

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty Assessment Against	DOCKET TV-240672
John Frank, LLC	ORDER 01
in the amount of \$12,900	GRANTING MITIGATION, IN PART

BACKGROUND

- 1 On September 20, 2024, the Washington Utilities and Transportation Commission (Commission) issued a \$12,900 penalty (Penalty Assessment) against John Frank, LLC (John Frank or Company). The Commission found that John Frank violated Washington Administrative Code (WAC) 480-15-555, Criminal Background Checks for Prospective Employees; and WAC 480-15-560 which adopts by reference Title 49 Code of Federal Regulations (49 C.F.R.) Part 391 - Qualifications of Drivers, 49 C.F.R. Part 393 - Parts and Accessories Necessary for Safe Operation, and 49 C.F.R. Part 395 - Hours of Service of Drivers.¹
- 2 The Revised Code of Washington (RCW) 81.04.405 allows for penalties of \$100 for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation
- 3 The \$12,900 Penalty Assessment against John Frank for the violations discovered during its safety investigation were calculated as follows:
 - A \$300 penalty for three violations of WAC 480-15-555(1) for failing to complete a national criminal background check prior to hiring employees Oleksandr Bahrii, Oleh Bychkiv, and Oleksandr Talan.

¹ WAC 480-15-560 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 Vehicle Identification Number (VIN) 1FDWE3FL3BDA79637.

- A \$12,300 penalty for 123 violations of 49 C.F.R. § 391.45(a) for drivers Oleksandr Bahrii, Oleh Bychkiv, and Oleksandr Talan, who were not medically examined and certified between February 14, 2024, and August 5, 2024, at a penalty assessment of \$100 for each occurrence.
- A \$100 “per category” penalty for three violations of 49 C.F.R. § 391.51(b)(2) for failing to maintain inquiries into driver's driving record in driver's qualification files for employees Oleksandr Bahrii, Oleh Bychkiv, and Oleksandr Talan.
- A \$100 “per category” penalty for 424 violations of 49 C.F.R. § 395.8(k)(1) for failing to preserve driver's record of duty status for 6 months of employees Oleksandr Bahrii, Oleh Bychkiv, Olekskii Guk, and Anton Korovchenko.
- A \$100 penalty for one violation of 49 C.F.R. § 393.41 for having an inoperative parking brake on one of its commercial vehicles which was placed out-of-service.²

4 On September 26, 2024, the Commission issued a Notice of Intent to Cancel John Frank’s Permit as a Household Goods Carrier and instructed the Company to submit its proposed safety management plan (SMP) no later than October 10, 2024.

5 On October 7, 2024, John Frank filed a response to the penalty assessment, accepted responsibility, and requested mitigation of the penalties. In the application for mitigation, John Frank did not request a hearing, but rather requested the Commission consider its: (1) inexperience in the industry as a new business; (2) language barriers that contributed to compliance issues; and (3) corrective measures it implemented in its SMP to ensure the violations would not recur.³

6 On October 17, 2024, Commission Staff (Staff) filed an exhibit and witness list and proposed exhibits,⁴ and on October 22, 2024, John Frank submitted an updated SMP addressing each violation noted during the investigation.

² Vehicle Identification Number (VIN) 1FDWE3FL3BDA79637.

³ Docket TV-240672, Application for Mitigation on behalf of John Frank LLC (October 7, 2024).

⁴ In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. RCW 34.05.455.

7 On October 23, 2024, Staff advised the Commission that the Company waived its right to a hearing and requested that the Brief Adjudicative Proceeding (BAP) scheduled for October 24, 2024, be cancelled given the parties were working to resolve this matter and preferred a paper record decision. On this same date the Presiding Office issued a Notice Cancelling the BAP.

8 On October 24, 2024, Staff filed John Frank's Waiver of Hearing in the docket together with its evaluation of the Company's updated SMP. Staff submits that the Company provided an updated SMP that meets the legal requirements of 49 C.F.R. § 385 and has taken corrective action to develop a compliant safety program and to implement systems to prevent future repeat violations.⁵

9 In its evaluation, Staff accepts John Frank's updated SMP and recommends that the Commission: (1) not cancel its provisional permit; (2) upgrade its satisfactory safety rating to conditional; and (3) extend the provisional period to such time that the Company receives a satisfactory safety rating subject to the following:

(1) Staff perform a follow-up safety investigation at least six months from the date of the order;

(2) John Frank maintain a conditional safety rating during the provisional period; and

(3) John Frank not incur any repeat violations of critical regulations upon reinspection that would result in the Commission finding good cause to cancel the Company's Operating authority.

10 Regarding the penalty violations, because John Frank provided Staff with evidence that it corrected these first-time violations and implemented procedures to prevent future occurrences, Staff recommends that the \$12,900 penalty be reduced to \$6,450. Staff further recommends that the Commission suspend \$3,200 of the reduced penalty for two years, and then waive it, subject to:

(1) John Frank paying the \$3,250 that is not suspended; and

(2) John Frank not incurring any repeat violations of critical-type regulations within the suspension period.

⁵ Docket TV-240672, Staff evaluation of safety management plan and recommendation (Staff Evaluation) at pg. 3 (October 24, 2024).

DISCUSSION

- 11 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.⁶ In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.⁷ Violations defined by federal law as “critical” meet this standard.⁸
- 12 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.⁹ The Commission also considers whether the violations were promptly corrected, a company’s history of compliance, and the likelihood the violation will recur.¹⁰ We address each violation category below.
- 13 **49 C.F.R § 391.45(a), 391.51(b)(2), 395.8(k)(1), and WAC 480-15-555(1).** Although the proposed unsatisfactory safety rating and \$12,900 penalty assessment was based on four critical first-time regulation violations,¹¹ we agree with Staff that John Frank’s updated SMP meet the legal requirements of 49 C.F.R. § 385. This is evidenced by the new systems and safety programs the Company implemented, and the documentationsubmitted demonstrating its legal compliance with the following:

- (1) Ensuring all its drivers possessed a valid medical examiner certificate in accordance with 49 C.F.R § 391.45(a) as of August 6, 2024, tracking expiration dates and sending google auto-generated calendar reminders one month before renewal due date.¹²

⁶ See RCW 81.04.405.

⁷ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission at pg. 6-8 ¶ 12, 15 (Jan. 7, 2013) (Enforcement Policy).

⁸ 49 C.F.R. § 385, Appendix B.

⁹ Docket A-120061, Enforcement Policy.

¹⁰ Enforcement Policy at pg. 6 ¶ 12.

¹¹ Critical regulations are those identified where the non-compliance relates to inadequate management and operational controls.

¹² Docket TV-240672, John Frank - Safety Management Plan (SMP) redacted at pgs. 11-21 (filed October 24, 2024, together with Staff Evaluation of updated SMP).

- (2) Obtaining motor vehicle reports (MVRs) in accordance 49 C.F.R § 391.51(b)(2), of all existing drivers and new drivers within 30 days of hire, properly documenting driver qualifications through third-party Checkr.com provider, tracking expiration dates, and sending google auto-generated calendar reminders one month before renewal due date.¹³
- (3) Preserving driver's records of duty status through google drive to ensure compliance with 49 C.F.R § 395.8(k)(1).¹⁴
- (4) Conducting criminal background checks for all current employees and prospective employees through Checkr.com third-party provider to comply with WAC 480-15-555(1).

14 John Frank also provided documentation of company policies and procedures, driver qualification, vehicle maintenance, hours of service records storage, criminal background documents, and updated compliance forms, as well as snapshots of calendar reminders for future compliance due dates.

15 We agree with Staff's recommendation. John Frank admitted the violations and took prompt remedial action. Additionally, it appears unlikely that the above violations will recur in light of the new procedures the Company implemented.

16 **49 C.F.R. § 393.41.** The Penalty Assessment includes a \$100 penalty for one violation of 49 C.F.R. § 393.41 for having an inoperative parking brake on one of its commercial motor vehicles.

17 In response to the safety inspection, the Company had all its commercial vehicles serviced and produced annual vehicle inspection reports dated August 8, 2024, demonstrating each vehicle passed inspection. Additionally, Staff confirmed that the Company took the required steps to bring its safety operations in compliance with Commission regulations.

18 Therefore, we agree with Staff's evaluation of John Frank's SMP and adopt Staff's recommendations to not cancel the Company's provisional permit, to upgrade its satisfactory safety rating to conditional, and extend the provisional period to such time

¹³ Docket TV-240672, John Frank - Safety Management Plan (SMP) redacted at pgs. 22-54 (filed October 24, 2024, together with Staff Evaluation of updated SMP).

¹⁴ *Id* at 55-62.

that the Company receives a satisfactory safety rating subject to the conditions summarized above in paragraph 9 (1-3).

- 19 We further agree with Staff's recommendation regarding penalty violations and reduce the \$12,900 penalty to \$6,450, with \$3,200 of the reduced penalty to be suspended for two years, and then waived provided John Frank: (1) pays the \$3,250 portion of the penalty that is not suspended, and (2) does not incur any repeat violations of critical-type regulations within the suspension period.

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 household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 21 (2) John Frank is a transportation company subject to Commission regulation.
- 22 (3) John Frank violated WAC 480-15-555(1) by failing to complete a criminal background check for every person the carrier intended to hire.
- 23 (4) John Frank should be penalized \$300 for three violations of WAC 480-15-555(1).
- 24 (5) John Frank violated 49 C.F.R. § 391.45(a) when it allowed drivers Oleksandr Bahrii, Oleh Bychkiv, and Oleksandr Tala to operate a motor vehicle without a valid medical certificate on 123 occasions between February 14, 2024, and August 5, 2024.
- 25 (6) John Frank should be penalized \$12,300 for 123 violations of 49 C.F.R. § 391.45(a).
- 26 (7) John Frank violated 49 C.F.R. § 391.51(b)(2) by failing to maintain inquiries into driver's driving record in driver's qualification file.
- 27 (8) John Frank should be penalized for \$100 for three violations of 49 C.F.R. § 391.51(b)(2).
- 28 (9) John Frank violated 49 C.F.R. § 395.8(k)(1) by failing to preserve driver's record of duty status for six months.

- 29 (10) John Frank should be penalized \$100 for 424 violations of 49 C.F.R. §
395.8(k)(1).
- 30 (11) John Frank violated 49 C.F.R. § 393.41 by operating a commercial vehicle with a
defective parking brake system.
- 31 (12) John Frank should be penalized \$100 for the inoperative parking brake violation.

ORDER

THE COMMISSION ORDERS:

- 32 (1) John Frank LLC's request for mitigation of the \$12,900 penalty is GRANTED, in
part, and the penalty is reduced to \$6,450. Additionally, a \$3,200 portion of the
reduced penalty is suspended for a period of two years, to be waived, subject to
the conditions identified in paragraph 10 of this order.
- 33 (2) John Frank, LLC shall pay the mitigated \$3,250 portion of the penalty not
suspended within 14 days of the effective date of this order.
- 34 The Secretary has been delegated authority to enter this order on behalf of the
Commissioners under WAC 480-07-903(2)(e).

DATED at Lacey, Washington, and effective December 24, 2024.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Jeff Killip
Executive Director and Secretary
By: /s/ Kathy Hunter
Transportation and Safety Director
Executive Director's Designee

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.