

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of David Osburn, Notice : Case No. 21-263-TR-CVF
of Apparent Violation and Intent to : (OH3207302892D)
Assess Forfeiture. :

SETTLEMENT AGREEMENT

I. INTRODUCTION

Pursuant to Ohio Administrative Code ("Ohio Adm.Code") 4901:2-7-11, David Osburn ("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. The Parties agree that if the Commission rejects all or any part of this Settlement Agreement or otherwise materially modifies its terms, either Party shall have the right, within thirty (30) business days of the Commission's order, either to

file an application for rehearing or to terminate and withdraw from this agreement by filing a notice with the Commission. If an application for rehearing is filed, and if the Commission does not, on rehearing, accept the Settlement Agreement without material modification, either Party may terminate and withdraw from this Settlement Agreement by filing a notice with the Commission within ten (10) business days of the Commission's order or entry on rehearing. In such an event, a hearing shall go forward, and the Parties shall be afforded the opportunity to present evidence through witnesses, to cross-examine all witnesses, to present rebuttal testimony, and to file briefs on all issues.

II. PROCEDURAL HISTORY

- A.** On December 22, 2020, a vehicle operated by Mid State Systems Inc. and driven by Respondent David Osburn was inspected within the State of Ohio. The inspection resulted in the discovery of a violation of the Commission's rules. The violation was:
- Failure to stop at railroad crossing – CMV requiring display of HM placards, in violation of 49 C.F.R. § 392.10(a)(3).
- B.** On December 24, 2020, the Staff sent a timely Notice of Apparent Violation and Intent to Assess Forfeiture ("Notice") in accordance with Ohio Adm.Code 4901:2-7-07 for Case No. OH3207302892D. The Notice assessed the Respondent \$500.00 for the violation.
- C.** On January 14, 2021, the Respondent made a request for a conference with the Staff pursuant to Ohio Adm.Code 4901:2-7-10.

- D.** A conference between the Respondent and the Staff was held on February 2, 2021.
- E.** On February 19, 2021, Respondent was timely served with a Notice of Preliminary Determination ("Preliminary Determination") in accordance with Ohio Adm. Code 4901:2-7-12 for Case No. OH3207302892D. The Preliminary Determination assessed Respondent \$500.00 for the violation.
- F.** On March 24, 2021, Respondent made a timely formal request for an administrative hearing pursuant to Ohio Adm. Code 4901:2-7-13.
- G.** 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 Respondent agrees to the violation of 49 C.F.R. § 392.10(a)(3). The Respondent recognizes that this violation may be included in the Respondent's Safety-Net Record and Respondent's history of violations insofar as it may be relevant for purposes of determining future penalty actions.
- B.** The recommended civil forfeiture for the violation of 49 C.F.R. § 392.10(a)(3) will be reduced from \$500.00 to \$250.00. The Respondent agrees to pay a total civil forfeiture of \$250.00 for the violation.

- C.** The Respondent shall pay the \$250.00 civil forfeiture within 30 days after the Commission's order approving this Settlement Agreement. The payment shall be made by certified check or money order payable to "Treasurer State of Ohio," and it shall be mailed to PUCO, Attn: CF Processing, 180 E. Broad St., 4th Floor, Columbus, OH 43215-3793. The case numbers (OH3207302892D and 21-263-TR-CVF) should appear on the face of the certified check or money order.
- D.** 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 this Settlement Agreement shall be considered the effective date of the Settlement Agreement.
- E.** This Settlement Agreement is made in settlement of all factual or legal issues in this case. It is not intended to have any effect whatsoever in any other case or proceeding, except as described in Paragraph A.

IV. CONCLUSION

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 behalf of David Osburn

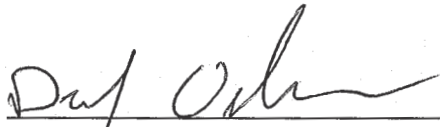
/s/ 

Bryan M. Griffith

Sanborn, Brandon, Duvall & Bobbitt Co.,
L.P.A.

2515 West Granville Road
Columbus, Ohio 43235

Date: 6/1/2021



David Osburn

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

/s/ *Chelsea R. Fletcher*

Chelsea R. Fletcher

Assistant Attorney General
Public Utilities Section

30 East Broad Street, 26th Floor
Columbus, Ohio 43215

Date: 6/3/2021

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6/3/2021 1:23:47 PM

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Case No(s). 21-0263-TR-CVF

Summary: Agreement Settlement Agreement electronically filed by Mrs. Kimberly M Naeder
on behalf of PUCO