

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of AC CHECKER LLC d/b/a VIP ARRIVALS For Compliance with WAC 480-30-221	DOCKETS TE-190590 and TE-190589 <i>(Consolidated)</i> ORDER 02
In the Matter of a Penalty Assessment Against AC CHECKER LLC d/b/a VIP ARRIVALS in the Amount of \$2,500	APPROVING SAFETY MANAGEMENT PLAN, UPGRADING SAFETY RATING, GRANTING MITIGATION IN PART, AND SUSPENDING PENALTY IN PART

BACKGROUND

- 1 On July 19, 2019, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel Certificate and Notice of Brief Adjudicative Proceeding (BAP) in Docket TE-190590 as a result of violations discovered by Commission staff (Staff) during a routine safety investigation of AC Checker LLC d/b/a VIP Arrivals (VIP Arrivals or Company). The Commission set the BAP for August 19, 2019, at 9:30 a.m. and instructed the Company to submit its proposed safety management plan no later than August 12, 2019.
- 2 On July 22, 2019, the Commission issued a Penalty Assessment against VIP Arrivals in the amount of \$2,500 in Docket TE-190589 for violations discovered by Staff during the same routine safety investigation that gave rise to Commission action in Docket TE-190590. The Penalty Assessment includes a \$2,100 penalty for 21 violations of 49 C.F.R. § 391.45(a); a \$100 penalty for two violations of 49 C.F.R. § 391.51(a); a \$100 penalty for 60 violations of 49 C.F.R. § 395.8(a)(1); a penalty of \$100 for one violation of 49 C.F.R. § 396.17(a); and, a penalty of \$100 for one violation of 49 C.F.R. § 393.62(a).

3 The Commission consolidated Dockets TE-190590 and TE-190589 on August 13, 2019.

4 On August 7, 2019, VIP Arrivals submitted a safety management plan in Docket
TE-190590, which addressed each violation cited in Staff's investigation, and an
application for mitigation of penalties in Docket TE-190589.

5 On August 12, 2019, Staff filed a letter evaluating the Company's safety management
plan. Staff responded to both the Company's safety management plan and its request for
mitigation. Staff reviewed the Company's safety management plan submitted on
August 7, 2019, and believes it is acceptable and meets the requirements of 49 C.F.R.
Part 385. Regarding the Company's request for mitigation, Staff explains that the
Company corrected each violation and took steps to prevent future occurrences. Staff
verified with the Company that it waived its right to a hearing.

6 Staff recommends the Commission upgrade the Company's safety rating to conditional
and grant mitigation, in part, by reducing the \$2,500 penalty amount in Docket TE-
190589 to \$1,500. Staff further recommends the Commission suspend \$1,000 of the
\$1,500 penalty for a period of two years, and waive it thereafter, on the conditions that:

- (1) Staff conducts a non-rated safety investigation at least six months from the date of
this Order;
- (2) the Company not incur any repeat violations of critical regulations;
- (3) the Company maintain a conditional safety rating; and,
- (4) the Company pay the unsuspended penalty of \$500.

DISCUSSION AND DECISION

7 **Safety Rating.** Washington Law requires charter party and excursion service carriers to
comply with federal safety requirements and undergo routine safety inspections. Staff's
compliance investigation in June and July 2019 of VIP Arrivals found 94 violations of
safety regulations, which resulted in a proposed unsatisfactory safety rating. The Penalty
Assessment, discussed below, assessed penalties for 85 of the 94 violations.

8 On August 7, 2019, the Company submitted its proposed safety management plan and
requested the Commission upgrade its safety rating. Staff determined that VIP Arrivals'
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. Staff concludes that VIP Arrivals' safety

management plan is acceptable and satisfies the legal requirements of 49 C.F.R. Part 385. We agree.

9 Based on Staff's Evaluation, the Commission finds that the Company has achieved compliance with WAC 480-30-221 by correcting the violations that led to the proposed unsatisfactory safety rating. Accordingly, the Commission agrees with Staff's recommendation and concludes that the Company's safety rating should be upgraded to conditional.

10 **Penalty Assessment.** Washington law requires charter and excursion carriers to comply with federal safety requirements and undergo routine safety inspections. Violations discovered during safety inspections are subject to penalties of \$100 per violation.¹ In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.

11 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.² The Commission also considers whether the violations were promptly corrected, a company's history of compliance, and the likelihood the violation will recur.

12 The Penalty Assessment includes a \$2,500 penalty for 85 violations of 49 C.F.R. § 391.45(a), 49 C.F.R. § 391.51(a), 49 C.F.R. § 395.8(a)(1), 49 C.F.R. § 396.17(a), 49 C.F.R. § 393.62(a). Staff recommends the Commission assess a reduced penalty of \$1,500. We agree with Staff's recommendation. The Company provided a comprehensive safety management plan that details the steps it has taken to bring its operations into compliance with applicable regulations. The safety management plan includes documentation of driver medical certification, driver qualifications, hours of service records, and vehicle maintenance files. Accordingly, we are satisfied that VIP Arrivals has cured the violations that gave rise to the Penalty Assessment and has put adequate controls in place to prevent the violations from reoccurring. In addition, the Company

¹ See RCW 80.04.405.

² Enforcement Policy ¶19.

reported \$11,200 in gross revenue for 2018. We conclude that a \$1,500 penalty provides a strong financial incentive for a small company to maintain compliance going forward.

- 13 **Partial Suspension.** We agree with Staff that suspending a portion of the penalty is appropriate in light of the Company's prompt efforts to remedy the violations and prevent their future recurrence. Our goal here, as in any enforcement proceeding, is to increase compliance, not create a financial burden for a regulated company. Accordingly, we suspend a \$1,000 portion of the penalty for a period of two years, and will subsequently waive that portion, if the Company complies with the following conditions: (1) Staff will conduct a non-rated safety investigation at least six months from the date of this Order; (2) the Company must not incur any repeat violations of critical regulations upon re-inspection; (3) the Company must maintain a conditional safety rating; and, (4) the Company must pay the unsuspended penalty of \$500 within 10 days of the effective date of this Order. If VIP Arrivals fails to comply with any of the above conditions, the suspended portion of the penalty will become immediately due and payable.

FINDINGS AND CONCLUSIONS

- 14 (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 charter party and excursion service carriers, and has jurisdiction over the parties and subject matter of these proceedings.
- 15 (2) VIP Arrivals is a charter party and excursion service carrier subject to Commission regulation.
- 16 (3) VIP Arrivals committed 94 violations of Chapter 480-30 WAC and Title 49 C.F.R., 85 of which were penalized by the Commission in the Penalty Assessment.
- 17 (4) VIP Arrivals cured the deficiencies that led to the proposed unsatisfactory safety rating. Accordingly, VIP Arrivals' safety rating should be upgraded to conditional.
- 18 (5) VIP Arrivals committed 85 violations of 49 C.F.R. § 391.45(a), 49 C.F.R. § 391.51(a), 49 C.F.R. § 395.8(a)(1), 49 C.F.R. § 396.17(a), 49 C.F.R. § 393.62(a) by: using a driver not medically examined and certified; failing to maintain a driver qualification file on each driver employed; failing to require its

driver to prepare a record of duty status using the appropriate method; using a commercial motor vehicle not periodically inspected; and, not having, or having defective, bus emergency exits.

- 19 (6) The Commission should penalize VIP Arrivals \$1,500 for 85 violations of 49 C.F.R. § 391.45(a), 49 C.F.R. § 391.51(a), 49 C.F.R. § 395.8(a)(1), 49 C.F.R. § 396.17(a), 49 C.F.R. § 393.62(a).
- 20 (7) The Commission should suspend a \$1,000 portion of the \$1,500 penalty for a period of two years, and then waive that portion if the Company complies with the conditions listed in paragraph 13, above. If VIP Arrivals fails to comply with any of these conditions, the suspended portion of the penalty should become immediately due and payable.

ORDER

THE COMMISSION ORDERS:

- 21 (1) AC Checker LLC d/b/a VIP Arrivals' safety management plan is approved.
- 22 (2) AC Checker LLC d/b/a VIP Arrivals' safety rating is upgraded to conditional.
- 23 (3) AC Checker LLC d/b/a VIP Arrivals' request to mitigate the \$2,500 penalty is granted, in part. AC Checker LLC d/b/a VIP Arrivals' penalty is reduced to \$1,500.
- 24 (4) The Commission suspends a \$1,000 portion of the \$1,500 penalty for a period of two years and will waive the suspended penalty amount thereafter if AC Checker LLC d/b/a VIP Arrivals complies with the conditions listed in paragraph 13, above. If AC Checker LLC d/b/a VIP Arrivals fails to comply with any of these

conditions, the suspended portion of the penalty will become immediately due and payable.

DATED at Lacey, Washington, and effective August 29, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ *Andrew J. O'Connell*

ANDREW J. O'CONNELL

Administrative Law Judge