

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF SMS TRANSPORT
LLC, NOTICE OF APPARENT VIOLATION
AND INTENT TO ASSESS FORFEITURE.

CASE NO. 16-1721-TR-CVF
(CR201603240212)

FINDING AND ORDER

Entered in the Journal on February 8, 2017

I. SUMMARY

{¶ 1} The Commission finds reasonable and approves the settlement agreement regarding a violation of the Commission's transportation rules.

II. DISCUSSION

A. *Applicable Law*

{¶ 2} R.C. 4923.04 provides that the Commission shall adopt rules applicable to the transportation of persons or property by motor carriers operating in interstate and intrastate commerce. Pursuant to Ohio Adm.Code 4901:2-5-03(A), the Commission adopted the Federal Motor Carrier Safety Regulations for the purpose of governing transportation by motor vehicle in the state of Ohio. Further, R.C. 4923.99 authorizes the Commission to assess a civil forfeiture of up to \$25,000 per day against any person who violates the safety rules adopted by the Commission.

B. *Procedural History*

{¶ 3} On March 24, 2016, a compliance review (CR) of SMS Transport LLC's (Respondent) facility was conducted by Staff. The CR resulted in discovery of the following violations, for which Respondent was assessed civil forfeitures specified in a Notice of Preliminary Determination, pursuant to Ohio Adm.Code 4901:2-7-12. The violations and applicable forfeitures are: 49 C.F.R. 395.8(k)(1) (failing to preserve driver's record of duty status supporting documents for six months), \$8,700; 395.3(a)(3)(i) (requiring or permitting a property-carrying commercial motor vehicle driver to drive

more than 11 hours), \$0; 390.19(g) (furnishing false or misleading information on an MCS-150, MCS-150B, or MCS-150C), \$0; 390.35 (fraudulent or intentional alteration of a supporting document), \$2,000; 395.3(b)(2) (requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 70 hours in eight consecutive days), \$0; 395.8(i) (failing to require driver to forward, within 13 days of completion, the original record of duty status), \$2,600; and 391.52(b)(7) (failing to maintain medical examiner's certificate in driver's qualification file), \$400.

{¶ 4} On August 15, 2016, Respondent requested an administrative hearing, pursuant to Ohio Adm.Code 4901:2-7-13.

{¶ 5} A prehearing conference was conducted on September 29, 2016.

{¶ 6} On November 18, 2016, Staff and Respondent filed a settlement agreement which, in the parties' opinion, resolves the issues raised in the NPD. The following is a summary of the conditions agreed to by the parties and is not intended to replace or supersede the settlement agreement.

- (a) Respondent admits to the violations listed above and in the NPD, and agrees that the violations may be included in its history of violations, insofar as it may be relevant for purposes of determining future penalty actions.
- (b) The civil forfeiture totaling \$13,700 shall be reduced to \$9,590 because of corrective action taken by Respondent. Following the CR, Respondent has undertaken a more organized approach to record keeping, including the implementation of computer software to manage its hours-of-service supporting documentation. In addition, Respondent has corrected its MCS-150 to accurately reflect its principal place of business.

- (c) Respondent shall pay the \$9,590 civil forfeiture in 12 consecutive monthly installments, starting 30 days after the Commission's order approving this settlement agreement. The first 11 installments shall be \$800 and the final installment shall be \$790. Payments shall be made payable to "Treasurer State of Ohio," and mailed to PUCO, Attn: CF Processing, 180 E. Broad St., 4th floor, Columbus, OH 43215-3793. In order to assure proper credit, Case No. 16-1721-TR-CVF and inspection number CR201603240212 should appear on the face of each check or money order.
- (d) This settlement agreement shall not become effective until adopted by the Commission. The date of the entry or order of the Commission adopting this settlement agreement shall be considered the effective date of the settlement agreement.
- (e) This settlement agreement is intended to resolve only factual or legal issues raised in this case. It is not intended to have any effect whatsoever in any other case or proceeding.

C. Conclusion

{¶ 7} The Commission finds that the settlement agreement submitted in this case is reasonable. Therefore, the settlement agreement shall be approved and adopted in its entirety.

III. ORDER

{¶ 8} It is, therefore,

{¶ 9} ORDERED, That the settlement agreement submitted in this case be approved and adopted in its entirety. It is, further,

{¶ 10} ORDERED, That Respondent pay the civil forfeiture of \$9,590 in accordance with the settlement agreement. Payment shall be made by check or money order payable to "Treasurer, State of Ohio," and mailed to PUCO, Attn: CF Processing, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. In order to assure proper credit, Respondent is directed to write Case No. 16-1721-TR-CVF and inspection number CR201603240212 on the face of the check or money order. It is, further,

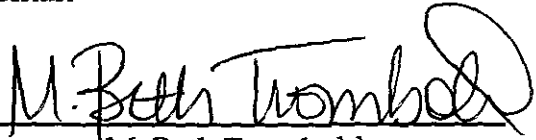
{¶ 11} ORDERED, That a copy of this Finding and Order be served upon Respondent and all other interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO




Asim Z. Haque, Chairman

Lynn Slaby



M. Beth Trombold

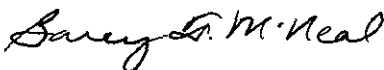


Thomas W. Johnson

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Barcy F. McNeal
Secretary