

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

BLUE SKY OUTFITTERS, INC.,

Respondent.

DOCKET TE-161267

ORDER 02

INITIAL ORDER APPROVING
SETTLEMENT AGREEMENT

BACKGROUND

- 1 On January 25, 2017, the Washington Utilities and Transportation Commission (Commission), entered Order 01, Complaint and Notice of Brief Adjudicative Proceeding set for March 13, 2017, at 9:30 a.m. (Order 01). Order 01 sought penalties against Blue Sky Outfitters, Inc. (Blue Sky Outfitters or Company) of up to \$5,000 for five violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference 49 C.F.R. Part 395 related to driver hours of service, and 49 C.F.R. Part 396 related to vehicle inspection, repair, and maintenance.
- 2 On March 3, 2017, Commission staff (Staff)¹ filed with the Commission a settlement agreement on behalf of the parties (Settlement Agreement).
- 3 As part of the Settlement Agreement, the Company agrees to voluntarily cancel its charter party and excursion carrier certificate. The Company also agrees to cease and desist all operations as a charter party and excursion service carrier and, within 45 days of the effective date of this Order, remove all advertisements and solicitations for such services from its website and any other medium.

¹ In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

4 The Company admits to each of the five violations of WAC 480-30-221 cited in the Complaint. The parties agree that the Commission should assess a total penalty of \$5,000 for these violations. The parties further agree that the Commission should suspend a \$4,500 portion of the penalty for a period of two years, and then waive it thereafter, provided the Company refrains from operating as a charter party or excursion service carrier without authorization from the Commission.

5 Andrew J. O'Connell, Assistant Attorney General, Olympia, Washington, represents Staff. Brad Sarvers, President, Cashmere, Washington, represents Blue Sky Outfitters.

DISCUSSION AND DECISION

6 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.

7 We approve the Settlement Agreement without condition. The parties made concessions relative to their respective litigation positions to arrive at end results that are supported by the evidence in the record. Blue Sky Outfitters admits that its conduct violated WAC 480-30-221 and agrees that the Commission should assess a total penalty of \$5,000, a \$4,500 portion of which will be suspended for a period of two years, and then waived, provided the Company ceases and desists all operations as a charter party and excursion service carrier. In addition, the Company has agreed to voluntarily cancel its charter party and excursion service carrier certificate. The Settlement Agreement permits the Company to pay a reduced penalty now while allowing Staff to achieve its goal of bringing the

Company into compliance by suspending a large portion of the penalty to deter future unauthorized operations.

8 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:

- 9 (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.
- 10 (2) Blue Sky Outfitters, Inc. is assessed a penalty of \$5,000. A \$4,500 portion of the penalty is suspended for a period of two years, and waived thereafter, provided Blue Sky Outfitters, Inc. voluntarily cancels its charter party and excursion certificate and refrains from operating as a charter party and excursion service carrier without first obtaining a certificate from the Commission.
- 11 (3) The \$500 portion of the penalty that is not suspended is due and payable within 10 days of the effective date of this Order.
- 12 (4) The hearing scheduled for March 13, 2017, at 9:30 a.m. is cancelled.
- 13 (5) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective March 6, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
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 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) 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.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An original and **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

Exhibit A
Settlement Agreement