

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

WHITE PASS COMMUNITY SERVICE
COALITION D/B/A LEWIS
MOUNTAIN HIGHWAY TRANSIT

in the amount of \$7,200

DOCKET TN-190036

FINAL ORDER 02

AFFIRMING ORDER 01, IN PART;
GRANTING REQUEST FOR
REVIEW, IN PART

BACKGROUND

- 1 On February 13, 2019, the Washington Utilities and Transportation Commission (Commission) assessed a \$7,200 penalty (Penalty Assessment) against White Pass Community Service Coalition d/b/a Lewis Mountain Highway Transit (White Pass or the Company) for 72 violations of Washington Administrative Code (WAC) 480-31-130, which adopts by reference Title 49 Code of Federal Regulations (C.F.R.) Part 391 related to driver qualifications.¹ Specifically, the Penalty Assessment cited 72 violations of 49 C.F.R. §391.45(a), which requires drivers to be medically examined and certified.
- 2 On February 25, 2019, White Pass filed a response to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty based on the written information provided. The Company explained that the violations have been corrected, included an administrative plan to prevent repeat violations, and requested the Commission reduce the penalty.
- 3 On March 19, 2019, Commission staff (Staff) filed a response recommending the Commission assess a reduced penalty of \$3,600 and suspend a \$1,800 portion of that

¹ WAC 480-70-201 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.

penalty for a period of two years, and then waive it, subject to the conditions that (1) Staff would conduct a follow-up investigation within two years, or as soon thereafter as practicable, (2) the Company must not incur any repeat violations of critical regulations during those two years, and (3) the Company must pay the \$1,800 portion of the penalty that is not suspended.

- 4 On March 22, 2019, the Commission entered Order 01, Granting Mitigation, in Part, Imposing and Suspending Penalty (Order 01). Order 01 reduced the initial \$7,200 penalty to \$3,600 and suspended a \$1,800 portion of that penalty for a period of two years subject to the conditions set out in paragraph 3, above. Order 01 also permitted the Company to work with Staff to establish a mutually agreeable payment arrangement for the non-suspended \$1,800 portion of the penalty. As of the date of this Order, the Company and Staff have not filed an agreed payment arrangement for Commission approval.
- 5 On April 5, 2019, White Pass filed with the Commission a petition for administrative review of Order 01 (Petition).² The Company seeks further reduction of the penalty but does not challenge the findings Order 01 makes with respect to the violations. In its Petition, the Company contends that it is being treated unfairly. To support its claim, the Company attached a “comparative matrix ... comparing the outcomes with similar violations of 49 C.F.R. 391.45(a) between [the Company] and Coastal Community Action Program (CCAP),” another nonprofit passenger transportation carrier. The Company requests that the \$3,600 penalty, \$1,800 of which is suspended subject to conditions, be further reduced, and that the suspension period be removed.
- 6 On April 15, 2019, Staff responded to the Company’s Petition. Staff explained that it employed different methodologies in the White Pass and CCAP investigations, apparently because White Pass uses commercially licensed drivers (CDL drivers) and CCAP does not. In its investigation of White Pass, Staff followed procedures for investigating companies that employ CDL drivers by reviewing drivers’ daily hours of service records for a six-month period, which led to the discovery of 72 violations of

² Order 01 was a delegated order signed by the Commission’s Executive Director and Secretary. WAC 480-07-903(2)(e)(ii). Pursuant to WAC 480-07-904(4), any person directly affected by a delegated determination may request Commission review of that determination. The Commission uses the same process for review as that applicable to the review of initial orders set forth in WAC 480-07-825.

The Company’s request was styled as a request for reconsideration. We liberally construe filings in order to effect just results. WAC 480-07-395(4). We, therefore, construe the Company’s request for reconsideration as a request for review under WAC 480-07-904(4).

medical certificate requirements. Staff described the scope of its review for CCAP as focused on non-commercial drivers, which did not include hours of service records. Rather, Staff found four employees who did not have currently valid medical certificates on file and cited those violations accordingly. Staff also explained that White Pass requested and received mitigation, which included suspended penalties to encourage future compliance. Because CCAP neither requested nor received mitigation, the assessed penalties were neither reduced nor suspended. Overall, Staff believes its investigation was fair, thorough, and conducted according to established procedures. As such, Staff recommends the Commission uphold the penalty assessed in Order 01.

DISCUSSION AND DECISION

- 7 As a preliminary matter, we find that Staff's investigations of White Pass and CCAP were equally consistent with Commission policies and procedures. Staff's investigation of White Pass examined the daily hours of service records during a six-month period for its CDL drivers, but did not include a review of the daily hours of service for White Pass's non-commercial drivers. CCAP, which employs only non-commercial drivers, was subject to the same review as White Pass with respect to its non-commercial drivers. In other words, neither company's non-commercial drivers were examined for hours of service violations.
- 8 In addition, CCAP was assessed a \$400 penalty for four violations of Commission safety regulations. No mitigation was requested or granted. Here, White Pass was initially assessed a \$7,200 penalty for 72 violations of 49 C.F.R. § 391.45(a). That penalty amount was later reduced to \$3,600 consistent with the Commission's practice of affording some lenience to those companies that promptly correct first-time violations. The Commission further alleviated the financial burden of this penalty by requiring that only \$1,800 be immediately remitted and suspending the remaining portion subject to conditions.
- 9 We find that the seriousness of the violations weighs against additional mitigation of the penalty amount. We, therefore, deny the Company's request to further reduce the penalty. White Pass allowed its employees – who could have had a serious undiagnosed medical condition – to operate its vehicles on 72 occasions without first having been medically examined and certified, which placed both its passengers and the traveling public at risk.
- 10 Although we uphold the penalty assessed in Order 01, we exercise our discretion to suspend a greater portion of the penalty. White Pass is a small, non-profit carrier, and we are sensitive to the impact that a large penalty would create. Our ultimate goal in any

enforcement proceeding is to increase compliance with Commission rules, not to create an insurmountable financial burden for a small company that provides a vital community service. In addition, these are White Pass's first violations of Commission rules. As such, we find that suspending a \$3,200 portion of the penalty, subject to conditions, is appropriate in this instance. Suspension is beneficial in at least two ways: first, the Company is relieved of the financial burden of the full penalty amount; and second, it encourages future compliance with Commission rules to avoid the imposition of the suspended penalty amount.

- 11 We suspend a \$3,200 portion of the penalty amount for a period of two years, after which it will be waived, subject to the following conditions: (1) Staff will conduct a follow-up investigation within two years, or as soon thereafter as practicable; (2) the Company must not incur any repeat violations of critical regulations as a result of this investigation; and (3) the Company must pay the \$400 portion of the penalty that is not suspended within 10 days of the date of this Order.

FINDINGS AND CONCLUSIONS

- 12 (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 private, nonprofit transportation providers, and has jurisdiction over the parties and subject matter of this proceeding.
- 13 (2) White Pass is a private, nonprofit transportation provider subject to Commission regulation.
- 14 (3) White Pass violated 49 C.F.R. § 391.45(a) by allowing drivers who were not medically examined and certified to drive company vehicles on 72 occasions.
- 15 (4) White Pass should be penalized \$3,600 for 72 violations of 49 C.F.R. § 391.45(a).
- 16 (5) Order 01's decision to assess a mitigated penalty of \$3,600 subject to conditions should be affirmed.
- 17 (6) The Commission should exercise its discretion and suspend a \$3,200 portion of the penalty for a period of two years, and then waive it, subject to the conditions set out in paragraph 13, above.

ORDER

THE COMMISSION ORDERS:

- 18 (1) Order 01, Granting Mitigation, in Part, Imposing and Suspending Penalty, is
AFFIRMED, in part, and White Pass Community Service Coalition d/b/a/ Lewis
Mountain Highway Transit's request for review is GRANTED, in part.
- 19 (2) White Pass Community Service Coalition d/b/a Lewis Mountain Highway Transit
is penalized \$3,600 for 72 violations of 49 C.F.R. § 391.45(a).
- 20 (3) The Commission suspends a \$3,200 portion of the penalty for a period of two
years, and then waives it, subject to the conditions set out in paragraph 13, above.
- 21 (4) White Pass Community Service Coalition d/b/a Lewis Mountain Highway Transit
must pay the \$400 portion of the penalty that is not suspended within 10 days of
the effective date of this Order.

DATED at Olympia, Washington, and effective April 29, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner