

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty Assessment Against  CHENEY CARE FOUNDATION, D/B/A CHENEY CARE CENTER,	DOCKET TN-170808 <i>(Consolidated)</i>  ORDER 01
<hr/> In the amount of \$15,100	DOCKET TN-170809 <i>(Consolidated)</i>
In the Matter of the investigation of  CHENEY CARE FOUNDATION, D/B/A CHENEY CARE CENTER,	ORDER 01  ORDER OF CONSOLIDATION; ORDER UPGRADING SAFETY RATING; ORDER IMPOSING AND SUSPENDING PENALTIES
for Compliance with WAC 480-31-100 and WAC 480-31-130	

**BACKGROUND**

- 1 On August 17, 2017, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel Certificate as a Private, Nonprofit Transportation Provider and Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements In the Matter of the Investigation of Cheney Care Foundation, d/b/a Cheney Care Center (Cheney Care Center or Company) for Compliance with Washington Administrative Code (WAC) 480-31-100 and WAC 480-31-130 in Docket TN-170809 (Notice of Intent to Cancel). The Notice explained that Commission regulatory Staff's (Staff) investigation disclosed 198 critical violations of Commission rules, and as a result, Staff proposed an unsatisfactory safety rating for the Company. The Notice set a Brief Adjudicative Proceeding for October 2, 2017, at 9:30 a.m. to determine whether the Commission should cancel Cheney Care Center's certificate to provide regulated transportation services.
- 2 Also on August 17, 2017, the Commission assessed a \$15,100 penalty (Penalty Assessment) in Docket TN-170808 against Cheney Care Center for violations of WAC 480-31-100, Equipment – Safety, and WAC 480-31-130, Operation of motor vehicles.

- 3 On August 30, 2017, Cheney Care Center submitted an application for mitigation of the penalty, admitting the violations and requesting mitigation. The Company explained that it had made changes to its transportation department, and the supervisor did not know the legal requirements. The Company represents that it remedied the violations immediately or as soon as possible and implemented changes and systems so that the violations will not recur. Cheney Care Center also included a safety management plan that addressed each type of violation and the steps the Company has taken and will take to remedy those violations and ensure future compliance.
- 4 On September 12, 2017, Staff submitted an Evaluation of Safety Management Plan and Recommendations (Evaluation). Staff examined the Company's safety management plan and concluded it is acceptable and in compliance with applicable law. Staff recommends the Commission upgrade the Company's safety rating to conditional, and allow the Company to maintain its certificate.
- 5 Based on Cheney Care Center's efforts to bring its operations into compliance with Commission regulations, Staff also recommends the Commission assess a reduced penalty in Docket TN-170808 of \$7,550. Staff further recommends that the Commission suspend \$3,775 of that assessment for one year and then waive it subject to the following conditions: (1) the Company may not incur any repeat critical violations of WAC 480-31-130 upon re-inspection in one year; (2) the Company must maintain a conditional safety rating during that time; and (3) the Company must immediately pay the \$3,775 that the Commission does not suspend, although Staff would support a payment arrangement if the Company requests one.
- 6 On September 12, 2017, the Commission issued a notice canceling the October 2, 2017, hearing and informing the parties that the Commission would enter an order resolving the issues in these dockets based on the parties' written submissions.

## **DISCUSSION AND DECISION**

### **Consolidation**

- 7 The Company's safety rating in Docket TN-170809 and the penalty assessment in Docket TN-170808 involve common issues of fact and law. Staff recommends that the Commission consolidate these dockets and represents that the Company has no objection to consolidation. Pursuant to WAC 480-07-320, therefore, the Commission consolidates Dockets TN-170809 and TN-170808 for Commission consideration.

**Docket TN-170809 – Nonprofit Transportation Provider Certificate**

- 8 Washington law requires private, nonprofit transportation carriers to comply with federal safety requirements and undergo routine safety inspections. Staff’s June 2017 compliance review of Cheney Care Center found 198 violations of critical regulations, which resulted in Staff proposing an unsatisfactory safety rating for 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 higher-than-average accident rates.
- 9 On August 30, 2017, the Company submitted its proposed safety management plan as part of its application for mitigation of the penalties the Commission assessed in Docket TN-170808. Like Staff, we construe this submission as a request that the Commission upgrade its safety rating.<sup>1</sup> Staff found that Cheney Care Center’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. Staff concludes that the plan is acceptable and satisfies the legal requirements at issue in these dockets.
- 10 Based on Staff’s evaluation, the Commission finds that the Company has achieved compliance with WAC 480-31-100 and WAC 480-31-130 by correcting the violations that led to the proposed unsatisfactory safety rating and establishing procedures to ensure future compliance. Accordingly, we agree with Staff’s recommendation. The Commission grants the Company’s request to upgrade its safety rating to conditional and allows the Company to maintain its nonprofit transportation carrier certificate.

**Docket TN-170808 – Penalty Assessment**

- 11 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> Critical violations meet this standard.<sup>4</sup> While the Commission is typically more lenient with nonprofit companies that commit paperwork violations – such as failing to meet the

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<sup>1</sup> See WAC 480-07-395(4) (authorizing liberal construction of pleadings).

<sup>2</sup> See RCW 80.04.405.

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

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

deadline for filing an annual report – transportation safety rules are enforced uniformly, regardless of a company’s nonprofit status.

- 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.<sup>5</sup> The Commission also considers whether the violations were promptly corrected, a company’s history of compliance, and the likelihood the violations will recur.<sup>6</sup>
- 13 The Penalty Assessment cited 198 violations of WAC 480-31-100 or WAC 480-31-130. The Company admits the violations but claims that they are the result of a change to its transportation department and a supervisor who was unaware of these legal requirements. We do not find this explanation compelling. Companies are responsible for knowing and complying with applicable safety regulations, and management changes do not justify or excuse the Company’s failure to do so.
- 14 Cheney Care Center, however, immediately took actions to remedy the violations, including submitting a satisfactory safety management plan that details the controls the Company has put in place to prevent repeat violations of Commission safety rules. We are satisfied that the Company takes its safety obligations seriously, and we are mindful that Cheney Care Center is a small, non-profit, transportation services provider. Under the circumstances presented here, we agree with Staff that assessing half of the original \$15,100 penalty will be as effective in ensuring the Company’s compliance. Accordingly, we mitigate the assessed penalty to \$7,550.
- 15 We also agree with Staff that the Company’s responsiveness and cooperation merit suspending a portion of the penalty, although a greater amount than Staff recommends. Due to the financial hardship that paying a large penalty will create for this small, non-profit company, we suspend \$5,000 of the penalty for a period of one year subject to the following conditions:
- (a) Cheney Care Center must maintain a conditional safety rating for at least one year from the date of this order;

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<sup>5</sup> Enforcement Policy ¶19.

<sup>6</sup> *Id.*

(b) Cheney Care Center may not incur any repeat critical violations of WAC 480-31-100 or WAC 480-31-130 for one year from the date of this order; and

(c) Cheney Care Center must pay the remaining \$2,550 penalty within 10 days of the date of this order.

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

16 If the Company fails to satisfy any of these conditions, the suspended portion of the penalty will become immediately due and payable. Staff will conduct a follow-up investigation after one year to determine whether the Company has complied with WAC 480-31-100 and WAC 480-31-130. If Staff finds that the Cheney Care Center has complied with the conditions in this Order, the Commission will waive the suspended portion of the penalty.

#### **FINDINGS AND CONCLUSIONS**

- 17 (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 private, nonprofit transportation providers, and has jurisdiction over the parties and subject matter of this proceeding.
- 18 (2) Cheney Care Center is a private, nonprofit transportation provider subject to Commission regulation.
- 19 (3) Cheney Care Center committed 198 violations of WAC 480-31-100 or WAC 480-31-130.
- 20 (4) Cheney Care Center cured the deficiencies that led to its unsatisfactory safety rating within 45 days, as required. Accordingly, the Commission should upgrade Cheney Care Center's safety rating to conditional and allow the Company to maintain its nonprofit transportation carrier certificate.
- 21 (5) The Commission should assess a total penalty of \$7,550 for 198 violations of WAC 480-31-100 and WAC 480-31-130 and should suspend \$5,000 of that amount for a period of one year subject to the conditions set out in paragraph 15 above.

- 22 (6) The Commission should require Staff to conduct a follow-up investigation of the Company's compliance with WAC 480-31-100 and WAC 480-31-130 in October 2018 or as soon thereafter as practicable and notify the Commission of the results of that investigation. The Commission should waive the suspended portion of the penalty if Staff finds as a result of its investigation that Cheney Care Center has complied with the conditions in this Order.

**ORDER**

THE COMMISSION ORDERS That

- 23 (1) Cheney Care Foundation d/b/a Cheney Care Center's safety rating is upgraded to conditional.
- 24 (2) The Commission assesses a \$7,550 penalty against Cheney Care Foundation d/b/a Cheney Care Center. The Commission suspends a \$5,000 portion of the penalty for a period of one year subject to the conditions set out in paragraph 15 above. If Cheney Care Foundation d/b/a Cheney Care Center fails to satisfy any of those conditions, the suspended portion of the penalty will become immediately due and payable without further Commission action.
- 25 (3) Cheney Care Foundation d/b/a Cheney Care Center must either pay the \$2,550 portion of the penalty that is not suspended or submit jointly with Staff a proposed payment arrangement within 10 days of the effective date of this Order.
- 26 (4) Commission Staff will conduct a follow-up investigation of Cheney Care Foundation d/b/a Cheney Care Center's compliance with WAC 480-31-100 and WAC 480-31-130 in October 2018 or as soon thereafter as practicable and inform the Commission of the results of that investigation. If, as a result of that investigation, Staff finds that Cheney Care Foundation d/b/a Cheney Care Center has complied with the conditions in this Order, the Commission will waive the suspended portion of the penalty.

DATED at Olympia, Washington, and effective September 14, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA  
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:

Attn: Steven V. King, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250