

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

SEATTLE OCEAN TRAVEL LLC
d/b/a SEATTLE OCEAN TRAVEL

in the amount of \$12,500

DOCKET TE-170026

ORDER 01

ORDER GRANTING MITIGATION, IN
PART; IMPOSING AND SUSPENDING
PENALTIES

BACKGROUND

- 1 On January 18, 2017, the Washington Utilities and Transportation Commission (Commission) assessed a \$12,500 penalty (Penalty Assessment) against Seattle Ocean Travel LLC d/b/a Seattle Ocean Travel (Seattle Ocean Travel or Company) for 125 critical violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference 49 C.F.R. Part 391 related to driver qualifications and Part 396 related to vehicle inspection, repair, and maintenance.
- 2 On January 31, 2017, Seattle Ocean Travel responded to the Penalty Assessment admitting the violations and requesting mitigation of the penalty based on the written information provided. In its response, the Company explained that it prepares daily driver vehicle inspection reports and regularly has its vehicle maintained, but, due to a language barrier, was unaware that the vehicle inspection must be conducted by a certified inspector. The Company further explained that it receives very little operating revenue, and that imposition of the \$12,500 penalty could potentially put the Company out of business.
- 3 On February 3, 2017, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. The Penalty Assessment includes a \$12,400 penalty for 124 violations of 49 C.F.R. Part 391.45(a) and a \$100 penalty for one violation of 49 C.F.R. Part 396.17(a). Because these are first-time violations, Staff recommends the Commission reduce the assessed penalty from \$12,500 to \$7,500.

DISCUSSION AND DECISION

- 4 Washington law requires auto transportation carriers 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 penalties for first-time violations.¹ Violations defined by federal law as “critical,” which are indicative of a breakdown in a carrier’s management controls, meet this standard.² Critical violations are subject to penalties of \$100 per violation.³
- 5 The Commission will, however, consider 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 The Commission also considers whether the violations were promptly corrected, a company’s history of compliance, and the likelihood the violation will recur.⁵ We address each violation category in turn.
- 6 **WAC 480-30-221, 49 C.F.R. Part 391.45(a).** The Penalty Assessment includes a \$12,400 penalty for 124 violations of 49 C.F.R. Part 391.45(a) because Seattle Ocean Travel allowed Yang He to drive on 124 occasions between August and December 2016 without a valid medical certificate. The Company’s request for mitigation did not address these violations specifically, but provided assurances that the Company has corrected the violations and will comply with all safety regulations going forward.
- 7 Staff noted in its response that the Company provided a copy of Yang He’s valid medical certificate dated December 26, 2016, prior to receiving the Penalty Assessment. Staff recommends the Commission assess a reduced penalty of \$7,400 because these are first-

¹ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

² 49 C.F.R. § 385, Appendix B.

³ See RCW 81.04.405.

⁴ Enforcement Policy ¶19.

⁵ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

time violations and the Company promptly corrected them. We agree with Staff's recommendation and assess a \$7,400 penalty for this violation category.

8 Although the Company did not introduce any new information to explain its failure to meet this requirement, it made a compelling case for the financial hardship the penalty would impose. The Company's gross revenue was approximately \$134,000 in 2015; the Commission considers company size when taking enforcement actions, and does not support imposing penalties disproportionate to a company's revenues.⁶ Ultimately, the Commission's goal is to obtain compliance, not create an insurmountable financial burden for a small company.

9 Accordingly, we exercise our discretion to suspend a \$5,000 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: 1) Seattle Ocean Travel must maintain a satisfactory safety rating, 2) Seattle Ocean Travel may not incur any repeat violations of WAC 480-30-221, and 3) Seattle Ocean Travel must pay the portion of the penalty that is not suspended no later than February 24, 2017.

10 **WAC 480-30-221, 49 C.F.R. Part 396.17(a).** The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. Part 396.17(a) because the Company failed to maintain records of periodic inspections for its vehicle. In its response, Seattle Ocean Travel explained that it did not understand it must use a certified inspector for its vehicle inspections.

11 Staff recommends no mitigation for this portion of the penalty because it is the Company's responsibility to ensure that its vehicle is periodically inspected consistent with the mandatory inspection program. We agree with Staff's recommendation and assess a \$100 penalty for this violation category.

12 To reduce the financial impact of the penalty, the Company may work with Staff to establish mutually agreeable payment arrangements.

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

⁶ Docket A-120061 at ¶11.

companies, including auto transportation carriers, and has jurisdiction over the parties and subject matter of this proceeding.

- 14 (2) Seattle Ocean Travel is an auto transportation carrier subject to Commission regulation.
- 15 (3) Seattle Ocean Travel violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 391.45(a), when it allowed its driver who was not medically examined and certified to drive on 124 occasions between August and December 2016.
- 16 (4) Seattle Ocean Travel should be penalized \$7,400 for 124 violations of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 391.45(a). A \$5,000 portion of the penalty should be suspended for a period of two years, and then waived, subject to the conditions set out in paragraph 9, above.
- 17 (5) Seattle Ocean Travel violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 396.17(a), when it failed to maintain records of periodic vehicle inspections for its vehicle.
- 18 (6) Seattle Ocean Travel should be penalized \$100 for one violation of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 396.17(a).
- 19 (7) Seattle Ocean Travel should be permitted to file jointly with Staff a mutually agreeable arrangement for paying the \$2,500 portion of the penalty that is not suspended.

ORDER

THE COMMISSION ORDERS:

- 20 (1) Seattle Ocean Travel LLC d/b/a Seattle Ocean Travel's request for mitigation of the \$12,500 penalty is GRANTED, in part, and the penalty is reduced to \$7,500.
- 21 (2) The Commission suspends a \$5,000 portion of the penalty, and then waives it, subject to the following conditions: 1) Seattle Ocean Travel LLC d/b/a Seattle Ocean Travel must maintain a satisfactory safety rating, 2) Seattle Ocean Travel

LLC d/b/a Seattle Ocean Travel may not incur any repeat violations of WAC 480-30-221, and 3) Seattle Ocean Travel LLC d/b/a Seattle Ocean Travel must pay the \$2,500 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement no later than February 24, 2017.

- 22 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 February 10, 2017.

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.