

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

EARL ALEXANDER d/b/a/ PUGET
SOUND TOURS

in the amount of \$1,800

DOCKET TE-180197

ORDER 01

DENYING MITIGATION; SUSPENDING
PENALTY SUBJECT TO CONDITIONS

BACKGROUND

- 1 On April 4, 2018, the Washington Utilities and Transportation Commission (Commission) assessed a \$1,800 penalty (Penalty Assessment) against Earl Alexander d/b/a Puget Sound Tours (Puget Sound Tours or Company) for four critical violations of Chapter 480-30 Washington Administrative Code (WAC), which adopts by reference sections of Title 49 Code of Federal Regulations (C.F.R.).¹
- 2 The Penalty Assessment includes a \$1,500 penalty for one violation of 49 C.F.R. Part 382.115(a) for failing to implement a random drug and alcohol testing program for calendar year 2017; a \$100 penalty for one violation of 49 C.F.R. Part 391.51(b)(2) for failing retain a copy of the original driver's abstract; a \$100 penalty for one violation of 49 C.F.R. Part 396.3(b) for failing to keep minimum records of vehicle inspection and maintenance; and a \$100 penalty for one violation of 49 C.F.R. Part 396.17(a) for using a commercial motor vehicle not periodically inspected.
- 3 On April 20, 2018, the Company responded to the Penalty Assessment, requesting mitigation of the penalty. The Company provided no explanation or documentation to support its mitigation request.
- 4 On April 26, 2018, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. Staff explains that the Company submitted a "15-day letter" on March 15, 2018, via email stating that it had corrected all of the violations. Although Staff acknowledges that the letter lacks sufficient detail and does not include any documentation to corroborate the corrective actions the

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.

Company claims it took, Staff nonetheless recommends that the \$1,500 penalty related to alcohol and controlled substances testing be reduced to \$1,000, resulting in a total penalty assessment of \$1,300.

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.² In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.³ Violations defined by federal law as “acute” or “critical” meet this standard.⁴ Failing to comply with the controlled substances and alcohol use testing requirements of Title 49 C.F.R. Part 382 triggers a \$1,500 penalty.⁵
- 6 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
- 7 We deny the Company’s request for mitigation. The Penalty Assessment includes the following language related to applications for mitigation, “if you do not include reasons supporting your application here, your request will be denied.” As noted above, the Company failed to provide any reasons to support its request. Moreover, Staff’s only basis for its recommendation that the Commission assess a reduced penalty is that the Company filed a “15-day letter” that lacked sufficient detail and documentation. Accordingly, the Company failed to provide any new information that had not already

² See RCW 81.04.405.

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

⁴ 49 C.F.R. § 385, Appendix B.

⁵ RCW 81.04.530.

⁶ Enforcement Policy ¶19.

been considered or explain other mitigating circumstances that would warrant a reduced penalty.

8 **Penalty Suspension.** 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 the company has taken specific actions to remedy the violations and avoid the same or similar violations in the future.⁷ Another factor we consider is whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.⁸ In any enforcement action, the Commission also considers the size of the company. It is not the Commission's intention to take enforcement actions disproportionate to a company's revenues.⁹

9 Here, the Commission assessed penalties for first time violations. In addition, Puget Sound Tours is a small business with one driver and one commercial vehicle. The Company reported \$45,600 in gross revenue for 2017. The Commission's goal in any enforcement proceeding is to obtain compliance, not create an insurmountable financial burden for a small company. In light of the Company's financial situation, we are willing to suspend a portion of the penalty conditioned on the Company agreeing to a specific compliance plan.

10 Accordingly, we suspend a \$1,000 portion of the penalty for two years, and then waive it, subject to the following conditions: (1) within 30 days of the effective date of this Order, the Company must provide documentation to Staff establishing that the Company has corrected the violations cited in the Penalty Assessment; (2) within 30 days of the effective date of this Order, the Company must provide to Staff a thorough explanation of the steps the Company has taken to ensure the violations will not reoccur; (3) the Company may not incur any repeat violations of critical regulations; and (4) the Company must pay the \$800 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement within 10 days of the effective date of this Order. Staff will conduct a follow-up investigation in two years to review the Company's safety management practices. If the Company fails to Comply with any of the conditions set out above, the suspended penalty will become immediately due and payable without further Commission order.

⁷ *Id.* at ¶20.

⁸ *Id.*

⁹ *Id.* at ¶15.

FINDINGS AND CONCLUSIONS

- 11 (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.
- 12 (2) Puget Sound Tours is a charter and excursion carrier subject to Commission regulation.
- 13 (3) Puget Sound Tours violated 49 C.F.R. Part 382.115(a) when it failed to implement a random drug and alcohol testing program.
- 14 (4) The Commission should penalize Puget Sound Tours \$1,500 for 1 violation of 49 C.F.R. 382.115(a).
- 15 (5) Puget Sound Tours violated 49 C.F.R. Part 391.51(b)(2) when it failed to retain a copy of the original driver's abstract.
- 16 (6) The Commission should penalize Puget Sound Tours \$100 for one violation of 49 C.F.R. Part 391.51(b)(2).
- 17 (7) Puget Sound Tours violated 49 C.F.R. Part 396.3(b) when it failed to keep minimum records of inspection and vehicle maintenance.
- 18 (8) The Commission should penalize Puget Sound Tours \$100 for one violation of 49 C.F.R. Part 396.3(b).
- 19 (9) Puget Sound Tours violated 49 C.F.R. Part 396.17(a) when it used a commercial motor vehicle not periodically inspected.
- 20 (10) The Commission should penalize Puget Sound Tours \$100 for one violation of 49 C.F.R. Part 396.17(a).
- 21 (11) The Commission should assess a total penalty of \$1,800 for four critical violations of WAC 480-15 and Title 49 C.F.R.
- 22 (12) The Commission should suspend a \$1,000 portion of the penalty for a period of two years, and then waive it, subject to the conditions set out in paragraph 10, above.

ORDER

THE COMMISSION ORDERS:

- 23 (1) Earl Alexander d/b/a Puget Sound Tours' request for mitigation of the \$1,800
penalty is DENIED.
- 24 (2) Earl Alexander d/b/a Puget Sound Tours is assessed a penalty of \$1,800.
- 25 (3) A \$1,000 portion of the penalty will be suspended for a period of two years and
then waived, subject to the following conditions: (1) within 30 days of the
effective date of this Order, Earl Alexander d/b/a Puget Sound Tours must
provide documentation to Staff establishing that the Company has corrected the
violations cited in the Penalty Assessment; (2) within 30 days of the effective date
of this Order, Earl Alexander d/b/a Puget Sound Tours must provide to Staff a
thorough explanation of the steps the Company has taken to ensure the violations
will not reoccur; (2) Earl Alexander d/b/a Puget Sound Tours may not incur any
repeat violations of critical regulations; and (3) Earl Alexander d/b/a Puget Sound
Tours must either pay the \$800 portion of the penalty that is not suspended or file
jointly with Staff a proposed payment plan within 10 days of the effective date of
this Order.
- 26 (4) Commission Staff will conduct a follow-up review of Earl Alexander d/b/a Puget
Sound Tours' operations two years after the effective date of this Order.
- 27 (5) If Earl Alexander d/b/a Puget Sound Tours fails to satisfy any of the conditions in
paragraph 25 of the Order, or fails to comply with the terms of any payment
arrangement, if applicable, the entire unpaid portion of the \$1,800 penalty will
become immediately due and payable without further Commission order.
- 28 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 May 23, 2018.

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.