

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Request for	:	
Approval of the Settlement Between	:	
Staff and BLACK DIAMOND	:	Case No. 21-1190-TR-CVF
TRANSPORTATION INC., Case No.	:	(22-CR-466665)
22-CR-466665, 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”), BLACK DIAMOND TRANSPORTATION INC. (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 July 15, 2021, a compliance review of the Respondent's facility located at 1122 Eagle Feather Cir., #F, Dayton, Ohio 45449, 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) Failing to conduct an annual query in violation of 49 C.F.R. §382.701(b)(1);

- (2) Failing to conduct a pre-employment query in violation of 49 C.F.R. §382.701(a)
 - (3) CDL must be current with proper endorsements. Must not violate restrictions in violation of 49 C.F.R. §383.37(a);
 - (4) Failing to require a driver to prepare a record of duty status in violation of 49 C.F.R. §395.8(a)(1); and
 - (5) False reports of records of duty status in violation of 49 C.F.R. §395.8(e)(1).
- B.** On July 24, 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 22-CR-466665. The Notice assessed the Respondent \$14,300.00 for the violations.
- C.** On August 23, 2021, the Staff sent Respondent a Second Notice for 22-CR-466665 assessing Respondent \$14,300.00 for the violations.
- D.** The Respondent made a request for a conference with the Staff pursuant to Ohio Adm.Code 4901:2-7-10.
- E.** A conference between the Respondent and the Staff was held on November 10, 2021.
- 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. §§382.701(b)(1); 382.701(a); 383.37(a); 395.8(a)(1) and 395.8(e)(1). 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 \$14,300.00 to \$10,310.00. The Respondent agrees to pay a total civil forfeiture of \$10,310.00 for the violations.
- C.** The Respondent shall pay the \$10,310.00 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 (22-CR-466665 and 21-1190-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 BLACK DIAMOND
TRANSPORTATION INC.

/s/ 

Michael J. Yemc, Jr.
YEMC LAW OFFICES
P.O. Box 468
Delaware, Ohio 43015

Date: 12/10/21

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: 12/10/2021

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

12/10/2021 4:26:32 PM

in

Case No(s). 21-1190-TR-CVF

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