**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held November 10, 2011

Commissioners Present:

 Robert F. Powelson, Chairman

 John F. Coleman, Jr., Vice Chairman

 Wayne E. Gardner

 James H. Cawley

 Pamela A. Witmer

Pennsylvania Public Utility Commission, C-2011-2219166

Bureau of Transportation and Safety

 v.

Canterbury International, Inc.,

d/b/a Two Men and a Truck

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Settlement Agreement (Settlement) entered into between the Commission’s Law Bureau Prosecutory Staff (LBPS), acting on behalf of the Commission’s Bureau of Transportation and Safety (BTS),[[1]](#footnote-1) and Canterbury International, Inc., d/b/a Two Men and a Truck (Respondent) for 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 May 18, 2006, the Respondent was issued a Certificate of Public Convenience (Certificate), at Docket No. A-00121505, to transport household goods in use, between points in Allegheny County. On February 12, 2009, the Commission approved the Respondent’s Application to transport goods in use from Allegheny County to all points in Pennsylvania, and vice versa.

Pursuant to its enforcement responsibilities, BTS filed a Formal Complaint against the Respondent, alleging that the Respondent performed a household goods move from McDonald, Washington County, Pennsylvania, to Conneaut Lake, Crawford County, Pennsylvania, which was not within the Respondent’s certificated authority because the move did not originate or terminate in Allegheny County. BTS alleged that this action violated Section 1102(a)(1)(i) of the Public Utility Code (Code),

66 Pa. C.S. § 1102(a)(1)(i), and sought a civil penalty of $500 for the violation.

 The Complaint, which was served on the Respondent on August 17, 2011, advised the Respondent that it must file an Answer to the Complaint within twenty days of the date of service of the Complaint. If an Answer was not filed, BTS would request the Commission to issue an Order which imposed the civil penalty.

In response to the Complaint, the Respondent filed an Answer on

August 22, 2011. In its Answer, the Respondent admitted that it performed the move which was outside of its certificated authority, but argued that the violation was inadvertent.

 On October 3, 2011, the Parties filed a Settlement Agreement (Settlement) and urged the Commission to approve the terms of the Settlement as being in the public interest, because the Settlement addresses and attempts to remedy all allegations raised in the Complaint. Settlement at ¶ 23.

**Settlement 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 entered into negotiations and agreed to settle the Complaint according to the terms and conditions of the Settlement. As part of the Settlement, the Respondent admitted that it transported household goods in use outside of its certificated territory and agreed to pay a civil penalty of $250 within twenty days of entry of a final Commission Order in this matter. The Respondent also agreed to comply with the Code and the Commission’s Regulations and orders in the future and to take appropriate steps to alleviate future misconduct and/or noncompliance. Settlement at ¶ 8.

**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.

We note that, in response to the Complaint, the Respondent filed correspondence signed by Raymond J. Coll. Mr. Coll is the Vice President of the Respondent. The Settlement is executed by an attorney from LBPS and by the Vice President of the Respondent, on behalf 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 Mr. Coll is the Vice President of the Respondent, we find that both the Answer and Settlement Agreement were properly filed and executed by the Parties.

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.

The first factor to be considered under the *Policy Statement* is whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or was merely administrative or technical errors. 52 Pa. Code § 69.1201(c)(1). We find that the Respondent’s action in this matter were not willful. The Respondent inadvertently performed a move that originated in Washington County because its computer system did not recognize that a portion of the shipper’s zip code was outside of Allegheny County. Additionally, the shipper’s residence was located just over the border of Allegheny County and the Respondent did not recognize that it was in Washington County. Settlement at ¶ 12.

The second factor found in the *Policy Statement* is an examination of whether the resulting consequences of the conduct at issue were of a serious nature, such as personal injury or property damage. 52 Pa. Code § 69.1201(c)(2). In this case, the Respondent’s violation did not have lasting consequences. Further, no one was physically harmed and no property was damaged. Settlement at ¶ 13.

The third factor in the *Policy Statement*, whether the conduct at issue was intentional or negligent, does not apply to the present case because this proceeding is a settled matter. 52 Pa. Code § 69.1201(c)(3). Nonetheless, we find that the Respondent’s conduct was unintentional.

The fourth standard in the *Policy Statement* is 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. 52 Pa. Code § 69.1201(c)(4). We note that the Respondent has filed an Application with the Commission to expand its transport area for household goods in use to cover Washington County, as well as other counties. Should the Commission reject its Application, the Respondent agrees to be more prudent in the future in ensuring that it is performing household goods moves within its certificated territory. Settlement at ¶ 15.

The fifth standard in the *Policy Statement* deals with the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). The duration of the Respondent’s violation was brief. It transported household goods in use outside of its certificated territory on one occasion, for one shipper. Additionally, the individual customer did not complain about the Respondent’s service. Settlement at ¶ 16.

The sixth standard is a consideration of the Respondent’s compliance history. 52 Pa. Code § 69.1201(c)(6). We note that the Respondent had one prior violation. On October 31, 2006, BTS initiated a Complaint against the Respondent, at Docket No. A-00121505C601, for its failure to include its Certificate number in an advertisement in a newspaper, as well as on its website. The Respondent paid a $50 civil penalty for this violation. Settlement at ¶ 17.

The seventh standard in the *Policy Statement* is whether the regulated entity cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). In this case, the Parties represent that the Respondent fully cooperated with counsel for LBPS, returning all phone calls promptly and answering all questions completely.

Settlement at ¶ 18.

The eighth standard in the *Policy Statement* is a consideration of the amount of the civil penalty necessary to deter future violations.

52 Pa. Code § 69.1201(c)(8). The Parties submit that a civil penalty in the amount of $250 constitutes a reasonable and appropriate resolution of the issues raised in this proceeding. Settlement at ¶ 19.

The ninth standard in the *Policy Statement* examines past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). This Agreement is consistent with prior decisions and is appropriate based upon the circumstances of this case. Settlement at ¶ 20.

The tenth standard 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.

Finally, we note that the Respondent has remitted the $250 civil penalty.

**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 has taken steps to ensure future compliance. Accordingly, we find that the proposed Settlement Agreement between LBPS and the Respondent is in the public interest and merits approval; **THEREFORE**,

 **IT IS ORDERED:**

 1. That the Settlement Agreement between the Commission’s Law Bureau Prosecutory Staff and Canterbury International, Inc., d/b/a Two Men and a Truck, filed October 3, 2011, is approved.

2. That the Complaint at Docket No. C-2011-2219166 is sustained to the extent outlined in this Opinion and Order.

3. That Canterbury International, Inc., d/b/a Two Men and a Truck 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*.

5. That a copy of this Opinion and Order shall be served on the Bureau of Investigation and Enforcement.

6. That a copy of this Opinion and Order shall be served on the Financial and Assessment Chief, Bureau of Administration.

7. That the Secretary shall mark these proceedings closed.



 **BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: November 10, 2011

ORDER ENTERED: November 10, 2011

1. By Order entered August 11, 2011, at Docket No. M-2008-2071852, the Commission reorganized this function of BTS into the new Bureau of Investigation and Enforcement. For purposes of consistency, this Opinion and Order shall use the term “BTS” throughout. [↑](#footnote-ref-1)