

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

In the Matter of the Penalty Assessment	)	DOCKET TE-110155
Against)	
	)	ORDER 01
)	
BEELINE TOURS LTD.,	)	INITIAL ORDER APPROVING
	)	SETTLEMENT AGREEMENT;
In the Amount of \$3,300	)	MITIGATING PENALTY TO \$1,300;
	)	SUSPENDING REMAINING \$2,000
	)	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 Beeline Tours Ltd. for multiple instances of drivers operating without current medical certification will be mitigated from \$3,300 to \$1,300. The remaining \$2,000 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, Beeline incurs 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 March 1, 2011, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment TE-110155 against Beeline Tours Ltd. (Beeline) in the amount of \$3,300, alleging multiple violations of Washington Administrative Code (WAC) 480-30, which requires a passenger transportation company to comply with parts of Title 49, Code of Federal Regulations, including 49 CFR Part 391, which governs qualifications of drivers.

3 On March 15, 2011, Beeline filed with the Commission a request for a mitigation hearing. On April 14, 2011, Beeline filed a letter further explaining its reasons in support of seeking a reduced fine, questioning the proportionality of the penalty to the type of infraction and explaining the financial burden a \$3,300 penalty would impose.

On April 28, 2011, Commission Staff filed a Response disputing Beeline's contentions and contending 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 determined that a brief adjudicative proceeding (BAP) was appropriate for determining whether the alleged violations occurred and, if so, whether the penalty should be mitigated and what actions might be necessary for Beeline to maintain future compliance, pursuant to the statutory provisions of RCW 81.04.

5 As part of a Notice issued on March 30, 2011, setting deadlines for the Company and Commission Staff to file statements of their positions, the Commission included a Notice of Hearing and set May 12, 2011, at 1:30 p.m. as the time for the parties to make oral statements concerning their positions.

6 **Settlement.** On May 4, 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 May 5, 2011, the parties filed their proposed Settlement Agreement and supporting Narrative, agreeing to reduce the penalty imposed on Beeline from \$3,300 to \$1,300 and to suspend the remaining \$2,000 for one year on condition of future compliance.

7 In the Settlement, Beeline admits to all 33 alleged violations of WAC 480-30-221, which adopts by reference 49 CFR 391.45(b)(1), using drivers not medically examined and certified within the preceding 24 months. In light of these failures to monitor the expiration of two of its drivers' medical certificates, Beeline agrees to pay a penalty in the amount of \$1,300.¹

8 Commission Staff and Beeline agree that the remaining \$2,000 penalty should be suspended for one full year from the date of this order, and waived thereafter, if Beeline 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.² Commission Staff intends to conduct a compliance review inspection

¹ Settlement Agreement, ¶ 6; *see also* Narrative, ¶ 8.

² Settlement Agreement, ¶ 7.

of Beeline's operations in approximately one year and recommend at that time whether the suspended penalty should be imposed or waived.³

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.

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. Beeline admits all of the alleged violations of WAC 480-30-221 and 49 CFR 391.45(b)(1), pledges future compliance with regard to driver medical certificates, and also commits to maintaining a satisfactory company safety rating. Commission Staff achieves its goal of bringing a company into compliance and, through suspending the majority of the penalty, does so without undue financial impact to the business.

12 **Commission Decision.** The Settlement Agreement is approved without condition. Beeline has taken responsibility for its past failures to monitor driver medical certifications and has an incentive to avoid repeat violations and to ensure its safety rating does not fall below satisfactory. The original penalty of \$3,300 should be mitigated and is reduced to \$1,300, due and payable within 30 days of the date of this

³ *Id.* ¶ 8.

order. The remaining \$2,000 of the original penalty will be suspended for a period of one year from the date of this order subject to the condition that Beeline avoids any repeat violations of WAC 480-30-221 and 49 CFR 391.45(b)(1) 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 Beeline’s business operations on or before Friday, May 4, 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.

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ORDER

THE COMMISSION ORDERS:

- 14 (1) Beeline Tours Ltd., is assessed a mitigated penalty of \$1,300 that is due and payable no later than Friday, June 10, 2011.
- 15 (2) The remainder of the original penalty, \$2,000, is suspended until one year from the date of this Initial Order, and waived thereafter, provided Beeline Tours Ltd. (a) avoids any repeat violations of WAC 480-30-221 and 49 CFR 391.45(b)(1) 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 Beeline’s business practices on or before Friday, May 4, 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 May 11, 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