



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

IN REPLY PLEASE  
REFER TO OUR FILE

November 29, 2012

Rosemary Chiavetta, Secretary  
Pa. Public Utility Commission  
2<sup>nd</sup> Floor, 400 North Street  
P.O. Box 3265  
Harrisburg, PA 17105

**RE: Settlement Agreement between Blue and White USA, Inc. t/d/b/a  
Altoona USA & Transfer; C-2011-2245312**

Dear Secretary Chiavetta:

The Bureau of Investigation and Enforcement has entered into a Formal Settlement Agreement in the above captioned proceeding. This matter is currently assigned to the Office of Administrative Law Judge and is before the Honorable Mary D. Long.

Please accept for filing an original Settlement Agreement for appropriate disposition by the Commission.

If you have any questions on this matter, please call me at 717-214-9594.

Sincerely,

Heidi L. Wushinske  
Prosecutor

Enclosure  
Cc: Per certificate of Service

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Pennsylvania Public Utility Commission</b>	:	
<b>Bureau of Transportation</b>	:	
<b>And Safety</b>	:	
	:	<b>Docket No.</b>
<b>v.</b>	:	<b>C-2011-2245312</b>
	:	
<b>Blue and White USA, Inc. t/d/b/a</b>	:	
<b>Altoona USA &amp; Transfer</b>	:	

**SETTLEMENT AGREEMENT**

**THIS AGREEMENT** is between the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement (I&E) <sup>1</sup> through Assistant Counsel Heidi L. Wushinske, and Blue and White USA, Inc. t/d/b/a Altoona USA & Transfer, Respondent ("Blue and White" or "Respondent"), in the above-captioned proceeding. In pursuance of this Agreement, I&E 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 Investigation and Enforcement, P.O. Box 3265, Harrisburg, PA 17105-3265, and Respondent, Blue and White, who maintains its principle place of business at 1024 Chestnut Avenue, Altoona, Pennsylvania 16601.

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<sup>1</sup> Due to the Commission's reorganization, the Bureau of Investigation and Enforcement is now handling this matter, which was formerly assigned to the Bureau of Transportation and Safety (BTS).

2. On the date of the violation alleged in this complaint, Respondent held a certificate of public convenience issued by this Commission. Respondent has held a certificate at A-00119928 since 2003.

3. Pursuant to its enforcement responsibilities, BTS initiated the above-captioned complaint against Respondent.

4. On June 3, 2011, BTS Enforcement Officer Robert E. Crawford inspected Blue and White's 2005 Ford Taxi with license PA TX43779 and found that it failed to have operative air conditioning.

9. In a Complaint dated July 29, 2011, BTS requested that the Commission fine Respondent a total of \$100.00 as a result of this violation.

10. Respondent timely submitted a partial payment.

11. Upon further investigation, Respondent alleged that he corrected the inoperative air conditioning the same day that Officer Crawford found the violation.

12. This case was scheduled for hearing before Administrative Law Judge (ALJ) Mary D. Long on September 27, 2012.

13. During a brief recess, I&E reached a settlement with Blue and White.

## **II. Settlement terms**

14. I&E and Respondent, intending to be legally bound and for consideration given, desire to conclude this litigation and agree to stipulate 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 according to the terms and conditions set forth herein.

- B. Respondent acknowledges that not having operative air conditioning in a vehicle used in taxi service constitutes a violation of the Public Utility Commission's regulations at 52 Pa. Code § 29.403(8).

Respondent therefore agrees to pay a civil penalty in the amount of \$50 within sixty days of approval of this Settlement Agreement.

- C. Respondent agrees that it 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.

**III. Joint Statement in Compliance with the Commission's Policy Statement on Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations**

15. Approval of this Settlement Agreement is consistent with the Commission's *Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, C-00992409 (March 16, 2000).

16. 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).

17. 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).

18. The first factor considered in this case was whether Respondent's alleged acts and omissions amounted to willful fraud or misrepresentation, or were merely administrative or technical errors. The alleged conduct in this case involves failure to have operative air conditioning in a vehicle used in taxi service. While this is a violation of the Commission's regulations, it does not rise to fraud or misrepresentation.

19. The second factor considered in this case was whether the resulting

consequences of Respondent's alleged actions or omissions were of a serious nature. In this case, Respondent's alleged conduct did not result in any serious consequences. Although, there is potential for discomfort of the traveling public when air conditioning in a taxi is not functioning, there is no indication that this happened in this case. Furthermore, it is rare that a malfunctioning taxi air conditioner would result in serious consequences.

20. 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. To the extent this factor is to be considered, it appears that Respondent's conduct was negligent in nature.

21. With regard to the fourth standard in the Commission's Policy Statement, 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 stated that the air conditioning was fixed later that day.

22. The fifth standard in the Policy Statement deals with the number of customers affected and the duration of the violation. In this case, there is no evidence that any customers were affected. The air conditioning was found to be inoperative during an inspection performed by a Commission Officer and Respondent stated that he fixed the air conditioning later that day.

23. The Policy Statement's sixth standard is a consideration of the compliance history of the entity. Respondent has held a certificate from this Commission since 2003. Overall, the Commission has issued eight formal complaints against Respondent,

including the two at issue in this memorandum. While, Respondent's compliance history is not entirely favorable, it did takes steps to promptly correct the violation.

24. The seventh standard in the Policy Statement is whether the regulated entity cooperated with the Commission's investigation. Respondent has cooperated throughout this investigation.

25. 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 Fifty Dollars (\$50), is sufficient to deter Respondent from committing any violations in the future, as the recommended civil penalty for this violation is only one hundred dollars (\$100). This Settlement Agreement recognizes Respondent's good faith efforts to comply with the Commission's regulations.

26. The ninth standard examines past Commission decisions in similar situations. Counsel is not aware of any decisions with this precise fact pattern. However, when all relevant factors are taken into account, this settlement is consistent with past Commission actions. Moreover, since this is a settled matter, it should be considered on its own merits.

27. 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.

28. 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.

29. None of the provisions of the Settlement Agreement or statements herein shall be considered an admission of any fact or culpability. I&E 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.

30. 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.

31. This Settlement Agreement is conditioned upon the Commission's approval without modification.

32. 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**, I&E and Blue and White USA, Inc. respectfully request that this Honorable Administrative Law Judge approve the terms of the Settlement Agreement.



IN WITNESS WHEREOF, we have hereunto set our hands and seals on this the

Nov. 28 day of 2012.

FOR THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Heidi L. Wushinske

Heidi L. Wushinske, Esq.  
Counsel for I&E

11/28/12

Date

Vincent Veloz

FOR BLUE AND WHITE

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Date

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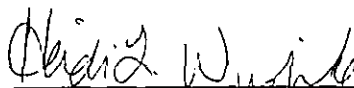
## CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons listed and in the manner indicated below:

**Notification by first class mail addressed as follows:**

Blue & White USA, Inc. t/d/b/a/ Altoona  
USA & Transfer  
1024 Chestnut Avenue  
Altoona, PA 16601

Administrative Law Judge Mary D. Long  
Pennsylvania Public Utility Commission  
Piatt Place, Suite 220  
301 5<sup>th</sup> Avenue  
Pittsburgh, PA 15222



Heidi L. Wushinske  
Prosecutor  
Attorney ID #93972  
(Counsel for Pennsylvania Public Utility  
Commission)

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

Dated: November 29, 2012

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