

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

CUSTOMIZED TOURS & CHARTER
SERVICE, LLC, D/B/A CUSTOMIZED
TOURS & CHARTER SERVICE;
CUSTOMIZED TOURS; TOURS OF
SEATTLE; CUSTOMIZED
CHARTERS; SEATTLE CHARTERS;
AND TOURSEATTLE.COM

in the amount of \$4,400

DOCKET TE-190523

ORDER 01

GRANTING MITIGATION, IN PART;
IMPOSING AND SUSPENDING
PENALTY

BACKGROUND

- 1 On July 3, 2019, the Washington Utilities and Transportation Commission (Commission) assessed a \$4,400 penalty (Penalty Assessment) against Customized Tours & Charter Service, LLC, d/b/a Customized Tours & Charter Service; Customized Tours; Tours of Seattle; Customized Charters; Seattle Charters; and TourSeattle.com (Customized Tours or Company) for violations of Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts by reference sections of Title 49 Code of Federal Regulations (C.F.R.).¹ Specifically, the Penalty Assessment cited 44 violations of 49 C.F.R. § 383.37(a) because the Company knowingly allowed, required, permitted, or authorized an employee to operate a commercial motor vehicle (CMV) during any period during which the driver does not have a current commercial driver's

¹ WAC 480-15-560 and -570 adopt 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.

license (CDL) because the Company allowed its driver to operate a CMV with a downgraded CDL on 44 occasions between January 30, 2019, and June 5, 2019.

- 2 On July 18, 2019, Customized Tours filed a response to the Penalty Assessment contesting the violations. Following discussions with Commission staff (Staff), Customized Tours filed a revised response on August 2, 2019, admitting the violations and requesting mitigation of the penalty based on the information provided (Mitigation Request). In its Mitigation Request, the Company provided the following explanation: “The Company did not ‘knowingly’ allow a driver to drive a CMV without a CDL. Driver to our knowledge had a CDL as he had a current health card. To our knowledge we were in total compliance. Only because of a communication glitch did the DOL not have this info. The public was never ‘endangered.’”
- 3 On August 9, 2019, Staff filed a response recommending the Commission assess a reduced penalty of \$2,200 and suspend a \$1,800 portion of that penalty for a period of two years, and then waive it, subject to the conditions that: (1) Staff will conduct a focused safety investigation related to driver license status within two years, or as soon thereafter as practicable, (2) the Company must not incur any repeat violations of 49 C.F.R. §383.37(a) during those two years, and (3) the Company must pay the \$400 portion of the penalty that is not suspended. Staff explained that it believes mitigation and suspension are appropriate because the Company immediately corrected the violation and took steps to prevent future occurrences.

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

² See RCW 81.04.405.

will issue penalties for first-time violations.³ Violations defined by federal law as “critical” meet this standard.⁴

5 The Commission considers several factors when entertaining a request for mitigation, including whether a 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 a company’s compliance.⁵

6 Here, Customized Tours was penalized \$4,400 for 44 violations of 49 C.F.R. §383.37(a) because the Company allowed one of its drivers to operate a CMV while his CDL was downgraded. We agree with Staff that mitigation of the penalty is appropriate because these are first-time violations that were immediately corrected. In addition, Customized Tours was not aware it had committed the violations; however, once the Company was notified, it developed a compliance plan to prevent the violations from recurring. In these circumstances, we find that a lesser penalty will be equally effective in ensuring the Company’s compliance going forward.

7 We also agree with Staff that suspending a portion of the penalty is appropriate in light of the circumstances. 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 \$1,800 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: (1) Staff will conduct a focused safety investigation related to driver license status within two years, or as soon thereafter as practicable, (2) the Company must not incur any repeat violations of 49 C.F.R. §383.37(a) during those two years, and (3) the Company must pay the \$400 portion of the penalty that is not suspended within 10 days of the date of this Order.

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 Enforcement Policy ¶19.

FINDINGS AND CONCLUSIONS

- 8 (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 companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 9 (2) Customized Tours is a passenger transportation company subject to Commission regulation.
- 10 (3) Customized Tours violated 49 C.F.R. §383.37(a) when it allowed its driver to operate a CMV while his CDL was downgraded.
- 11 (4) The Commission should penalize Customized Tours \$2,200 for 44 violations of 49 C.F.R. §383.37(a).
- 12 (5) The Commission should suspend a \$1,800 portion of the penalty for a period of two years, and then waive it, subject to the conditions set out in paragraph 7, above.

ORDER

THE COMMISSION ORDERS:

- 13 (1) Customized Tours & Charter Service, LLC, d/b/a Customized Tours & Charter Service; Customized Tours; Tours of Seattle; Customized Charters; Seattle Charters; and TourSeattle.com's request for mitigation is GRANTED, in part, and the penalty is reduced to \$2,200.
- 14 (2) The Commission suspends a \$1,800 portion of the penalty for a period of two years, and then waives it, subject to the conditions set out in paragraph 7, above.
- 15 (3) Customized Tours & Charter Service, LLC, d/b/a Customized Tours & Charter Service; Customized Tours; Tours of Seattle; Customized Charters; Seattle Charters; and TourSeattle.com must pay the \$400 portion of the penalty that is not suspended within 10 days of the effective date of this Order.
- 16 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-903(2)(e).

DATED at Lacey, Washington, and effective August 13, 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(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.