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| **PENNSYLVANIA****PUBLIC UTILITY COMMISSION****Harrisburg, PA 17105-3265** |
|  |  Public Meeting held December 22, 2016 |
| Commissioner’s Present: Gladys M. Brown, ChairmanAndrew G. Place, Vice ChairmanJohn F. Coleman, Jr.Robert F. PowelsonDavid W. Sweet  |
| Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement  v. Nasser Limousine, LLC  |  C-2015-2488425 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Joint Settlement Petition (Settlement) filed on June 20, 2016, by the Commission’s Bureau of Investigation and Enforcement (I&E) and Nasser Limousine, LLC (Nasser Limousine) (collectively, the Parties). Each Party also filed a Statement in Support of the Settlement. For the reasons set forth herein, we will approve the Settlement as filed.

**Background**

 The Commission issued Nasser Limousine a Certificate of Public Convenience (Certificate) on August 15, 2005, at A-00120555, for limousine and group and party sixteen or greater authority. Pursuant to that Certificate, Nasser Limousine is authorized to transport, as a common carrier, by motor vehicle, persons in limousine service between points in Lackawanna County and from points in Lackawanna County to points in Pennsylvania and return.

On July 9, 2014, Nasser Limousine filed an Application with the Commission at Docket No. A-2014-2434077, seeking the additional right to begin to transport, as a common carrier, by motor vehicle, persons in limousine service, between points within the counties of Bradford, Berks, Carbon, Columbia, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Pike, Schuylkill, Sullivan, and Susquehanna, Pennsylvania.[[1]](#footnote-1) On February 4, 2015, I&E filed a Complaint against Nasser Limousine at Docket No. C-2015-2461513, alleging that Nasser Limousine violated Section 1102 of the Public Utility Code (Code), 66 Pa. C.S. § 1102, by transporting passengers outside its authorized service area for compensation and requested that Nasser Limousine pay a civil penalty of $500. Specifically, I&E alleged that, while the Application was pending, Nasser Limousine provided limousine service for compensation on August 23, 2014, between points in Luzerne County, Pennsylvania, which is outside Nasser Limousine’s authorized service area. By Secretarial Letter issued April 14, 2015 (*April 2015 Secretarial Letter*), the allegations in the Complaint were deemed admitted and the Complaint was sustained due to Nasser Limousine’s failure to file an Answer to the Complaint. Settlement at 4. In the *April 2015 Secretarial Letter*, Nasser Limousine was ordered to pay the $500 civil penalty within twenty days from the date of service of the *April 2015 Secretarial Letter*. Nasser Limousine did not pay the $500 civil penalty within the twenty-day period. Nasser Limousine paid the $500 civil penalty on July 30, 2015. Settlement at 5.

 Additionally, I&E alleged that on May 1, 2015, Nasser Limousine provided limousine service for compensation from 3 College Hill, Nanticoke, Luzerne County to the Woodlands Resort at 1073 Highway 315, Wilkes Barre, Luzerne County, Pennsylvania (which is outside of Nasser Limousine’s certificated territory) under the name Best Rate Rent-A-Car LLC (Best Rate Rent-A-Car). John C. Nasser is the president and sole member of Best Rate Rent-A-Car, which does not have authority from the Commission to provide passenger transportation service to the public for compensation. *Id*. I&E also alleged that the vehicle operated on May 1, 2015, was a 2006 Chrysler 300 Limousine and that Nasser Limousine did not obtain a Certificate of Waiver of Vehicle Age Requirements (Waiver) from the Commission to operate that vehicle.[[2]](#footnote-2) *Id*. at 5-6. By Secretarial Letter issued May 6, 2015 (*May 2015 Secretarial Letter*), the Commission dismissed Nasser Limousine’s Application at Docket No. A-2014-2434077 due to Nasser Limousine’s failure to demonstrate that it had the propensity to operate safely and legally. Settlement at 6.

 In the *May 2015 Secretarial Letter*, the Commission noted the following deficiencies regarding Nasser Limousine and Best Rate Limousine, LLC’s (Best Rate Limousine)[[3]](#footnote-3) compliance history: (1) the above-discussed Complaint at Docket No.

C-2015-2461513; (2) a Complaint filed against Nasser Limousine on April 6, 2015, at Docket No. C-2015-2468725 (related to transporting persons in limousine service for compensation outside of Nasser Limousine’s authorized service territory);[[4]](#footnote-4) (3) Nasser Limousine’s failure to file assessment reports with the Commission for the 2006, 2009, 2010, 2012, 2013, and 2014 calendar years in violation of 66 Pa. C.S. § 510(b); (4) a Complaint filed against Best Rate Limousine at Docket No. C-2014-2428514 (related to failure to maintain evidence of insurance on file with the Commission);[[5]](#footnote-5) (5) a Complaint filed against Best Rate Limousine at Docket No. C-2013-2384535 (related to the advertisement of discounted rates contrary to its approved tariff and the operation of an overaged vehicle);[[6]](#footnote-6) and (6) the cancellation of Best Rate Limousine’s Certificate at

A-00116860. Settlement at 6-7.

 Furthermore, I&E alleged that on May 9, 2015, after the dismissal of Nasser Limousine’s Application at Docket No. A-2014-2434077, Nasser Limousine provided limousine service for compensation from 275 East Grove Street, Kingston, Luzerne County, Pennsylvania, to points within Luzerne County, Pennsylvania and back to 275 East Grove Street, Kingston, Luzerne County, Pennsylvania under the name of Best Rate Rent-A-Car. *Id*. at 7-8. The vehicle operated was a 2006 Dodge Chrysler 300 limousine, bearing the same vehicle identification number as that of the limousine vehicle referenced above. Nasser Limousine did not obtain a Waiver from the Commission regarding the 2006 Dodge Chrysler 300 limousine, which is more than eight model years old. *Id*. at 8.

**History of the Proceeding**

On June 19, 2015, I&E filed a Formal Complaint (Complaint) against Nasser Limousine at Docket No. C-2015-2488425. In Count 1 of the Complaint, I&E alleged that Nasser Limousine failed to pay the $500 civil penalty as directed in the *April 2015 Secretarial Letter* at Docket No. C-2015-2461513. I&E’s proposed civil penalty for this violation was $500 for the outstanding civil penalty and $1,000 for each day since May 4, 2015, the date on which the civil penalty was due, for a total civil penalty of $46,500. In Counts 2 and 3 of the Complaint, I&E alleged that Nasser Limousine unlawfully provided passenger transportation service for compensation outside of its authorized service area on May 1, 2015, and May 9, 2015, in violation of Section 1102(a) of the Code, 66 Pa. C.S. § 1102(a). I&E’s proposed civil penalty for these violations was $1,500 for each passenger transportation service provided by Nasser Limousine for compensation outside of its authorized service area, for a total civil penalty of $3,000. In Counts Four and Five of the Complaint, I&E alleged that Nasser Limousine unlawfully provided passenger transportation service for compensation in a limousine vehicle that was more than eight model years old on May 1, 2015, and May 9, 2015, without obtaining a Waiver from the Commission, in violation of Section 29.333(e) of the Commission’s Regulations, 52 Pa. Code § 29.333(e). I&E proposed a civil penalty of $500 for each passenger transportation service provided by Nasser Limousine for compensation in an overaged limousine vehicle for a total civil penalty of $1,000. In total, I&E’s Complaint requested the following: (1) a civil penalty of $50,500 for the above alleged violations; (2) cancellation of Nasser Limousine’s Certificate based on its repeated failure to comply with the Code and the Commission’s Orders and Regulations; and (3) such other remedy that the Commission may deem appropriate, including an additional $1,000 civil penalty for each day that Nasser Limousine failed to pay the $500 civil penalty imposed at Docket No. C-2015-2461513.

On July 16, 2015, Nasser Limousine filed an Answer and New Matter.[[7]](#footnote-7) In its Answer, Nasser Limousine denied the material allegations in the Complaint and averred that the suggested civil penalties were “excessive and out-of-line” with the Commission’s Policy Statement at 52 Pa. Code § 69.1201. In its New Matter, Nasser Limousine indicated that it would like to resolve the Complaint amicably through a settlement. On August 4, 2015, I&E filed a Reply to New Matter.

The Parties entered into negotiations and agreed to resolve this matter in accordance with the Commission’s policy to promote settlements at 52 Pa. Code § 5.231. As previously indicated, the Parties filed the instant Settlement on June 20, 2016.

**Terms of the Settlement Agreement**

The Settlement is a comprehensive resolution of all issues in this Complaint proceeding. The Settlement includes the following terms and conditions:

 a. Nasser Limousine will pay a civil penalty in the amount of fourteen thousand dollars ($14,000) pursuant to Section 3301 of the Code, 66 Pa. C.S. § 3301, and the Commission’s Motor Carrier Services and Enforcement Penalty Guidelines.

 b. Within thirty (30) days of the date of entry of the Commission’s Opinion and Order approving the Settlement Agreement, said payment shall be made by certified check or money order, made payable to the “Commonwealth of Pennsylvania,” and shall be sent to:

Secretary

 Pennsylvania Public Utility Commission

 P.O. Box 3265

 Harrisburg, PA 17105-3265

 c. Within forty-five (45) days of the date of entry of the Commission’s Opinion and Order approving the Settlement Agreement, Nasser Limousine will submit an Application with the Commission seeking the additional right to begin to transport, as a common carrier by motor vehicle, persons in limousine service between points within, *inter alia*, Luzerne County, Pennsylvania.

 d. I&E will not oppose Nasser Limousine’s Application to extend its service territory provided that Nasser Limousine complies with the terms and conditions of this Settlement Agreement.

 e. Nasser Limousine agrees to cease providing any further unauthorized intrastate transportation service for compensation between points in Pennsylvania pending the Commission’s approval of Nasser Limousine’s Application to extend its service territory.

 f. By entering into this Settlement Agreement, John C. Nasser certifies that he fully understands the requirements of the Commission that are applicable to Nasser Limousine as a motor carrier of passengers and that the failure to comply with the Commission’s requirements may result in civil penalties, suspension of Nasser Limousine’s operating rights, and/or cancellation of Nasser Limousine’s Certificate. John Nasser also acknowledges that this certification is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

 g. Nasser Limousine agrees to timely file all assessment reports with the Commission going forward as required by 66 Pa. C.S. § 510(b) and acknowledges that the failure to do so may result in civil penalties, suspension of its operating rights, and/or cancellation of its Certificate.

 h. Nasser Limousine agrees to timely pay all assessments to the Commission going forward as required by 66 Pa. C.S.

 § 510(c) and acknowledges that the failure to do so may result in civil penalties, suspension of its operating rights, and/or cancellation of its Certificate.

 i. Nasser Limousine agrees to timely file evidence of insurance with the Commission as required by 66 Pa. C.S.

 § 512 and 52 Pa. Code §§ 32.2(c) and 32.11(a) and acknowledges that the failure to do so may result in civil penalties, suspension of its operating rights, and/or cancellation of its Certificate.

 j. Nasser Limousine agrees to refrain from transporting persons in limousine service for compensation outside its certificated service territory without first obtaining approval from the Commission for such service as required by 66 Pa. C.S. § 1102 and acknowledges that the failure to do so may result in civil penalties, suspension of its operating rights, and/or cancellation of its Certificate.

Settlement at 10-13, ¶ 32(a)-(j).

 The Settlement is conditioned upon the Commission’s approval, without modification, of all of the Settlement terms. The Parties state that, if the Commission modifies the Settlement terms, then either Party may elect to withdraw from the Settlement and proceed with litigation of this proceeding. Settlement at 14. The Settlement is made without prejudice to any position advanced by either Party in this proceeding or that may be advanced in the future on the merits of the issues in future proceedings. *Id*. at 15.

**Discussion**

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Commission must review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

The Code sets forth the maximum civil penalty amounts that we may levy on public utilities for violations of a Commission Order, Regulation, or a statute. Section 3301 of the Code authorizes the Commission to impose a fine of up to $1,000 for each and every discrete violation of the Code.[[8]](#footnote-8)

After a review of the terms of the Settlement, we find that the Settlement is in the public interest. The Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 that sets forth ten factors that we may consider in evaluating whether a civil penalty for violating a Commission Order, Regulation, or a statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. The Policy Statement sets forth the guidelines we use when determining whether, and to what extent, a civil penalty is warranted. In this case, application of these guidelines supports approval of the Settlement as filed.

The first factor we may consider is whether the conduct at issue is of a serious nature. 52 Pa. Code § 69.1201(c)(1). “When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.” *Id*. In this case, we find that most of Nasser Limousine’s actions constitute conduct of a serious nature. I&E alleged that Nasser Limousine provided transportation for compensation outside of its certificated service territory on two occasions in violation of Section 1102(a) of the Code, 66 Pa. C.S.

§ 1102(a). Nasser Limousine allegedly engaged in this conduct after it was previously prosecuted for the same violation at Docket No. C-2015-2461513, in which the Commission imposed a $500 civil penalty on Nasser Limousine for providing limousine transportation for compensation outside of its certificated service territory on August 23, 2014. Nasser Limousine then violated the Commission’s directive in the *May 2015 Secretarial Letter* to timely pay this $500 civil penalty. Nasser Limousine was found to be in violation of Section 1102(a) of the Code on two other prior occasions at Docket Nos. C-2013-2350116 and C-2015-2468725, related to transporting persons in limousine service for compensation outside of its authorized service territory. Because Nasser Limousine should have been aware that it was violating the Code by operating outside of its authorized service territory for compensation and continued to do so, we find that a higher civil penalty is warranted here.

The second factor we may consider is whether the resulting consequences of the conduct are of a serious nature. 52 Pa. Code § 69.1201(c)(2). “When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.” *Id.* In this case, it does not appear that consequences of a serious nature were involved. I&E indicates that Nasser Limousine’s conduct did not have lasting consequences, no one was physically harmed, and no property was damaged. I&E Statement in Support at 9.

The third factor pertains to litigated cases only. 52 Pa. Code
§ 69.1201(c)(3). Because this proceeding was settled prior to an evidentiary hearing, this factor is not applicable to this Settlement.

The fourth factor we may consider is whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered. 52 Pa. Code § 69.1201(c)(4). In this case, Nasser Limousine paid the outstanding civil penalty at Docket No. C-2015-2461513 on July 30, 2015, and Nasser Limousine and/or John C. Nasser has paid the other outstanding civil penalties as discussed herein. Nasser Limousine has also agreed in the Settlement to submit an Application seeking the additional right to provide limousine service in Luzerne County, Pennsylvania. Furthermore, Nasser Limousine has agreed to comply with the Code and the Commission’s Regulations going forward by refraining from providing limousine service for compensation outside of its authorized service territory; by timely filing all assessment reports and timely paying all assessments; and by timely filing evidence of insurance with the Commission. Accordingly, this factor weighs in favor of a lower civil penalty.

 The fifth factor we may consider is the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). I&E states that Nasser Limousine’s provision of limousine service for compensation outside of its certificated service territory occurred twice, and the customers involved did not complain about Nasser Limousine’s service. I&E also states that Nasser Limousine’s conduct in operating an overaged limousine vehicle occurred twice, and the customers involved did not complain about Nasser Limousine’s service.

 We may also consider the compliance history of the regulated entity which committed the violation. 52 Pa. Code § 69.1201(c)(6). Based on our review and I&E’s averments, since receiving a Certificate in 2005, the Commission has found Nasser Limousine to be in violation of the Code and/or the Commission’s Regulations on six occasions prior to the filing of the Settlement. *See* Docket Nos. C-2011-2271078,

C-2013-2350116, C-2015-2461513, C-2015-2468725, C-2015-2485631, and C-2015-2501651.[[9]](#footnote-9) The violations that are relevant to the instant case involve Nasser Limousine providing transportation for compensation outside of its authorized service territory in violation of Section 1102(a) of the Code, 66 Pa. C.S. § 1102(a), and Nasser Limousine providing passenger transportation service for compensation in an overaged vehicle in violation of Section 29.333(e) of the Commission’s Regulations, 52 Pa. Code

§ 29.333(e). Nasser Limousine was found to be in violation of Section 1102(a) of the Code on three prior occasions at Docket Nos. C-2013-2350116, C-2015-2461513, and

C-2015-2468725, and was found to be in violation of Section 29.333(e) of the Commission’s Regulations on one previous occasion at Docket No. C-2015-2501651. *See* I&E Statement in Support at 10-11. Consequently, we find that under the circumstances in this case, Nasser Limousine’s compliance history warrants a higher civil penalty.

Another factor we may consider is whether the regulated entity cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). I&E represents that Nasser Limousine cooperated with counsel for I&E throughout the settlement process. I&E Statement in Support at 12.

In addition, we may consider the amount of the civil penalty necessary to deter future violations as well as past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(8) and (c)(9). Given Nasser Limousine’s compliance history and its prior violations demonstrating the repeated provision of limousine service for compensation outside of its certificated service territory, we find that the $14,000 civil penalty amount is appropriate and will be a sufficient deterrent to prevent similar future occurrences. Based on the repetitive nature of the alleged violations and Nasser Limousine’s compliance history, we conclude that our determination regarding this Settlement and the civil penalty amount is consistent with our prior decisions in similar cases.

The tenth factor we may consider is other relevant factors. 52 Pa. Code

§ 69.1201(c)(10). We believe that it is in the public interest to approve the settlement of this matter so as to avoid the expense of litigation and the possibility of appeals. In addition, we believe that the Settlement is in the public interest because it contains terms intended to bring Nasser Limousine into full compliance with the Code and the Commission’s Regulations.

For the reasons set forth above, after reviewing the terms of the Settlement Agreement, we find that approval of the Settlement is in the public interest and is consistent with the terms of our Policy Statement.

**Conclusion**

It is the Commission’s policy to promote settlements. 52 Pa. Code § 5.231. The Parties herein have provided the Commission with sufficient information upon which to thoroughly consider the terms of the proposed Settlement. Based on our review of the record in this case, including the Settlement Agreement and the Statements in Support thereof, we find that the proposed Settlement is in the public interest and merits approval; **THEREFORE**,

**IT IS ORDERED:**

1. That the Joint Settlement Petition filed by the Commission’s Bureau of Investigation and Enforcement and Nasser Limousine, LLC on June 20, 2016, is approved.

2.  That, within thirty days of the entry date of this Opinion and Order, Nasser Limousine, LLC shall remit $14,000, payable by certified check or money order, to “Commonwealth of Pennsylvania” and sent to:

Secretary

 Pennsylvania Public Utility Commission

 P.O. Box 3265

 Harrisburg, PA 17105-3265

  3. That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

4. That the Secretary’s Bureau shall mark this proceeding closed upon payment of the civil penalty as set forth in Ordering Paragraph No. 2.

 **BY THE COMMISSION,**

Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: December 22, 2016

ORDER ENTERED: December 22, 2016

1. The Commission issued Nasser Limousine a Certificate of Public Convenience (Certificate) on August 15, 2005, at A-00120555, for limousine and group and party sixteen or greater authority. Pursuant to its Certificate, Nasser Limousine is authorized to transport, as a common carrier, by motor vehicle, persons in limousine service between points in Lackawanna County and from points in Lackawanna County to points in Pennsylvania and return. [↑](#footnote-ref-1)
2. 52 Pa. Code § 29.333(e) (which was repealed in 2016), prohibited the use of a vehicle more than eight model years old in limousine service, unless permitted by the Commission. [↑](#footnote-ref-2)
3. John C. Nasser previously operated and is the sole member of Best Rate Limousine, whose Certificate at A-00116860 as cancelled due to its failure to maintain evidence of insurance on file with the Commission. On March 1, 2016, Best Rate Limousine filed a petition to rescind the Secretarial Letter cancelling its Certificate. I&E did not file a protest to that petition. [↑](#footnote-ref-3)
4. Nasser Limousine paid the $500 civil penalty associated with this Complaint on April 30, 2015. [↑](#footnote-ref-4)
5. John C. Nasser paid the $600 civil penalty associated with this Complaint on January 5, 2016. [↑](#footnote-ref-5)
6. On January 5, 2016, John C. Nasser paid the $1,750 civil penalty associated with the Complaint in this case. [↑](#footnote-ref-6)
7. On July 8, 2015, Nasser Limousine filed a Request for Extension of Time to File an Answer to I&E’s Complaint. By Secretarial Letter issued July 9, 2015, Nasser Limousine was granted an extension of time, until July 16, 2015, to file an Answer. [↑](#footnote-ref-7)
8. If any public utility, or any other person or corporation subject to this part, shall violate any of the provisions of this part, or shall do any matter or thing herein prohibited; or shall fail, omit, neglect or refuse to perform any duty enjoined upon it by this part; or shall fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the commission . . . or to comply with any final judgment, order or decree made by any court, such public utility, person or corporation for such violation, omission, failure, neglect, or refusal, shall forfeit and pay to the Commonwealth a sum not exceeding $1,000 . . . .

66 Pa. C.S. § 3301(a). [↑](#footnote-ref-8)
9. Some of the violations involved minor infractions, including providing passenger transportation service for compensation in an overaged vehicle and failing to file a vehicle list with the Commission. Other infractions were more serious, including Nasser Limousine providing limousine service for compensation outside its certificated service territory, offering service of a different nature than that authorized by its Certificate, failing to maintain evidence of insurance on file with the Commission, and charging rates different from those in its tariff on file with the Commission. [↑](#footnote-ref-9)