

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF TOTAL DISTRIBUTION,
INC., NOTICE OF APPARENT VIOLATION
AND INTENT TO ASSESS FORFEITURE.

CASE NO. 22-475-TR-CVF
(OH3216301804S)

FINDING AND ORDER

Entered in the Journal on October 5, 2022

I. SUMMARY

{¶ 1} The Commission finds reasonable and approves the settlement agreement regarding a violation of the Commission's transportation rules.

II. DISCUSSION

{¶ 2} R.C. 4923.04 provides that the Commission shall 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 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 against any person who violates the safety rules adopted by the Commission.

{¶ 3} On February 17, 2022, a commercial motor vehicle was stopped and inspected by Staff of the Ohio Department of Public Safety. The cargo consisted of hazardous material being shipped by Total Distribution, Inc. (Respondent). During the inspection, the following violation was found: 49 C.F.R. 172.504(a) (vehicle not placarded as required).¹

¹ The Commission notes that 49 C.F.R. 172.500(a), titled Applicability of Placarding Requirements, states that "Each person who **offers for transportation** or transports any hazardous material subject to this subchapter shall comply will the applicable placarding requirements of this subpart" (emphasis added).

{¶ 4} On February 18, 2022, Respondent was served with a Notice of Apparent Violation and Intent to Assess Forfeiture.. The forfeiture assessed was \$720.00 for the violation.

{¶ 5} On March 29, 2022, a conference was conducted but no settlement was reached.

{¶ 6} On April 6, 2022, Staff sent a Notice of Preliminary Determination (NPD) to Respondent. The NPD assessed \$720 for the violation.

{¶ 7} On July 14, 2022, the parties participated in a prehearing conference and negotiated a Settlement Agreement.

{¶ 8} On September 6, 2022, the parties filed a Settlement Agreement which the parties believe resolves all issues raised in the NPD. The following is a summary of the conditions agreed to by the parties and is not intended to replace or supersede the settlement agreement.

- (a) Respondent agrees to the violation of 49 C.F.R. 172.504(a) (vehicle not placarded as required). Respondent recognizes that this violation may be included in Respondent's history of violations and Safety-Net Record, insofar as it may be relevant for purposes of determining future penalty actions.
- (b) Respondent has provided sufficient proof to Staff that it has a compliance plan in place to correct the violation found in this inspection. Therefore, Staff agrees to reduce the total forfeiture amount from \$720 to \$504, and Respondent agrees to pay \$504 to resolve this case.

- (c) Payment of \$504 should be made within 30 days after Commission approval of this Settlement Agreement. Payment should be made via the Commission website, or by certified check or money order payable to the “Public Utilities Commission of Ohio” and mailed to Public Utilities Commission of Ohio, Attn: CF Processing, 180 East Broad Street, 4th floor, Columbus, OH 43215-3793. Respondent shall write on the certified check or money order Case No. 22-475-TR-CVF, as well as inspection number OH3216301804S.
- (d) This settlement agreement shall not become effective until adopted by the Commission. The date of the Commission order adopting this Settlement Agreement shall be considered the effective date of the settlement agreement.
- (e) The settlement agreement is made in settlement of all factual and legal issues in this case. It is not intended to have any effect in any other case or proceeding.

{¶ 9} 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, the 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.

{¶ 10} 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

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That the settlement agreement submitted in this case be approved and adopted in its entirety. It is, further,

{¶ 13} ORDERED, That Respondent pay the civil forfeiture described herein. Payment of \$504 shall be made via the Commission website, or by check or money order payable to "Public Utilities Commission of Ohio," and mailed to Public Utilities Commission of Ohio, 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 No. 22-475-TR-CVF and inspection number OH3216301804S on the face of the certified check or money order check or money order.

{¶ 14} 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

JML/dmh

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

10/5/2022 2:37:57 PM

in

Case No(s). 22-0475-TR-CVF

Summary: Finding & Order that the Commission finds reasonable and approves the settlement agreement regarding a violation of the Commission's transportation rules electronically filed by Ms. Donielle M. Hunter on behalf of Public Utilities Commission of Ohio