

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of LEAVENWORTH SHUTTLE & TAXI, LLC For Compliance with WAC 480-30-221	DOCKET TE-161021 <i>(Consolidated)</i> ORDER 02
In the Matter of the Penalty Assessment Against LEAVENWORTH SHUTTLE & TAXI, LLC In the amount of \$19,800	DOCKET TE-161020 <i>(Consolidated)</i> ORDER 02
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. LEAVENWORTH SHUTTLE & TAXI, LLC Respondent.	DOCKET TE-181030 <i>(Consolidated)</i> ORDER 01 INITIAL ORDER APPROVING SETTLEMENT AGREEMENT

BACKGROUND

- 1 On January 11, 2019, Washington Utilities and Transportation Commission (Commission) staff (Staff) filed with the Commission a Motion to Impose Suspended Penalties. Staff requested that the Commission impose the \$10,000 penalty on

Leavenworth Shuttle & Taxi, LLC (Leavenworth Shuttle or Company) that the Commission had suspended in Order 01 of consolidated Dockets TE-161021 and TE-161020. Staff alleged that the Company violated a condition of Order 01 by incurring repeat violations of WAC 480-30-221.

2 On February 27, 2019 the Commission served a complaint for penalties against Leavenworth Shuttle for violations of the Commission's vehicle and driver rules in WAC 480-30-221, which adopts by reference specific provisions of Title 49 C.F.R. The Complaint was filed in Docket TE-181030 and alleged the following violations:

- 4 violations of 49 C.F.R. § 382.305(i)(2) (alcohol and controlled substances testing)
- 24 violations of 49 C.F.R. § 391.45(a) (medical certificate)
- 25 violations of 49 C.F.R. §395.8(a)(1) (record of duty status)
- 82 violations of 49 C.F.R. §396.11(a) (preparation of driver vehicle inspection report)
- 3 violations of 49 C.F.R. §396.13(c) (signature on driver vehicle inspection report)
- 3 violations of 49 C.F.R. §396.17(a) (periodic vehicle inspection)

3 On February 27, 2019, the Commission also issued a notice to consolidate Dockets TE-161021, TE-161020, and TE-181030, and scheduled a brief adjudicative proceeding to hear these matters to be held on April 20, 2019.

4 On April 2, 2019, the Parties notified the Commission that they had reached a settlement in principle. On April 11, 2019, the Parties filed with the Commission the Settlement Agreement (Agreement) and Joint Narrative in support of the Settlement Agreement (Narrative).

5 Under the Agreement, Leavenworth Shuttle agrees to pay the \$10,000 suspended penalty from consolidated Dockets TE-161020 and TE-161021. Furthermore, the Parties agree that Leavenworth Shuttle should be assessed a \$25,800 penalty, of which \$5,800 will be due, and \$20,000 will be suspended. The Parties agree that Leavenworth Shuttle will

work with Staff to establish a mutually agreeable payment arrangement to pay the combined \$15,800 penalty now due from the consolidated dockets. The Parties agree that the \$20,000 suspended penalty will be suspended for a period of two years, and then waived, upon the Company's compliance with the following conditions: a) the Company maintains a conditional safety rating; b) the Company does not incur any repeat critical violations of WAC 480-30-221 discovered during the November 2018 safety investigation upon re-inspection within two years; c) the Company pays the \$15,800 penalty now due; and d) the Company complies with the payment plan agreed to by the Parties or ordered by the Commission. Finally, the Company agrees to work with Staff to develop a safety management plan.

- 6 Joe Dallas, Assistant Attorney General, Olympia, Washington, represents Staff. David Witt, Owner, Leavenworth, Washington, represents Leavenworth Shuttle.

DISCUSSION AND DECISION

- 7 WAC 480-07-750(1) states in part: "The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission." Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

The Commission must determine one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to conditions.
- Reject the proposed settlement.

- 8 We approve the Settlement Agreement without condition. Leavenworth Shuttle has admitted to all of the violations in the new proceeding, Docket TE-181030, and has agreed to pay the entire \$10,000 penalty in Dockets TE-161021 and TE-161020 that was suspended on the condition of future compliance. The Agreement imposes a substantial new penalty of \$25,800, with a \$5,800 portion to be paid now, and a \$20,000 portion to

be suspended for two years, conditioned on future compliance. We agree with Staff that the \$20,000 suspended penalty provides a significant incentive to encourage future compliance. We also agree with Staff that Leavenworth Shuttle's commitment to continue to work with Staff on a safety management plan, and commitment to comply with the plan, is in the public interest. The Settlement Agreement allows Staff to achieve its goal of bringing the Company into compliance with Commission safety rules while avoiding the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome.

- 9 The terms of the Settlement Agreement are not contrary to law or public policy and reasonably resolve all issues in this proceeding. Given these factors, we find the Settlement Agreement is consistent with the public interest and should be approved as filed

ORDER

THE COMMISSION ORDERS:

- 10 (1) The Settlement Agreement is approved without condition, is attached as Exhibit A to, and incorporated into, this Order, and is adopted as the final resolution of the disputed issues in this docket.
- 11 (2) The \$10,000 penalty that was suspended in Order 01 in consolidated Dockets TE-161020 and TE-161021 is now due and payable.
- 12 (3) Leavenworth Shuttle & Tax, LLC, is assessed an additional penalty of \$25,800, of which \$20,000 is suspended for a period of two years and then waived, subject to the following conditions: a) The Company must maintain a conditional safety rating; b) the Company may not incur any repeat critical violations of WAC 480-30-221 discovered during the November 2018 safety investigation upon re-inspection within two years; c) the Company must pay the \$10,000 assessed in consolidated Dockets TE-161020 and TE-161021 and the \$5,800 portion of the new penalty that is not suspended; and d) the Company must comply with each step of any payment plan that the Parties file or the Commission Orders.
- 13 (4) Leavenworth Shuttle & Taxi, LLC and Staff must file a letter describing a mutually agreed payment arrangement to the Commission within 10 days of this Order.

- 14 (5) Leavenworth Shuttle and Taxi, LLC, will work with Staff to develop a safety management plan, and will file the completed plan in this Docket.

DATED at Olympia, Washington, and effective April 16, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

LAURA CHARTOFF
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-610(7) provides that any party to this proceeding has twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).