

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against TEAM FORKS, LLC d/b/a TWILIGHT ADVENTURES in the amount of \$200	DOCKET TE-160477 ORDER 01 ORDER DENYING MITIGATION
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BACKGROUND

- 1 On May 10, 2016, the Washington Utilities and Transportation Commission (Commission) assessed a \$200 penalty (Penalty Assessment) against Team Forks, LLC d/b/a Twilight Adventures (Twilight Adventures or Company) for two violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference 49 C.F.R. Part 395 related to driver hours of service and Part 396 related to vehicle inspection, repair, and maintenance.
- 2 On May 19, 2016, Twilight Adventures responded to the Penalty Assessment contesting the violations and requesting mitigation of the penalty based on the written information provided. The Company explained that it was not aware of the requirements associated with operating as a charter carrier prior to the Commission's inspection, and has since come into compliance by correcting the violations. The Company also claims that the inspector assured the Company there would be no penalty.
- 3 On May 24, 2016, Commission staff (Staff) filed a response recommending the Commission deny the Company's request for mitigation. Staff explains that although all five violations cited in the Penalty Assessment are first-time offenses, two warrant penalties because they present a risk of serious harm to the public. Consistent with the Commission's enforcement policy related to first-time violations, however, penalties were assessed on a "per category" rather than a "per violation" basis. Accordingly, although Staff found that the Company's driver drove on 15 occasions without making a record of duty status, the Penalty Assessment assessed a \$100 penalty for only one violation of 49 C.F.R. Part 395.8(a). In addition, although Staff found that the Company operated a vehicle that had not been periodically inspected on 15 separate occasions, the

Commission assessed a \$100 penalty for only one violation of 49 C.F.R. Part 396.17(a). Because the penalties assessed are the minimum allowed for these categories of violations, Staff recommends no mitigation.

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 As a preliminary matter, we deny the Company’s contest of the violations. The undisputed facts demonstrate that in September and October of 2015, the Company’s driver drove a vehicle that had not been periodically inspected on 15 occasions, and also failed to make a record of duty status on each of those days. Although the Company disputes the penalty, it does not dispute that the violations occurred. Accordingly, we find that the Company committed one violation each of 49 C.F.R. Part 395.8(a) and Part 396.17(a), and turn now to the issue of mitigation.
- 6 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
- 7 The Penalty Assessment includes a \$100 penalty for one violation of 49 C.F.R. Part 395.8(a) because the Company’s driver failed to make a record of duty status on 15 occasions. The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. Part 396.17(a) because the Company’s driver drove a vehicle that had not been periodically inspected on 15 occasions.

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.

- 8 We agree with Staff that mitigation is not appropriate here. It is the Company's responsibility to be aware of, and ensure compliance with, Commission rules. As Staff notes in its response, the Company acknowledged its obligation to comply with local, state, and federal regulations related to charter carrier service when it submitted its application to the Commission. Accordingly, the Company's claim that it was unaware of Commission rules does not excuse the violations.
- 9 The Company's claim that the inspector stated there would be no penalty assessed for the violations also fails to provide a basis for mitigation. Although Staff did not address this allegation in its response, it has no bearing on our decision to uphold the penalty. The Commission's enforcement policy requires penalties for first-time violations of "critical" safety regulations regardless of any representations that may or may not have been made by Staff. Even if Staff had provided assurances to that effect, the Company cannot reasonably argue that it relied on Staff's statement to its detriment, or was otherwise harmed.
- 10 Finally, the Company did not introduce any new information that warrants a penalty reduction. The Commission could have assessed penalties up to \$100 per violation – for a total penalty of \$3,000 – but instead exercised its discretion to assess a much lower penalty of \$200 because the Company is relatively small and has no history of prior violations.

ORDER

THE COMMISSION ORDERS:

- 11 (1) Team Forks, LLC d/b/a Twilight Adventures' request for mitigation of the \$200 penalty is DENIED.
- 12 (2) The penalty is due and payable no later than June 14, 2016.
- 13 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 May 31, 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.