

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF DeWITT
CONSTRUCTION AND TROY DeWITT,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE.

CASE NO. 21-222-TR-CVF
(OH3270013544C)
(OH3270013544D)

FINDING AND ORDER

Entered in the Journal on June 2, 2021

I. SUMMARY

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

II. DISCUSSION

{¶ 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.

{¶ 3} On November 11, 2020, a commercial motor vehicle (CMV) operated by DeWitt Construction, LLC and driven by Troy DeWitt (collectively, Respondents) was inspected within the state of Ohio. The inspection resulted in the following carrier violations: Ohio Adm.Code 4901:2-5-10 (no company markings, intrastate, both sides of CMV, \$100 recommended forfeiture), 49 C.F.R. 393.95 (no fire extinguisher, \$0 recommended forfeiture), 49 C.F.R. 396.17(c) (CMV tractor -- no proof of periodic inspection, \$0 recommended forfeiture), 392.9.(a) (failure to secure load, \$100 recommended forfeiture), 49 C.F.R. 396.17(c) (CMV trailer - no proof of periodic inspection, \$0 recommended forfeiture), 49 C.F.R. 393.11 (no left ID lamp on rear of trailer, \$0 recommended forfeiture), 49 C.F.R. 393.11 (no center ID lamp on rear of trailer, \$0

recommended forfeiture), 49 C.F.R. 393.11 (no right ID lamp on rear of trailer, \$0 recommended forfeiture). In addition, the following driver violations were found: 49 C.F.R. 383.23(a)(2) (operating a CMV without a commercial driver's license, \$250 recommended forfeiture), and 391.41(a) (no medical certificate in driver's possession, \$100 recommended forfeiture). Total civil forfeitures recommended against the carrier were \$200; total civil forfeitures recommended against the driver were \$350.

{¶ 4} On February 13, 2021, each Respondent was served with a Notice of Preliminary Determination (NPD), pursuant to Ohio Adm.Code 4901:2-7-12. The NPDs recommended that Troy DeWitt be assessed a total civil forfeiture of \$250 for the driver violations noted above and recommended that DeWitt Construction, LLC be assessed a total civil forfeiture of \$350.00 for the carrier violations noted above.

{¶ 5} On March 5, 2021, Respondents requested an administrative hearing, pursuant to Ohio Adm.Code 4901:2-7-13.

{¶ 6} A prehearing conference was conducted on April 6, 2021.

{¶ 7} On May 10, 2021, Staff and Respondents filed a settlement agreement (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) Respondents admit to the violations in the NPD and agree that the violations may be included in the Safety-Net record and history of violations, insofar as it may be relevant for purposes of determining future penalty actions.
- (b) Respondents and Staff agree that DeWitt Construction, LLC will pay a reduced forfeiture of \$140 and Troy DeWitt

will pay a reduced forfeiture of \$245 in recognition of mitigating circumstances offered by Respondents.

- (c) Accordingly, Respondents shall pay the reduced civil forfeitures within 30 days after the Commission's order approving this Settlement Agreement. The payments shall be made payable by separate check or money order to "Treasurer State of Ohio," and mailed to PUCO Finance, 180 E. Broad St., 4th floor, Columbus, OH 43215-3793. In order to ensure proper credit, Case No. 21-222-TR-CVF and inspection numbers OH3270013544C and OH3270013544D should appear on the face of each respective check or money order.
- (d) Respondents and Staff agree that nothing in this Settlement Agreement shall prevent Staff from assessing civil forfeitures pursuant to Ohio Adm.Code Chapter 4901:2-7, as the result of future compliance reviews or roadside inspections.
- (e) 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.
- (f) This Settlement Agreement is made in settlement of all factual and legal issues in this case. It is not intended to have any effect in any other case or proceeding.

{¶ 8} 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. The Commission notes that, in accordance with Ohio Adm.Code 4901:2-7-14(D), if the Respondent fails to comply with the provisions of the Settlement Agreement for a period exceeding 30 days, Respondent shall be in default and shall be deemed to have admitted the occurrence of the violations and waived all further right to contest liability for the forfeiture originally assessed by Staff.

III. ORDER

{¶ 9} It is, therefore,

{¶ 10} ORDERED, That the Settlement Agreement submitted in this case be approved and adopted in its entirety. It is, further,

{¶ 11} ORDERED, That Respondents pay civil forfeitures of \$140 and \$245 in accordance with the Settlement Agreement. Each payment shall be made by check or money order payable to "Treasurer, State of Ohio," and mailed to PUCO Finance, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. In order to ensure proper credit, Respondents are directed to write Case No. 21-222-TR-CVF and inspection numbers OH3270013544C and OH3270013544D on the face of each respective check or money order. It is, further,

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

COMMISSIONERS:

Approving:

Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

JML/hac

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Case No(s). 21-0222-TR-CVF

Summary: Finding & Order approving the settlement agreement regarding a violation of the Commission's transportation rules. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio