



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

November 25, 2015

Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
2nd Floor, 400 North Street
P.O. Box 3265
Harrisburg, PA 17105

RE: Pennsylvania Public Utility Commission Bureau of Investigation and
Enforcement v. Rosemont Taxi Cab Co., Inc.: C-2014-2437268

Dear Secretary Chiavetta:

The Bureau of Investigation and Enforcement has entered into a Formal Settlement Agreement in the above captioned proceeding. This matter is currently assigned to the Office of Administrative Law Judge and is before the Honorable Eranda Vero.

Please accept for filing an original Settlement Agreement for appropriate disposition by the Commission.

If you have any questions on this matter, please call me at 717-214-9594.

Sincerely,

Heidi L. Wushinske
Prosecutor

Enclosure

Cc: Per certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation	:	
and Enforcement	:	
	:	Docket No. C-2014-2437268
v.	:	
	:	
Rosemont Taxi Cab Co., Inc.	:	

SETTLEMENT AGREEMENT

THIS AGREEMENT is between the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement (“I&E”) through Prosecutor Heidi L. Wushinske, Esq., and Rosemont Taxi Cab Co., Inc. (“Rosemont” or “Respondent”) through its attorney Michael S. Henry, Esq., in the above-captioned proceeding. In pursuance of this Agreement, I&E and Respondent stipulate as follows:

I. Background and Summary of Proceedings

1. The parties to this Settlement Agreement are the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, P.O. Box 3265, Harrisburg, PA 17105-3265, and Respondent, Rosemont, who maintains its principle place of business at 102 Browning Lane, Building B, Cherry Hill, NJ 08003.

2. On the date of the violations alleged in this complaint, Respondent held a certificate of public convenience at A-6310311 issued by this Commission on December 8, 2008.

3. Pursuant to its enforcement responsibilities, I&E initiated the above referenced complaint against Respondent based on the following.

4. On July 1, 2014, at 12:19 PM, Respondent's Cab R-33 transported a passenger or passengers from the Norristown Transportation Center in Norristown, Pennsylvania to 1700 Pine Street, Norristown, Montgomery County, Pennsylvania, for compensation.

5. On July 1, 2014, at 2:47 PM, Respondent's Cab R-33 transported a passenger or passengers from 823 Tremont Avenue, Norristown, Montgomery County, Pennsylvania to 548 DeKalb Street, Norristown, Montgomery County, Pennsylvania, for compensation.

6. On July 7, 2014, at 12:47 PM, Respondent's Cab R-33 transported a passenger or passengers from 210 E. Main Street, Norristown, Montgomery County, Pennsylvania, to 414 Hamilton Street, Norristown, Montgomery County, Pennsylvania, for compensation.

7. On July 8, 2014, at 1:30 PM, Cab R-33 transported a passenger or passengers from the Norristown Transportation Center in Norristown, Montgomery County, Pennsylvania, to 522 Kohn Street, Norristown, Montgomery County, Pennsylvania, for compensation.

8. On July 8, 2014, at 2:30 PM, Respondent's Cab R-33 transported a passenger or passengers from the Norristown Transportation Center in Norristown, Montgomery County, Pennsylvania to 1019 DeKalb Street, Norristown, Montgomery County, Pennsylvania, for compensation.

9. Respondent's certificate of public convenience does not authorize it to operate in Norristown, Montgomery County, Pennsylvania.

10. For the above violations, I&E issued a complaint, at the above referenced docket, against Respondent charging it with five counts of operating outside its authority and requested civil penalties totaling twenty-five hundred dollars (\$2,500.00).

11. Respondent filed an answer to the complaint, in which it denied all of the charges and sought dismissal of the complaint.

12. This case was scheduled for hearing before Administrative Law Judge ("ALJ") Eranda Vero on June 29, 2015.

13. During a brief recess in the case, I&E reached a settlement with Rosemont.

14. The terms of the settlement were presented to ALJ Vero on the record.

II. Settlement terms

15. I&E and Respondent, intending to be legally bound and for consideration given, desire to conclude this litigation and agree to stipulate to the following terms:

a. In recognition of the cost of further litigation, the time and expense of further hearings, and the merits of the parties' respective positions, the parties have entered into negotiations and have agreed to settle the complaint according to the terms and conditions set forth herein.

b. Respondent acknowledges that rendering service within the Commonwealth of Pennsylvania in a different territory than that authorized by its certificate of public convenience constitutes a violation of the Public Utility Code at 66 Pa. C.S. § 1102(a)(1)(i).

c. Respondent therefore agrees to pay a civil penalty in the amount of twelve hundred fifty dollars (\$1,250.00) within sixty days of final approval of this Settlement Agreement.

d. Respondent agrees that it will comply with the Public Utility Code and the Commission's regulations and orders in the future and take appropriate steps to alleviate future misconduct and/or noncompliance with the Public Utility Code and the Commission's regulations and orders.

III. Joint Statement in Compliance with the Commission's Policy Statement on Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations

16. Approval of this Settlement Agreement is consistent with the Commission's *Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, C-00992409 (March 16, 2000).

17. Under the Policy Statement, the Commission will consider specific factors when evaluating settlements of alleged violations of the Public Utility Code and the Commission's Regulations. These factors are: (i) Whether the conduct at issue was of a serious nature; (ii) Whether the resulting consequences of the conduct at issue were of a serious nature; (iii) Whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (iv) The number of customers affected and the duration of the violation; (v) The Compliance history of the regulated entity that committed the violation; (vi) Whether the regulated entity cooperated with the Commission's investigation; (vii) The Amount of the civil penalty or fine necessary to deter future violations; (viii) Past Commission decisions in similar situations; and (ix) other relevant factors. 52 Pa. Code § 69.1201(c).

18. The Commission will not apply the standards as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors and standards may still be considered, in settled cases the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.” 52 Pa. Code § 69.1201(b).

19. The first factor considered in this case was whether Respondent’s alleged acts and omissions amounted to willful fraud or misrepresentation, or were merely administrative or technical errors. The alleged conduct in this case involves five instances of operating outside of Respondent’s authorized service territory over a period of approximately one week. However, only one of Respondent’s drivers committed all five of these violations and there is no evidence to suggest that this is a deliberate or willful policy of Respondent or that Respondent’s other drivers engaged in this practice. Moreover, Respondent’s driver, when questioned by an I&E Enforcement Officer, appeared to be unaware that he was not permitted to take the trips in question.

20. The second factor considered in this case was whether the resulting consequences of Respondent’s alleged actions or omissions were of a serious nature. In this case, Respondent’s alleged conduct did not result in any serious consequences. Although, it is illegal, as well as unfair to Respondent’s competition for it to operate outside of its authorized service territory, there is no evidence of any serious harm in this case.

21. The third factor to be considered in this case, namely, whether Respondent's alleged conduct was intentional or negligent, does not apply to the present case because this proceeding is a settled matter. To the extent this factor is to be considered, it appears that Respondent's conduct was negligent in nature.

22. With regard to the fourth standard in the Commission's Policy Statement, whether the entity made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future, I&E's Enforcement Officer informed the driver in this case that he was not permitted to accept fares outside of Rosemont's service territory unless he was dispatched and the trip started or ended in Rosemont's service territory. The Commission has not issued any subsequent complaints against Rosemont for operating outside of its service territory.

23. The fifth standard in the Policy Statement deals with the number of customers affected and the duration of the violation. In this case, there is no evidence that any customers were negatively affected. No customers complained to the Commission as a result of the trips in question. The violations occurred over a period of approximately one week, from July 1 through July 8, 2014.

24. The Policy Statement's sixth standard is a consideration of the compliance history of the entity. Respondent has held a certificate from this Commission since 2008. Overall, the majority of complaints issued against Respondent have dealt with minor violations, such as improper placement of consumer information decals and several instances of unclean trunks. This is the first complaint issued against Respondent for operating outside of its service territory.

25. The seventh standard in the Policy Statement is whether the regulated entity cooperated with the Commission's investigation. Respondent has cooperated throughout this investigation, including providing requested documentation and facilitating interviews with its employees.

26. The amount of the civil penalty or fine necessary to deter future violations is the eighth standard in the Policy Statement. The parties submit that a civil penalty in the amount of twelve hundred fifty dollars (\$1,250.00) is sufficient to deter Respondent from committing any violations in the future. This Settlement Agreement recognizes Respondent's cooperation and good faith efforts to comply with the Commission's regulations. Respondent's driver has been informed that he cannot perform trips outside of Rosemont's service area and there is no evidence that any subsequent trips outside of Respondent's service area have occurred. Moreover, although Respondent is responsible for the actions of its drivers, this appears to have been a problem with just one of Respondent's drivers, rather than a company-wide problem.

27. The ninth standard examines past Commission decisions in similar situations. Counsel is not aware of any decisions with this precise fact pattern. However, when all relevant factors are taken into account, this settlement is consistent with past Commission actions. Moreover, since this is a settled matter, it should be considered on its own merits.

28. The parties submit that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the prosecuting agency to prove elements of each allegation. In

return, the opposing party in a settlement agrees to a lesser fine or penalty. Both parties negotiate from their initial litigation positions. The fines and penalties in a litigated proceeding have always been different from those that result from a settlement.

29. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the parties involved. This Agreement shall be construed and interpreted under Pennsylvania law.

30. None of the provisions of the Settlement Agreement or statements herein shall be considered an admission of any fact or culpability. I&E acknowledges that this Agreement is entered into with the express purpose of settling the asserted claims regarding the specific alleged violations of the Public Utility Code and the regulations promulgated thereunder against, or prejudice to, any position which any party may adopt during any subsequent proceeding of whatever nature.

31. The parties agree that the underlying allegations were not the subject of any hearing or formal procedure and that there has been no order or findings of fact rendered in this matter.

32. This Settlement Agreement is conditioned upon the Commission's approval without modification.

33. The parties agree to waive the exception period, thereby allowing this Settlement Agreement to be presented directly to the Commission for review, pursuant to 52 Pa. Code § 5.232(e). The parties reserve the right to withdraw from this Settlement Agreement if it is modified in any manner, or if any adverse response is filed.

WHEREFORE, I&E and Rosemont Taxi Cab Company, Inc. respectfully request that this Honorable Administrative Law Judge approve the terms of the Settlement Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this the 25 day of July 2015.

FOR THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

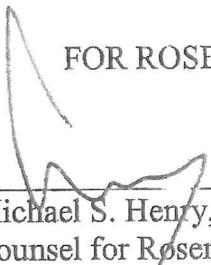


Heidi L. Wushinske, Esq.
Prosecutor

11/25/15

Date

FOR ROSEMONT TAXI CAB COMPANY, INC.



Michael S. Henry, Esq.
Counsel for Rosemont Taxi Cab Company

8/21/2015

Date

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing Settlement Agreement in accordance with the requirements of 52 Pa. Code § 1.54 *et seq.* (relating to service by a participant).

Notification by first class mail addressed as follows:

Administrative Law Judge Eranda Vero
801 Market Street, Suite 4063
Philadelphia, PA 19107

Michael S. Henry, Esq.
2336 S. Broad Street
Philadelphia, PA 19145



Heidi L. Wushinske
Prosecutor
Attorney ID #93972
(Counsel for Pennsylvania Public Utility
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Dated: November 25, 2015