

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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| In the Matter of the Penalty Assessment Against | DOCKET TV-230180 |
| MAX KASTL d/b/a KASTL EXPRESS LLC (Kastl Express of Company) | ORDER 01 |
| in the amount of \$10,600 | DENYING MITIGATION, IMPOSING AND SUSPENDING PENALTIES |

BACKGROUND

- 1 On May 23, 2023, the Washington Utilities and Transportation Commission (Commission) issued a \$10,600 penalty (Penalty Assessment) against Max Kastle, d/b/a Kastl Express LLC, (Kastl Express or Company). The Commission found that Kastl Express violated Washington Administrative Code (WAC) 480-15-630, Estimates; WAC 480-15-710, Bill of lading; and Tariff 15-C, Item 85-Estimates, and Item 95-Bills of lading. The Penalty Assessment includes:
 - A \$4,300 penalty for 43 violations of WAC 480-15-630 and Tariff 15-c, Item 85(1) for failure to provide Estimates to 43 customers.
 - A \$4,300 penalty for 43 violations of WAC 480-15-620 and Tariff 15-C, Item 85(3)(c) for failure to provide 43 customers with a copy of the Commission publication *Consumer guide to moving in Washington State* (Consumer Guide).
 - A \$2,000 penalty for 20 violations of WAC 480-15-710 and Tariff 15, Item 95(1) for failing to provide bills of lading to 20 customers.

- 2 On August 10, 2023, Kastl Express filed with the Commission an application for mitigation of penalties (Application). In the request for mitigation Max Kastl, owner of Kastl Express, admits the violations, asks that the penalties be reduced, requests a hearing to present evidence before an administrative law judge, but fails to include reasons supporting the application for mitigation.

- 3 Staff’s response to the request for mitigation references the late filing and recommends mitigation be denied for Kastl express. Staff cites a lack of reasoning for the violations, and sufficient documentation in the docket for decision. Staff further submitted that suspending a portion of the penalty for a period of two years will deter repeat violations of this kind.

DISCUSSION AND DECISION

- 4 Washington Law requires household goods 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
- 5 Several factors are considered 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.³ The Commission also considers whether the violations were intentional, whether the company was cooperative and responsive, the number of violations, the number of customers affected, a company's history of compliance, the likelihood the violation will recur, and the size of the company.⁴
- 6 The Penalty Assessment assessed a \$10,600 penalty for 106 violations of the above-mentioned WAC 480-15 violations pertaining to 43 different customers. In its Application, Kastl Express admits the violations, asks that the penalties be reduced, and requests a hearing to present evidence before an administrative law judge. However, the Application does not mention any reasons for its request for mitigation. The Application was filed long after the 15-day deadline provided in WAC 480-07-915(3) for a response to a penalty assessment. Staff submits that there is sufficient documentation in the docket for an administrative law judge to decide without further expense or delay.
- 7 Staff recommends that the Commission does not mitigate any of the penalty, instead suspend half of for these violation categories, from \$10,600 to \$5,300. Thus, hopefully creating incentive for future compliance with Household Goods rules and Tariff 15-C and deter the company from incurring repeat violations.
- 8 We agree with Staff's recommendation. We deny the Company's request for mitigation of the penalty associated with violations of WAC 480-15-620, WAC 480-15-630, and WAC 480-15-710. While these are first time violations of this kind, the Company has not

¹ See RCW 81.04.405

² Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12, 15 (Jan. 7, 2013) (Enforcement Policy).

³ Enforcement Policy ¶19.

⁴ Enforcement Policy ¶15.

shown that it has corrected the violations or changed practices. Furthermore, Staff previously provided technical assistance with specific remedies to help the Company improve and comply with Household Goods rules and Tariffs. This technical assistance was not followed, and violations continued to occur. Staff also noted there is no compliance plan in place, and that the violations are expected to recur without due penalties.

9 However, because the Company was cooperative throughout the investigation and expressed a desire to come into compliance, we also agree with Staff's recommendation to suspend a \$5,300 portion of the penalty for a period of two years, then waive it, subject to the condition(s) that 1) Kastl Express does not incur any repeat violations of WAC 480-15-620, WAC 480-15-630, WAC 480-15-710 (3), and Tariff 15-C, Item 85 and Item 95, and 2) Kastl Express pays the \$5,300 portion of the penalty that is not suspended. If Staff discovers that Kastl Express has violated the Household Goods rules and Tariff 15-C, the \$5,300 suspended portion of the penalty will become immediately due and payable without further Commission order.

FINDINGS AND CONCLUSIONS

- 10 (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 household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 11 (2) Kastl Express is a household goods carrier subject to Commission regulation.
- 12 (3) Kastl Express violated WAC 480-15-630 when it failed to for failed to provide Estimates to 43 customers.
- 13 (4) The Commission should penalize Kastl Express \$4,300 for 43 violations of WAC 480-15-630.
- 14 (5) Kastl Express violated WAC 480-15-620 and Tariff 15-C, Item 85(3)(c) for failure to provide 43 customers with a copy of the Commission publication *Consumer guide to moving in Washington State* (Consumer Guide).
- 15 (6) The Commission should penalize Kastl Express \$4,300 for 43 violations of WAC 480-15-620 and Tariff 15-C, Item 85(3)(c).
- 16 (7) Kastl Express violated WAC 480-15-710 and Tariff 15, Item 95(1) when it failed to provide bills of lading to 20 customers.

- 17 (8) The Commission should penalize Kastl Express \$2,000 for 20 violations of
WAC
480-15-710 and Tariff 15, Item 95(1).
- 18 (9) The Commission should deny the Company's request to mitigate any portion of
the \$10,600 total penalty against Kastl Express.
- 19 (10) The Commission should suspend a \$5,300 portion of the penalty, subject to the
conditions noted above in paragraph nine.

ORDER

THE COMMISSION ORDERS

- 20 (1) Kastl Express d/b/a Kastle Express LLC's request for mitigation of the \$10,600
penalty is DENIED, in part, and the penalty is reduced to \$5,300.
- 21 (2) The \$5,300 penalty is suspended for a period of two years, at which point it will
be waived, subject to the conditions described in paragraph nine.
- 22 (3) In the event that Kastl Express d/b/a Kastle Express LLC violates the Household
Goods rules and Tariff 15-C, the \$5,300 suspended penalty will become
immediately due and payable without further Commission order.
- 23 The Secretary has been delegated authority to enter this order on behalf of the
Commissioners under WAC 480-07-903(2)(e).

DATED at Lacey, Washington, and effective September 14, 2023

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

KATHY HUNTER
Acting 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.**