

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of ROCKET TRANSPORTATION, LLC For Compliance with WAC 480-30-221	DOCKET TC-171023 <i>(Consolidated)</i> ORDER 01
In the Matter of the Penalty Assessment Against ROCKET TRANSPORTATION, LLC In the amount of \$7,000	DOCKET TC-171022 <i>(Consolidated)</i> ORDER 01 ORDER OF CONSOLIDATION; ORDER UPGRADING SAFETY RATING; ORDER IMPOSING AND SUSPENDING PENALTIES

BACKGROUND

- 1 On October 18, 2017, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel Certificate as an Auto Transportation Carrier and Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements In the Matter of the Investigation of Rocket Transportation, LLC (Rocket Transportation or Company) For Compliance with WAC 480-30-221 in Docket TC-171023 (Notice of Intent to Cancel). The Notice of Intent to Cancel set the Brief Adjudicative Proceeding for November 20, 2017, at 1:30 p.m.
- 2 Also on October 18, 2017, the Commission assessed a penalty of \$7,000 (Penalty Assessment) in Docket TC-171022 against Rocket Transportation for 71 violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference 49 Code of Federal Regulations (C.F.R.) Part 391.45(a) related to driver medical examination and certification,¹ and 49 C.F.R. Part 391.51(b)(7) related to driver

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.

qualification file requirements.

- 3 On November 1, 2017, Rocket Transportation filed an application for mitigation of the penalty, requesting a hearing to present evidence demonstrating why the penalty should be mitigated. In its response, the Company admits that the types of violations identified by Commission staff (Staff) occurred, but disputes the number of occurrences, stating in part: “we deny that there are as many violations as indicated and we respectfully request a hearing to present our evidence.” The Company further explained that the business is struggling financially, and that the Company is making changes to prevent the violations from reoccurring.
- 4 The Commission conducted a brief adjudicative proceeding on November 20, 2017, before Administrative Law Judge Laura Chartoff. The parties agreed that the Commission should address the Penalty Assessment in Docket TC-171022 concurrently with the Notice of Intent to Cancel in Docket TC-171023. Accordingly, the Commission consolidated Dockets TC-171022 and TC-171023.
- 5 Staff presented testimony from Mathew Perkinson, motor carrier safety manager. Mr. Perkinson provided documentation about the critical safety violations that resulted in Staff’s proposed “unsatisfactory” safety rating for Rocket Transportation.² Following a July 2017 compliance review, Staff documented 69 violations of 49 C.F.R. Part 391.45(a), which requires drivers to be medically examined and certified. Company drivers Pauline Cheng, Todd Katke, and Klaus Sterling drove on a total of 69 occasions without valid medical certificates. Staff also documented two violations of 49 C.F.R. Part 391.51(b)(7), which requires the Company to maintain copies of medical examiner’s certificates in its driver qualification files. The Company failed to maintain copies of the medical examiner’s certificate in the driver qualification files of two employees, William Wagoner and Pauline Cheng.
- 6 Mr. Perkinson further testified that the Company has since submitted a proposed safety management plan that Staff finds acceptable. Accordingly, 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 TC-171022, Staff recommends the Commission reduce the penalty by half, to \$3,500, and suspend a \$1,750 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: 1) the Company may not incur any repeat critical violations of Title 49 C.F.R.; 2) the Company maintains a conditional safety rating; and

² Staff also documented eight non-critical violations of Title 49 C.F.R.

3) the company pays the remaining \$1,750 portion of the penalty that is not suspended. Staff will conduct a non-rated follow-up investigation in one year.

- 7 Rocket Transportation presented testimony from Kathy Roman, Company CEO, who disputed some of the violations and requested the penalty be mitigated. Ms. Roman explained that prior to the safety audit, the Company's office staff did not fully comprehend the consequences of failing to strictly comply with Commission regulations. According to Ms. Roman, the Company has corrected the violations and is willing and able to comply going forward. Ms. Roman further testified that the Penalty Assessment contains an error related to the dates employee Klaus Sterling drove without medical certification. Ms. Roman testified the violations occurred in 2017, not 2016.³ In addition, Ms. Roman testified that 19 of the violations occurred in a minivan. Ms. Roman contends that those trips are not subject to Commission regulation. With regard to the Company's failure to keep copies of the medical examiner's certificate in driver qualification files, Ms. Roman provided copies of employee William Wagoner's medical examiner's certificate and testified that the Company had the certificate at the time of Staff's inspection, but that it had been misfiled or thrown away prematurely.
- 8 Jeff Roberson, Assistant Attorney General, Olympia, Washington, represents Staff. Kathy Roman, CEO, Rocket Transportation, Sequim, Washington, represents Rocket Transportation.

DISCUSSION AND DECISION

1. Docket TC-171023 – Auto Transportation Certificate

- 9 Washington law requires auto transportation carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's June 2017 compliance review of Rocket Transportation found 71 violations of two critical safety regulations, which, weighted with the Company's accident rate of 3.74 accidents per one million miles travelled, resulted in a proposed "unsatisfactory" safety rating. Critical regulations relate to management and/or operational issues, and violations of these regulations typically indicate a breakdown in a carrier's management controls. Patterns of noncompliance with a critical regulation are quantitatively linked to inadequate safety management controls and usually higher-than-average accident rates.

³ Staff agrees that the violations occurred in 2017.

10 The Company submitted its proposed safety management plan prior to the hearing and requested the Commission upgrade its safety rating. On November 20, 2017, Staff presented its evaluation of the Company’s proposed safety management plan and recommended that the Commission upgrade the Company’s safety rating to “conditional.” Staff is satisfied that Rocket Transportation’s 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.

11 Based on the evidence in the record, 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 TC-171022 – Penalty Assessment

12 Violations discovered during safety inspections are subject to penalties of \$100 per violation.⁴ In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.⁵ Critical violations meet this standard.⁶

13 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.⁷ The Penalty Assessment cited 71 critical violations in two categories. We address each category in turn.

⁴ See RCW 80.04.405.

⁵ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

⁶ 49 C.F.R. § 385, Appendix B.

⁷ Enforcement Policy ¶19.

49 C.F.R. Part 391.45(a)

- 14 **Discussion.** 49 C.F.R. Part 391.45(a) requires drivers to be medically examined and certified as physically qualified to operate a commercial motor vehicle. The Commission assessed penalties of \$6,900 because Staff discovered during its review that the Company allowed three drivers to drive on 69 occasions without being medically examined and certified. Ms. Roman testified that Company staff have been educated and will comply going forward. Staff testified that the Company promptly corrected the violations and put controls in place to ensure that medical cards are obtained and kept on file for all employees.
- 15 While the Company accepts responsibility for the majority of the violations, the Company argues that 19 of the violations cited by Staff occurred while providing transportation in a minivan, which the Company contends is not subject to the vehicle and driver safety requirements set out in WAC 480-30-221. The Company did not provide any legal authority for its position. Staff disagrees, arguing auto transportation service provided in minivans is subject to WAC 480-30-221. We agree with Staff. The vehicle and safety requirements in WAC 480-30-221 apply to “all vehicles and drivers used to provide passenger transportation services under the authority of the company’s certificate”⁸ With respect to auto transportation companies, the term “vehicle” is defined as “every self-propelled vehicle used on the public highways, for the transportation of persons for compensation.”⁹ The regulations do not provide an exclusion or exception for auto transportation services provided by minivan.¹⁰ Therefore, we reject the Company’s argument that the trips provided by minivan did not violate 49 C.F.R. 391.45(a).
- 16 **Decision.** We find that a “per violation” penalty is appropriate here because medical certification is fundamental to safe operations; drivers who are not medically certified may have an undocumented medical condition that puts the traveling public at risk. We will however, assess a reduced penalty of \$3,400 for 69 violations of 49 C.F.R. Part

⁸ Although Commission rules have always applied to passenger vehicles of any size used to provide auto transportation service, the Commission amended its rules effective August 31, 2017, by adopting WAC 480-20-222 to separately address vehicle and driver safety requirements for vehicles with seven or fewer passengers.

⁹ WAC 480-30-036(2).

¹⁰ In contrast, the term “vehicle” with regard to charter and excursion carriers is defined as “every self-propelled vehicle with a manufacturer’s seating capacity for eight or more passengers, including the driver. . . .” WAC 480-30-036(2).

391.45(a) because the Company promptly corrected the violations and implemented procedures to ensure future compliance.

49 C.F.R. Part 391.51(b)(7)

- 17 **Discussion.** 49 C.F.R. Part 391.51(b)(7) requires the Company to maintain copies of the medical examiner’s certificate in its driver qualification files. The Commission assessed penalties of \$100 because Staff discovered during its review that the Company failed to maintain copies of the medical examiner’s certificate in the driver qualification files of two employees, William Wagoner and Pauline Cheng. Ms. Roman testified that Company office staff has been educated and will comply with this requirement going forward. The Company further argues that, although it had the medical examiner’s certificates at the time of the compliance review, they had been misfiled or thrown away. The Company produced copies of Mr. Wagoner’s certificate to demonstrate that it was valid during the safety review period.
- 18 **Decision.** Complete driver qualification files must be produced on demand at the time of the compliance review. Producing any portion of the driver qualification files following the compliance review does not cure a record keeping violation of 49 C.F.R. Part 391.51(b)(7). Here, the Commission assessed a \$100 penalty for two violations of this regulation. The Commission could have assessed penalties of \$100 per violation, 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, and decline to mitigate this portion of the penalty.
- 19 Because the Company submitted a satisfactory proposed safety management plan that details the controls it has put in place to prevent repeat violations of Commission safety rules, we agree with Staff’s recommendation and assess a reduced penalty of \$3,500. We also suspend a \$1,750 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: 1) Rocket Transportation must maintain a “conditional” safety rating, 2) Rocket Transportation may not incur any repeat violations of Title 49 C.F.R., and 3) Rocket Transportation must pay the remaining \$1,750 portion of the penalty that is not suspended within 10 days of the effective date of this order. The Company may work with Staff to establish mutually agreeable payment arrangements to pay the \$1,750 portion of the penalty that is not suspended. If Rocket Transportation fails to comply with any of these conditions, the \$1,750 suspended portion of the penalty will become immediately due and payable without further Commission order.

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 auto transportation companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 21 (2) Rocket Transportation is an auto transportation company subject to Commission regulation.
- 22 (3) Rocket Transportation cured the deficiencies that led to its “unsatisfactory” safety rating within 45 days, as required. Accordingly, Rocket Transportation’s safety rating should be upgraded to “conditional,” and the Company should be allowed to maintain its auto transportation certificate.
- 23 (4) Rocket Transportation violated 49 C.F.R. Part 391.45(a) by using three drivers on 69 occasions who were not medically certified.
- 24 (5) Rocket Transportation should be penalized \$3,400 for 69 violations of 49 C.F.R. Part 391.45(a).
- 25 (6) Rocket Transportation violated 49 C.F.R. 391.51(b)(7) by failing to maintain copies of the medical examiner’s certificate in two driver qualification files.
- 26 (7) Rocket Transportation should be penalized \$100 for two violations of WAC 480-30-221, which adopts by reference 49 C.F.R. 391.51(b)(7).
- 27 (8) The Commission should assess a penalty of \$3,500 for 71 violations of Title 49 CFR. A \$1,750 portion of the penalty should be suspended for a period of two years, and then waived, subject to the conditions set out in paragraph 19, above.

ORDER

THE COMMISSION ORDERS That

- 28 (1) The Commission upgrades Rocket Transportation, LLC’s safety rating to “conditional.”

- 29 (2) The Commission assesses a \$3,500 penalty against Rocket Transportation, LLC. The Commission suspends a \$1,750 portion of the penalty for a period of two years, and then waives it, subject to the following conditions: 1) Rocket Transportation, LLC must maintain a “conditional” safety rating, 2) Rocket Transportation, LLC may not incur any repeat violations of Title 49 C.F.R., and 3) Rocket Transportation, LLC must either pay the \$1,750 portion of the penalty that is not suspended or file jointly with Staff a proposed payment plan within 10 days of the effective date of this Order.
- 30 (3) If Rocket Transportation, LLC fails to comply with any condition of this Order, the entire \$1,750 suspended penalty will become immediately due and payable without further Commission order.

DATED at Olympia, Washington, and effective November 22, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

LAURA CHARTOFF
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 480-07-610(7) provides that any party to this proceeding has twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) 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.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).