

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

GOOD & GOODS, LLC d/b/a THE
ORIGINAL CANNABUS

in the amount of \$1,700

DOCKET TE-160223

ORDER 01

ORDER GRANTING MITIGATION
TO \$1,000

BACKGROUND

- 1 On February 26, 2016, the Washington Utilities and Transportation Commission (Commission) assessed a \$1,700 penalty (Penalty Assessment) against Good & Goods, LLC d/b/a The Original Cannabus (Cannabus or Company) for 17 violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference 49 C.F.R. Part 391 related to driver qualifications; Part 395 related to driver hours of service; and Part 396 related to vehicle inspection, repair, and maintenance.
- 2 On March 9, 2016, Cannabus responded to the Penalty Assessment admitting the violations and requesting mitigation of the penalty based on the written information provided. The Company's owner, David Good, explained that the Company has since corrected each of the violations cited in the Penalty Assessment and implemented procedures to ensure the violations do not recur.
- 3 On March 15, 2016, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. Staff explains that although all 18 violations cited in the Penalty Assessment are first-time offenses, 17 warrant penalties because they present a risk of serious harm to the public. The Penalty Assessment includes a \$700 penalty for seven violations of 49 C.F.R. Part 391.45(a); a \$100 penalty for one violation of 49 C.F.R. Part 391.51(a); a \$700 penalty for seven violations of 49 C.F.R. Part 395.8(a); a \$100 penalty for one violation of 49 C.F.R. Part 396.3(b); and a \$100 penalty for one violation of 49 C.F.R. Part 396.17(a). Staff recommends the Commission assess a penalty of \$1,000.

DISCUSSION AND DECISION

- 4 Washington law requires auto transportation 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.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 “critical,” which are indicative of a breakdown in a carrier’s management controls, meet this standard.³
- 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.⁴
- 6 The Penalty Assessment includes a \$700 penalty for seven violations of 49 C.F.R. Part 391.45(a) because Company employee Anthony Domish drove on seven occasions without being medically certified. As noted in the Penalty Assessment, drivers who are not medically certified may have an undocumented medical condition that puts the traveling public at risk. Nevertheless, Staff recommends the Commission mitigate this portion of the penalty to \$350 because the Company corrected the violation prior to receiving the Penalty Assessment and has since implemented procedures to ensure the violation does not reoccur. We agree with Staff’s recommendation. Because the Company took prompt corrective action and provided assurances of future compliance, we assess a reduced penalty of \$50 per violation, or \$350.
- 7 The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. Part 391.51(a) because the Company failed to create or maintain a driver qualification file for Mr. Domish. In its response, the Company explained that it now maintains the required file. Staff recommends the Commission deny the Company’s request to mitigate this portion of the penalty. Although we appreciate the Company’s efforts to come into compliance, the Company did not introduce any new information that warrants a penalty

¹ See RCW 81.04.405.

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

³ 49 C.F.R. § 385, Appendix B.

⁴ Enforcement Policy ¶19.

reduction. Accordingly, we decline to mitigate this portion of the penalty.

- 8 The Penalty Assessment also includes a \$700 penalty for seven violations of 49 C.F.R. Part 395.8(a) because Mr. Domish failed to make a record of duty status on seven occasions. In its response, the Company explains that it believes the short-haul exemption applies to its operations, which requires only that short-haul drivers maintain accurate time records. The Company has, however, implemented a new practice of keeping written times and miles for each of its drives. Staff agrees that the short-haul exemption requires less stringent record keeping, and recommends the Commission mitigate this portion of the penalty to \$350. Because the Company does, in fact, qualify for the short-haul exemption and has created internal controls to ensure this requirement is met, we agree with Staff that mitigation is appropriate and reduce the penalty to \$50 per violation, or \$350.
- 9 The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. Part 396.3(b) because the Company failed to keep minimum records of vehicle inspection and maintenance. Mr. Good explained that he has now established a policy that Mr. Domish will ensure the mechanic signs the appropriate form each time the vehicle is inspected or undergoes maintenance. Staff recommends denying mitigation with respect to this portion of the penalty because the Company's response does not adequately address the requirements set forth in 49 C.F.R. Part 396(3)(b). We agree with Staff that mitigation is not appropriate here. At a minimum, the Company would need to describe, in detail, what steps it has taken to prevent repeat violations. Accordingly, we decline to mitigate this portion of the penalty.
- 10 Finally, the Penalty Assessment includes a \$100 penalty for one violation of 49 C.F.R. Part 396.17(a) because the Company does not conduct annual inspections of its vehicles. In its response, the Company states that it now uses the Driver's Vehicle Inspection Report (DVIR) found in the Commission's publication, "Your Guide to Achieving a Satisfactory Safety Rating." Staff recommends the Commission deny the Company's request to mitigate this portion of the penalty because using the DVIR form does not fulfill the requirement to obtain an annual inspection of the Company's vehicle conducted by a qualified inspector. We agree with Staff that the Company has failed to demonstrate that this violation has been corrected, and encourage the Company to work with Staff to ensure controls are implemented to prevent repeat violations. Accordingly, we decline to mitigate this portion of the penalty.

ORDER

THE COMMISSION ORDERS:

- 11 (1) Good & Good, LLC d/b/a The Original Cannabus's request for mitigation of the \$1,700 penalty is GRANTED, in part, and the penalty is reduced to \$1,000.
- 12 (2) The penalty is due and payable no later than April 13, 2016.
- 13 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 March 30, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
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. The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. A form for late-filed requests is available on the Commission's website.