

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Request for	:	
Approval of the Settlement Between	:	
Staff and RWS TRANSPORTATION	:	Case No. 21-0765-TR-CVF
LLC, Case No. 21-CR-441172,	:	(21-CR-441172)
Pursuant to Rule 4901:2-7-11, Ohio	:	
Administrative Code.	:	

SETTLEMENT AGREEMENT

I. INTRODUCTION

Pursuant to Rule 4901:2-7-11 of the Ohio Administrative Code (“Ohio Adm.Code”), RWS TRANSPORTATION LLC (hereinafter, “Respondent”) and the Staff of the Transportation Department of the Public Utilities Commission of Ohio (hereinafter, “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 (hereinafter, “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 April 1, 2021, a compliance review of the Respondent's facility located at 17476 Road 4, Pandora, Ohio 45877, resulted in the discovery of alleged violations of the Commission's rules. The Staff timely notified the Respondent pursuant to Ohio Adm.Code 4901:2-7-07 that it intended to assess a civil forfeiture against the Respondent for the following violations:

- (1) Req./perm. property CMV driver to drive after 14 hours on duty in violation of 49 C.F.R. §395.3(a)(2);

- (2) Requiring or permitting property CMV driver to drive more than 11 hours in violation of 49 C.F.R. §395.3(a)(3)(i);
- (3) Failing to assign unidentified driving to the appropriate driver in violation of 49 C.F.R. §395.32(c)(1)(ii);
- (4) False reports of records of duty status in violation of 49 C.F.R. §395.8(e)(1);
- (5) Failing to maintain fleet in violation of 49 C.F.R. §396.3(a);
- (6) Failing to keep minimum records of inspection and maintenance in violation of 49 C.F.R. §396.3(b);
- (7) Operating vehicle likely to cause an accident or breakdown in violation of 49 C.F.R. §396.7(a);
- (8) Failing to keep roadside inspection form 12 mo. at PPOB in violation of 49 C.F.R. §396.9(d)(3);
- (9) Failing to keep roadside inspection form 12 mo. at PPOB in violation of Ohio Admin.Code 4901:2-5-03;
- (10) Using a driver before receiving a pre-employment result in violation of 49 C.F.R. §382.301(a);
- (11) Failing to do random drug tests at applicable annual rate in violation of 49 C.F.R. §382.305(b)(2);
- (12) Failing to get “reasonable suspicion” designee 60 min training in violation of 49 C.F.R. §382.603;

- (13) Failing to conduct an annual query in violation of 49 C.F.R. §382.701(b)(1);
- (14) Failing to conduct a pre-employment query in violation of 49 C.F.R. §382.701(a);
- (15) Failing to report a refusal to take an alcohol test in violation of 49 C.F.R. §382.705(b)(1)(iii);
- (16) Failing to report a drug test refusal to test determination in violation of 49 C.F.R. §382.705(b)(1)(iv);
- (17) Failing to register in the Clearinghouse in violation of 49 C.F.R. §382.711(b);
- (18) Allowing driver to drive while disqualified (Safety Related) in violation of 49 C.F.R. §383.37(b);
- (19) No annual list of traffic violations in violation of 49 C.F.R. §391.11(b)(6);
- (20) Incomplete or no employment application in violation of 49 C.F.R. §391.21(a);
- (21) Failing to investigate driver's background in violation of 49 C.F.R. §391.23(a);
- (22) Failing to obtain driver's driving record each 12 months in violation of 49 C.F.R. §391.25(a);
- (23) Failing to review the driving record of each driver in violation of 49 C.F.R. §391.25(b);

- (24) Inquiries into driving record not kept in qualification file in violation of 49 C.F.R. §391.51(b)(2);
- (25) Records not kept in qual. file 3 yrs. after date of execution in violation of 49 C.F.R. §391.51(d); and
- (26) Operating a vehicle in violation of local/state laws - Unsafe Driving in violation of 49 C.F.R. §392.2.

- B.** On April 9, 2021, 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 21-CR-441172. The Notice assessed the Respondent \$10,300.00 for the violations. On May 9, 2021, the Staff sent a Second Notice to the Respondent.
- C.** On May 20, 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 June 17, 2021.
- E.** On June 29, 2021, the Staff sent a timely Notice of Preliminary Determination and (“NPD”) to Respondent in accordance with Ohio Adm.Code 4901:2-7-12. On June 30, 2021, Respondent submitted its improvement plan to Staff.

- F.** 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 violations of 49 C.F.R. §§ 395.3(a)(2); 395.3(a)(3)(i); 395.32(c)(1)(ii); 395.8(e)(1); 396.3(a); 396.3(b); 396.7(a); 396.9(d)(3); 382.301(a); 382.305(b)(2); 382.603; 382.701(b)(1); 382.701(a); 382.705(b)(1)(iii); 382.705(b)(1)(iv); 382.711(b); 383.37(b); 391.11(b)(6); 391.21(a); 391.23(a); 391.25(a); 391.25(b); 391.51(b)(2); 391.51(d); 392.2 and Ohio Admin.Code 4901:2-5-03. The Respondent recognizes that these violations may be included in the 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.** The Respondent has provided proof sufficient to the Staff that it has a compliance plan in place to correct the violations found in this inspection. The Staff therefore agrees to reduce the forfeiture amount from \$10,300.00 to \$8,650.00. The Respondent agrees to pay a total civil forfeiture of \$8,650.00 for the violations.
- C.** The Respondent shall pay the \$8,650.00 civil forfeiture in 12 monthly payments commencing 30 days after the Commission's order approving

this Settlement Agreement. The payments shall be made by certified check or money order payable to “Treasurer State of Ohio,” and they shall be mailed to PUCO, Attn: CF Processing, 180 E. Broad St., 4th Floor, Columbus, OH 43215-3793. The case numbers (21-CR-441172 and 21-0765-TR-CVF) should appear on the face of each check.

- 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 RWS TRASPORTATION
LLC

/s/ 

Robert Steele

Owner

RWS TRANSPORTATION LLC

17476 Road 4

Pandora, Ohio 45877

Date: 7-10-2021

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

/s/ *Steven L. Beeler*

Steven L. Beeler

Assistant Attorney General

Public Utilities Section

30 East Broad Street, 26th Floor

Columbus, Ohio 43215

Date: 07-20-2021

This foregoing document was electronically filed with the Public Utilities

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Case No(s). 21-0765-TR-CVF

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