

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TE-171193
BML INVESTMENTS LLC d/b/a WENATCHEE VALLEY SHUTTLE	ORDER 01
in the amount of \$1,500	GRANTING MITIGATION TO \$800

BACKGROUND

- 1 On January 5, 2018, the Washington Utilities and Transportation Commission (Commission) assessed a \$1,500 penalty (Penalty Assessment) against BML Investments LLC d/b/a Wenatchee Valley Shuttle (Wenatchee Valley Shuttle or Company) for one violation of Chapter 480-30-221 Washington Administrative Code (WAC), which adopts by reference sections of Title 49 Code of Federal Regulations (C.F.R.).¹ The Penalty Assessment includes a \$1,500 penalty for one violation of 49 C.F.R. Part 382.305(a) for failing to implement a random controlled substance testing program prior to April of 2017.
- 2 On January 19, 2018, the Company responded to the Penalty Assessment, requesting mitigation of the penalty based on the written information provided. In its response, the Company admitted the violations and explained it was not aware it needed to enroll in a random controlled substance and alcohol testing program. The Company responded, in part:

Prior to this year, Wenatchee Valley Shuttle only had one CDL driver, who received his CDL while employed with our company. We also had one 24 passenger vehicle without air brakes. Once we learned we needed to be enrolled in such a program (even with one employee in a vehicle without air brakes, but over 15 passengers), we did enroll immediately in a random controlled substance/alcohol testing program. We now have all our employees in separate

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.

random testing pools according to CDL or non-CDL licensing, to ensure we are a drug free company.

- 3 On January 26, 2018, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. Staff recommends that the Commission reduce the penalty from \$1,500 to \$800 because the Company corrected the violation prior to the safety investigation by enrolling in an approved program. Staff further recommends that \$400 of the penalty should be suspended for two years, and then waived, subject to the condition that the Company pay the balance and incur no similar violations.

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.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 "acute" or "critical" meet this standard.⁴
- 5 In addition, RCW 81.04.530 imposes penalties for violations of 49 C.F.R. Part 382 related to controlled substances and alcohol use testing. A carrier that fails to comply with 49 C.F.R. Part 382 is subject to a penalty "of up to one thousand five hundred dollars and up to an additional five hundred dollars for each motor vehicle driver employed by the person or employer who is not in compliance with the motor vehicle driver testing requirements."⁵
- 6 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

² See RCW 81.04.405.

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

⁴ 49 C.F.R. § 385, Appendix B.

⁵ RCW 81.04.530.

convince the Commission that a lesser penalty will be equally or more effective in ensuring the company's compliance.⁶

7 Here, the Commission assessed a \$1,500 penalty for failing to implement a random controlled substance and alcohol testing program and the Company timely requested mitigation. In its request, the Company admits the violations occurred, but asserts it did not know that such testing was required. The Company explained it discovered it was out of compliance in April 2017, and immediately corrected the violation by enrolling all employees in an approved program.

8 Because the Company identified and corrected the violation on its own, prior to Staff's safety investigation in December 2017, Staff recommends that the Commission mitigate the \$1,500 penalty to \$800. Staff also recommends that the Commission suspend \$400 of the remaining penalty on the conditions that the Company pay the remaining balance and incur no similar violations for two years.

9 This violation is serious and potentially harmful to the public.⁷ Passenger transportation companies that fail to implement a controlled substance and alcohol testing program put the traveling public at risk. We recognize, however, that the Company identified and corrected the violation on its own. We therefore agree with Staff's recommendation to mitigate the penalty to \$800.

10 We disagree, however, with Staff's recommendation to suspend a portion of the penalty. The Commission's Enforcement Policy lists several factors the Commission will consider in determining whether to suspend a penalty.⁸ When a penalty creates a significant financial burden, suspending a portion of it conditioned on the company refraining from incurring repeat violations can better serve the Commission's goal of ensuring the company's future compliance with safety regulations. Here, the \$800 penalty is minimal compared to the Company's annual revenues (\$853,300 in 2016) such that suspending a portion of the penalty will have limited value in ensuring ongoing compliance. Accordingly, we conclude that no portion of the penalty should be suspended, and that the entire penalty should be due within 10 days of the effective date of this order.

⁶ Enforcement Policy ¶19.

⁷ Enforcement Policy ¶15(1) ("*Certain violations or conditions are a likely candidate for penalties or a complaint even for a first-time offence. Examples include . . . the requirement for a drug and alcohol testing program.*")

⁸ Enforcement Policy ¶20.

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 passenger transportation carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 12 (2) Wenatchee Valley Shuttle is a passenger transportation carrier subject to Commission regulation.
- 13 (3) Wenatchee Valley Shuttle violated 49 C.F.R. 382.305(a) when it failed to implement a random controlled substance and alcohol testing program prior to April 2017.
- 14 (4) The Commission should penalize Wenatchee Valley Shuttle \$800 for 1 violation of 49 C.F.R. 382.305(a).

ORDER

THE COMMISSION ORDERS:

- 15 (1) BML Investments LLC d/b/a Wenatchee Valley Shuttle's request for mitigation of the \$1,500 penalty is GRANTED, in part, and the penalty is reduced to \$800.
- 16 (2) BML Investments LLC d/b/a Wenatchee Valley Shuttle must pay the \$800 penalty within 10 days of the effective date of this Order.
- 17 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 February 13, 2018.

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.