

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TE-200940
OLYMPIC HIKING COMPANY LLC	ORDER 01
in the amount of \$100	DENYING MITIGATION

BACKGROUND

- 1 On December 1, 2020, the Washington Utilities and Transportation Commission (Commission) assessed a \$100 penalty (Penalty Assessment) against Olympic Hiking Company LLC (Olympic Hiking or Company) for 44 violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference Title 49 Code of Federal Regulations (C.F.R.).¹ Specifically, the Penalty Assessment assessed a \$100 penalty for 44 violations of 49 C.F.R. § 396.11(a) for failing to require its driver to prepare vehicle inspection report on 44 occasions.
- 2 On December 2, 2020, Olympic Hiking filed with the Commission an application for mitigation of penalties (Application), admitting the violations and requesting that the penalty be reduced based on the written information provided. The Company explains in its Application that the violations were unintentional, have since been corrected, and that it has taken measures to ensure compliance going forward.
- 3 On December 29, 2020, Commission staff (Staff) filed a response recommending the Commission deny the Application.

DISCUSSION AND DECISION

- 4 Washington law requires charter and excursion carriers to comply with federal safety requirements and undergo routine safety inspections. In some cases, Commission

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.

requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.²

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.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

6 Here, the Penalty Assessment assessed a \$100 penalty for 44 violations of 49 C.F.R. § 396.11(a) because Olympic Hiking failed to require drivers to prepare vehicle inspection reports on 44 occasions. In its Application, Olympic Hiking explains that it was unaware of this requirement, and that it does not believe the violations presented a safety risk to the public.

7 Staff recommends no mitigation of the penalty. We agree for two reasons. First, the Commission could have assessed a "per violation" penalty for each of the 44 violations, which would have resulted in a \$4,400 penalty. Because these are first-time violations, however, the Commission exercised its discretion to assess a single penalty of \$100 for the violation category. In addition, the Company's explanation fails to introduce new information or explain circumstances that would support further reduction of the penalty. Accordingly, we find that the \$100 penalty assessed for 44 violations of 49 C.F.R. § 396.11(a) is appropriate in light of the circumstances and conclude that no further mitigation is warranted.

FINDINGS AND CONCLUSIONS

8 (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.

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.

- 9 (2) Olympic Hiking is a charter and excursion service carrier subject to Commission regulation.
- 10 (3) Olympic Hiking violated 49 C.F.R. § 396.11(a) when it failed to require its driver to prepare driver vehicle inspection reports on 44 occasions.
- 11 (4) Olympic Hiking should be penalized \$100 for 44 violations of 49 C.F.R. § 396.11(a).

ORDER

THE COMMISSION ORDERS:

- 12 (1) Olympic Hiking LLC's request for mitigation of the \$100 penalty is DENIED.
- 13 (2) The penalty is due and payable no later than January 21, 2021.
- 14 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Lacey, Washington, and effective January 6, 2021.

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.