

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TE-170713
ALCLS, LLC	ORDER 01
in the amount of \$1,600	ORDER GRANTING MITIGATION TO \$600

BACKGROUND

- 1 On June 20, 2017, the Washington Utilities and Transportation Commission (Commission) assessed a \$1,600 penalty (Penalty Assessment) against ALCLS, LLC (ALCLS or Company) for 12 critical violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference 49 C.F.R. Part 382 related to controlled substances and alcohol use and testing and Part 395 related to driver hours of service.¹
- 2 On June 28, 2017, ALCLS responded to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty based on the written information provided. In its response, the Company explained that the violations have been corrected, and the penalty would create a severe financial hardship.
- 3 On June 30, 2017, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. The Penalty Assessment includes a \$1,500 penalty for one violation of 49 C.F.R. 382.115(a) and a \$100 penalty for one violation of 49 C.F.R. Part 395.8(a). Because these are first-time violations and the Company promptly took corrective action, Staff recommends the Commission reduce the assessed penalty from \$1,600 to \$600.

DISCUSSION AND DECISION

- 4 Washington law requires auto transportation carriers to comply with federal safety requirements and undergo routine safety inspections. Violations discovered during safety

¹ 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.

inspections are subject to penalties of \$100 per violation.² In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.³ Violations defined by federal law as “critical,” which are indicative of a breakdown in a carrier’s management controls, meet this standard.⁴

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.⁵ We address each violation category in turn.

6 **49 C.F.R. 382.115(a).** The Penalty Assessment includes a \$1,500 penalty for one violation of 49 C.F.R. 382.115(a) because the Company failed to implement an alcohol and controlled substances testing program prior to commencing commercial motor vehicle operations. In its response, the Company explained that it allowed its testing program to lapse because the Company’s owner planned to retire. The Company has since re-enrolled in a testing program and provided proof of its enrollment to Staff.

7 Staff recommends the Commission assess a reduced penalty of \$500 in light of the Company’s financial situation. We agree. Staff’s response notes that the Company reported gross revenues of approximately \$39,000 in 2016. The Commission’s goal in any enforcement proceeding is to obtain compliance, not create an insurmountable financial burden for a small company. In addition, the Company promptly took corrective action. Accordingly, we assess a reduced penalty of \$500 for one violation of 49 C.F.R. 382.115(a).

8 **49 C.F.R. Part 395.8(a).** The Penalty Assessment also includes a \$100 penalty for 11 violations of 49 C.F.R. Part 395.8(a) because ALCLS allowed its driver to drive without making a record of duty status on 11 occasions in the six months preceding the

² See RCW 81.04.405.

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

⁴ 49 C.F.R. § 385, Appendix B.

⁵ Enforcement Policy ¶19.

compliance review. In its response, the Company acknowledged the violations and explained that they have since been corrected.

9 Staff notes in its response that, because these are first-time violations, it recommended a “per category” rather than “per violation” penalty; accordingly, no further penalty reduction is warranted. We agree and find that a single \$100 penalty is appropriate for 11 first-time violations.

10 To reduce the financial impact of the penalty, the Company may work with Staff to establish mutually agreeable payment arrangements.

FINDINGS AND CONCLUSIONS

11 (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 carriers, and has jurisdiction over the parties and subject matter of this proceeding.

12 (2) ALCLS is an auto transportation carrier subject to Commission regulation.

13 (3) ALCLS violated 49 C.F.R. 382.115(a) when it commenced operations prior to implementing an alcohol and/or controlled substances testing program.

14 (4) ALCLS should be penalized \$500 for one violation of 49 C.F.R. 382.115(a).

15 (5) ALCLS violated 49 C.F.R. Part 395.8(a) when it allowed its driver to drive without making a record of duty status on 11 occasions in the six months preceding the compliance review.

16 (6) ALCLS should be penalized \$100 for 11 violations of 49 C.F.R. Part 395.8(a).

17 (7) ALCLS should be permitted to file jointly with Staff a mutually agreeable arrangement for paying the \$600 penalty.

ORDER

THE COMMISSION ORDERS:

18 (1) ALCLS, LLC’s request for mitigation of the \$1,600 penalty is GRANTED, in part, and the penalty is reduced to \$600.

19 (2) ALCLS, LLC must either pay the \$600 penalty or file jointly with Staff a
proposed payment arrangement no later than August 1, 2017.

20 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 July 11, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
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.**