

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against SPAETH TRANSFER INC. in the amount of \$17,400.	DOCKET TV-240073 ORDER 01 GRANTING MITIGATION, IN PART; IMPOSING AND SUSPENDING PENALTIES
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BACKGROUND

1 On February 23, 2024, the Washington Utilities and Transportation Commission (Commission) issued a penalty assessment against Spaeth Transfer Inc. (Spaeth Transfer or Company) in the amount of \$17,400 for the following violations of the Washington Administrative Code (WAC): 480-15-555, Criminal Background Checks for Prospective Employees; and WAC 480-15-560, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 C.F.R.) Part 391 – Qualification of Drivers, 49 C.F.R. Part 393 – Parts and Accessories Necessary for Safe Operation, and 49 C.F.R. Part 395 – Hours of Service of Drivers. Specifically, the penalty assessment reads as follows:

- One violation of WAC 480-15-555 – Failure to complete a criminal background check for every person the carrier intends to hire. The Company failed to acquire a criminal background check for employee David Zettlemyer.
- One hundred seventy violations of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified. Spaeth Transfer allowed drivers Austin Becker, Scotty Fleck, and Nicholas Perry to operate a commercial motor vehicle (CMV) without a valid medical certificate on 170 occasions between July 1, 2023, and December 30, 2023.
- One violation of 49 C.F.R. § 393.9(a) – Inoperative required lamps. The Company operated a CMV with an inoperable right, rearmost turning signal at the time of inspection. The vehicle was placed out-of-service.

- One violation of 49 C.F.R. § 393.11(a)(1) – Missing turn signal. The Company operated a CMV with a missing right, rearmost turning signal at the time of inspection. The vehicle was placed out-of-service.
- Sixteen violations of 49 C.F.R. § 395.8(a)(1) – Failing to require driver to make a record of duty status. The Company failed to require drivers Austin Becker, Travis Clayton, Scotty Fleck, Nicholas Perry, and David Zettlemoyer to prepare records of duty status on 16 occasions between November 1, 2023, and November 30, 2023.

2 On March 7, 2024, Spaeth Transfer filed with the Commission its application for mitigation of penalties (Application). In the request for mitigation, Jenay Ingalls, president of Spaeth Transfer, admits the violations, states the violations occurred as a result of a lack of training following an ownership transition, and shares that the Company has corrected or is in the process of correcting the violations. Additionally, Ingalls states that some of the 170 occurrences of violations of 49 C.F.R. § 391.45(a) were taken in error. Ingalls states that following the safety investigation, the Company reviewed internal records which indicated that drivers were assigned to duties other than driving on some of the documented occasions.

3 On April 12, 2024, Staff filed a response recommending the Commission grant the request for mitigation, in part, and assess a reduced total penalty of \$6,250. Staff further recommends that the Commission suspend a \$3,000 portion of the penalty for two years, and then waive it, subject to the following conditions: (1) Spaeth Transfer must not incur repeat violations of 49 C.F.R. 391.45(a); (2) the Company must pay the \$3,250 portion of the penalty that is not suspended within 10 days of this order or enter into a mutually agreeable payment arrangement with Staff; and (3) Staff conduct a follow-up investigation focused on driver medical certifications at least six months from the date of this order.

DISCUSSION AND DECISION

4 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.¹ The Commission also considers whether the

¹ Enforcement Policy ¶19.

violations were promptly corrected, a company's history of compliance, and the likelihood the violation will reoccur. We address each violation category below.

- 5 **WAC 480-15-555.** The Commission assessed a penalty of \$100 for one violation of WAC 480-15-555. The Company took corrective action by running a criminal background check on employee David Zettlemoyer. Staff recommends the \$100 penalty be reduced to \$50. We agree. Accordingly, we grant the Company's request to mitigate this portion of the penalty and assess a \$50 penalty for one violation of WAC 480-15-555.
- 6 **49 C.F.R. § 391.45(a).** Commission assessed a penalty of \$100 for each occurrence of 170 violations of 49 C.F.R. § 391.45(a), for a total of \$17,000. Ingalls states that the Company was unaware that the requirement for medically certified drivers included those operating CMVs with a gross vehicle weight rating between 10,001 and 26,000 pounds. The Company provided additional documentation following the investigation which Staff determined should lower the count to 120 violations and a revised penalty total of \$12,000 per the enforcement policy. The Company states that drivers Becker and Perry are not currently driving CMVs and have been scheduled for medical examinations later in April. Ingalls states that Fleck's job duties no longer include driving vehicles for the Company. Staff recommends the revised penalty of \$12,000 be reduced to \$6,000 for these first-time violations. We agree with Staff's recommendations. Accordingly, we grant the Company's request to mitigate this portion of the penalty and assess a \$6,000 penalty for 120 violations of 49 C.F.R. § 391.45(a).
- 7 **49 C.F.R. § 393.9(a).** The Commission assessed a penalty of \$100 for one violation of 49 C.F.R. § 393.9(a). The Company corrected the violation during the investigation. Staff recommends the \$100 penalty be reduced to \$50. We agree. Accordingly, we grant the Company's request to mitigate this portion of the penalty and assess a \$50 penalty for one violation of 49 C.F.R. § 393.9(a).
- 8 **49 C.F.R. § 393.11(a).** The Commission assessed a penalty of \$100 for one violation of 49 C.F.R. § 393.11(a). The Company corrected the violation during the investigation. Staff recommends the \$100 penalty be reduced to \$50. We agree. Accordingly, we grant the Company's request to mitigate this portion of the penalty and assess a \$50 penalty for one violation of 49 C.F.R. § 393.11(a).
- 9 **49 C.F.R. § 395.8(a)(1).** The Commission assessed a "per category" penalty of \$100 for 16 violations of 49 C.F.R. § 395.8(a)(1). The Company has implemented hours of service recordkeeping for its drivers and assigned responsibilities for tracking these records for accuracy. Because the Commission assessed a "per category" penalty of \$100 for all 16 violations instead of penalizing for each occurrence, Staff recommends no mitigation of this portion of the penalty. We agree that no reduction of this portion of the penalty is

warranted. Accordingly, we deny the Company's request to mitigate this portion of the penalty.

FINDINGS AND CONCLUSIONS

- 10 (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 household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 11 (2) Spaeth Transfer is a household goods carrier subject to Commission regulation.
- 12 (3) Spaeth Transfer violated WAC 480-15-555 when it failed to acquire a criminal background check for employee David Zettlemoyer.
- 13 (4) The Commission should penalize Spaeth Transfer \$50 for one violation of WAC 480-15-555.
- 14 (5) Spaeth Transfer violated 49 C.F.R. § 391.45(a) when it allowed drivers Austin Becker, Scotty Fleck, and Nicholas Perry to operate a commercial motor vehicle (CMV) without a valid medical certificate on 170 occasions between July 1, 2023, and December 30, 2023.
- 15 (6) The Commission should penalize Spaeth Transfer \$6,000 for 120 violations of 49 C.F.R. § 391.45(a).
- 16 (7) Spaeth Transfer violated 49 C.F.R. § 393.9(a) when it operated a CMV with an inoperable right, rearmost turning signal at the time of inspection.
- 17 (8) The Commission should penalize Spaeth Transfer \$50 for one violation of 49 C.F.R. § 393.9(a).
- 18 (9) Spaeth Transfer violated 49 C.F.R. § 393.11(a)(1) when it operated a CMV with a missing right, rearmost turning signal at the time of inspection.
- 19 (10) The Commission should penalize Spaeth Transfer \$50 for one violation of 49 C.F.R. § 393.11(a).
- 20 (11) Spaeth Transfer violated 49 C.F.R. § 395.8(a)(1) when it failed to require drivers Austin Becker, Travis Clayton, Scotty Fleck, Nicholas Perry, and David

Zettlemoyer to prepare records of duty status on 16 occasions between November 1, 2023, and November 30, 2023.

- 21 (12) The Commission should penalize Spaeth Transfer \$100 for 16 violations of 49 C.F.R. § 395.8(a)(1).
- 22 (13) The Commission should suspend a \$3,000 portion of the mitigated \$6,250 penalty for a period of two years, and then waive it, subject to the conditions outlined in paragraph 3 of this order.

ORDER

THE COMMISSION ORDERS:

- 23 (1) Spaeth Transfer Inc.'s request for mitigation of the \$17,400 penalty is GRANTED, in part, and the penalty is reduced to \$6,250.
- 24 (2) The Commission suspends a \$3,000 portion of the penalty for a period of two years, and then waives it, subject to the conditions outlined in paragraph 3 of this order.
- 25 (3) If Spaeth Transfer Inc. fails to satisfy the conditions in paragraph 3 of this Order, the suspended portion of the penalty will become immediately due and payable without further Commission order.
- 26 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Lacey, Washington, and effective October 1, 2024.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFF KILLIP
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.