**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held May 5, 2011

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

Tyrone J. Christy

Wayne E. Gardner

James H. Cawley

|  |  |
| --- | --- |
| Pennsylvania Public Utility Commission,  Bureau of Transportation and Safety | C-2009-2057984 |
| v. |  |
| Rockroad Trucking, LLC |  |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Settlement Agreement (Settlement) between the Commission’s Law Bureau Prosecutory Staff (LBPS), representing the Commission’s Bureau of Transportation and Safety (BTS), and Rockwell Trucking, LLC (Respondent), for the resolution of allegations regarding violations of the Public Utility Code (Code), 66 Pa. C.S. §§ 101, *et* seq., and the Commission’s Regulations, 52 Pa. Code §§ 1.1, *et seq*.

**History of the Proceeding**

On June 14, 2005, the Respondent was issued a Certificate of Public Convenience (Certificate) at Docket No. A-00121582, which authorized it as a common carrier to transport property, excluding household goods in use, between points in Pennsylvania.

By Secretarial Letter (Letter) dated September 19, 2009, the Respondent was advised that its operating authority would be suspended, effective September 22, 2009, if it failed to file proof of liability insurance with the Commission. Proof of insurance was not received by that date.

Pursuant to its enforcement responsibilities, BTS initiated the instant Complaint against the Respondent on November 4, 2009. The Complaint alleged that the Respondent, by failing to maintain proof of liability insurance with the Commission, violated 66 Pa. C.S. § 512, and 52 Pa. Code §§ 32.2(c) and 32.12(a). BTS sought a civil penalty of $250 for the alleged violation.

On November 19, 2009, the Respondent filed an Answer to the Complaint, in which it stated that there was never a lapse in its insurance coverage, and that proof of insurance was filed after receipt of the Complaint.

On August 13, 2010, the Parties filed a Settlement Agreement and urged the Commission to approve the terms of the Settlement as being in the public interest.

**Terms of the Settlement Agreement**

In recognition of the cost of further litigation, the time and expense associated with a hearing, and the merits of the Parties’ respective positions, the Parties agreed to settle the Complaint according to the following terms and conditions:

a. The Respondent agrees that there was a violation of the Public Utility Code and the Commission’s Regulations, by failing to maintain proof of liability insurance on file with the Commission. As a result, the Respondent agrees to pay a civil penalty of $100.

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 ensure future compliance.

**Discussion**

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Commission must review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004). Before addressing the merits of the proposed settlement, however, we must address several preliminary issues.

In response to the Complaint, the Respondent filed correspondence signed by Florence Miller, as Owner and Operator of the Respondent. Our Regulations at 52 Pa. Code § 1.35(b) state that a pleading, submittal or other document filed with the Commission on behalf of a corporation must be signed by an authorized attorney or by an officer of the corporation. Since Ms. Miller is the Owner of the Respondent, a limited liability company, the Answer was properly executed.

The Settlement is executed by an attorney from the LBPS, on behalf of BTS, and by the Owner of the Respondent, on behalf of the Respondent. As stated above, our Regulations provide that a pleading, submittal or, if the entity is a corporation, or in this case, a limited liability company, by an officer of the corporation or limited liability company. 52 Pa. Code § 1.35(b). We find that the Settlement Agreement was properly executed by the Parties.

The Parties assert that the Settlement should be approved for several reasons. In this case, BTS agrees that proof of insurance was filed after the service of the Complaint. The Respondent maintains it believed its insurance had been timely filed. Additionally, the Respondent avers that it never received the September 19, 2009 Letter. The Respondent further avers that a delay in the processing of its business’ name change by the Federal Motor Carrier Safety Administration contributed to the late filing of the required proof of insurance.

After a review of the terms of the Settlement Agreement, we are satisfied that the Agreement is in the public interest. We further find that approval of this Settlement is consistent with the Commission’s Policy Statement at 52 Pa. Code § 69.1201. The Policy Statement sets forth the guidelines we use when determining whether and to what extent a civil penalty is warranted. In this case, application of these guidelines supports approval of the Settlement Agreement as filed.

Initially, we examine whether the conduct and the consequences of the conduct are serious. Based on the facts before us, we are of the opinion that the violation committed by the Respondent should be deemed unintentional. As noted above, the Respondent states it was unaware that its insurance had not been timely filed because it did not receive the September 19, 2009 Letter.

We also review whether the regulated entity has made an effort to modify internal practices and procedures to address the conduct at issue and to prevent similar conduct in the future. In this case, upon receipt of the Complaint, the Respondent contacted BTS and its insurer, to ensure that the required proof of insurance was filed.

We also consider 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.

Another factor we consider is whether the regulated entity cooperated with the Commission’s investigation. LBPS has noted that the Respondent promptly responded to the Complaint and has fully cooperated with Staff in this proceeding.

On the issue of the Respondent’s compliance history, this is the first time that a Complaint was filed against the Respondent for failure to maintain evidence of proof of insurance.

Finally, we consider whether the amount of the proposed civil penalty is sufficient to deter future violations as well as past Commission decisions in similar situations. The size of the utility may also be considered to determine the appropriate penalty amount. As noted above, LBPS has agreed to reduce the proposed civil penalty from $250 to $100. We believe that a $100 civil penalty is sufficient in this case. For the reasons set forth above, we find that the Settlement is in the public interest and merits approval.

We further note that the $100 civil penalty assessed in this case has been remitted by the Respondent.

**Conclusion**

It is the Commission’s policy to promote settlements. 52 Pa. Code § 5.231. The Parties herein have provided the Commission with sufficient information upon which to thoroughly consider the terms of the proposed Settlement. The Settlement effectively addresses the issues that arose during the course of this proceeding and avoids the expense of litigation and the possibility of appeals. The Respondent agrees that it will comply with the Code and the Commission’s Regulations and Orders in the future and take appropriate steps to ensure compliance. Accordingly, we find that the proposed Settlement Agreement between the LBPS and the Respondent is in the public interest and merits approval; **THEREFORE**,

**IT IS ORDERED:**

1. That the Settlement Agreement between the Pennsylvania Public Utility Commission’s Law Bureau Prosecutory Staff and Rockroad Trucking, LLC, filed on August 13, 2010, is approved.

2. That the Complaint at Docket No. C-2009-2057984 is sustained to the extent outlined in this Opinion and Order.

3. That Rockroad Trucking, LLC shall cease and desist from any further violations of the Public Utility Code, 66 Pa. C.S. §§ 101, *et seq*., and the Commission’s Regulations, 52 Pa. Code §§ 1.1, *et seq*.

4. That a copy of this Opinion and Order shall be served on the Bureau of Transportation and Safety.

5. That a copy of this Opinion and Order shall be served on the Financial and Assessment Chief, Office of Administrative Services.

6. That the Secretary shall mark this proceeding closed.

** BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: May 5, 2011

ORDER ENTERED: May 9, 2011