

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TC-180761
PACIFIC NORTHWEST DISTRIBUTING, LLC d/b/a VASHON SHUTTLE	ORDER 01
in the amount of \$6,300	DENYING REQUEST FOR HEARING; GRANTING MITIGATION TO \$3,200; SUSPENDING PENALTY, IN PART

BACKGROUND

- 1 On September 27, 2018, the Washington Utilities and Transportation Commission (Commission) assessed a \$6,300 penalty (Penalty Assessment) against Pacific Northwest Distributing, LLC d/b/a Vashon Shuttle (Vashon Shuttle or Company) for 64 violations of Washington Administrative Code (WAC) 480-30-222, which sets out the safety requirements for auto transportation companies that operate vehicles with a capacity of seven or fewer passengers, including the driver.
- 2 On November 13, 2018, the Company responded to the Penalty Assessment, admitting the violations, requesting mitigation of the penalty, and requesting a hearing. The Company did not provide any explanation or supporting documentation with its response.
- 3 On November 20, 2018, Commission staff (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 \$6,300 to \$3,200, and suspend a \$1,600 portion of the penalty for two years, and then waive it, subject to the conditions that the Company promptly pay the \$1,600 portion of the penalty that is not suspended, and that the Company incur no repeat violations. Staff will conduct a follow-up investigation within two years to review the Company's safety management practices.

DISCUSSION AND DECISION

- 4 Washington law requires auto 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.¹ In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.² Violations defined by federal law as “acute” or “critical” meet this standard.³

5 As a preliminary matter, we deny the Company’s request for hearing. The Commission’s Penalty Assessment advised the Company that a request for hearing will only be granted if material issues of law or fact require consideration of evidence and resolution in hearing. Because the Company admitted the violations and presented no new information, no issues of law or fact are in dispute. Accordingly, the Company’s request for a hearing is denied. We turn now to the Company’s request for mitigation of the penalty.

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.⁴

7 The Penalty Assessment included a \$6,200 penalty for 62 violations of WAC 480-30-222(4)(e), which provides that drivers who operate vehicles with a capacity of seven or fewer passengers, including the driver, must be medically examined and certificated by a medical examiner who is listed on the National Registry of Certified Medical Examiners. Vashon Shuttle allowed two of its employees to drive on 62 separate occasions without being medically examined and certificated.

8 In its response, Staff explains that, although the Company did not provide any explanation in its request for mitigation, it submitted a corrective action safety plan on September 15, 2018, prior to receiving the Penalty Assessment. In its corrective action safety plan, the Company explained that it promptly corrected the violations, it provided

¹ See RCW 81.04.405.

² Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12, 15 (Jan. 7, 2013) (Enforcement Policy).

³ 49 C.F.R. § 385, Appendix B.

⁴ Enforcement Policy ¶19.

copies of current medical certificates for each of its drivers, and it implemented a policy to ensure compliance going forward. Based on the Company's representations in its corrective action safety plan and the documents submitted in support thereof, Staff recommends that the Commission reduce the penalty for these violations from \$6,200 to \$3,100. We agree with Staff's recommendation. Mitigation of this portion of the penalty is appropriate because these are first-time violations, Vashon Shuttle corrected the violations prior to receiving the Penalty Assessment, and the Company has developed a compliance plan to prevent the violations from recurring.

- 9 The Penalty Assessment also includes a \$100 penalty for two violations of WAC 480-30-222(5), which requires that auto transportation companies verify and document driver qualifications prior to initially allowing the driver to operate a vehicle and at least once every 12 months thereafter during the time of employment or the contract. Vashon Shuttle failed to maintain driver qualification files for two of its employees.
- 10 Staff recommends no mitigation of this portion of the penalty. Because these are first-time violations, the Commission assessed a "per category" rather than "per violation" penalty; accordingly, Staff asserts that no further penalty reduction is warranted. We agree and find that a single \$100 penalty is appropriate for two first-time violations.
- 11 Finally, Staff recommends the Commission suspend a \$1,600 portion of the penalty for two years, and then waive it, subject to the conditions described above. We agree with Staff's recommendation. Vashon Shuttle is a small company with one vehicle and two drivers. The Company reported \$65,631 in gross revenue in 2017. Accordingly, suspending a portion of the penalty both recognizes that imposing the entire penalty would likely create a financial hardship and provides a significant incentive for the Company to avoid repeat violations in the future. In light of these factors, we assess a reduced penalty of \$3,200 for 64 violations of WAC 480-30-222, and suspend \$1,600 of the penalty for a period of two years, and then waive it, subject to the following conditions:

- (a) Vashon Shuttle may not incur any repeat violations of WAC 480-30-222; and
- (b) Vashon Shuttle must either pay the remaining \$1,600 penalty or submit jointly with Staff a proposed payment arrangement within 10 days of the effective date of this Order.

Staff will conduct a follow-up investigation within two years of the date of this Order or as soon thereafter as practicable to review the Company's safety management practices.

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 auto transportation companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 13 (2) Vashon Shuttle is an auto transportation company subject to Commission regulation.
- 14 (3) Vashon Shuttle violated WAC 480-30-222(4)(e) when it allowed two drivers to drive on 62 occasions a commercial motor vehicle without first being medically examined and certificated by a medical examiner who is listed on the National Registry of Certified Medical Examiners.
- 15 (4) The Commission should penalize Vashon Shuttle \$3,100 for 62 violations of WAC 480-30-222(4)(e).
- 16 (5) Vashon Shuttle violated WAC 480-30-222(5) when it failed to maintain driver qualification files for two of its drivers.
- 17 (6) The Commission should penalize Vashon Shuttle \$100 for two violations of WAC 480-30-222(5).
- 18 (7) The Commission should assess a total penalty of \$3,200 for 64 violations of WAC 480-30-222, and should suspend \$1,600 of that amount for two years, and then waive it, subject to the conditions set out in paragraph 11, above.

ORDER

THE COMMISSION ORDERS:

- 19 (1) Pacific Northwest Distributing, LLC d/b/a Vashon Shuttle's request for mitigation of the \$6,300 penalty is GRANTED, in part, and the penalty is reduced to \$3,200.
- 20 (2) A \$1,600 portion of the penalty is suspended for two years, and then waived, subject to the following conditions: (a) Pacific Northwest Distributing, LLC d/b/a Vashon Shuttle may not incur any repeat violations of WAC 480-30-222; and (b) Pacific Northwest Distributing, LLC d/b/a Vashon Shuttle must pay the remaining \$1,600 penalty that is not suspended or submit jointly with Staff a proposed payment arrangement within 10 days of the effective date of this Order. If Pacific

Northwest Distributing, LLC d/b/a Vashon Shuttle fails to satisfy these conditions, the suspended portion of the penalty will become immediately due and payable without further Commission order.

- 21 (3) Commission Staff will conduct a follow-up investigation within two years of the date of this Order or as soon thereafter as practicable to review Pacific Northwest Distributing, LLC d/b/a Vashon Shuttle's safety management practices.
- 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 December 21, 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.