



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

IN REPLY PLEASE
REFER TO OUR FILE

Bp8# 2146181

March 7, 2011

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

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SECRETARY'S BUREAU

**RE: Pennsylvania Public Utility Commission Bureau of Transportation
& Safety v. Yellow Cab Company of Pittsburgh;
Docket No. C-2010-2146181**

Dear Ms. Chiavetta:

Enclosed for filing are the original and three copies of the Settlement Agreement on behalf of the Bureau of Transportation & Safety in the above-captioned proceeding. As evidence by the enclosed certificate of service, all parties have been served as indicated.

If you have any further questions regarding this matter, please contact me at 717-783-3459.

Sincerely,

Terrence J. Buda
Assistant Counsel

Enclosures

cc: As per Certificate of Service

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, :
Bureau of Transportation & Safety, :

Complainant : :

v. : Docket No. C-2010-2146181

Yellow Cab Company of Pittsburgh, : :

Respondent : :

SETTLEMENT AGREEMENT

THIS AGREEMENT is between the Pennsylvania Public Utility Commission's Law Bureau Prosecutory Staff (Prosecutory Staff), representing the Commission's Bureau of Transportation and Safety (BTS), through Assistant Counsel Terrence J. Buda, and Yellow Cab Company of Pittsburgh (Respondent), in the above-captioned proceeding. In pursuance of this Agreement, Prosecutory Staff, representing BTS, and the 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 the Respondent, Yellow Cab Company of Pittsburgh, which maintains its principal place of business at 1101 Beaver Avenue, Pittsburgh, PA 15233.

2. During the period of the violations alleged in this complaint, the Respondent held a certificate of public convenience issued by this Commission. The Respondent's certificate of public convenience was granted on December 21, 1964, at Application Docket No. A-00049926, F.2, F.3, F.5, and F.6.

3. Pursuant to its enforcement responsibilities, the Commission's BTS initiated the above-captioned complaint against the Respondent on June 8, 2010. The alleged violations detailed in the complaint aver that Respondent committed violations of Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501 as follows:

- That on November 29, 2009, Ms. Jackie Merranko called Respondent at approximately 11:00 p.m. for a taxicab from 400 45th Street, Pittsburgh to 6917 Bishop Street, Pittsburgh. At 11:23 p.m., the request was dispatched again. According to the Respondent's dispatch sheet of November 29, 2009, Ms. Merranko was picked up at 12:02 a.m. and had waited approximately one hour and two minutes for the taxicab.
- That on December 6, 2009, Ms. Merranko called Respondent at approximately 11:15 p.m. for transportation from 4221 Penn Avenue, Pittsburgh to 6917 Bishop Street, Pittsburgh. Respondent's dispatch sheet for December 6, 2009, indicates that the job was re-dispatched at 11:26 p.m. and Ms. Merranko was picked up at 12:06 a.m. Ms. Merranko waited approximately 51 minutes for the taxicab.

4. BTS alleged that Respondent, by failing to maintain safe, adequate, efficient and reasonable service and facilities for the proper safety of its patrons and public, violated Section 1501 of the Public utility Code.

5. The Bureau of Transportation and Safety Prosecutory Staff's proposed civil penalty for each of the violations listed in paragraphs 3 and 4 is \$500.00, for a total penalty of \$1,000.00.

II. Settlement Terms

6. The Respondent and BTS, represented by the Prosecutory Staff, intending to be legally bound, desire to conclude this litigation and agree to stipulate as to the following terms:

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.

a. The Respondent agrees to pay a civil penalty of \$250.00 for each violation, for a total of \$500.00, in settlement of a disputed claim. Respondent's payment of this civil penalty is not an admission of liability.

b. The Respondent agrees to comply with the Public Utility Code and the Commission's regulations and orders in the future and take appropriate steps to continue to ensure future compliance by providing reasonable response times to dispatch requests.

7. The Respondent and BTS, represented by the Prosecutory Staff, believe that this Agreement is in the public interest, and therefore will request that the Commission approve this Settlement Agreement as being 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.

III. Statement in Support of Settlement

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 that are to be applied in determining the amount of civil penalties in slamming cases. The Commission subsequently determined that all violations of the Public Utility Code and Commission regulations 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 complies with the requirements set forth in *Rosi* and that the terms of this 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 § 69.1201.¹ 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 addressed herein.

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). The violations committed by the Respondent here should not be deemed willful fraud or misrepresentation, as the failure to provide reasonable service is more akin to negligent conduct.

11. The second factor to be considered under the policy statement is whether the resulting consequences of the Respondent's actions were of a serious nature. 52 Pa. Code § 69.1201(c)(2). This violation should be not be deemed serious or have lasting consequences since the violation only occurred on two occasions.

12. The third factor to be considered under the policy statement is whether the Respondent's conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). "This

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

factor may only be considered in evaluating litigated cases.” *Id.* Although this is not a litigated case, Respondent’s conduct in this case should be deemed unintentional.

13. The fourth factor to be considered under the policy statement is whether the Respondent has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). The Respondent has agreed to be more attentive in seeing that this violation does not occur in the future, even if there is a high demand for service on certain Sundays.

14. The fifth factor to be considered under the policy statement relates to the number of customers affected by the Respondent’s actions and the duration of its violations. 52 Pa. Code § 69.1201(c)(5). The public was not adversely affected by the Respondent’s failure to provide reasonable service.

15. The sixth factor to be considered under the policy statement relates to the Respondent’s compliance history. 52 Pa. Code § 69.1201(c)(6). The Respondent has a satisfactory compliance history with the Public Utility Code and the Commission’s regulations.

16. The seventh and eighth factors to be considered under the policy statement relate to whether the Respondent cooperated with the Commission’s investigation and the appropriate penalty amount. 52 Pa. Code § 69.1201(c)(7) and (8). The Respondent fully cooperated with the Commission’s staff in this proceeding during settlement discussions. Furthermore, consistent civil penalties are a reliable method for bringing utilities into compliance with the Public Utility Code and Commission regulations. The primary purpose of a fine is to secure future compliance. Prosecutory Staff submits that the

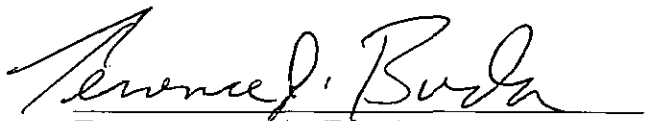
Respondent's payment of the agreed upon \$250.00 civil penalty per violation constitutes a reasonable and appropriate settlement of this proceeding.

17. The ninth factor to be considered under the policy statement relates to past Commission decisions in similar matters. This Agreement is consistent with prior decisions because it is appropriate based upon the circumstances of this case.

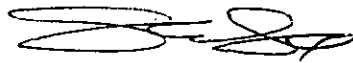
WHEREFORE, because the Agreement addresses and attempts to remedy all allegations raised in this matter, the Law Bureau Prosecutory Staff, on behalf of the Bureau of Transportation and Safety, and the Respondent request that the Commission adopt an order approving the terms of this Agreement as being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

Date: 3/7/2011

Date: 3/3/11



Terrence J. Buda, Esquire
Law Bureau Prosecutory Staff
Pennsylvania Public Utility Commission



James Campolongo, President
Yellow Cab Company of Pittsburgh

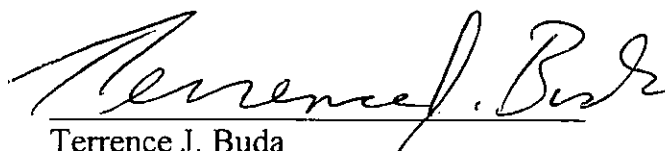
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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing documents in accordance with the requirements of 52 Pa. Code § 1.54 *et seq.* (relating to service by a participant).

Notification by first class mail addressed as follows:

Ray F. Middleman, Esquire
Malone Middleman, P.C.
Northridge Office Plaza Suite 310
117 VIP Drive
Wexford, PA 15090



Terrence J. Buda
Assistant Counsel

P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-5000

Dated: March 7, 2010

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