

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Penalty Assessment
Against AGATE PASS
TRANSPORTATION, LLC D/B/A AGATE
PASS TRANSPORTATION, in the Amount
of \$600

DOCKET TE-110698
SETTLEMENT AGREEMENT

1 This Settlement Agreement is entered into by both parties to this proceeding for the
purpose of resolving all issues raised in the above docket.

I. PARTIES

2 The parties to this Settlement Agreement are Agate Pass Transportation, LLC d/b/a
Agate Pass Transportation (“Agate Pass”) and the Staff of the Washington Utilities and
Transportation Commission (“Staff”) (collectively, “the Parties”).

II. BACKGROUND

3 On April 14, 2011, Staff completed a compliance review of Agate Pass and
identified one violation of WAC 480-30-221, which adopts by reference Title 49, CFR Part
382.305(b)(1), failing to conduct random alcohol testing at an annual rate of not less than the
applicable annual rate of the average number of driver positions. (For 2010, Agate Pass had
to ensure two drivers were randomly tested, however, only one driver was tested.)

4 Staff also identified five violations of CFR Part 382.305(b)(2), failing to conduct
random controlled substances testing at an annual rate of not less than the applicable annual

rate of the average number of driver positions. (For 2010, Agate Pass had to ensure nine drivers were randomly tested, however, only four drivers were tested.)

5 In a Notice of Penalties Incurred and Due for Violations of Laws and Rules issued to Agate Pass on May 2, 2011, the Commission assessed penalties of \$600 against Agate Pass for six violations of WAC 480-30-221. On May 16, 2011, Agate Pass requested a hearing and asked that the penalty be reduced by an unspecified amount. On May 26, 2011, Staff filed its response to Agate Pass's application for mitigation. The Commission scheduled a brief adjudicative proceeding for July 6, 2011. Prior to the hearing, the Parties engaged in a settlement conference on June 23, 2011, which resulted in this Settlement Agreement.

III. AGREEMENT

6 The Parties have reached agreement on the issues raised in the above docket and present their agreement for the Commission's consideration and approval. The Parties therefore adopt the following Settlement Agreement, which the Parties enter into voluntarily, to resolve the matters in dispute between them and to expedite the orderly disposition of this proceeding.

7 Agate Pass admits that the six violations of WAC 480-30-221 occurred. Staff recommends and the Parties agree that Agate Pass will pay to the Commission penalties totaling \$300. The amount shall be ordered due and payable after the Commission issues its order approving this Settlement Agreement.

8 Staff recommends and the Parties agree that the remaining \$300 penalty amount shall be suspended for, and waived after, one year from the date the Commission approves this Settlement Agreement, provided that Agate Pass, upon inspection by Staff, incurs no

repeat violations of CFR Parts 382.305(b)(1) and 382.305(b)(2) and receives no conditional or unsatisfactory safety ratings during that year.

9 Staff will conduct a compliance review inspection within one year from the date the Commission approves this Settlement Agreement and will provide Staff's recommendation on whether the suspended penalty in paragraph seven should be waived or imposed.

IV. GENERAL PROVISIONS

10 The Parties agree that this Settlement Agreement reflects the settlement of all contested issues between them in this proceeding. The Parties understand that this Settlement Agreement is not binding unless and until accepted by the Commission.

11 The Parties agree to cooperate in submitting this Settlement Agreement promptly to the Commission for acceptance. The Parties agree to support adoption of this Settlement Agreement in proceedings before the Commission through testimony or briefing. No party to this Settlement Agreement or their agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Settlement Agreement.

12 The Parties agree (1) to provide each other the right to review in advance of publication any and all announcements or news releases that the other party intends to make about the Settlement Agreement (with the right of review to include a reasonable opportunity to request changes to the text of such announcements); and (2) to include in any news release or announcement a statement that the Staff's recommendation to approve the settlement is not binding on the Commission itself.

13 Nothing in this Settlement Agreement shall limit or bar any other entity from pursuing legal remedies against Agate Pass or Agate Pass's ability to assert defenses to such claims.

14 The Parties have entered into this Settlement Agreement to avoid further expense, inconvenience, uncertainty, and delay of continuing litigation. The Parties recognize that this Settlement Agreement represents a compromise of the Parties' positions. As such, conduct, statements, and documents disclosed during negotiations of this Settlement Agreement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Settlement Agreement or any Commission order fully adopting those terms. This Settlement Agreement shall not be construed against either party because it was a drafter of this Settlement Agreement.

15 The Parties have negotiated this Settlement Agreement as an integrated document to be effective upon execution and Commission approval. This Settlement Agreement supersedes all prior oral and written agreements on issues addressed herein. Accordingly, the Parties recommend that the Commission adopt this Settlement Agreement in its entirety.

16 The Parties may execute this Settlement Agreement in counterparts and as executed shall constitute one agreement. Copies sent by facsimile are as effective as original documents.

17 The Parties shall take all actions necessary, as appropriate, to carry out this Settlement Agreement.


18 In the event that the Commission rejects or modifies any portion of this Settlement Agreement, each party reserves the right to withdraw from this Settlement Agreement by written notice to the other party and the Commission. Written notice must be served within ten (10) business days of the Order rejecting part or all of this Settlement Agreement. In such event, neither party will be bound or prejudiced by the terms of this Settlement Agreement, and either party shall be entitled to seek reconsideration of the Order.

Additionally, the Parties will jointly request that a prehearing conference be convened for purposes of establishing a procedural schedule to complete the case.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

AGATE PASS TRANSPORTATION, LLC
D/B/A AGATE PASS TRANSPORTATION

ROBERT M. MCKENNA
Attorney General



GREGORY J. TRAUTMAN
Assistant Attorney General
Counsel for the Utilities and
Transportation Commission Staff

LESLIE F. BAGLEY
General Manager

Dated: June 30, 2011

Dated: _____, 2011

Additionally, the Parties will jointly request that a prehearing conference be convened for purposes of establishing a procedural schedule to complete the case.

WASHINGTON UTILITIES AND
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AGATE PASS TRANSPORTATION, LLC
D/B/A AGATE PASS TRANSPORTATION

ROBERT M. MCKENNA
Attorney General



LESLIE F. BAGLEY
General Manager

GREGORY J. TRAUTMAN
Assistant Attorney General
Counsel for the Utilities and
Transportation Commission Staff

Dated: _____, 2011

Dated: 6/29, 2011