



STATE OF WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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March 16, 2017

Steven V. King, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. SW  
P.O. Box 47250  
Olympia, Washington 98504-7250

RE: *Washington Utilities and Transportation Commission v. Big Woody Limos, LLC*  
Commission Staff's Response to Application for Mitigation of Penalties  
Docket TE-170027

Dear Mr. King:

On February 8, 2017, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment TE-170027 against Big Woody Limos, LLC (Big Woody Limos or company) in the amount of \$1,500 for ten critical violations of Washington Administrative Code (WAC) 480-30-221 Vehicle and Driver Safety Requirements, which requires charter and excursion carriers to comply with Title 49 Code of Federal Regulations (CFR) Part 382 – Controlled Substances and Alcohol Use and Testing, Part 391 – Qualification of Drivers, and Part 395 – Hours of Service of Drivers, as follows:

- **Two violations of CFR 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.** Big Woody Limos allowed employees Mark Dixon and Shawn Moody to operate a commercial motor vehicle before receiving a negative pre-employment controlled substance test result.
- **Two violations of CFR 391.51(a) – Failing to maintain a driver qualification file for each driver it employs.** Big Woody Limos failed to maintain driver qualification files for two of its drivers, Victor Graves and Don Mayor.
- **Three violations of CFR 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file.** Big Woody Limos failed to ensure a driver's abstract was maintained in the driver qualification files of Kelly Ryan, Shawn Moody, and Mark Dixon.

- **Three violations of CFR 395.8(a) – Failing to require driver to make a record of duty status.** Big Woody Limos allowed employees Mark Dixon and Don Mayor to drive without making a record of duty status while not under short haul exemption on three separate occasions between June 18 and October 15, 2016.

Revised Code of Washington (RCW) 81.04.530 allows penalties of five hundred dollars for each violation of Title 49 CFR Part 382. RCW 81.04.405 allows penalties of one hundred dollars for each violation of Title 49 CFR Part 391 and Part 395. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

The February 8, 2017 penalty assessment required the company to act within 15 days after receiving the notice. On March 14, Big Woody Limos filed with the Commission its application for mitigation of penalties. Chris Kwan, part owner and CEO of Big Woody Limos, admits the violations, provides zero explanation of the corrective action steps taken by the company, and asks that the penalties be reduced for reasons set out in his response. In the application for mitigation, Mr. Kwan attributes the late response to him being on his honeymoon, and states that the penalty imposed would create a financial hardship on the company.

Big Woody Limos operates as a charter and excursion carrier under permit number CH-64613. In its application for charter and excursion authority filed with the Commission in April 2012, Devin Luther, majority owner and president of Big Woody Limos, acknowledged the company's responsibility to understand and comply with applicable motor carrier safety rules and regulations. Commission staff conducted a new entrant visit with Big Woody Limos on May 2, 2012, and provided additional technical assistance pertaining to safety regulations. On June 5, 2013, Commission staff conducted a compliance review of Big Woody Limos and documented one critical violation of 395.8(a) for failing to require a driver to make a record of duty status.

On December 6, 2016, Commission Motor Carrier Safety Investigator Wayne Gilbert conducted a compliance review investigation, an in-depth examination of the motor carrier's compliance with regulations that the FMCSA has identified as "acute" or "critical."<sup>1</sup> Acute regulations are identified where non-compliance is so severe as to require immediate corrective action regardless of the overall safety posture of the motor carrier. Violations of critical regulations are generally indicative of breakdowns in a carrier's management controls. Non-compliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and unusually higher than average accident rates.<sup>2</sup> Mr. Gilbert documented ten violations of critical regulations, seven of which were first-time violations and three of which were repeat violations, resulting in a conditional safety rating.

The Commission's Enforcement Policy provides that some Commission requirements are so essential to safe operations that the Commission may issue penalties for a first-time violation, even if staff has not previously provided technical assistance on specific issues. The Commission

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<sup>1</sup> Code of Federal Regulations, Appendix B to Part 385—Explanation of safety rating process

<sup>2</sup> *Id.*

will assess penalties for any repeat violations of critical regulations, including for each occurrence of a repeat violation.<sup>3</sup>

In the mitigation request, Chris Kwan admitted the violations, but failed to provide corrective action steps taken by the company. Staff found the company's response to be incomplete, and provides its response below:

- **Mitigation Request: CFR 382.301(a) –Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.** Big Woody Limos' request for mitigation did not address this violation. In the company's 15-day response letter to the Commission, Big Woody Limos states that going forward it will require a negative pre-employment controlled substance test result before allowing its employees to drive, and will draft a checklist for its hiring process that is compliant with motor carrier safety regulations.

**Staff response:** It is the company's responsibility to ensure that its drivers have received a negative pre-employment controlled substance test result prior to allowing its employees to operate a commercial motor vehicle. Big Woody Limos states that it will draft a checklist for its hiring process that is compliant with motor carrier safety regulations, but failed to provide documentation with respect to steps taken to correct this violation.

The assessed penalty is \$1,000 for two occurrences of this violation. Staff recommends the penalty be reduced \$500, for a total of \$500.

- **Mitigation Request: CFR 391.51(a) – Failing to maintain a driver qualification file for each driver it employs.** Big Woody Limos' request for mitigation did not address this violation. In the company's 15-day response letter to the Commission, Big Woody Limos states that it will file all necessary records on drivers, and update all necessary records annually.

**Staff response:** The company failed to provide an example of a driver qualification file, a list of the documents the company keeps in such a file, or any supporting evidence or documentation with respect to steps taken to correct this violation.

The assessed penalty is \$100 for one violation of this type. Staff recommends no mitigation of this penalty.

- **Mitigation Request: CFR 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file.** Big Woody Limos' request for mitigation did not address this violation. In the company's 15-day response letter to the Commission, Big Woody Limos states that it will file all necessary records on drivers, and update all necessary records annually.

**Staff response:** The company states that it will update all necessary records annually, but failed to provide any supporting evidence or documentation of the steps it has taken to avoid recurrence.

The assessed penalty is \$100 for one violation of this type. Staff recommends no mitigation of this penalty.

- **Mitigation Request: CFR 395.8(a) – Failing to require driver to make a record of duty status.** Big Woody Limos' request for mitigation did not address this violation. In the company's 15-day response letter to the Commission, Big Woody Limos states that it will require its drivers to make a record of duty status in the daily driver log books, and company management will review and enforce all record of duty status completions.

**Staff response:** In the company's 15-day response letter to the Commission, the company did explain how the violations occurred and documented the steps it is taking to avoid recurrence; however these are repeat violations.

The assessed penalty is \$300 for three occurrences of this violation. Staff recommends no mitigation of this penalty, as this is a repeat violation.

Big Woody Limos is a small company that currently operates two commercial motor vehicles and employs five drivers between its Seattle and Vancouver locations. The company reported \$96,609 in gross revenue and 4,250 miles traveled in 2015. Staff recommends that the penalty of \$1,500 be reduced to \$1,000.

If you have any questions, please contact Jason Hoxit, Compliance Investigator, Transportation Safety, at 360-664-1320, or by e-mail at [JHoxit@utc.wa.gov](mailto:JHoxit@utc.wa.gov).

Sincerely,



David Pratt  
Assistant Director, Transportation Safety