



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

IN REPLY PLEASE
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March 1, 2010

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Transportation and
Safety v. American Road Lines, Inc.
Docket No. C-2009-2046450

Dear Secretary McNulty:

Enclosed please find an original and three (3) copies of the Settlement Agreement on behalf of the Law Bureau Prosecutory Staff in the above-captioned proceeding.

The Office of Special Assistants should prepare a proposed opinion and order for Commission consideration.

If you have further questions regarding this matter, please do not hesitate to contact me at (717) 772-8839.

Very truly yours,

Stephanie M. Wimer
Assistant Counsel

Enclosures

cc: Cheryl Walker Davis

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION, BUREAU OF
TRANSPORTATION AND SAFETY**

v.

AMERICAN ROAD LINES, INC.

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**Docket No.
C-2009-2046450**

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SECRETARY'S BUREAU**

SETTLEMENT AGREEMENT

THIS AGREEMENT is by the Pennsylvania Public Utility Commission's ("Commission") Law Bureau Prosecutory Staff ("Prosecutory Staff"), through Assistant Counsel Stephanie M. Wimer, representing the Commission's Bureau of Transportation and Safety ("BTS"), and David M. O'Boyle, representing American Road Lines, Inc. ("Respondent"), in the above-captioned proceeding. In pursuance of this Agreement, the Prosecutory Staff and Respondent stipulate as follows:

I. Background and Summary of Proceedings

1. The parties to this Settlement Agreement are BTS, represented by Prosecutory Staff, P.O. Box 3265, Harrisburg, PA 17105-3265, and Respondent, American Road Lines, Inc., represented by David M. O'Boyle. Respondent maintains a principle place of business at 1155 Stoops Ferry Road, Moon Township, PA 15108.

2. On the date of the alleged violation in this complaint, Respondent held a certificate of public convenience issued by this Commission. Respondent was issued a certificate of public convenience on July 5, 2001 at Application Docket No. A-00117859.

3. Pursuant to its enforcement responsibilities, BTS initiated the above-captioned complaint against Respondent on August 17, 2009. The complaint alleged that Respondent violated 66 Pa. C.S. § 512, 52 Pa. Code § 32.2(c) and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a) for its failure to maintain evidence of cargo insurance on file with the Commission. BTS requested a civil penalty of \$250.00 and cancellation of the Respondent's certificate of public convenience for the alleged violation.

4. After receiving an extension of time to file an answer to the BTS Complaint, Respondent filed its Answer and New Matter on October 1, 2009. Respondent requested that the proposed civil penalty be lowered because there was no lapse in the carrier's insurance coverage. Informal discovery was conducted between the parties. During discovery, Respondent asserted that its cargo insurance carrier failed to file evidence of cargo insurance with the Commission.

II. Settlement Terms

5. Prosecutory Staff, representing BTS, and Respondent, intending to be legally bound and for consideration given, desire to conclude this litigation and agree to stipulate as to the following terms:

- A. In recognition of the cost of further litigation, the time and expense of holding a hearing, 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 agrees that evidence of cargo insurance was not filed with the Commission, and that this violation was unintentional.

Respondent, therefore, agrees to pay a civil penalty in the amount of one hundred dollars (\$100.00) for this violation.

- C. 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. *Rosi* Test

6. Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. However, the Commission must review proposed settlements to determine whether the terms are in the public interest. *Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, M-00031768 (Order entered January 7, 2004).

7. In *Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, C-00992409 (March 16, 2000), the Commission adopted standards to be applied to determine the amount of the civil penalty in slamming cases. The Commission subsequently determined that all violations of the Public Utility Code and Commission regulations, not just slamming cases, shall be subject to review under the standards enunciated in *Rosi*. *Pa. P.U.C. v. NCIC Operator Services*, M-00001440 (December 21, 2000). Prosecutory Staff, representing BTS, and Respondent submit that this Settlement Agreement does not violate the requirements for settlements found in *Rosi* and that the terms of the Agreement are in the public interest.

8. The parties further assert that approval of this Settlement is consistent with the proposed *Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations*, M-00051875 (Order entered Aug. 12, 2005).¹ Under the proposed policy statement, while many of the *Rosi* standards may still be applied, the Commission specifically recognized that in “settled cases the parties should be afforded more flexibility in determining the amount of a fine, penalty, or other resolution.” *Id.* at 4.

9. The first standard in *Rosi* addresses whether Respondent’s actions, which gave rise to this matter, were intentional or negligent. Respondent’s actions were unintentional. Respondent maintains that there was no lapse of insurance and that its insurance carrier was responsible for failing to file the required Form H. Further, Respondent arranged for its cargo insurance carrier to file with the Commission a Form H, which was received by the Commission on or about Sept 14, 2009. Respondent has agreed to be more vigilant in the future in ascertaining whether its insurance carrier follows through in timely filing the required Form H’s with the Commission. The second and third *Rosi* standards do not apply to the instant case because they are applicable only to slamming cases.

10. The fourth standard concerns the number of customers affected and the duration of the violation. It is undetermined as to how many customers were affected during the time period specified in the BTS complaint.

¹ The proposed policy statement establishes the standards the Commission will consider in evaluating the merits of a settlement involving violations of the Public Utility Code and Commission regulations. When the Commission issues a final policy statement, the standards set forth therein will replace the use of the *Rosi* standards.

11. The fifth *Rosi* standard is whether the penalty arises from a settlement or a litigated proceeding. In this case, the civil penalty would arise from a settlement reached prior to a hearing. Furthermore, Respondent was very cooperative with Prosecutory Staff.

12. The sixth *Rosi* standard relates to Respondent's compliance history. Respondent's compliance history with the Public Utility Code and the Commission is satisfactory. The captioned complaint was the first enforcement action initiated by BTS against Respondent.

13. In the process of negotiating this Settlement Agreement, all of the other factors in *Rosi* were considered. Specifically, the parties considered Respondent's willingness to cooperate with the Commission and whether the amount of the penalty will deter future violations. Respondent has been very cooperative with Prosecutory Staff, returning all phone calls promptly and answering all questions completely. Prosecutory Staff submits that Respondent's payment of the agreed upon civil penalty of one hundred dollars (\$100.00) constitutes a reasonable and appropriate resolution of the merits of the proceeding, and is intended to secure future compliance.

14. The parties believe that their efforts have resulted in a fair and equitable Settlement that is in the public interest and adequately addresses the issues set forth in the Complaint.

WHEREFORE, because the Agreement addresses and attempts to remedy all allegations raised in this matter, BTS, Prosecutory Staff and Respondent request that the

Commission adopt an order approving the terms of this Settlement Agreement as being in the public interest.

Date: 2/23/2010

Date: 2-26-2010

Stephanie M. Wimer

Stephanie M. Wimer
Law Bureau Prosecutory Staff
Pennsylvania Public Utility Commission

David M. O'Boyle

David M. O'Boyle
Counsel for Respondent, American Road
Lines, Inc.