



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

IN REPLY PLEASE
REFER TO OUR FILE

May 4, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Transportation and
Safety v. WGM Transportation, Inc.
Docket No. C-2009-2053309

Dear Secretary Chiavetta:

Enclosed please find an original and three (3) copies of the Settlement Agreement on behalf of the Bureau of Transportation and Safety in the above-captioned proceeding. I have also enclosed a money order from the WGM Transportation, Inc. in the amount of \$150.00.

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
Scott W. Pohlman, Esq.

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SECRETARY'S BUREAU
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

v.

WGM TRANSPORTATION, INC.

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**Docket No.
C-2009-2053309**

SECRETARY'S BUREAU

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RECORDED

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 Scott W. Pohlman, representing WGM Transportation, 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, WGM Transportation, Inc., represented by Scott W. Pohlman. Respondent maintains a principle place of business at 9074 Franklin Hill Road, East Stroudsburg, PA 18301.

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 May 24, 1995, at Application Docket No. A-00111651, and on August 8, 1996, at Application Docket No. A-00111651.

3. Pursuant to its enforcement responsibilities, BTS initiated the above-captioned complaint against Respondent on March 6, 2009. The complaint alleged that on April 16, 2008, Respondent refused service to Stephen Woodward, a customer, and advised him that he had been placed on a suspension list. The complaint averred that Respondent violated 52 Pa. Code § 29.313(a) by failing to furnish trip service on demand. BTS requested a civil penalty of five hundred dollars (\$500.00) for the alleged violation.

4. On March 24, 2009, Respondent filed its Answer to the Complaint. Respondent denied advising the customer that he had been placed on a suspension list. Respondent asserted that the customer contacts Respondent for service and is not present when Respondent arrives. Respondent also averred that the customer creates a race by contacting multiple carriers across the region to see which carrier will arrive to him first. Informal discovery was conducted between the parties. During discovery, Respondent maintained that this particular customer has been problematic.

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 it did not provide service to the customer on April 16, 2008. However, because the customer regularly contacts Respondent for service and is not present when Respondent arrives, the customer's actions mitigate the severity of the lapse of service. Respondent, therefore, agrees to pay a civil penalty in the amount of one hundred and fifty dollars (\$150.00) 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. The customer repeatedly contacted Respondent for service and when Respondent arrived, the customer was not present or was seen receiving a ride from another carrier. Thus, the customer’s actions mitigate the severity of the lapse of service. The second and third *Rosi* standards do not apply to the instant case because they are applicable only to slamming cases.

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.

10. The fourth standard concerns the number of customers affected and the duration of the violation. Only one customer was affected during the time period specified in the BTS complaint.

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. BTS filed numerous complaints against the Respondent between 1998 and 2005. However, no complaint has been filed against the Respondent since 2005. Respondent has therefore demonstrated a willingness to abide by the Public Utility Code and Commission regulations in recent years.


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 and fifty dollars (\$150.00) 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.

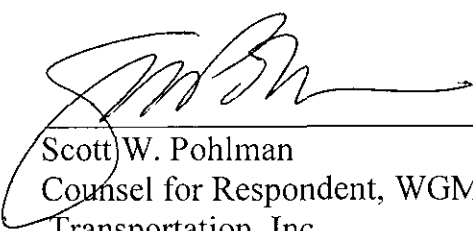
WHEREFORE, because the Agreement addresses and attempts to remedy all allegations raised in this matter, BTS, Prosecutory Staff and Respondent request that the Commission adopt an order approving the terms of this Settlement Agreement as being in the public interest.

Date: 5/4/2010

Date: 3/3/2010



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



Scott W. Pohlman
Counsel for Respondent, WGM
Transportation, Inc.