

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TE-190790
LEMYN’S LEGACY, INC., D/B/A SPOKANE PARTY BUS	ORDER 01
in the amount of \$5,700	GRANTING MITIGATION TO \$3,000

BACKGROUND

1 On October 2, 2019, the Washington Utilities and Transportation Commission (Commission) assessed a \$5,700 penalty (Penalty Assessment) against Lemyn’s Legacy, Inc., d/b/a Spokane Party Bus (Spokane Party Bus or Company), for 86 critical violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference Title 49 Code of Federal Regulations (C.F.R.).¹ The Penalty Assessment includes:

- A \$5,300 penalty for 53 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.
- A \$100 penalty for one violation of 49 C.F.R. § 391.51(a) for failing to maintain a driver qualification file for each driver employed.
- A \$100 penalty for one violation of 49 C.F.R. § 393.75(c) for a tire tread depth measuring less than 1/32 of an inch measured in two adjacent major treat grooves in three separate locations eight inches apart.
- A \$100 penalty for 30 violations of 49 C.F.R. § 395.8(a)(1) for failing to require a driver to prepare a record of duty status using appropriate method.
- A \$100 penalty for one violation of WAC 480-30-900 for operating under interstate authority issued by the United States Department of Transportation (USDOT) or its successor agency without registering with the Commission and paying fees as required by the Uniform Carrier Registration (UCR) program.

¹ 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 October 2, 2019, Spokane Party Bus submitted a corrective action safety plan, acknowledging the violations and providing supporting documentation of the corrections made to prevent violations from reoccurring.
- 3 On October 3, 2019, the Company filed with the Commission an application for mitigation of penalties (Application). In the Application, Spokane Party Bus admits the violations and asks that the penalty be reduced.
- 4 On October 9, 2019, Commission staff (Staff) filed a response recommending the Commission assess a reduced penalty of \$3,000 and suspend a \$2,500 portion of the reduced penalty for a period of two years, and then waive it, subject to the following conditions: (1) Staff will conduct a follow-up safety investigation in two years or as soon thereafter as practicable to review the Company’s safety management practices, (2) the Company must not incur any repeat violations of critical regulations, and (3) Spokane Party Bus must pay the \$500 portion of the penalty that is not suspended.

DISCUSSION AND DECISION

- 5 Washington law requires charter and excursion 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.² Violations defined by federal law as “critical” meet this standard.³
- 6 Violations classified as “critical” are indicative of a breakdown in a carrier’s management controls. Critical violations are subject to penalties of \$100 per violation.⁴
- 7 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.⁵ The Commission also considers whether the

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 See RCW 81.04.405.

⁵ Enforcement Policy ¶19.

violations were promptly corrected, a company's history of compliance, and the likelihood the violation will recur.⁶ We address each violation category in turn.

- 8 **49 C.F.R. § 391.45(a).** The Penalty Assessment includes a \$5,300 penalty for 53 violations of 49 C.F.R. § 391.45(a) because the Company allowed a driver who was not medically examined and certified, Chauncy Welliver, to drive on 53 occasions between March 2 and August 23, 2019. Upon receiving notice of this violation, the driver completed the medical examination and the Company provided a copy of the medical examiner's certificate to Staff.
- 9 Staff recommends the penalty be reduced by half because this is a first-time violation that the Company immediately corrected. We agree with Staff's recommendation and assess a reduced penalty of \$2,650.
- 10 **49 C.F.R. § 391.51(a).** The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. § 391.51(a) because Spokane Party Bus failed to maintain a driver qualification file for Chauncy Welliver. Upon receiving notice of this violation, the Company promptly corrected the violation and provided staff with a copy of Chauncy Welliver's qualification file.
- 11 Staff recommends the Commission reduced the penalty by half, because this is a first-time violation that Spokane Party Bus promptly corrected. We agree. In its response, the Company acknowledged the violations, corrected the violation, and provided supporting documentation. In light of these factors, we assess a \$50 penalty for one violation of 49 C.F.R. § 391.51(a).
- 12 **49 C.F.R. § 393.75(c).** The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. § 393.75(c) because Staff discovered that a motor vehicle operated by the Company had less than 1/32 tread depth across three separate locations eight inches apart on both duals of rear passenger side tires, and subsequently placed the vehicle out of service. In its response, the Company acknowledged the violation and provided documentation that both dual tires of the rear passenger side were immediately replaced.
- 13 Staff recommends no mitigation of this penalty because ensuring the safety of its vehicles is the Company's responsibility. We agree and deny the request to mitigate this portion of the penalty.

⁶ Enforcement Policy ¶15.

- 14 **49 C.F.R. § 395.8(a)(1).** The Penalty Assessment also includes a \$100 penalty for 30 violations of 49 C.F.R. § 395.8(a)(1) for failing to require a driver, Chauncy Welliver, to prepare a record of duty status using the appropriate method. In its response, Spokane Party Bus acknowledged the violations and provided Staff with a completed record of duty status for Chauncy Welliver for the month of September 2019.
- 15 Staff recommends no mitigation of this portion of the penalty. The Commission could have assessed a \$3,000 penalty, but, because these are first-time violations, assessed a “per category” rather than “per violation” penalty. We agree and find that no further penalty reduction is warranted.
- 16 **WAC 480-30-900.** The Penalty Assessment also includes a \$100 penalty for one violation of WAC 480-30-900 for operating as a carrier under interstate authority issued by the USDOT without registering with the Commission and paying fees as required by the UCR program. Spokane Party Bus did not respond to this violation.
- 17 Staff recommends no mitigation of this penalty. We agree. Staff has confirmed that the Company is not registered with the UCR program. Therefore, reduction of the penalty is not warranted.
- 18 **Penalty Suspension.** The Commission considers several factors in 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 has taken specific actions to remedy the violations and avoid the same or similar violations in the future, such as purchasing new technology, making system changes, or training company personnel.⁷ Another factor we consider is whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.⁸
- 19 In this case, penalties were assessed for first-time violations. In addition, the Company has taken action to prevent the violations from reoccurring. Suspending a portion of the penalty with the conditions proposed by Staff will both increase compliance and provide a strong incentive to avoid violations in the future. Accordingly, we suspend a \$2,500 portion of the penalty for two years, and then waive it, subject to the following conditions: (1) Spokane Party Bus may not incur any repeat violations of critical regulations, (2) Spokane Party Bus must pay the \$500 portion of the penalty that is not suspended; and (3) Spokane Party Bus must register with the UCR program and pay all

⁷ *Id.* At ¶20.

⁸ *Id.*

required fees. Staff will conduct a follow-up safety investigation in two years to review the Company's safety management practices. If the Company fails to comply with any of the conditions, the suspended penalty will become immediately due and payable without further Commission order.

FINDINGS AND CONCLUSIONS

- 20 (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 and excursion service carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 21 (2) Spokane Party Bus is a charter and excursion service carrier subject to Commission regulation.
- 22 (3) Spokane Party Bus violated 49 C.F.R. § 391.45(a) when it allowed a driver who was not medically examined and certified to drive on 53 occasions between March 2 and August 23, 2019.
- 23 (4) Spokane Party Bus should be penalized \$2,650 for 53 violations of 49 C.F.R. § 391.45(a).
- 24 (5) Spokane Party Bus violated 49 C.F.R. § 391.51(a) when it failed to maintain a driver qualification file on its driver.
- 25 (6) Spokane Party Bus should be penalized \$50 for one violation of 49 C.F.R. § 391.51(a).
- 26 (7) Spokane Party Bus violated 49 C.F.R. § 393.75(c) by having a tire tread depth measuring less than 1/32 of an inch measured in two adjacent major tread grooves three separate locations eight inches apart.
- 27 (8) Spokane Party Bus should be penalized \$100 for one violation of 49 C.F.R. § 393.75(c).
- 28 (9) Spokane Party Bus violated 49 C.F.R. § 395.8(a) by failing to require its driver to prepare a record of duty status using an appropriate method.
- 29 (10) Spokane Party Bus should be penalized \$100 for 30 violations of 49 C.F.R. § 395.8(a).

- 30 (11) Spokane Party Bus violated WAC 480-30-900 by failing to register with the Commission and pay fees as required by the UCR program while operating as a carrier under interstate authority issued by the USDOT.
- 31 (12) Spokane Party Bus should be penalized \$100 for one violation of WAC 480-30-900.
- 32 (13) The Commission should assess a total penalty of \$3,000 for 86 critical violations of WAC 480-30 and Title 49 C.F.R.
- 33 (14) The Commission should suspend a \$2,500 portion of the penalty for a period of two years, and then waive it, subject to the conditions set out in paragraph 19, above.

ORDER

THE COMMISSION ORDERS:

- 34 (1) Lemyn's Legacy, Inc., d/b/a Spokane Party Bus's request for mitigation of the \$5,700 penalty is GRANTED, in part, and the penalty is reduced to \$3,000.
- 35 (2) The Commission suspends a \$2,500 portion of the penalty for a period of two years, and then waives it, subject to the following conditions; (1) Lemyn's Legacy, Inc., d/b/a Spokane Party Bus, must pay the \$500 portion of the penalty that is not suspended within 10 days of the effective date of this Order; (2) Lemyn's Legacy, Inc., d/b/a Spokane Party Bus, may not incur any repeat violations of critical regulations; and (3) Lemyn's Legacy, Inc., d/b/a Spokane Party Bus, must register with the Uniform Carrier Registration program and pay applicable fees.
- 36 (3) Commission Staff will conduct a follow-up review of Lemyn's Legacy, Inc., d/b/a Spokane Party Bus's operations in two years or as soon thereafter as practicable.
- 37 (4) If Lemyn's Legacy, Inc., d/b/a Spokane Party Bus, fails to satisfy any of the conditions in paragraph 36 of this order, or fails to comply with the terms of a payment arrangement, if applicable, the entire unpaid portion of the \$3,000 penalty will become immediately due and payable without further Commission order.

38 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 October 28, 2019.

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.