

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

TRANSPORTAINMENT NORTH
WEST LLC

in the amount of \$3,800

DOCKET TE-190321

ORDER 01

GRANTING MITIGATION;
IMPOSING AND SUSPENDING
PENALTY

BACKGROUND

1 On May 29, 2019, the Washington Utilities and Transportation Commission (Commission) assessed a \$3,800 penalty (Penalty Assessment) against Transportainment North West LLC (Transportainment NW or Company) for 38 violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference sections of Title 49 Code of Federal Regulations (C.F.R.).¹ The Penalty Assessment includes:

- a \$3,600 penalty for 36 violations of 49 C.F.R. Part 391.45(a) for using a driver not medically examined and certified;
- a \$100 penalty for one violation of 49 C.F.R. Part 391.51(a) for failing to maintain a driver qualification file for each driver employed; and,
- a \$100 penalty for one violation of 49 C.F.R. Part 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance.

The Penalty Assessment also explains that the Company must act within 15 days of receipt and choose to either pay the amount due, contest the occurrence of the violations, or request mitigation to contest the amount of the penalty. If the Company chooses not to take any of the actions, the Penalty Assessment explained that the Company may be subject to additional enforcement action.

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 Title 49 C.F.R.

- 2 On June 26, 2019, the Commission received Transportainment NW’s response to the Penalty Assessment admitting the violations and requesting mitigation of the penalty based on the written information provided. In its response, the Company took responsibility for the violations, stated that it made immediate corrections, and explained that it will ensure no repeat violations will occur. The Company noted that it is a small business, and requested mitigation of the penalty amount because it is a significant burden. The Company did not provide any additional details or supporting documentation.
- 3 On July 5, 2019, Staff filed a response recommending that the Commission mitigate the \$3,800 penalty amount and impose a \$1,900 reduced penalty. Staff also recommended that the Commission suspend a \$1,000 portion of that penalty for a period of two years, and then waive it, subject to the conditions that (1) Staff will conduct a follow-up investigation within two years, or as soon thereafter as practicable, (2) the Company must not incur any repeat critical violations during those two years, and (3) the Company must pay the \$900 portion of the penalty that is not suspended. Staff explained that it believed mitigation was appropriate in this case because the Company promptly corrected the violations, took steps to ensure no future occurrences, and the small size of the Company. For these reasons, Staff also believes suspension is appropriate, in part, noting that Transportainment NW employs only one driver and one commercial motor vehicle (CMV) and reported \$31,600 in gross revenue in 2018.

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. Violations defined by federal law as “critical” meet this standard, and are indicative of a breakdown in a carrier’s management controls.
- 5 The Commission will, however, consider 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. The Commission also considers whether the violations were promptly corrected, a company’s history of compliance, and the likelihood the violation will recur. We address each violation category below.

6 **49 C.F.R. Part 391.45(a).** The Penalty Assessment assessed a \$3,600 penalty for 36 violations of 49 C.F.R. Part 391.45(a) because the Company used a driver not medically examined and certified.

7 Staff recommends the Commission reduce the \$3,600 penalty by \$1,800. Staff explains that it believes a penalty amount of \$50 per violation, \$1,800 in total, is appropriate in this instance because the Company took immediate actions to correct the violations and steps to prevent future occurrences. We agree. In its response, the Company acknowledged and took responsibility for the violations, explained the immediate corrective actions it took, and discussed how it would prevent future occurrences. Accordingly, we assess a \$1,800 mitigated penalty for 36 violations of 49 C.F.R. Part 391.45(a).

8 **49 C.F.R. Part 391.51(a).** The Penalty Assessment assessed a \$100 penalty for one violation of 49 C.F.R. Part 391.51(a) because the Company failed to maintain a driver qualification file for each driver employed.

9 Staff recommends the Commission reduce the \$100 penalty by \$50. Staff explains that it believes a penalty amount of \$50 per violation, \$50 in total, is appropriate in this instance because the Company took immediate actions to correct the violations and steps to prevent future occurrences. We agree. In its response, the Company acknowledged and took responsibility for the violation, explained the immediate corrective actions it took, and discussed how it would prevent future occurrences. Accordingly, we assess a \$50 mitigated penalty for one violation of 49 C.F.R. Part 391.51(a).

10 **49 C.F.R. Part 396.3(b).** The Penalty Assessment assessed a \$100 penalty for one violation of 49 C.F.R. Part 396.3(b) because the Company failed to keep minimum records of inspection and vehicle maintenance.

11 Staff recommends the Commission reduce the \$100 penalty by \$50. Staff explains that it believes a penalty amount of \$50 per violation, \$50 in total, is appropriate in this instance because the Company took immediate actions to correct the violations and steps to prevent future occurrences. We agree. In its response, the Company acknowledged and took responsibility for the violation, explained the immediate corrective actions it took, and discussed how it would prevent future occurrences. Accordingly, we assess a \$50 mitigated penalty for one violation of 49 C.F.R. Part 396.3(b).

12 We also agree with Staff that suspending a portion of the penalty is appropriate in light of the circumstances. The Company acknowledged and took responsibility for the

violations, immediately corrected each violation, and took steps to prevent future occurrences. Transportainment NW is also a small company with only one driver, one CMV, and reported \$31,600 in gross revenue for 2018. Our goal here, as in any enforcement proceeding, is to increase compliance, not create an insurmountable financial burden for a regulated company. Accordingly, we suspend a \$1,000 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: (1) Staff will conduct a follow-up investigation within two years, or as soon thereafter as practicable, (2) the Company must not incur any repeat violations of critical regulations during those two years, and (3) the Company must pay the \$900 portion of the penalty that is not suspended within 10 days of the date of this Order.

FINDINGS AND CONCLUSIONS

- 13 (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 charter and excursion carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 14 (2) Transportainment NW is a charter and excursion carrier subject to Commission regulation.
- 15 (3) Transportainment NW violated 49 C.F.R. Part 391.45(a) when it used a driver not medically examined and certified.
- 16 (4) Transportainment NW should be penalized \$1,800 for 36 violations of 49 C.F.R. Part 391.45(a).
- 17 (5) Transportainment NW violated 49 C.F.R. Part 391.51(a) by failing to maintain a driver qualification file for each driver employed.
- 18 (6) Transportainment NW should be penalized \$50 for one violation of 49 C.F.R. Part 391.51(a).
- 19 (7) Transportainment NW violated 49 C.F.R. Part 396.3(b) by failing to keep minimum records of inspection and vehicle maintenance.
- 20 (9) Transportainment NW should be penalized \$50 for one violation of 49 C.F.R. Part 396.3(b).

- 21 (10) The Commission should assess a total penalty of \$1,900 for 38 violations of Chapter 480-30 WAC and Title 49 C.F.R.
- 22 (11) The Commission should suspend a \$1,000 portion of the penalty for a period of two years, and then waive it, subject to the conditions set out in paragraph 12.

ORDER

THE COMMISSION ORDERS:

- 23 (1) Transportainment North West LLC's request for mitigation is GRANTED. The penalty amount of \$3,800 is mitigated by half. The Commission, therefore, imposes a mitigated penalty amount of \$1,900 against Transportainment North West LLC, but the Commission exercises its discretion to suspend a portion of the mitigated penalty amount subject to conditions.
- 24 (2) The Commission suspends a \$1,000 portion of the penalty for a period of two years, and then waives it, subject to the conditions set out in paragraph 12.
- 25 (3) Transportainment North West LLC must pay the \$900 portion of the penalty that is not suspended within 10 days of the effective date of this Order.
- 26 The Secretary has been delegated authority to enter this order on behalf of the Commission under WAC 480-07-903(2)(e).

DATED at Olympia, Washington, and effective July 31, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK L. JOHNSON
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, 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.