

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty Assessment Against	DOCKET TE-200117
ATS TRANS, L.L.C., d/b/a AROUND- THE-SOUND TRANSPORTATION SPECIALISTS	ORDER 01
in the amount of \$700	GRANTING MITIGATION

BACKGROUND

- 1 On February 27, 2020, the Washington Utilities and Transportation Commission (Commission) issued a \$700 penalty (Penalty Assessment) against ATS Trans, LLC, d/b/a Around-The-Sound Transportation Specialists, (ATS or Company). The Commission found that ATS violated Washington Administrative Code (WAC) 480-30-221, which adopts Title 49 Code of Federal Regulations (49 CFR) Part and 49 CFR Part 391.¹ The Penalty Assessment includes:
- A \$100 penalty for one violation of 49 CFR § 383.37(a) for allowing a driver to operate a commercial motor vehicle with a downgraded CDL on a single occasion.
 - A \$500 penalty for five violations of 49 CFR § 391.45(a) for allowing a driver to operate a commercial motor vehicle without a valid medical certificate on five occasions between August 10 and August 23, 2019.
 - A \$100 penalty for four violations of 49 CFR § 391.51(b)(9) for failing to verify the medical examiners listed on the medical certificates of four drivers with the national registry.
- 2 On March 6, 2020, ATS requested mitigation of the penalty. ATS submitted that it accepted responsibility for the violations, desired to be in full compliance, and took

¹ 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.

measures to ensure the violations would not recur.

- 3 On March 11, 2020, Commission staff (Staff) filed its reply.² Because ATS corrected the violations at issue and accepted technical assistance from Staff, Staff recommends that the penalty be reduced to \$400.

DISCUSSION AND DECISION

- 4 Washington law requires passenger transportation companies to comply with federal safety requirements and undergo routine safety inspections. Violations discovered during safety inspections are subject to penalties of \$100 per violation.³ In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.⁴ Violations defined by federal law as “critical” meet this standard.⁵
- 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.⁶ The Commission also considers whether the violations were promptly corrected, a company’s history of compliance, and the likelihood the violation will recur.⁷ We address each violation category below.

² In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. RCW 34.05.455.

³ See RCW 81.04.405.

⁴ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶ 12, 15 (Jan. 7, 2013) (Enforcement Policy).

⁵ 49 C.F.R. § 385, Appendix B.

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

⁷ Enforcement Policy ¶19.

6 **49 CFR § 383.37(a).** The Penalty Assessment includes a \$100 penalty for one violation of 49 CFR § 383.37(a), because it allowed a driver to operate a commercial motor vehicle with a downgraded CDL on a single occasion. The Company suggested that this driver “slipped through the cracks” due to staffing changes in its human resources department. The Company instituted a new schedule for human resources to review the file of drivers requiring medical certifications and to schedule required physical examinations.

7 Staff noted that the Company instituted new procedures to address this violation and recommended that the penalty be reduced from \$100 to \$50.

8 We agree with Staff’s recommendation. The Company admitted the violation and it was promptly corrected. It appears unlikely that the violation will recur in light of the new procedures the Company implemented to ensure physical examinations are scheduled as required.

9 **49 CFR § 391.45(a).** The Penalty Assessment includes a \$500 penalty for five violations of 49 CFR § 391.45(a) for allowing a driver to operate a commercial motor vehicle without a valid medical certificate on five occasions between August 10 and August 23, 2019. The Company responded that it has instituted a calendar system that requires a driver to have the correct license and medical card prior to operating a vehicle. A driver will be required to obtain a medical card when driving any vehicle registered with the Commission. The Company also argues that the penalty is excessive because it discovered that the driver at issue was not properly licensed and failed to report past driving infractions. The Company has since terminated her employment.

10 Staff observed that the Company immediately corrected this violation and instituted a policy to medically certify all drivers. It recommends the penalty be reduced from \$500 to \$250.

11 We agree with Staff’s recommendation and mitigate this portion of the penalty to \$250. While the Company suggests that the driver’s misrepresentations about her past citations contributed to this violation, the Company admits that its dispatcher did not confirm the driver carried the proper medical certification before assigning her to operate Company vehicles. Nevertheless, we agree with Staff that the Company’s corrective actions, including immediately correcting the violation and implementing new policies to prevent it from recurring, weigh in favor of assessing a reduced penalty. In light of these circumstances, we find that a lesser penalty is sufficient to ensure future compliance.

12 **49 CFR § 391.51(b)(9).** The Penalty Assessment includes a \$100 penalty for four violations of 49 CFR § 391.51(b)(9) for failing to verify with the national registry the medical examiners listed on the medical certificates of four drivers. The Company responds that it had no intent to deceive the Commission, and that it simply failed to complete this task in a timely manner. The Company instituted new policies to track license renewals and verify medical examiners.

13 Staff recommends against mitigation because the Company was assessed a single \$100 penalty for four separate violations of the regulation at issue.

14 We agree with Staff and decline to mitigate this portion of the penalty. First, this is a repeat violation. Although Staff gave the Company a “satisfactory” rating following a 2015 safety investigation, Staff cited the Company for five violations of 49 CFR § 391.51(b)(9). Second, the Commission may assess a penalty of \$100 for each violation of a law, rule, or regulation.⁸ By assessing a \$100 “per category” penalty for these four violations, the Penalty Assessment assessed a substantially reduced penalty. We thus conclude that no further reduction is warranted.

FINDINGS AND CONCLUSIONS

15 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate passenger transportation companies, and the Commission has jurisdiction over the parties and subject matter of this proceeding.

16 (2) ATS Trans, L.L.C., is a transportation company subject to Commission regulation.

17 (3) ATS Trans, L.L.C., violated 49 CFR § 383.37(a) by allowing a driver to operate a commercial motor vehicle with a downgraded CDL on a single occasion.

18 (4) ATS Trans, L.L.C., should be penalized \$50 for one violation of 49 CFR § 383.37(a).

⁸ RCW 81.04.405

- 19 (5) ATS Trans, L.L.C., violated 49 CFR § 391.45(a) by allowing a driver to operate a commercial motor vehicle without a valid medical certificate on five occasions between August 10 and August 23, 2019.
- 20 (6) ATS Trans, L.L.C., should be penalized \$250 for five violations of 49 CFR § 391.45(a).
- 21 (7) ATS Trans, L.L.C., violated 49 CFR § 391.51(b)(9) by failing to verify the medical examiners listed on the medical certificates of four drivers with the national registry.
- 22 (8) ATS Trans, L.L.C., should be penalized \$100 for four violations of 49 CFR § 391.51(b)(9).

ORDER

THE COMMISSION ORDERS:

- 23 (1) ATS Trans, L.L.C.'s request for mitigation of the \$700 penalty is GRANTED, in part, and the penalty is reduced to \$400.
- 24 (2) The \$400 penalty is due and payable no later than April 2, 2020.
- 25 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-903(2)(e).

DATED at Olympia, Washington, and effective March 20, 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.