

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment  
Against

SKY HARBOR SHUTTLE LLC,

in the amount of \$10,100

DOCKET TE-220755

ORDER 01

DENYING REQUEST FOR  
HEARING; GRANTING  
MITIGATION TO \$5,200; IMPOSING  
AND SUSPENDING PENALTY

**BACKGROUND**

1 On October 18, 2022, the Washington Utilities and Transportation Commission (Commission) assessed a \$10,100 penalty (Penalty Assessment) against Sky Harbor Shuttle LLC (Sky Harbor 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.).<sup>1</sup> The Penalty Assessment includes:

- a \$9,900 penalty for 99 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified;
- a \$100 penalty for one violation of 49 C.F.R. § 393.41 operating a commercial motor vehicle (CMV) with a defective parking brake system; and
- a \$100 penalty for two violations of 49 C.F.R. § 396.17(a) for using a CMV not periodically inspected.

2 On December 15, 2022, Sky Harbor 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 requested a hearing to present evidence but provided no written support for its Application or its request for hearing.

3 On December 20, 2022, Commission staff (Staff) filed a response recommending the Commission grant the Company's Application, in part. In its response, Staff states that on

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

October 20, Sky Harbor provided to Staff a corrective safety management plan (SMP) describing in detail the actions, processes, and procedures the Company implemented to correct the violations and prevent recurrence. The Company also provided copies of valid medical certificates for drivers Mark Vincent and Ray Hirschi, as well as annual vehicle inspections for its two CMVs. Staff further recommends that the Commission suspend a portion of the penalty subject to the following conditions: (a) Sky Harbor must not incur any repeat violations of acute or critical regulations upon re-inspection within two years, 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.

Because the Company failed to provide any new information with its request, Staff recommends that the Commission deny the Company's request for hearing and decide the matter based on the information provided.

#### 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.<sup>2</sup> Violations defined by federal law as "acute" or "critical" meet this standard.<sup>3</sup>
- 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,<sup>4</sup> and critical violations are subject to penalties of \$100 per violation.<sup>5</sup>
- 6 As a preliminary matter, we deny the Company's request for a hearing. The Penalty Assessment advised the Company that a request for hearing will only be granted if material issues of law or fact require consideration of evidence and resolution in hearing.

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<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> See RCW 81.04.530.

<sup>5</sup> See RCW 81.04.405.

Here, no issues of law or fact are in dispute. The Company provided no evidence to refute the evidence presented by Staff. The facts, therefore, are undisputed, and the law is clear. Accordingly, the Company's request for a hearing is denied.

7 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.<sup>6</sup> We address each violation category below.

8 **49 C.F.R. § 391.45(a).** The Penalty Assessment includes a \$9,900 penalty for 99 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 \$5,000.

9 We agree with Staff. Drivers who are not medically certified may have an unknown 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 and assess a total penalty of \$5,000 for 99 violations of 49 C.F.R. §391.45(a).

10 **49 C.F.R. § 393.41.** The Penalty Assessment includes a \$100 penalty for one violation of 49 C.F.R. § 393.41 for operating a CMV with a defective parking brake system. Staff recommends no mitigation for this out-of-service violation.

11 We agree with Staff's recommendation. Although the Company has corrected the violation, using a CMV with an inoperative parking brake system puts the Company's passengers and the traveling public at risk. Here, the Commission correctly assessed a \$100 minimum penalty for this critical violation. We thus decline to mitigate this portion of the penalty.

12 **49 C.F.R. § 396.17(a).** The Penalty Assessment includes a \$100 penalty for two violations of 49 C.F.R. § 396.17(a) for using a CMV that was not periodically inspected. The Company provided Staff with evidence that it had promptly corrected the violations

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<sup>6</sup> Enforcement Policy ¶ 19.

and took steps to prevent recurrence. However, Staff recommends no mitigation of this per-category penalty.

13 We agree with Staff. Companies who use CMVs who have not been periodically examined put their passengers and the traveling public at risk. Although the Company provided evidence that it corrected the violation and took steps to prevent recurrence, here the Commission imposed the minimum per-category penalty. We thus decline to further mitigate this portion of the penalty.

14 **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 \$2,600 portion of the penalty for a period of two years and then waive it subject to the conditions that: (1) Staff conducts a follow up investigation within two years from the date of this Order or as soon thereafter as practicable to review the Company's compliance, (2) Sky Harbor must not incur repeat violations of acute or critical violations upon reinspection, and (3) the Company must pay the \$2,600 portion of the penalty that is not suspended within 10 days, or file a mutually agreeable payment arrangement with Staff.

### 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) Sky Harbor is a passenger transportation company subject to Commission regulation.

17 (3) Sky Harbor committed 99 violations of 49 C.F.R. § 391.45(a) by using a driver not medically examined and certified.

18 (4) The Commission should penalize Sky Harbor \$5,000 for 99 violations of 49 C.F.R. § 391.45(a).

19 (5) Sky Harbor committed one violation of 49 C.F.R. § 393.41 when it operated a CMV with a defective parking brake system.

- 20 (6) The Commission should penalize Sky Harbor \$100 for one violation of 49 C.F.R. § 393.41.
- 21 (7) Sky Harbor committed two violations of 49 C.F.R. § 396.17(a) when it used a CMV not periodically inspected.
- 22 (8) The Commission should penalize Sky Harbor \$100 for two violations of 49 C.F.R. § 396.17(a).
- 23 (9) The Commission should suspend a \$2,600 portion of the penalty for a period of two years, and then waive it, subject to the conditions listed in paragraph 14.

**ORDER**

THE COMMISSION ORDERS:

- 24 (1) Sky Harbor Shuttle LLC's request for mitigation of the \$10,100 penalty is GRANTED, in part, and the penalty is reduced to \$5,200.
- 25 (2) The Commission suspends a \$2,600 portion of the penalty for a period of two years, and then waives it, subject to the conditions that: (1) Sky Harbor Shuttle LLC must either pay the \$2,600 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) Sky Harbor Shuttle LLC must not incur any repeat critical or acute violations upon reinspection.
- 26 (3) Commission Staff will conduct a follow-up review of Sky Harbor Shuttle LLC's operations approximately two years after the effective date of this Order.
- 27 (4) If Sky Harbor Shuttle LLC 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 \$2,600 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 480-07-903(2)(e).

DATED at Lacey, Washington, and effective January 6, 2023.

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.**