

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

BLUE SKY OUTFITTERS, INC.,

Respondent.

DOCKET TE-161267

SETTLEMENT AGREEMENT

**I. INTRODUCTION**

1 This Settlement Agreement (“Settlement”) is entered into by the parties in this case:  
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 “Party”).

2 This Settlement is a “full settlement” as the term is defined in WAC 480-07-730(1)  
because it is entered into by the Parties, and it resolves all issues raised in the above docket.

**II. AGREED FACTS**

3 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.

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

5 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.<sup>1</sup>

6 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 Parties had reached a settlement in principle, and that they 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.

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<sup>1</sup> 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.).

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The Parties' full settlement agreement is reflected in this Settlement document, which was entered into voluntarily to resolve all matters in dispute. The Parties now wish to present their Settlement for the Commission's consideration and approval. This Settlement is filed in the interest of expediting the orderly disposition of this proceeding. The Parties understand that this Settlement is subject to Commission approval, and hereby respectfully request that the Commission issue an order approving this Settlement in its entirety. The Parties will jointly file supporting documentation, as required by WAC 480-07-740(2), in the form of a settlement narrative.

### III. AGREEMENT

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#### **Voluntary Cancellation of Operating Authority.**

- a. Voluntary Cancellation. Blue Sky Outfitters requests cancellation of its authority to operate as a charter party and excursion service carrier. This part of the Company's business is a very small fraction of its operations. Additionally, the Company believes it may benefit, overall, from the cessation of these operations due to its own analysis of the gains it receives from providing these services and the costs it incurs from the same. The Company is aware that it will no longer be subject to regulation by the Commission, but will still be required to comply with other state, local, and federal regulations as part of its operations outside of the Commission's jurisdiction.
- b. Cease and Desist. The Parties agree that the Company will cease and desist operations as a charter party and excursion service carrier immediately upon approval of this Settlement and will, within 45 days of an order approving this Settlement becoming final, remove any advertisements and solicitations for such

services from its website and any other medium it uses for advertisements and solicitations. This includes, for example, advertisements on the Company's website that advertise wine tours and beer tours.

9 **Violations of WAC 480-30-221.**

The Parties agree that five critical violations of Commission rules occurred, as outlined in the Commission's complaint and subpoena issued in this docket on January 25, 2017.<sup>2</sup>

10 **Penalty Amount and Suspension of Penalties.**

- a. Penalty. The Parties agree that a penalty is warranted in this case. While the Commission has the authority to impose up to \$1,000 for each violation, totaling \$5,000, the Parties agreed through negotiation that in combination with the other elements of this Settlement that the Company should be assessed a lesser amount, with the remainder being suspended to ensure compliance going forward.
- b. Penalty Amount. The Parties agree that upon Commission approval of this Settlement the Company will remit an unsuspended penalty amount of \$500 to the Commission: \$100 for each violation.
- c. Suspension of \$4,500. The Parties agree that the remaining \$4,500 will be suspended for a period of two years from the date of the Commission's approval of this Settlement, subject to the condition that the Company not engage in operations as a charter party or excursion service carrier without authorization

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<sup>2</sup> Docket TE-161267, Order 01, Complaint Seeking to Impose Penalties and Notice of Hearing (Set for March 13, 2017, at 9:30 a.m.) (Jan. 25, 2017). The violations pertained to WAC 80-30-221: driver qualification files (CFR 391.51(a)); driver's record of duty status (CFR 395.8); preservation of driver's record of duty status (CFR 395.8(k)(1)); records of inspection and vehicle maintenance (CFR 396.3(b)); and, use of commercial motor vehicle not periodically inspected (CFR 396.17(a)).

from the Commission. After two years from the date of the Commission's approval of this Settlement, the suspended amount of \$4,500 will be dropped and will no longer be a compliance tool because of this case. The Parties agree that this suspended amount serves as incentive to comply with this Settlement, and is in balance with the fair unsuspended amount and other elements of this Settlement.

#### IV. GENERAL PROVISIONS

11 The Parties agree that this Settlement reflects the settlement of all contested issues in this proceeding. The Parties note that this Settlement is the result of a negotiated effort, seeking compromise from both sides in an effort to efficiently resolve the disputes arising in this case. The Parties understand that this Settlement is not binding unless and until accepted by the Commission.

12 The Parties agree that this Agreement promotes the public interest, and that it is appropriate for unconditional Commission acceptance under WAC 480-07-750.

13 The Parties agree to advocate for acceptance of this Settlement before the Commission. After the Commission accepts this Settlement, no party or its agents, employees, consultants, or attorneys will engage in advocacy contrary to the Settlement. The Parties shall take all actions necessary, as appropriate, to carry out this Settlement.

14 The Parties have negotiated this Settlement as an integrated document to be effective upon execution and Commission approval. This Settlement supersedes all prior oral and written agreements on issues addressed herein.

15 The Parties may execute this Settlement in counterparts, and as executed, shall constitute one agreement. Copies sent by facsimile or electronic mail are as effective as original documents.

16 In the event that the Commission rejects or modifies any portion of this Settlement, each Party reserves the right to withdraw from this Settlement by written notice to the other Parties and the Commission. Notice, whether written or electronic, must be filed with this docket within ten (10) business days of the Order rejecting part or all of this Settlement. In such event, no Party will be bound or prejudiced by the terms of this Settlement, and any Party shall be entitled to seek reconsideration of the Order.

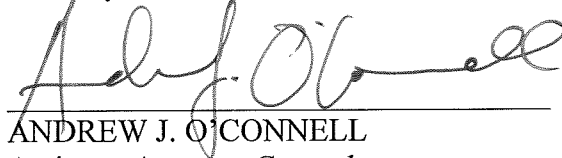
17 Each person signing this Settlement warrants that he or she has authority to bind the Party that he or she represents.

Respectfully submitted this 2<sup>nd</sup> 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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Respectfully submitted this 2 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

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