**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held May 24, 2012

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

Wayne E. Gardner

James H. Cawley

Pamela A. Witmer

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| Pennsylvania Public Utility Commission,  Bureau of Investigation and Enforcement  v.  Willow Grove Yellow Cab Company, Inc.,  t/a Bux-Mont Yellow Cab, *et al* |  | C-2011-2270559 |

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# OPINION AND ORDER

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a request for approval of a Settlement Agreement (Settlement) entered into between the Commission’s Bureau of Investigation and Enforcement (BI&E) and Willow Grove Yellow Cab Company, Inc., t/a Bux-Mont Yellow Cab, *et al.* (Company) for resolution of allegations regarding the Company’s violations of the Commission’s Regulations, 52 Pa. Code §§ 29.314(c) and 29.333(d).

**History of the Proceeding**

On November 29, 2011, the BI&E initiated a Complaint against the Company in which it alleged that between December 1 and December 31, 2010, the Company failed to provide to the Commission a current list of all of its vehicles utilized under its call or demand authority. This list must contain the year, make, vehicle identification number and registration number for each vehicle. Failing to provide the Commission with a current vehicle list violated 52 Pa. Code §§ 29.314(c) and 29.333(d). The Complaint requested that a civil penalty of $500.00 be imposed on the Company.

On December 5, 2011, the Company filed an Answer and New Matter to the Complaint denying any violations of Commission Regulations. As for the New Matter, the Company opined that the Commission, through its authorized staff, had actual knowledge of the composition of the Company’s fleet because Commission staff reviewed the vehicle list during on-site inspections in 2010 and 2011.

On December 22, 2011, the BI&E filed a Reply to New Matter. The BI&E stated that dismissing the Complaint would not be justified. According to the BI&E, the fact that Commission staff may have been aware of the various vehicles the Company was operating in its fleet did not serve to bring the Company into compliance with 52 Pa. Code §§ 29.314(c) and 29.333(d). The aforementioned sections of the Public Utility Code specifically provide that vehicle lists must be mailed between December 1 and December 31st of each year to the attention of the Director of the Commission’s Bureau of Transportation and Safety; now the Manager of the Inspection Division, Bureau of Investigation and Enforcement (responsibilities transferred in August of 2011).

The BI&E further averred that the Company was well aware of this vehicle list filing requirement because it submitted the mandated list in 2009.

On January 27, 2012, the Parties filed a Settlement and urged the Commission to approve the terms of the Settlement as being in the public interest. The Settlement notes that the Company no longer contests the Complaint, and that the Company cooperated throughout the course of the proceeding. Settlement at ¶¶ 4, 15.

**Discussion**

The Parties aver that the proposed Settlement is in the public interest and request Commission approval. Settlement at ¶ 6. The Parties assert that the Settlement should be approved because the Company’s compliance record is deemed satisfactory and there were no customer complaints resulting from the violations. The BI&E, for its part, agrees to a reduction in the amount of the requested penalty to $250.00, noting that this civil penalty constitutes a reasonable and appropriate resolution to the merits of this proceeding. Adoption of the Settlement by the Commission would avoid the cost of further litigation of this matter.

The Company and the BI&E have agreed to the terms and conditions summarized below:

1. The Company agrees that it violated 52 Pa. Code §§ 29.314(c) and 29.333(d), by not submitting a current vehicle list for vehicles providing service pursuant to its call or demand and limousine authorities.

2. The Company agrees to pay a civil penalty of $250.00 to satisfy this Complaint.

3. The Company agrees to comply with the Commission’s Regulations.

4. The BI&E and the Company agree that the terms of the Settlement Agreement shall become effective only upon entry of the instant Opinion and Order which adopts and incorporates the terms of the Settlement Agreement.

After our review of the terms of the Settlement Agreement, we are satisfied that the Settlement is in the public interest. In *Joseph A. Rosi v. Bell Atlantic-Pennsylvania, Inc. and Sprint Communications Company, L.P.*, 2000 Pa. PUC LEXIS 5, Docket No. C-00992409 (Order entered February 10, 2000), the Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 (*Policy Statement*) that sets forth ten factors that we may consider in evaluating a proposed settlement. We will consider each of those factors in turn.

The first factor to be considered under the policy statement is whether the Company's actions amounted to willful fraud or misrepresentation, or were merely administrative or technical errors. 52 Pa. Code § 69.1201(c)(1). We note that the violations committed by the Company in this case should not be deemed willful fraud or misrepresentation. Settlement at ¶ 9. As such, we are of the opinion that the $250.00 civil penalty agreed upon by the Parties is appropriate.

The second factor to be considered is whether the resulting consequences of the conduct are of a serious nature. 52 Pa. Code § 69.1201(c)(2). “When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.” *Id.* The allegations in this case do not rise to the level of serious consequences. Settlement at ¶ 10.

The third factor pertains to litigated cases only and, thus, is not applicable to this case. 52 Pa. Code § 69.1201(c)(3).

The fourth factor to be considered is whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered. 52 Pa. Code § 69.1201(c)(4). In this case, the Company has assured the Commission that the required vehicle list will be submitted in a timely manner in the future. Settlement at ¶ 12.

The fifth factor we may consider is the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). No customers were affected by these violations. Settlement at ¶ 13.

We may also consider the compliance history of the regulated entity which committed the violation. 52 Pa. Code § 69.1201(c)(6). The Company has a satisfactory compliance history. Settlement at ¶ 14.

Another factor we may consider is whether the regulated entity cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). The BI&E represent that the Company cooperated in the investigation. Settlement at ¶ 15.

In addition, we may consider the amount of the civil penalty necessary to deter future violations, as well as past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(8) and (c)(9). We note that the Company is now in compliance with the Commission’s Rules and Regulations, since it obtained a waiver of vehicle age requirements on August 24, 2011. We believe that a penalty is necessary in this case and that the $250.00 penalty amount settled upon by the Parties is sufficient to deter future violations.

For the reasons set forth above, after reviewing the terms of the Settlement Agreement, we are satisfied that approval of that Settlement Agreement is in the public interest and is consistent with the terms of the *Policy Statement*.

**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 consider thoroughly the terms of the instant Settlement Agreement. The Settlement Agreement effectively addresses the issues which arose during the course of this proceeding and avoids the expense of litigation and the possibility of appeals. The Company agrees that, in the future, it will take all appropriate steps to avoid misconduct and noncompliance with the Commission’s Regulations. Accordingly, we find that the proposed Settlement Agreement entered into between the BI&E and the Company is in the public interest and merits approval; **THEREFORE,**

**IT IS ORDERED:**

1. That the Settlement Agreement entered into between the Commission’s Bureau of Investigation and Enforcement and Willow Grove Yellow Cab Company, Inc., t/a Bux-Mont Yellow Cab, *et al*, filed on January 27, 2012, which resolves the above-captioned Complaint, is approved.

2. That the Complaint filed on November 29, 2011, at Docket No. C‑2011-2270559, is sustained to the extent outlined in this Opinion and Order.

3. That, pursuant to Sections 3301 and 3315 of the Public Utility Code, 66 Pa. C.S. §§ 3301 and 3315, Willow Grove Yellow Cab Company, Inc., t/a Bux-Mont Yellow Cab, *et al*, shall pay a civil penalty of two hundred fifty dollars ($250.00) within thirty (30) days after the date of entry of this Opinion and Order, by sending a certified check or money order to:

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA 17105-3265

4. That Willow Grove Yellow Cab Company, Inc., t/a Bux-Mont Yellow Cab, *et al*, shall cease and desist from any further violations of the Public Utility Code, 66 Pa. C.S. §§ 101, *et seq.*, or this Commission’s Regulations, 52 Pa. Code §§ 1.1, *et seq.*

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

6. That upon payment of the civil penalty assessed in this matter, the relevant docket shall be marked closed.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: May 24, 2012

ORDER ENTERED: May 24, 2012