



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

IN REPLY PLEASE
REFER TO OUR FILE

February 1, 2011

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. Paul's Cab Service, Inc.
Docket No. C-2010-2206738

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 check in the amount of the agreed-upon civil penalty, or fifty dollars (\$50.00).

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
Robert Bingaman
Carl Hovenstine

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PENNSYLVANIA PUBLIC UTILITY
COMMISSION, BUREAU OF
TRANSPORTATION AND SAFETY

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PA PUC
SECRETARY'S BUREAU

Docket No. C-2010-2206738

v.

PAUL'S CAB SERVICE, INC.

SETTLEMENT AGREEMENT

THIS AGREEMENT is by the Pennsylvania Public Utility Commission's (Commission) Law Bureau, through Assistant Counsel Stephanie M. Wimer, representing the Commission's Bureau of Transportation and Safety (BTS), and Paul's Cab Service, Inc. (Respondent), in the above-captioned proceeding. Pursuant to this Agreement, the Law Bureau and Respondent stipulate as follows:

I. Background and Summary of Proceedings

1. The parties to this Settlement Agreement are BTS, represented by the Law Bureau, P.O. Box 3265, Harrisburg, PA 17105-3265, and Respondent, Paul's Cab Service, who maintains a principal place of business at 735 Market Street, Sunbury, PA 17801.

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 March 31, 2008, at Application Docket No. A-00119340.

3. Pursuant to its enforcement responsibilities, BTS initiated the above-captioned Complaint against Respondent on November 22, 2010. The Complaint alleged that Respondent violated 52 Pa. Code § 29.314(c) for its failure to provide the Commission with a current vehicle list. BTS requested a civil penalty of \$250.00 for this violation.

4. On November 29, 2010, Respondent filed an Answer to the Complaint. Respondent admitted that it failed to provide the Commission with a current vehicle list between December 1 and December 31, 2009. Respondent attached to its Answer a copy of its current vehicle list and requested that the \$250.00 civil penalty be waived.

5. The parties conducted informal discovery. Respondent maintained that it did not receive notice that it was obligated to provide the Commission with a vehicle list between December 1 and December 31, 2009. Further, Respondent asserted that it provided a BTS enforcement officer with copies of current vehicle lists during the two inspections of its vehicles in 2009. Respondent also noted that this offense was its first for this type of violation.

II. Settlement Terms

6. The Law Bureau, representing BTS, and Respondent, intending to be legally bound and for consideration given, desire to conclude this litigation and agree to stipulate to the following terms:

- A. In recognition of the cost of further litigation, the time and expense of holding a hearing, and 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 a current list of its vehicles was not filed with the Commission between December 1 and December 31, 2009, and that this violation was unintentional. Respondent, therefore, agrees to pay a civil penalty in the amount of fifty dollars (\$50.00) 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. Statement in Support of Settlement Agreement

7. 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).

8. 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). 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.

9. The parties further assert that approval of this Settlement is consistent with the Commission's Policy Statement regarding factors and standards for evaluating litigated and settled proceedings at 52 Pa. Code § 69.101.¹ Under this Policy Statement, while many of the same factors and standards may still be considered in both litigated and settled cases, the Commission specifically recognized that 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). The ten factors of the Policy Statement, as applied to this case, are as follows:

10. The first factor to be considered under the Policy Statement is whether Respondent's actions amounted to willful fraud or misrepresentation, or were merely administrative or technical errors. 52 Pa. Code § 69.1201(c)(1). Respondent's actions did not rise to the level of willful fraud or misrepresentation. Respondent maintains that it was unaware that it had to file a vehicle list with the Commission between December 1 and December 31 of each year.

11. The second factor to be considered under the Policy Statement is whether the resulting consequences of Respondent's actions were of a serious nature. 52 Pa. Code

¹ This Policy Statement became effective upon publication in the Pennsylvania Bulletin on December 22, 2007, at 37 Pa. Bull. 6755.

§ 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, there were no serious consequences at issue.

12. The third factor to be considered under the Policy Statement is whether Respondent's conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). Respondent's failure to provide the Commission with a current vehicle list was unintentional.

13. The fourth factor to be considered under the Policy Statement is whether Respondent has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Respondent is now aware of the requirement to file vehicle lists with the Commission between December 1 and December 31 of each year and has agreed to comply with this requirement in the future.

14. The fifth factor to be considered under the Policy Statement relates to the number of customers affected by Respondent's actions and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). Upon receipt of the Complaint, Respondent immediately filed a vehicle list with the Commission. No customers were adversely affected by Respondent's violation.

15. The sixth factor to be considered under the Policy Statement relates to Respondent's compliance history. 52 Pa. Code § 69.1201(c)(6). Respondent's compliance history has been satisfactory. This Complaint is the first to allege that Respondent failed to file its vehicle list with the Commission. Further, Respondent's last violation occurred in 2006 in which a Complaint was issued alleging that Respondent

failed to maintain its vehicle in a clean and sanitary condition, pursuant to 52 Pa. Code § 29.403(2). The Complaint also alleged that Respondent failed to have its rear tailgate door operative, pursuant to 52 Pa. Code § 29.402(2) and 67 Pa. Code 175.77(f).

Respondent paid a \$150.00 civil penalty for these violations.

16. The seventh factor to be considered under the Policy Statement relates to whether Respondent cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). Respondent fully cooperated with Prosecutory Staff, returning all phone calls promptly and answering all questions completely.

17. The eighth factor to be considered under the Policy Statement is the amount of the civil penalty or fine necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). "The size of the utility may be considered to determine an appropriate penalty amount." *Id.* The Law Bureau submits that Respondent's payment of the agreed upon civil penalty of fifty dollars (\$50.00) constitutes a reasonable and appropriate resolution of the merits of the proceeding and is intended to secure future compliance.

18. The ninth factor to be considered under the Policy Statement relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). This Agreement is consistent with prior decisions and is appropriate based upon the circumstances of this case.

19. The tenth factor in the Policy Statement examines other relevant factors. 52 Pa. Code § 69.1201(c)(10). In this case, the civil penalty would arise from a settlement reached prior to a hearing and will save the parties the time and expense of holding a hearing.

20. The Respondent and BTS, represented by the Law Bureau, 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. Therefore, the parties request that the Commission approve this Settlement Agreement as in the public interest. This Agreement is expressly conditioned upon the Commission's approval under applicable public interest standards without modification, addition, or deletion of any term or condition herein. If the Commission fails to approve this Agreement, by tentative or final order, or any of the terms or conditions set forth herein, without modification, addition, or deletion, then either Party may elect to withdraw from this Agreement by filing a response to the tentative or final order within fifteen (15) days of the date that the tentative or final order is entered. None of the provisions of this Agreement shall be considered binding upon the Parties if such a response is filed.

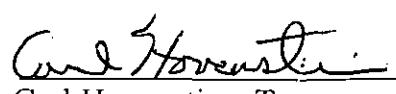
WHEREFORE, because the Agreement addresses and attempts to remedy all allegations raised in this matter, BTS, the Law Bureau and Respondent request that the Commission adopt an order approving the terms of this Settlement Agreement as being in the public interest.

Date: 2/1/2011



Stephanie M. Wimer
Law Bureau
Pennsylvania Public Utility Commission

Date: 1/28/11



Carl Hovenstine, Treasurer
Paul's Cab Service, Inc.

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