

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Proceeding No. 14G-1023BP

Civil Penalty Assessment Notice No. 109816

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Complainant,

v.

HIGHGRACE TRANSIT LLC,

Respondent.

STIPULATION AND SETTLEMENT AGREEMENT

Staff of the Public Utilities Commission (“Staff”) and Respondent HighGrace Transit LLC (“Respondent”) (collectively, the “Parties”) enter into this Stipulation and Settlement Agreement (“Agreement”) in the above-referenced proceeding as a complete and final resolution of all issues that were or could have been raised in this proceeding. Sinclair Ugboaja, managing member of Respondent, has authority to enter into settlement on behalf of Respondent.

Background

On August 12, 2014, Staff issued Respondent Civil Penalty Assessment Notice No. 109816 (the “CPAN”), alleging three violations of the Commission’s Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (“CCR”) 723-6 as follows: Rule 6102(a)(I) referring to 49 C.F.R. § 391.45, Rule 6102(a)(I) referring to 49 C.F.R. § 396.17(a), and Rule 6103(c)(II)(D). The CPAN

sought civil penalties of \$2,970.00 (or \$1,485.00 if paid within 10 days) and was served by certified mail, return receipt requested, on October 16, 2014.

Settlement Agreement

Staff and Respondent hereby stipulate and agree as follows:

1. Staff will dismiss violation No. 2 in the CPAN.
2. Respondent admits liability to the remaining violations in the CPAN.
3. Respondent agrees to comply with all Colorado statutes and Commission Rules, in particular the rules concerning medical certification of drivers, periodic inspection of vehicles, and accurate drivers' time records.

4. The Agreement herein has been reached in the spirit of compromise, in light of the uncertainties of trial, and to avoid the costly expense of litigation. The Agreement promotes administrative efficiency by avoiding the time and expense that would be necessarily devoted to hearing this matter. The public interest is served by requiring Respondent to pay a civil penalty in the amount of \$900.00 under the terms herein. In reducing the penalty, Staff considered the following mitigating factors pursuant to Commission Rule 1302(b):

- a. Respondent acknowledges wrongdoing.
- b. Upon Staff's dismissal of violation No. 2 in the CPAN, Respondent admits the maximum level of culpability for the remaining violations Nos. 1 and 3 in the CPAN.
- c. Since the issuance of the CPAN, Respondent immediately obtained a vehicle inspection. Although the procured vehicle inspection was not fully-compliant with the applicable rule, it nonetheless demonstrates Respondent's good faith effort to comply with the requirement.

- d. Respondent has obtained a current medical examiner's certificate.
- e. Respondent is a one-driver, two-vehicle carrier.
- f. Assessing Respondent a civil penalty of \$900.00 under the terms herein is sufficient motivation for Respondent to remain in compliance with the Public Utilities Laws and Commission Rules on a going-forward basis.

5. In consideration of Respondent's admission of liability, and for the reasons expressed above, Staff agrees reducing the amount of the civil penalty from \$2,970.00 to \$900.00 is appropriate and in the public interest. This \$900.00 settlement amount consists of an \$818.18 penalty, plus a ten-percent surcharge of \$81.82, pursuant to section 24-34-108, C.R.S.

6. Respondent shall pay the \$900.00 in three payments, with the first payment of \$300.00 due within 10 days of the Commission's final order approving this Agreement, the second payment of \$300.00 due thirty days following the first payment's due date, and the third payment of \$300.00 due thirty days following the second payment's due date.

7. If Respondent fails to make any payment when due, Respondent shall be liable for the full civil penalty amount of \$2,970.00 (less any payment made), which amount will be due immediately.

8. Respondent further agrees that if, during any investigation(s) conducted by Staff within twelve months of the date of a Commission final order in this proceeding, the Commission finds any violations of 4 CCR 723-6-6102(a)(I) (49 C.F.R. § 391.45 and/or § 396.17(a)) or -6103(c)(II)(D), Respondent shall be liable for the full

civil penalty, less any payment made. In this event, the remaining full civil penalty will be due immediately. Respondent and Staff agree the specific intent of this provision is to prevent further violations of the Public Utilities Laws and Commission Rules.

9. All matters that were or could have been raised in this proceeding relating to the issues specifically identified and addressed herein have been resolved by this Agreement. This Agreement may be executed in counterparts, each of which when taken together shall constitute the entire Agreement of the Parties, and no further modification of this Agreement is allowed, except in writing by the parties, and further agreed to in an order issued by the Commission.


10. Respondent's failure to complete its payment obligation as set forth in this Agreement shall be deemed a waiver by Respondent of any and all rights to file exceptions and/or a request for rehearing, reargument, and reconsideration, or to file any other form of appeal.

11. In the event that this Agreement is modified or not approved in its entirety, either Party, at that Party's option, may withdraw from this Agreement by filing a notice with the Commission in this proceeding within seven days of entry of such order. In that event, this Agreement shall be void and this matter shall be set for hearing.

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Executed this 8TH day of January, 2015.

STAFF OF THE COLORADO
PUBLIC UTILITIES COMMISSION


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