

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

JPH INTERNATIONAL, INC., D/B/A
A&A AIRPORT LIMOUSINE
SERVICE, A BUS SERVICE
SEATTLE,

in the amount of \$1,200

DOCKET TE-210189

ORDER 01

GRANTING MITIGATION TO \$1,050;
IMPOSING AND SUSPENDING
PENALTIES SUBJECT TO CONDITIONS

BACKGROUND

1 On April 7, 2021, the Washington Utilities and Transportation Commission (Commission) assessed a \$1,200 penalty (Penalty Assessment) against JPH International, Inc., d/b/a A&A Airport Limousine Service; A Bus Service Seattle, (JPH International or Company) for 21 violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference sections of Title 49 Code of Federal Regulations (C.F.R.).¹ The Penalty Assessment includes:

- a \$100 penalty for one violation of 49 C.F.R. Part 382.105 for using a Department of Transportation (DOT) custody and control form to perform a non-DOT test;
- a \$500 penalty for one violation of 49 C.F.R. Part 382.301(a) for using a driver before the motor carrier has received a negative pre-employment controlled substance test result;
- a \$100 penalty for six violations of 49 C.F.R. Part 382.601(b) for failing to provide to employees a written policy on misuse of alcohol and controlled substances that meets requirements;
- a \$300 penalty for three violations of 49 C.F.R. Part 391.45(a) for using a driver not medically examined and certified;

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.

- a \$100 penalty for two violations of 49 C.F.R. Part 391.51(b)(2) for failing to maintain inquiries into driver's driving record in driver's qualification file; and
- a \$100 penalty for eight violations of 49 C.F.R. Part 391.51(b)(9) for failing to place a note related to the verification of the medical examiner's listing on the National Registry of Certified Medical Examiners.

2 On April 13, 2021, the Company responded to the Penalty Assessment, contesting the violations and requesting the Commission issue a decision based on the written information provided. In its response, the Company admitted to each of the violations, but stated that it had taken action to rectify the violations and prevent recurrence.

3 On April 16, 2021, Staff filed a response recommending the Commission interpret the Company's contest of violations as a request for mitigation, and to grant mitigation, in part. Staff recommends the penalties related to the non-medically certified driver be reduced by half, and that the Commission impose a total penalty of \$1,050. Staff further recommends that \$500 of the reduced penalty be suspended for a period of two years, and then waived, subject to the following conditions: (1) the Company may not incur any repeat violations of critical regulations, and (2) the Company must pay the \$550 portion of the penalty that is not suspended. Staff will conduct a follow-up investigation in two years to review the Company's safety management practices.

DISCUSSION AND DECISION

4 Washington law requires passenger transportation companies to comply with federal safety requirements and undergo routine safety inspections. Violations discovered during safety inspections are subject to penalties of \$100 per violation.² In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.³ Violations defined by federal law as "critical" meet this standard.⁴

5 Because the Company offered no facts that contradicted Staff's investigation report and admitted the violations while explaining the circumstances, the Commission agrees with

² See RCW 81.04.405.

³ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12, 15 (Jan. 7, 2013) (Enforcement Policy).

⁴ 49 C.F.R. § 385, Appendix B.

Staff and interprets the Company's filing as a request for mitigation, rather than a contest of violations. 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.⁵ We address each violation category below.

6 **49 C.F.R. Part 382.105.** The Penalty Assessment includes a \$100 penalty for one violation of 49 C.F.R. Part 382.105 because the Company used a DOT custody form for a pre-employment test for a driver who is a non-DOT driver. In its response, the Company admitted the violation, and stated that its desire to treat its commercial driver's license (CDL) holding drivers and non-CDL holding drivers alike was the cause of the violation. The Company stated that it has since created a separate pool for its non-CDL drivers.

7 Staff recommends no mitigation of this portion of the penalty because this was a repeat violation. We agree. Although the Company promptly corrected the violation, the Commission already assessed the minimum penalty for this repeat violation. We thus conclude that no further penalty reduction is warranted.

8 **49 C.F.R. Part 382.301(a).** The Penalty Assessment includes a \$500 penalty for one violation of 49 C.F.R. Part 382.301(a) for using a driver before receiving a negative controlled substance test result. In its response, the Company explained that the delay between testing and delivery of the official test result caused the Company to begin training in advance of receiving the required test result.

9 Staff recommends no mitigation of this portion of the penalty because this was a repeat violation. We agree. The Company failed to demonstrate that it has taken any action to prevent the violation from reoccurring. Further, the Commission typically does not mitigate penalties for repeat violations of critical safety requirements, and the Company failed to introduce any new information that would warrant a penalty reduction.

10 **49 C.F.R. Part 382.601(b).** The Penalty Assessment includes a \$100 penalty for six violations of 49 C.F.R. Part 382.601(b) for failing to provide drivers with current written controlled substance and alcohol policy as required. In its response, the Company stated that this violation was an oversight and that it had promptly corrected the violation.

11 Staff recommends no mitigation of this portion of the penalty because this was a repeat violation. We agree. Although the Company promptly corrected the violation, the

⁵ Enforcement Policy ¶19.

Commission already assessed the minimum “per category” penalty for this repeat violation. We thus conclude that no further penalty reduction is warranted.

- 12 **49 C.F.R. Part 391.45(a).** The Penalty Assessment includes a \$300 penalty for three violations of 49 C.F.R. Part 391.45(a) for using a driver not medically examined and certified. In its response, the Company stated that it had promptly corrected the violation.
- 13 Staff recommends that the Commission reduce the penalty for these violations from \$300 to \$150 because the Company took prompt corrective action and implemented protocols to prevent future violations. We agree. Because the Company has taken action to ensure future compliance, we reduce the penalty for this violation category by half, and assess a total penalty of \$150 for the three violations of 49 C.F.R. Part 391.45(a).
- 14 **49 C.F.R. Part 391.51(b)(2).** The Penalty Assessment includes a \$100 penalty for two violations of 49 C.F.R. Part 391.51(b)(2) for failing to maintain inquiries into driver’s driving record in driver’s qualification file. In its response, the Company admitted the violation, provided extenuating circumstances, and stated that it had taken prompt corrective action to correct the violations.
- 15 Staff recommends no mitigation of this portion of the penalty. We agree. Although the Company promptly corrected the violation, the Commission assessed the minimum “per category” penalty for this violation. We thus conclude that no further penalty reduction is warranted.
- 16 **49 C.F.R. Part 391.51(b)(9).** The Penalty Assessment includes a \$100 penalty for eight violations of 49 C.F.R. Part 391.51(b)(9) for failing to place a note related to the verification of the medical examiner’s listing on the National Registry of Certified Medical Examiners. In its response, the Company stated that it is making efforts to correct the violation.
- 17 Staff recommends no mitigation of this portion of the penalty. We agree. Not only is this a repeat violation, but the Commission assessed the minimum “per category” penalty for this violation. We thus conclude that no further penalty reduction is warranted.
- 18 **Penalty Suspension.** The Commission considers several factors when 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.⁶ Another factor we consider is whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.⁷

19 In this case, the Company has taken action to prevent each of 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 \$500 portion of the penalty for two years, and then waive it, subject to the following conditions: (1) The Company may not incur any repeat violations of critical regulations, and (2) the Company must pay the \$550 portion of the penalty that is not suspended. 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 either of the conditions, the suspended penalty will become immediately due and payable without further Commission order. To reduce the financial impact of the penalty, the Company may work with Staff to establish mutually agreeable payment arrangements.

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 passenger transportation companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 21 (2) JPH International is a passenger transportation company subject to Commission regulation.
- 22 (3) JPH International violated 49 C.F.R. Part 382.105 when it used a DOT custody and control form to perform a non-DOT test.
- 23 (4) The Commission should penalize JPH International \$100 for one violation of 49 C.F.R. Part 382.105.

⁶ *Id.* at ¶20.

⁷ *Id.*

- 24 (5) JPH International violated 49 C.F.R. Part 382.301(a) when it used a driver before the motor carrier had received a negative pre-employment controlled substance test result.
- 25 (6) The Commission should penalize JPH International \$500 for one violation of 49 C.F.R. Part 382.301(a).
- 26 (7) JPH International violated 49 C.F.R. Part 382.601(b) when it failed to provide employees a written policy on misuse of alcohol and controlled substances as required by C.F.R. 382.601(b) 1-11 on six occasions.
- 27 (8) The Commission should penalize JPH International \$100 for six violations of C.F.R. 382.601(b).
- 28 (9) JPH International violated 49 C.F.R. Part 391.45(a) when it used a driver not medically examined and certified on three occasions.
- 29 (10) The Commission should penalize JPH International \$150 for three violations of 49 C.F.R. Part 391.45(a).
- 30 (11) JPH International violated 49 C.F.R. Part 391.51(b)(2) when it failed to maintain inquiries into driver's driving record in driver's qualification file on two occasions.
- 31 (12) The Commission should penalize JPH International \$100 for two violations of 49 C.F.R. Part 391.51(b)(2).
- 32 (13) JPH International violated C.F.R. Part 391.51(b)(9) when it failed to place a note related to the verification of the medical examiner's listing on the National Registry of Certified Medical Examiners in driver qualification file on eight occasions.
- 33 (14) The Commission should penalize JPH International \$100 for eight violations of 49 C.F.R. Part 391.51(b)(9).
- 34 (15) The Commission should suspend a \$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:

- 35 (1) JPH International, Inc., d/b/a A&A Airport Limousine Service; A Bus Service
Seattle's request for mitigation of the \$1,200 penalty is GRANTED, in part, and
the penalty is reduced to \$1,050.
- 36 (2) The Commission suspends a \$500 portion of the penalty for a period of two
years, and then waives it, subject to the following conditions: (1) JPH
International, Inc., d/b/a A&A Airport Limousine Service; A Bus Service Seattle
must either pay the \$550 portion of the penalty that is not suspended or file jointly
with Staff a proposed payment arrangement within 10 days of the effective date of
this Order; and (2) JPH International, Inc., d/b/a A&A Airport Limousine Service;
A Bus Service Seattle may not incur any repeat violations of critical regulations
upon reinspection.
- 37 (3) Commission Staff will conduct a follow-up review of JPH International, Inc.,
d/b/a A&A Airport Limousine Service; A Bus Service Seattle's operations
approximately two years after the effective date of this Order.
- 38 (4) If JPH International, Inc., d/b/a A&A Airport Limousine Service; A Bus Service
Seattle fails to satisfy any of the conditions in paragraph 36 of this order, or fails
to comply with the terms of the payment arrangement, if applicable, the entire
unpaid portion of the \$1,050 penalty will become immediately due and payable
without further Commission order.
- 39 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 11, 2021.

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.