

FILE

RECEIVED-DOCKETING DIV

BEFORE THE

2008 FEB PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

In the Matter of Kenneth J. Brown, : Case No. 06-1394-TR-CVE
Notice of Apparent Violation and : (9432300118C)
Intent to Assess Forfeiture. :

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ATTORNEY GENERAL'S OFFICE
PUBLIC UTILITIES SECTION

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SETTLEMENT AGREEMENT

I. Introduction

Pursuant to Rule 4901:2-7-11 of the Ohio Administrative Code (O.A.C.), Kenneth J. Brown DBA Frank's Vacuum Truck Service (Respondent Carrier or Respondent), and the Staff of the Transportation Department of the Public Utilities Commission of Ohio (Staff) enter into this Settlement Agreement and urge the Commission to adopt the same.

It is understood by the Respondent and the Staff that this Settlement Agreement is not binding upon the Public Utilities Commission of Ohio (Commission). This agreement, however, is based on the Respondent's and the Staff's desire to arrive at a reasonable result considering the law, facts and circumstances. Accordingly, the Respondent and the Staff believe that the Commission should adopt this Settlement Agreement.

This Settlement Agreement is submitted on the condition that the Commission adopts the agreed upon terms. In the event the Commission rejects any part of the Settlement Agreement, or adds to, or otherwise materially modifies its terms, each party

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shall have the right, within thirty days of the Commission's order, to file an application for rehearing that includes a request to terminate and withdraw from the Settlement Agreement. Upon the application for rehearing and request to terminate/withdraw from the Settlement Agreement being granted by the Commission, the Settlement Agreement shall immediately become null and void. In such event, the parties shall proceed to a hearing as if this Settlement Agreement had never been executed.

II. Procedural History

- A. On May 18, 2006, a commercial motor vehicle operated by Respondent Carrier was inspected by Staff within the State of Ohio. As a result of the inspection, the following violations were discovered: Not having Emergency Response Information accessible, as required under 49 C.F.R. 172.602(b); Not having packages secure in a motor vehicle, as required under 49 C.F.R. 177.834(a); and for displaying identification numbers when prohibited, as prohibited under 49 C.F.R. 172.334. As a result of the violations discovered, the Respondent was assessed a \$1,657.50 civil forfeiture by the Compliance Division.
- B. Commission Staff timely served Respondent with a notice of preliminary determination in accordance with Rule 4901:2-07-12 of the O.A.C. for Case No. 9432300118C. The Total Forfeiture Staff assessed Respondent was \$1,657.50 for the alleged violations.
- C. Respondent made a timely formal request for an administrative hearing pursuant to Rule 4901:2-7-13 of the O.A.C.

- D. The parties have negotiated this Settlement Agreement which the parties believe resolves all the issues raised in the notice of preliminary determination.

III. Settlement Agreement

The parties hereto agree and recommend that the Commission find as follows:

- A. The Commission Staff and Respondent agree that Respondent does not contest any of the violations referenced above and cited to him by the officer who conducted the inspection in this case. The Commission Staff and Respondent agree that Respondent will pay a civil forfeiture in the amount of \$1,160.25 for the violations.
- B. For purposes of settlement, and not as an admission or evidence that the violations above occurred, Respondent agrees that the citations for not having Emergency Response Information accessible, not having packages secure in a motor vehicle, and for displaying identification numbers when prohibited, may be included in the Respondent's Safety-Net record and history of violations insofar as they may be relevant for purposes of determining future penalty actions.
- C. This settlement agreement shall not become effective until adopted by an Opinion and Order of the Commission. The date of the entry of the Commission order adopting the Settlement Agreement shall be considered the effective date of the Settlement Agreement.

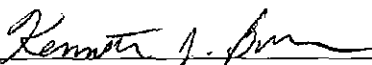
- D. Within 30 days of the effective date of the Settlement Agreement, Respondent shall pay the total amount of \$1,160.25. Payment shall be made using a certified check or money order payable to: "Treasurer State of Ohio," and mail to: PUCO Fiscal, 180 E. Broad St., 13th Floor, Columbus, Ohio 43215-3793.
- E. This Settlement Agreement is made in settlement of all factual or legal issues in this case. It is not intended to have any affect whatsoever in any other case or proceeding.

IV. Conclusion

This agreement, which is subject to the Rules of the Commission, constitutes the entire agreement of the parties. The Signatory parties agree that this Settlement Agreement is in the best interest of all parties, and urge the Commission to adopt the same. The undersigned respectfully request that the Commission issue an entry in accordance with the terms set forth in this Settlement Agreement.

The parties have manifested their consent to the Settlement Agreement by affixing their signatures below on this ____ day of January, 2008.

On behalf of the Respondent



Kenneth J. Brown

Respondent

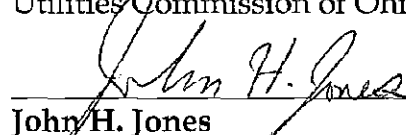
Vice President

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On behalf of the Staff of the Public
Utilities Commission of Ohio



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