

RECEIVED

By Brittany Roos at 2:46 pm, Jul 08, 2024



101 Armour Road, Suite B
North Kansas City, MO 64116

July 8, 2024

Nebraska Public Service Commission
PSC.motorfilings@nebraska.gov
Brittany.seabrooks@nebraska.gov
1200 N Street #300
Lincoln, NE 68508

Re: Title 291, Chapter 3, Motor Carrier Rules and Regulations seeking comments on second set of proposed rules and regulations amending driver requirements for licensees transporting employees of railroad carriers.

Commission,

RailCrew Xpress (RCX) is a transportation company that provides service to railroad crews, based on awarded contracts for their customers at their various service units. RCX is contracted to transport work crews to and from locations on an on-demand and in some circumstances as a scheduled shift basis.

Railcrew Xpress, LLC employees approximately 260 employees in Nebraska providing transportation services to Union Pacific (UP) and Burlington Northern (BNSF) railroads.

As commented and testified on the first set of proposed regulations, RCX indicates the proposed regulations in 013.08D only being applied to carriers of railroad passengers creates an unjust duty for only one segment of the transportation industry.

The proposed regulations in 013.08D would not accomplish the stated goal, as based on the railroad needs, many trips cross over state lines. Specifically, RCX employees from Iowa, Kansas, Missouri, Illinois, Wyoming, and Colorado would not be subject to these new restrictions and thus crews in Nebraska would most likely be transported by someone from another state that

was certified by e-railsafe but not these additional requirements. On average 30% of drivers that perform crew hauling services in Nebraska on any given day are from a bordering state.

RCX already has specific policies and practices to identify and eliminate applicants that have job related convictions within specified timeframes as listed below.

- a. More than **one moving violation** within a three (3) year period will disqualify applicants from the driving position.
- b. A careless/reckless/failure to control a vehicle conviction within a five (5) year period will disqualify applicants from the driving position.
- c. A driving under the influence conviction in the past seven (7) years
- d. A drug or alcohol conviction within a four (4) year period will disqualify applicants from the driving position.
- e. An auto theft conviction in a seven (7) year period will also disqualify the driver.
- f. Employees or applicants required to report on a sex offender registry, will be reviewed for any disqualifying factors or crimes of concern.
- g. A felony conviction in the last 7 years is reviewed by e-railsafe and the railroad and a determination is made if the driver is eligible.
- h. A release from incarceration/parole/probation in the last five (5) years is reviewed by e-railsafe and the railroad and a determination is made if the driver is eligible.
- i. Additionally, all background reports are reviewed for crimes of concern by RCX, e-railsafe, and the railroad to determine if disqualified.

Proposed requirements in 013.08 (D)(i) – appears to allow more overall traffic violations than RCX and also creates an additional layer of “major traffic violations”.

013.08 (D) (i) allows for four (4) moving violations whereas RCX policy only allows one (1) in the last three (3) years.

013.08 (D) (i) allows for zero (0) “major traffic violations” within the last three (3) years.

013.08 (D)(i)(a). Proposed regulations want to add Failure to stop and report or render aid as a major offense. RCX does not have this identified as a major moving violation and suggests it be removed from regulations as it doesn’t involve the driver performing an unsafe driving violation.

013.08(D)(i)(b). Proposed regulations would identify reckless driving in the last three (3) years as a major violation. This regulation is not needed as RCX’s policy eliminates applicants who have a reckless/careless or failure to control violation in the last five (5) years.

013.08(D)(i)(c). Proposed regulations would identify speeding of more than thirty-five (35) miles per hour as a major violation. Neither the State of Nebraska or RCX has speeding listed as a major traffic violation. RCX’s policy has this covered under

the no more than one (1) moving violation policy and encompasses all speeding not just over thirty-five (35) miles per hour.

013.08(D)(i)(d). Proposed regulations make failure to yield to pedestrian resulting in bodily injury as a major violation. RCX believes this would result in a criminal charge and thus is already covered by RCX and e-railsafe policy.

013.08 (D)(ii). RCX policy already eliminates anyone with a driving under the influence conviction for the previous seven (7) years. RCX further disqualifies for any alcohol or drug conviction (not just driving convictions) within the previous four (4) years.

013.08(D)(iii). Proposed regulations would eliminate all applicants that have a felony or misdemeanor that required registry in the last seven (7) years. Erailsafe already eliminates the felony convictions in last seven (7) years. RCX has a policy that reviews all registered sex offenders and making decisions for disqualifying factors or crimes of concern that covers felony and misdemeanors.

013.08 (D)(iv). Proposed regulations would eliminate applicants that use a vehicle to commit a felony. RCX applicants are already screened by e-railsafe and all felonies, not just motor vehicle felonies, are reviewed by the railroad and denied access through the established program.

013.08 (D)(v). RCX is unclear on what this regulation is requiring. What is the intent and substance behind this proposed regulation? If it intends to add additional requirements, RCX would need review those requirements. RCX already has a policy that states "Drivers must adhere to all state and/or federal driving laws."

13.08 (E). Proposed regulations requiring a card be displayed is redundant as all employees that enter railroad property already have an e-railsafe badge (see attached copy). The card was created and already in effect for identification purposes. It is used by all railroad drivers so out of state drivers would also have this card and would eliminate the concerns with out of state drivers coming into Nebraska for trips and not having this additional card.

In addition, both UP and BNSF, are provided driver names when each trip is accepted. If the crew has any concerns they report it to the railroad. It is then assigned to the crewhauler with the driver's information included. The crew hauler than is required to research and respond on the complaint to the railroad which will determine if access to property is revoked or the driver is allowed to return to active duty and move crews.

To create an additional card is redundant and would lead directly to increased costs by RCX that would then increase the cost for the railroad.

The additional regulations would not eliminate any current employees working for RCX and thus demonstrates that RCX, the railroads and e-railsafe is working as designed. These additional regulations are not needed as the industry already manages applicants with stricter qualifications than are proposed in these regulations.

As discussed, if the proposed regulations would be used to eliminate an applicant in the future, there would have to be an appeal process for the applicant. Would that process go through the Commission? What steps, documents and timeframe would the Commission require? E-railsafe already has a well established appeal process that has worked as designed for many years.

Based on all these reasons, RCX feels that the proposed changes are unnecessary and will add cost to our business that will be passed on to the railroad and add to the Commission's workload in managing the appeal process.

Sincerely,

Sandy Walker

Sandy Walker
Vice President

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service) Rule and Regulation No. 211
Service Commission, on its own motion,)
seeking to amend Title 291, Chapter 3, Motor)
Carrier Rules and Regulations, to adopt rules)
modifying driver requirements for licensees)
transporting employees of railroad carriers.)
)

COMMENTS OF UNION PACIFIC RAILROAD COMPANY

Union Pacific Railroad Company (“UP”) hereby submits the following comments in response to the Nebraska Public Service Commission’s (“PSC” or “Commission”) June 4, 2024 Order Releasing Second Proposed Rules, Seeking Comment, and Setting Hearing associated with the Commission’s proposed changes in the Rule and Regulation No. 211 docket, which amend Title 291, Chapter 3 to adopt rules modifying driver requirements for licensees transporting employees of railroad carriers (“Proposed Rules”), and states as follows:

I. Background

UP is a Class I railroad headquartered in Omaha, Nebraska. UP operates on over 32,000 miles of track across 23 states and provides a critical link in the global supply chain. From 2013 to 2022, UP invested approximately \$34 billion in its network and operations to support America's transportation infrastructure. The railroad's diversified business mix includes its Bulk, Industrial, and Premium business groups. UP serves many of the fastest-growing U.S. population centers, operates from all major West Coast and Gulf Coast ports to eastern gateways, connects with Canada's rail systems and is the only railroad serving all six major Mexico gateways. UP provides value to its roughly 10,000 customers by delivering products in a safe, reliable, fuel-efficient, and environmentally responsible manner.

UP routinely uses third-party railroad crew hauling companies (“Licensees”) in the course of its operations. Disruptions to the ability of these Licensees to hire and retain employees has the potential to inflict serious operational challenges for UP and its customers.

II. Response to the Commission’s Proposed Amendments

UP appreciates the Commission’s thoughtfully revised second proposed regulations, which revise the earlier, more broadly written disqualifications for drivers of Licensees transporting employees of railroad carriers, including multiple moving or what are defined as “major” traffic violations, driving under the influence, and certain other types of criminal activity.

That said, it is worth noting that these proceedings and Proposed Rules still attempt to address purported safety concerns that are not in response to, or based upon, actual safety evidence or data. Rather, a targeted industry stands to face increased regulation and workforce limitation. The Proposed Rules, largely based on fears of hypothetical scenarios, could have the effect of holding one party to a higher standard than the other. Beyond those overarching concerns of the necessity of this proceeding, there remain several specific concerns with the Proposed Rules, and we are grateful for the opportunity to raise these concerns as an indirectly impacted party.

A. Operational Impact

Even as revised, the Proposed Rules are likely to reduce the number of drivers for Licensees in Nebraska at a time when the state is experiencing an ongoing low unemployment rate. Shrinking the pool of candidates that Licensees may hire from will affect not only the Licensees’ operations, but the operations of the industries they serve. UP relies on Licensees for the transportation of its employees throughout the state, and reducing a Licensee’s capacity to provide UP with crew transportation may contribute to slower rail freight movement for Nebraska shippers. Additionally, reduced capacity to provide crew transportation increases the likelihood of stopped trains and

blocked crossings, particularly in periods of adverse weather, both locally and regionally, which would counter the work that has been done by UP and the Commission to reduce the number and duration of blocked crossings.

B. Processes in Place for Vetting Drivers

There are preexisting practices to vet applicants. RailcrewXpress, in previously submitted comments, described its policies and practices to identify and eliminate applicants who have job-related convictions within the periods specified in the Proposed Rules. UP uses eRailSafe to monitor and vet vendor employees who have access to UP property; eRailSafe conducts criminal background checks and investigations for UP vendors and requires vendors to complete required safety and security awareness training and testing.

Tools like eRailSafe are just one aspect of the checks on railroad employee transportation providers. Such transportation providers – and the hiring railroad – are also subject to federal regulations. Additionally, the right of railroad employees to work under certain conditions is protected under the Federal Employees Liability Act. These federal schemes, as well as the private procurement practices of U.S. railroads and internal criteria imposed by Licensees, are sufficient to ensure appropriate driver qualifications without additional regulation at the state level.

As noted in UP's previously filed written comments and in Tonya Eggspuehler's testimony in the Commission's March 5, 2024 hearing, one in four Americans currently possess a criminal record – a sizable talent pool that is excluded from the workforce every day. Amongst the 70 million people with a criminal record are skilled, motivated, and diverse candidates just looking for an opportunity to work. Creating hiring opportunities for these individuals is not only an asset to companies like UP, but also increases the likelihood of successful reentry for those leaving the criminal justice system and, in turn, improves the quality of life in all our communities. Implementation of a second chance hiring program does not mean employers ignore a candidate's

criminal history or neglect to investigate that history altogether. Rather, the program allows UP, in partnership with high-quality community partners, to identify candidates with a criminal history who may safely enter the UP workforce in the appropriate position and with appropriate oversight.

C. Interstate Application

UP operates across state lines, and our rail operations in Nebraska connect directly to rail operations in Wyoming, Colorado, Kansas, and Iowa. Our resources are used fluidly across state boundaries, ensuring the U.S. freight rail network can operate as efficiently as possible. Licensees are an essential resource that balance our crew needs around the UP network, operating mostly blind to state boundaries. The proposed rule does not address the reality of interstate railroad operations as it relates to Licensees. We ask the PSC to further describe how the Proposed Rules would affect the cross-border movement of drivers. As presently drafted, UP is left to conclude that Licensees may need to switch drivers at state border lines, or only originate a crew hauling trip outside the state with a “Nebraska-compliant” driver. Such a design would greatly increase the head count of drivers needed in order for Licensees to successfully achieve the crew hauling demands of our railroad. We hope the PSC can understand this concern and provide more clarity to the enforcement of interstate crew hauling practices.

D. Frequency of criminal background checks

UP seeks clarification on the frequency of criminal background checks that will be required under the Proposed Rules. Does the regulation apply when a crew hauling driver is initially screened by the crew hauling company and the contracted railroad, or will there be some frequency to “re-certify,” for lack of a better term, perhaps at specified intervals? “Recertification” would surely increase the financial and administrative resources required to comply with state regulations despite robust regulatory frameworks at the federal level.

E. Vehicle Registration Requirements

UP seeks more understanding from the PSC regarding the proposed rule's requirement that Licensees "comply with all applicable state laws, such as driving laws and vehicle registration requirements." UP agrees that our vendors should adhere to state laws. However, the phrasing of this portion of the regulation is confusing and could create unintended consequences. Crew hauling companies are fleet vehicle companies, meaning that drivers routinely operate different Licensee vehicles, i.e., drivers are not "assigned" to a particular vehicle. The drivers do not own the vehicles in which they operate; these are company-owned or leased fleet vehicles, operating interchangeably with the driver base, similar to bus drivers. The concept of changing a driver's state vehicle registration with each different vehicle would appear to place a unique state regulation on a fleet-operating industry, one that would substantially increase the administrative procedures before each driver can occupy each vehicle. This administrative burden would not only be borne by Licensees, but also by Nebraska's Department of Motor Vehicles. UP would appreciate more clarity on the intent and understanding of the PSC's intended process and enforcement if this provision is enacted.

III. Conclusion

UP appreciates the opportunity to provide comments on this matter and looks forward to continuing working in partnership with the Commission.

Respectfully submitted this 8th day of July, 2024.

UNION PACIFIC RAILROAD COMPANY