

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of  PUGET EXPRESS, LLC  For Compliance with WAC 480-30-221	DOCKET TE-170951 <i>(Consolidated)</i>  ORDER 04
In the Matter of the Penalty Assessment Against  PUGET EXPRESS, LLC  In the amount of \$8,300	DOCKET TE-170950 <i>(Consolidated)</i>  ORDER 04
In re the Application of  PUGET EXPRESS, LLC  For the Reinstatement of Previously Canceled Charter and Excursion Carrier Services Certificate	DOCKET TE-190030 <i>(Consolidated)</i>  ORDER 01  ORDER OF CONSOLIDATION; GRANTING EXEMPTION; UPGRADING SAFETY RATING TO CONDITIONAL; REINSTATING CERTIFICATE SUBJECT TO CONDITION

**BACKGROUND**

- 1 On September 13, 2017, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel Certificate as a Charter and Excursion Carrier; Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements in the Matter of the Investigation of Puget Express, LLC (Puget Express or Company) for Compliance with Washington Administrative Code (WAC) 480-30-221 in Docket TE-170951. Also on September 13, 2017, the Commission assessed a penalty of \$8,300 in Docket TE-170950 against Puget Express for 83 acute and critical violations of WAC 480-30-221.

- 2 On October 18, 2017, the Commission convened a brief adjudicative proceeding to address the issues in both dockets. On October 27, 2017, the Commission entered Order 01, which cancelled Puget Express’s charter party and excursion carrier certificate and imposed \$8,200 in penalties. Order 01 suspended a \$5,200 portion of the penalty subject to several conditions, including the requirement that Puget Express cease and desist all charter party and excursion operations. Order 01 explained that Puget Express had 30 days from the date of Order 01 to request reinstatement of its certificate.
- 3 On February 9, 2018, Commission staff (Staff) filed with the Commission a letter alleging that Puget Express continued to offer and advertise charter party and excursion service in violation of Order 01. That same day, Puget Express responded to Staff’s letter and conceded that it “might have quoted customers” prices for charter party service. The Company did not request a hearing to contest the violations.
- 4 On February 28, 2018, the Commission entered Order 02, Imposing Suspended Penalties. The Commission entered Order 03 on April 20, 2018, which approved a payment arrangement mutually agreed to by Staff and the Company. On July 19, 2018, the Company paid the penalty in full.
- 5 On January 4, 2019, Puget Express submitted to Staff a proposed safety management plan that addresses each of the violations cited in Staff’s 2017 safety investigation.
- 6 On January 16, 2019, Puget Express filed with the Commission an application for reinstatement of its charter and excursion carrier certificate in Docket TE-190030 (Application). The Application stems from the Commission’s decision to cancel the Company’s certificate in Dockets TE-170950 and TE-170951. As such, all three dockets share the same facts and principles of law. The Commission accordingly exercises its discretion to consolidate the Application in Docket TE-190030 with the cancellation proceeding in consolidated Dockets TE-170950 and TE-170951.
- 7 On April 8, 2019, Staff filed with the Commission its evaluation of the Company’s proposed safety management plan (Evaluation). Staff’s Evaluation notes that the Company’s plan:
- Demonstrates that the Company understands the applicable state and federal regulations;
  - Identifies how the violations occurred;
  - Describes the actions taken to correct each of the violations, including contracting with a safety consultant to assist with overseeing safety compliance;

- Documents the Company’s drug and alcohol testing policy;
- Provides proof of insurance; and
- Documents driver qualifications, method for recording hours of service, and vehicle maintenance.

8 Staff conducted new entrant training with Company owner Isaiah Fikre on March 21, 2019. Staff also inspected three vehicles and found no safety violations.

9 Staff recommends the Commission upgrade Puget Express’s safety rating to conditional and reinstate the Company’s certificate.

### DISCUSSION AND DECISION

10 As a preliminary matter, we resolve two procedural issues. First, WAC 480-30-181 provides that the Commission may reinstate a certificate canceled for cause if a company corrects all of the conditions that led to the cancellation and files an application to reinstate its authority within 30 days of the cancellation order service date. Here, the 30-day window for reinstatement expired on November 17, 2017.

11 Under WAC 480-07-110(1), the Commission may, on its own initiative, grant an exemption from, or modify the application of, any of its rules in individual circumstances if the exemption or modification is consistent with the public interest, the purposes underlying regulation, and applicable statutes. We find that such circumstances exist here. Although more than one year has transpired since the Commission canceled Puget Express’s charter and excursion carrier certificate, allowing the Company to apply for reinstatement of its certificate rather than requiring the Company to file a new application equally serves the Commission’s ultimate goal of bringing the Company into compliance.<sup>1</sup> Specifically, the reinstatement standard requires a carrier to correct the deficiencies that led to the cancellation of its certificate, which Puget Express has achieved to Staff’s satisfaction. Accordingly, we find that granting an exemption to the 30-day requirement in WAC 480-30-181 is consistent with the public interest, the purposes underlying regulation, and applicable statutes.

12 Second, WAC 480-07-395(4) provides that the Commission will liberally construe pleadings and motions to effect justice among the parties. The Commission will consider pleadings and motions based primarily on the relief they request and will not rely solely on the name of a given document.<sup>2</sup> Here, Staff filed a document entitled “Evaluation of Safety Management Plan for Safety Rating Upgrade” in which Staff recommends the

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<sup>1</sup> We note both new applications and applications for reinstatement require the same form and \$200 fee.

<sup>2</sup> WAC 480-07-395(4).

Commission grant the Company's request to upgrade its safety rating and approve its Application. Accordingly, we construe Staff's Evaluation and the Company's request as a joint motion to: 1) upgrade the Company's safety rating in Dockets TE-170951 and TE-170950; and, 2) approve the Application in Docket TE-190030.

- 13 We grant the parties' joint motion. According to Staff's Evaluation, Puget Express'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. Staff thus concludes that Puget Express's safety management plan is acceptable and satisfies the legal requirements of 49 CFR Part 385. We agree.
- 14 Based on Staff's Evaluation, the Commission finds that the Company has achieved compliance with WAC 480-30-221 by correcting the violations that led to the unsatisfactory safety rating. Accordingly, the Commission agrees with Staff's recommendation and concludes that the Company's safety rating should be upgraded to conditional, and that its certificate should be reinstated.
- 15 We are concerned, however, with the Company's significant history of non-compliance with Commission laws and rules. While we are cautiously optimistic that the Company has made positive, permanent changes, we agree with Staff that a non-rated follow-up safety review is appropriate within one year of the Company's reinstatement. Further, we also require Staff to conduct a rated safety review within two years, and condition the Company's reinstatement of its certificate on the requirement that the Company achieve a satisfactory safety rating following the rated review. Staff's non-rated review at one year should provide the Company with valuable technical assistance to help the Company achieve a satisfactory safety rating during the rated review. If the Company fails to achieve a satisfactory safety rating as a result of the rated review, the Commission should cancel the Company's certificate for failure to comply with the terms of this Order.

## **ORDER**

THE COMMISSION ORDERS That

- 16 (1) Puget Express, LLC's safety rating is upgraded to conditional.
- 17 (2) Commission Staff will conduct a non-rated safety review within one year to evaluate Puget Express, LLC's compliance with applicable laws and rules.

- 18 (3) Commission Staff will conduct a rated safety review within two years to evaluate Puget Express, LLC's compliance with applicable laws and rules.
- 19 (4) Puget Express, LLC's charter and excursion carrier certificate is reinstated subject to the condition that Puget Express, LLC achieves a satisfactory safety rating as a result of Staff's rated safety review.
- 20 (5) If Puget Express, LLC fails to achieve a satisfactory safety rating as a result of Staff's rated safety review, the Commission will cancel Puget Express, LLC's charter and excursion carrier certificate for failure to comply with the terms of this Order.

DATED at Olympia, Washington, and effective April 10, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON  
Administrative Law Judge