

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

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 Agate Pass Transportation, LLC d/b/a Agate Pass
Transportation (“Agate Pass” or “the Company”) and the Staff of the Washington Utilities
and Transportation Commission (“Staff”). Both parties have signed the Settlement
Agreement, which is included with this Narrative. This Narrative summarizes the
Settlement Agreement. It is not intended to modify any terms of the Settlement Agreement.

II. PROPOSALS FOR REVIEW PROCEDURE

2 The Parties submit that this matter is considerably less complex than a general rate
proceeding and request that review proceed on a timetable for less complex matters, as
provided in WAC 480-07-740(1)(b). To the knowledge of both Parties, there are no
opponents of the settlement. Because of the less complex nature of this matter and the
uncontested status of the settlement, the Parties suggest that a formal settlement hearing
along with the opportunity for public comment are unnecessary in this case.

3 The Parties do not intend to file documentation supporting the Settlement
Agreement, with the exception of the Settlement Agreement itself and this Narrative. If the

Commission requires supporting documents beyond the Settlement Agreement, Narrative, and the other documents on file in this docket, the Parties will provide documentation as reasonably needed.

4 In keeping with WAC 480-07-740(2)(b), the Parties are prepared to present one or more witnesses each to testify in support of the proposal and answer questions concerning the details of the Settlement Agreement, and its costs and benefits, should such testimony be required. In addition, both Staff and the Company are available to respond to any questions the Commission may have regarding the proposed Settlement Agreement.

5 The Parties request a streamlined review of the proposed Settlement Agreement. To that end, the Parties would prefer an informal review on a paper record. In accordance with WAC 480-07-730, the Parties propose the foregoing procedural alternatives for review of the proposed Settlement Agreement.

III. SCOPE OF THE UNDERLYING DISPUTE

6 The underlying dispute concerns a penalty assessment issued by the Commission against Agate Pass at the request of Staff on May 2, 2011. 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.)

7 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.)

8 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 for six violations of Commission rules. 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, and subsequently agreed to a resolution of all issues raised by the penalty assessment filed in this docket.

IV. SUMMARY OF PROPOSED SETTLEMENT

9 The Settlement Agreement resolves all of the issues in dispute. Agate Pass admits that the six violations of WAC 480-30-221 occurred. Agate Pass agrees to pay the Commission penalties totaling \$300. The amount shall be ordered due and payable after the Commission issues its order approving this Agreement. Agate Pass agrees 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 Part 382.305(b)(1) and 382.305(b)(2), and receives no conditional or unsatisfactory safety ratings during that year. 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 should be waived or imposed.

V. STATEMENT OF PARTIES' INTERESTS AND THE PUBLIC INTEREST

10 As stated in the Settlement Agreement, the settlement represents a compromise of the positions of 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. It is in the public interest that this dispute conclude without the further expenditure of public resources on litigation expenses. The Commission will receive the \$300 penalty amount without expending resources on litigation. Likewise, it is in the public interest that the Settlement Agreement contains a provision that the suspended \$300 penalty may be waived if the Company complies with the conditions in the Settlement Agreement, or imposed if the Company does not so comply. The compliance review of Agate Pass that Staff will commence within one year will enable the Commission to ascertain the Company's compliance with the Settlement Agreement's provisions, and to determine whether the suspended penalty should be imposed or waived.

11 For the reasons explained above, these commitments, and the Settlement Agreement as a whole, are in the public interest, as well the interests of the Parties. Staff and Agate Pass, therefore, recommend that the Commission approve the Settlement Agreement in its entirety.

VI. LEGAL POINTS THAT BEAR ON PROPOSED SETTLEMENT

12 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

13


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

Respectfully submitted this 30th day of June, 2011.

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

VII. CONCLUSION

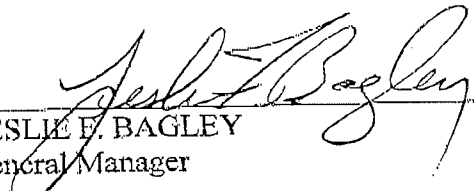
13 Because the parties have negotiated a compromise on all of the issues in this dispute and because the settlement is in the public interest, both Parties request that the Commission issue an order approving the Settlement Agreement in full.

Respectfully submitted this _____ day of June, 2011.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

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