

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TN-190928
BOOST COLLABORATIVE	ORDER 01
in the amount of \$500	GRANTING MITIGATION, IN PART

**BACKGROUND**

- 1 On November 22, 2019, the Washington Utilities and Transportation Commission (Commission) assessed a \$500 penalty (Penalty Assessment) against Boost Collaborative (Boost or Company) for five violations of Washington Administrative Code (WAC) 480-31-130, which adopts by reference Title 49 Code of Federal Regulations (C.F.R.) Part 391 – Qualifications of Drivers.<sup>1</sup> The Penalty Assessment includes a \$500 penalty for five violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.
- 2 On December 9, 2019, the Company filed with the Commission an application for mitigation of penalties (Application). In the Application, Boost admits the violations and asks that the penalty be reduced based on the written information it provided.
- 3 On December 13, 2019, Commission staff (Staff) filed a response recommending the Commission assess a reduced penalty of \$250.

**DISCUSSION AND DECISION**

- 4 Washington law requires nonprofit transportation providers 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> Violations defined by federal

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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.

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

law as “critical,” which are indicative of a breakdown in a carrier’s management controls, meet this standard.<sup>3</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>4</sup> The Commission also considers whether the violations were promptly corrected, a company’s history of compliance, and the likelihood the violation will recur.<sup>5</sup>

6 The Penalty Assessment assessed a \$500 penalty for five violations of 49 C.F.R. § 391.45(a) because the Company allowed a driver who was not medically examined and certified to drive on five occasions. In its Application, the Company acknowledged the violations and stated that it took immediate action to correct them. Boost further stated that the cost of the penalty was high compared to the revenue received from its transportation services, and that the costs of compliance were already burdensome.

7 Staff recommends the penalty be reduced by half because the Company immediately corrected the violation and now maintains current medical certificates in its driver qualification files. Because the Company accepted responsibility for the violations and immediately corrected them, we agree with Staff’s recommendation and assess a reduced penalty of \$250.

### 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 nonprofit transportation providers, and has jurisdiction over the parties and subject matter of this proceeding.

9 (2) Boost is a nonprofit transportation provider subject to Commission regulation.

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<sup>3</sup> 49 C.F.R. § 385, Appendix B.

<sup>4</sup> Enforcement Policy ¶19.

<sup>5</sup> Enforcement Policy ¶15.

- 10 (3) Boost violated 49 C.F.R. § 391.45(a) when it allowed its driver to drive without  
being medically examined and certified on five occasions.
- 11 (4) Boost should be penalized \$250 for five violations of 49 C.F.R. § 391.45(a).

**ORDER**

THE COMMISSION ORDERS:

- 12 (1) Boost Collaborative's request for mitigation of the \$500 penalty is GRANTED, in  
part, and the penalty is reduced to \$250.
- 13 (2) The penalty is due and payable no later than January 14, 2020.
- 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 December 31, 2019.

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.**