



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

August 9, 2023

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
Jadon Trucking Inc.
Docket No. C-2021-3028563

Joint Petition for Approval of Settlement and Statement in Support

Dear Secretary Chiavetta:

Enclosed for electronic filing is the **Joint Petition for Approval of Settlement and Statement in Support of I&E (Appendix A)** in the above-referenced matter.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads 'M Swindler'.

Michael L. Swindler
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 43319
(717) 783-6369
mwindler@pa.gov

MLS/ac
Enclosures

cc: Office of Special Assistants (via email – ra-osa@pa.gov)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|---|---|---------------------------|
| Pennsylvania Public Utility Commission, | : | |
| Bureau of Investigation and Enforcement | : | |
| | : | |
| v. | : | Docket No. C-2021-3028563 |
| | : | |
| Jadon Trucking Inc. | : | |

JOINT PETITION FOR APPROVAL OF SETTLEMENT

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.41, 5.232 and 3.113(b)(3), the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and Jadon Trucking Inc. (“Jadon” or “Company”) hereby submit this Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) to resolve all issues related to a formal proceeding initiated by I&E against Jadon for violations of the Public Utility Code (“Code”).

As part of this Settlement Agreement, I&E and Jadon (hereinafter referred to collectively as the “Parties”) respectfully request that the Commission enter an Opinion and Order approving the Settlement, without modification. I&E’s Statement in Support of the Settlement is attached hereto as Appendix A.

I. INTRODUCTION

1. The Parties to this Settlement Agreement are the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement, by its prosecuting

attorney, with a business address of 400 North Street, Commonwealth Keystone Building, Harrisburg, PA, 17120, and Jadon Trucking Inc. with a business address of 2072 Alberta Drive, South Park, PA 15129.

2. The Pennsylvania Public Utility Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within this Commonwealth, as well as other entities subject to its jurisdiction, pursuant to the Public Utility Code (“Code”), 66 Pa. C.S. §§ 101, *et seq.*

3. I&E is the bureau established to take enforcement actions against public utilities and other entities subject to the Commission’s jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11); see also Implementation of Act 129 of 2008; Organization of Bureaus and Offices, Docket No. M-2008-2071852 (August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

4. Section 501(a) of the Code, 66 Pa. C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

5. Jadon Trucking, Inc. (“Respondent”) is a “public utility” as that term is defined at 66 Pa.C.S. § 102, as it is engaged in the transporting of property within the Commonwealth of Pennsylvania for compensation. Respondent was issued a Certificate of Public Convenience by this Commission to transport property on or about February 7, 2006, at Docket No. A-00100411.

6. Jadon, as a public utility, is subject to the power and authority of this Commission pursuant to Section 501(c) of the Code, 66 Pa.C.S. § 501(c), which requires a public utility to comply with Commission regulations and orders.

7. Section 3301 of the Code, 66 Pa. C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission's authority for violations of the Code, the Commission's regulations, and/or orders. Section 3301 allows for the imposition of a fine for each violation and each day's continuance of such violation(s).

8. Pursuant to Section 701 of the Code, 66 Pa.C.S. § 701, the commission, or any person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.

9. On September 17, 2021, I&E filed a Formal Complaint against Respondent initiating a formal proceeding docketed at C-2021-3028563.

10. As a result of successful negotiations between I&E and Jadon, the Parties reached an agreement on an appropriate outcome to the formal proceeding as encouraged by the Commission's policy to promote settlements. *See* 52 Pa. Code § 5.231. The Settlement also is consistent with the Commission's Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and Commission regulations, 52 Pa. Code § 69.1201. The Parties agree to the settlement terms set forth herein and urge the Commission to approve the Settlement as submitted as being in the public interest.

II. BACKGROUND

11. I&E commenced this action on September 17, 2021, by filing a Formal Complaint alleging that Respondent failed to file assessment reports detailing its gross intrastate operating revenues for the 2018 and 2019 calendar years in violation of Section 510(b) of the Code, 66 Pa.C.S. § 510(b) and failed to pay its 2019-2020 and 2020-2021 Fiscal Year assessment invoices in violation of Section 510(c) of the Code, 66 Pa.C.S. § 510(c). For relief, I&E requested, among other things, that the Commission direct Respondent to pay a total of \$5,848, consisting of its outstanding assessment balance of \$4,148 and the requested civil penalty of \$1,700.

12. Respondent did not file an Answer to I&E's Formal Complaint.

13. On February 2, 2022, I&E filed a Motion for Default Judgment, requesting that its Formal Complaint be sustained due to Respondent's failure to file an Answer to the Complaint.

14. Respondent did not file an Answer to I&E's Motion for Default Judgment.

15. In May 2022, I&E and Respondent held settlement discussions and agreed to settlement of this matter.¹

16. On December 8, 2022, the Commission entered an Order granting I&E's Motion for Default Judgment and directing the Company to pay \$3,270 ("December 8 Order").

¹ The settlement agreement was originally verbally entered into between Mr. John Coates of Jadon Trucking Inc. and a former I&E prosecutor. The terms of the settlement have now been memorialized herein. These terms are consistent with the revision of the civil penalty amount sought in I&E's Petition for Amendment of the December 8 Order filed at the above docket on January 19, 2023.

17. On January 19, 2023, I&E filed a Petition for Amendment of the December 8 Order to reflect a civil penalty due of \$850 rather than the full civil penalty of \$1,700.

III. ALLEGED VIOLATION

18. Had this matter been fully litigated, I&E would have proffered evidence and legal arguments to demonstrate that Respondent violated Sections 510(b) and (c) of the Code when it failed to file assessment reports detailing its gross intrastate operating revenues for the 2018 and 2019 calendar years and failed to pay its 2019-2020 and 2020-2021 Fiscal Year assessment invoices, respectively.

19. Had this matter been fully litigated, Jadon would have likely attempted to deny that it violated Sections 510(b) and (c) of the Code, raised defenses and/or mitigating factors in support of its defense, and defended against the same at any potential hearing.

IV. SETTLEMENT TERMS

20. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held discussions that culminated in this Settlement. I&E and Jadon desire to (1) terminate this formal proceeding; and (2) settle this matter completely without litigation. The Parties recognize that this is a disputed matter and given the inherent unpredictability of the outcome of a contested proceeding, the Parties further recognize the benefits of amicably resolving the disputed issues. The terms of the Settlement, for which the Parties seek Commission approval, are set forth below:

- a) That the civil penalty (\$1,700) requested in the Formal Complaint filed at this Docket be reduced by half (\$850).

- b) That Jadon Trucking Inc. shall pay a total of four thousand nine-hundred ninety-eight dollars (\$4,998), consisting of its outstanding assessment balance of \$4,148 and a civil penalty of \$850, to the Commission in two installment payments of \$2,500 and \$2,498.
- c) That the Commission received the first installment payment per the terms of this Settlement of \$2,500 on May 20, 2022.
- d) That the second and final installment payment of \$2,498 shall be made within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania" and sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

21. In consideration of the Company's second installment payment of \$2,498, the Commission will treat this matter as resolved. Nothing contained in this Settlement Agreement shall adversely affect the Commission's authority to receive and resolve any informal or formal complaints filed by any affected party with respect to the incident, except that no penalties beyond the civil penalty amount agreed to herein may be imposed by the Commission for any actions identified herein.

22. I&E and Respondent jointly acknowledge that approval of this Settlement Agreement is in the public interest and is fully consistent with the Commission's Policy Statement for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's assessment violations raised in its Complaint and avoids the time and expense of further litigation

which may involve possible appeals. Attached as Appendix A is a Statement in Support submitted by I&E, setting forth the bases upon which the Settlement Agreement is in the public interest.

V. CONDITIONS OF SETTLEMENT

23. 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 Settlement Agreement shall be construed and interpreted under Pennsylvania law, without regard to its conflicts of laws provisions.

24. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Joint Settlement Petition without modification. If the Commission modifies this Settlement Agreement, any party may elect to withdraw from this Settlement Agreement and may proceed with litigation and, in such event, this Settlement Agreement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all parties within twenty (20) business days after entry of an Order modifying the Settlement.

25. The benefits and obligations of this Settlement Agreement shall be binding upon the successors and assigns of the Parties to this Agreement.

26. The Parties agree that the underlying allegations were not the subject of any hearing or formal procedure and that there has been no order, findings of fact or conclusions of law rendered in this proceeding. It is further understood that, by entering into this Settlement Agreement, Jadon has made no concession or admission of fact or

law and may dispute all issues of fact and law for all purposes in all proceedings that may arise as a result of the circumstances described in this Settlement Agreement.

27. The Parties acknowledge that this Settlement Agreement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding.

28. If either party should file any pleading, including comments, in response to an order of the Commission, the other party shall have the right to file a reply.

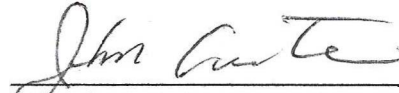
29. This Settlement Agreement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. This Settlement Agreement is presented without prejudice to any position that any of the Parties may have advanced and without prejudice to the position any of the Parties may advance in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement Agreement. This Settlement Agreement does not preclude the Parties from taking other positions in any other proceeding.

30. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed herein. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and Jadon Trucking Inc. respectfully request that the Commission enter an Order approving the terms of the Joint Petition for Approval of Settlement in their entirety as being in the public interest.

Respectfully submitted,

Date: July 12, 2023



John Coates
Owner
Jadon Trucking Inc.

Date: August 9, 2023



Michael L. Swindler
Deputy Chief Prosecutor for the
Commission's Bureau of Investigation
and Enforcement

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|---|---|---------------------------|
| Pennsylvania Public Utility Commission, | : | |
| Bureau of Investigation and Enforcement | : | |
| | : | |
| v. | : | Docket No. C-2021-3028563 |
| | : | |
| Jadon Trucking Inc. | : | |

PROPOSED ORDERING PARAGRAPHS

1. That the Joint Petition for Approval of Settlement filed on August 9, 2023 between the Commission’s Bureau of Investigation and Enforcement and Jadon Trucking Inc. is approved in its entirety without modifications.

2. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, within thirty (30) days of the date this Order becomes final, Jadon Trucking Inc. shall pay **two thousand four hundred and ninety-eight dollars (\$2,498)**, which consists of the remaining assessment balance and agreed-to civil penalty owed by Respondent. Said payment shall be made by certified check or money order payable to “Commonwealth of Pennsylvania” and shall be sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

3. A copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

4. That the above-captioned matter shall be marked closed upon receipt of Jadon Trucking Inc. payment of the above amount.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
 :
v. : Docket No. C-2021-3028563
 :
Jadon Trucking Inc. :

**BUREAU OF INVESTIGATION AND ENFORCEMENT
STATEMENT IN SUPPORT OF
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.41, 5.232 and 3.113(b)(3), the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), a signatory party to the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) filed in the matter docketed above, submits this Statement in Support of the Settlement Agreement between I&E and Jadon Trucking Inc. (“Jadon” or “Company”). I&E avers that the terms and conditions of the Settlement are just and reasonable and in the public interest for the reasons set forth herein.

I. BACKGROUND

I&E commenced this action on September 17, 2021, by filing a Formal Complaint alleging that Jadon failed to file assessment reports detailing its gross intrastate operating

revenues for the 2018 and 2019 calendar years in violation of Section 510(b) of the Code, 66 Pa.C.S. § 510(b) and failed to pay its 2019-2020 and 2020-2021 Fiscal Year assessment invoices in violation of Section 510(c) of the Code, 66 Pa.C.S. § 510(c). For relief, I&E requested that the Commission direct the Company to pay a total of \$5,848, consisting of its outstanding assessment balance of \$4,148 and the requested civil penalty of \$1,700. Jadon did not file an Answer to I&E's Formal Complaint.

On February 2, 2022, I&E filed a Motion for Default Judgment, requesting that its Formal Complaint be sustained due to the Company's failure to file an Answer to the Complaint. Jadon did not file an Answer to I&E's Motion for Default Judgment.

In May 2022, I&E and the Company held settlement discussions and agreed to settlement of this matter.¹

On December 8, 2022, the Commission entered an Order granting i&E's Motion for Default Judgment and directing the Company to pay \$3,270 ("December 8 Order").

On January 19, 2023, I&E filed a Petition for Amendment of the December 8 Order to reflect a civil penalty due of \$850 rather than the full civil penalty of \$1,700.

II. THE PUBLIC INTEREST

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties discussed settlement of this matter. These discussions culminated in the Settlement Agreement, which, once approved, will

¹ The settlement agreement was originally verbally entered into between Mr. John Coates of Jadon Trucking Inc. and a former I&E prosecutor. The terms of the settlement have now been memorialized as set forth in the Settlement Agreement. These terms are consistent with the revision of the civil penalty amount sought in I&E's Petition for Amendment filed at the above docket on January 19, 2023.

resolve all issues related to I&E's informal investigation involving the amounts outstanding for past assessment invoices. The Settlement was originally agreed to verbally, but the payment arrangement with the agreed-to decreased civil penalty was deemed violated when the second and final payment arrangement installment was not received and I&E filed a Motion for Default Judgment seeking the past due assessment amounts plus the original full civil penalty. The December 8 Order was entered directing the Company to make full payment.

I&E's communications with Mr. Coates of the Company suggests that a good faith effort was made to abide by the Settlement terms. In fact, the first payment installment was received on May 20, 2022. Mr. Coates claimed that his wife mailed the second and final installment payment, but this payment was never received by the Commission. On January 19, 2023, I&E filed a Petition to Amend the Commission's December 8 Order, to recognize the Company's good faith effort to abide by the original verbal settlement terms and revise the amount due to reflect the lower agreed-to civil penalty amount of \$850 rather than the full civil penalty amount of \$1,700 set forth in the December 8 Order. In order to "prove" the agreed-to Settlement terms, I&E memorialized the Settlement into a Joint Petition for Approval of Settlement which was executed by the Parties and filed with the Commission on August 9, 2023. I&E avers that the Settlement should be approved without modification, noting the revised amount to be paid by the Company while concurrently granting I&E's Petition for Amendment or, in the alternative, rendering the December 8 Order supplanted by an Order approving this

Settlement and rendering the Petition for Amendment moot.

III. TERMS OF SETTLEMENT

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held discussions that culminated in this Settlement. I&E and Jadon desire to (1) terminate this formal proceeding; and (2) settle this matter completely without litigation. The terms of the Settlement, for which the Parties seek Commission approval, are set forth below:

- a) That the civil penalty (\$1,700) requested in the Formal Complaint filed at this Docket be reduced by half (\$850).
- b) That Jadon Trucking Inc. shall pay a total of four thousand nine-hundred ninety-eight dollars (\$4,998), consisting of its outstanding assessment balance of \$4,148 and a revised civil penalty of \$850, to the Commission in two installment payments of \$2,500 and \$2,498.
- c) That the Commission received the first installment payment per the terms of this Settlement of \$2,500 on May 20, 2022.
- d) That the second installment payment of \$2,498 shall be made within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania" and sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

In consideration of the Company's second installment payment of \$2,498, the Commission will treat this matter as resolved. I&E avers that approval of this Settlement Agreement is in the public interest and is fully consistent with the Commission's Policy

Statement for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's assessment violations raised in its Complaint and avoids the time and expense of further litigation which may involve possible appeals.

IV. LEGAL STANDARD FOR SETTLEMENT AGREEMENTS

The benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004). I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission's Policy Statement regarding *Factors and Standards for Evaluating 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.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission's Policy Statement sets forth ten (10) factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

Here, the civil penalty is not an arbitrary, agreed-to penalty, but rather is based on a civil penalty algorithm used in all assessment complaints. See the December 8 Order at 6-7. In order to conserve the resources of the various Commission bureaus involved as

well as to conserve the time and expense of the respondent entity, here a small trucking company run by Mr. Coates, I&E often offers to settle a matter by indicating that the civil penalty will be reduced to assist in the financial hardship experienced by the entity and to amicably resolve a complaint in an expedited fashion. It is important to note that there is no reduction in the amount of assessment payment due in reaching such a settlement. The full past due assessment amount is paid; only the discretionary civil penalty is negotiated.

Here, in order to try to assist the Company in resolving this matter, I&E memorialized the original, verbal settlement so that a final Commission Order will reflect a civil penalty due of \$850 rather than the original civil penalty amount sought of \$1750. I&E avers that in this simple matter, recitation of the ten *Rosi* factors is unnecessary. This is not a typical case where I&E seeks to prove that its civil penalty is in the public interest. Rather, in this case, I&E has negotiated a reduced civil penalty in order to give Mr. Coates and his company the benefit of the doubt that he did, in good faith, endeavor to comply with the terms of the original verbal settlement, and that it remains those terms, with the decreased civil penalty of \$850, that the Company should be held to in order to finally resolve this matter. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.

WHEREFORE, I&E supports the Settlement Agreement as being in the public interest and respectfully requests that the Commission approve the Settlement in its entirety without modification.

Respectfully submitted,



Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 783-6369
mwindler@pa.gov

Dated: August 9, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| Pennsylvania Public Utility Commission, | : | |
| Bureau of Investigation and Enforcement | : | |
| | : | |
| v. | : | Docket No. C-2021-3028563 |
| | : | |
| Jadon Trucking Inc. | : | |

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Joint Petition for Approval of Settlement and Statement in Support** dated August 9, 2023, upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Served via First Class and Electronic Mail

Jadon Trucking Inc.
John Coates
2072 Alberta Drive
South Park, PA 15129
jacoates49@comcast.net



Michael L. Swindler
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 43319
(717) 783-6369
mwindler@pa.gov