



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

IN REPLY PLEASE
REFER TO OUR FILE

April 19, 2006

A-00113647C0501

RICK LIDDELL PRESIDENT
GEORGE W WEAVER & SONS INC
165 LAMONT ST
NEW CUMBERLAND PA 17070

DOCUMENT
FOLDER

Pennsylvania Public Utility Commission, Bureau of Transportation and safety v. George W. Weaver & Sons, Inc.

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge David A. Salapa. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days** of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within **ten (10) days** of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within **twenty (20) days**, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,

James J. McNulty
Secretary

Encls.
Certified Mail
Receipt Requested
MMB

PATRICIA T WIEDT ESQUIRE
PA PUBLIC UTILITY COMMISSION
LAW BUREAU
P O BOX 3265
HARRISBURG PA 17105-3265

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission
Bureau of Transportation and Safety

v.

George W. Weaver & Sons, Inc.

:
:
:
:
:
:

A-00113647C0501

INITIAL DECISION

DOCUMENT
FOLDER

Before
David A. Salapa
Administrative Law Judge

DOCKETED
APR 19 2006

HISTORY OF THE PROCEEDING

On June 6, 2005, the Pennsylvania Public Utility Commission's (Commission's) Bureau of Transportation and Safety (BTS), filed a formal complaint with the Commission against George W. Weaver & Son, Inc., (Weaver) that the Commission docketed at A-00113647C0501. BTS alleged that Weaver violated Section 1303 of the Pennsylvania Public Utility Code, 66 Pa.C.S. §1303, by charging a higher rate than that specified by its tariff and violated Section 1501 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §1501 by failing to provide reasonable service when it transported household goods on November 24, 2004. (paragraphs 3, 4 & 5 complaint) BTS requested that the Commission impose a civil penalty of \$750.00 for the violations.

On June 20, 2005, Weaver's president filed a letter dated June 15, 2005. The letter denies the allegations in the complaint and asserts that Weaver charged the correct rate and provided reasonable service for transporting household goods on November 24, 2004. The letter requests that the matter be closed or set for hearing. By memorandum dated October 7, 2005,

the Secretary's Bureau assigned this case to the Office of Administrative Law Judge (OALJ) to conduct a hearing.

By hearing notice dated December 8, 2005, the Commission scheduled an initial hearing for this matter on February 1, 2006 in Hearing Room 5, Commonwealth Keystone Building, Harrisburg, and assigned the case to me. I issued a prehearing order on December 12, 2005 addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission policy encouraging settlements.

I conducted the initial hearing as scheduled on February 1, 2006 in Hearing Room 5, Commonwealth Keystone Building. Francis E. Marshall, Esquire appeared on behalf of Weaver and Patricia T. Wiedt, Esquire appeared on behalf of BTS. At the start of the hearing, counsel stated that they had reached a tentative settlement. Counsel agreed to submit a settlement agreement to me. I informed counsel that I would reschedule the hearing for May 3, 2006 and that counsel should submit their settlement agreement to me prior to that date. In the event that I did not receive a settlement agreement by that date, the hearing scheduled for May 3, 2006 would go forward. (N.T. 5)

By hearing notice dated February 8, 2006, the Commission scheduled a further hearing for this matter on May 3, 2006 in Hearing Room 5, Commonwealth Keystone Building, Harrisburg. On April 6, 2006, the parties submitted a settlement agreement to me. The record closed on April 6, 2006, the date the parties submitted the settlement agreement to me.

DISCUSSION

The settlement agreement is attached to and incorporated into this initial decision. The settlement agreement contains nine stipulation paragraphs that set forth the allegations in the BTS complaint and the response in the Weaver letter dated June 15, 2005. Weaver admits that it charged a rate higher than that specified by its tariff and failed to provide reasonable service. Weaver agrees to pay a civil penalty of \$250.00 to the Commission. Weaver also agrees to

waive receipt of any payment from the customers for transporting their household goods on November 24, 2004.

The settlement agreement also contains a discussion of the factors set forth in Rosi v. Bell Atlantic-Pennsylvania, Inc., Docket No. C-00992409 (Order entered February 10, 2000) that the Commission considers in evaluating whether the civil penalty assessed in a slamming case is appropriate. The settlement agreement also refers to the Commission's order in Proposed Policy Statement for Litigated and Settled Proceedings Involving Violation of the Public Utility Code and Commission Regulations, Docket No. M-00051875 (Order entered August 12, 2005) where the Commission has proposed establishing factors for evaluating litigated and settled cases involving violation of the Public Utility Code and Commission regulations.

Commission policy promotes settlements, 52 Pa. Code §5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve precious administrative hearing resources. In this case, the parties have agreed to a civil penalty of \$250.00 for Weaver's violation of 66 Pa. C.S. §§1303 and 1501. This is less than the amount BTS requested in its complaint. However, Weaver has agreed to waive receipt of any payment from the customers for transporting their household goods on November 24, 2004. According to the BTS complaint, Weaver charged the customers \$1,032.81 for the November 24, 2004 move.

I conclude that the settlement agreement is reasonable and in the public interest. The civil penalty against Weaver will deter it from future violations, which is in the public interest. The customers do not pay Weaver for transporting their household goods on November 24, 2004 which they contend constituted unreasonable service. Weaver saves the costs in time and money it would otherwise incur litigating the case. Consequently, I will impose a \$250.00 civil penalty for the violation of 66 Pa.C.S. §§1303 and 1501 regarding the transportation of household goods between points in Pennsylvania on November 24, 2004.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this case.
2. The Commission has the power, and the duty, to enforce the requirements of the Public Utility Code.
3. The settlement agreement submitted by BTS and Weaver is reasonable and in the public interest.
4. The complaint in this case should be sustained in accordance with the terms and conditions of the settlement agreement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by the Pennsylvania Public Utility Commission, Bureau of Transportation & Safety, against George W. Weaver & Sons, Inc., at Docket Number A-00113647C0501, is sustained as a violation of 66 Pa.C.S. §1303 and 1501.
2. That the terms and conditions contained in the settlement agreement submitted by George W. Weaver & Sons, Inc. and the Pennsylvania Public Utility Commission, Bureau of Transportation & Safety at Docket Number A-00113647C0501 are approved and adopted.


3. That George W. Weaver & Sons, Inc., shall pay a civil penalty of Two Hundred Fifty Dollars (\$250.00) for the violation of 66 Pa.C.S. §1303 and 1501 regarding transportation of household goods in use on November 24, 2004, as provided for in the Public Utility Code, 66 Pa.C.S. §3301, by certified check or money order, within twenty (20) days after service of the Commission's order to:

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

4. That George W. Weaver & Sons, Inc., cease and desist from further violations of the Public Utility Code and the Public Utility Commission's regulations.

5. That the record at Docket Number A-00113647C0501 be marked closed.

Date: April 13, 2006


David A. Salapa
Administrative Law Judge

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

v.

GEORGE W. WEAVER & SON, INC.:

**Docket No.
A-00113647C0501**

PA P.U.C.
LAW BUREAU

2006 APR -6 AM 9:10

RECEIVED

SETTLEMENT AGREEMENT

THIS AGREEMENT is by the Pennsylvania Public Utility Commission's ("Commission") Law Bureau Prosecution Staff ("the Prosecution"), through Assistant Counsel Patricia T. Wiedt, and Rick Liddell, President, George W. Weaver & Son, Inc., Respondent ("Respondent" or "the Company"), in the above-captioned proceeding. In pursuance of this Agreement, the Prosecution and Respondent stipulate as follows:

I. Introduction and Summary of Proceedings

1. Respondent maintains its principle place of business at 165 Lamont Street, New Cumberland, Pennsylvania 17070.
2. Respondent was issued a certificate of public convenience by the Commission on May 8, 1997, at Application Docket No. A-00113647.
3. Pursuant to its enforcement responsibilities, the Bureau of Transportation and Safety (Bureau) initiated the above-captioned complaint against Respondent.

PA PUC

05 APR -6 PM 1:35

RECEIVED
OFFICE OF GENERAL COUNSEL

4. On November 24, 2004, Respondent transported household goods for Tessa and Steve Ebersole from 211 Constitutional Court, Mechanicsburg, Pennsylvania to 1700 Mountain View Road, Harrisburg, Pennsylvania for \$1,032.81.

5. Steve and Tessa Ebersole ("the Ebersoles") filed a Motor Carrier Complaint Form with the Commission alleging that Respondent only moved a part of their household goods and did not complete their move. In their complaint, the Ebersoles indicated that Respondent only used one of the two trucks dispatched to their residence and that only three of four men sent to their residence moved their furniture. The Ebersoles further alleged that the movers were rude and complained, and one mover walked off the job and remained seated in the truck during most of the move. The Ebersoles indicated that they did not know that Respondent was not going to complete their move until Friday, November 26, 2004, when they called the Respondent's office and discovered that no one was available or working on that day. The Ebersoles complained that they were forced to hire another moving company to complete their move, that they were unable to get another company until November 29, 2004, and that they had to pay extra rent and fees for not vacating their townhouse on time.

6. Upon review of these allegations, the Bureau alleged in the Complaint that Respondent violated 66 Pa. C.S. §1303, by charging a higher rate than that specified in the tariff on file with the Commission and alleged that Respondent violated 66 Pa. C.S. §1501 by failing to maintain, safe, adequate, efficient and reasonable service and facilities for the proper safety of its patrons and public.

7. As a result of Respondent's violation, the Bureau requested that the Commission fine Respondent seven hundred and fifty dollars (\$750.00).

8. Respondent filed an Answer to the Complaint on June 15, 2005. In its Answer, Respondent stated that it was contesting the Complaint because it had dispatched two trucks and four men to the Ebersoles household according to the estimate and because the Ebersoles conduct was the cause of it pulling out of the move and not completing the move. Respondent indicated that the rate charged was appropriate for the number of trucks and men on the job. Respondent asserted that all four men were on the job and that nobody left the job. Respondent asserted that Mrs. Ebersole's conduct in harassing and interfering with the move coupled with her verbal abuse of the workers reached a level where it was impossible to the professional moving crew to continue to perform its services. Respondent indicated that the reason that it did not go back to complete the move was the decision of the Ebersole's, and that the Ebersole's were given the option of completing the move that same evening. Respondent asserted that it provided as reasonable service as possible due to the course of events, that its workers have been with its company for many years and are professionals, and that it made every attempt possible to provide satisfactory service to the Ebersoles.

9. During all prior settlement negotiations Respondent was firm in its position of requesting a formal hearing, however, on the day of the hearing Respondent was cooperative and participated in extensive settlement discussions in an effort to resolve the matter short of a hearing.

II. Settlement Terms

10. In recognition of the cost of further litigation, the merits of the parties' respective positions, the fact that Respondent has been providing a valuable service for approximately nine years under PUC No. A-00113647 with no complaints, and in recognition of Respondent's efforts to comply with the Commission's regulations, the parties have entered into negotiations and have agreed to settle the complaint with the terms and conditions set forth herein.

11. Respondent admits that by engaging in the actions alleged in the Bureau's Complaint, it violated 66 Pa. C.S. §1303 and §1501 by charging a higher rate than that specified on file with this Commission and by failing to maintain safe, adequate, efficient and reasonable service and facilities for the proper safety of its patrons and public over this Thanksgiving holiday period.

12. The parties agree that Respondent shall pay a civil penalty in the amount of \$250.00, that the allegations in the complaint shall be sustained and agree that Respondent shall waive receipt of any payment from the Ebersoles for the move of household goods of November 24, 2004.

III. Rosi Test

13. In *Rosi v. Bell Atlantic Pennsylvania, Inc.*, 2000 Pa. PUC Lexis 5, C-00992409 (Order entered February 10, 2000), and specifically *Pennsylvania Public Utility Commission v. NCIC Operator Services*, M-00001440 (December 20, 2000), the Commission adopted a ten point test for determining whether a particular enforcement outcome is in the public interest, and as more recently discussed in the Commission

policy statement, Proposed Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations, M-00051875 (August 12, 2005). The Prosecution and Respondent submit that the terms of the Agreement are in the public interest.

14. Rosi (1): Intent. There is no evidence to indicate that Respondent intended to violate the Public Utility Code. As stated by Respondent in its Answer, it dispatched two trucks and four men to the Ebersoles household as per the estimate and it did not complete the move due conflict with the customers.

15. Rosi (2): Restitution. Respondent has agreed to waive any payment from the Ebersoles for the move on November 24, 2004.

16. Rosi (3): Preventative measures. Respondent will ensure that its bills of lading are issued at the correct rates pursuant to its tariff on file with the Commission and will maintain safe, adequate, efficient and reasonable service and facilities.

17. Rosi (4): Number of customers affected. Two customers were affected in this case specifically Steve and Tessa Ebersole.

18. Rosi (5): Procedural context. This settlement was reached immediately prior to a hearing.

19. Rosi (6): Compliance history. Respondent has had no filed complaints in its recent history.

20. Rosi (7): Cooperation. Once settlement negotiations began, Respondent was cooperative in exchanging information and ideas.

21. Rosi (8): Deterrence. Consistent civil penalties are a reliable method for bringing transportation utilities into compliance with Commission regulations. In this instance, the Prosecution recommends a monetary penalty in the amount of \$250.00 for Respondents violation of 66 Pa. C.S. §1501 by failing to maintain, safe, adequate, efficient and reasonable service and facilities for the proper safety of its patrons and public. Furthermore, Respondent has agreed to forego any charges to the complainant.

22. Rosi (9): Past decisions. This Agreement is consistent with prior decisions because it is appropriate based upon the circumstances of this case.

23. Rosi (10): Other relevant factors. Due to the fact that Respondent has a history of compliance with the Commission, and the customers affected by the violations are satisfied with the present Agreement.

IV. Miscellaneous Provisions

24. Disputes concerning the interpretation of this Agreement shall be adjudicated exclusively by the Commission.

25. The statements made in section III of this Agreement relating to the Rosi criteria are made for the sole purpose of demonstrating that this Agreement is in the public interest. The specific statements made therein may not be cited for any other purpose in any other proceeding. This restriction does not apply to the remainder of this Agreement.

26. Without regard to choice of law provisions, Pennsylvania law shall govern this Agreement, and this Agreement will be construed and enforced in accordance therewith. If, and to the limited extent that Pennsylvania law is preempted, the

Agreement shall be governed by, construed, and enforced in accordance with federal law.

27. This Agreement constitutes the entire agreement of the Parties concerning this subject matter. The Agreement is intended to supersede all prior negotiations, understandings, and agreements. There are no other agreements, understandings, representations, or obligations of any kind concerning the subject matter of this Agreement. This Agreement represents a unitary whole, and each and every term herein is an integral part of the entire Agreement.

28. This Agreement is binding on Respondent's successors and assigns. This Agreement shall be effective on the date the Commission approves or is deemed to have approved the Agreement in accordance with the Commission's rules of practice and procedure as set forth in 52 Pa. Code § 1.1, et seq.

Date: April 6, 2006

Patricia T. Wiedt
Patricia T. Wiedt
Assistant Counsel
PA Public Utility Commission

Date: 4/02/2006

Rick Liddell
Rick Liddell
President
George W. Weaver & Son, Inc.

RECEIVED

Act 294

MAY 04 2006

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Case Identification:

A-00113647C0501; PA PUC, Bureau of
T&S v. George W. Weaver & Sons, Inc.

Initial Decision By:

ALJ David A. Salapa

Deadline for Return to OSA:

May 3, 2006

This decision has not been reviewed by OSA.

RECEIVED
2006 MAY -3 AM 9:30
OFFICE OF SPECIAL
ASSISTANTS

DOCKETED
MAY 10 2006

* * * * *

DOCUMENT
FOLDER

I want full Commission review of this decision.

Commissioner

Date

X I do not want full Commission review of this decision.

Spencer J. Sklar

May 3, 2006

Commissioner

Date

RJP

Act 294

Case Identification: A-00113647C0501; PA PUC, Bureau of
T&S v. George W. Weaver & Sons, Inc.

Initial Decision By: ALJ David A. Salapa

Deadline for Return to OSA: May 3, 2006

This decision has not been reviewed by OSA.

RECEIVED
2006 MAY -3 PM 1:59
OFFICE OF SPECIAL
ASSISTANTS

* * * * *

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

✓ James H. Cawley
Commissioner

5/3/06
Date

Sharon

Act 294

Case Identification:

**A-00113647C0501; PA PUC, Bureau of
T&S v. George W. Weaver & Sons, Inc.**

Initial Decision By:

ALJ David A. Salapa

Deadline for Return to OSA:

May 3, 2006

This decision has not been reviewed by OSA.

**RECEIVED
2006 MAY -4 AM 8:00
OFFICE OF SPECIAL
ASSISTANTS**

* * * * *

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

Bill Shaner

Commissioner

4/24/06

Date

Act 294

Case Identification: A-00113647C0501; PA PUC, Bureau of T&S v. George W. Weaver & Sons, Inc.

Initial Decision By: ALJ David A. Salapa

Deadline for Return to OSA: May 3, 2006

This decision has not been reviewed by OSA.

RECEIVED
2006 MAY -4 AM 7:21
OFFICE OF SPECIAL ASSISTANTS

* * * * *

I want full Commission review of this decision.

Commissioner Date

I do not want full Commission review of this decision.

Kim Fitzgerald _____
Commissioner Date
5-3-06.

Act 294

Case Identification: A-00113647C0501; PA PUC, Bureau of
T&S v. George W. Weaver & Sons, Inc.

Initial Decision By: ALJ David A. Salapa

Deadline for Return to OSA: May 3, 2006

This decision has not been reviewed by OSA.

RECEIVED
2006 MAY - 1 AM 8:37
OFFICE OF SPECIAL
ASSISTANTS

* * * * *

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

Terrance J. Fitzgerald

Commissioner

4-27-06

Date

DATE: May 23, 2006

SUBJECT: A-00113647C0501

TO: Office of Administrative Law Judge
Susan Hoffner

FROM: James J. McNulty
Secretary
nvl

DOCKETED
MAY 25 2006

PA P.U.C., BUREAU OF TRANSPORTATION AND SAFETY

VS

GEORGE W. WEAVER & SONS INC

The Initial Decision has been served upon all parties of interest.

Neither exceptions nor requests for review from the Commissioners have been received by the Commission. This matter is referred to your office for whatever action you deem necessary.

cc: Office of Special Assistants

**DOCUMENT
FOLDER**

P.S. Please note that exceptions or reply exceptions may come in timely with certificates of mailings. A second memo will not be released for these exceptions.