

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment  
Against

Luxury1 Limo, LLC

in the amount of \$1,400

DOCKET TE-180596

ORDER 01

DENYING MITIGATION;  
SUSPENDING PENALTY, IN PART

**BACKGROUND**

1 On July 25, 2018, the Washington Utilities and Transportation Commission (Commission) assessed a \$1,400 penalty (Penalty Assessment) against Luxury 1 Limo, LLC (Luxury1 Limo or Company) for 16 violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference sections of Title 49 Code of Federal Regulations (C.F.R.).<sup>1</sup> The Penalty Assessment includes:

- a \$700 penalty for seven acute violations of 49 C.F.R. Part 383.37(a) for allowing, requiring, permitting, or authorizing an employee to operate a commercial motor vehicle without a current commercial learner’s permit (CLP), commercial driver’s license (CDL), or proper class endorsements;
- a \$100 penalty for seven critical violations of 49 C.F.R. Part 395.8(a)(1) for failing to require its driver to make a record of duty status;
- a \$500 penalty for one critical violation of 49 C.F.R. Part 382.301(a) for using a driver prior to receiving a negative pre-employment controlled substance test result;
- a \$100 penalty for one violation of 49 C.F.R. Part 393.62(c) for emergency exit windows that were unmarked and would not open.

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<sup>1</sup> WAC 480-30-221 adopts by reference sections of Title 49 C.F.R. Accordingly, Commission safety regulations with parallel federal rules are hereinafter referenced only by the applicable provision of 49 C.F.R.

- 2 On August 29, 2018, the Commission received the Company's response to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty based on the written information provided. The Company explained that the audit conducted by Commission staff (Staff), during which the Company's violations were discovered, was the Company's first such audit and the Company was not aware of all the regulations it was required to follow. The Company committed to future compliance with applicable regulations.
- 3 On September 13, 2018, Staff filed a response recommending the Commission deny the Company's request for mitigation, but suspend half of the \$1,400 penalty amount subject to certain conditions. Staff argues that the Company has already received technical assistance regarding the mitigation process on three occasions, failed to provide evidence of corrective action or procedural changes that would prevent future violations, and failed to submit a "15-day letter."<sup>2</sup> Staff noted that the Company is small, reporting only \$42,750 in gross revenue and 8,751 miles traveled in 2017, and that the Company has only one driver and one commercial vehicle.
- 4 Staff recommends that a \$700 portion of the reduced penalty be suspended for a period of two years, and then waived, subject to the following conditions: 1) the Company may not incur any repeat violations of acute or critical regulations; 2) Staff will conduct a follow-up safety investigation within two years to evaluate the Company's safety fitness; 3) the Company provides the "15-day letter" that was requested in writing to be submitted to investigator Gagne; and, 4) the Company must pay the \$700 portion of the penalty that is not suspended.

### DISCUSSION AND DECISION

- 5 Washington law requires passenger transportation companies to comply with federal safety requirements and undergo routine safety inspections. In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue

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<sup>2</sup> A "15-day letter" acknowledges the violations and provides a company's detailed plan for correcting and avoiding future violations. It is an instructional tool used by the Commission to educate companies about why its practices resulted in violations of state and federal laws and to encourage the companies to update their practices so that future violations are avoided.

penalties for first-time violations.<sup>3</sup> Violations defined by federal law as “acute” or “critical” meet this standard.<sup>4</sup>

6 Violations are considered “acute” when non-compliance is so severe that immediate corrective action is required regardless of the overall safety posture of the company.<sup>5</sup> Violations classified as “critical” are indicative of a breakdown in a carrier’s management controls.<sup>6</sup> Typically, acute violations discovered during safety inspections are subject to penalties of up to \$1,500 per violation and critical violations are subject to penalties of \$100 per violation.<sup>7</sup> For the critical violation of using a driver prior to receiving a negative pre-employment controlled substance test result, a carrier is subject to a penalty of \$500.<sup>8</sup>

7 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.<sup>9</sup>

8 Here, the Company failed to provide any new information or explain previously unknown circumstances that would justify a lesser penalty. The Company has also been unresponsive to Staff’s requests for a “15-day letter,” which may have supported its request for mitigation. Instead, the Company stated only that it “was not aware” of Commission regulations. We find this explanation unpersuasive. Because Luxury1 Limo has received previous technical assistance, the Company knew or should have known its

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<sup>3</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶¶ 12, 15 (Jan. 7, 2013) (Enforcement Policy).

<sup>4</sup> 49 C.F.R. § 385, Appendix B.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> RCW 81.04.530; 49 C.F.R. § 385, Appendix B; *see* RCW 81.04.405.

<sup>8</sup> RCW 81.04.530; 49 C.F.R. § 385, Appendix B.

<sup>9</sup> Enforcement Policy ¶ 19.

conduct violated Commission rules.<sup>10</sup> In light of these circumstances, we decline to assess a reduced penalty.

9 **Penalty Suspension.** The Commission considers several factors when determining whether to suspend a portion of a penalty, including whether it is a first-time penalty for the same or similar violations and whether the company can demonstrate other circumstances that convince the Commission to suspend the penalties.<sup>11</sup> Also, the Commission's goal in any enforcement proceeding is to obtain compliance, not create an insurmountable financial burden for a small company.

10 We agree with Staff's recommendation that mitigation should be denied, but that half of the penalty amount should be suspended subject to certain conditions. We find that suspending \$700 of the total \$1,400 penalty amount is justified because these are first-time violations. Also, Luxury1 Limo is a small company with only one driver, one commercial vehicle, and \$42,750 in gross revenue in 2017. Accordingly, we suspend \$700 of the penalty amount for a period of two years, and then waive it, subject to the following conditions:

- (1) the Company must not incur any repeat violations of acute or critical regulations;
- (2) the Company must pay the \$700 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement within 10 days of the effective date of this Order; and,
- (3) the Company must submit a "15-day letter" to Staff within 10 days of the effective date of this Order containing its detailed plan for correcting and avoiding future violations.

11 If the Company fails to comply with any of the above conditions, the suspended penalty amount will become immediately due and payable without further Commission order.

12 We direct Staff to conduct a follow-up safety investigation in two years from the effective date of this Order.

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<sup>10</sup> The Company attended new entrant training on May 15, 2017, and signed its application for authority, indicating that it acknowledged its responsibility to understand and comply with applicable state and federal safety requirements.

<sup>11</sup> *Id.* at ¶ 20.

### FINDINGS AND CONCLUSIONS

- 13 (1) The 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 charter party and excursion carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 14 (2) Luxury1 Limo is a charter party and excursion carrier subject to Commission regulation.
- 15 (3) Luxury1 Limo violated 49 C.F.R. Part 383.37(a) when it allowed, required, permitted, or authorized an employee to operate a commercial motor vehicle without a current CLP, CDL, or proper class endorsements.
- 16 (4) The Commission should penalize Luxury1 Limo \$700 for seven acute violations of 49 C.F.R. Part 383.37(a).
- 17 (5) Luxury1 Limo violated 49 C.F.R. Part 395.8(a)(1) when it failed to require its driver to make a record of duty status.
- 18 (6) The Commission should penalize Luxury1 Limo \$100 for seven critical violations of 49 C.F.R. Part 395.8(a)(1).
- 19 (7) Luxury1 Limo violated 49 C.F.R. Part 382.301(a) when it used a driver prior to receiving a negative pre-employment controlled substance test result.
- 20 (8) The Commission should penalize Luxury1 Limo \$500 for one violation of 49 C.F.R. Part 382.301(a).
- 21 (9) Luxury1 Limo violated 49 C.F.R. Part 393.62(c) when it failed to properly mark its emergency exit windows and maintain its emergency exit windows so that they open.
- 22 (10) The Commission should penalize Luxury1 Limo \$100 for one violation of 49 C.F.R. Part 393.62(c).
- 23 (17) The Commission should assess a total penalty of \$1,400 for 16 violations of WAC 480-30 and Title 49 C.F.R.

- 24 (18) The Commission should suspend a \$700 portion of the penalty for a period of two years and then waive it subject to the conditions set out in paragraph 10, above.

**ORDER**

**THE COMMISSION ORDERS:**

- 25 (1) Luxury1 Limo, LLC's request for mitigation of the \$1,400 penalty is DENIED.
- 26 (2) The Commission, however, suspends a \$700 portion of the penalty for a period of two years, and then waives it, subject to the following conditions: (1) Luxury1 Limo, LLC must not incur any repeat violations of acute or critical regulations; (2) the Company must pay the \$700 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement within 10 days of the effective date of this Order; and, (3) the Company must submit a "15-day letter" to Staff within 10 days of the effective date of this Order containing its detailed plan for correcting and avoiding future violations.
- 27 (3) Commission Staff will conduct a follow-up review of Luxury1 Limo, LLC's operations in two years from the effective date of this Order.
- 28 (4) If the Luxury1 Limo, LLC fails to comply with any condition in paragraph 26 of this Order, or fails to comply with the terms a payment arrangement, if applicable, the entire unpaid portion of the penalty amount and the entire suspended penalty amount will become immediately due and payable without further Commission order.
- 29 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 21, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK L. JOHNSON  
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.**