

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TE-190825
FIFE MARITIME INC.	ORDER 01
in the amount of \$200	DENYING MITIGATION

BACKGROUND

- 1 On October 8, 2019, the Washington Utilities and Transportation Commission (Commission) assessed a \$200 penalty (Penalty Assessment) against Fife Maritime Inc. (Fife Maritime or Company) for ten violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference Title 49 Code of Federal Regulations (C.F.R.).¹ The Penalty Assessment includes:
- A \$100 penalty for one violation of 49 C.F.R. § 390.35 for making, or causing to make fraudulent or intentionally false statements, fraudulent or intentionally false entries on records, and/or reproducing records for fraudulent purposes.
 - A \$100 penalty for nine violations of 49 C.F.R. § 396.11(a) for failing to require driver to prepare vehicle inspection report.
- 2 On September 30, 2019, Fife Maritime submitted a corrective action safety plan, acknowledging the violations and describing the measures it has taken to prevent violations from reoccurring.
- 3 On October 8, 2019, the Company filed with the Commission an application for mitigation of penalties (Application). In the Application, Fife Maritime admits the violations and asks that the penalty be reduced based on the written information it provided.
- 4 On October 18, 2019, Commission staff (Staff) filed a response recommending the Commission deny the Application.

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.

DISCUSSION AND DECISION

- 5 Washington law requires charter and excursion carriers to comply with federal safety requirements and undergo routine safety inspections. In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.²
- 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.³ The Commission also considers whether the violations were promptly corrected, a company's history of compliance, and the likelihood the violation will recur.⁴ We address each violation category in turn.
- 7 **49 C.F.R. § 390.35.** The Penalty Assessment includes a \$100 penalty for one violation of 49 C.F.R. § 390.35 because the Company fraudulently signed the annual driver review of driver Chris Prestel on May 18, 2017, when the Company had not yet received the driver's motor vehicle record. Company owner, Jon Fife, stated in the Application that it was an oversight on his part.
- 8 Staff recommends no mitigation of this penalty. We agree. The Company should be aware of the requirement to complete an annual driver check, and Company representatives should have a full understanding of documents prior to signing them. We decline to mitigate this portion of the penalty.
- 9 **49 C.F.R. § 396.11(a).** The Penalty Assessment also includes a \$100 penalty for nine violations of 49 C.F.R. § 396.11(a) because Fife Maritime failed to require drivers to prepare vehicle inspection reports on nine occasions. In the Application, Fife Maritime stated that Washington State Patrol informed the Company during a safety audit that driver vehicle inspection reports must be completed two to three times per week, rather than at the completion of each day's work. The Company states that it has implemented a

² Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

³ Enforcement Policy ¶19.

⁴ Enforcement Policy ¶15.

checklist for drivers that includes a section for completing driver vehicle inspection reports.

- 10 Staff recommends no mitigation of this portion of the penalty. The Commission could have assessed a \$900 penalty, but, because these are first-time violations, assessed a “per category” rather than “per violation” penalty. We agree and find that no further penalty reduction is warranted.

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 service carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 12 (2) Fife Maritime is a charter and excursion service carrier subject to Commission regulation.
- 13 (3) Fife Maritime violated 49 C.F.R. § 390.35 when Company owner, Jon Fife, signed the annual review of driver Chris Prestel prior to obtaining the driver’s motor vehicle record.
- 14 (4) Fife Maritime should be penalized \$100 for one violation of 49 C.F.R. § 390.35.
- 15 (5) Fife Maritime violated 49 C.F.R. § 396.11(a) when it failed to require its driver to prepare driver vehicle inspection reports on nine occasions.
- 16 (6) Fife Maritime should be penalized \$100 for nine violations of 49 C.F.R. § 396.11(a).
- 17 (7) The Commission should assess a total penalty of \$200 for ten violations of WAC 480-30 and Title 49 C.F.R.

ORDER

THE COMMISSION ORDERS:

- 18 (1) Fife Maritime Inc.’s request for mitigation of the \$200 penalty is DENIED.
- 19 (2) The penalty is due and payable no later than November 14, 2019.

20 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 October 30, 2019.

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.