

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against  ROBANY WORK SERVICES, LLC  in the amount of \$12,400	DOCKET TV-171143  ORDER 01  GRANTING MITIGATION TO \$4,000; IMPOSING AND SUSPENDING PENALTIES
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**BACKGROUND**

- 1 On December 6, 2017, the Washington Utilities and Transportation Commission (Commission) assessed a \$12,400 penalty (Penalty Assessment) against Robany Work Services, LLC (Robany or Company) for 124 violations of Chapter 480-15 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 \$6,200 penalty for 62 violations of WAC 480-15-550 for operating a commercial motor vehicle without the required level of cargo insurance in effect; and a \$6,200 penalty for 62 violations of 49 C.F.R. Part 391.45(b)(1) for using a driver not medically examined and certified.
- 2 On December 26, 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, and explained that its violation of the cargo insurance requirements was unintentional.
- 3 On January 3, 2018, Staff filed a response recommending the Commission grant the Company's request for mitigation, in part. Staff recommends that the Commission reduce the penalty from \$12,400 to \$4,000, and that \$2,000 of the reduced penalty be suspended, and then waived, subject to the conditions that the Company: 1) pays the \$2,000 portion of the penalty that is not suspended or files jointly with Staff an approved payment plan, and 2) does not incur any repeat violations within the next two years.

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<sup>1</sup> WAC 480-15-560 and 570 adopt 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.

## DISCUSSION AND DECISION

- 4 Washington law requires household goods 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>
- 5 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>5</sup>
- 6 **WAC 480-15-550.** The Penalty Assessment includes a \$6,200 penalty for 62 violations of WAC 480-15-550 for operating a commercial motor vehicle on 62 occasions without the required level of cargo insurance in effect. The Company admits it did not have the required level of cargo insurance but explains it provided insurance information to the Commission with its application for a temporary business license, and that Staff approved the Company’s application without alerting the Company that the insurance was inadequate. Because the application was approved, the Company assumed it was complying with insurance requirements.
- 7 Staff responds that it believes the Company acted in good faith in obtaining its cargo insurance, and acknowledges that it may have missed an opportunity to point out the discrepancy to the Company. Staff also notes that the Company immediately corrected the violation upon being advised of the problem. Therefore, Staff recommends that the Commission assess a reduced penalty of \$1,000.

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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> Enforcement Policy ¶19.

8 We agree with Staff's recommendation to mitigate the penalty to \$1,000. The Company immediately corrected the violations prior to receiving the Penalty Assessment, and these are first-time violations. Although Staff's failure to detect the violation at the time of application does not excuse the violations, the fact that the application was approved lends support to the Company's claim that the violation was unintentional. In light of these factors, we assess a \$1,000 penalty for three violations of WAC 480-15-550.

9 **49 C.F.R. Part 391.45(b)(1).** The Penalty Assessment also includes a \$6,200 penalty for 62 violations of 49 C.F.R. Part 391.45(b)(1) because Robany owner Hachimi Ouedraogo drove a commercial motor vehicle on 62 occasions without having been medically examined and certified. The Company did not address this violation in its mitigation request.

10 Staff recommends the Commission assess a reduced penalty of \$3,000 because the Company promptly corrected the violation prior to receiving the Penalty Assessment. Because these are first-time violations and the Company immediately took corrective action, we agree with Staff's recommendation and assess a \$3,000 penalty for this violation category.

11 **Suspended Penalty.** Because these are first-time violations that the Company has since remedied, we agree with Staff's recommendation to suspend a \$2,000 portion of the penalty for a period of two years, and then waive it, subject to the conditions that the Company 1) pays \$2,000 portion of the penalty that is not suspended or files jointly with Staff an approved payment plan within 10 days of the effective date of this Order, and 2) incurs no repeat violations.

### 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 household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.

13 (2) Robany is a household goods carrier subject to Commission regulation.

14 (3) Robany violated WAC 480-15-550 when it operated a commercial motor vehicle without the required level of cargo insurance in effect on 62 occasions during the 6 months preceding the safety investigation.

- 15 (4) The Commission should penalize Robany \$1,000 for 62 violations of WAC 480-15-550.
- 16 (5) Robany violated 49 C.F.R. 391.45(b)(1) when it allowed a driver who was not medically examined and certified to drive on 62 occasions during the 6 months preceding the safety investigation.
- 17 (6) The Commission should penalize Robany \$3,000 for 62 violations of 49 C.F.R. 391.45(b)(1).
- 18 (7) The Commission should assess a total penalty of \$4,000 for 124 violations of WAC 480-15 and Title 49 C.F.R., and suspend a \$2,000 portion for two years, and then waive it, provided that Robany pays the \$2,000 unsuspended portion of the penalty or files jointly with staff a mutually agreeable payment arrangement within 10 days of the effective date of this Order, and Robany incurs no repeat violations.

### ORDER

#### THE COMMISSION ORDERS:

- 19 (1) Robany Work Services LLC's request for mitigation of the \$12,400 penalty is GRANTED, in part, and the penalty is reduced to \$4,000.
- 20 (2) The Commission suspends a \$2,000 portion of the penalty, and then waives it, subject to the following conditions: 1) Robany Work Services LLC may not incur any repeat violations of WAC 480-15-550 and 49 C.F.R. 391.45(b)(1), and 2) Robany Work Services LLC must pay the \$2,000 portion of the penalty that is not suspended or file jointly with Staff a mutually agreeable payment arrangement within 10 days of the effective date of this Order.
- 21 (3) If Robany Work Services LLC fails to satisfy any of the conditions in paragraph 20 of this order, or fails to comply with terms of the payment arrangement, if applicable, the entire \$4,000 penalty will become immediately due and payable without further Commission order.

- 22 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 February 7, 2018.

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.**