

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TE-200175
NW TOURS.NET LLC	ORDER 01
in the amount of \$800	GRANTING MITIGATION TO \$400 AND SUSPENDING PENALTY

BACKGROUND

1 On March 30, 2020, the Washington Utilities and Transportation Commission (Commission) assessed a \$800 penalty (Penalty Assessment) against NW Tours.net LLC (NW Tours or Company) for violating Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 391 – Qualification of Drivers, 49 CFR Part 395 – Hours of Service of Drivers, and 49 CFR Part 396 – Inspection, Repair, and Maintenance.¹ The Penalty Assessment includes:

- a \$400 penalty for four violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified;
- an \$100 penalty for one violation of 49 C.F.R. § 391.51(a) for failing to maintain driver qualification file on each driver employed;
- a \$100 penalty for 30 violations of 49 C.F.R. § 395.8(a) for failing to require driver to make a record of duty status;
- a \$100 penalty for one violation of 49 C.F.R. § 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance; and
- a \$100 penalty for one violation of 49 C.F.R. § 396.17(a) for using a commercial motor vehicle not periodically inspected.

2 On March 21, 2020, NW Tours submitted to Commission staff (Staff) a corrective action safety plan wherein the Company provided a comprehensive response to each violation, including descriptions of corrective measures the Company took to prevent repeat

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.

violations. NW Tours further stated that the Company has ceased operations and refers to the operations as a financial loss.

3 On April 1, 2020, NW Tours requested that the Commission cancel the Company's certificate because NW Tours is no longer operating. That same day, the Commission cancelled the Company's certificate by delegated letter in Docket TE-200296.

4 On April 13, 2020, NW Tours responded to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty based on the written information provided.

5 On April 15, 2020, Staff filed a response recommending the Commission grant NW Tour's request for mitigation. Staff recommends the Commission reduce the assessed penalty from \$800 to \$400 based on statements included in the Company's corrective action safety plan. Staff is also sensitive to the Company's financial situation and further recommends that the entire reduced penalty be suspended for a period of two years, and then waived, subject to the conditions that: (1) NW Tours refrains permanently from further operations as a charter party or excursion service carrier in the state of Washington without first obtaining the required certificate from the Commission, and (2) should NW Tours apply to reinstate its operating authority from the Commission within two years, the Company will be responsible for paying the reduced penalty of \$400.

DISCUSSION AND DECISION

6 Washington law requires charter and excursion service companies 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.² Violations defined by federal law as "critical," which are indicative of a breakdown in a carrier's management controls, meet this standard.³ Critical violations discovered during safety inspections are subject to penalties of \$100 per violation.⁴

² Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

³ 49 C.F.R. § 385, Appendix B.

⁴ See RCW 81.04.405.

7 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

8 We agree with Staff's recommendation and recognize that NW Tours is ceasing operations due to significant losses related to the COVID-19 pandemic. The Commission's primary objective in any enforcement action is to ensure compliance with a company's legal obligations; penalties both punish noncompliance and provide an incentive to comply in the future. The assessed penalty would further neither of these goals if the company is no longer operating in Washington. Accordingly, we find that suspending the entire penalty is appropriate subject to the conditions outlined in paragraph 5, above.

FINDINGS AND CONCLUSIONS

- 9 (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 service carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 10 (2) NW Tours is a charter and excursion service company subject to Commission regulation.
- 11 (3) NW Tours violated 49 C.F.R. § 391.45(a) when its employee drove on four occasions without a valid medical certificate.
- 12 (4) The Commission should penalize NW Tours \$200 for four violations of 49 C.F.R. § 391.45(a).
- 13 (5) NW Tours violated 49 C.F.R. § 391.51(a) when it failed to maintain a driver qualification file for its employee.

⁵ Enforcement Policy ¶19.

- 14 (6) The Commission should penalize NW Tours \$50 for one violation of 49 C.F.R. § 391.51(a).
- 15 (7) NW Tours violated 49 C.F.R. § 395.8(a) when it failed to require its driver to make a record of duty status on 30 occasions.
- 16 (8) The Commission should penalize NW Tours \$50 for 30 violations of 49 C.F.R. § 395.8(a).
- 17 (9) NW Tours violated 49 C.F.R. § 396.3(b) when it failed to keep the minimum required maintenance records for its one commercial motor vehicle.
- 18 (10) The Commission should penalize NW Tours \$50 for one violation of 49 C.F.R. § 396.3(b).
- 19 (11) NW Tours violated 49 C.F.R. § 396.17(a) when it failed to have an annual inspection performed on its one commercial vehicle.
- 20 (12) The Commission should penalize NW Tours \$50 for one violation of 49 C.F.R. § 396.17(a).
- 21 (13) The Commission should suspend the entire \$400 penalty for a period of two years, and then waive it, subject to the conditions set out in paragraph 5, above.

ORDER

THE COMMISSION ORDERS:

- 22 (1) NW Tours.net LLC's request for mitigation of the \$800 penalty is GRANTED, and the penalty is reduced to \$400.
- 23 (2) The Commission suspends the \$400 penalty for a period of two years, and then waives it, subject to the following conditions: (1) NW Tours.net LLC must refrain permanently from further operations as a charter party or excursion service carrier in the state of Washington without first obtaining the required certificate from the Commission, and (2) should NW Tours.net LLC apply to reinstate its operating authority from the Commission within two years, NW Tours.net LLC will be

responsible for paying the reduced penalty of \$400.

24 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 April 28, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

A handwritten signature in black ink, appearing to read "Mark L. Johnson", is centered on the page. The signature is fluid and cursive.

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.