

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

BLUE SKY OUTFITTERS, INC.,

Respondent.

DOCKET TE-161267

NARRATIVE SUPPORTING
SETTLEMENT AGREEMENT

I. INTRODUCTION

1 This Narrative Supporting Settlement Agreement (“Narrative”) is filed pursuant to WAC 480-07-740(2)(a) on behalf of both Blue Sky Outfitters, Inc. (“Blue Sky Outfitters” or the “Company”) and staff of the Washington Utilities and Transportation Commission (“Staff”) (hereinafter collectively referred to as “Parties” and individually as a “Party”). This Narrative summarizes the Settlement Agreement (“Settlement”); it does not modify any terms of the Settlement.

II. PROPOSALS FOR REVIEW PROCEDURE

2 The Parties do not request a hearing to present the Settlement. The Parties instead respectfully request a streamlined review of the proposed Settlement on a paper record. If the Commission requires a hearing, the Parties are prepared to present one or more witnesses to testify in support of the Settlement pursuant to WAC 480-07-740(2)(b).

III. SCOPE OF THE UNDERLYING DISPUTE

3 The underlying dispute concerns violations of WAC 480-30-221, which mostly concern safety regulations for the maintenance of records, by Blue Sky Outfitters.

4 Blue Sky Outfitters is a charter party and excursion service carrier subject to the jurisdiction of the Washington Utilities and Transportation Commission (“Commission”). The Company has been operating since 1983 with its primary businesses being whitewater rafting and snowshoeing in the Leavenworth Valley. The Company has been commercially successful and remains popular with customers. The Company operates one vehicle as part of its business. Its operations as a charter party and excursion service carrier are only a very small part of its business, dwarfed by its primary enterprises.

5 Brad Sarver is the president and co-owner of Blue Sky Outfitters. He is ultimately responsible for the operations of the Company.

6 On October 6, 2016, Special Investigator Wayne Gilbert arranged for a compliance review investigation of the Company and requested necessary documents related to the Company’s operations as a charter party and excursion service carrier. In November of 2016, Investigator Gilbert conducted that compliance review. No records were produced by the Company either prior to or on the day of the investigation. Staff was able to identify only one date for which there was evidence of a trip provided for compensation: October 23, 2016. The Company did not possess the records required by Commission rules for the trip and the vehicle used, and Investigator Gilbert identified five critical violations of FMCSA rules incorporated by WAC 480-30-221.¹

7 On January 25, 2017, the Commission issued a complaint and a subpoena to the Company, alleging five violations of WAC 480-30-221. The Parties engaged in settlement discussions in mid-February and on February 23, 2017, Staff notified the Commission that the

¹ The lack of required records resulted in Staff’s recommendation of five violations of WAC 480-30-221, as outlined in Order 01 in Docket TE-161267, Complaint Seeking to Impose Penalties and Notice of Hearing (Set for March 13, 2017, at 9:30 a.m.).

Parties had reached a settlement in principle, and that it believed the Parties had time to memorialize their agreement by March 6, 2017 – one week prior to the date set for hearing. The Commission expressed its appreciation for the notification from the Parties and instructed that it would expect the Parties to file a settlement agreement and supporting documentation, or a status report on their progress by March 6, 2017, after which it would make a determination on the settlement proposal and the necessity (or lack thereof) for the hearing set for March 13, 2017.

8 The Parties' full settlement agreement is reflected in the Settlement Agreement, which was entered into voluntarily to resolve all matters that were in dispute.

IV. SUMMARY OF PROPOSED SETTLEMENT

9 The Settlement resolves all of the issues in dispute between the Parties. Blue Sky Outfitters voluntarily requests cancellation of its authority to operate as a charter party and excursion service carrier. These operations are a very small fraction of the Company's business and the Company believes that it is in its best interest to request this cancellation due to its analysis that the gains it receives from providing charter party and excursion service transportation are outweighed by the costs it incurs from providing these services. The Parties agree that, after the Company's authority to operate has been cancelled as part of this Settlement, the Company will cease and desist operations as a charter party and excursion service carrier immediately upon the approval of this Settlement. The Parties agree and acknowledge that the Company will need some additional time to orchestrate the removal of all its advertisements and any other solicitations from its website and other mediums, if any. This includes, for example, advertisements on the Company's website that advertise wine tours and beer tours. To that end, the Parties agree that it is reasonable to afford the Company 45 days after Commission approval of this Settlement in order to complete the removal of such advertisements and solicitations.

10 Additionally, the Parties agree that five critical violations of Commission rules occurred and the Parties agree that reasonable and fair penalties are warranted. Both Parties acknowledge that the Commission may impose penalties of up to \$1,000 for each violation, but in this case the Parties agree that, in combination with the other elements of this Settlement, an unsuspended penalty amount of \$100 for each violation and a suspended penalty amount of \$900 for each violation is fair, reasonable, and justified. The penalty amount due immediately upon approval of this Settlement is \$500. The Parties agree that the remaining \$4,500 should be suspended for a period of two years subject to the conditions explained below. The Parties believe that an unsuspended penalty of \$500, coupled with the cancellation of the Company's authority to operate is a just resolution of the issues in this case. To ensure and incentivize adherence to this Settlement, the Parties agree that a suspended penalty amount of \$4,500 is sufficient.

11 The Parties agree that a suspended penalty amount of \$4,500 is reasonable in this case. The \$4,500 would be suspended for a period of two years from the date of the Commission's approval of this Settlement. Afterwards, the Parties agree and understand that the \$4,500 suspended penalty will become null and void; no longer enforceable against the Company should it violate the conditions of the suspension. The Parties agree that the suspension of this penalty amount is conditioned upon the Company abiding by the agreed cease and desist order contained in this Settlement. Should the Commission discover within two years of the approval of this Settlement that the Company is operating as a charter party and excursion service carrier without the required authority from the Commission the \$4,500 suspended penalty would be enforced against the Company. The Parties understand and note, however, that the Company's operations that fall outside of the Commission's jurisdiction – namely, the private carriage of passengers in relation to its whitewater rafting and snowshoeing business in the Leavenworth Valley – do not

trigger enforcement of this suspended penalty amount. The suspended penalty amount would only be enforced against the Company should it operate as a charter party and excursion service carrier without authorization from the Commission. Staff notes that it is willing and able to provide technical assistance to the Company, upon request, to ensure that its business is not crossing over in to Commission-regulated operations.

V. STATEMENT OF THE PARTIES THAT THE SETTLEMENT AGREEMENT SATISFIES THEIR INTERESTS AND THE PUBLIC INTEREST

12 The Settlement represents a compromise by the two Parties. The Parties find it is in their best interests to avoid the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome. Likewise, the public interest is served by concluding this dispute without the further expenditure of public resources for litigation expenses.

13 The Parties agree that the collection of elements in the Settlement provide a sound resolution of the issues and serve the public interest. The public is served by ensuring that only charter party and excursion service carriers who are able and willing to undertake the costs of meeting safety regulations provide such service. Staff commends the Company for its frank analysis of those costs and its understanding of the impetus behind the safety regulations imposed by the Commission. Staff did not initially envision cancellation of the Company's authority to operate. But after discussions with the Company, Staff appreciates the thoughtful and economic approach that the Company has employed in its consideration of the issues presented in this case. The Company has displayed to Staff great understanding of the expectations the Commission has for charter party and excursion service carriers. As a result, the Parties believe that an agreement which significantly reduces the unsuspended penalty amount owed by the Company but relieves the safety risk that Staff had identified through the critical

violations giving rise to this proceeding is fair, just, reasonable, and in the public interest. For these reasons, Staff believes the Settlement satisfies its interest and the public interest.

14 For these reasons, the Settlement as a whole is in the public interest, as well as the interests of the Parties. Staff and Blue Sky Outfitters, therefore, recommend that the Commission approve the Settlement in its entirety.

VI. LEGAL POINTS THAT BEAR ON PROPOSED SETTLEMENT

15 In WAC 480-07-700, the Commission states its support for parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest. The Parties have resolved all of the issues in dispute between them, and their resolution complies with Commission rules and, as explained above, is consistent with the public interest.

VII. CONCLUSION

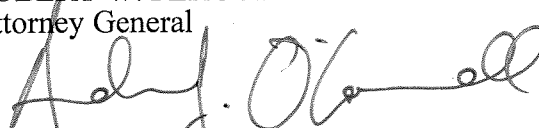
16 Because the Parties have negotiated a compromise on all of the issues in this dispute and because the Settlement is in the public interest, the Parties request that the Commission issue an order approving the Settlement in full.

Respectfully submitted this 2nd day of March, 2017.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

BLUE SKY OUTFITTERS, INC.

ROBERT W. FERGUSON
Attorney General



ANDREW J. O'CONNELL
Assistant Attorney General
Counsel for the Utilities and
Transportation Commission Staff

see attached

BRAD SARVER
President of Blue Sky Outfitters, Inc.

Dated: March 2, 2017

Dated: _____, 2017

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VII. CONCLUSION

16 Because the Parties have negotiated a compromise on all of the issues in this dispute and because the Settlement is in the public interest, the Parties request that the Commission issue an order approving the Settlement in full.

Respectfully submitted this 1 day of March, 2017.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

BLUE SKY OUTFITTERS, INC.

ROBERT W. FERGUSON
Attorney General

ANDREW J. O'CONNELL
Assistant Attorney General
Counsel for the Utilities and
Transportation Commission Staff

Brad Sarver

BRAD SARVER
President of Blue Sky Outfitters, Inc.

Dated: _____, 2017

Dated: March 1, 2017