

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against  EAST COUNTY SENIOR CENTER  in the amount of \$9,800	DOCKET TN-170157  ORDER 01  ORDER IMPOSING AND SUSPENDING PENALTIES
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**BACKGROUND**

- 1 On March 15, 2017, the Washington Utilities and Transportation Commission (Commission) assessed a \$9,800 penalty (Penalty Assessment) against East County Senior Center (ECSC or Company) for 102 critical violations of Washington Administrative Code (WAC) 480-31-130, which adopts by reference 49 C.F.R. Part 391 related to driver qualifications, and Part 396 related to vehicle inspection, repair, and maintenance.<sup>1</sup>
- 2 On April 3, 2017, ECSC 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 is a stand-alone nonprofit agency that transports seniors and disabled adults in and around Monroe, WA. The Company provided a comprehensive response to each violation, including descriptions of any corrective measures the Company has taken to prevent repeat violations.
- 3 On April 7, 2017, Commission staff (Staff) filed a response recommending the Commission deny the Company's request for mitigation but suspend a portion of the penalty on condition of future compliance. The Penalty Assessment includes a \$9,600 penalty for 96 violations of 49 C.F.R. Part 391.45(a); a \$100 penalty for five violations of 49 C.F.R. Part 391.51(a); and a \$100 penalty for one violation of 49 C.F.R. Part 396.17(a). Because the Company provides a valuable community service and has since corrected each of the violations at issue, Staff recommends the Commission suspend an

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<sup>1</sup> WAC 480-31-130 adopts by reference sections of Title 49 C.F.R. Accordingly, Commission safety regulations with parallel federal provisions are hereinafter referenced by the applicable part of 49 C.F.R.

\$8,000 portion of the penalty for one year, and then waive it, subject to the condition that ECSC may not incur any repeat violations of critical regulations upon re-inspection.

### DISCUSSION AND DECISION

- 4 Washington law requires nonprofit transportation carriers to comply with federal safety requirements and undergo routine safety inspections. In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.<sup>2</sup> Violations defined by federal law as “critical,” which are indicative of a breakdown in a carrier’s management controls, meet this standard.<sup>3</sup> Critical violations are subject to penalties of \$100 per violation.<sup>4</sup> While the Commission is typically more lenient with nonprofit companies that commit paperwork violations – such as failing to meet the deadline for filing an annual report – transportation safety rules are enforced uniformly, regardless of a company’s nonprofit status.
- 5 The Commission will, however, consider 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> The Commission also considers whether the violations were promptly corrected, a company’s history of compliance, and the likelihood the violation will recur.<sup>6</sup> We address each violation category in turn.
- 6 **49 C.F.R. Part 391.45(a).** The Penalty Assessment includes a \$9,600 penalty for 96 violations of 49 C.F.R. Part 391.45(a) because ECSC allowed five drivers who were not medically examined and certified to drive on 96 occasions between August 2016 and January 2017. In its response, the Company explained that it was not aware of this requirement. As of February 10, 2017, all Company drivers are medically certified, and

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

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

<sup>4</sup> See RCW 81.04.405.

<sup>5</sup> Enforcement Policy ¶19.

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

the Company has created an annual reminder in Outlook to ensure compliance. ECSC has also added this requirement to its new hire package.

7 Staff notes in its response that these are repeat violations and recommends no mitigation of this portion of the penalty. Due to the Company's nonprofit status, however, Staff recommends the Commission suspend an \$8,000 portion of the penalty subject to the condition that the Company does not incur any repeat critical violations upon re-inspection in one year. We agree. While we appreciate the Company's efforts to achieve compliance, a "per violation" penalty is appropriate for repeat violations because medical certification is fundamental to safe operations. Drivers who are not medically certified may have an undocumented medical condition that puts the traveling public at risk. Nevertheless, we are sensitive to the Company's financial situation and recognize the value of the service it provides to its community. Accordingly, we suspend an \$8,000 portion of the penalty subject to the condition Staff recommends.

8 **49 C.F.R. Part 391.51(a).** The Penalty Assessment also includes a \$100 penalty for five violations of 49 C.F.R. Part 391.51(a) because the Company failed to maintain driver qualification files for each of its five drivers. In its response, the Company explained that the violation has since been corrected, and provided copies of driver qualification files for each employee.

9 Staff recommends no mitigation of this portion of the penalty. We agree. The Commission could have assessed a \$500 penalty, but, because these are first-time violations, assessed a "per category" rather than "per violation" penalty. Accordingly, we find that no further penalty reduction is warranted.

10 **49 C.F.R. Part 396.17(a).** Finally, the Penalty Assessment includes a \$100 penalty for one violation of 49 C.F.R. Part 396.17(a) because the Company failed to maintain records of periodic vehicle inspections for its vehicle. In its response, ECSC explained that it has corrected the violation and provided supporting documentation.

11 Staff recommends no mitigation for this portion of the penalty. Staff notes that the Company corrected this violation on March 20, 2017, after the Penalty Assessment was served. We agree with Staff's recommendation and find that the Company failed to promptly correct the violation or introduce any new information that would warrant a penalty reduction. Accordingly, we assess a \$100 penalty for one violation of 49 C.F.R. Part 396.17(a).

12 To reduce the financial impact of the penalty, the Company may work with Staff to  
establish mutually agreeable payment arrangements.

### FINDINGS AND CONCLUSIONS

- 13 (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 carriers, and has jurisdiction over  
the parties and subject matter of this proceeding.
- 14 (2) ECSC is a nonprofit transportation carrier subject to Commission regulation.
- 15 (3) ECSC violated 49 C.F.R. Part 391.45(a) when it allowed five drivers who were  
not medically examined and certified to drive on 96 occasions between August  
2016 and January 2017.
- 16 (4) ECSC should be penalized \$9,600 for 96 violations of 49 C.F.R. Part 391.45(a).
- 17 (5) ECSC violated 49 C.F.R. Part 391.51(a), when it failed to maintain driver  
qualification files for each driver it employs.
- 18 (6) ECSC should be penalized \$100 for five violations of 49 C.F.R. Part 391.51(a).
- 19 (7) ECSC violated 49 C.F.R. Part 396.17(a) when it failed to maintain records of  
periodic vehicle inspections for its vehicle.
- 20 (8) ECSC should be penalized \$100 for one violation of 49 C.F.R. Part 396.17(a).
- 21 (9) The Commission should suspend an \$8,000 portion the penalty for a period of one  
year, and then waive it, subject to the following conditions: 1) ECSC may not  
incur any repeat violations of critical regulations upon re-inspection in one year,  
and 2) ECSC must either pay the \$1,800 portion of the penalty that is not  
suspended or file jointly with Staff a mutually agreeable arrangement no later than  
April 27, 2017.

**ORDER**

THE COMMISSION ORDERS:

- 22 (1) East County Senior Center's request for mitigation of the \$9,800 penalty is  
DENIED.
- 23 (2) The Commission suspends an \$8,000 portion of the penalty for a period of one  
year, and then waives it, subject to the conditions set out in paragraph 21, above.
- 24 (3) East County Senior Center must either pay the \$1,800 portion of the penalty that  
is not suspended or file jointly with Staff a proposed payment arrangement no  
later than April 27, 2017.
- 25 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 April 13, 2017.

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.**