

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TE-190751
SEATTLE TRAVEL SERVICE, LLC	ORDER 01
in the amount of \$14,400	GRANTING MITIGATION TO \$7,250

**BACKGROUND**

1 On September 18, 2019, the Washington Utilities and Transportation Commission (Commission) assessed a \$14,400 penalty (Penalty Assessment) against Seattle Travel Service, LLC, (Seattle Travel or Company) for 249 acute and critical violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference Title 49 Code of Federal Regulations (C.F.R.).<sup>1</sup> The Penalty Assessment includes:

- A \$1,500 penalty for one violation of 49 C.F.R. § 382.305 for failing to implement a random controlled substance and alcohol testing program.
- A \$12,800 penalty for 128 violations of 49 C.F.R. § 391.45(b)(1) for allowing two drivers to drive without medical certificates on 128 occasions.
- A \$100 penalty for 120 violations of 49 C.F.R. § 396.11(a) for failing to require drivers to prepare vehicle inspection reports.

2 On September 23, 2019, Seattle Travel 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 had corrected all of the violations, and provided supporting documentation.

3 On September 30, 2019, Commission staff (Staff) filed a response recommending the Commission assess a reduced penalty of \$7,250 and suspend a \$3,625 portion of the reduced penalty for a period of two years, and then waive it, subject to 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

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<sup>1</sup> 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.

must not incur any repeat violations of critical and acute regulations, and (3) Seattle Travel pays the \$3,625 portion of the penalty that is not suspended.

### DISCUSSION AND DECISION

- 4 Washington law requires charter and excursion 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 “acute” or “critical” meet this standard.<sup>3</sup>
- 5 Violations are considered “acute” when non-compliance is so severe that immediate corrective action is required regardless of the overall safety posture of the company. Violations classified as “critical” are indicative of a breakdown in a carrier’s management controls. Acute violations discovered during safety inspections are subject to penalties of \$1,500 per violation,<sup>4</sup> and critical violations are subject to penalties of \$100 per violation.<sup>5</sup>
- 6 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>6</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>7</sup> We address each violation category in turn.
- 7 **49 C.F.R. § 382.305.** The Penalty Assessment includes a \$1,500 penalty for one violation of 49 C.F.R. § 382.305 because the Company failed to implement a random controlled substance and alcohol testing program. In its response, the Company explained that it was confused about the distinction between annual drug testing and a random drug 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 81.04.530.

<sup>5</sup> See RCW 81.04.405.

<sup>6</sup> Enforcement Policy ¶19.

<sup>7</sup> Enforcement Policy ¶15.

alcohol testing program. The Company also provided proof of enrollment in a random testing program.

8 Staff recommends the penalty be reduced by half because, while this is an acute violation of a fundamental safety regulation, it is a first-time violation and the Company immediately corrected the violation and provided supporting documentation. We agree with Staff's recommendation and assess a reduced penalty of \$750.

9 **49 C.F.R. § 391.45(b)(1).** The Penalty Assessment also includes a \$12,800 penalty for 128 violations of 49 C.F.R. § 391.45(b)(1) because Seattle Travel allowed two drivers who were not medically examined and certified, Song Jian and Yong Yang, to drive on 128 occasions between January and July 2019. In its response, the Company admitted the violations and stated the driver Song Jian received medical certification immediately after the violation was identified, and that driver Yong Yang no longer works for the company. Seattle Travel provided a copy of Song Jian's valid medical certificate.

10 Staff recommends the Commission reduce the penalty by half, because these are first-time violations that Seattle Travel promptly corrected. We agree. In its response, the Company acknowledged the violations and explained the controls it has in place to prevent repeat occurrences. In addition, the violations have since been corrected. In light of these factors, we assess a \$6,400 penalty for 128 violations of 49 C.F.R. § 391.45(b)(1).

11 **WAC 480-30-221, 49 C.F.R. Part 396.11(a).** The Penalty Assessment also includes a \$100 penalty for 120 violations of 49 C.F.R. § 396.11(a) because the Company failed to require its drivers to prepare a driver vehicle inspection report (DVIR) on 120 occasions. In its response, the Company acknowledged the violation and stated it has educated its drivers on how to complete the DVIRs, placed the required forms in its vehicles, and will review the completed DVIRs.

12 Staff recommends no mitigation of this penalty because it was a "per-category" penalty for 120 occurrences of a first-time violation. We agree. The Commission could have assessed a \$12,000 penalty for these violations. Accordingly, no further reduction of the penalty is warranted.

13 **Penalty Suspension.** The Commission considers several factors in determining whether to suspend a portion of a penalty, including whether it is a first-time penalty for the same or similar violations, and whether the company has taken specific actions to remedy the violations and avoid the same or similar violations in the future, such as purchasing new

technology, making system changes, or training company personnel.<sup>8</sup> Another factor we consider is whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.<sup>9</sup>

14 In this case, penalties were assessed for first-time violations. In addition, the Company has taken action to prevent the violations from reoccurring. Suspending a portion of the penalty with the conditions proposed by Staff will both increase compliance and provide a strong incentive to avoid violations in the future. Accordingly, we suspend a \$3,625 portion of the penalty for two years, and then waive it, subject to the following conditions: (1) Seattle Travel may not incur any repeat violations of critical or acute regulations, and (3) Seattle Travel must pay the \$3,625 portion of the penalty that is not suspended. Staff will conduct a follow-up safety investigation in two years to review the Company's safety management practices. If the Company fails to comply with either of the conditions, the suspended penalty will become immediately due and payable without further Commission order. To reduce the financial impact of the penalty, the Company may work with Staff to establish mutually agreeable payment arrangements.

#### FINDINGS AND CONCLUSIONS

- 15 (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 and excursion service carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 16 (2) Seattle Travel is a transportation charter and excursion service carrier subject to Commission regulation.
- 17 (3) Seattle Travel violated 49 C.F.R. § 382.305 when it failed to implement a random controlled substance and alcohol testing program.
- 18 (4) Seattle Travel should be penalized \$750 for one violation of 49 C.F.R. § 382.305.

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<sup>8</sup> *Id.* At ¶20.

<sup>9</sup> *Id.*

- 19 (5) Seattle Travel violated 49 C.F.R. § 391.45(b)(1) when it allowed two drivers who were not medically examined and certified to drive on 128 occasions between January and July 2019.
- 20 (6) Seattle Travel should be penalized \$6,400 for 128 violations of 49 C.F.R. § 391.45(b)(1).
- 21 (7) Seattle Travel violated 49 C.F.R. § 396.11(a) when it failed to require drivers to prepare DVIRs on 120 occasions.
- 22 (8) Seattle Travel should be penalized \$100 for 120 violations of 49 C.F.R. § 396.11(a).
- 23 (9) The Commission should assess a total penalty of \$7,250 for 249 acute and critical violations of WAC 480-30 and Title 49 C.F.R.
- 24 (10) The Commission should suspend a \$3,625 portion of the penalty for a period of two years, and then waive it, subject to the conditions set out in paragraph 14, above.
- 25 (11) Seattle Travel should be permitted to file jointly with Staff a mutually agreeable arrangement for paying the unsuspended \$3,625 portion of the penalty.

### ORDER

#### THE COMMISSION ORDERS:

- 26 (1) Seattle Travel Service, LLC's request for mitigation of the \$14,400 penalty is GRANTED, in part, and the penalty is reduced to \$7,250.
- 27 (2) The Commission suspends a \$3,625 portion of the penalty for a period of two years, and then waives it, subject to the following conditions; (1) Seattle Travel Service, LLC, must either pay the \$3,625 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement within 10 days of the effective date of this Order; and (2) Seattle Travel Service, LLC, may not incur any repeat violations of acute or critical regulations.
- 28 (3) Commission Staff will conduct a follow-up review of Seattle Travel Service, LLC's operations in two years or as soon thereafter as practicable.

29 (4) If Seattle Travel Service, LLC, fails to satisfy any of the conditions in paragraph  
27 of this order, or fails to comply with the terms of a payment arrangement, if  
applicable, the entire unpaid portion of the \$7,250 penalty will become  
immediately due and payable without further Commission order.

30 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 October 9, 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.**