

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF PHILLIP GROUND
LLC, NOTICE OF APPARENT VIOLATION
AND INTENT TO ASSESS FORFEITURE.

CASE NO. 21-326-TR-CVF
(21-CR-421874)

FINDING AND ORDER

Entered in the Journal on June 2, 2021

I. SUMMARY

{¶ 1} The Commission finds reasonable and approves the settlement agreement filed between Staff and Phillip Ground, LLC 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} Pursuant to Ohio Adm.Code 4901:2-7-11(C) settlement agreements providing for the payment of forfeitures of \$5,000 or more for any violation must be approved by order of the Commission.

{¶ 4} On January 19, 2021, Staff conducted a compliance review of a facility belonging to Phillip Ground, LLC (Respondent). The inspection resulted in the discovery of 11 alleged violations of the FMCSR.

{¶ 5} Pursuant to Ohio Adm.Code 4901:2-7-07, Staff timely served Respondent with a Notice of Intent to Assess a Forfeiture (NIA). The NIA assessed Respondent a total civil forfeiture of \$13,700 for the 11 alleged violations.

{¶ 6} On April 22, 2021, Staff and Respondent filed a settlement agreement (Settlement Agreement) that, in the parties' opinions, resolves the issues raised in this case. Staff and Respondent filed the Settlement Agreement in accordance with Ohio Adm.Code 4901:2-7-11(C), which requires settlement agreements providing for the payment of forfeitures of \$5,000 or more for any violation to be approved by order of the Commission. 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 acknowledges that pursuant to the January 19, 2021 inspection, Respondent was found in violation of: 49 C.F.R. 391.21(a), 391.51(b)(5), 391.51(b)(6), 392.2, 395.8(a)(1), 395.8(e)(1), 382.303(a), 382.303(b), 382.303(d)(1), 382.303(d)(2), and 382.701(a). Respondent further acknowledges that the violations listed above may be included in Respondent's compliance record and history of violations insofar as they may be relevant for the purposes of determining penalty actions for future violations.
- B. Respondent has provided proof sufficient to Staff that it has a compliance plan in place to correct the violations found in this inspection. Staff therefore agrees to reduce the forfeiture amount from \$13,700 to \$10,070. Respondent agrees to pay a total civil forfeiture of \$10,070 for the violations.
- C. Respondent shall pay the \$10,070 civil forfeiture in 24 consecutive payments of \$419.58 commencing 30 days following the Commission's Order approving the Settlement Agreement. The payments shall be made payable to "Treasurer State of Ohio," and shall be mailed to

Public Utilities Commission of Ohio, Attn: CF Processing, 180 E. Broad St., 4th Floor, Columbus, OH 43215-3793. The case number (21-CR-419764) should appear on the face of the payments.

- D. The 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 its effective date.
- E. The Settlement Agreement is made in settlement of all factual or legal issues in the case. It is not intended to have any effect in any other case or proceeding, except as described in the Settlement Agreement.

{¶ 7} 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.

{¶ 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.

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 Respondent pay the civil forfeiture of \$10,070 in accordance with the Settlement Agreement. Payments 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 number 21-CR-419764 on the face of each check or money order. It is, further,

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

COMMISSIONERS:

Approving:

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

JMD/kck

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Case No(s). 21-0326-TR-CVF

Summary: Finding & Order approving the settlement agreement filed between Staff and Phillip Ground, LLC regarding violations of the Commission's transportation rules. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio