

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TE-170027
BIG WOODY LIMOS, LLC	ORDER 01
in the amount of \$1,500	ORDER DENYING MITIGATION

BACKGROUND

- 1 On February 8, 2017, the Washington Utilities and Transportation Commission (Commission) assessed a \$1,500 penalty (Penalty Assessment) against Big Woody Limos, LLC (Big Woody Limos or Company) for ten critical violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference 49 C.F.R. Part 382 related to controlled substances and alcohol use and testing; Part 391 related to driver qualifications; and Part 395 related to driver hours of service.
- 2 On March 13, 2017, Big Woody Limos 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 provided the following explanation: “we are a small business that has not been profitable while trying to grow. This will bankrupt us. We are trying diligently to be compliant. I have been on my honeymoon and could not respond sooner.”
- 3 On March 16, 2017, Commission staff (Staff) filed a response recommending the Commission grant the Company’s request for mitigation, in part. The Penalty Assessment includes a \$1,000 penalty for two violations of 49 C.F.R. 382.301(a); a \$100 penalty for two violations of 49 C.F.R. Part 391.51(a); a \$100 penalty for three violations of 49 C.F.R. Part 391.51(b)(2); and a \$300 penalty for three violations of 49 C.F.R. Part 395.8(a). Staff recommends the Commission reduce the assessed penalty from \$1,500 to \$1,000.

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 We address each violation category in turn.
- 6 **WAC 480-30-221, 49 C.F.R. 382.301(a).** The Penalty Assessment includes a \$1,000 penalty for two violations of 49 C.F.R. 382.301(a) because the Company allowed employees Mark Dixon and Shawn Moody to operate a commercial vehicle prior to receiving a negative pre-employment controlled substance test result. The Company did not address these violations in its request for mitigation.
- 7 Staff noted in its response that the Company provided assurances of future compliance in its response letter to the Commission regarding its safety inspection. Big Woody Limos explained that it now requires a negative pre-employment controlled substance test result before allowing its employees. The Company further explained that it will prepare a hiring checklist that complies with motor carrier safety regulations, but failed to provide any supporting documentation.
- 8 Staff recommends the Commission assess a reduced penalty of \$500, but offers no support for its recommendation. Because these violations present serious safety concerns, we decline to mitigate this portion of the penalty. As noted in the Penalty Assessment, drivers with unknown pre-employment controlled substance tests may put the traveling public at risk. In its request for mitigation, the Company failed to describe the corrective

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.

actions it has taken to prevent these violations from reoccurring. Moreover, the Company failed to introduce any new information that would warrant a penalty reduction.

- 9 **WAC 480-30-221, 49 C.F.R. Part 391.51(a).** The Penalty Assessment also includes a \$100 penalty for two violations of 49 C.F.R. Part 391.51(a) because the Company failed to create or maintain a driver qualification file for employees Victor Graves and Don Mayor. The Company did not address these violations in its response. Staff recommends no mitigation of this portion of the penalty.
- 10 We agree with Staff's recommendation. The Commission could have assessed a \$200 penalty, but, because these are first-time violations, assessed a "per category" rather than "per violation" penalty. In addition, the Company failed to introduce any new information that would warrant a penalty reduction. Accordingly, we decline to mitigate this portion of the penalty.
- 11 **WAC 480-30-221, 49 C.F.R. Part 391.51(b)(2).** The Penalty Assessment also includes a \$100 penalty for three violations of 49 C.F.R. Part 391.51(b)(2) because the Company failed to obtain driving record inquiries for three employees within 30 days of hire. The Company did not address these violations in its response.
- 12 Staff notes in its response that, because these are first-time violations, it recommended a "per category" rather than "per violation" penalty; accordingly, no further penalty reduction is warranted. We agree and find that a single \$100 penalty is appropriate for three first-time violations.
- 13 **WAC 480-30-221, 49 C.F.R. Part 395.8(a).** The Penalty Assessment also includes a \$300 penalty for three violations of 49 C.F.R. Part 395.8(a) because Big Woody Limos allowed three drivers to drive without making a record of duty status on three occasions between June and October 2016. The Company did not address these violations in its response.
- 14 Staff recommends no mitigation of this portion of the penalty because these are repeat violations. We agree with Staff's recommendation and assess a \$300 penalty for three violations of 49 C.F.R. Part 395.8(a). The Commission typically does not mitigate penalties for repeat violations of critical safety requirements, particularly in the absence of any new information that would warrant a penalty reduction.

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

FINDINGS AND CONCLUSIONS

- 16 (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 auto transportation carriers, and has jurisdiction over the
parties and subject matter of this proceeding.
- 17 (2) Big Woody Limos is an auto transportation carrier subject to Commission
regulation.
- 18 (3) Big Woody Limos violated 49 C.F.R. 382.301(a), as adopted in WAC 480-30-
221, when two employees drove commercial vehicles prior to receiving a negative
pre-employment controlled substance test result.
- 19 (4) Big Woody Limos should be penalized \$1,000 for two violations of 49 C.F.R.
382.301(a), as adopted in WAC 480-30-221.
- 20 (5) Big Woody Limos violated 49 C.F.R. Part 391.51(a), as adopted in WAC 480-30-
221, when it failed to maintain driver qualification files for two of its employees.
- 21 (6) Big Woody Limos should be penalized \$100 for two violations of 49 C.F.R. Part
391.51(a), as adopted in WAC 480-30-221.
- 22 (7) Big Woody Limos violated 49 C.F.R. Part 391.51(b)(2), as adopted in WAC 480-
30-221, when it failed to obtain driving record inquiries for three employees
within 30 days of hire.
- 23 (8) Big Woody Limos should be penalized \$100 for three violations of 49 C.F.R. Part
391.51(b)(2), as adopted in WAC 480-30-221.
- 24 (9) Big Woody Limos violated 49 C.F.R. Part 395.8(a), as adopted in WAC 480-30-
221, when it allowed three drivers to drive without making a record of duty status
on three occasions between June and October 2016.
- 25 (10) Big Woody Limos should be penalized \$300 for three violations of 49 C.F.R. Part
395.8(a), as adopted in WAC 480-30-221.

- 26 (11) Big Woody Limos should be permitted to file jointly with Staff a mutually agreeable arrangement for paying the \$1,500 penalty.

ORDER

THE COMMISSION ORDERS:

- 27 (1) Big Woody Limos, LLC's request for mitigation of the \$1,500 penalty is DENIED.
- 28 (2) Big Woody Limos, LLC must either pay the penalty or file jointly with Staff a proposed payment arrangement no later than April 7, 2017.
- 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 March 24, 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.