

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TC-180199
WICKKISER INTERNATIONAL COMPANIES, INC.	ORDER 01
in the amount of \$100	DENYING MITIGATION

BACKGROUND

- 1 On March 15, 2018, the Washington Utilities and Transportation Commission (Commission) assessed a \$100 penalty (Penalty Assessment) against Wickkiser International Companies, Inc., (Wickkiser or Company) for one violation of Washington Administrative Code (WAC) 480-30-221, which adopts by reference 49 C.F.R. Part 393.62,¹ related to vehicle parts and accessories necessary for safe operation. Commission staff (Staff) documented the violation during a destination check at SeaTac International Airport. During the inspection, Staff discovered that Wickkiser vehicle number 391 had an emergency window exit that would not close, and placed the vehicle out-of-service.
- 2 On March 20, 2018, the Company responded to the Penalty Assessment, admitting the violation and requesting mitigation of the penalty based on the written information provided. In its response, the Company explained that it had no knowledge of the defective emergency window exit until the inspector opened the window exit during the inspection, after which it would not close. The Company further explained that it was able to correct the violation on-site, and therefore disputes the allegation that the vehicle was placed out-of-service or that passenger safety was impacted.
- 3 On March 23, 2018, Commission staff (Staff) filed a response recommending the Commission deny the Company's request for mitigation because a \$100 penalty is appropriate for one out-of-service violation. On April 2, 2018, Staff filed a supplemental response to provide additional facts regarding the investigation. In its response, Staff clarified that the compliance investigators who performed the vehicle inspection did not

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.

themselves open any emergency exit window during the vehicle inspection. Staff explains that motor carrier investigators are trained to not open emergency exit windows to avoid causing damage or to be held liable for a pre-existing defective condition. In addition, Staff explained that North American Out-of-Service Criteria (OOS Criteria) required the vehicle to be placed out of service, and that the inspection report evidences that the vehicle was placed out-of-service, contrary to the Company's allegation.

4 On March 29, 2018, Wickkiser paid the \$100 penalty in full.

DISCUSSION AND DECISION

5 Washington law requires passenger 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.² Equipment violations meeting the Federal Motor Carrier Safety Administration's "out-of-service" criteria meet this standard, and are subject to penalties of \$100 per violation.

6 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.³

7 The Penalty Assessment includes a \$100 penalty for one violation of 49 C.F.R. Part 393.62 because one of the Company's vehicles had a window emergency exit that would not close. This violation required the vehicle to be placed out-of-service, under OOS Criteria, to protect the Company's passengers and the travelling public. Contrary to the Company's assertion, the inspection report clearly establishes that the vehicle was placed out-of-service.

² Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12, 15 (Jan. 7, 2013) (Enforcement Policy).

³ Enforcement Policy ¶19.

8 In its request for mitigation, the Company admits the violation and explains that it was able to temporarily correct the violation on-site. The Company further explains that it had no knowledge of the defect until it was discovered during the inspection.

9 Staff recommends no mitigation of the penalty because \$100 is an appropriate penalty for one out-of-service violation. We agree. We recognize that the Company admitted and promptly corrected the violation, and that there was no evidence the Company was aware of the defective window exit prior to the inspection. However, the Commission was aware of these facts and took them into consideration when it issued the Penalty Assessment. The Company did not introduce any new information or circumstances that would warrant reduction of the penalty. Accordingly, we deny the Company's request for mitigation.

FINDINGS AND CONCLUSIONS

10 (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 passenger transportation companies, and has jurisdiction over the parties and subject matter of this proceeding.

11 (2) Wickkiser is a passenger transportation company subject to Commission regulation.

12 (3) Wickkiser violated 49 C.F.R. Part 393.62 when Wickkiser vehicle number 391 failed to meet applicable emergency exit requirements, upon inspection.

13 (4) The Commission should penalize Wickkiser \$100 for 1 violation of 49 C.F.R. Part 393.62.

ORDER

THE COMMISSION ORDERS:

14 (1) Wickkiser International Companies, Inc.'s request for mitigation of the \$100 penalty is DENIED.

15 (2) Wickkiser International Companies, Inc. paid the \$100 penalty in full on March 29, 2018.

- 16 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 20, 2018.

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.