

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TE-180268
ISLAND AIRPORTER LLC	ORDER 01
in the amount of \$14,500	GRANTING MITIGATION TO \$7,000; SUSPENDING PENALTY IN PART

**BACKGROUND**

- 1 On April 27, 2018, the Washington Utilities and Transportation Commission (Commission) assessed a \$14,500 penalty (Penalty Assessment) against Island Airporter LLC (Island Airporter or Company) for 145 violations of Chapter 480-30 Washington Administrative Code (WAC), which adopts by reference sections of Title 49 Code of Federal Regulations (C.F.R.).<sup>1</sup> The Penalty Assessment includes a \$14,500 penalty for 145 violations of 49 C.F.R. Part 387.31(a), for operating a commercial motor vehicle without having in effect the required minimum levels of financial responsibility.
- 2 On May 14, 2018, the Company responded to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty based on the written information provided. In its response, the Company explained that it had instructed its insurance company to provide coverage to comply with all Commission requirements but then failed to verify that the policy was actually in compliance. Upon learning during the safety investigation that it had insufficient liability insurance, the Company states it immediately contacted its insurer and had the policy changed to comply with the law. Finally, the Company explained that the amount of the penalty is excessive because it is equal to about half of the Company's yearly income after expenses.
- 3 On May 25, 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 \$14,500 to \$7,000, and suspend a \$5,500 portion of the penalty for two years, and then waive it, subject to the conditions that the Company promptly pay the \$1,500 balance or agree with Staff to a mutually acceptable payment plan, and that the Company incur no repeat violations. Staff argues that

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<sup>1</sup> 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.

mitigation is appropriate for several reasons. Staff confirmed that the Company promptly corrected this first time violation and now maintains adequate levels of insurance. In addition, Staff notes that this was the Company's fifth safety investigation and its first penalty for safety violations. Finally, Staff agrees the original penalty is disproportionate to a Company's revenues. Staff asserts that its recommendation requires the Company to pay an appropriate, but not overly burdensome, penalty and provides a significant incentive for the Company to avoid repeat violations.

### 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.<sup>2</sup> In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.<sup>3</sup> Violations defined by federal law as "acute" or "critical" meet this standard.<sup>4</sup>
- 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.<sup>5</sup>
- 6 In its request for mitigation, the Company explained that its failure to obtain the minimum amount of liability insurance was an unintentional oversight. The Company also asserts that the penalty is excessive, amounting to about half of the Company's yearly net income. Commission records indicate that Island Airporter is a small company with one driver and one commercial vehicle, and reported \$73,937 in gross revenue for 2017.

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<sup>2</sup> See RCW 81.04.405.

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

<sup>4</sup> 49 C.F.R. § 385, Appendix B.

<sup>5</sup> Enforcement Policy ¶19.

7 After considering the Company's mitigation request, Staff recommended that the Commission reduce the penalty from \$14,500 to \$7,000, and suspend a \$5,500 portion for two years, and then waive it, subject to the conditions that the Company pay the \$1,500 that is not suspended and incur no repeat violations.

8 We agree with Staff's recommendation. We recognize the Company's swift efforts to correct these first-time violations, and that the Company has a positive compliance history overall. We also agree that mitigation is appropriate because the original penalty was disproportionate to the Company's revenues, and that suspending a portion of the penalty 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 \$7,000 for 145 violations of 49 C.F.R. Part 387.31(a), and suspend \$5,500 of the penalty for a period of two years, and then waive it, subject to the following conditions:

(a) Island Airporter may not incur any repeat violations of 49 C.F.R. Part 387.31(a); and

(b) Island Airporter must either pay the remaining \$1,500 penalty or submit jointly with Staff a proposed payment arrangement within 10 days of the effective date of this Order.

### FINDINGS AND CONCLUSIONS

9 (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.

10 (2) Island Airporter is an auto transportation company subject to Commission regulation.

11 (3) Island Airporter violated 49 C.F.R. Part 387.31(a) when it operated a commercial motor vehicle without having in effect the required minimum levels of financial responsibility on 145 occasions.

12 (4) The Commission should penalize Island Airporter \$7,000 for 145 violations of 49 C.F.R. Part 387.31(a).

- 13 (5) The Commission should assess a total penalty of \$7,000 for 145 violation of WAC 480-30, and should suspend \$5,500 of that amount for two years, and then waive it, subject to the conditions set out in paragraph 8, above.

**ORDER**

THE COMMISSION ORDERS:

- 14 (1) Island Airporter LLC's request for mitigation of the \$14,500 penalty is GRANTED, in part, and the penalty is reduced to \$7,000.
- 15 (2) A \$5,500 portion of the penalty is suspended for two years, and then waived, subject to the following conditions: (a) Island Airporter LLC may not incur any repeat violations of 49 C.F.R. Part 387.31(a); and (b) Island Airporter LLC must pay the remaining \$1,500 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 Island Airporter LLC fails to satisfy these conditions, the suspended portion of the penalty will become immediately due and payable without further Commission action.
- 16 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 June 8, 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.**