

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THRIFTY PROPANE,
INC., NOTICE OF APPARENT VIOLATION
AND INTENT TO ASSESS FORFEITURE.

CASE NO. 18-1308-TR-CVF
(OH3219302370C)

FINDING AND ORDER

Entered in the Journal on November 21, 2019

I. SUMMARY

{¶ 1} The Commission finds reasonable and approves the settlement agreement filed between Staff and Thrifty Propane, Inc. regarding violations of the Commission's transportation rules.

II. DISCUSSION

{¶ 2} R.C. 4923.04(A)(1) mandates that the Commission 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 (FMCSR), published in the Code of Federal Regulations (C.F.R.), 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, per violation, against any person who violates the safety rules adopted by the Commission.

{¶ 3} On April 23, 2018, a commercial motor vehicle operated by Thrifty Propane, Inc. (Respondent) and driven by James R. Mahan, Jr., was inspected within the state of Ohio. As a result of the inspection, two violations of hazardous materials regulation were discovered: (1) failure to mark manual remote shutoff device in violation of 49 C.F.R. 172.328(d) and (2) no emergency discharge control in violation of 49 C.F.R. 173.315(n)(3).

{¶ 4} Pursuant to Ohio Adm.Code 4901:2-7-12, Staff timely served Respondent with a Notice of Preliminary Determination (NPD) on July 11, 2018. The NPD assessed Respondent a total civil forfeiture of \$7,560.00 for the two violations.

{¶ 5} On August 20, 2018, counsel for Respondent filed a request for an administrative hearing pursuant to Ohio Adm.Code 4901:2-7-13. Staff and counsel for Respondent participated in a prehearing conference on October 18, 2018, and a hearing was scheduled for January 24, 2019. Pursuant to a series of entries granting unopposed motions for a continuance filed by Respondent, the hearing commenced on September 11, 2019. At the outset of the hearing, counsel informed the attorney examiner that the parties had reached an agreement in principle, but would need additional time in which to complete certain conditions precedent to the anticipated resolution. Thus, upon the parties' oral motion, the attorney examiner rescheduled the hearing.

{¶ 6} On November 1, 2019, Staff and Respondent filed a settlement agreement that, in the parties' opinion, resolves the issues raised in this case. The following is a summary of the conditions agreed to by the parties; it is not intended to replace or supersede the settlement agreement.

- A. Respondent agrees to violations of 49 C.F.R. 172.328(d) and 49 C.F.R. 173.315(n)(3) and recognizes that the violations may be included in Respondent's Safety-Net Record and Respondent's history of violations insofar as they may be relevant for purposes of determining future penalty actions.
- B. Respondent agrees to pay a total civil forfeiture of \$5,292 for the two violations.
 - 1. The proposed forfeiture for the violation of 49 C.F.R. 172.328(d) was \$2,520; the proposed forfeiture for the violation of 49 C.F.R. 173.315(n)(3) was \$5,040.
 - 2. When the proposed forfeiture amount was initially assessed, it was noted that Respondent had two previously adjudged forfeitures that were not paid and had been referred to

collection by the Ohio Attorney General. As part of the settlement, Respondent agreed to pay the outstanding forfeitures. Staff has confirmed that those forfeitures have been paid.

3. Respondent has sufficiently proven to Staff that Respondent has corrected the violations found in the inspection. Staff therefore agrees to reduce the forfeiture amount for the violation of 49 C.F.R. 172.328(d) to \$1,764; Staff further agrees to reduce the forfeiture amount for the violation of 49 C.F.R. 173.315(n)(3) to \$3,528. Respondent agrees to pay a total civil forfeiture of \$5,292 for the violations.
- C. Payment will be due 30 days from Commission approval of the settlement agreement. Payment should be made by certified check or money order to “Public Utilities Commission of Ohio” and mailed to: PUCO FISCAL, 180 East Broad St., Columbus, OH 43215-3793.
 - D. The settlement agreement shall not become effective until adopted by the Commission. The date of the Commission’s order shall be the effective date of the settlement agreement.
 - E. The settlement agreement is intended to resolve factual or legal issues raised in this case; it is not intended to have any effect on any other case or proceeding, except as described in Paragraph A.

{¶ 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 \$5,292 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. 18-1308-TR-CVF and the inspection number OH3219302370C 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.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

PAS/hac

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Case No(s). 18-1308-TR-CVF

Summary: Finding & Order Finding and Order that the Commission finds reasonable and approves the settlement agreement filed between Staff and Thrifty Propane, Inc. regarding violations of the Commission's transportation rules. electronically filed by Docketing Staff on behalf of Docketing