

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

<p>In the Matter of the Investigation of</p> <p>SANI MAHAMA MAUROU d/b/a SEATAC AIRPORT 24</p> <p>For Compliance with WAC 480-30-221</p>	<p>DOCKET TC-152296 (Consolidated)</p> <p>ORDER 01</p>
<p>In the Matter of a Penalty Assessment Against</p> <p>SANI MAHAMA MAUROU d/b/a SEATAC AIRPORT 24</p> <p>in the amount of \$29,200</p>	<p>Docket TC-160187 (Consolidated)</p> <p>ORDER 01</p> <p>ORDER OF CONSOLIDATION; INITIAL ORDER CANCELLING CERTIFICATE; ORDER IMPOSING AND SUSPENDING PENALTIES</p>

BACKGROUND

- 1 On February 9, 2016, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel Certificate as an Auto Transportation Carrier and Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements In the Matter of the Investigation of Sani Mahama Maurou d/b/a SeaTac Airport 24 (SeaTac Airport 24 or Company) For Compliance with WAC 480-30-221 in Docket TC-152296. The Notice set the Brief Adjudicative Proceeding for March 1, 2016, at 9:30 a.m. At the request of Commission staff (Staff), the brief adjudicative proceeding was rescheduled to March 7, 2016, at 9:30 a.m.
- 2 Also on February 9, 2016, the Commission assessed a penalty of \$29,200 (Penalty Assessment) in Docket TC-160187 against SeaTac Airport 24 for 292 violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference 49 C.F.R. Part 391 related to driver qualifications and 49 C.F.R. Part 396 related to vehicle inspection, repair, and maintenance.

- 3 On February 25, 2016, SeaTac Airport 24 filed a request for hearing, admitting the violations and requesting the opportunity to present evidence at the brief adjudicative proceeding set for March 7, 2016, in Docket TC-152296.
- 4 The Commission conducted a brief adjudicative proceeding on March 7, 2016, before Administrative Law Judge Rayne Pearson. The Commission construed the Company's request to present evidence related to the Penalty Assessment at the brief adjudicative proceeding as a motion for consolidation. Staff supported the Company's request, and Dockets TC-152296 and TC-160187 were consolidated.
- 5 Staff presented testimony from Mathew Perkinson, special investigator, and David Pratt, assistant director, Transportation Safety. Mr. Perkinson provided documentation of the critical safety violations that resulted in Staff's proposed unsatisfactory safety rating for SeaTac Airport 24. Following an investigation conducted in December 2015, Staff documented 247 violations of 49 C.F.R. Part 391.45(b)(1), which requires drivers to be medically examined and certified annually by a qualified health professional. Both of the Company's drivers drove without being medically certified a total of 247 times. Staff also documented two violations of C.F.R. Part 391.51(a), which requires companies to maintain a driver qualification for each driver; two violations of C.F.R. Part 396.3(b), which requires companies to maintain vehicle inspection and maintenance records; and 41 violations of C.F.R. Part 396.11(a), which requires drivers to complete a vehicle inspection report (DVIR) at the end of his or her shift each day a vehicle is used.
- 6 Mr. Pratt presented additional testimony and evidence related to the Commission's enforcement policy and the technical assistance provided to SeaTac Airport 24 since it first obtained its certificate in October 2014. Mr. Pratt also testified that because the Company's proposed safety management plan failed to cure four of the six deficiencies cited in Staff's investigation, Staff maintains its recommendation to cancel the Company's auto transportation and charter and excursion authority.
- 7 The Company presented testimony from Mr. Maurou, who acknowledged the violations but requested the penalty be waived because it would create an insurmountable financial hardship for his Company. Mr. Maurou also claimed that the deficiencies contained in his proposed safety management plan had been corrected, and attempted to introduce additional documentation to corroborate his testimony. Finally, Mr. Maurou argued that he has not received adequate technical assistance from the Commission leading up to Staff's proposed unsatisfactory safety rating.

- 8 Following the parties' presentations, Judge Pearson issued a ruling from the bench and cancelled the Company's auto transportation certificate effective March 8, 2016. Judge Pearson ordered the Company to cease and desist all operations, including offering and advertising its services, unless and until the Company's permit is reinstated or the Company reapplies and obtains a new certificate from the Commission.
- 9 Andrew J. O'Connell, Assistant Attorney General, Olympia, represents Commission Staff (Staff). Sani Maurou, Owner, Seattle, represents SeaTac Airport 24.

DISCUSSION AND DECISION

1. Docket TC-152296 – Auto Transportation Certificate

- 10 Washington law requires auto transportation carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's December 2015 compliance review of SeaTac Airport 24 found 47 violations of "critical" regulations, which resulted in a proposed unsatisfactory safety rating. "Critical" regulations relate to management and/or operational issues, and violations of these regulations typically indicate a breakdowns in a carrier's management controls. Patterns of noncompliance with a critical regulation are quantitatively linked to inadequate safety management controls and usually higher-than-average accident rates.
- 11 SeaTac Airport 24 received notice of its proposed unsatisfactory safety rating on January 22, 2016. Carriers that receive proposed unsatisfactory safety ratings have 45 days to request and receive a change to the proposed rating. SeaTac Airport 24's deadline for requesting and receiving an upgrade to its safety rating was the day of the hearing, March 7, 2016.
- 12 In its February 9, 2016, Notice of Intent to Cancel Certificate, the Commission instructed the Company to submit its proposed safety management plan no later than 5:00 p.m. on Friday, February 26, 2016. On Monday, February 29, 2016, the Company submitted its proposed safety management plan.
- 13 On March 4, 2016, Staff filed its response to the Company's proposed safety management plan, which provided an evaluation of the Company's plan and concluded it was deficient in four of the six areas addressed in Staff's investigation. Staff found that

the Company's proposed safety management plan was not supported by evidence that the Company has taken corrective actions to address the violations, or that the Company's operations currently meet the safety fitness standards set forth in 49 C.F.R Parts 385.5 and 385.7.

- 14 Based on the testimony and evidence presented at the hearing, the Commission found that the Company failed to take corrective action to address the violations within the 45-day time period provided by federal law. Accordingly, the Commission found good cause to cancel the Company's auto transportation certificate effective March 8, 2016. The Company was ordered to cease and desist all operations, including advertising and offering its services, unless and until the Company's certificate was reinstated or the Company applied for and obtained a new certificate from the Commission.

2. Docket TC-160187 – Penalty Assessment

- 15 Violations discovered during safety inspections are subject to penalties of \$100 per violation.¹ In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.² Violations defined by federal law as "critical" meet this standard.³
- 16 The Commission considers several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have been considered in setting the assessed penalty amount, or explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring the company's compliance.⁴ The Penalty Assessment cited 292 critical violations in four categories. We address each category in turn.

WAC 480-30-221, 49 C.F.R. Part 396.11(a)

- 17 **Discussion.** WAC 480-30-221, 49 C.F.R. Part 396.11(a) requires drivers to complete a vehicle inspection report (DVIR) at the end of his or her shift each day a vehicle is used.

¹ See RCW 80.04.405.

² Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶ 12 (Jan. 7, 2013) (Enforcement Policy).

³ 49 C.F.R. § 385, Appendix B.

⁴ Enforcement Policy ¶ 19.

The report includes an 11-item checklist that identifies any defects that could affect safe operation of the vehicle. The Penalty Assessment cited 41 violations of WAC 480-30-221 because both drivers failed to prepare DVIRs on the 41 occasions in October 2015 when the Company operated its vehicles. Mr. Maurou testified that he had no idea drivers were expected to complete DVIRs, but that his vehicles are routinely serviced by a mechanic and have never broken down.

18 Staff presented evidence and testimony that Mr. Maurou received an onsite technical assistance visit from Staff in October 2014. During that visit, Mr. Maurou was provided with a copy of the Commission’s publication, “Achieving a Satisfactory Safety Rating,” which explains the DVIR requirement and provides a detailed description of the information the reports must contain. Mr. Maurou testified that he has difficulty comprehending the Commission’s publication, “Achieving a Satisfactory Safety Rating,” because English is his second language and the publication is not available in French.

19 **Decision.** Here, the Commission assessed a \$4,100 penalty for 41 violations of WAC 480-30-221. Staff recommends a “per violation” penalty because the Company received technical assistance related to DVIRs in October 2014 and was aware that its operations should mirror those outlined in “Achieving a Satisfactory Safety Record.” We agree with Staff that the responsibility for complying with Commission rules rests solely with the Company. If Mr. Maurou had difficulty comprehending the Commission’s safety guide, he should have contacted Commission Staff with questions or sought other assistance.

20 Despite these factors, we decline to adopt Staff’s recommendation and instead assess a \$100 penalty for 41 violations of C.F.R. 396.11(a). Recent Commission penalty assessments and subsequent orders on review have found that a \$100 penalty for this category of violations – rather than a “per violation” penalty – is appropriate for a first-time offense, even when a company has received extensive technical assistance.⁵ Accordingly, we assess a penalty of \$100 for 41 violations of C.F.R. 396.11(a) consistent with our recent decisions.

⁵ See *In the Matter of the Penalty Assessment Against Gus & Jack Moving Company, LLC*, Docket TV-143199 (November 14, 2014), where the Commission assessed a \$100 penalty for 16 violations of C.F.R. Part 396.11(a) because they were first time violations. The Company had received prior technical assistance on two occasions. See also *In the Matter of the Penalty Assessment Against Adam’s Moving and Delivery Service, LLC*, Docket TV-143801 (December 18, 2014), where the Commission assessed a \$100 penalty for 53 violations of C.F.R. Part 396.11(a) because they were first time violations. The Company had received prior technical assistance on two occasions and had declined to attend Commission safety training.

WAC 480-30-221, 49 C.F.R. Part 396.3(b)

21 **Discussion.** WAC 480-30-221, 49 C.F.R. Part 396.3(b) requires carriers to keep minimum records of inspection and vehicle maintenance. The Company was unable to provide any records of inspections or maintenance for its two vehicles. Mr. Maurou testified that he was not aware of this requirement, but that his vehicles are routinely checked by a mechanic.

22 Staff testified that Mr. Maurou received extensive technical assistance during Staff's October 2014 site visit, which included information about requirements for vehicle inspection and maintenance records.

23 **Decision.** Here, the Commission assessed a \$200 penalty for two violations of C.F.R. Part 396(3)(b). The Company received technical assistance related to vehicle inspection and maintenance records, and failed to introduce any new information at hearing that would support mitigation. Accordingly, we decline to mitigate the penalty.

WAC 480-30-221, C.F.R Part 391.51(a)

24 **Discussion.** WAC 480-30-221, C.F.R. Part 391.51(a) requires companies to maintain a driver qualification file for each driver. The Company failed to maintain driver qualification files for its two drivers, Ndow Yankuba and Mr. Maurou. Mr. Maurou testified that he was not aware of this requirement, and has not received sufficient technical assistance from the Commission on this issue.

25 Staff testified that Mr. Maurou received technical assistance related to driver qualification files during Staff's 2014 on-site visit.

26 **Decision.** The Commission assessed a \$200 penalty for two violations of C.F.R. Part 391.51(a). The Company received technical assistance related to vehicle inspection and maintenance records, and failed to introduce any new information at hearing that would support mitigation. Accordingly, we decline to mitigate the penalty.

27 **WAC 480-15-570, C.F.R. Part 391.45(b)(1)**

28 **Discussion.** WAC 480-30-221, C.F.R. Part 391.45(b)(1) requires drivers to be medically examined and certified annually by a qualified health professional. The Penalty Assessment cited 247 violations of WAC 480-30-221 because Staff found that Mr. Yankuba drove a total of 114 times and Mr. Maurou drove a total of 133 times without a valid medical certificate. In total, the drivers drove 247 times without valid medical certificates during the past 6 months.

29 **Decision.** A company that permits its employees to perform safety-sensitive functions, such as transporting passengers without being medically certified, puts the traveling public at risk. Following the compliance review, Mr. Yankuba obtained a valid medical certificate. Mr. Maurou submitted a medical certificate with his proposed safety management plan, but it was not issued by a qualified medical provider approved by the National Registry of Certified Medical Examiners. As noted above, Mr. Maurou presented a new medical certificate at hearing, but Staff has not yet had the opportunity to confirm its validity.

30 While we appreciate the Company's attempt to come into compliance, medical certification is a fundamental requirement that warrants penalties for a first-time offense, and a "per violation" penalty is appropriate because these violations are considered critical to safe operations. The Company did not introduce any new information at hearing related specifically to its failure to meet this requirement, but it did make a compelling case for the financial hardship the \$24,700 penalty associated with these violations would impose. The Company's gross revenue was approximately \$90,000 in 2014. Penalties for these violations represent nearly one-third of the Company's revenues prior to any deductions for operations and expenses, and would likely create an insurmountable financial hurdle for the Company. The Commission considers company size when taking enforcement actions, and does not support imposing penalties disproportionate to a company's revenues.⁶

31 Accordingly, we will suspend a \$20,000 portion of the \$24,700 penalty for a period of two years, and then waive it, subject to the following conditions: 1) SeaTac Airport 24 must either maintain a satisfactory safety rating or cease and desist all auto transportation

⁶ Docket A-120061 at ¶ 11.

operations, 2) SeaTac Airport 24 may not incur any repeat violations of WAC 480-30-221, and 3) SeaTac Airport 24 must pay the remaining \$4,700 portion of the penalty, plus the \$500 penalty assessed for the violations addressed above, for a total penalty of \$5,200, within ten days of the effective date of this order. The Company may work with Staff to establish mutually agreeable payment arrangements to pay the \$5,200 portion of the penalty that is not suspended.

FINDINGS AND CONCLUSIONS

- 32 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including household goods companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 33 (2) SeaTac Airport 24 is an auto transportation company subject to Commission regulation.
- 34 (3) SeaTac Airport 24 failed to cure the deficiencies that led to its unsatisfactory safety rating within 45 days, as required. Accordingly, SeaTac Airport 24's auto transportation certificate should be cancelled.
- 35 (4) SeaTac Airport 24 violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 396.11(a), by failing to require its driver to complete driver vehicle inspection reports on 41 occasions.
- 36 (5) SeaTac Airport 24 should be penalized \$100 for 41 violations of WAC 480-15-560, which adopts by reference 49 C.F.R. Part 396.11(a).
- 37 (6) SeaTac Airport 24 violated WAC 480-30-221, which adopts by reference 49 C.F.R. 396.3(b), by failing to keep minimum records related to vehicle inspection and maintenance.
- 38 (7) SeaTac Airport 24 should be penalized \$200 for two violations of WAC 480-30-221, which adopts by reference 49 C.F.R. 396.3(b).

- 39 (8) SeaTac Airport 24 violated WAC 480-30-221, which adopts by reference 49
C.F.R. 391.51(a), by failing to maintain a driver qualification file for each driver.
- 40 (9) SeaTac Airport 24 should be penalized \$200 for two violations of WAC 480-30-
221, which adopts by reference 49 C.F.R. 391.51(a).
- 41 (10) SeaTac Airport 24 violated WAC 480-30-221, which adopts by reference C.F.R.
Part 391.45(a), by failing to ensure its driver was medically examined and
certified on 247 occasions.
- 42 (11) SeaTac Airport 24 should be penalized \$24,700 for 247 violations of WAC 480-
30-221, which adopts by reference C.F.R. Part 391.45(a). A \$20,000 portion of
the penalty should be suspended for a period of two years, and then waived,
subject to the following conditions: 1) SeaTac Airport 24 must either maintain a
satisfactory safety rating or cease and desist all auto transportation operations, 2)
SeaTac Airport 24 may not incur any repeat violations of WAC 480-30-221, and
3) SeaTac Airport 24 must pay the remaining \$5,200 penalty within ten days of
the effective date of this order. The Company may work with Staff to establish
mutually agreeable payment arrangements to pay the \$5,200 portion of the
penalty that is not suspended.

ORDER

THE COMMISSION ORDERS That

- 43 (1) Sani Mahama Maurou d/b/a SeaTac Airport 24's auto transportation certificate C-
65615 is cancelled. Sani Mahama Maurou d/b/a SeaTac Airport 24 must cease
and desist all operations unless and until its certificate is reinstated or it applies
for and obtains a new certificate from the Commission.
- 44 (2) Sani Mahama Maurou d/b/a SeaTac Airport 24 is assessed a penalty of \$25,200.
A \$20,000 portion of the penalty is suspended for a period of two years, and then
will be waived, subject to the following conditions: 1) Sani Mahama Maurou
d/b/a SeaTac Airport 24 must either maintain a satisfactory safety rating or cease
and desist all auto transportation operations, 2) Sani Mahama Maurou d/b/a
SeaTac Airport 24 may not incur any repeat violations of WAC 480-30-221, and

3) Sani Mahama Maurou d/b/a SeaTac Airport 24 must either pay the \$5,200 portion of the penalty that is not suspended or file jointly with Staff a proposed payment plan no later than March 25, 2016.

DATED at Olympia, Washington, and effective March 15, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
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 **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250