

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

LEMYN’S LEGACY INC. D/B/A
SPOKANE PARTY BUS,

in the amount of \$6,700

DOCKET TE-240799

ORDER 01

DENYING MITIGATION; IMPOSING
AND SUSPENDING PENALTY

BACKGROUND

1 On November 14, 2024, the Washington Utilities and Transportation Commission (Commission) assessed a \$6,700 penalty (Penalty Assessment) against Lemyn’s Legacy Inc. d/b/a Spokane Party Bus (Spokane Party Bus or Company) for violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference sections of Title 49 Code of Federal Regulations (C.F.R.) Part 391 - Qualifications of Drivers and 49 C.F.R. Part 395 – Hours of Service of Drivers.¹ The Penalty Assessment included:

- a \$6,000 penalty for 60 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified; and
- a \$700 penalty for seven violations of 49 C.F.R. § 395.8(a)(1) for failing to require driver to make a record of duty status.

2 On December 3, 2024, Spokane Party Bus filed a response to the Penalty Assessment admitting the violations and requesting mitigation of the penalty amount (Application). In its Application, the Company acknowledged the violations and stated that it has taken action to correct the violations and prevent further occurrences.

3 On December 13, 2024, Commission staff (Staff) filed a reply recommending the Commission deny the Company’s Application in part. In its response, Staff acknowledges that the Company was cooperative throughout the investigation, took

¹ This Order refers to Commission safety regulations that adopt federal rules only by the applicable section of Title 49 C.F.R.

corrective action, and expressed a desire to operate within regulation. However, Staff also notes that the violations are repeat violations from the Company's previous safety investigation in September 2019 during which time the Commission issued a penalty assessment, provided technical assistance regarding those violations, and granted mitigation in Docket TE-190790. Staff recommends that the Commission suspend a \$3,500 portion of the penalty subject to the following conditions: a) Staff perform a follow-up investigation in two years or as soon thereafter as practicable, b) Spokane Party Bus not incur any repeat violations of critical regulations upon re-inspection, and c) The Company must pay the \$3,200 portion of the penalty that is not suspended within 10 days or file a mutually agreeable payment arrangement with Staff.

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.² Violations defined by federal law as "acute" or "critical" meet this standard.³
- 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 \$1,500 per violation,⁴ and critical violations are subject to penalties of \$100 per violation.⁵
- 6 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.⁶ We address the violations below.

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 81.04.530.

⁵ See RCW 81.04.405.

⁶ Enforcement Policy ¶ 19.

- 7 **49 C.F.R. § 391.45(a).** The Penalty Assessment includes a \$6,000 penalty for 60 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified. Staff shares that the Company has supplied Staff with evidence of a new medical certificate, and the company states that it has implemented a tracking procedure for reviewing driver medical certification expiration. However, staff also notes that the Company was previously found to have violated 49 C.F.R. § 391.45(a) and was granted mitigation in Docket TE-190790. As a result, Staff recommends that the Commission deny the Company's current request for mitigation.
- 8 We agree with Staff's recommendation. While the Company has corrected the violations and taken action to prevent recurrence, these are recurring violations, and the company was already granted mitigation for the same infractions in Docket TE-190790. The Company's request for mitigation is denied.
- 9 **49 C.F.R. § 395.8(a)(1).** The Penalty Assessment includes a \$700 penalty for seven violations of 49 C.F.R. § 395.8(a)(1) for failing to require driver to make a record of duty status. Staff shares that the Company has supplied Staff with evidence of a current time sheet for its driver, and the company states that it has implemented a tracking procedure for reviewing driver records of duty status. However, staff notes that the Company was previously found to have violated 49 C.F.R. § 395.8(a)(1) and was granted mitigation in Docket TE-190790. As a result, Staff recommends that the Commission deny the Company's current request for mitigation.
- 10 We agree with Staff's recommendation. While the Company has corrected the violations and taken action to prevent recurrence, these are recurring violations, and the company was already granted mitigation for the same infractions in Docket TE-190790. The Company's request for mitigation is denied.
- 11 **Suspension.** We also agree with Staff that suspending a portion of the penalty is appropriate. The Commission's interest in any enforcement action is compliance, and we find that suspending a portion of the penalty subject to the conditions recommended by Staff creates further incentive for the Company to comply with safety regulations. Accordingly, we suspend a \$3,500 portion of the penalty for a period of two years to be waived subject to the conditions that: 1) Staff conducts a follow up investigation in two years or as soon thereafter as practicable, 2) Spokane Party Bus not incur any repeat violations of critical regulations upon re-inspection, and 3) the Company must pay the \$3,200 portion of the penalty that is not suspended within 10 days, or file a mutually agreeable payment arrangement with Staff.

FINDINGS AND CONCLUSIONS

- 12 (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.
- 13 (2) Spokane Party Bus is a passenger transportation company subject to Commission regulation.
- 14 (3) Spokane Party Bus committed 60 violations of 49 C.F.R. § 391.45(a) by using a driver not medically examined and certified.
- 15 (4) The Commission should penalize Spokane Party Bus \$6,000 for 60 violations of 49 C.F.R. § 391.45(a).
- 16 (5) Spokane Party Bus committed seven violations of 49 C.F.R. § 395.8(a)(1) by failing to require driver to make a record of duty status.
- 17 (6) The Commission should penalize Spokane Party Bus \$700 for seven violations of 49 C.F.R. § 395.8(a)(1).
- 18 (7) The Commission should suspend a \$3,500 portion of the penalty for a period of two years, and then waive it, subject to the conditions listed in paragraph 11.

ORDER

THE COMMISSION ORDERS:

- 19 (1) Spokane Party Bus's request for mitigation of the \$6,700 penalty is DENIED.
- 20 (2) The Commission suspends a \$3,500 portion of the penalty for a period of two years, and then waives it, subject to the conditions that: 1) Spokane Party Bus must either pay the \$3,200 portion of the penalty that is not suspended or file a mutually agreeable payment plan with Staff within 10 days of this Order; and 2) Spokane Party Bus not incur any repeat violations of critical regulations upon reinspection.
- 21 (3) Commission Staff will conduct a follow-up investigation in two years or as soon thereafter as practicable of Spokane Party Bus's operations after the effective date of this Order.

- 22 (4) If Spokane Party Bus fails to satisfy any of the conditions in paragraph 11 of this order or fails to comply with the terms of the payment arrangement, if applicable, the entire unpaid portion of the \$6,700 penalty will become immediately due and payable without further Commission order
- 23 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 December 20, 2024.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



JEFF KILLIP
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.