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Leading Articles

Practice and Procedure Before the Nebraska State Railway Commission

J. Max Harding*

I. INTRODUCTION

While the Rules of Practice and Procedure adopted by the Nebraska State Railway Commission, October 15, 1950,¹ have proved to be of great assistance to the Bar, it is believed that an analysis of the problems encountered in the prosecution of the more common types of proceedings before the Commission would also be helpful to attorneys practicing in Nebraska. The jurisdiction and functions of the Railway Commission have been thoroughly and capably reviewed by Bert L. Overcash² and need not be repeated here. It is, of course, an impossibility to cover even briefly all of the many and varied types of proceedings handled by the Commission. However, inasmuch as the overwhelming preponderance of Commission cases referred to attorneys involve motor carriers, this article will be directed primarily toward such proceedings.

Though it may be impertinence on this writer's part to say so, it is mandatory that the lawyer who intends to appear in a motor carrier case before the Commission read and familiarize himself with the Nebraska Motor Carrier Act³ and the Commission's Rules of Practice and Procedure. In my four plus years as a hearing examiner in the Commission's Motor Department, it was all too apparent that many lawyers had not taken the time to perform this all-important task. The Commission is created by Constitutional provision,⁴ but it exercises its jurisdiction and performs its

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¹ General Order 93, Neb. State Ry. Comm. (These General Orders may be obtained by writing to the Commission located at the State Capitol.)

² 28 Neb. L. Rev. 242 (1949).

³ Neb. Rev. Stat. §§ 222 thru 75-250 inclusive.

⁴ Neb. Const. Art. IV, § 20.

functions "as the Legislature may provide by law." Scarcely a Legislative Session has been concluded without the Motor Carrier Act being amended or changed in some respect. This being so, even recent court decisions are often inapplicable. One of the most difficult problems the lawyer faces lies in the fact that the Commission's decision and orders are not reported or codified in any way. Furthermore, since regulation in Nebraska of motor carriers is barely twenty years of age, innumerable problems have not as yet been fully resolved. Due to the striking similarity between the Federal Motor Carrier Act⁵ and the Nebraska Act, it is oftentimes helpful to refer to the reported decisions of the Interstate Commerce Commission in motor carrier matters.

Generally speaking, motor carrier cases before the Railway Commission fall into three categories: (1) The original or extension application, (2) the transfer application, and (3) the order to show cause or formal complaint proceeding. It is believed that the most effective approach to this subject can best be made by following the procedure necessary in the ordinary type of application in each of these classifications.

II. THE ORIGINAL OR EXTENSION APPLICATION

The lawyer must thoroughly understand just what authority the client seeks from the Commission and then determine the kind and type of application to file. The application will be for either common or contract carrier authority; it will be for either a regular or an irregular type route;⁶ and it will be either for general commodities, except those requiring special equipment, limited commodities, or even specialized commodities moving in specialized equipment such as petroleum products in bulk in tank vehicles. It should be noted that there are few motor contract carriers in Nebraska and seldom will the carrier desire a contract carrier's permit.

Applications must be filed on application blanks specified and supplied by the Commission.⁷ The application will not be docketed by the Commission unless the necessary filing fee of \$50.00⁸ accompanies the application. Upon receipt and docketing of the appli-

⁵ 24 Stat. 379 (1887), as amended, 49 U.S.C. §§ 301-27 (1940).

⁶ See General Order 82, Neb. State Ry. Comm.

⁷ Rule 8, Rules of Practice and Procedure, Neb. State Ry. Comm.

⁸ Neb. Rev. Stat. § 75-226 (1955 Supp.).

cation, it will be acknowledged by the Director of the Commission's Motor Department who will set forth the proposed notice of hearing in his reply. It is extremely important that the lawyer discuss the proposed notice with his client. Amendments which unduly broaden the scope of the application will not be allowed at the hearing, as the notice would then be defective. Consequently, if the proposed notice is lacking in some respect, it must be called to the attention of the Commission immediately.

After confirmation of the proposed notice, the application usually will be assigned for hearing before an Examiner of the Commission. Depending upon the docket load, the Examiner's itinerary, and other factors, the application will ordinarily be set for hearing at the place requested by applicant within thirty to sixty days from date of filing. The law requires that the Commission give notice to interested parties.⁹ A hearing notice showing the time, date, place of the hearing, and the authority sought will be forwarded at least ten days prior to the hearing date to the applicant, his attorney, and all authorized carriers in the area sought to be served.

Rule 3.11 of the Rules of Practice specifically provide that a protest against the granting of any application must be filed with the Commission, with service of a copy thereof on the applicant or his attorney, at least five days prior to the date of the hearing. Rule 3.13 authorizes an appearance to be made at the hearing without the prior filing of a written protest, petition for leave to intervene, or other pleading, providing no affirmative relief is sought. There exists some doubt as to the exact meaning of this latter rule. It has been the experience of this writer that generally it is the practice of the hearing examiners and the Commission to permit appearance of interveners in opposition at the time the hearing is called even though no formal protest or petition for leave to intervene had been filed in accordance with Rules 3.11 and 3.12. The appearance is permitted under Rule 3.13, presumably under the assumption that such interveners are seeking only negative relief, i.e., denial of the application. It is the opinion of this writer that except for unusual situations such appearances should not be permitted as it manifestly defeats the purpose of the Rules. Such "interveners in opposition" are in truth and fact, protestants, and may create serious problems for applicant's counsel, since he was not anticipating opposition from that quarter. There is support for the position that applicant's counsel should object vigorously to such

⁹ Neb. Rev. Stat. § 75-234 (Reissue 1950).

appearances, and failure on the part of the Commission to sustain the objection is reversible error.¹⁰

If sufficient preparation is made prior to the hearing and if the lawyer keeps in mind the exact elements which he must prove in order to warrant the issuance to his client of a certificate of public convenience and necessity, the hearing itself ordinarily should not consume a great amount of time. Section 75-230¹¹ is the only section in the entire Railway Commission Act under which the Commission is authorized to grant and issue to common motor carriers certificates of convenience and necessity.¹² Under this section, it is incumbent upon the applicant to sustain his burden of proof to show that he is fit, willing and able, and that the present or future public convenience and necessity require the proposed service. Corroborative testimony may not be necessary to support applicant's showing of fitness but it is essential with respect to public convenience and necessity. It should also be pointed out that future public convenience and necessity does not mean some nebulous or speculative need but rather something which is known and foreseeable in the immediate future, testified to by competent witnesses.

The task of proving fitness and ability naturally varies to quite an extent with the carrier. Generally, requirements of proof of fitness are not great. It is seldom that applicant's fitness is seriously challenged by protestants, and few applications fail on this aspect. It has oftentimes been stated by the Interstate Commerce Commission that it would have been difficult, if not impossible, for the motor carrier industry to have attained its prominence in the transportation field if stringent requirements as to an applicant's financial fitness and ability had been imposed. This type of thinking has, for the most part, been followed by the Nebraska Commission. However, there are certain types of proof which should be prepared for use when possible. It is obvious that proof of operations, successfully and profitably carried on in the past by the applicant, is the best evidence of his fitness to conduct the proposed service. Even on an original application, the applicant is often currently engaged in the trucking business, transporting livestock or other exempt commodities under the exemption provided in Section 75-224.¹³ The problem with an existing carrier seeking an extension

¹⁰ See *Caudill v. Lysinger*, 161 Neb. 235, 72 N.W.2d 684 (1955); *In re Application of Chicago & N.W. Ry. Co.*, 157 Neb. 594, 60 N.W.2d 662 (1953).

¹¹ Neb. Rev. Stat. (Reissue 1950).

¹² *In re Application of Richling*, 154 Neb. 108, 47 N.W.2d 413 (1951).

¹³ Neb. Rev. Stat, as amended, Laws 1957 c. 314, p. 1129.

of authority is materially less. There are three standard exhibits which should be prepared in advance by the applicant for use at the hearing: (1) the last available balance sheet, (2) the profit and loss statement of applicant's trucking business for at least the last six months, and (3) the complete list of motor vehicle equipment. In examination of the applicant, a showing should be made of his experience and familiarity with the trucking business, his knowledge of the way in which various types of freight should be handled, his safety program and record, regular equipment maintenance program, competent and capable driver personnel, administrative help and facilities, insurance coverage, terminal facilities, and other like evidence. These factors should be possessed or maintained by applicant, or at least investigated by him and available if the operating authority is granted. It is proper for an applicant to indicate that he has received requests for the proposed service and that such shippers are present and will testify in support of the application. While it is not anticipated that the applicant, unless he is already a certificated carrier, will be familiar with the Nebraska Motor Carrier Act and the rules and regulations of the Commission, he should indicate that he will familiarize himself with such and comply with the same if the certificate is issued to him.

Through administrative interpretation by the Commission, confirmed by the Supreme Court in *In re Application of Moritz*,¹⁴ the term "public convenience and necessity" has a well-established meaning:

. . . the controlling questions are whether an operation will serve a useful purpose responsive to a public demand or need; whether this purpose can or will be served as well by existing carriers; and whether it can be served by applicant in a specified operation without endangering or impairing the operations of existing carriers contrary to the public interest.¹⁵

The testimony of the supporting witnesses must be affirmative proof of these three factors. Far too often the applicant's attorney wastes a great amount of time in questioning shipper witnesses about matters which have no materiality to these issues. This writer is the first to admit that there are unusual or extraordinary cases which require lengthy examination of a particular witness or witnesses, but these cases are rare.

After determining the name, address, occupation of the witness, and his qualifications to testify on behalf of his company, the fol-

¹⁴ 153 Neb. 206, 43 N.W.2d 603 (1950).

¹⁵ *Id.* at 210, 43 N.W.2d at 606.

lowing ten points, if well covered, will normally elicit all the information needed.

1. The kind and types of merchandise handled by his company.
2. The sources of supply of such merchandise in Nebraska.
3. How often transportation service is required by his company from source of supply to destination.
4. The volume of merchandise his company has to be shipped in a given period of time—per month or year.
5. Does his company designate the carrier and control the routing of this freight from source of supply to destination.
6. Familiarity with this application, the applicant, what is here proposed, and applicant's reputation as a businessman in the community.
7. What is the existing service, both rail and motor, and what service is his company presently using.
8. What is wrong with the existing service.
9. Would he use applicant's service if application granted.
10. Is additional service required and necessary for the efficient conduct of his company's business.

Counsel for protestants is, of course, entitled to cross-examine the applicant and the shipper witnesses appearing in support. The rules of procedure applicable to civil proceedings apply generally with respect to the scope and nature of the cross-examination. Perhaps the most grievous error of all is oftentimes inadvertently made by inexperienced counsel in cross-examination of these witnesses. The danger is two-fold. First, it is seldom that the applicant is an inexperienced or nervous witness. The chances are great that he has been on the witness stand in many Commission proceedings. Further, this practice involves regulation of extremely complex transportation matters, the basic mechanical characteristics of which the attorney cannot hope to obtain knowledge in a few days, while the applicant is usually well versed. However, any weaknesses or faults which appear in the testimony or exhibits of the applicant himself should be fully and vigorously explored. The second pitfall—and the more dangerous of the two—is cross-examination of the shipper witnesses. Counsel for protestants must at all times remember that this is not a civil proceeding where the litigants and witnesses seldom have need or necessity for further business relationships. Each and every shipper witness is a present or potential customer of the protestant. To make one of these shipper witnesses appear stupid or ridiculous under cross-examin-

ation may aid in the denial of the application on hearing but will undoubtedly cost the protestant dearly in the long run.

Upon completion of applicant's case, protestants may then proceed with such testimony and evidence as will tend to answer applicant's case. Unless something unusual is present, protestants seldom spend much time or effort toward producing evidence of applicant's unfitness or inability. Counsel for protestants ordinarily is fortunate enough to be supplied with extremely capable and competent witnesses. It is often the traffic manager of the protestant company, a person who is thoroughly conversant with the Nebraska Motor Carrier Act, the rules and regulations of the Commission, and all the service and facilities of his company. Since it is necessary for the applicant to prove all three of the tests of public convenience and necessity, protestants endeavor to prove the negative of all or any one of the three. Again, certain standard or stock exhibits are helpful. Protestant should prepare and introduce the following exhibits:

1. Copy of Commission's order issuing certificate to protestant.
2. List of equipment and terminal facilities.
3. Current balance sheet.
4. Profit and loss statement for last 6 months or year.
5. Abstract from freight bills showing shipments to or from area sought to be served by applicant and the revenue derived therefrom. (Freight bills must be present in the hearing room as foundation for admission of this exhibit in case objection is made.)

Depending upon the size of the protesting carrier and the versatility of its owner or traffic manager, the number and nature of exhibits in support of protestant's position may be further explored.

It is proper for the applicant to adduce rebuttal evidence upon completion of protestant's case, but this is not often done because the evidence of protestant usually concerns matters which are peculiarly within protestant's knowledge and can not be successfully challenged by applicant.

The rules provide for a closing argument¹⁶ and the filing of briefs.¹⁷ This, of course, is a matter of choice; but unless the matter involves some highly technical or novel legal problems, arguments or briefs are seldom made or submitted to the Examiner. The pri-

¹⁶ Rule 6.1, Rules of Practice and Procedure, Neb. State Ry. Comm.

¹⁷ Rule 6.2, Rules of Practice and Procedure, Neb. State Ry. Comm.

mary reason for not doing so appears to be that the Examiner's Report and Recommendation to the Commission is interlocutory in character and has no standing at law.

III. THE TRANSFER APPLICATION

The filing of the transfer application, its acknowledgment by the Commission, and the notice of hearing, all proceed in the same manner as above for original or extension applications.

The jurisdiction and authority of the Commission for approval of any transfer, merger, purchase, acquisition of stock control, or any other change in the control of the carrier is set forth in Section 75-240, and sub-sections thereof.¹⁸ Strange as it may be, there have been in recent years more bitterly fought cases, more court appeals, more amendatory legislation in this area of the Commission's work than in most any other. Unless the attorney handling the transfer proceedings before the Commission makes certain that sufficient pre-hearing preparation is made, he may end up with the certificate revoked and cancelled and the transfer application dismissed.

Occasionally, the parties to the transfer proceedings are confronted by an emergency situation whereby the seller cannot continue the operations either by reason of financial difficulty, poor health, or other circumstances. Section 75-240.01 provides for the filing of a petition for temporary approval for ninety days pending disposition of the permanent transfer application. When such petitions are submitted, it is well to also file two copies of the lease agreement entered into between the parties. The Commission has held that due to the peculiar wording of Section 75-240.01, in that it refers specifically to a transfer application filed under Section 75-240, the temporary lease approval cannot be authorized where the proposed transferee is not an existing motor carrier as defined by Section 75-223, as amended. Upon receipt of the petition for temporary lease approval, the Commission sends a consideration notice to other existing carriers in the involved territory. With or without the filing of protests, if the Commission is of the opinion that the petitioners have shown good cause, the temporary lease approval will be given for a period of ninety days.

It is well to note that Section 75-240 refers solely to transfers, mergers, etc., involving existing motor carriers, while Section 75-240.02 applies to transfers or leases of certificates or permits from an existing motor carrier to one who is not an authorized motor

¹⁸ Neb. Rev. Stat. (1955 Supp.).

carrier. However, the statutory burden is substantially the same in either type of transaction. There are really six elements of proof to be met by the parties to the transfer: (1) That the transfer or lease will be consistent with the public interest, (2) That it will not unduly restrict competition, (3) That the applicant transferee is fit, willing, and able, (4) That the operating rights are not dormant, (5) That no additional territory is sought other than that which can be served by the respective parties to the transfer, and (6) That no restrictions on the certificate are sought to be removed.

Section 75-240.03 governs transfers where there is a change in control through sale or assignment of stock or a change in one or more of the partners. It is interesting that this section does not require the quantum of proof that Sections 75-240 and 75-240.02 do. That is undoubtedly one of the reasons that an increasing number of motor carriers are incorporating.

Sections 75-240.04, 75-240.05, and 75-240.06 deal with disposition of the certificate or permit in the event of the death, incompetency, or bankruptcy of the holder thereof. While Section 75-240.05 is somewhat ambiguous, the Commission has held on at least one occasion that the year for which the certificate continues with the legal representative of the deceased commences as of the date of the appointment and qualification of the legal representative and not from the date of the certificate holder's decease. Generally, it is sufficient if the attorney forwards to the Commission a letter advising of the death or incompetency of the certificate holder and a certified copy of the letters of administration appointing the legal representative.

"Consistency with the public interest" is unquestionably a very elusive term and is difficult to define. Oftentimes, in reports which have been approved by the Commission, the Examiners have held that factors to be considered are "the immediate and prospective traffic requirements in the affected territory, the needs of the shippers, the adequacy of existing service, whether the proposed service would divert traffic from the existing carriers and impair their ability to serve the shipping public, and whether unsound economic conditions in the industry would result from approval of the proposed transaction." While this gives some idea of the approach to the term, it is impossible to lay down a hard and fast definition. Depending on a given factual situation, the exact interpretation of the phrase may vary greatly. This writer does not entirely agree with the above definition which infers that increased competition as a result of the transfer is necessarily inconsistent with the public interest. The decisions of the Interstate Commerce

Commission and many other utility commissions do not so hold. Nor is there any such statutory restriction on property carriers' transfers.

The statutory prohibition against a transfer which will "unduly restrict competition" of course refers to consolidations or mergers which result in absolute monopoly in a given area. Due to the great number of carriers authorized to operate in Nebraska, this is seldom, if ever, at issue. The very presence of protestants negates any real possibility of conflict with this restriction.

Fitness and ability of the transferee must be shown in exactly the same manner as outlined above for applicants seeking original or extended authority.

The question of dormancy is directly related to the Order to Show Cause, which customarily will have been issued by the Commission against the transferor in connection with the transfer. This can best be met by adequate preparation of certain documentary evidence and testimony of the transferor himself.

Testimony of the transferee to the effect that he is not seeking any additional commodity authorization or territory authorization than that presently contained in the transferor's certificate, and that he does not seek to remove any restriction or qualification contained in the transferor's certificate is sufficient to meet the last two statutory tests.

Preparatory to the hearing, the transferor should prepare an exhibit from his freight bills showing an abstract of representative shipments. The abstract should cover at least six months. This exhibit, reflecting date, freight bill number, origin, destination, commodity and weight, is extremely necessary and important. It serves a two-fold purpose in that it provides an irrefutable answer to the Order to Show Cause and also dispels any question of dormancy of the certificate. The freight bills from which the exhibit was prepared must be present in the hearing room as foundation for introduction of the exhibit. Other exhibits, such as truck directory advertising, newspaper ads, shippers' cards, telephone directories, etc., may be used to show that the transferor has held his service out to the public generally.

Transferee should also prepare certain standard exhibits: (1) Copy of Order of Commission issuing present certificate to transferee if an existing motor carrier, (2) Current balance sheet, (3) Profit and loss statement if he is an existing motor carrier, and (4) List of equipment. If transferee is an existing motor carrier, a great deal of the evidence can be put in exhibit form. Some of the more common additional types of evidence are: (1) A list showing

location and brief description of present terminals, (2) A list of personnel, broken down as to job classification, (3) Tonnage and number of shipments during a given period of time, which were handled by means of interchange between transferor and transferee, and which would move in the future via single-line service, (4) Garage and maintenance facilities for equipment, (5) A balance sheet of the two carriers combined into one, and (6) A combined profit and loss sheet of the two carriers for the past year, had they been operated as one, reflecting savings in various fixed operating costs and a greater net revenue.

At the hearing, the matters raised by the Order to Show Cause ordinarily will be disposed of first. Usually a field inspector of the Commission will have made an investigation of the transferor's operations and will be called by the Commission to testify as to his findings. The transferor should then be called. There is no established practice in presentation of proof in these proceedings; however, certain points must be covered:

1. Information as to years in business operating pursuant to Commission authority.
2. Equipment operated.
3. Personnel employed.
4. Terminal facilities used.
5. Competition for business from other authorized carriers in this area.
6. Method of operations. (Witness should outline in some detail the general schedules between terminals and time in which shipments are handled.)
7. Service held out to public generally without discrimination.
8. Introduction of abstract of representative shipments and other exhibits showing past operations and solicitation efforts.
9. Profit and Loss statement of his operations.
10. That the contract submitted to Commission contains all of the terms and conditions of the transaction between the parties.

Transferee or his representative must also cover certain required matters. His proof is, in many respects, similar to an existing carrier seeking an extension of authority. Necessary points in transferee's testimony are:

1. Years in business, experience in trucking industry, etc., including an exhibit showing existing authority if already a motor carrier.

2. Financial fitness
 - (a) Balance sheet
 - (b) Profit and loss sheet.
3. Other evidence of fitness and ability
 - (a) Equipment
 - (b) Personnel
 - (c) Terminals
 - (d) Maintenance facilities
 - (e) Safety program and safety record
 - (f) Insurance program and coverage.
4. Knowledge of transferor's operations, active business negotiations, fair price based on appraised value of equipment and going concern value of business.
5. That he will continue same kind and type of service in future if transfer approved.
6. Operating economies which can be effected by combining two existing carriers.
7. Service improvements which can be effected by combining two existing carriers.
8. That there will be no change in existing competitive situation—transferee merely replacing transferor.
9. That parties have disclosed all of terms of transaction in contract submitted to Commission.
10. That transferee is seeking to acquire exactly same authority as is presently held by transferor.

There are so many unexpected and unusual situations which can and do arise in connection with these transfer proceedings that it must be emphasized that the above outline is sketchy and would have to be altered in any given proceeding.

IV. ORDERS TO SHOW CAUSE AND FORMAL COMPLAINTS

Section 75-238 provides that a certificate or permit may be suspended, changed, or revoked in whole or in part either upon complaint or the Commission's own initiative, after notice and hearing, for willful failure to comply with the provisions of the Nebraska Motor Carrier Act, the rules and regulations of the Commission, or any term or condition of such permit.

The Supreme Court has held that this is the only statutory authority which the Commission possesses to revoke, change, or

suspend certificates and permits; and that any such orders must make a finding of willful failure to comply.¹⁹

"Willful failure" as used in Section 75-238 is such behavior through acts of commission or omission which justifies a belief that there was an intent entering into and characterizing the failure complained of.²⁰

Complaints initiated by the Commission against carriers are in the form of an order to show cause why the certificate or permit in question should not be revoked, suspended, or changed for willful failure to comply. While the Order to Show Cause is comprehensive in form, specific counts are recited so that the respondent carrier has knowledge of the particular deficiencies of which the Commission complains. Generally, Orders to Show Cause have been rarely issued by the Commission except in connection with transfer proceedings, failure to purchase annual license plates, or failure to file evidence of required insurance coverage. When the Order pertains to payment of annual fees for plates or the filing of evidence of insurance, the Order will automatically be vacated upon compliance within the time specified. Orders to Show Cause issued in connection with transfer proceedings will be disposed of when the entire matter is presented to the Commission either by the Examiner or on argument on exceptions to the Examiner's report.

An Order to Show Cause which is issued apart from these discussed is an extremely serious charge to the certificate holder. Revocation of his authority may result in the loss of thousands of dollars and wipe out twenty or thirty years work. The rules provide that the respondent may file an answer to the charges made and if deemed sufficient, the Commission can vacate and set aside the Order.²¹

In the event the order is not set aside, respondent must immediately prepare any and all evidence available to refute the charges made. Deficiencies which may have existed should be corrected at once and evidence of the steps taken must be presented at the hearing. If this is done and the respondent is in full compliance at the time of the hearing, in at least one decision, our Supreme Court

¹⁹ See *Hergott v. Nebraska State Railway Commission*, 145 Neb. 100, 15 N.W.2d 418 (1944).

²⁰ *Union Transfer v. Bee Line Motor Freight*, 150 Neb. 280, 34 N.W.2d 363 (1948).

²¹ Rule 10.2, Rules of Practice and Procedure, Neb. State Ry. Comm.

has held that revocation of the authority would be an unreasonable and arbitrary act.²²

Formal complaints proceed in much the same way except that they are instituted by the complainant rather than the Commission. The formal complaint must be drawn in the manner and form outlined in Rules 3.1 and 3.2. Requirements as to copies and service are set forth in Rule 3.3. There is provision for satisfaction or answer in Rules 3.4, 3.5, 3.6, and 3.7. An important difference in the formal complaint proceeding lies in the fact that the burden of proof and the burden of going forward rest upon the complainant. This proof is not easily obtained and may require that the complainant resort to use of subpoenas as permitted by Rule 2.2(b). Preparation of the complaint and the prosecution thereof, as well as the answer and defense, require a thorough knowledge of the statutes, the Commission's rules and regulations, and mechanics of the motor carrier industry.

V. AFTER THE HEARING

After a hearing before an Examiner, the Examiner will prepare a report in which the evidence is analyzed, basic and statutory findings are made, and recommended disposition is set forth. This report is served upon all parties of record but is not presented to the Commission until at least ten days have elapsed from date of service.

Any party who is dissatisfied with the Examiner's report may file written exceptions with the Commission within ten days from the date the report is mailed,²³ and may request an opportunity to argue the exceptions. If it is decided to file exceptions to an examiner's report, it is almost imperative that a transcript of the testimony taken at the hearing be ordered. At the argument on exceptions before the Commission, the dissatisfied party should make some effort to advise the Commission as to the background and nature of the case, the authority sought, the date of hearing, and the Examiner's Recommended Order. Too many times the Attorney arguing the exceptions assumes that the Commission is familiar with all aspects of the case, while in reality it may have had no occasion to look at the docket. It must be remembered that with a multitude of functions to perform, the Commissioners find it a physical impossibility to read in detail every Examiner's report

²² Caudill v. Lysinger, 161 Neb. 235, 72 N.W.2d 684 (1955).

²³ Rule 4.7, Rules of Practice and Procedure, Neb. State Ry. Comm.

from the Motor Department prior to presentation by the Examiner. To do so would defeat the very purpose of utilizing Examiners.

After argument on exceptions the Commission will enter its Order in the matter. Ten days from the date of mailing this Order any dissatisfied party may file a motion for rehearing.²⁴ Oral argument on such motion is ordinarily granted and subsequent thereto the Commission will enter its final Order in the proceedings. Notice of appeal to the Supreme Court must be filed within thirty days from the date such final Order was entered.

VI. CONCLUSION

In conclusion it should be said that the Commission has a difficult and arduous task in the regulation of some two thousand licensed motor carriers in Nebraska. The problems of the industry and of the Commission are seldom understood by both the general public and a large number of lawyers. It is unfortunate that lack of funds do not permit codification of the Commission's decisions so that they would be more readily available to attorneys called upon to handle Commission matters. As previously indicated, the Rules of Practice have helped, but they are deficient and ambiguous in many ways. Experience has shown that the rules should be revised and amended to reflect certain changes made necessary by new legislation and court decisions. Perhaps the Commission should adopt special rules governing motor carrier proceedings, in addition to rules of general application. In the past year the Interstate Commerce Commission has amended its rules whereby its motor carrier applications and cases are governed in large part by a special section of its rules. This approach to the problem permits the Commission considerable latitude in handling matters of an investigatory nature where unrepresented persons or unorganized civic groups desire to, and should be, heard; and at the same time leaves in effect governing rules to handle motor cases. The pattern and procedure of motor cases is fairly well crystallized, and the lawyers are entitled to concise, unambiguous rules applicable to such proceedings.

The Administrative Law Section has given consideration to a State Administrative Procedure Act. The need for such an Act is imperative. Its enactment would guarantee to all a code of standard procedures applicable to all the various administrative tribunals.

²⁴ Neb. Rev. Stat. § 75-406 (Reissue 1950).