



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

IN REPLY PLEASE
REFER TO OUR FILE
C-2011-2213374

November 22, 2011

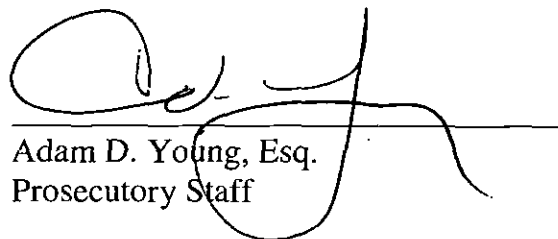
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pa. PUC v. Harrisburg City Cab, Inc., Docket No. C-2011-2213374

Dear Secretary Chiavetta:

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Adam D. Young", is written over a horizontal line. The signature is fluid and cursive, with a long, sweeping tail that extends to the right and loops back under the line.

Adam D. Young, Esq.
Prosecutory Staff

cc: Hon. David A. Salapa

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PA PUC
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION, BUREAU OF
TRANSPORTATION AND SAFETY**

v.

HARRISBURG CITY CAB, INC.

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**Docket No.
C-2011-2213374**

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PA PUG BUREAU
SECRETARY'S BUREAU**

SETTLEMENT AGREEMENT

THIS AGREEMENT is by the Pennsylvania Public Utility Commission's ("Commission") Bureau of Investigations and Enforcement Prosecutory Staff ("BIE" or "Staff"), through its prosecutor Adam D. Young, and Harrisburg City Cab, Inc., Respondent ("Respondent"), in the above-captioned proceeding. In pursuance of this Agreement, the BIE 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 Investigations and Enforcement Prosecutory Staff (Prosecutory Staff), P.O. Box 3265, Harrisburg, PA 17105-3265, and Respondent, Harrisburg City Cab, Inc., which maintains its principle place of business at 1601 Paxton Street, Harrisburg, PA 17104.

2. On the date of the violation alleged in this complaint, Respondent held a certificate of public convenience issued by this Commission. Respondent was issued a certificate of public convenience on October 12, 2007 at Application Docket No. A-00122208.

3. Pursuant to its enforcement responsibilities, the former Bureau of transportation and Safety (BTS) initiated the above-captioned complaint against Respondent on April 27, 2011 seeking a \$10,000 (\$500 per day to the statutory maximum) civil penalty for failure to furnish documents to the Commission's enforcement officer in aid of inspection, examination, Inquiry or investigation, pursuant to 66 Pa. C.S. § 505.

4. The Complaint alleges that on January 31, 2011, during an investigation of a consumer complaint, Enforcement Officer Timothy Troxell requested Respondent's driver's logs for December 2, 2010 for Steven Weist. Respondent's President and sole shareholder, Lamont Palmer, provided Officer Troxell with dispatch logs for that day and stated that he would try to locate the driver's logs.

5. Officer Troxell attempted to contact Mr. Palmer on February 4th and 7th, 2011, leaving a message. On February 8, 2011, Officer Troxell succeeded in contacting Mr. Palmer who stated that he would have the driver's log ready for pickup on February 9th.

6. On February 9, 2011, Officer Troxell went to Respondent's place of business, but the requested log sheet was not available. At 2:00pm the same day Officer Troxell checked again, but the driver's log still was not available.

7. On February 15, 2011, a certified letter was sent to Respondent stating that failure to cooperate with an Officer's investigation by not providing the documents is a violation which will subject Respondent to a civil penalty of \$500 for each day that Respondent fails to provide the document. The letter was received on March 9, 2011.

8. On May 6, 2011 Respondent filed an Answer to the April 27, 2010 Complaint, in the form of a letter, which contests the allegations in the Complaint and further alleges that Respondent did not have the driver's log sheet for December 2, 2010. Upon learning of the nature of the investigation, Mr. Palmer immediately terminated Steven Weist's employment. Respondent avers that due to his dismissal, Mr. Weist didn't turn in any additional log sheets, and therefore, Respondent couldn't provide a document it didn't have.

9. BTS alleges that Respondent, in performing the act described above, violated 66 Pa. C.S. § 505 for failure to furnish documents to the Commission's enforcement officer in aid of inspection, examination, inquiry or investigation

8. The Bureau requested that the Commission fine Respondent a total of \$10,000 (\$500 per day to the statutory maximum) as a result of this violation.

II. Settlement Terms

9. 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. Prosecutory 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. Respondent agrees to pay a civil penalty in the amount of one-thousand dollars (\$1000.00).
- B. Respondent agrees to modify its internal operating procedures to ensure that driver log sheets are collected from all drivers on no less than a weekly basis, and retained in accordance with 52 Pa. Code § 29.313(c).
- C. Respondent agrees that he 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.

10. In consideration of Respondent's payment of a civil penalty 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)

11. 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)

12. 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).

13. 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).

14. 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. In this case, Respondent did not have the driver’s trip log for the day of the incident. On the day Officer Troxell first went to Respondent’s place of business to investigate the customer complaint, Mr. Palmer drove to the airport to retrieve the dispatch logs because he was unable to locate the driver’s logs at that time. Mr. Palmer made several attempts to obtain the driver log for that day, but was unable to do so, because the driver involved in the incident on December 2, 2010 had been fired the day Respondent learned of the infraction. In this case, there is no manifest intent to ignore a Commission directive; rather the request was impossible to comply with. While this act does not rise to the level of serious misconduct, it evidences a concern about Respondent’s timely collection of driver log sheets, which will be remedied by this agreement.

15. The second factor considered in this case was whether the resulting consequences of Respondent’s alleged omissions were of a serious nature. Under normal circumstances, refusing to cooperate in a Commission investigation is a serious offense, however the facts of this case indicate less a refusal to cooperate and more an inability to cooperate. Respondent made all efforts to obtain the driver’s log sheet for December 2, 2010, but was unable to do so after the driver had been fired.

16. 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, it does not appear that Respondent's actions were intentional.

17. 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 has agreed to modify its internal procedures to ensure that driver trip logs are collected from every driver on no less than a weekly basis, and that these logs are retained in accordance with 51 Pa. Code § 29.313(c).

18. The fifth standard in the Policy Statement deals with the number of customers affected and the duration of the violation. The incident necessitating the investigation involved "flat-rating" a single customer. In the course of this investigation that it was discovered that Respondent did not have the driver log sheets. Immediately upon learning of the flat-rating incident, Respondent terminated the driver's employment. The driver then became uncooperative and refused to turn over any more log sheets. Requiring Respondent to collect driver log sheets on no less than a weekly basis from all drivers will help eliminate the possibility of such an incident reoccurring.

19. The Policy Statement's sixth standard is a consideration of the compliance history of the entity. Respondent has been operating since 2007 and has had numerous violations for various offenses. However the offense at issue in this case alleges a refusal

to cooperate with a Commission investigation. Staff does not believe that the facts of this case warrant a statutory maximum fine of \$10,000, where the document requested could not be obtained or turned over to the enforcement officer. Had Respondent been able to turn over the driver's log sheets, the violations in a subsequent Complaint would have been a tariff violation and possibly a log sheet violation as well. Respondent made all reasonable attempts to obtain the driver's log sheets, and even personally made the trip to the airport to obtain the dispatch sheets. Respondent immediately terminated the driver's employment upon learning of the offense. Staff believes that the civil penalty agreed to in this settlement, as well as the remedial action requested pertaining to the internal operating procedures is sufficient to deter any future violations of this kind.

20. 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.

21. 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 One Thousand Dollars (\$1000) is sufficient to deter Respondent from committing such violations in the future. Moreover, subsequent violations of this nature should be a non-issue when Respondent begins implementing its modified procedures and obtains driver's log sheets on a weekly basis.

22. The ninth standard examines past Commission decisions in similar situations. When all relevant factors are taken into account, this settlement is not

inconsistent with past Commission decisions, nor is it inconsistent with decisions in litigated matters from the Office of Administrative Law Judge. Moreover, since this is a settled matter, it should be considered on its own merits.

23. 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.

24. 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 civil penalty for its conduct in this case, and will make all efforts to comply with the Commission's regulations in the future.

25. Therefore, LBPS believes 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).

26. 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.

27. None of the provisions of the Settlement Agreement or statements herein shall be considered an admission of any fact or culpability. Prosecutory Staff acknowledges 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.

28. 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.

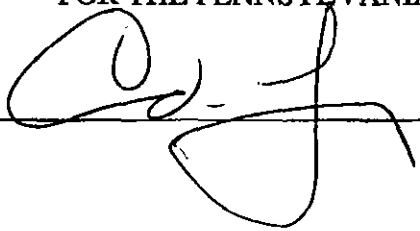
29. This Settlement Agreement is conditioned upon the Commission's approval without modification. The parties agree that Prosecutory Staff may prepare and submit a tentative order for the Commission's consideration pursuant to 52 Pa. Code § 3.113.

30. 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 Investigation and Enforcement Prosecutory Staff and Harrisburg City Cab, Inc., respectfully request that the Pennsylvania Public Utility Commission adopt a tentative order approving the terms of the Settlement Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this the 22 day of November 2011.

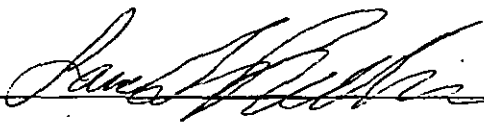
FOR THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:



 Title Prosecutor

 Date 11/22/2011

FOR HARRISBURG CITY CAB, INC.



 Title owner

 Date 11/22/11

11/22/11
 11/22/11
 11/22/11