

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against CREATIVE BUS, LLC, in the amount of \$3,400	DOCKET TE-220268 ORDER 01 GRANTING MITIGATION, IN PART; IMPOSING AND SUSPENDING PENALTY
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BACKGROUND

1 On May 6, 2022, the Washington Utilities and Transportation Commission (Commission) assessed a \$3,400 penalty (Penalty Assessment) against Creative Bus, LLC, (Creative Bus or Company) for 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 \$1,500 penalty for one violation of 49 C.F.R. § 382.115(a) for failing to implement an alcohol and/or controlled substances testing program on the date the employer begins commercial motor vehicle (CMV) operations;
- a \$1,500 penalty for three violations of 49 C.F.R. §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 one violation of 49 C.F.R. § 383.37(b) for knowingly allowing, requiring, permitting, or authorizing an employee to operate a CMV during any period in which the driver has a current commercial learner’s permit (CLP) or commercial driver’s license (CDL) disqualified by a State, has lost the right to operate a CMV in a State, or has been disqualified from operating a CMV; and
- a \$300 penalty for three violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.

¹ This Order refers to Commission safety regulations that adopt federal rules only by the applicable section of Title 49 C.F.R.

- 2 On May 11, 2022, Creative Bus filed a response to the Penalty Assessment admitting the violations and requesting mitigation of the penalty amount (Application). In its Application, the Company acknowledged the violations and stated that it has taken action to correct the violations and prevent further occurrences.
- 3 On May 18, 2022, Commission staff (Staff) filed a response recommending the Commission grant the Company’s Application in part. In its response, Staff states that the Company submitted to Staff a safety management plan (SMP) that details the steps taken by the Company to remedy the violations and prevent future recurrence. Staff further recommends that the Commission suspend a portion of the penalty subject to the following conditions: a) Creative Bus must not incur any repeat violations of acute or critical regulations upon re-inspection in six months, and b) The Company must pay the portion of the penalty that is not suspended within 10 days of this Order or enter a mutually agreeable payment arrangement with Staff.

DISCUSSION AND DECISION

- 4 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 “acute” or “critical” meet this standard.³
- 5 Violations are considered “acute” when non-compliance is so severe that immediate corrective action is required regardless of the overall safety posture of the company. Violations classified as “critical” are indicative of a breakdown in a carrier’s management controls. Acute violations discovered during safety inspections are subject to penalties of \$1,500 per violation,⁴ and critical violations are subject to penalties of \$100 per violation.⁵

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 81.04.530.

⁵ See RCW 81.04.405.

6 The Commission considers several factors when entertaining a request for mitigation, including whether a 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 a company's compliance.⁶ We address each violation category below.

7 **49 C.F.R. § 382.115.(a).** The Penalty Assessment includes a \$1,500 penalty for one violation of 49 C.F.R. § 382.115.(a) for failing to implement an alcohol and controlled substances testing program for all its commercial drivers. Staff states that the SMP submitted by the Company shows that the Company has enrolled in a testing program. Staff recommends that the Commission reduce the penalty to \$750.

8 We agree with Staff's recommendation. The Company has corrected the violation and taken action to prevent recurrence. Accordingly, we reduce the penalty for this violation category by half and assess a total penalty of \$750 for one violation of 49 C.F.R. §382.115(a).

9 **49 C.F.R. § 382.301(a).** The Penalty Assessment includes a \$1,500 penalty for three violations of 49 C.F.R. § 382.301(a) for using a driver before the motor carrier has received a negative pre-employment controlled substance test result. The Company informed Staff that two of the employees at issue had resigned and that the Company would require a pre-employment test if the third employee returns to duty. Staff states that the Company failed to provide information on how it will prevent any future violations and recommends no mitigation of this penalty.

10 We agree with Staff. Companies who use drivers who have not received negative controlled substance test results put their passengers and the traveling public at risk. The Company failed to prioritize the fitness of its employees and the safety of the public and failed to show how it will prevent recurrence of this violation. We thus deny the Company's request to mitigate this portion of the penalty.

11 **49 C.F.R. § 383.37(b).** The Penalty Assessment includes a \$100 penalty for one violation of 49 C.F.R. § 383.37(b) for knowingly allowing, requiring, permitting, or authorizing an employee to operate a CMV during any period in which the driver has a current CLP or CDL disqualified by a State, has lost the right to operate a CMV in a State, or has been disqualified from operating a CMV. Staff informed the Commission that the Company

⁶ Enforcement Policy ¶ 19.

stated that it has removed the driver in question from service but failed to state how the Company will prevent future occurrences of this violation. Staff recommends no mitigation of the penalty.

- 12 We agree with Staff. Companies who knowingly allow a driver with a suspended CDL put their customers and the traveling public at risk. The Company's failure to make sure that its drivers were qualified to operate its vehicles and failure to offer proof that it will successfully prevent further occurrences of this violation shows a lack of commitment to safety regulations. This is an acute violation requiring immediate corrective action that could allow a driver without the proper license endorsements to operate a commercial motor vehicle carrying passengers. Such violations are quantitatively linked to inadequate safety management controls and usually higher than average accident rates. We therefore deny the Company's request to mitigate this portion of the penalty.
- 13 **49 C.F.R. § 391.45(a).** The Penalty Assessment includes a \$300 penalty for three violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified. Staff informed the Commission that the Company took corrective action and implemented protocols to ensure future compliance. Staff recommends the Commission reduce this portion of the penalty to \$150.
- 14 We agree with Staff. Drivers who are not medically certified may have an undocumented medical condition that puts the traveling public at risk. However, the Company acted to immediately correct the violation and has demonstrated that it has a system in place to prevent future violations. Accordingly, we reduce the penalty for this violation category by half and assess a total penalty of \$150 for three violations of 49 C.F.R. §391.45(a).
- 15 **Suspension.** We also agree with Staff that suspending a portion of the penalty is appropriate. The Commission's interest in any enforcement action is compliance, and we find that suspending a portion of the penalty subject to the conditions recommended by Staff creates further incentive for the Company to comply with safety regulations. Accordingly, we suspend a \$1,250 portion of the penalty for a period of two years and waive it subject to the conditions that: 1) Staff conducts a follow up investigation at least six months from the date of this Order, 2) Creative Bus must not incur repeat violations of acute or critical violations upon reinspection, and 3) the Company must pay the \$1,250 portion of the penalty that is not suspended within 10 days, or file a mutually agreeable payment arrangement with Staff.

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 passenger transportation companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 17 (2) Creative Bus is a passenger transportation company subject to Commission regulation.
- 18 (3) Creative Bus committed one violation of 49 C.F.R. § 382.115(a) by failing to implement an alcohol and/or controlled substances testing program on the date the employer began CMV operations.
- 19 (4) The Commission should penalize Creative Bus \$750 for one violation of 49 C.F.R. § 382.115(a).
- 20 (5) Creative Bus committed three violations of 49 C.F.R. § 382.301(a) by using drivers before the motor carrier has received a negative pre-employment controlled substance test result.
- 21 (6) The Commission should penalize Creative Bus \$1,500 for three violations of 49 C.F.R. § 382.301(a).
- 22 (7) Creative Bus committed one violation of 49 C.F.R. § 383.37(b) by knowingly allowing, requiring, permitting, or authorizing an employee to operate a CMV during any period in which the driver has a current CLP or CDL disqualified by a State, has lost the right to operate a CMV in a State, or has been disqualified from operating a CMV.
- 23 (8) The Commission should penalize Creative Bus \$100 for one violation of 49 C.F.R. § 383.37(b).
- 24 (9) Creative Bus committed three violations of 49 C.F.R. § 391.45(a) by using a driver not medically examined and certified on three occasions.
- 25 (10) The Commission should penalize Creative Bus \$150 for two violations of 49 C.F.R. § 391.45(a).

- 26 (11) The Commission should suspend a \$1,250 portion of the penalty for a period of two years, and then waive it, subject to the conditions listed in paragraph 15.

ORDER

THE COMMISSION ORDERS:

- 27 (1) Creative Bus, LLC's request for mitigation of the \$3,400 penalty is GRANTED, in part, and the penalty is reduced to \$2,500.
- 28 (2) The Commission suspends a \$1,250 portion of the penalty for a period of two years, and then waives it, subject to the conditions that: 1) Creative Bus, LLC, must either pay the \$1,250 portion of the penalty that is not suspended or file a mutually agreeable payment plan with Staff within 10 days of this Order; and 2) Creative Bus, LLC, must not incur any repeat critical or acute violations upon reinspection.
- 29 (3) Commission Staff will conduct a follow-up review of Creative Bus, LLC's operations approximately at least six months after the effective date of this Order.
- 30 (4) If Creative Bus, LLC, fails to satisfy any of the conditions in paragraph 28 of this order, or fails to comply with the terms of the payment arrangement, if applicable, the entire unpaid portion of the \$1,250 penalty will become immediately due and payable without further Commission order
- 31 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-903(2)(e).

DATED at Lacey, Washington, and effective June 7, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AMANDA MAXWELL
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.