

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of AAA PARTY BUS, LLC d/b/a SEATTLE PARTY BUS RENTALS For Compliance with WAC 480-30-221	DOCKET TE-160910 <i>(Consolidated)</i> ORDER 01
In the Matter of the Penalty Assessment Against AAA PARTY BUS, LLC d/b/a SEATTLE PARTY BUS RENTALS In the amount of \$2,300	DOCKET TE-160824 <i>(Consolidated)</i> ORDER 01 ORDER OF CONSOLIDATION; ORDER UPGRADING SAFETY RATING; ORDER IMPOSING AND SUSPENDING PENALTIES

BACKGROUND

- 1 On July 14, 2016, the Washington Utilities and Transportation Commission (Commission) assessed a penalty of \$2,300 (Penalty Assessment) in Docket TE-160824 against AAA Party Bus, LLC d/b/a Seattle Party Bus Rentals (Seattle Party Bus Rentals or Company) for 58 violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference 49 C.F.R. Part 390 related to general regulations; 49 C.F.R. Part 391 related to driver qualifications; 49 C.F.R. Part 395 related to driver hours of service; and 49 C.F.R. Part 396 related to vehicle inspection, repair, and maintenance.
- 2 On August 2, 2016, the 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 Seattle Party Bus Rentals For Compliance with WAC 480-30-221 in Docket TE-160910. The Notice set the Brief Adjudicative Proceeding for August 24, 2016, at 1:30 p.m.
- 3 On August 17, 2016, Seattle Party Bus Rentals filed an application for mitigation of the penalty, admitting the violations and requesting a decision based on the written

information provided. In its response, the Company stated, “violations were not intentional.”

- 4 The Commission conducted a brief adjudicative proceeding on August 24, 2016, before Administrative Law Judge Rayne Pearson. The parties agreed that the Commission should address the Penalty Assessment in Docket TE-160824 concurrently with the Company’s proposed safety management plan in Docket TE-160910. Accordingly, the Commission consolidated Dockets TE-160824 and TE-160910.
- 5 Staff presented testimony from David Pratt, assistant director, Transportation Safety. Mr. Pratt testified briefly about the acute and critical safety violations discovered during a June 7, 2016, compliance review that resulted in Staff’s proposed “unsatisfactory” safety rating for Seattle Party Bus Rentals. 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-160824, Staff recommends the Commission suspend a \$1,300 portion of the penalty for a period of one year, and then waive it, subject to the condition that the Company does not incur any repeat violations of WAC 480-30-221 upon re-inspection.
- 6 Seattle Party Bus Rentals presented testimony from Pamela Green and Travis Edwards, partners and co-owners, who acknowledged the violations but requested the penalty be mitigated. Ms. Green explained that the violations were unintentional, and the Company has since developed a compliance plan to prevent recurring violations.
- 7 Jeff Roberson, Assistant Attorney General, Olympia, represents Commission Staff (Staff). Pamela Green, Member and Owner, Seattle, represents Seattle Party Bus Rentals.

DISCUSSION AND DECISION

1. Docket TE-160910 – Auto Transportation Certificate

- 8 Washington law requires auto transportation carriers to comply with federal safety requirements and undergo routine safety inspections. Staff’s June 7, 2016, compliance review of Seattle Party Bus Rentals found violations of one “acute” and 57 “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.

- 9 Seattle Party Bus Rentals received notice of its proposed “unsatisfactory” safety rating on June 24, 2016. Carriers that receive proposed “unsatisfactory” safety ratings have 45 days to request and receive a change to the proposed rating. Due to scheduling conflicts, Staff extended Seattle Party Bus Rentals’ deadline for requesting and receiving an upgrade to its safety rating until August 17, 2016.
- 10 On August 17, 2016, the Company submitted its proposed safety management plan and requested the Commission upgrade its safety rating. 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-160824 – Penalty Assessment

- 11 Violations discovered during safety inspections are subject to penalties of \$100 per violation.¹ In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.² Both “acute” and “critical” violations meet this standard.³
- 12 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.⁴ The Penalty Assessment cited one acute and 57 critical violations in five categories. We address each category in turn.

WAC 480-30-221, 49 C.F.R. Part 390.35

- 13 **Discussion.** WAC 480-30-221, 49 C.F.R. Part 390.35 prohibits auto transportation carriers from making or causing to make fraudulent or intentionally false entries on

¹ See RCW 80.04.405.

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 Enforcement Policy ¶19.

records subject to inspection. The Commission assessed a \$100 penalty for one violation of 49 C.F.R. Part 390.35 because Mr. Edwards' medical certificate was falsified. Mr. Edwards testified that he created a mock-up of a medical certificate using his own name and information solely for illustrative purposes, which Ms. Green mistook for an authentic medical certificate and provided to Staff during its inspection. Mr. Edwards acknowledged that he did not have a valid medical certificate at the time of Staff's inspection.

- 14 **Decision.** Although Staff recognized that Mr. Edwards' medical certificate was falsified, this type of violation, if undetected, could interfere with the Commission's ability to perform its regulatory functions. The Company is responsible for the violation even if, as it claims, its conduct was unintentional. Accordingly, we decline to mitigate this portion of the penalty.

WAC 480-30-221, 49 C.F.R. Part 391.45(b)(1)

- 15 **Discussion.** WAC 480-30-221, 49 C.F.R. Part 391.45(b)(1) requires any driver who has not been medically examined and certified as physically qualified to operate a commercial motor vehicle in the preceding 24 months to renew their medical certification. Staff discovered during its review that two drivers drove on 16 occasions with expired medical cards. Ms. Green testified that, to address this issue, the Company has become familiar with Commission safety requirements and put controls in place to ensure that medical cards are obtained and kept on file for all employees.

- 16 **Decision.** While we appreciate the Company's assurances of future compliance in this area, these are "critical" violations that warrant penalties for a first-time offense. Moreover, we find that a "per violation" penalty is appropriate because medical certification is fundamental to safe operations; drivers who are not medically certified may have an undocumented medical condition that puts the traveling public at risk. Accordingly, we decline to mitigate this portion of the penalty.

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

- 17 **Discussion.** WAC 480-30-221, 49 C.F.R. Part 391.51(a) requires companies to maintain a driver qualification file for each driver. Seattle Party Bus Rentals failed to maintain driver qualification files for four of its drivers: Mr. Edwards, Fernando Valdez, Jabril Ibrahim, and Bill Handy. Ms. Green testified that the Company has since become familiar with Commission safety requirements and created a checklist to ensure that required items are placed in each employee's file.

18 Staff noted that this is a repeat violation from the Company's previous safety inspection in 2011.

19 **Decision.** The Commission assessed a \$400 penalty for four violations of C.F.R. Part 391.51(a). Because the Company received technical assistance related to vehicle inspection and maintenance records in 2011 and failed to introduce any new information at hearing that would support mitigation, we decline to mitigate this portion of the penalty.

WAC 480-30-221, 49 C.F.R. Part 395.8(a)

20 **Discussion.** WAC 480-30-221, 49 C.F.R. Part 395.8(a) requires drivers to make a record of duty status. Company employees Mr. Edwards and Mr. Valdez drove together on seven occasions during a 30-day period without making a record of duty status as required. In its proposed safety management plan, the Company explains that the correct driver time record is now being used by all drivers.

21 **Decision.** Here, the Commission assessed a \$100 penalty for seven violations of C.F.R. Part 395.8(a). The Commission could have assessed a \$700 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)

22 **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 30 violations of WAC 480-30-221 because the Company did not previously require its drivers to prepare DVIRs. Ms. Green testified that she was not aware of this requirement prior to the June 2016 inspection, but the Company now requires all drivers to complete DVIRs.

23 **Decision.** Here, the Commission assessed a \$100 penalty for 30 violations of WAC 480-30-221. The Commission could have assessed a \$3,000 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.

24 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 \$1,300 portion of the penalty for a period of one year, and then waive it, subject to the following conditions: 1) Seattle Party Bus Rentals must maintain a "conditional" safety rating, 2) Seattle Party Bus Rentals may not incur any repeat violations of WAC 480-30-221, and 3) Seattle Party Bus Rentals must pay the remaining \$1,000 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 \$1,000 portion of the penalty that is not suspended.

FINDINGS AND CONCLUSIONS

- 25 (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.
- 26 (2) Seattle Party Bus Rentals is an auto transportation company subject to Commission regulation.
- 27 (3) Seattle Party Bus Rentals cured the deficiencies that led to its "unsatisfactory" safety rating within 45 days, as required. Accordingly, Seattle Party Bus Rentals' safety rating should be upgraded to "conditional," and the Company should be allowed to maintain its auto transportation certificate.
- 28 (4) Seattle Party Bus Rentals violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 390.35, by submitting a falsified medical certificate for inspection.
- 29 (5) Seattle Party Bus Rentals should be penalized \$100 for one violation of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 390.35.
- 30 (6) Seattle Party Bus Rentals violated WAC 480-30-221, which adopts by reference 49 C.F.R. 391.45(b)(1), by using two drivers on 16 occasions who were not medically certified.
- 31 (7) Seattle Party Bus Rentals should be penalized \$1,600 for 16 violations of WAC 480-30-221, which adopts by reference 49 C.F.R. 391.45(b)(1).

- 32 (8) Seattle Party Bus Rentals violated WAC 480-30-221, which adopts by reference
49 C.F.R. 391.51(a), by failing to maintain a driver qualification file for each of
its four drivers.
- 33 (9) Seattle Party Bus Rentals should be penalized \$400 for four violations of WAC
480-30-221, which adopts by reference 49 C.F.R. 391.51(a).
- 34 (10) Seattle Party Bus Rentals violated WAC 480-30-221, which adopts by reference
C.F.R. Part 395.8(a), by failing to require its drivers to make a record of duty
status on any of the seven occasions they drove during a 30-day period.
- 35 (11) Seattle Party Bus Rentals should be penalized \$100 for seven violations of WAC
480-30-221, which adopts by reference C.F.R. Part 395.8(a).
- 36 (12) Seattle Party Bus Rentals violated WAC 480-30-221, which adopts by reference
C.F.R. Part 396.11(1) by failing to require its drivers to prepare DVIRs.
- 37 (13) Seattle Party Bus Rentals should be penalized \$100 for 30 violations of WAC
480-30-221, which adopts by reference C.F.R. Part 396.11(1).
- 38 (14) The Commission should assess a total penalty of \$2,300 for 58 violations of WAC
480-30-221. A \$1,300 portion of the penalty should be suspended for a period of
one year, and then waived, subject to the following conditions: 1) Seattle Party
Bus Rentals must maintain a “conditional” safety rating, 2) Seattle Party Bus
Rentals may not incur any repeat violations of WAC 480-30-221, and 3) Seattle
Party Bus Rentals must pay the remaining \$1,000 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 \$1,000 portion of the
penalty that is not suspended.

ORDER

THE COMMISSION ORDERS That

- 39 (1) The Commission upgrades AAA Party Bus, LLC d/b/a Seattle Party Bus Rentals’
safety rating to “conditional.”
- 40 (2) The Commission assesses a \$2,300 penalty against AAA Party Bus, LLC d/b/a
Seattle Party Bus Rentals. The Commission suspends A \$1,300 portion of the
penalty for a period of one year, and then waives it, subject to the following
conditions: 1) AAA Party Bus, LLC d/b/a Seattle Party Bus Rentals must

maintain a “conditional” safety rating, 2) AAA Party Bus, LLC d/b/a Seattle Party Bus Rentals may not incur any repeat violations of WAC 480-30-221, and 3) AAA Party Bus, LLC d/b/a Seattle Party Bus Rentals must either pay the \$1,000 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 August 29, 2016.

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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