

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

JIMMY'S DISCOUNT MUFFLER
BRAKE AND RADIATOR d/b/a
JIMMY'S LIMOUSINE

in the amount of \$2,600

DOCKET TE-160224

ORDER 01

ORDER DENYING MITIGATION

BACKGROUND

- 1 On February 26, 2016, the Washington Utilities and Transportation Commission (Commission) assessed a \$2,600 penalty (Penalty Assessment) against Jimmy's Discount Muffler Brake and Radiator d/b/a Jimmy's Limousine (Jimmy's Limousine or Company) for 12 violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference 49 C.F.R. Part 382 related to controlled substance and alcohol testing; Part 383 related to commercial driver's license standards; Part 393 related to driver qualifications; and Part 396 related to vehicle inspection, repair, and maintenance.
- 2 On March 15, 2016, Jimmy's Limousine responded to the Penalty Assessment admitting the violations and requesting mitigation of the penalty based on the written information provided. The Company's owner, James Palmer, explained that the violations were unintentional and that the Company intends to comply with Commission rules going forward. Mr. Palmer further explained that the Company is communicating with the "US Health Center" about a drug testing program, that all drivers are now qualified to drive and are medically certified, and that maintenance records for commercial vehicles will be maintained going forward.
- 3 On March 22, 2016, Commission staff (Staff) filed a response recommending the Commission deny the Company's request for mitigation. Staff explains that although all 22 violations cited in the Penalty Assessment are first-time offenses, 12 warrant penalties because they present a risk of serious harm to the public. The Penalty Assessment includes a \$1,500 penalty for one violation of 49 C.F.R. Part 382.115(a); a \$400 penalty for four violations of 49 C.F.R. Part 383.37(b); a \$600 penalty for six violations of 49

C.F.R. Part 391.45(a); and a \$100 penalty for one violation of 49 C.F.R. Part 396.3. Staff recommends no mitigation of the penalty.

DISCUSSION AND DECISION

- 4 Washington law requires auto transportation carriers to comply with federal safety requirements and undergo routine safety inspections. 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,” which are indicative of a breakdown in a carrier’s management controls, meet this standard.³
- 5 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
- 6 The Penalty Assessment includes a \$1,500 penalty for one violation of 49 C.F.R. Part 382.115(a) because the Company does not have an alcohol and drug testing program in place. In its response, the Company explained that it is in communication with the “US Health Center” regarding a testing program. Staff notes that it is not familiar with the “US Health Center” and recommends the Commission deny the Company’s request for mitigation with respect to this portion of the penalty because the Company failed to provide evidence that it has implemented a testing program or corrected the violation. We agree with Staff’s recommendation. As noted in the Penalty Assessment, impaired drivers present serious safety concerns, and companies that disregard requirements for alcohol and drug testing put the traveling public risk. In addition, the Company received technical assistance related to this requirement during a 2009 compliance review, has not yet corrected the violation, and presented no new information that would warrant a penalty reduction. Given these circumstances and the critical nature of this violation, we decline to mitigate this portion of the penalty.

¹ See RCW 81.04.405.

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.

- 7 The Penalty Assessment also includes a \$400 penalty for four violations of 49 C.F.R. Part 383.37(b) because the Company allowed an employee, Robert DeHart, to operate a commercial vehicle on four occasions while his commercial driver's license was invalid. In correspondence received by Staff on February 18, 2016, the Company stated that Mr. DeHart is no longer employed by the Company. Staff recommends the Commission deny the Company's request to mitigate this portion of the penalty because the Company failed to explain how the violations occurred or how the violations have since been corrected, and neglected to mention in its response that it no longer employs Mr. DeHart. We agree with Staff's recommendation. At a minimum, the Company should have included a description of how it plans to prevent this violation from recurring in the future. In addition, the Company's response did not introduce any new information that would warrant a reduction of the penalty. Accordingly, we decline to mitigate this portion of the penalty.
- 8 The Penalty Assessment also includes a \$600 penalty for six violations of 49 C.F.R. Part 391.45(a) because the Company allowed three of its drivers to drive without medical certification on six occasions. In its response, the Company explains that all drivers are currently medically certified and will maintain their certification. Staff recommends the Commission deny the Company's request for mitigation of this portion of the penalty because the Company failed to explain how the violations occurred, failed to provide any documentation of the steps it has taken to avoid repeat violations, and neglected to mention in its response that two of the three noncompliant drivers are no longer employed by the Company. In addition, the Company has received technical assistance related to these violations on two prior occasions. We agree with Staff that mitigation is not appropriate in these circumstances. Drivers who are not medically certified may have an undocumented medical condition that puts the traveling public at risk, and the Company has neither demonstrated that it has achieved compliance in this area nor introduced any new information to warrant a reduction of the penalty.
- 9 Finally, the Penalty Assessment includes a \$100 penalty for one violation of 49 C.F.R. Part 396.3 because the Company failed to maintain vehicle inspection and maintenance records. In its response, the Company explains that records of all inspections are maintained as they are performed. Staff recommends the Commission deny the Company's request to mitigate this portion of the penalty because the Company failed to identify the breakdown in internal controls that led to the violations, or provide documentation of a compliance plan. We agree with Staff that mitigation is not appropriate here. It is the Company's responsibility to ensure compliance with

Commission rules and to demonstrate that it has come into compliance when violations are identified. Moreover, the Company did not introduce any new information that warrants a penalty reduction.

ORDER

THE COMMISSION ORDERS:

- 10 (1) Jimmy's Discount Muffler Brake and Radiator d/b/a Jimmy's Limousine's
request for mitigation of the \$2,600 penalty is DENIED.
- 11 (2) The penalty is due and payable no later than April 11, 2016.
- 12 The Secretary has been delegated authority to enter this order on behalf of the
Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective March 28, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website. The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. A form for late-filed requests is available on the Commission's website.