

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TE-160946
EXPLORERS 3, LLC d/b/a EVERGREEN ESCAPES	ORDER 01
in the amount of \$5,500	ORDER GRANTING MITIGATION TO \$3,000

BACKGROUND

- 1 On August 16, 2016, the Washington Utilities and Transportation Commission (Commission) assessed a \$5,500 penalty (Penalty Assessment) against Explorers 3, LLC d/b/a Evergreen Escapes (Evergreen Escapes or Company) for 55 violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference 49 C.F.R. Part 391 related to driver qualifications.
- 2 On August 26, 2016, Evergreen Escapes responded to the Penalty Assessment admitting the violations and requesting mitigation of the penalty based on the written information provided. The Company's director of tour operations, Eric Rupp, provided a detailed explanation of the steps taken to correct the violations and the Company's overall compliance plan.
- 3 On September 1, 2016, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. Staff explains that although all 55 violations cited in the Penalty Assessment are first-time offenses, they warrant penalties because they present a risk of serious harm to the public. The Penalty Assessment includes a \$5,500 penalty for 55 violations of 49 C.F.R. Part 391.45(a). Because the Company has corrected the violations and provided a detailed plan to prevent them from recurring, Staff recommends the Commission assess a reduced penalty of \$3,000.

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 \$5,500 penalty for 55 violations of 49 C.F.R. Part 391.45(a) because Company employees Martin Wentzel, Jeff Carter, and Shawna Sherman drove on 55 occasions without being medically certified. As noted in the Penalty Assessment, drivers who are not medically certified may have an undocumented medical condition that puts the traveling public at risk. Nevertheless, Staff recommends the Commission mitigate the penalty to \$3,000 because the Company corrected the violations and has since implemented a compliance plan to ensure the violations do not reoccur. We agree with Staff’s recommendation. Because the Company took prompt corrective action and changed its procedures to ensure ongoing compliance, we assess a reduced penalty of \$3,000 for 55 violations of 49 C.F.R. Part 391.45(a).

ORDER

THE COMMISSION ORDERS:

- 7 (1) Explorers 3, LLC d/b/a Evergreen Escapes’ request for mitigation of the \$5,500 penalty is GRANTED, in part, and the penalty is reduced to \$3,000.
- 8 (2) The penalty is due and payable no later than September 21, 2016.

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.

- 9 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 September 7, 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.