

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty Assessment	)	DOCKET TE-110698
Against	)	
	)	
	)	ORDER 01
AGATE PASS TRANSPORTATION,	)	
LLC, d/b/a Agate Pass Transportation	)	INITIAL ORDER APPROVING
	)	SETTLEMENT AGREEMENT;
In the Amount of \$600	)	MITIGATING PENALTY TO \$300;
	)	SUSPENDING REMAINING \$300
	)	PENALTY FOR ONE YEAR ON
	)	CONDITION OF FUTURE
.....	)	COMPLIANCE

1 **Synopsis.** *This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective as described in the notice at the end of this Order. If this Initial Order becomes final, the parties’ proposed Settlement Agreement will be approved and the penalty assessed against Agate Pass Transportation for a total of six violations regarding failures to meet required annual rates for random alcohol and controlled substances testing will be mitigated from \$600 to \$300. The remaining \$300 penalty will be suspended for a period of one year from the date of this order, then waived, subject to the condition that when inspected by Commission Staff, Agate Pass has no repeat violations of this nature and its safety rating is not assessed as “conditional” or “unsatisfactory” at any time during that year.*

2 **Penalty.** On May 2, 2011, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment TE-110698 against Agate Pass Transportation, LLC (Agate Pass) in the amount of \$600, alleging multiple violations of Washington Administrative Code (WAC) 480-30-221, which requires a passenger transportation company to comply with parts of Title 49, Code of Federal Regulations, including 49 CFR Part 382.305(b), which governs annual rates for conducting random alcohol and controlled substances testing.

3 On May 16, 2011, Agate Pass filed with the Commission a request for a mitigation hearing. Agate Pass filed a letter explaining its difficulty complying with the random testing laws due to the part-time nature of the company's employees. Agate Pass also stated that the proposed \$600 penalty posed a major financial burden to the company. On May 26, 2011, Commission Staff filed a Response disputing Agate Pass's contentions and stating that the company's safety record was a matter of concern to the Commission.

4 **Hearing.** Pursuant to RCW 34.05.482 and WAC 480-07-610, the Commission found that a brief adjudicative proceeding (BAP) was appropriate for determining whether the alleged violations occurred, whether the penalty should be mitigated, and what actions might be necessary for Agate Pass to maintain future compliance, pursuant to the statutory provisions of RCW 81.04.

5 As part of a Notice issued on June 3, 2011, setting deadlines for the Company and Commission Staff to file statements of their positions, the Commission included a Notice of Hearing and set July 6, 2011, at 1:30 p.m. as the time for the parties to make oral statements concerning their positions.

6 **Settlement.** On June 23, 2011, the parties notified the Commission that they had reached a full settlement in principle and indicated they would be reducing it to writing prior to the scheduled hearing date. On June 30, 2011, the parties filed their proposed Settlement Agreement and supporting Narrative, agreeing to reduce the penalty imposed on Agate Pass from \$600 to \$300 and to suspend the remaining \$300 for one year on condition of future compliance.

7 In the Settlement, Agate Pass admits to all six alleged violations of WAC 480-30-221, which adopts by reference 49 CFR 382.305(b). Agate Pass was required to conduct random alcohol tests on two drivers in 2010, but concedes that it tested only one. Further, Agate Pass was required to conduct random controlled substances testing on at least nine drivers in 2010, but concedes that it tested only four.<sup>1</sup> In light of these

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<sup>1</sup> Settlement Agreement, ¶ 7; *see also* Narrative, ¶¶ 6-7 and 9.

failures to conduct the required number of random tests, Agate Pass agrees to pay a penalty in the amount of \$300.<sup>2</sup>

8 Commission Staff and Agate Pass agree that the remaining \$300 penalty should be suspended for one full year from the date of this order, and waived thereafter, if Agate Pass avoids any repeat violations of this nature and ensures that its safety rating does not merit categorization as “conditional” or “unsatisfactory” at any point during the next year.<sup>3</sup> Commission Staff intends to conduct a compliance review inspection of Agate Pass’s operations in approximately one year and recommend at that time whether the suspended penalty should be imposed or waived.<sup>4</sup>

9 **Evaluation of Settlement.** 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.

10 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.

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<sup>2</sup> Settlement Agreement, ¶ 7; *see also* Narrative, ¶ 9.

<sup>3</sup> Settlement Agreement, ¶ 8; *see also* Narrative, ¶ 9.

<sup>4</sup> Settlement Agreement, ¶ 9; *see also* Narrative, ¶ 9.

- 11 The Settlement terms proposed by the parties are consistent with law and policy, and reasonably resolve all issues in this proceeding. The parties made concessions relative to their respective litigation positions to arrive at end results that are supported by the evidence in the record. Agate Pass admits all of the alleged violations of WAC 480-30-221 and 49 CFR 382.305(b), pledges future compliance with regard to random testing requirements and rate, and also commits to maintaining a satisfactory company safety rating. Commission Staff achieves its goal of bringing the company into compliance and, through suspending half of the penalty, does so without undue financial impact to the business.
- 12 **Commission Decision.** The Settlement Agreement is approved without condition. Agate Pass has taken responsibility for its past failures to conduct random alcohol and controlled substance testing at required rates and has an incentive to avoid repeat violations and to ensure its safety rating does not fall below satisfactory. The original penalty of \$600 should be mitigated and is reduced to \$300, due and payable within 30 days of the date of this order. The remaining \$300 of the original penalty will be suspended for a period of one year from the date of this order subject to the condition that Agate Pass avoids any repeat violations of WAC 480-30-221 and 49 CFR 382.305(b) and maintains its company safety rating so as to avoid any “conditional” or “unsatisfactory” ratings for a full year.
- 13 Commission Staff shall conduct a compliance review inspection of Agate Pass’s business operations on or before Friday, June 29, 2012, to ensure compliance with the terms of this order. Commission Staff shall then recommend whether the suspended penalty should be imposed or allowed to expire and be waived in accordance with the terms of the Settlement Agreement and this order. If Commission Staff fails to timely file its recommendation, the penalty shall be waived one year from the date of this order.

*REMAINDER OF THIS PAGE INTENTIONALLY BLANK*

**ORDER**

**THE COMMISSION ORDERS:**

- 14 (1) Agate Pass Transportation, is assessed a mitigated penalty of \$300 that is due and payable no later than Friday, August 5, 2011.
- 15 (2) The remainder of the original penalty, \$300, is suspended until one year from the date of this Initial Order, and waived thereafter, provided Agate Pass Transportation (a) avoids any repeat violations of WAC 480-30-221 and 49 CFR 382.305(b) and (b) ensures that its safety rating is not assessed by Commission Staff as “conditional” or “unsatisfactory” for the entire year.
- 16 (3) Commission Staff shall conduct a review of Agate Pass’s business practices on or before Friday, June 29, 2012, and, as described above, timely recommend to the Commission’s Executive Director and Secretary whether the suspended penalty should be imposed or waived in accordance with the terms of the Settlement Agreement.
- 17 (4) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective July 6, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM  
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 **seven (7)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250