

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF BLACK DIAMOND
TRANSPORTATION, INC., NOTICE OF
APPARENT VIOLATION AND INTENT TO
ASSESS FORFEITURE

CASE NO. 21-1190-TR-CVF
(22-CR-466665)

FINDING AND ORDER

Entered in the Journal on April 6, 2022

I. SUMMARY

{¶ 1} The Commission finds reasonable and approves the settlement agreement filed between Staff and Black Diamond Transportation Inc., 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, 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} On July 15, 2021, Staff inspected within the State of Ohio a facility located at 1122 Eagle Feather Cir., #F, Dayton Ohio, 45449, owned by Black Diamond Transportation, Inc. (Respondent).

{¶ 4} 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 \$14,300 for five alleged violations.

{¶ 5} On December 10, 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 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 Respondent's history of violations and Safety-Net Record insofar as they may be relevant for the purposes of determining penalty actions for future violations.
- B. The 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 \$14,300 to \$10,310. Respondent agrees to pay a total civil forfeiture of \$10,310 for the violations.
- C. The Respondent shall pay the \$10,310 civil forfeiture in 12 monthly installments commencing 30 days after the Commission's order approving the Settlement Agreement. The payments 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. Case Nos. 21-1190-TR-CVF and 22-CR-466665 should appear on the face of each certified check or money order.
- D. The Settlement Agreement shall not be effective until adopted by the Commission. The date of the Order adopting the Settlement

Agreement shall be considered the effective date of the Settlement Agreement.

- 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 whatsoever in any other case or proceeding, except as described in Paragraph A of the Settlement Agreement.

{¶ 6} The Commission notes that in accordance with Ohio Adm.Code 4901:2-7-14(D), if 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.

{¶ 7} 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

{¶ 8} It is, therefore,

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

{¶ 10} ORDERED, That Respondent pay the civil forfeiture of \$10,310 in accordance with the Settlement Agreement. Payments shall be made via the Commission website or 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 numbers 21-1190-TR-CVF and 22-CR-466665 on the face of each check or money order. It is, further,

{¶ 11} 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/IMM/mef

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in

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

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