

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Proceeding No. 13G-0880BP
Civil Penalty Assessment Notice No. 105862

STIPULATION AND SETTLEMENT AGREEMENT

PUBLIC UTILITIES COMMISSION,

Complainant,

v.

FRED NNANNA, in his capacity as owner and/or operator of American Transit Express LLC,

and

AMERICAN TRANSIT EXPRESS LLC,

Respondents

Staff of the Public Utilities Commission (Staff) and Fred Nnanna, in his capacity as owner and/or operator of American Transit Express LLC, and American Transit Express, LLC, (Respondents) (collectively Parties) enter into this Stipulation and Settlement Agreement (Agreement) in the above-referenced Docket as a complete and final resolution of all issues that were or could have been raised in this proceeding.

Background

On August 6, 2013, Staff served Civil Penalty Assessment Notice 105862 (the "CPAN") upon Respondents alleging ten violations of § 40-10.1-202(1)(a), C.R.S., for operating as a contract carrier without first having obtained a permit from the Commission. Pursuant to 4 CCR 723-6216(a)(I), the maximum penalty that may be assessed for violating § 40-10.1-202(1)(a), C.R.S., is \$1,100.00. On October 1, 2013, Staff filed a Motion to Dismiss Counts 8 and 9 of

CPAN No. 105862. The Administrative Law Judge (ALJ) assigned to this proceeding granted Staff's motion in Decision No. R13-1228-I. The maximum penalty sought by Staff following this decision is \$9,680.00.

Settlement Agreement

Staff and Respondents hereby stipulate and agree as follows:

1. Respondents admit liability for the violations set forth in the CPAN.

2. Respondents agree to immediately cease and desist from the actions that led to the violations set forth on the CPAN.

3. The Agreement herein has been reached in the spirit of compromise and in light of the uncertainties of trial. The Agreement has also been reached to avoid the costly expense of litigation. The Parties note that the Agreement promotes administrative efficiency by avoiding the time and expense that would be necessarily devoted to hearing this matter. The Parties submit that the public interest is served by assessing Respondents a reduced civil penalty of \$6,800.00, to be paid in monthly installments, under the terms herein. In reducing the penalty, the Parties considered the following mitigating factors pursuant to Commission Rule 1302(b):

- a. Respondents acknowledge wrongdoing.
- b. Respondents admit the maximum level of culpability for the violations set forth in the CPAN.
- c. Respondents assert that it is determined to be in compliance with all relevant PUC rules.
- d. Following the dates of the violations alleged in the CPAN, Respondent American Transit Express LLC applied for and has since been granted authority to operate as a contract carrier by the PUC and is currently in good standing.
- e. The Respondents fully cooperated with Staff in resolving this matter without the need for a litigated evidentiary proceeding.

f. Assessing Respondents a civil penalty of \$6,800.00, to be paid in monthly installments, under the terms herein is sufficient to motivate Respondents to remain compliant with the Public Utilities Laws and Commission rules on a going-forward basis.

4. In consideration of Respondents' admission of liability in paragraph 1 and agreement in paragraph 2, and for the reasons expressed in paragraph 3, Staff agrees that reducing the amount of the civil penalty from \$9,680.00 to \$6,800.00, to be paid in monthly installments, is appropriate and in the public interest.

5. Respondents agree to pay the reduced penalty of \$6,800.00 in twelve monthly installments on the 25th day of each month. If the 25th day of a month falls on a weekend or holiday, the payment will be due on the next business day. The first eleven payments will each be in the amount of \$567.00. The twelfth and final payment will be in the amount of \$563.00. The first payment will be due on the 25th of the month following the month in which a Commission decision approving this Agreement becomes final. For purposes of this Agreement, a final Commission decision shall mean the date when the Recommended Decision of the administrative law judge approving or modifying this Agreement becomes a decision of the Commission.

6. The \$6,800.00 settlement amount includes a 10% surcharge pursuant to § 24-34-108, C.R.S., and the breakout is as follows: \$6,181.82 is the civil penalty and \$618.18 is the 10% surcharge. The 10% surcharge is also reflected in each monthly payment to be made and the breakout is as follows: for the first eleven payments, \$515.45 is the civil penalty and \$51.55 is the 10% surcharge; for the twelfth and final payment, \$511.82 is the civil penalty and \$51.18 is the 10% surcharge.

7. Respondents agree that they shall each be jointly and severally liable for the reduced civil penalty and for each monthly payment.

8. Respondents further agree that if, during any investigation(s) conducted by Staff within twelve months of the date of a Commission final order in this Proceeding, Staff finds any violations of the same rules or statutes or of a similar nature as any of the violations for which the Respondents have admitted liability, Respondents shall be liable, jointly and severally, for the full civil penalty less any payments made. In this event, the remaining full civil penalty will be due immediately. Respondents and Staff agree that the specific intent of this provision is to prevent further violations of the Public Utilities Laws and Commission Rules.

9. Respondents agree that the failure to timely pay the settlement amount or make any of the required monthly payments as provided herein will result in Respondents being liable, jointly and severally, for the full civil penalty less payments made without any further hearing or administrative or adjudicatory process.

10. Respondents agree and stipulate that the failure to complete its payment obligations as set forth in this Agreement shall also be deemed a waiver by Respondents of any and all rights to file exceptions and/or a request for rehearing, reargument, and reconsideration or any other form of appeal. This result will mean neither the Commission nor Staff will incur additional time and expense to prosecute the full civil penalty.

11. The Parties agree all matters that were raised or could have been raised in this Proceeding relating to the issues specifically identified and addressed herein have been resolved by this Agreement. This Agreement may be executed in counterparts, each of which when taken together shall constitute the entire Agreement of the Parties, and no further modification of this

Agreement is allowed, except in writing by the parties, and further agreed to in an order issued by the Commission.

12. In the event that this Agreement is modified or not approved in its entirety, either Party, at that Party's option, may withdraw from this Agreement by filing a notice with the Commission in this Docket within seven (7) days of entry of such Order. In that event, this Agreement shall be void and this matter shall be set for hearing.

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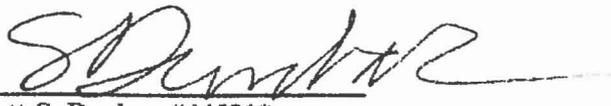
EXECUTED on November 19, 2013.

Approved as to form:

STAFF OF THE COLORADO
PUBLIC UTILITIES COMMISSION

JOHN W. SUTHERS,
ATTORNEY GENERAL

By: 
Cliff Hinson

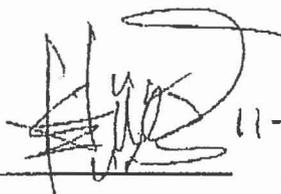
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11-15-13
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on behalf of myself and American Transit Express, LLC
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