

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the matter of the Nebraska Public Service	)	
Commission, on its own motion, seeking to	)	
amend Title 291, Chapter 3, Motor Carrier	)	
Rules and Regulations, to adopt rules in	)	Rules and Regulation No. 206
accordance with Nebraska Legislative Bill	)	
461 [2020].	)	
_____	)	

**COMMENTS OF UNION PACIFIC**

Union Pacific (“UP”) hereby respectfully files these comments as permitted by the Order Opening Docket, Releasing Proposed Rules, and Seeking Comment (the “Order”) issued by the Nebraska Public Service Commission (“Commission”) on March 16, 2021. As a preliminary matter, UP finds that the proposed rules and regulations comply generally with the requirements set forth in LB461 (2020) and the subsequent NEB. REV. STAT. §§ 75-304.03 and 75.304.04.

**Background Check Requirements**

UP recommends Proposed Rule 013.03C7 be updated to match the existing criminal background check requirements in the Commission’s rules and regulations. Proposed Rule 013.03C7 requires applicants for initial and renewal licenses to transport household goods or passengers that are employees of railroad carriers include “A copy of the applicant’s fingerprint-based background check report conducted by the Nebraska State Patrol or other comparable law-enforcement agency.” This requirement contrasts with existing minimum qualifications for drivers, *see* 291 Neb. Admin. Code § 3-005.03, and requirements for transportation network companies (“TNC”), *see* 291 Neb. Admin. Code § 3-012.12A, which do not require background checks be fingerprint-based.

Requiring fingerprint-based background checks may result in the exclusion of information regarding the applicant that is relevant to the services to be provided by the applicant. A national

criminal history background check that is not reliant on fingerprinting is often more comprehensive and would provide the Commission with the best source of information in the licensing process. Furthermore, there are more avenues for timely obtaining such a report which reduces the burden on applicants. UP is concerned that onerous background check requirements will have the unintended consequence of reducing competition among services providers seeking contracts to transport railroad employees. A name-based national criminal background check will reveal the information necessary to assess the quality of the applicant without an undue burden on applicants.

In addition, fingerprint-based national background checks may only be obtained from the Nebraska State Patrol if required by state or federal law. For example, the Commission may require a national criminal history record search by the Nebraska State Patrol because the Legislature has authorized such a search in NEB. REV. STAT. § 75-903.02. The provisions of LB461 and NEB. REV. STAT. §§ 75-304.03 and 75.304.04 are silent regarding background check requirements for applications to transport household goods or passengers that are employees of railroad carriers. Accordingly, the Commission may not have the authority to require a fingerprint-based background check report from the Nebraska State Patrol as currently mandated in Proposed Rule 013.03C7.

For the reasons stated above, UP urges the Commission amend Proposed Rule 013.03C7, as released on March 16, 2021, to conform to background check requirements for drivers as enumerated elsewhere in Title 192 Chapter 3.

### **Conclusion**

UP appreciates the Commission's effort to provide a smooth transition to the new licensing system in Docket MT-0002/PI-235 and looks forward to continuing its work with the Commission to fully implement the provisions of LB461 (2020).

Respectfully submitted this 16th day of April, 2021.

**UNION PACIFIC**

BY:



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**Certificate of Service**

The undersigned hereby certifies that on this 16th day of April, 2021, one (1) original and five (5) paper copies of the foregoing Comments of Union Pacific were hand-delivered to the Nebraska Public Service Commission at 1200 N St. #300, Lincoln, NE 68508 and an electronic copy in Word format was emailed to the following:

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