



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

IN REPLY PLEASE
REFER TO OUR FILE

January 7, 2013

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

Re: **Blue and White USA, Inc. t/d/b/a Altoona USA & Transfer;**
C-2011-2245312, C-2011-2244900

Dear Secretary Chiavetta:

Pursuant to the provisions of 52 Pa. Code § 5.533, please accept for filing The Bureau of Investigation and Enforcements Exceptions to the Initial Decision issued in the above referenced matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Heidi L. Wushinske'.

Heidi L. Wushinske
Prosecutor

Enclosures

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Transportation and Safety	:	
	:	Docket No. C-2011-2245312
v.	:	C-2011-2244900
	:	
Blue and White USA, Inc. t/d/b/a	:	
Altoona USA & Transfer	:	

**EXCEPTIONS OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT¹
TO THE INITIAL DECISION ISSUED DECEMBER 18, 2012**

The Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission, through Prosecutor Heidi Wushinske, files the following Exceptions to the Initial Decision of Administrative Law Judge Mary D. Long, issued December 18, 2012, in the above-captioned matter.

1. The Bureau excepts to the ALJ's dismissal of the civil penalty portion of I&E's Complaint, Ordering paragraph number four

The above-captioned complaints (C-2011-2245312 and C-2011-2244900) against Blue and White USA, Inc. t/d/b/a Altoona USA & Transfer (Blue and White) were consolidated for the purposes of disposition. I&E's excepts only to the portion of the decision concerning the fine reduction in C-2011-2244900.

The facts of the case are not disputed. The only issue is the proper fine amount. The record was uncontradicted that the penalty requested in the complaint by the Bureau

¹ Due to the Commission's reorganization, this matter, which was originally assigned to the Bureau of Transportation and Safety, is now assigned to the Bureau of Investigation and Enforcement.

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of Transportation and Safety (BTS), \$200, was consistent with the Commission's penalty guidelines. Respondent appeared at the hearing unrepresented and did not offer any mitigating facts that would justify reducing the fine. Subsequent to the hearing, I&E submitted a memorandum in support of the \$200 civil penalty.

Blue and White did not submit any additional documentation contesting the \$200 penalty. Notwithstanding this lack of evidence, the ALJ surprisingly determined that a reduction in the fine was appropriate. The ALJ based her decision on the notion that I&E did not establish that Respondent's violation was intentional, deterrence wasn't a significant factor, and other questionable mitigating factors. Initial Decision, pp. 10-11.²

I&E submits that the ALJ erred in placing the burden on it to establish Respondent's state of mind or any other mitigating factors regarding the fine reduction. Contrary to the ALJ's decision, the burden of proof is not on I&E, but on the Respondent. 66 Pa. C.S. §315(b). This is especially the case when dealing with the issue of mitigation. To hold otherwise would require I&E to meet an impossible burden.

It is not incumbent upon I&E to establish the wisdom of the Commission approved fine schedule. The appropriate fine is established by looking to the Commission approved penalty guidelines, barring any mitigation that Respondent may establish. In this case, Respondent failed to establish any mitigation that warrants deviating from the proposed fine, which was consistent with the Commission approved penalty guidelines. Furthermore, it is the Commission's policy to impose the fine recommended in the

complaint based on the fine schedule. *Pa. PUC v. Tropicano Airport Shuttle*, Docket No. A-00110899C9601 (Order entered may 27, 1997).

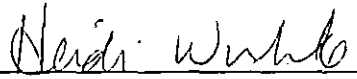
I&E contends that should the Commission adopt the ALJ's initial decision, as written, it will have the practical effect of rendering the transportation regulations virtually unenforceable. This decision would require I&E to prove a Respondent's state of mind and intentions. These violations do not require a showing on the prosecution's part of intent. The mere proof of the violation is sufficient to warrant a penalty.

The Commission has consistently applied a fine schedule for certain violations. The ALJ in this case has elected to unilaterally ignore the Commission's guidelines and substitute her own. Consider that the ALJ found that the Respondent violated the regulations and, nonetheless, assessed no penalty. The bottom line here is that the Respondent committed the violations and should be fined appropriately. Otherwise, there is no purpose in prosecuting these cases because the Respondent can be found in violation and not be penalized if they merely show up for the hearing.

² These factors include the fact that Respondent showed up at the hearing, cooperated with the investigation, and the

WHEREFORE, for the foregoing reasons, I&E requests that the Commission sustain the complaint and impose the fine as requested.

Respectfully submitted,


Heidi Wushinske
Prosecutor
Bureau of Investigation and Enforcement

Wayne T. Scott
First Deputy Chief Prosecutor
Bureau of Investigation and Enforcement

Dated: January 7, 2013

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lack of evidence regarding how long the violations were ongoing. Initial Decision, pp. 10-11.

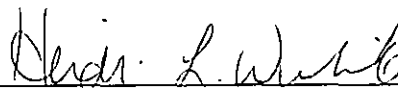
CERTIFICATE OF SERVICE

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 5th Avenue
Pittsburgh, PA 15222
(also via e-mail)



Heidi L. Wushinske
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Attorney ID #93972
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Dated: January 7, 2013

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