



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

IN REPLY PLEASE
REFER TO OUR FILE
C-2010-2113563
C-2010-2123058
C-2010-2116414

January 21, 2011

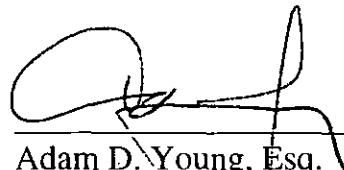
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Pa. Public Utility Commission Law Bureau Prosecutory Staff v.
Germantown Cab Company, Inc. Docket Nos. C-2010-2113563; C-
2010-2123058; C-2010-2116414**

Dear Secretary Chiavetta:

Enclosed for filing are an original and three (3) copies of a Settlement Agreement between the parties in the above-referenced matters. Law Bureau Prosecutory Staff is requesting that this settlement be forwarded to the Office of Special Assistants. Thank you for your cooperation in this matter.

Very truly yours,


Adam D. Young, Esq.
Prosecutory Staff

RECEIVED
2011 JAN 21 PM 12:54
PA PUC
SECRETARY'S BUREAU

Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF TRANSPORTATION AND SAFETY	:	
	:	
	:	
v.	:	Docket Nos.
	:	C-2010-2113563
	:	C-2010-2123058
GERMANTOWN CAB COMPANY	:	C-2010-2116414

SETTLEMENT AGREEMENT

THIS AGREEMENT is by the Pennsylvania Public Utility Commission Bureau of Transportation and Safety (“BTS”), by and through Assistant Counsel Adam D. Young of the Law Bureau, and Germantown Cab Company, Respondent (“Respondent”), in the above-captioned proceeding. In pursuance of this Agreement, the BTS 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 Transportation and Safety, P.O. Box 3265, Harrisburg, PA 17105-3265, and Respondent, Germantown Cab Company, which maintains its principle place of business at 800 Chestnut Street, Philadelphia, PA 19107.

2. On the dates of the violations alleged in these complaints, Respondent held a certificate of public convenience issued by this Commission. Respondent was issued a

certificate of public convenience on September 5, 1996 for taxi authority and on September 18, 2009 for paratransit authority at Application Docket No. A-00110733.

3. Regarding Docket Number C-2010-2113563, it is alleged that on May 4, 2009, a Bureau of Transportation and Safety enforcement officer inspected a 2004 Ford taxicab bearing Pennsylvania License No. TX44000, and found consumer info decals and PUC numbers missing. The Complaint sought a penalty of \$50.

4. Regarding Docket Number C-2010-2123058, it is alleged that on July 17, 2009, a Bureau of Transportation and Safety enforcement officer conducted a follow-up interview with Mr. Tony Gillard (Respondent's Manager) in reference to drivers license records. The enforcement officer found that Respondent allowed five (5) of its drivers to operate at various times while having suspended driving privileges. The Complaint sought a penalty of \$1600.

5. Regarding Docket Number C-2010-2116414, it is alleged that on June 18, 2009, a Bureau of Transportation and Safety enforcement officer inspected several of Respondent's taxicabs and found: (1) an unsecured battery; (2) an inoperative meter; (3) two improperly calibrated meters; (4) missing Commission-issued complaint decal; (5) missing PUC numbers; (6) inoperative turn signal; (7) no posted tariff; (8) and inoperative headlights. The Complaint sought a total penalty of \$2950.

6. Pursuant to its enforcement responsibilities, BTS initiated the above-captioned complaints against Respondent seeking the civil penalties aforementioned.

7. Respondent filed Answers to each of the Complaints denying the allegations and averring lack of information sufficient to form a belief as to the truth of the allegations.

II. Settlement Terms

9. 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 to pay in full, the civil penalties requested in dockets C-2010-2113563 and C-2010-2123058 (\$50 and \$1600 respectively). With regards to C-2010-2116414, Respondent agrees to pay a reduced civil penalty in the amount of \$1000.
- C. Respondent agrees to 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.

33. In consideration of Respondent's payment of the civil penalties as specified herein, Prosecutory Staff agrees to forbear from prosecuting any formal complaint

relating to Respondent's conduct as described in this Settlement Agreement. Nothing contained in this Agreement shall affect the Commission's authority to receive and resolve any formal or informal complaints filed by any affected party with respect to the incident, except that no further civil penalties may be imposed by the Commission for any actions identified herein.

V. Statement in Support of Settlement in Compliance with 52 Pa. Code § 69.1201 and *Rosi v. Bell Atlantic Pennsylvania, Inc.*, 2000 Pa. PUC Lexis 5, C-00992409 (Order entered Feb. 10, 2000)

34. The parties acknowledge that approval of this Settlement Agreement meets the standards set forth in the Commission's policy statement at 52 Pa. Code § 69.1201 and its decision in *Rosi v. Bell Atlantic Pennsylvania, Inc.*, 2000 Pa. PUC Lexis 5, C-00992409 (Order entered Feb. 10, 2000)

35. 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).

36. 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).

37. The first factor considered in this case was whether Respondent’s alleged acts and/or omissions amounted to willful fraud or misrepresentation, or were merely administrative or technical errors. Among the three complaints, many of the violations can easily be categorized as administrative/technical errors. Violations such as the missing decals and PUC numbers, missing tariff postings, inoperative headlights and turn lamps, and an unsecured battery. Other violations, such as inoperative meters, improperly calibrated meters, and drivers operating on suspended licenses, while not amounting to willful fraud or misrepresentation, could be categorized as something more than administrative or technical oversights.

38. The second factor considered in this case was whether the resulting consequences of Respondent’s alleged omissions were of a serious nature. In this case, the results of Respondent’s alleged conduct were not of a serious nature.

39. 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. Insofar as this factor is considered, Respondent's actions clearly were negligent.

40. The fourth standard in the Commission's Policy Statement is 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. Respondent will work with a compliance specialist from BTS to ensure future compliance with Commission regulations.

41. The fifth standard in the Policy Statement deals with the number of customers affected and the duration of the violation. Many of these violations did not affect Respondent's customers. The violations for inoperative and improperly calibrated meters *may* have affected one or more customers. The Complaint, however, identified no customers in particular, and sought no reimbursement for any customers. No complaints were filed with regard to the amount charged, if any, for service provided with a faulty meter. As such, we cannot assume any customers were affected.

42. The Policy Statement's sixth standard is a consideration of the compliance history of the entity. Respondent's compliance history is not out of character for a taxicab company of its size. Respondent has had several formal complaints in the past, most for violations similar to those found in these cases.

43. The seventh standard in the Policy Statement is whether the regulated entity cooperated with the Commission. Respondent has cooperated throughout all phases of this proceeding.

44. 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 Two Thousand Six Hundred Fifty Dollars (\$2650) is sufficient to deter Respondent from committing any violations in the future.

45. The ninth standard examines past Commission decisions in similar situations. These cases present unique fact situations, but Staff is confident that when all relevant factors are taken into account, this settlement consistent with past Commission decisions, and with decisions in litigated matters from the Office of Administrative Law Judge. Since this is a settled matter, however, it should be considered on its own merits, factoring in the financial situation and lack of technical experience of Respondent.

46. 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.

47. Both parties' efforts have resulted in a fair and equitable settlement that is in the public interest. The Commission has consistently encouraged settlements to avoid the cost, expense and time of litigation. The parties submit that the Settlement Agreement is in the public interest because it effectively addresses the issues set forth in the Complaint and avoids the time and expense of litigation, which entails hearings,

filings of briefs, exceptions, reply exceptions, and possible appeals. Respondent has agreed to pay a fair and equitable penalty for its conduct in these cases, and will make all efforts to comply with the Commission's regulations in the future.

48. Therefore, the parties believe this Settlement Agreement meets the standards set forth in the Commission's policy statement at 52 Pa. Code § 69.1201 and its decision in *Rosi v. Bell Atlantic Pennsylvania, Inc.*, 2000 Pa. PUC Lexis 5, C-00992409 (Order entered Feb. 10, 2000).

49. 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.

50. None of the provisions of the Settlement Agreement or statements herein shall be considered an admission of any fact or culpability. The Parties acknowledge 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.

51. 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.

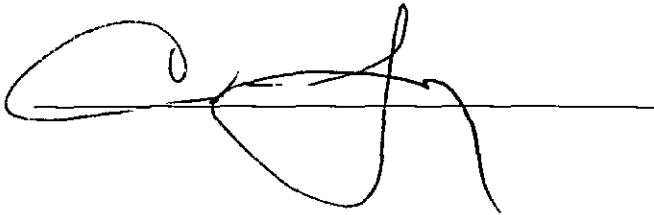
52. This Settlement Agreement is conditioned upon the Commission's approval without modification.

53. 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, the Bureau of Transportation and Safety Prosecutory Staff and Respondent respectfully request that the Pennsylvania Public Utility Commission adopt an order approving the terms of the Settlement Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this the 21st day of January 2010.

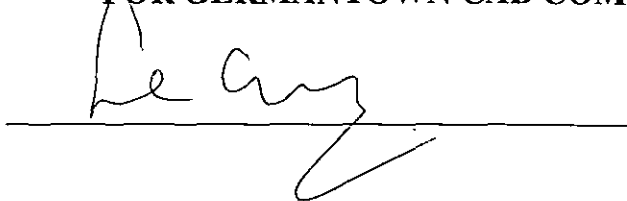
FOR THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:



ASSISTANT Counsel
Title

1-21-11
Date

FOR GERMANTOWN CAB COMPANY:



ATTORNEY AT LAW
Title

1-13-11
Date