

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of  SAN JUAN TRANSIT TOURS AND CHARTERS LLC d/b/a SAN JUAN TRANSIT  For Compliance with WAC 480-30-221	DOCKET TE-161225 <i>(Consolidated)</i>  ORDER 01
In the Matter of the Penalty Assessment Against  SAN JUAN TRANSIT TOURS AND CHARTERS LLC d/b/a SAN JUAN TRANSIT  In the amount of \$3,900	DOCKET TE-161224 <i>(Consolidated)</i>  ORDER 01  ORDER OF CONSOLIDATION; ORDER UPGRADING SAFETY RATING; ORDER IMPOSING AND SUSPENDING PENALTIES

**BACKGROUND**

- 1 On December 6, 2016, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel Certificate as an Auto Transportation Carrier and Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements In the Matter of the Investigation of San Juan Transit Tours and Charters, LLC d/b/a San Juan Transit (San Juan Transit or Company) For Compliance with WAC 480-30-221 in Docket TE-161225 (Notice of Intent to Cancel). The Notice of Intent to Cancel set the Brief Adjudicative Proceeding for January 10, 2017, at 2 p.m.
- 2 Also on December 6, 2016, the Commission assessed a penalty of \$3,900 (Penalty Assessment) in Docket TE-161224 against San Juan Transit for nine violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference 49 C.F.R. Part 382 related to controlled substance and alcohol use testing; 49 C.F.R. Part 391 related to driver qualifications; and 49 C.F.R. Part 396 related to vehicle inspection, repair, and maintenance.
- 3 On December 19, 2016, San Juan Transit filed an application for mitigation of the penalty, admitting the violations. In its response, the Company stated, “combination of first-time ignorance, unavailability of certified mechanic, over confidence in friends and school district coworkers as San Juan Transit employees, and financial difficulties.”

- 4 On January 10, 2017, the Commission conducted a brief adjudicative proceeding before Administrative Law Judge Rayne Pearson. The parties agreed that the Commission should address the Penalty Assessment in Docket TE-161224 concurrently with the Company's proposed safety management plan in Docket TE-161225. Accordingly, the Commission consolidated Dockets TE-161224 and TE-161225.
- 5 Staff presented testimony from Wayne Gilbert, special investigator, and David Pratt, assistant director, Transportation Safety. Mr. Gilbert testified about the acute and critical safety violations that resulted in Staff's proposed "unsatisfactory" safety rating for San Juan Transit. Following an October 2016 compliance review, Staff documented one violation of 49 C.F.R. Part 382.305, which requires carriers to implement a random controlled substance and alcohol testing program. The Company failed to drug test any of its drivers in 2015. Staff also documented four violations of 49 C.F.R. Part 382.301(a), which requires pre-employment controlled substance and alcohol use testing for all drivers. The Company allowed employees Mary Morrison, William Pike, Dennis Hazelton, and Holly Harbers to drive its vehicles prior to receiving a negative controlled substance and alcohol use test result.
- 6 Staff also documented one violation of 49 C.F.R. Part 391.51(a), which requires carriers to maintain driver qualification files for each driver. San Juan Transit did not have driver qualification files for any of the five drivers checked. Staff also documented one violation of 49 C.F.R. Part 396.3(b), which requires carriers to keep minimum records of vehicle inspection and maintenance. San Juan Transit failed to keep records for any of the five vehicles checked. Staff also documented 150 violations of 49 C.F.R. Part 396.11(a), which requires drivers to complete a driver vehicle inspection report (DVIR) at the end of their shift each day a vehicle is used. At the time of Staff's investigation, San Juan Transit did not require its drivers to complete DVIRs. Finally, Staff documented one violation of 49 C.F.R. Part 396.17(a), which requires carriers to periodically inspect its vehicles. None of the Company's vehicles were inspected as required.
- 7 Mr. Pratt testified that the Company has since submitted a proposed safety management plan that Staff finds acceptable. Staff recommends the Commission upgrade the Company's safety rating to "conditional," and allow the Company to maintain its certificate. With respect to the penalty assessed in Docket TE-161224, Staff recommends the Commission suspend a \$2,500 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: 1) the Company may not incur any repeat acute or critical violations of WAC 480-30-221 upon re-inspection in six months, 2) the Company must provide documentation that its vehicles have been inspected as required prior to commencing operations this summer, 3) the Company may not incur any

repeat acute or critical violations of WAC 480-30-221 upon re-inspection in two years. Mr. Pratt clarified that the six-month inspection will be non-rated.

8 San Juan Transit presented testimony from Kraig Hansen, owner, who acknowledged the violations but requested the penalty be mitigated. Mr. Hansen explained that he purchased the Company in late 2013 and did not understand how to properly comply with Commission rules. Mr. Hansen testified that the violations were unintentional, and the Company has since developed a compliance plan to prevent them from reoccurring.

9 Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents Commission staff (Staff). Kraig Hansen, Owner, Friday Harbor, Washington, represents San Juan Transit.

## **DISCUSSION AND DECISION**

### **1. Docket TE-160910 – Auto Transportation Certificate**

10 Washington law requires auto transportation carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's October 2016 compliance review of San Juan Transit found violations of one "acute" and eight "critical" regulations, which resulted in a proposed "unsatisfactory" safety rating. 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. Patterns of noncompliance with a critical regulation are quantitatively linked to inadequate safety management controls and usually higher-than-average accident rates.

11 On January 5, 2017, the Company submitted its proposed safety management plan and requested the Commission upgrade its safety rating. Staff found that San Juan Transit's safety management plan addresses each violation, identifies how each violation occurred, describes the steps taken to correct each violation, and describes the controls put in place to ensure compliance going forward.

12 Based on the testimony and evidence presented at the hearing, the Commission finds that the Company has achieved compliance by correcting the violations that led to the proposed "unsatisfactory" safety rating. Accordingly, the Commission agrees with Staff's recommendation and grants the Company's request to upgrade its safety rating to "conditional."

## 2. Docket TE-161224 – Penalty Assessment

13 Violations discovered during safety inspections are subject to penalties of \$100 per violation.<sup>1</sup> In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.<sup>2</sup> Both “acute” and “critical” violations meet this standard.<sup>3</sup>

14 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.<sup>4</sup> The Penalty Assessment cited one acute and eight critical violations in five categories. We address each category in turn.

### WAC 480-30-221, 49 C.F.R. Part 382.301(a)

15 **Discussion.** WAC 480-30-221, 49 C.F.R. Part 382.301(a) prohibits auto transportation carriers from using drivers prior to receiving a negative pre-employment controlled substance and alcohol use test result. The Commission assessed penalties of \$500 for four violations of 49 C.F.R. Part 382.301(a), for a total penalty of \$2,000, because San Juan Transit allowed Ms. Morrison, Mr. Pike, Mr. Hazelton, and Ms. Harbers to drive its vehicles prior to receiving a negative controlled substance and alcohol test result. Mr. Hansen explained that the Company, which operates seasonally, is enrolled in a consortium, but he was unaware that drivers must be retested prior to re-hire each season. Mr. Hansen testified that he has since corrected the violations by ensuring all drivers submit to a controlled substance and alcohol test prior to driving Company vehicles upon rehire.

16 **Decision.** Drivers who have not been tested for alcohol or controlled substances may drive while impaired, which poses a serious risk to passengers and other drivers. The Commission could have assessed the statutory maximum of \$1,500 per violation, for a total penalty of \$6,000, but, because these are first-time violations, assessed a reduced penalty of \$500 per violation. Because this requirement is fundamental to safe operations,

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<sup>1</sup> See RCW 80.04.405.

<sup>2</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

<sup>3</sup> 49 C.F.R. § 385, Appendix B.

<sup>4</sup> Enforcement Policy ¶19.

we find that no further penalty reduction is warranted, and decline to mitigate this portion of the penalty.

**WAC 480-30-221, 49 C.F.R. Part 382.305**

17 **Discussion.** WAC 480-30-221, 49 C.F.R. Part 382.305 requires companies to administer random controlled substance and alcohol testing to their drivers. The Penalty Assessment included a \$1,500 penalty for one violation of 49 C.F.R. Part 382.305 because San Juan Transit failed to randomly test any of its drivers in 2015.

18 **Decision.** The Commission assessed a \$1,500 penalty for four violations of C.F.R. Part 391.51(a). The Commission could have assessed the statutory maximum of \$1,500 per violation, for a total penalty of \$6,000, but, because these are first-time violations, assessed a “per category” rather than “per violation” penalty. Accordingly, we find that no further penalty reduction is warranted, and decline to mitigate this portion of the penalty.

**WAC 480-30-221, 49 C.F.R. Part 391.51(a)**

19 **Discussion.** WAC 480-30-221, 49 C.F.R. Part 391.51(a) requires companies to maintain a driver qualification file for each driver. San Juan Transit failed to maintain driver qualification files for Ms. Morrison, Mr. Pike, Mr. Hazelton, or Ms. Harbers. Mr. Hansen testified that the Company has since become familiar with Commission safety requirements and now maintains employee files as required.

20 **Decision.** The Commission assessed a \$100 penalty for four violations of C.F.R. Part 391.51(a). The Commission could have assessed a \$400 penalty, but, because these are first-time violations, assessed a “per category” rather than “per violation” penalty. Accordingly, we find that no further penalty reduction is warranted, and decline to mitigate this portion of the penalty.

**WAC 480-30-221, 49 C.F.R. Part 396.11(a)**

21 **Discussion.** WAC 480-30-221, 49 C.F.R. Part 396.11(a) requires drivers to complete a vehicle inspection report (DVIR) at the end of his or her shift each day a vehicle is used. The report includes an 11-item checklist that identifies any defects that could affect safe operation of the vehicle. The Penalty Assessment cited one violation of WAC 480-30-221 because the Company failed to require its drivers to prepare DVIRs on 150 occasions. Mr. Hansen testified that although he prepared pre-trip sheets in the past, the forms did not comply with the Commission’s safety rules. Mr. Hansen explained that the Company now requires all drivers to complete DVIRs.

22 **Decision.** Here, the Commission assessed a \$100 penalty for 150 violations of WAC 480-30-221. The Commission could have assessed a \$15,000 penalty, but, because these are first-time violations, assessed a “per category” rather than “per violation” penalty. Accordingly, we find that no further penalty reduction is warranted and decline to mitigate this portion of the penalty.

**WAC 480-30-221, 49 C.F.R. Part 396.17(a)**

23 **Discussion.** WAC 480-30-221, 49 C.F.R. Part 396.17(a) requires commercial vehicles to be inspected annually by a certified inspector who must complete and sign a required form attesting to the vehicle’s condition. The Penalty Assessment cited one violation of 49 C.F.R. Part 396.17(a) because San Juan Transit used five vehicles that were not inspected by a certified inspector as required. Mr. Hansen testified that he had difficulty retaining a certified inspector, but performed all proper vehicle maintenance. Mr. Hansen has since hired a certified inspector, and understands that if the inspector becomes unavailable, he will have to transport his vehicles off island for inspection.

24 **Decision.** Here, the Commission assessed a \$100 penalty for five violations of WAC 480-30-221. The Commission could have assessed a \$500 penalty, but, because these are first-time violations, assessed a “per category” rather than “per violation” penalty. Accordingly, we find that no further penalty reduction is warranted and decline to mitigate this portion of the penalty.

**WAC 480-30-221, 49 C.F.R. Part 396.3(b)**

25 **Discussion.** WAC 480-30-221, 49 C.F.R. Part 396.3(b) requires carriers to maintain vehicle inspection and maintenance records for its commercial vehicles. The Penalty Assessment cited one violation of 49 C.F.R. Part 396.3(b) because San Juan Transit failed to maintain these records for any of the five vehicles checked. Mr. Hansen testified that the Company now maintains these records as required.

26 **Decision.** Here, the Commission assessed a \$100 penalty for five violations of WAC 480-30-221. The Commission could have assessed a \$500 penalty, but, because these are first-time violations, assessed a “per category” rather than “per violation” penalty. Accordingly, we find that no further penalty reduction is warranted and decline to mitigate this portion of the penalty.

27 Because the Company has submitted a satisfactory proposed safety management plan that details the controls it put in place to prevent repeat violations of Commission safety rules, we agree with Staff’s recommendation and will suspend a \$2,500 portion of the penalty for a period of two years, and then waive it, subject to the following conditions:

- a) San Juan Transit must maintain a “conditional” safety rating;
- b) San Juan Transit may not incur any repeat acute or critical violations of WAC 480-30-221 upon re-inspection in six months;
- c) San Juan Transit must provide documentation that its vehicles have been inspected as required prior to commencing operations in the summer of 2017;
- d) San Juan Transit may not incur any repeat acute or critical violations of WAC 480-30-221 upon re-inspection in two years; and
- e) San Juan Transit must pay the remaining \$1,400 penalty within ten days of the effective date of this Order. The Company may work with Staff to establish mutually agreeable payment arrangements to pay the \$1,400 portion of the penalty that is not suspended.

### **FINDINGS AND CONCLUSIONS**

- 28 (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 companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 29 (2) San Juan Transit is an auto transportation company subject to Commission regulation.
- 30 (3) San Juan Transit cured the deficiencies that led to its “unsatisfactory” safety rating within 45 days, as required. Accordingly, San Juan Transit’s safety rating should be upgraded to “conditional,” and the Company should be allowed to maintain its auto transportation certificate.
- 31 (4) San Juan Transit violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 382.301(a), by using drivers prior to receiving a negative pre-employment controlled substance and alcohol test result.
- 32 (5) San Juan Transit should be penalized \$2,000 for four violations of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 382.301(a).
- 33 (6) San Juan Transit violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 382.305, by failing to implement a random controlled substance and alcohol testing program.

- 34 (7) San Juan Transit should be penalized \$1,500 for one violation of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 382.305.
- 35 (8) San Juan Transit violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 391.51(a), by failing to maintain a driver qualification file for each of its five drivers.
- 36 (9) San Juan Transit should be penalized \$100 for five violations of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 391.51(a).
- 37 (10) San Juan Transit violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 396.11(a), by failing to require its drivers to prepare DVIRs.
- 38 (11) San Juan Transit should be penalized \$100 for 150 violations of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 396.11(a).
- 39 (12) San Juan Transit violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 396.17(a), by using commercial vehicles not periodically inspected.
- 40 (13) San Juan Transit should be penalized \$100 for five violations of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 396.17(a).
- 41 (14) San Juan Transit violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 396.3(b), by failing to keep minimum records of vehicle inspection and maintenance.
- 42 (15) San Juan Transit should be penalized \$100 for five violations of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 396.3(b).
- 43 (16) The Commission should assess a total penalty of \$3,900 for nine violations of WAC 480-30-221. A \$2,500 portion of the penalty should be suspended for a period of two years, and then waived, subject to the conditions set out in paragraph 27, above.

**ORDER**

THE COMMISSION ORDERS That

- 44 (1) The Commission upgrades San Juan Transit Tours and Charters, LLC d/b/a San Juan Transit's safety rating to "conditional."



- 45 (2) The Commission assesses a \$3,900 penalty against San Juan Transit Tours and Charters, LLC d/b/a San Juan Transit. 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:
- a) San Juan Transit Tours and Charters, LLC d/b/a San Juan Transit must maintain a “conditional” safety rating;
  - b) San Juan Transit Tours and Charters, LLC d/b/a San Juan Transit incur any repeat acute or critical violations of WAC 480-30-221 upon re-inspection in six months;
  - c) San Juan Transit Tours and Charters, LLC d/b/a San Juan Transit must provide documentation that its vehicles have been inspected as required prior to commencing operations in the summer of 2017;
  - d) San Juan Transit Tours and Charters, LLC d/b/a San Juan Transit may not incur any repeat acute or critical violations of WAC 480-30-221 upon re-inspection in two years; and
  - e) San Juan Transit Tours and Charters, LLC d/b/a San Juan Transit must either pay the \$1,400 portion of the penalty that is not suspended or file jointly with Staff a proposed payment plan within ten days of the effective date of this Order.

DATED at Olympia, Washington, and effective January 12, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON  
Administrative Law Judge

### NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

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