

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

<p>In the Matter of the Investigation of</p> <p>KASTL EXPRESS LLC,</p> <p>for Compliance with WAC 480-15-555, WAC 480-15-560, and WAC 480-15-570</p>	<p>DOCKETS TV-210939 and TV-210940 (Consolidated)</p> <p>INITIAL ORDER 01</p> <p>CONSOLIDATING DOCKETS; APPROVING SAFETY MANAGEMENT PLAN; UPGRADING SAFETY RATING TO CONDITIONAL AND EXTENDING PROVISIONAL PERIOD; IMPOSING AND SUSPENDING PENALTIES SUBJECT TO CONDITIONS</p>
<p>In the Matter of the Penalty Assessment Against</p> <p>KASTL EXPRESS LLC,</p> <p>in the Amount of \$7,700</p>	

BACKGROUND

- 1 On December 16, 2021, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel and Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements in the Matter of the Investigation of Kastl Express LLC (Kastl Express or the Company) for Compliance with Washington Administrative Code (WAC) 480-15-555, 480-15-560, and 480-15-570 (Notice).
- 2 The Notice explained that Commission staff (Staff) conducted a compliance review of Kastl Express’s operations between October and November 2021 and cited the Company for 83 violations of federal and state safety regulations, including 19 critical or critical-type violations, resulting in a proposed conditional safety rating. Based on its review, Staff recommended the Commission cancel Kastl Express’s household goods carrier permit unless the Company obtained Commission approval of a safety management plan. The Notice directed Kastl Express to file a proposed safety management plan by January 5, 2022. The Commission also set a brief adjudicative proceeding for January 19,

2022, at 9:30 a.m. to determine whether the Commission should cancel Kastl Express's household goods carrier permit.

3 On December 28, 2021, the Commission assessed a \$7,700 penalty (Penalty Assessment) in Docket TV-210940 against Kastl Express for the safety violations discovered during Staff's compliance review.¹ The Penalty Assessment includes:

- A \$500 penalty for 5 critical violations of WAC 480-15-555 for failing to conduct or retain paperwork containing criminal background checks or hiring an individual with a disqualifying conviction for a household goods carrier in the state of Washington;
- a \$6,700 penalty for 67 critical violations of 49 C.F.R. § 395.45(a) for using a driver not medically examined and certified;
- a \$100 penalty for 5 critical violations of 49 C.F.R. § 391.51(a) for failing to maintain driver qualification file on each driver employed;
- a \$100 penalty for 1 violation of 49 C.F.R. § 393.45(b)(2) for using a commercial motor vehicle with a brake hose or tubing chafing and/or kinking;
- a \$100 penalty for 1 out-of-service violation of 49 C.F.R. § 396.3(a)(1) for using a commercial motor vehicle with brakes out of service;
- a \$200 penalty for 2 critical violations of 49 C.F.R. § 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance; and
- a \$100 penalty for 2 critical violations of 49 C.F.R. § 396.17(a) for using a commercial motor vehicle not periodically inspected.

4 On January 18, 2022, Kastl Express submitted a request for mitigation in Docket TV-210940, admitting the violations and requesting the Commission assess a reduced penalty based on the written information provided. Kastl Express also submitted a proposed safety management plan.

5 Also on January 18, 2022, Staff contacted the administrative law division and indicated that Staff had accepted the Company's safety management plan and was in the process of preparing an evaluation to file with the Commission. Staff requested on behalf of the

¹ The Penalty Assessment cites violations of Washington Administrative Code (WAC) 480-15-555, WAC 480-15-560, and WAC 480-15-570. WAC 480-15-560 and -570 adopt by reference sections of Title 49 Code of Federal Regulations (C.F.R.). Accordingly, Commission safety regulations with parallel federal rules are hereinafter referenced only by the applicable provision of Title 49 C.F.R.

Parties that the Commission cancel the brief adjudicative proceeding and decide this matter on a paper record. Staff also filed with the Commission its evaluation of the Company's safety management plan (Evaluation). Staff determined, based on its review of the Company's proposed plan, that the Company took all of the required steps to bring its safety operations into compliance with Commission regulations. Staff recommends that the Commission not cancel the Company's certificate and also extend the Company's provisional permit period until such time as the Company is able to achieve a satisfactory safety rating. Staff further recommends, in response to the Company's request for mitigation, that the Commission assess a reduced penalty of \$3,850 and suspend a \$2,000 portion of the penalty for a period of two years, and then waive it, subject to the following conditions:

- (1) Staff must conduct a follow-up safety investigation at least six months from the effective date of this Order;
- (2) the Company must not incur any repeat critical violations upon re-inspection; and
- (3) the Company must pay the \$1,850 portion of the penalty that is not suspended within 10 days of the effective date of this Order.

6 Also on January 18, 2022, the Commission issued a notice canceling the January 19, 2022, hearing and informing the parties that the Commission would enter an order based on the parties' written submissions.

DISCUSSION AND DECISION

1. Consolidation

7 Because the violations cited in Staff's investigation gave rise to the enforcement actions taken in both dockets, the Commission exercises its discretion to consolidate these proceedings. Accordingly, Docket TV-210939 and Docket TV-210940 are consolidated.

2. Safety Rating

8 Washington Law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's compliance review of Kastl Express found 17 violation types with 102 individual violations of safety regulations, including 7 violation types with 81 individual critical violations and 2 other individual violations warranting penalties according to the Commission's Enforcement Policy.

Staff's review also resulted in a proposed conditional safety rating for the Company. Violations classified as "critical" are indicative of a breakdown in a carrier's management controls. Patterns of noncompliance with a critical regulation are quantitatively linked to inadequate safety management controls and usually higher-than-average accident rates.

9 On January 18, 2022, the Company submitted its proposed safety management plan and requested the Commission not cancel its certificate. Staff determined that Kastl Express's safety management plan remedies the violations discovered and includes steps taken to develop a compliant safety program and implemented a system that, if followed, should prevent future repeat violations. Staff concludes that Kastl Express's safety management plan is acceptable and satisfies the legal requirements of 49 C.F.R. Part 385. We agree.

10 Based on Staff's Evaluation, the Commission finds that the Company has achieved compliance with Chapter 480-15 WAC by correcting the violations that led to the proposed conditional safety rating. Accordingly, the Commission agrees with Staff's recommendation and grants the Company's request to upgrade its safety rating to conditional.

11 We likewise agree with Staff's recommendation to extend the Company's provisional period for its household goods carrier permit. Prior to a grant of permanent authority, an applicant must complete a provisional period of not less than six months and not more than 18 months unless the Commission determines for good cause that the provisional period should be extended.² Good cause may include, among other things, a carrier that has not yet achieved a satisfactory safety rating but is making substantial progress toward a satisfactory rating. Here, the Company has corrected the violations at issue and demonstrated that it has taken significant steps to ensure its operations comply with applicable safety regulations. Accordingly, the Commission finds good cause to extend the Company's provisional period until such time as the Company achieves a satisfactory rating.

3. Penalty

12 Violations discovered during safety inspections are subject to penalties of \$100 per violation.³ In some cases, Commission requirements are so fundamental to safe

² WAC 480-15-305(1)(b).

³ See RCW 80.04.405.

operations that the Commission will issue penalties for first-time violations.⁴ Critical violations meet this standard.⁵

13 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 compliance.⁶

14 Here, Staff recommends the Commission assess a reduced penalty of \$3,850. We agree with Staff's recommendation. The Company provided a comprehensive safety management plan that details the steps it has taken to bring its operations into compliance with applicable regulations. The safety management plan addresses each violation, describes the steps taken to correct them, and put a system in place to ensure the Company maintains compliance. Accordingly, we are satisfied that Kastl Express has cured the violations that gave rise to the Penalty Assessment and has put adequate controls in place to prevent the violations from reoccurring. In addition, the Company operates three commercial motor vehicles, employs two drivers, and reported \$185,207 in gross revenue for 2020. We conclude that a \$3,850 penalty provides a strong financial incentive for the Company to maintain compliance going forward.

4. Suspended Penalty

15 The Commission considers several factors in determining whether to suspend a portion of a penalty, including whether it is a first-time penalty for the same or similar violations, and whether specific actions have been taken to remedy the violations and avoid the same or similar violations in the future, such as purchasing new technology, making system changes, or training company personnel.⁷ Another factor we consider is whether a company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.⁸

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 Enforcement Policy at ¶ 19.

⁷ *Id.* at ¶ 20.

⁸ *Id.*

16 In this case, penalties were assessed for first-time violations. In addition, the Company has taken action to prevent each of the violations from reoccurring. Suspending a portion of the penalty with the conditions proposed by Staff will both increase compliance and provide a strong incentive to avoid violations in the future. Accordingly, we agree with Staff's recommendation and suspend a \$2,000 portion of the penalty for a period of two years, and then waive it, subject to the following conditions:

- (1) Staff must conduct a follow-up safety investigation at least six months from the effective date of this Order;
- (2) the Company must not incur any repeat critical violations upon re-inspection; and
- (3) Kastl Express must pay the \$1,850 portion of the penalty that is not suspended within 10 days of the effective date of this Order or enter into a mutually agreeable payment arrangement with Staff, about which Staff will promptly file a letter in these consolidated dockets indicating the arrangement reached with the Company. If Staff and the Company enter into such an arrangement and the Company fails to pay any installment by the due date, the entire remaining balance, including the suspended portion of the penalty, will immediately become due and payable without further Commission order.

FINDINGS AND CONCLUSIONS

- 17 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including common carriers such as household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 18 (2) Kastl Express is a household goods carrier subject to Commission regulation.
- 19 (3) Kastl Express committed 102 violations of Chapter 480-15 WAC and Title 49 C.F.R., including 81 critical safety violations and 2 other violations that warrant penalties.
- 20 (4) Kastl Express does not dispute that the violations occurred.
- 21 (5) Kastl Express cured the deficiencies that led to the proposed conditional safety rating and submitted a safety management plan addressing the controls it has put in place to ensure the Company maintains compliance. Accordingly, the

Commission should approve Kastl Express's safety management plan and not cancel its certificate.

- 22 (6) Pursuant to WAC 480-15-305(1)(b), the Commission should find good cause to extend Kastl Express's provisional period until such time as the Company achieves a satisfactory safety rating.
- 23 (7) Staff's investigation gave rise to the enforcement actions taken in both Docket TV-210939 and Docket TV-210940. Accordingly, the Commission should exercise its discretion to consolidate the proceedings.
- 24 (8) Kastl Express should be penalized \$3,850 for 83 violations of Chapter 480-15 WAC and Title 49 C.F.R. The Commission should suspend a \$2,000 portion of the penalty for two years, and then waive it, subject to the conditions set out in Paragraph 16, above.

ORDER

THE COMMISSION:

- 25 (1) Consolidates Docket TV-210939 and Docket TV-210940.
- 26 (2) Approves Kastl Express LLC's safety management plan.
- 27 (3) Extends Kastl Express LLC's provisional period until it achieves a satisfactory safety rating.
- 28 (4) Assesses a \$3,850 penalty against Kastl Express LLC. The Commission suspends a \$2,000 portion of the penalty for a period of two years and then waives it, subject to the conditions set out in Paragraph 16, above.

DATED at Lacey, Washington, and effective January 25, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ *Andrew J. O'Connell*
ANDREW J. O'CONNELL
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order and you would like the Order to become final before the time limits expire, you may send a letter to the Commission waiving your right to petition for administrative review.

WAC 480-07-610(7) provides that any party to this proceeding has 21 days after service of this initial order to file a petition for administrative review (Petition). Section (7)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-610(7)(c) states that any party may file a response to a Petition within 7 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence that is essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-610(9) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission does not exercise administrative review on its own motion.

Any Petition or response must be electronically filed through the Commission's web portal, as required by WAC 480-07-140(5).