

Service Date: March 22, 2019

BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of a Penalty Assessment  
Against

WHITE PASS COMMUNITY  
SERVICE COALITION D/B/A LEWIS  
MOUNTAIN HIGHWAY TRANSIT

in the amount of \$7,200

DOCKET TN-190036  
(Consolidated)

ORDER 01

GRANTING MITIGATION, IN PART;  
IMPOSING AND SUSPENDING  
PENALTY

BACKGROUND

- 1 On February 13, 2019, the Washington Utilities and Transportation Commission (Commission) assessed a \$7,200 penalty (Penalty Assessment) against White Pass Community Service Coalition d/b/a Lewis Mountain Highway Transit (White Pass or Company) for 72 violations of Washington Administrative Code (WAC) 480-31-130, which adopts by reference 49 Code of Federal Regulations (C.F.R.) Part 391 related to driver qualifications.<sup>1</sup> Specifically, the Penalty Assessment cited 72 violations of 49 C.F.R. §391.45(a), which requires drivers to be medically examined and certified.
- 2 On February 25, 2019, White Pass filed a response to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty based on the written information provided. The Company explained that the violations have been corrected, included an administrative plan to prevent repeat violations, and requested the Commission reduce the penalty.
- 3 On March 19, 2019, Commission staff (Staff) filed a response recommending the Commission assess a reduced penalty of \$3,600 because the Company promptly corrected the violations. Staff further recommends the Commission suspend a \$1,800 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: 1) Staff will conduct a follow-up investigation within two years, or as soon thereafter as practicable; 2) the Company must not incur any repeat violations of critical regulations; and 3) the Company must pay the \$1,800 portion of the penalty that is not suspended.

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<sup>1</sup> WAC 480-70-201 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.

## DISCUSSION AND DECISION

- 4 Washington law requires private, nonprofit transportation companies 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” 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>
- 6 The Penalty Assessment assessed a \$7,200 penalty for 72 violations of 49 C.F.R. § 391.45(a) because White Pass allowed two drivers who were not medically examined and certified to drive on 72 occasions during the six months preceding the safety review.
- 7 Staff recommends the Commission assess a reduced penalty of \$3,600 because these are first-time violations that have since been corrected and the Company has taken steps to ensure that all of its drivers are medically examined and certified. We agree with Staff’s recommendation. The Company admitted the violations, explained how the violations were corrected, and provided assurances of future compliance. In light of these factors, we assess a \$3,600 penalty for 72 violations of 49 C.F.R. § 391.45(a).
- 8 We also agree with Staff that suspending a portion of the penalty is appropriate in light of the circumstances. White Pass is a non-profit organization that provides transportation services in a rural area to elderly, low-income, and disabled people. Our goal here, as in any enforcement proceeding, is to increase compliance, not create an insurmountable financial burden for a non-profit company that provides a vital community service. Accordingly, we suspend a \$1,800 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: 1) Staff will conduct a follow-up investigation within two years, or as soon thereafter as practicable; 2) the Company must not incur any repeat violations of critical regulations; and 3) the Company must pay the

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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> Enforcement Policy ¶19.



\$1,800 portion of the penalty that is not suspended within 10 days of the date of this Order. To reduce the financial impact of the penalty, the Company may work with Staff to establish mutually agreeable payment arrangements.

### 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 private, nonprofit transportation providers, and has jurisdiction over the parties and subject matter of this proceeding.
- 10 (2) White Pass is a private, nonprofit transportation provider subject to Commission regulation.
- 11 (3) White Pass violated 49 C.F.R. § 391.45(a) by allowing drivers who were not medically examined and certified to drive company vehicles on 72 occasions.
- 12 (4) White Pass should be penalized \$3,600 for 72 violations of 49 C.F.R. § 391.45(a).
- 13 (5) The Commission should suspend a \$1,800 portion of the penalty for a period of two years, and then waive it, subject to the conditions set out in paragraph 8, above.

### ORDER

#### THE COMMISSION ORDERS:

- 14 (1) White Pass Community Service Coalition d/b/a Lewis Mountain Highway Transit's request for mitigation is GRANTED, in part, and the penalty is reduced to \$3,600.
- 15 (2) The Commission suspends a \$1,800 portion of the penalty for a period of two years, and then waives it, subject to the conditions set out in paragraph 8, above.
- 16 (3) White Pass Community Service Coalition d/b/a Lewis Mountain Highway Transit must either pay the \$1,800 portion of the penalty that is not suspended or file jointly with Staff a mutually agreeable payment arrangement within 10 days of the effective date of this Order.

- 17 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 22, 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.



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • TTY (360) 586-8203

March 19, 2019

Mark L. Johnson, Executive Director and Secretary  
Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. SW  
P. O. Box 47250  
Olympia, WA 98504-7250

Re: *Washington Utilities and Transportation Commission v. WHITE PASS COMMUNITY SERVICE COALITION d/b/a LEWIS MOUNTAIN HIGHWAY TRANSIT*  
Commission Staff's Response to Application for Mitigation of Penalties  
Docket TN-190036

Dear Mr. Johnson:

On Feb. 13, 2019, the Washington Utilities and Transportation Commission (commission) issued a penalty assessment against WHITE PASS COMMUNITY SERVICE COALITION d/b/a LEWIS MOUNTAIN HIGHWAY TRANSIT (White Pass or Company) in the amount of \$7,200 for violations of WAC 480-31-130 Operation of Motor Vehicles, which adopts Title 49 CFR Part 391 – Qualifications of Drivers, calculated as follows:

- **72 violations of Title 49 CFR Part 391.45(a)** – Using a driver not medically examined and certified. The Commission assessed a penalty of \$100 for each occurrence of these critical violations, for a total of \$7,200.

On Feb. 25, 2019, Mr. Douglas Hayden, executive director for White Pass, filed an application for mitigation of penalties. Mr. Hayden admitted the violations but asked that the commission reduce penalties because the violations have been corrected. Mr. Hayden included an administrative plan to prevent a reoccurrence of the violation.

**Staff Response:** White Pass corrected the violations identified in staff's safety investigation conducted on Dec. 21, 2018. The company also created an administrative plan to prevent future violations. Staff recommends the commission reduce the penalty from \$7,200 to \$3,600.

White Pass is a non-profit carrier operating in rural Lewis County. The company currently has eight motor vehicles and employs five drivers. In 2017, the company reported \$296,553 in gross revenue.

Mark L. Johnson

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Staff recommends the penalty of \$7,200 be reduced to \$3,600. Staff is also sensitive to the company's financial situation and understands the impact a significant penalty has on a small business. For these reasons, staff further recommends that \$1,800 of the reduced penalty be suspended for a period of two years before being waived, on the conditions that: 1) staff conducts a follow-up safety investigation in two years or as soon thereafter as practicable to review the company's safety management practices, 2) the company not incur any repeat violations of critical regulations, and 3) White Pass pays the \$1,800 portion of the penalty that is not suspended.

If you have any questions, please contact Kathryn McPherson, Compliance Investigator, Consumer Protection, at (360) 664-1108 or e-mail at [Kathryn.McPherson@utc.wa.gov](mailto:Kathryn.McPherson@utc.wa.gov).

Sincerely,

A handwritten signature in cursive script that reads "Bridgit Feeser".

Bridgit Feeser

Assistant Director, Consumer Protection