

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of BUCKLEY SENIOR CITIZENS, INC. For Compliance with WAC 480-31-130	DOCKET TN-170156 <i>(Consolidated)</i> ORDER 01
In the Matter of the Penalty Assessment Against BUCKLEY SENIOR CITIZENS, INC. In the amount of \$9,500	DOCKET TN-170152 <i>(Consolidated)</i> ORDER 01 ORDER OF CONSOLIDATION; ORDER UPGRADING SAFETY RATING; ORDER IMPOSING AND SUSPENDING PENALTIES

BACKGROUND

- 1 On March 16, 2017, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel Certificate as a Private, Nonprofit Transportation Provider and Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements In the Matter of the Investigation of Buckley Senior Citizens, Inc. (Buckley Senior Citizens or Company) For Compliance with Washington Administrative Code (WAC) 480-31-130 in Docket TN-170156 (Notice of Intent to Cancel). The Notice of Intent to Cancel set the Brief Adjudicative Proceeding for April 19, 2017, at 9:30 a.m.
- 2 Also on March 16, 2017, the Commission assessed a \$9,500 penalty (Penalty Assessment) in Docket TN-170152 against Buckley Senior Citizens for 103 violations of WAC 480-31-130, which adopts by reference Title 49 of the Code of Federal Regulations (49 C.F.R.) Part 391 related to driver qualifications, and five violations of 49 C.F.R. Part 395 related to driver hours of service.¹

¹ WAC 480-15-570 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.

- 3 On March 30, 2017, Buckley Senior Citizens filed an application for mitigation of the penalty, admitting the violations and requesting a hearing. In its response, the Company explained that it was unaware of Commission safety requirements prior to the Commission's safety inspection, but it now intends to proactively ensure compliance. The Company provided a response to each violation, including descriptions of any corrective measures the Company has taken to prevent repeat violations.
- 4 On April 19, 2017, the Commission conducted a brief adjudicative proceeding before Administrative Law Judge Rayne Pearson. The parties agreed that the Commission should address the Penalty Assessment in Docket TN-170152 concurrently with the Company's proposed safety management plan in Docket TN-170156. Accordingly, the Commission consolidated Dockets TN-170152 and TN-170156.
- 5 Staff presented testimony from Sandi Yeomans, special investigator, and Mathew Perkinson, motor carrier safety supervisor, Transportation Safety. Ms. Yeomans testified about the critical safety violations that resulted in Staff's proposed unsatisfactory safety rating for Buckley Senior Citizens. Following a January 2017 compliance review, Staff documented 93 violations of 49 C.F.R. Part 391.45(a), which requires that drivers be medically examined and certified by a qualified provider prior to operating company vehicles. The Company allowed five employees to drive its vehicles on 93 occasions between July 1 and December 30, 2016, without a valid medical certificate.
- 6 Staff also documented five violations of 49 C.F.R. Part 391.51(a), which requires carriers to maintain a driver qualification file for each driver it employs. Buckley Senior Citizens failed to maintain driver qualification files for its five drivers.
- 7 Finally, Staff documented five violations of 49 C.F.R. Part 395.8(a), which requires drivers to make a record of duty status. The Company allowed its employees to drive on five occasions without making a record of duty status between July 15 and December 11, 2016.
- 8 Mr. Perkinson testified that the Company has since submitted a proposed safety management plan that Staff finds acceptable. Staff recommends the Commission upgrade the Company's safety rating to "conditional," and allow the Company to maintain its certificate. With respect to the penalty assessed in Docket TN-170152, Staff recommends the Commission assess a reduced penalty of \$5,000. Staff further recommends the Commission suspend a \$2,500 portion of the penalty for a period of one year, and then waive it, subject to the following conditions: 1) the Company may not incur any repeat critical violations of WAC 480-31-130 upon re-inspection in one year, and 2) the Company must maintain a conditional safety rating.

- 9 Buckley Senior Citizens presented testimony from Ellen Boyd, recreation services director for the City of Buckley, who acknowledged the violations but requested the penalty be mitigated. Ms. Boyd explained that all of the Company's drivers are now medically certified and are required to complete and submit records of duty status. Ms. Boyd further testified that the Company has created driver qualification files for each driver that contain the necessary forms and certifications. Finally, Ms. Boyd testified that the violations resulted from an overall lack of awareness that Commission safety rules applied to the Company's operations, and explained that the Company has since developed a compliance plan to prevent the violations from reoccurring.
- 10 Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents Commission staff (Staff). Ellen Boyd, Recreation Services Director, Buckley, Washington, represents Buckley Senior Citizens.

DISCUSSION AND DECISION

1. Docket TN-170156 – Nonprofit Transportation Provider Certificate

- 11 Washington law requires private, nonprofit transportation carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's January 2017 compliance review of Buckley Senior Citizens found violations of 103 critical regulations, which resulted in a proposed unsatisfactory safety rating. Violations classified as critical are indicative of a breakdown in a carrier's management controls. Patterns of noncompliance with a critical regulation are quantitatively linked to higher-than-average accident rates.
- 12 On April 10, 2017, the Company submitted its proposed safety management plan and requested the Commission upgrade its safety rating. Staff found that Buckley Senior Citizens' safety management plan addresses each violation, identifies how each violation occurred, describes the steps taken to correct each violation, and describes the controls put in place to ensure compliance going forward.
- 13 Based on the testimony and evidence presented at the hearing, the Commission finds that the Company has achieved compliance by correcting the violations that led to the proposed unsatisfactory safety rating. Accordingly, the Commission agrees with Staff's recommendation and grants the Company's request to upgrade its safety rating to conditional.

2. Docket TN-170152 – Penalty Assessment

- 14 Violations discovered during safety inspections are subject to penalties of \$100 per violation.² In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.³ Critical violations meet this standard.⁴ 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.
- 15 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.⁵ The Commission also considers whether the violations were promptly corrected, a company’s history of compliance, and the likelihood the violation will recur.⁶ The Penalty Assessment cited 103 violations in three categories. We address each category in turn.
- 16 **49 C.F.R. Part 391.45(a).** The Penalty Assessment includes an \$9,300 penalty for 93 violations of 49 C.F.R. Part 391.45(a) because Buckley Senior Citizens allowed five drivers who were not medically examined and certified to drive on 93 occasions between July and December 2016. Ms. Boyd testified that the Company was unaware of this requirement, and the Company now has controls in place to ensure that all drivers maintain valid medical certificates.
- 17 Staff recommends the Commission assess a reduced penalty of \$4,800 because these are first-time violations and the Company has taken steps to ensure that all of its drivers are medically examined and certified. We agree. The Company acknowledged the violations, provided an explanation about how the violations were corrected, and provided

² See RCW 80.04.405.

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

⁴ 49 C.F.R. § 385, Appendix B.

⁵ Enforcement Policy ¶19.

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

assurances of future compliance. In light of these factors, we assess a \$4,800 penalty for 93 violations of 49 C.F.R. Part 391.45(a).

18 **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.

19 We decline to mitigate this portion of the penalty. 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.

20 **49 C.F.R. Part 395.8(a).** The Penalty Assessment also includes a \$100 penalty for five violations of 49 C.F.R. Part 395.8(a) because Buckley Senior Citizens allowed its employees to drive without making a record of duty status on five occasions in the six months preceding the compliance review. Ms. Boyd testified that the Company now has controls in place to ensure drivers complete records of duty status.

21 We decline to mitigate this portion of the penalty. 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.

22 **Suspended Penalty.** Because the Company has submitted a satisfactory proposed safety management plan that details the controls it put in place to prevent repeat violations of Commission safety rules, we agree with Staff that suspending a portion of the penalty is appropriate. However, due to the financial hardship that a larger penalty will create for the Company, which is largely volunteer-run, we exercise our discretion to suspend a greater portion of the penalty than Staff recommends. Accordingly, we suspend a \$3,500 portion of the penalty for a period of one year, and then waive it, subject to the following conditions:

- a) Buckley Senior Citizens must maintain a conditional safety rating;
- b) Buckley Senior Citizens may not incur any repeat critical violations of WAC 480-31-130 upon re-inspection in one year;
- c) Buckley Senior Citizens must pay the remaining \$1,500 penalty within ten days of the effective 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

- 23 (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.
- 24 (2) Buckley Senior Citizens is a private, nonprofit transportation provider subject to Commission regulation.
- 25 (3) Buckley Senior Citizens cured the deficiencies that led to its unsatisfactory safety rating within 45 days, as required. Accordingly, Buckley Senior Citizens' safety rating should be upgraded to conditional, and the Company should be allowed to maintain its nonprofit transportation carrier certificate.
- 26 (4) Buckley Senior Citizens violated 49 C.F.R. Part 391.45(a) by allowing drivers who were not medically examined and certified to drive company vehicles on 93 occasions.
- 27 (5) Buckley Senior Citizens should be penalized \$4,800 for 93 violations of 49 C.F.R. Part 391.45(a).
- 28 (6) Buckley Senior Citizens violated 49 C.F.R. Part 391.51(a) by failing to maintain driver qualifications files for each of its five drivers.
- 29 (7) Buckley Senior Citizens should be penalized \$100 for five violations of 49 C.F.R. Part 391.51(a).
- 30 (8) Buckley Senior Citizens violated 49 C.F.R. Part 395.8(a) by failing to require its drivers to make a record of duty status on five occasions.
- 31 (9) Buckley Senior Citizens should be penalized \$100 for five violations of 49 C.F.R. Part 395.8(a).
- 32 (10) The Commission should assess a total penalty of \$5,000 for 103 violations of Title 49 C.F.R. A \$3,500 portion of the penalty should be suspended for a period of two years, and then waived, subject to the conditions set out in paragraph 22, above.

ORDER

THE COMMISSION ORDERS That

- 33 (1) Buckley Senior Citizens, Inc.'s safety rating is upgraded to conditional.
- 34 (2) The Commission assesses a \$5,000 penalty against Buckley Senior Citizens, Inc. The Commission suspends a \$3,500 portion of the penalty for a period of two years, and then waives it, subject to the conditions set out in paragraph 22, above.
- 35 (3) Buckley Senior Citizens, Inc. must either pay the \$1,500 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.

DATED at Olympia, Washington, and effective April 21, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

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