

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TE-170986
JPH INTERNATIONAL, INC. d/b/a/ A&A AIRPORT LIMOUSINE SERVICE	ORDER 01
in the amount of \$1,700	GRANTING MITIGATION TO \$700

**BACKGROUND**

- 1 On October 10, 2017, the Washington Utilities and Transportation Commission (Commission) assessed a \$1,700 penalty (Penalty Assessment) against JPH International, Inc. d/b/a A&A Airport Limousine Service (A&A Limousine or Company) for 26 violations of Chapter 480-30 Washington Administrative Code (WAC), which adopts by reference sections of Title 49 Code of Federal Regulations (C.F.R.).<sup>1</sup> The Penalty Assessment includes a \$1,500 penalty for three violations of 49 C.F.R. Part 382.301(a) related to pre-employment controlled substances test results; a \$100 penalty for six violations of 49 C.F.R. 391.51(b)(6) related to driver certification of violations of motor vehicle laws and ordinances; and a \$100 penalty for 17 violations of 49 C.F.R. Part 395.8(a) related to driver's record of duty status.
- 2 On October 23, 2017, the Company responded to the Penalty Assessment, requesting mitigation of the penalty based on the written information provided. In its response, the Company admitted the violations, explained why the violations occurred, and described the procedures it put in place to ensure future compliance.
- 3 On October 26, 2017, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. Staff recommends that the Commission reduce the penalty related to pre-employment controlled substance test results from \$1,500 to \$500 because the Company promptly corrected the violation. Accordingly, Staff recommends the Commission assess a reduced total penalty of \$700.

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<sup>1</sup> 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.

4 Based on Staff’s recommendation, A&A Limousine made a \$700 payment to the Commission on November 20, 2017.

### DISCUSSION AND DECISION

5 Washington law requires charter and excursion carriers to comply with federal safety requirements and undergo routine safety inspections. Violations discovered during safety inspections are subject to penalties of \$100 per violation.<sup>2</sup> In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.<sup>3</sup> Violations defined by federal law as “acute” or “critical” meet this standard.<sup>4</sup>

6 In addition, RCW 81.04.530 imposes penalties for violations of 49 C.F.R. Part 382 related to controlled substances and alcohol use testing. A carrier that fails to comply with 49 C.F.R. Part 382 is subject to a penalty “of up to one thousand five hundred dollars and up to an additional five hundred dollars for each motor vehicle driver employed by the person or employer who is not in compliance with the motor vehicle driver testing requirements.”<sup>5</sup>

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.<sup>6</sup> We address each violation category in turn.

8 **Title 49 C.F.R. Part 382.301(a).** The Penalty Assessment includes a \$1,500 penalty for three violations of Title 49 C.F.R. Part 382.301(a) because the Company assigned drivers William Johnson, William Ronan, and Edwin Lyle to safety sensitive functions prior to receiving an approved negative pre-employment controlled substances test result. The

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<sup>2</sup> See RCW 81.04.405.

<sup>3</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12, 15 (Jan. 7, 2013) (Enforcement Policy).

<sup>4</sup> 49 C.F.R. § 385, Appendix B.

<sup>5</sup> RCW 81.04.530.

<sup>6</sup> Enforcement Policy ¶19.

Company operates both charter and limousine businesses. The Company explained that it mistakenly placed Mr. Johnson in the limousine sample pool, which does not meet federal testing requirements. The Company further explained that it overlooked placing Mr. Ronan and Mr. Lyle into the charter carrier testing pool because they were part time employees. The Company immediately corrected these violations and all three drivers have since been tested and received the required negative test result.

- 9 Staff recommends that the Commission assess a reduced penalty of \$500 because the Company immediately corrected the violations. We agree. The Company corrected the violations prior to receiving the Penalty Assessment. In addition, these are first-time violations. In light of these factors, we assess a \$500 penalty for three violations of 49 C.F.R. Part 382.301(a).
- 10 **49 C.F.R. Part 391.51(b)(6).** The Penalty Assessment includes a \$100 penalty for six violations of 49 C.F.R. Part 391.51(b) because the Company failed to maintain driver certifications relating to violations of motor vehicle laws and ordinances required by 49 C.F.R. 391.27. The Company explained that it now understands the requirement to run and maintain driver violation records and that it implemented a procedure to ensure future compliance.
- 11 Staff recommends no mitigation of this portion of the penalty. We agree. The Commission could have assessed a \$600 penalty for these violations. Because these were first-time violations, however, the Commission assessed a “per category” rather than a “per violation” penalty. Accordingly, we conclude that no further penalty reduction is warranted.
- 12 **49 C.F.R. Part 395.8(a).** The Penalty Assessment includes a \$100 penalty for 17 violations of 49 C.F.R. Part 395.8(a) because the Company failed to require a driver to prepare a complete record of duty status on 17 occasions. The Company explained that it now understands the required method of tracking driver hours, and that it has a new form and procedures in place to ensure future compliance.
- 13 Staff recommends no mitigation of this portion of the penalty. We agree. The Commission could have assessed a \$1,700 penalty for these violations. Because these were first-time violations, however, the Commission assessed a “per category” rather than a “per violation” penalty. Accordingly, we conclude that no further penalty reduction is warranted.

### FINDINGS AND CONCLUSIONS

- 14 (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 carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 15 (2) A&A Limousine is a charter and excursion carrier subject to Commission regulation.
- 16 (3) A&A Limousine violated 49 C.F.R. 382.301(a) when it assigned three drivers to safety sensitive functions prior to receiving approved negative pre-employment controlled substances test results.
- 17 (4) The Commission should penalize A&A Limousine \$500 for three violations of 49 C.F.R. 382.301(a).
- 18 (5) A&A Limousine violated 49 C.F.R. Part 391.51(b)(6) when it failed to maintain driver certifications as required by 49 C.F.R. 391.27 for six drivers.
- 19 (6) The Commission should penalize A&A Limousine \$100 for six violations of 49 C.F.R. Part 391.51(b)(6).
- 20 (7) A&A Limousine violated 49 C.F.R. 395.8(a) when it failed to require a driver to prepare a complete record of duty status on 17 occasions.
- 21 (8) The Commission should penalize A&A Limousine \$100 for 17 violations of 49 C.F.R. 395.8(a).
- 22 (9) The Commission should assess a total penalty of \$700 for 26 violations of WAC 480-30 and Title 49 C.F.R.

### ORDER

#### THE COMMISSION ORDERS:

- 23 (1) JPH International, Inc. d/b/a A&A Airport Limousine Service's request for mitigation of the \$1,700 penalty is GRANTED, in part, and the penalty is reduced to \$700.

- 24 (2) JPH International, Inc. d/b/a A&A Airport Limousine Service paid the penalty in full on November 20, 2017.
- 25 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 December 1, 2017.

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.**