

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TE-210120
EXPLORERS 3, LLC, D/B/A EVERGREEN ESCAPES	ORDER 01
in the amount of \$2,000	GRANTING MITIGATION TO \$1,100; SUSPENDING PENALTY, IN PART

**BACKGROUND**

- 1 On March 3, 2021, the Washington Utilities and Transportation Commission (Commission) assessed a \$2,000 penalty (Penalty Assessment) against Explorers 3, LLC, d/b/a Evergreen Escapes, (Evergreen Escapes or Company) for 22 violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference sections of Title 49 Code of Federal Regulations (C.F.R.).<sup>1</sup> The Penalty Assessment includes:
  - A \$1,800 penalty for 18 violations of 49 C.F.R. Part 391.15(a) for using a disqualified driver.
  - a \$100 penalty for one violation of 49 C.F.R. Part 391.45(a) for using a driver not medically examined and certified; and
  - a \$100 penalty for three violations of 49 C.F.R. Part 396.17(a) for using a commercial motor vehicle not periodically inspected.
- 2 On March 16, 2021, the Company responded to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty based on the written information provided. The Company stated that it has created a successful safety management plan and has corrected the violations at issue. The Company further stated that the COVID-19 pandemic has had a profound impact on both the Company's safety management controls and its revenue.
- 3 On March 19, 2021, Staff filed a response recommending the Commission grant the Company's request for mitigation, in part. Staff recommends the penalties related to the

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<sup>1</sup> 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.

disqualified driver be reduced by half, and that the Commission impose a total penalty of \$1,100. Staff further recommends that \$600 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 \$500 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.<sup>2</sup> In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.<sup>3</sup> Violations defined by federal law as "critical" meet this standard.<sup>4</sup>
- 5 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>5</sup> We address each violation category below.
- 6 **49 C.F.R. Part 391.15(a).** The Penalty Assessment includes a \$1,800 penalty for 18 violations of 49 C.F.R. Part 391.15(a) because the Company allowed a driver with a suspended driver's license to operate a commercial motor vehicle on 18 occasions. In its response, the Company stated that it has improved upon its protocols to ensure that this violation is not repeated.
- 7 Staff recommends that the Commission reduce the penalty for these violations from \$1,800 to \$900 because the Company took prompt corrective action. Staff is also

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<sup>2</sup> See RCW 81.04.405.

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

<sup>4</sup> 49 C.F.R. § 385, Appendix B.

<sup>5</sup> Enforcement Policy ¶19.

sensitive to the Company's financial situation and the impact of a significant penalty on a small business still suffering the effects of the COVID-19 pandemic restrictions.

8 We agree with Staff's recommendation to mitigate this portion of the penalty. These are violations that the Company has since corrected, and the original penalty amount is significant in proportion to the Company's reduced revenue. The Commission's goal in any enforcement proceeding is to obtain compliance, not create an insurmountable financial burden for a small company. Accordingly, we reduce the penalty for this violation category by half, and assess a total penalty of \$900 for 18 violations of 49 C.F.R. Part 391.15(a).

9 **49 C.F.R. Part 391.45(a).** The Penalty Assessment includes a \$100 penalty for one violation of 49 C.F.R. Part 391.45(a) because the Company used a driver not medically examined and certified on one occasion. Upon receiving notice of this violation, the Company promptly corrected the violation. The Company stated in its response that it has re-established pre-pandemic procedures to ensure compliance going forward.

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

11 **49 C.F.R. Part 396.17(a).** The Penalty Assessment also includes a \$100 penalty for three violations of 49 C.F.R. Part 396.17(a) because the Company used a commercial motor vehicle not periodically inspected on three occasions. The Company stated that it has corrected the violation. The Company further stated that it has implemented new procedures to prevent the violation from reoccurring.

12 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.

13 **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.<sup>6</sup>

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<sup>6</sup> *Id.* at ¶20.

Another factor we consider is whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.<sup>7</sup>

14 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 \$600 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 \$500 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

- 15 (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.
- 16 (2) Evergreen Escapes is a passenger transportation company subject to Commission regulation.
- 17 (3) Evergreen Escapes violated 49 C.F.R. Part 391.15(a) when it used a disqualified driver on 18 occasions.
- 18 (4) The Commission should penalize Evergreen Escapes \$900 for 18 violations of 49 C.F.R. Part 391.15(a).
- 19 (5) Evergreen Escapes violated 49 C.F.R. Part 391.45(a) when it used a driver not medically examined and certified on one occasion.

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<sup>7</sup> *Id.*

- 20 (6) The Commission should penalize Evergreen Escapes \$100 for one violation of 49 C.F.R. Part 391.45(a).
- 21 (7) Evergreen Escapes violated 49 C.F.R. Part 396.17(a) when it used a commercial motor vehicle not periodically inspected.
- 22 (8) The Commission should penalize Evergreen Escapes \$100 for one violation of 49 C.F.R. Part 396.17(a).
- 23 (9) The Commission should suspend a \$600 portion of the penalty for a period of two years, and then waive it subject to the conditions set out in paragraph 14, above.

**ORDER**

**THE COMMISSION ORDERS:**

- 24 (1) Explorers 3, LLC, d/b/a Evergreen Escapes' request for mitigation of the \$2,000 penalty is GRANTED, in part, and the penalty is reduced to \$1,100.
- 25 (2) The Commission suspends a \$600 portion of the penalty for a period of two years, and then waives it, subject to the following conditions: (1) Explorers 3, LLC, d/b/a Evergreen Escapes must either pay the \$500 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) Explorers 3, LLC, d/b/a Evergreen Escapes may not incur any repeat violations of critical regulations.
- 26 (3) Commission Staff will conduct a follow-up review of Explorers 3, LLC, d/b/a Evergreen Escapes' operations approximately two years after the effective date of this Order.
- 27 (4) If Explorers 3, LLC, d/b/a Evergreen Escapes fails to satisfy any of the conditions in paragraph 25 of this order, or fails to comply with the terms of the payment arrangement, if applicable, the entire unpaid portion of the \$1,100 penalty will become immediately due and payable without further Commission order.
- 28 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 April 2, 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.**