



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

IN REPLY PLEASE
REFER TO OUR FILE

September 27, 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. Heather R. Galvin
Docket No. C-2010-2121952

Dear Secretary Chiavetta:

Enclosed please find an original and three copies of the Settlement Agreement in support thereof to be filed in the above-captioned proceeding.

Very truly yours,

A handwritten signature in black ink, appearing to read "Elizabeth Lion Januzzi", written in a cursive style.

Elizabeth Lion Januzzi
Assistant Counsel

ELJ/lmm

Enclosures

cc: Kandace Melillo, ALJ
kmelillo@pa.gov

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Pennsylvania Public Utility Commission, :
Bureau of Transportation & Safety; :
k/n/a Bureau of Investigation and :
Enforcement :
Complainant :
 :
v. :
Heather R. Galvin :
Respondent :
 :
 :

Docket No. C-2010-2121952

SETTLEMENT AGREEMENT

THIS AGREEMENT is by the Pennsylvania Public Utility Commission's Law Bureau (Law Bureau), representing the Commission's Bureau of Transportation and Safety (BTS), now known as the Bureau of Investigation and Enforcement (BI&E), through Assistant Counsel Elizabeth Lion Januzzi and Heather Galvin, on behalf of herself, (Respondent), in the above-captioned proceeding. In pursuance of this Agreement, the Law Bureau, representing BI&E, and Respondent Galvin stipulate as follows:

I. Background and Summary of Proceedings

1. The parties to this Settlement Agreement are BI&E, represented by the Law Bureau, P.O. Box 3265, Harrisburg, PA 17105-3265, and Respondent, Heather Galvin, who maintains her place of residence at : 172 Snake Lane, Kinzers, PA 17535.

2. On the date of the violations alleged in this complaint with respect to the underlying complaint at Docket No. C-2010-2121952, Respondent did not hold a certificate of public convenience issued by this Commission for the service rendered, that is, transporting passengers.

3. Pursuant to its enforcement responsibilities, the Commission's Bureau of Transportation and Safety (BTS) initiated a complaint at this docket against Respondent. Respondent filed an Answer to the complaint by letter dated February 22, 2010.

4. BTS alleged that Respondent had on several occasions provided transportation of passengers for compensation while not then holding a Certificate of Public Convenience issued by the Commission in violation of 66 Pa. C.S. § 1102(a)(1)(i). The complaint sought a \$1,000 civil penalty and that Respondent cease and desist from unauthorized service.

5. On August 11, 2011, the Commission reorganized its investigation and enforcement responsibilities into the Bureau of Investigation and Enforcement (BI&E), which is now a successor to BTS in this matter. For the duration of this matter, counsel from the Law Bureau will represent BI&E.

II. Settlement Terms

6. Ms. Galvin agrees that this settlement will be binding upon her and that the term "Respondent" as used hereinafter applies to her.

7. Respondent and BI&E, represented by the Law Bureau, intending to be legally bound, desire to conclude this litigation and agree to stipulate as 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 captioned herein and the underlying complaints referenced herein according to the terms and conditions set forth herein.
- b. Respondent, without admission of any violation 66 Pa. C.S. § 1101, as detailed in the complaint at this docket agrees to pay a civil penalty of \$100.00. This civil penalty will be due thirty (30) days after the Commission enters an order approving this settlement.
- c. Respondent agrees to comply with the Public Utility Code and will not provide transportation for compensation without authority again in the future.
- d. BI&E will accept the payment of \$100 in response to the complaint at this docket in full settlement of the underlying complaint.

8. Respondent and BI&E, represented by the Law Bureau, believe that this Agreement is in the public interest, and therefore will 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.

III. Statement in Support of Settlement

9. 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).

10. 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). BI&E 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.

11. 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 as follows:

12. 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 Respondent in this case should not be deemed willful fraud or misrepresentation.

13. 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 § 69.1201(c)(2). Respondent's act of providing service without the specific authority, standing alone, does not constitute a serious violation. Moreover, Respondent has assured the Commission that a violation of this nature will never happen again.

14. 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). "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.* The violation in this case should be deemed unintentional.

15. 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 has assured the Commission that it has not and will not commit violations of this nature again. Respondent is also aware that violations of this nature in the future may preclude the Law Bureau or other prosecutor staff from recommending to the Commission in either litigated cases or formal settlement agreements that civil penalties or other recourse requested by BI&E in any future complaints against Respondent be moderated.

16. 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 its violations. 52 Pa. Code § 69.1201(c)(5). Respondent’s transportation of parties for compensation was isolated to the circumstances in this case.


17. The sixth factor to be considered under the policy statement relates to Respondent’s compliance history. 52 Pa. Code § 69.1201(c)(6). Respondent has had no prior history of alleged violations of the Public Utility Code and the Commission’s regulations.

18. The seventh factor to be considered under the policy statement relates to whether Respondent cooperated with the Commission. 52 Pa. Code § 69.1201(c)(7). Respondent fully cooperated with the Commission’s staff in this proceeding both during the investigation stage and during settlement discussions. 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 civil penalty is to secure future compliance. The Law Bureau submits that Respondent's payment of the agreed upon \$100.00 civil penalty constitutes a reasonable and appropriate resolution of the merits of this proceeding.


19. 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, Bureau of Investigation and Enforcement, and Respondent request that the Administrative Law Judge issue an order recommending that the Commission enter an order approving the terms of this Agreement as being in the public interest.



Elizabeth Lion Januzzi
Attorney I.D.: 69487
Assistant Counsel
Pennsylvania Public Utility Commission
On behalf of Bureau of Investigation and
Enforcement, f/k/a
Bureau of Transportation and Safety

Date: 9-22-2011



Heather Galvin
Date:

9/22/11

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CERTIFICATE OF SERVICE

I hereby certify that I am this day servicing the foregoing document, Settlement Agreement, upon the persons listed and in the manner indicated below:

Via First-Class Mail:

Heather R. Galvin
172 Snake Lane
Kinzers, PA 17535



Elizabeth Lion Januzzi
Assistant Counsel
Attorney ID # 69487
(Counsel for the Pennsylvania Public
Utility Commission)

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

Dated: September 27, 2011

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