questioned how one might distinguish open class service from taxicab service. A review of these two rules would indicate that the only meaningful difference between open class service under Rule 003.01D and that of a taxicab service identified in 003.01E is that the taxi service must be provided on a metered basis and the taxi vehicle must have a top light (Rule 010.02G). It has never been clear if there is any other distinction between the two services. The

present docket provides an opportunity for the Commission to better distinguish between the two types of service if, in fact, the Commission intends that there be differences other than the obligation of the taxicab to charge based on its metered rates and the display of a top light.

Rule 003.01E. The proposed rule makes reference to Rule 011.01D which has been deleted in the revised draft. It is therefore suggested that the language in the third line of proposed Rule 003.01E that reads “subject to the provisions of Rule 011.01D” be deleted.

Rule 003.02C. Another area of historic confusion about existing authority results from a number of carriers who were generally authorized to transport all passengers before the Commission required specific authorization to transport passengers on behalf of the Nebraska Department of Health and Human Services (“HHS”). Since the Commission began requiring HHS designation in applications, many certificated carriers have had language inserted in their certificates specifically authorizing HHS service. A number of the older certificates held by carriers who were transporting traffic for HHS long before the Commission required separate HHS designation have not been amended so as to reflect authorization to transport HHS traffic.

It would be beneficial to state in the rule that carriers who were engaged in transporting traffic for HHS prior to the time the Commission required the separate designation to haul such traffic have been “grandfathered” with regard to HHS traffic. The proposed rule could easily be amended to reflect the point at which the Commission required such separate HHS designation and further provide for the grandfathering of those carriers already engaged in HHS transportation, even though their certificates do not specifically authorize transportation for HHS as required in Rule 003.02C.

Another option would be for the Commission to create a list of carriers who qualify for “grandfathering” as to HHS traffic. The rule on HHS designation could indicate that the Commission has developed a list of those carriers whose certificate may not have the designated HHS language but are still authorized to transport HHS traffic, due to the grandfathering provision.

Rule 005.01B. There appears to be some language missing between the second and third lines of the proposed rule. It appears the rule should read as follows: “Adequate sight which shall include vision with visual acuity of at least 20/40 (Snellen) in each eye either “with or without corrective lenses.” The insertion of the words “with or” would seem to be consistent with the prior rule and would allow for corrected lenses to qualify the driver for minimum sight requirements.

Rule 010.01E, Trip Log. It appears the word “fill” in the eighth line should read “full.”

CONCLUSION

The Commission staff is to be commended for undertaking the task of rewriting the Motor Carrier Rules in this docket. Much of the deleted material no longer has any application to the current day regulation. The undersigned appreciates the opportunity to comment on these matters. Although the undersigned will be out of town on the date of the workshop on June 29, 2011, the undersigned looks forward to an opportunity to comment on any revisions which might be forthcoming or to provide any further input which the Commission or staff might request.

Respectfully submitted,

By:

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