

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty Assessment Against	DOCKET TE-240056
BAYVIEW CHAUFFEURED TRANSPORTATION LLC	ORDER 01
in the amount of \$2,200	GRANTING MITIGATION

BACKGROUND

1 On February 8, 2024, the Washington Utilities and Transportation Commission (Commission) issued a \$2,200 penalty (Penalty Assessment) against Bayview Chauffeured Transport LLC, (Bayview or Company). The Commission found that Bayview violated Washington Administrative Code (WAC) 480-30-221, which adopts Title 49 Code of Federal Regulations (49 CFR) Part and 49 CFR Part 392 – Controlled Substance and Alcohol Use and Testing and Part 393 – Parts and Accessories Necessary for Safe Operation.¹ The Penalty Assessment includes:

- A \$2,000 penalty for four violations of 49 CFR § 382.301(a) for using a driver before the motor carrier received a negative pre-employment controlled substance test result.
- A \$200 penalty for two violations of 49 CFR § 393.62 for using a commercial motor vehicle (CMV) with inoperative emergency exits.

2 On February 22, 2024, Bayview requested mitigation of the penalty. Bayview submitted that it accepted responsibility for the violations, desired to be in full compliance, and took measures to ensure the violations would not recur.

3 On February 28, 2024, Commission staff (Staff) filed its reply.² Because Bayview corrected the violations at issue and accepted technical assistance from Staff, Staff recommends that the penalty be reduced to \$1,100.

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.

- 4 On February 29, 2024, the Commission issued a second \$2,200 Penalty Assessment against Bayview for the same violations as the Penalty Assessment dated February 8, 2024.
- 5 On March 1, 2024, the Commission issued a Notice of Errata to Penalty Assessment wherein the Commission noted the second Penalty Assessment dated February 29, 2024, was a duplicate of the first Penalty Assessment issued on February 8, 2024, and withdrew the Penalty Assessment dated February 29, 2024.

DISCUSSION

- 6 Washington law requires passenger transportation companies to comply with federal safety requirements and undergo routine safety inspections. Violations discovered during safety inspections are subject to penalties.³ In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.⁴ Violations defined by federal law as “critical” meet this standard.⁵
- 7 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.⁶ The Commission also considers whether the violations were promptly corrected, a company’s history of compliance, and the likelihood the violation will recur.⁷ We address each violation category below.
- 8 **49 CFR § 382.301(a).** The Penalty Assessment includes a \$500 for each of four violations of 49 CFR § 382.301(a), totaling \$2,000, because Bayview used four drivers

² In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. RCW 34.05.455.

³ See RCW 81.04.405.

⁴ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶ 12, 15 (Jan. 7, 2013) (Enforcement Policy).

⁵ 49 C.F.R. § 385, Appendix B.

⁶ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

⁷ Enforcement Policy ¶19.

before the Company received a negative pre-employment controlled substance test result. The Company admitted the violations occurred due to a misunderstanding of the requirements. The Company submitted that three of the four drivers in violation have provided a negative controlled substance test result and the fourth has moved from the area. The Company also established a process that includes a check list of all pre-employment requirements, including a pre-employment drug test result, to ensure the Company meets requirements prior to allowing a driver to operate a CMV.

- 9 Staff noted that the Company received negative pre-employment tests for each driver in violation and instituted new procedures to address this violation and recommended that the penalty be reduced from \$2,000 to \$1,000.
- 10 We agree with Staff's recommendation. The Company admitted the violation and it was promptly corrected. It appears unlikely that the violation will recur in light of the new procedures the Company implemented to ensure pre-employment substance tests are scheduled and to verify negative results are received as required before new employees are able to operate CMVs.
- 11 **49 CFR § 393.62.** The Penalty Assessment includes a \$200 penalty for two violations of 49 CFR § 393.62 for using a CMV with inoperative emergency exits.
- 12 The Company responded that in response to the safety inspection, the CMV was removed from service and a mechanic was immediately contacted to inspect the emergency exits. Upon inspection, the mechanic found and reported to the Company that both emergency exits operated as required. Accordingly, the Company determined that the issue was operator error and that the driver asked to assist with the inspection did not know how to operate the exits. The Company subsequently implemented training for all drivers on how to operate the emergency exits in all of the Company's CMVs. The Company has certified that each driver can provide verbal directions as well as hands on operation of all emergency exits, including how to manually override the passenger doors in case of power or compression failure.
- 13 Staff observed that the Company immediately corrected this violation and that the Company claims to have instituted a training program to ensure all drivers are trained to operate the emergency exits in each of the Company vehicles. Staff recommends the penalty be reduced from \$200 to \$100.
- 14 We agree with Staff's recommendation and mitigate this portion of the penalty to \$100. The Company suggests that the violations occurred due to the driver's error. The Company had the vehicle inspected and claims the emergency exits are operating

properly. Further, the Company claims that all drivers are now trained to operate all emergency exits on each of the Company's vehicles. We agree with Staff that the Company's corrective actions, including immediately correcting the violation and implementing new training to prevent it from recurring, weigh in favor of assessing a reduced penalty. In light of these circumstances, we find that a lesser penalty is sufficient to ensure future compliance.

FINDINGS AND CONCLUSIONS

- 15 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate passenger transportation companies, and the Commission has jurisdiction over the parties and subject matter of this proceeding.
- 16 (2) Bayview Chauffeured Transport LLC, is a transportation company subject to Commission regulation.
- 17 (3) Bayview Chauffeured Transport LLC, violated 49 CFR § 382.301(a) by using a driver before the motor carrier received a negative pre-employment controlled substance test result on four occasions.
- 18 (4) Bayview Chauffeured Transport LLC, should be penalized \$1,000 for four violations of 49 CFR § 382.301(a).
- 19 (5) Bayview Chauffeured Transport LLC, violated 49 CFR § 393.62 by using a commercial motor vehicle with inoperative emergency exits.
- 20 (6) Bayview Chauffeured Transport LLC, should be penalized \$100 for one violation of 49 CFR § 393.62.

ORDER

THE COMMISSION ORDERS:

- 21 (1) Bayview Chauffeured Transport LLC's request for mitigation of the \$2,200 penalty is GRANTED, in part, and the penalty is reduced to \$1,100.
- 22 (2) The \$1,100 penalty is due and payable no later than March 22, 2024.
- 23 The Secretary has been delegated authority to enter this order on behalf of the

Commissioners under WAC 480-07-903(2)(e).

DATED at Olympia, Washington, and effective March 7, 2024.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFF KILLIP

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.