

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

INTERNATIONAL DISTRICT
PARKING ASSOCIATION d/b/a
MERCHANTS PARKING
ASSOCIATION, MERCHANTS
PARKING/TRANSIA

in the amount of \$36,900

DOCKET TE-160829

ORDER 01

ORDER GRANTING MITIGATION TO
\$19,450

BACKGROUND

- 1 On July 6, 2016, the Washington Utilities and Transportation Commission (Commission) assessed a \$36,900 penalty (Penalty Assessment) against International District Parking Association d/b/a Merchants Parking Association, Merchants Parking/Transia (Transia or Company) for 365 acute and critical violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference, 49 C.F.R. Part 382, related to controlled substances and alcohol use and testing; Part 383 related to commercial driver's license standards; Part 391 related to driver qualifications; Part 395 related to driver hours of service; and Part 396 related to vehicle inspection, repair, and maintenance.
- 2 On July 21, 2016, Transia 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 explained that it is a revenue-based, nonprofit corporation that provides transportation and parking services with its 45-vehicle fleet. The Company provided a comprehensive response to each violation, including descriptions of any corrective measures the Company has taken to prevent repeat violations.
- 3 On August 1, 2016, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. The Penalty Assessment includes a \$500 penalty for one violation of 49 C.F.R. 382.301(a); a \$23,400 penalty for 234 violations of 49 C.F.R. Part 383.37(a); an \$11,500 penalty for 115 violations of 49 C.F.R. Part 391.45(a); a \$100 penalty for seven violations of 49 C.F.R. Part 391.51.(b)(2); a \$500 penalty for five violations of 49 C.F.R. Part 395.8(a); a \$100

penalty for 210 violations of 49 C.F.R. Part 396.11(a); and an \$800 penalty for eight violations of 49 C.F.R. Part 396.17(a). Because some of the violations are first-time offenses, Staff recommends the Commission reduce the assessed penalty from \$36,900 to \$19,450.

- 4 On August 17, 2016, Staff filed a supplemental response further addressing the Company’s explanations of its violations of 49 C.F.R. Part 391.45(a) and 49 C.F.R. Part 396.11(a).

DISCUSSION AND DECISION

- 5 Washington law requires auto 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
- 6 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 While the Commission is typically more lenient with nonprofit companies that commit paperwork violations – such as failing to meet the deadline for filing an annual report – transportation safety rules are enforced uniformly, regardless of a company’s nonprofit status.
- 7 The Commission will, however, consider several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have

¹ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

² 49 C.F.R. § 385, Appendix B.

³ See RCW 81.04.530.

⁴ See RCW 81.04.405.

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 violations were promptly corrected, a company's history of compliance, and the likelihood the violation will recur.⁶ We address each violation category in turn.

- 8 **WAC 480-30-221, 49 C.F.R. 382.301(a).** The Penalty Assessment includes a \$500 penalty for one violation of 49 C.F.R. 382.301(a) because Company employee Jonathan Duarte drove on one occasion prior to receiving a negative pre-employment controlled substance test result. In its response, the Company explained that Mr. Duarte's pre-employment drug test was inadvertently overlooked.
- 9 Staff recommends no mitigation of this portion of the penalty because this is a repeat violation that presents serious safety concerns. As noted in the Penalty Assessment, drivers with unknown pre-employment controlled substance tests may put the traveling public at risk. We agree with Staff and deny the Company's request to mitigate this portion of the penalty. The Commission typically does not mitigate penalties for repeat violations of critical safety requirements, and the Company failed to introduce any new information that would warrant a penalty reduction.
- 10 **WAC 480-30-221, 49 C.F.R. Part 383.37(a).** The Penalty Assessment also includes a \$23,400 penalty for 234 violations of 49 C.F.R. Part 383.37(a) because Transia allowed three employees who did not have passenger endorsements on their commercial driver's licenses (CDL) to operate commercial vehicles with passengers on 234 occasions between November 2015 and April 2016. In its response, the Company explained that it was not aware that passenger endorsements were required to transport passengers, but that it now only hires CDL drivers with passenger endorsements.
- 11 Because these are first-time violations, Staff recommends the penalty be reduced by half, to \$11,700. We agree with Staff's recommendation and assess a reduced penalty of \$50 per violation, or \$11,700. Mitigation of this portion of the penalty is appropriate because

⁵ Enforcement Policy ¶19.

⁶ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

these are first-time violations, Transia has since corrected the violations at issue, and the Company has developed a compliance plan to prevent the violations from recurring.

- 12 **WAC 480-30-221, 49 C.F.R. Part 391.45(a).** The Penalty Assessment also includes an \$11,500 penalty for 115 violations of 49 C.F.R. Part 391.45(a) because Transia allowed four drivers who were not medically examined and certified to drive on 115 occasions between January 2015 and April 2016. In its response, the Company disputes the violations related to two of the four drivers. Transia claims that driver Najeh Mohammed had a valid medical certificate on January 4, 2016 – the date the Company believes the alleged violation occurred – and that driver Daniel Miller has a CDL but does not drive a route that requires a CDL. The Company noted in its response that Mr. Miller’s medical certificate is valid from January 23, 2015, to January 23, 2017.
- 13 In its supplemental response, Staff notes that the violations related to Mr. Mohammed occurred between February 1 and April 14, 2016 – not on January 4 – and that Mr. Mohammed drove on 64 occasions while his medical certificate had lapsed. With respect to Mr. Miller, Staff notes that all CDL drivers are required to have valid medical certificates. Mr. Miller’s certificate lapsed from October 25, 2015, to January 23, 2015, during which time he drove on 15 occasions. Accordingly, we deny the Company’s contest of the violations related to Mr. Mohammed and Mr. Miller.
- 14 Nevertheless, Staff recommends the Commission assess a reduced penalty of \$50 per violation, or \$5,750, because these are first-time violations. 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 violations have since been corrected. In light of these factors, we assess a \$5,750 penalty for 115 violations of 49 C.F.R. Part 391.45(a).
- 15 **WAC 480-30-221, 49 C.F.R. Part 391.51(b)(2).** The Penalty Assessment also includes a \$100 penalty for seven violations of 49 C.F.R. Part 391.51(b)(2) because the Company failed to obtain driving record inquiries for seven employees within 30 days of hire. In its response, the Company explained that four of the seven employees are not “CDL drivers,” and are therefore not required to have driving record inquiries in their files.
- 16 Staff explains in its response that the Company is required to obtain driving record inquiries for all drivers, regardless of CDL status. We therefore deny the Company’s contest of the violations related to four of seven the drivers. Staff further notes that,

because these are first-time violations, it recommended a “per category” rather than “per violation” penalty; accordingly, no further penalty reduction is warranted. We agree and find that a single \$100 penalty is appropriate for seven first-time violations.

17 **WAC 480-30-221, 49 C.F.R. Part 395.8(a).** The Penalty Assessment also includes a \$500 penalty for five violations of 49 C.F.R. Part 395.8(a) because Transia allowed four drivers to drive without making a record of duty status on five occasions between November 2015 and February 2016. In its response, the Company acknowledged that it was not aware of this requirement, and described its new process for preventing repeat violations.

18 Staff recommends no mitigation of this portion of the penalty because these are repeat violations. We agree with Staff’s recommendation and assess a \$500 penalty for five violations of 49 C.F.R. Part 395.8(a). As noted above, the Commission typically does not mitigate penalties for repeat violations of critical safety requirements, particularly in the absence of any new information that would warrant a penalty reduction.

19 **WAC 480-30-221, 49 C.F.R. Part 396.11(a).** The Penalty Assessment also includes a \$100 penalty for 210 violations of 49 C.F.R. Part 396.11(a) because the Company failed to require its drivers to prepare a driver vehicle inspection report (DVIR) on 210 occasions.

20 The Company does not dispute that the violations occurred, but argues that because it currently uses the same DVIR form it used when Staff conducted a safety inspection in 2012, these violations cannot be held against it.

21 Staff notes in its response that whether these violations were overlooked during a previous safety inspection has no bearing on the violations at issue, which are being treated as first-time violations. We agree. Moreover, whether or not Staff discovered these violations during a previous safety inspection does not relieve the Company of its obligation to comply with Commission rules. Accordingly, we find that a single \$100 “per category” penalty for 210 violations of 49 C.F.R. Part 396.11(a) is appropriate.

22 **WAC 480-30-221, 49 C.F.R. Part 396.17(a).** Finally, the Penalty Assessment includes an \$800 penalty for eight violations of 49 C.F.R. Part 396.17(a) because the Company failed to maintain records of periodic vehicle inspections for any of the eight vehicles inspected by Staff. In its response, Transia explained that its maintenance employee was

out of the country at the time of the safety inspection, but it has since verified that a portion of its vehicles were periodically inspected as required. The Company does not dispute that the violations occurred.

23 Staff recommends no mitigation for this portion of the penalty because these are repeat violations. We agree with Staff's recommendation and find that the Company also failed to introduce any new information that would warrant a penalty reduction. Accordingly, we assess an \$800 penalty for eight violations of 49 C.F.R. Part 396.17(a).

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

FINDINGS AND CONCLUSIONS

25 (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 auto transportation carriers, and has jurisdiction over the parties and subject matter of this proceeding.

26 (2) Transia is an auto transportation carrier subject to Commission regulation.

27 (3) Transia violated WAC 480-30-221, which adopts by reference 49 C.F.R. 382.301(a), when its employee drove on one occasion prior to receiving a negative pre-employment controlled substance test result.

28 (4) Transia should be penalized \$500 for one violation of WAC 480-30-221, which adopts by reference 49 C.F.R. 382.301(a).

29 (5) Transia violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 383.37(a), when it allowed three employees who did not have CDL passenger endorsements to operate commercial vehicles with passengers on 234 occasions between November 2015 and April 2016.

30 (6) Transia should be penalized \$11,700 for 234 violations of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 383.37(a).

- 31 (7) Transia violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 391.45(a), when it allowed four drivers who were not medically examined and certified to drive on 115 occasions between January 2015 and April 2016.
- 32 (8) Transia should be penalized \$5,750 for 115 violations of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 391.45(a).
- 33 (9) Transia violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 391.51(b)(2), when it failed to obtain driving record inquiries for seven employees within 30 days of hire.
- 34 (10) Transia should be penalized \$100 for seven violations of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 391.51(b)(2).
- 35 (11) Transia violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 395.8(a), when it allowed four drivers to drive without making a record of duty status on five occasions between November 2015 and February 2016.
- 36 (12) Transia should be penalized \$500 for five violations of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 395.8(a).
- 37 (13) Transia violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 396.11(a), when it failed to require its drivers to prepare a DVIR on 210 occasions.
- 38 (14) Transia should be penalized \$100 for 210 violations of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 396.11(a).
- 39 (15) Transia violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 396.17(a), when it failed to maintain records of periodic vehicle inspections for any of the eight vehicles inspected by Staff.
- 40 (16) Transia should be penalized \$800 for eight violations of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 396.17(a).

- 41 (17) Transia should be permitted to file jointly with Staff a mutually agreeable arrangement for paying the \$19,450 penalty.

ORDER

THE COMMISSION ORDERS:

- 42 (1) International District Parking Association d/b/a Merchants Parking Association, Merchants Parking/Transia's request for mitigation of the \$36,900 penalty is GRANTED, in part, and the penalty is reduced to \$19,450.
- 43 (2) International District Parking Association d/b/a Merchants Parking Association, Merchants Parking/Transia must either pay the penalty or file jointly with Staff a proposed payment arrangement no later than September 7, 2016.
- 44 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective August 23, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
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