

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment  
Against

A CRYSTAL COACH LIMOUSINE  
SERVICE, INC.

in the amount of \$10,200

DOCKET TE-170082

ORDER 01

ORDER IMPOSING AND SUSPENDING  
PENALTIES

**BACKGROUND**

- 1 On February 15, 2017, the Washington Utilities and Transportation Commission (Commission) assessed a \$10,200 penalty (Penalty Assessment) against A Crystal Coach Limousine Service, Inc. (Crystal Coach or Company) for 88 acute and critical violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference 49 C.F.R. Part 382 related to controlled substance and alcohol testing; Part 383 related to commercial driver's license standards; Part 391 related to driver qualifications; and Part 396 related to vehicle inspection, repair, and maintenance.<sup>1</sup>
- 2 On March 2, 2017, Crystal Coach responded to the Penalty Assessment, admitting the violations and requesting a hearing. In its response, the Company stated that it has since opened an account for employee alcohol and drug testing; implemented a checklist to verify Commercial Driver's License (CDL) status for all employees; implemented a checklist to verify expiration dates for medical certificates; and implemented a process for tracking driver vehicle inspection reports (DVIRs). The Company notes that it has sold both of its vehicles and submitted with its response a request to voluntarily cancel its Commission-issued charter and excursion carrier certificate. The Company did not address why it believed the penalty should be reduced.

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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 are hereinafter referenced only by the applicable provisions of Title 49 C.F.R.

- 3 On March 7, 2017, the Commission issued a Notice Denying Request for Hearing and Notice of Opportunity to file a Written Response (Notice). The Notice allowed the Company to provide a written response to explain how the violations occurred and why it believes the penalty should be reduced.
- 4 On March 10, 2017, Crystal Coach filed a written response to the Notice, requesting the Commission assess and defer a reduced penalty of \$1,000. The Company argues that certain violations were redundant, and explains that the penalty would create a financial hardship.
- 5 On March 24, 2017, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part, and assess a reduced penalty of \$6,000 because the Company took steps to prevent the violations from reoccurring. The Penalty Assessment includes a \$1,500 penalty for one violation of 49 C.F.R. Part 382.115(a); a \$4,200 penalty for 42 violations of 49 C.F.R. Part 383.37(a); a \$4,300 penalty for 43 violations of 49 C.F.R. Part 391.45(a); a \$100 penalty for four violations of 49 C.F.R. Part 391.51(a); and a \$100 penalty for seven violations of 49 C.F.R. Part 396.11(a).

### **DISCUSSION AND DECISION**

- 6 Washington law requires auto transportation 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>
- 7 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

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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.

controls. Acute violations discovered during safety inspections are subject to penalties of \$500 per violation,<sup>4</sup> and critical violations are subject to penalties of \$100 per violation.<sup>5</sup>

8 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>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.

9 **49 C.F.R. Part 382.115(a).** The Penalty Assessment includes a \$1,500 penalty for one violation of 49 C.F.R. Part 382.115(a) because the Company did not have an alcohol and drug testing program in place at the time of inspection. In its response, the Company explained that it has since opened an account with Alliance 2020 in Renton. Staff recommends the Commission deny the Company's request for mitigation as it relates to this violation because the Company failed to provide any documentation or evidence that it has implemented a testing program.

10 We agree with Staff's recommendation. As noted in the Penalty Assessment, impaired drivers present serious safety concerns, and companies that disregard requirements for alcohol and drug testing put the traveling public risk. In addition, the Company presented no new information that would warrant a penalty reduction. Given these circumstances and the seriousness of this violation, we decline to mitigate this portion of the penalty.

11 **49 C.F.R. Part 383.37(a).** The Penalty Assessment also includes a \$4,200 penalty for 42 violations of 49 C.F.R. Part 383.37(a) because Crystal Coach allowed an employee who did not have a passenger endorsement on his CDL to operate a commercial vehicle with passengers on 42 occasions between July and December 2016. In its response, the Company explained that it assumed its driver was properly licensed, and that it has since implemented a checklist for all new and current employees to verify their CDL status.

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

The Company further explained that the employee in question is in the process of obtaining a CDL passenger endorsement.

- 12 Because the Company took steps to correct the violations, Staff recommends the penalty be reduced by half, to \$2,100. We agree with Staff’s recommendation and assess a reduced penalty of \$50 per violation, or \$2,100. Mitigation of this portion of the penalty is appropriate because these are first-time violations, Crystal Couch has since corrected the violations, and the Company has developed a compliance plan to prevent the violations from recurring.
- 13 **49 C.F.R. Part 391.45(a).** The Penalty Assessment includes a \$4,300 penalty for 43 violations of 49 C.F.R. Part 391.45(a) because Crystal Coach allowed two drivers who were not medically examined and certified to drive on 43 occasions. In its response, the Company explained that it has created a list of expiration dates for employee medical certificates to prevent violations going forward.
- 14 Because the Company took steps to correct the violations, Staff recommends assessing a reduced penalty of \$2,100. Although Staff’s response incorrectly notes that the Company was penalized \$4,200, it ultimately recommends reducing the penalty by half. We agree with Staff that mitigation of this portion of the penalty is appropriate because these are first-time violations, Crystal Coach has since corrected the violations, and the Company has developed a compliance plan to prevent the violations from recurring. Accordingly, we assess a reduced penalty of \$50 per violation, or \$2,150.
- 15 **49 C.F.R. Part 391.51(a).** The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. Part 391.51(a) because Crystal Coach failed to maintain driver qualification files for each of its four drivers. In its response, the Company explained that it recently implemented a tracking system to ensure that driver files are complete.
- 16 Staff recommends no mitigation of this portion of the penalty. The Commission could have assessed a \$400 penalty, but, because these are first-time violations, assessed a “per category” rather than “per violation” penalty. Accordingly, we agree that no further reduction is warranted, and decline to mitigate this portion of the penalty.
- 17 **49 C.F.R. Part 396.11(a).** The Penalty Assessment also includes a \$100 penalty for seven violations of 49 C.F.R. Part 396.11(a) because the Company failed to require its drivers to prepare DVIRs on seven occasions. In its response, the Company explained that it now requires DVIRs to be submitted daily, and its dispatch staff tracks the reports.

18 Staff recommends no mitigation of this portion of the penalty. The Commission could have assessed a \$700 penalty, but, because these are first-time violations, assessed a “per category” rather than “per violation” penalty. Accordingly, we find that no further reduction is warranted, and decline to mitigate this portion of the penalty.

19 **Suspended Penalty.** In any enforcement action, the Commission’s ultimate goal is compliance. We find here that suspending a large portion of the penalty to deter future unauthorized operations best serves this goal. In light of the fact that Crystal Coach voluntarily cancelled its charter and excursion carrier authority effective March 6, 2017, we will exercise our discretion to suspend a \$5,050 portion of the penalty for period of two years, and then waive it thereafter, provided the Company refrains from operating as a charter party or excursion service carrier without authorization from the Commission. The Company may work with Staff to establish a mutually agreeable plan for payment of the \$1,000 portion of the penalty that is not suspended.

#### FINDINGS AND CONCLUSIONS

- 20 (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 this proceeding.
- 21 (2) Crystal Coach is a charter party and excursion service carrier subject to Commission regulation.
- 22 (3) Crystal Coach violated 49 C.F.R. Part 382.115(a) by failing to implement an alcohol and controlled substances testing program on the date it began its operations.
- 23 (4) Crystal Coach should be penalized \$1,500 for one violation of 49 C.F.R. Part 382.115(a).
- 24 (5) Crystal Coach violated 49 C.F.R. Part 383.37(a) by allowing its driver to operate a commercial motor vehicle without a CDL passenger vehicle endorsement on 42 occasions.
- 25 (6) Crystal Coach should be penalized \$2,100 for 42 violations of 49 C.F.R. Part 383.37(a).

- 26 (7) Crystal Coach violated 49 C.F.R. Part 391.45(a) when it allowed two drivers who were not medically examined and certified to drive on a total of 43 occasions.
- 27 (8) Crystal Coach should be penalized \$2,150 for 43 violations of 49 C.F.R. Part 391.45(a).
- 28 (9) Crystal Coach violated 49 C.F.R. Part 391.51(a) by failing to maintain medical examination certificates in each of its four driver's files.
- 29 (10) Crystal Coach should be penalized \$100 for four violations of 49 C.F.R. Part 391.51(a).
- 30 (11) Crystal Coach violated 49 C.F.R. Part 396.11(a) by failing to require its drivers to prepare DVIRs on seven occasions.
- 31 (12) Crystal Coach should be penalized \$100 for seven violations of 49 C.F.R. Part 396.11(a).
- 32 (13) Crystal Coach should be penalized a total of \$6,050. A \$5,050 portion of the penalty should be suspended for a period of two years, and then waived, subject to the condition that Crystal Coach refrains from operating as a charter party or excursion service carrier without authorization from the Commission. The Company may work with Staff to establish a mutually agreeable plan for payment of the \$1,000 portion of the penalty that is not suspended.

**ORDER**

**THE COMMISSION ORDERS:**

- 33 (1) A Crystal Coach Limousine Service, Inc.'s request for mitigation of the \$10,200 penalty is GRANTED, in part, and the penalty is reduced to \$6,050.
- 34 (2) A \$5,050 portion of the penalty is suspended for a period of two years, and then waived, subject to condition that A Crystal Coach Limousine Service, Inc. refrains from operating as a charter party or excursion service carrier without authorization from the Commission.

- 35 (3) A Crystal Coach Limousine Service, Inc. must either pay the \$1,000 portion of  
the penalty that is not suspended or file jointly with Staff a proposed payment  
plan no later than April 12, 2017.
- 36 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 29, 2017.

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.**