

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty Assessment Against	DOCKET TE-190996
TRI CITIES LIMO, LLC, d/b/a TRI CITIES LIMO	ORDER 01
in the amount of \$2,500	GRANTING MITIGATION, IN PART; SUSPENDING PENALTY

**BACKGROUND**

1 On December 27, 2019, the Washington Utilities and Transportation Commission (Commission) issued a \$2,500 penalty (Penalty Assessment) against Tri Cities Limo LLC, d/b/a Tri Cities Limo, (Tri Cities Limo or Company). The Commission found that Tri Cities Limo violated Washington Administrative Code (WAC) 480-30-191, Bodily Injury and Property Damage Liability Insurance; and WAC 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR).<sup>1</sup> The Penalty Assessment includes:

- A \$1,700 penalty for 17 violations of WAC 480-30-191 for failing to maintain sufficient insurance coverage on a motor vehicle with a passenger seating capacity of 16 or more (including the driver).
- A \$500 penalty for one violation of 49 CFR § 382.301(a) for using a driver before the motor carrier has received a negative pre-employment controlled substance test result.
- A \$100 penalty for four violations of 49 CFR § 391.51(b)(7) for failing to maintain a medical examiner’s certificate in driver qualification files.
- A \$100 penalty for three violations of 49 CFR § 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance.
- A \$100 penalty for 14 violations of 49 CFR § 396.11(a) for failing to require driver to prepare driver vehicle inspection report.

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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.

- 2 On January 10, 2020, Tri Cities Limo filed with the Commission a request for an extension of time to respond to the Penalty Assessment pending the Company’s appeal of a determination regarding the seating capacity of one of its vehicles. The Commission accordingly suspended the deadline for responding to the Penalty Assessment.
- 3 On March 13, 2020, after Tri Cities Limo failed to prevail in its appeal of the seating capacity determination, the Company admitted the violations and requested mitigation of the penalty. The Company explained that it did not intend to violate the regulations and attempted to remedy the violations within one week of the safety audit. The Company stated that it suspended operations as of December 6, 2019, and it was in the process of closing the business with no intent to resume operations because the business was not profitable.
- 4 On March 19, 2020, Commission staff (Staff) noted that the Company was closing permanently and that it had requested cancellation of its certificate. Staff recommended that the penalty be reduced to \$1,250. Staff also recommended suspending the remaining \$1,250 penalty for a period of two years, and then waiving it, subject to the condition that the Company cease operations.

### **DISCUSSION AND DECISION**

- 5 Washington law requires passenger transportation companies to comply with federal safety requirements and undergo routine safety inspections. Violations discovered during safety inspections are subject to penalties of \$100 per violation.<sup>2</sup> In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.<sup>3</sup> Violations defined by federal law as “critical” meet this standard.<sup>4</sup>
- 6 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

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<sup>2</sup> See RCW 81.04.405.

<sup>3</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶ 12, 15 (Jan. 7, 2013) (Enforcement Policy).

<sup>4</sup> 49 C.F.R. § 385, Appendix B.

ensuring the company's compliance.<sup>5</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>6</sup>

7 Similarly, the Commission considers various factors when entertaining a request for suspending all or part of a penalty. The Commission considers whether it was a first-time violation, whether the company agreed to a compliance plan, and whether other circumstances warrant suspending the penalty.<sup>7</sup>

8 Here, Tri Cities Limo explains that it believed it was in compliance with regulations by transporting no more than 16 passengers at a time in its limo bus. Tri Cities Limo further states that it ceased operations after the failed safety audit. In its reply, Staff recommends mitigating the penalty to \$1,250. Staff recommends mitigating the total penalty amount rather than addressing the penalty assessed for each violation individually.

9 We agree with Staff's recommendation. Tri Cities Limo states that it suspended operations while appealing the safety audit and that it is now closing permanently. In addition, the Company does not have any history of penalties for safety violations. In light of these circumstances, we conclude that a lesser penalty of \$1,250 is sufficient to ensure compliance.

10 We also agree with Staff's recommendation to suspend the \$1,250 penalty for two years, and then waive it, subject to the condition that Tri Cities Limo does not resume operations. The Commission's primary objective in any enforcement action is to ensure compliance with a company's legal obligations; penalties both punish noncompliance and provide an incentive to comply in the future. The assessed penalty would further neither of these goals if the Company is no longer operating in Washington. Accordingly, the Commission's standard practice is to suspend or waive penalties against companies who surrender their operating authority and cease operations.<sup>8</sup>

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<sup>5</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

<sup>6</sup> Enforcement Policy ¶19.

<sup>7</sup> Enforcement Policy ¶20.

<sup>8</sup> See, e.g., *Washington Utils. & Transp. Comm'n v. Seventh Generation*, Docket TC-140414, Notice (June 25, 2015) (waiving suspended penalty after company voluntarily surrendered its certificate and was no longer in business); *In re Big Sky Bus Lines, Inc.*, Docket TE-160687, Notice Withdrawing Penalty (July 13, 2016) (withdrawing penalty against company that cancelled its certificate).

11 In the event the Company applies for any type of motor carrier or passenger transportation authority from the Commission in the next two years, it will be required to first pay the \$1,250 penalty prior to obtaining a certificate or permit. Moreover, if Staff discovers that Tri Cities Limo has resumed regulated operations without first obtaining the requisite authority from the Commission at any point within the next two years, the \$1,250 suspended penalty will become immediately due and payable without further Commission order.

### FINDINGS AND CONCLUSIONS

- 12 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate passenger transportation companies, and the Commission has jurisdiction over the parties and subject matter of this proceeding.
- 13 (2) Tri Cities Limo, LLC, is a transportation company subject to Commission regulation.
- 14 (3) Tri Cities Limo, LLC, committed the following violations:
- Seventeen violations of WAC 480-30-191 for failing to carry sufficient insurance coverage for a motor vehicle with capacity for sixteen or more passengers.
  - One violation of 49 CFR § 382.301(a) for using a driver before the motor carrier has received a negative pre-employment controlled substance test result.
  - Four violations of 49 CFR § 391.51(b)(7) for failing to maintain medical examiner's certificate in driver's qualification file.
  - Three violations of 49 CFR § 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance.
  - Fourteen violations of 49 CFR § 396.11(a) for failing to require driver to prepare driver vehicle inspection report.
- 15 (4) Tri Cities Limo, LLC, should be penalized a total of \$1,250 for each of the violations identified in paragraph 14, above.
- 16 (5) The \$1,250 penalty against Tri Cities Limo, LLC, should be suspended for a period of two years, and then waived, subject to the condition that it refrains from engaging in any operations regulated by the Commission.

**ORDER**

THE COMMISSION ORDERS:

- 17 (1) Tri Cities Limo, LLC's request for mitigation of the \$2,500 penalty is GRANTED, in part, and the penalty is reduced to \$1,250.
- 18 (2) The \$1,250 penalty is suspended for a period of two years, and then waived, subject to the following conditions: (1) Tri Cities Limo, LLC, refrains from engaging in any type of motor carrier or passenger transportation operations that require authority from the Commission in the next two years without first obtaining the required certificate from the Commission, and (2) if Tri Cities Limo, LLC, applies for any type of operating authority from the Commission within two years, Tri Cities Limo, LLC, must first pay the reduced penalty of \$1,250 before such authority will issue.
- 19 (3) In the event that Tri Cities Limo, LLC, resumes regulated operations without first obtaining the requisite authority from the Commission at any point within the next two years, the \$1,250 suspended penalty will become immediately due and payable without further Commission order.
- 20 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-903(2)(e).

DATED at Olympia, Washington, and effective March 31, 2020.

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.**