



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

IN REPLY PLEASE  
REFER TO OUR FILE

August 13, 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. Rockroad Trucking, LLC; Docket No. C-2009-2057984

Dear Secretary Chiavetta:

The Bureau of Transportation and Safety has entered into a Formal Settlement Agreement in the above captioned proceeding. This complaint has not been assigned to the Office of Administrative Law Judge.

The Commission's regulations at 52 Pa. Code § 5.232 empower a participant in a formal Commission proceeding to file an executed Settlement Agreement with your office provided that a Commission Administrative Law Judge has not been assigned to hear the case.

Please accept for filing an original and three copies of the Settlement Agreement in the above captioned proceeding for appropriate disposition by the Commission.

Very truly yours,

Heidi L. Wushinske  
Assistant Counsel

Counsel for Pennsylvania Public  
Utility Commission Prosecutory Staff

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Enclosures

cc: Cheryl W. Davis, Director of OSA  
Florence Miller, Owner Rockroad Trucking, LLC

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

v.

**ROCKROAD TRUCKING LLC**

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**Docket No.  
C-2009-2057984**

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PA PUBLIC UTILITY COMMISSION  
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 Shane Rooney, and Rockroad Trucking LLC, Respondent ("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 the Pennsylvania Public Utility Commission's Law Bureau Prosecutory Staff (Prosecutory Staff), P.O. Box 3265, Harrisburg, PA 17105-3265, and Respondent, Rockroad Trucking, LLC, which maintains its principle place of business at 1060 Rock Road, Schuylkill Haven, PA 17972.

2. On the date of the violation alleged in this complaint, Respondent held a certificate of public convenience issued by this Commission. Respondent was issued a

certificate of public convenience on June 14, 2005 at Application Docket No. A-00121582.

3. On September 19, 2009 the Commission sent the Respondent a letter at its principal of business warning that its operating authority would be suspended on September 22, 2009, if proof of liability insurance was not filed.

4. The Respondent claimed that it did not receive this letter.

5. Proof of liability insurance was not received by September 22, 2009.

6. Pursuant to its enforcement responsibilities, the Bureau of Transportation and Safety ("BTS") initiated the above-captioned Complaint against Respondent on November 4, 2009.

7. In the Complaint, BTS represented that the Respondent violated 66 Pa.C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code §32.12(a) by failing to maintain proof of liability insurance on file with the Commission.

8. In the Complaint, BTS requested that the Respondent cause its insurer to provide evidence of insurance and pay a \$250 civil penalty to satisfy the Complaint.

9. On November 18, 2009, the Respondent filed an Answer to the Complaint. Respondent stated there was never a gap in its insurance coverage, and that proof of insurance was filed with the Commission after receipt of the Complaint.

10. The Commission agrees that proof of insurance was filed after the service of the Complaint, and that there was no gap in Respondent's insurance coverage. The Commission has lifted the suspension of Respondent's operating authority.

## **II. Settlement Terms**

11. Prosecutory Staff 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 there was a violation of 66 Pa.C.S. § 512 and the Respondent violated 66 Pa.C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code §32.12(a) by failing to maintain proof of liability insurance on file with the Commission. Respondent agrees to pay a civil penalty of \$100.
- 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. Factors and Standards for Evaluating Litigated and Settled Proceedings**

12. 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).

13. The Commission adopted a policy statement at 52 Pa. Code §69.1201 identifying factors and standards for evaluating litigated and settled proceedings.

14. The parties further assert that approval of this Settlement is consistent with the policy statement.

15. The first standard is whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation. This type of conduct warrants a higher penalty. Conduct that is less egregious, such as administrative filing errors, may warrant a lower penalty. In this proceeding, the Respondent maintains that it thought the insurer had timely filed the proof of insurance, and that it did not receive the Commission's warning letter. The Respondent also asserted that a delay in the processing of name change for its business by the Federal Motor Carrier Safety Administration contributed to the late filing of proof. Once the Complaint was served, the Respondent promptly contacted the Commission, and caused its insurer to file proof of insurance.

16. The second standard is whether the consequences of the conduct were of a serious nature, such as personal injury or property damage. In those instances, a higher penalty is warranted. In this case, there was no personal or property damage as a result of the late filed proof of insurance.

17. The third factor is whether the conduct was intentional or negligent. If the conduct was intentional, a higher penalty may be warranted. In this case, the Respondent

maintains that the conduct was unintentional. The Respondent asserts that it believed that its insurer had filed evidence of insurance with the Commission, and that it did not receive the September 19, 2009 warning letter.

18. The fourth factor is whether the regulated entity has made efforts to modify internal practices and procedures to prevent their recurrence. The amount of time it took to correct the conduct and the involvement of top level management may be considered as a mitigating factor. In this case, Florence Miller, the Respondent's Owner and Operator, promptly responded to the Complaint and cooperated with the Commission in ensuring that proof of insurance was filed.

19. The fifth factor is the number of customers affected and the duration of the violation. Here, no customers were affected, and the violation was corrected within several days of the receipt of the Complaint.

20. The sixth factor is the compliance history of the regulated entity which committed the violation. An isolated incident supports a lower penalty. This is the first occasion that a Complaint was filed against the Respondent for failure to maintain proof of insurance. The Respondent has not been previously assessed a civil penalty for violations of the Public Utility Code.

21. The seventh factor is whether the Respondent cooperated with the Commission's investigation. Respondent promptly responded to the Complaint and has been cooperative with Prosecutory Staff.

22. The eighth factor is the amount of civil penalty necessary to deter future violations. The Respondent is a very small utility and the \$100 payment represents a meaningful deterrent to future violations.

Date: June 23, 2010

Date: July 5, 2010

Shane Rooney  
Shane M. Rooney  
Assistant Counsel

Florence Miller  
Florence Miller  
Owner and Operator  
Rockroad Trucking, LLC

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