

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Complainant,

v.

QM TRANSPORT (USA), INC.

Respondent.

DOCKET TH-200868

ORDER 01

GRANTING MITIGATION, IN PART,
TO \$1,500; SUSPENDING \$750
SUBJECT TO CONDITIONS

BACKGROUND

- 1 On October 28, 2020, the Washington Utilities and Transportation Commission (Commission) assessed a \$3,000 penalty (Penalty Assessment) against QM Transport (USA), Inc., (QM Transport or Company) for 30 violations of Washington Administrative Code (WAC) 480-62-278, which adopts Title 49 Code of Federal Regulations (C.F.R.) Part 391 related to driver qualifications.
- 2 On November 13, 2020, QM Transport responded to the Penalty Assessment admitting the violations and requesting mitigation of the penalty based on the written information provided. In its response, the Company detailed how the violations have been corrected, described the steps taken to prevent future occurrences, and explained that the assessed penalty would create financial hardship for the Company.
- 3 On December 8, 2020, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. The Penalty Assessment includes a \$3,000 penalty for 30 violations of 49 C.F.R. Part 391.45(a). Staff recommends the Commission reduce the assessed penalty from \$3,000 to \$1,500 and then also suspend \$750 for a period of two years, before waiving it, subject to the following conditions:

- (1) Staff will conduct a follow-up safety investigation focused on driver medical certification in one year, or as soon thereafter as practicable, to review the Company's safety management practices;
- (2) The Company must not incur any repeat violations; and,
- (3) The Company must pay the \$750 unsuspended portion of the reduced penalty.

DISCUSSION AND DECISION

- 4 Washington law requires railroad contract crew transportation 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.¹ Violations defined by federal law as “acute” or “critical” meet this standard.²
- 5 Violations are considered “acute” when non-compliance is so severe that immediate corrective action is required regardless of the overall safety posture of the company. Violations classified as “critical” are indicative of a breakdown in a carrier's management controls. Acute violations discovered during safety inspections are subject to penalties of \$500 per violation,³ and critical violations are subject to penalties of \$100 per violation.⁴ Violations of 49 C.F.R. Part 391.45(a), which is adopted by WAC 480-62-278, are critical violations that in this case were assessed a penalty of \$100 per violation.
- 6 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.⁵ The Commission also considers whether the

¹ *In re Enforcement Policy of the Wash. Utils. and Transp. Comm'n*, Docket A-120061, 6, ¶ 12 (Jan. 7, 2013) [hereinafter Enforcement Policy].

² 49 C.F.R. § 385, Appendix B.

³ See RCW 81.04.530.

⁴ See RCW 81.04.405.

⁵ Enforcement Policy, 10-11, ¶ 19.

violations were promptly corrected, a company's history of compliance, and the likelihood the violation will recur.⁶

7 The Penalty Assessment includes a \$3,000 penalty for 30 violations of 49 C.F.R. Part 391.45(a) because QM Transport allowed drivers who were not medically examined and certified to drive on 30 occasions. In its response, the Company admits the violations and explains how the violations have been corrected and what procedures were put in place to prevent recurrence.

8 In its response, Staff agrees that QM Transport corrected the violations, implemented new procedures, and created a system that will inform management of expiring medical certificates in order to prevent future occurrences. Staff therefore recommends the Commission assess a reduced penalty of \$50 per violation, or \$1,500, with half of that amount suspended subject to the conditions identified in Paragraph 3.

9 We agree. In its response, the Company acknowledged the violations and explained the controls it has in place to prevent repeat occurrences. In addition, the Company was cooperative with the investigation, has no history of violations or penalties with the Commission, expressed an immediate desire to come into compliance, and did so by correcting the violations. In light of these factors, we assess a \$1,500 penalty for 30 violations of 49 C.F.R. Part 391.45(a). In addition, we suspend a \$750 portion of the penalty for a period of two years, and waive it thereafter, subject to the conditions identified in Paragraph 3.

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

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 railroad contract crew transportation carriers, and has jurisdiction over the parties and subject matter of this proceeding.

⁶ *Id.*

- 12 (2) QM Transport is a railroad contract crew transportation carrier subject to Commission regulation.
- 13 (3) QM Transport violated WAC 480-62-278, which adopts by reference 49 C.F.R. Part 391.45(a), when it allowed drivers who were not medically examined and certified to drive on 30 occasions.
- 14 (4) QM Transport should be penalized a reduced amount of \$1,500 for 30 violations of WAC 480-62-278, which adopts by reference 49 C.F.R. Part 391.45(a).
- 15 (5) The Commissions should suspend a \$750 portion of the penalty for a period of two years, and waive it thereafter, subject to the conditions in Paragraph 3.
- 16 (6) QM Transport should be permitted to file jointly with Staff a mutually agreeable arrangement for paying the \$750 portion of the penalty that is not suspended.

ORDER

THE COMMISSION ORDERS:

- 17 QM Transport (USA), Inc.'s request for mitigation of the \$3,000 penalty is GRANTED, in part, and the penalty is reduced to \$1,500, with \$750 suspended for a period of two years and then waived thereafter subject to the following conditions:
- (1) Commission Staff will conduct a follow-up safety investigation focused on driver medical certification in one year, or as soon thereafter as practicable, to review the QM Transport (USA), Inc.'s safety management practices;
 - (2) QM Transport (USA), Inc. must not incur any repeat violations; and,
 - (3) QM Transport (USA), Inc. must pay the \$750 unsuspended portion of the reduced penalty.

18 The Executive 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 December 17, 2020.

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.