



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • TTY (360) 586-8203

April 26, 2016

Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

RE: *Washington Utilities and Transportation Commission v. Pacific Northwest
Transportation Service, Inc. d/b/a Capital Aeroporter*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TC-160332

Dear Mr. King:

On March 29, 2016, the Washington Utilities and Transportation Commission (commission) issued Penalty Assessment TC-160332 against Pacific Northwest Transportation Services, Inc. d/b/a Capital Aeroporter in the amount of \$200, for two violations of WAC 480-30-221 Vehicle and Driver Safety Requirements, which requires charter and excursion carriers to comply with CFR Part 391 – Qualifications of Drivers, as follows:

- **One violation of CFR Part 391.51(b)(2) – Failing to maintain driving record inquiries in driver's qualification file.** Capital Aeroporter failed to maintain driving record inquiries in the qualification files of drivers Jeffery Dunlap, Oscar Bailey, and Chris Hoffman.¹
- **One violation of CFR Part 391.51(b)(7) – Failing to maintain medical examiner's certificate in driver's qualification file.** Capital Aeroporter failed to maintain medical examiner's certificates in the qualification files of drivers Paul Vitous and Chris Hoffman.

¹ The penalty assessment incorrectly cited CFR 391.52(b)(2). The correct citation, as noted here, is CFR 391.51(b)(2).

On April 13, 2016, the carrier filed with the commission its request for mitigation of penalties. John Fricke, Vice President – Operations of Capital Aeroporter, contested the violation of CFR 391.51(b)(2), admitted the violation of CFR 391.51.(b)(7), and asked that the penalties be reduced for the reasons set out in the response.

Capital Aeroporter operates as an auto transportation carrier under permit number C-000862. On February 23, 2016 Motor Carrier Safety Investigator Sandra Yeomans conducted a compliance review investigation, which is an in-depth examination of the motor carrier's compliance with regulations that the FMCSA has identified as “acute” or “critical.”² Violations of acute regulations are those so severe as to require immediate corrective actions by a motor carrier regardless of the overall safety posture of the motor carrier. Violations of critical regulations are generally indicative of breakdowns in a carrier's management controls. Non-compliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and unusually higher than average accident rates.³ Ms. Yeomans found two violations of critical regulations, both of which were first-time violations.

The commission’s Enforcement Policy provides that some commission requirements are so critical to safe operations that the commission may issue penalties for a first-time violation, even if staff has not previously provided technical assistance on specific issues.⁴

In the Mitigation Request, Mr. Fricke requested non-specified relief of the assessed penalty. Staff’s response is provided.

1. **Mitigation Request:** CFR 391.51(b)(2) Failing to maintain driving record inquiries in driver’s qualification file. Capital Aeroporter failed to maintain driving record inquiries in the qualification files of drivers Jeffery Dunlap, Oscar Bailey, and Chris Hoffman. The company contests this violation, stating that the required documentation was present in the employee files at the time of the compliance review.

Staff Response: Staff met with the company to close the compliance review and reviewed the documentation presented by the company in support of its mitigation request. Staff confirmed that the documents presented in rebuttal are not the correct documents to meet the requirements of CFR 391.51(b)(2). The company disputes and has failed to correct this violation. Because this is a critical violation, staff recommends no mitigation of the \$100 penalty.

² Code of Federal Regulations, [Appendix B to Part 385—Explanation of safety rating process](#)

³ *Id.*

⁴ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

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2. **Mitigation Request:** CFR 391.51(b)(7) Failing to maintain medical examiner's certificates in the driver qualification files of drivers Paul Vitous and Chris Hoffman. The company acknowledged that staff did not find the required documentation during the compliance review. Both drivers did have current certificates in their possession. Copies were made and placed in the respective driver qualification files. Mr. Hoffman's previous copy was eventually located in his file, having been copied onto the back of Hoffman's Employment Eligibility Verification (I-9) form. Mr. Vitous' previous copy was never located and the company states that it had been misfiled.

Staff Response: Staff determined both drivers had been medically examined and certified and did not drive company vehicles otherwise. Mr. Hoffman's medical certificate was eventually located in the file, among some employment documents unrelated to driver qualifications. Mr. Vitous' medical certificate was missing from the driver qualification file.

One medical certificate missing from one driver qualification file does not establish a pattern, and therefore, this violation does not rise to the level of critical. Staff recommends dismissal of this penalty and wishes to apologize for any inconvenience caused.

Capital Aeroporter is a medium-sized company with 23 commercial vehicles with 36 drivers. The company reported \$2.3 million in gross revenue for 2015 and logged 1.3 million miles.

Staff recommends adjustment of the penalty amount from \$200 to \$100. This amount reflects no mitigation of the \$100 penalty for violation of CFR 391.51(b)(2), and dismissal of the penalty for CFR 391.51(B)(7).

If you have any questions, please contact Mike Turcott, Compliance Investigator, Transportation Safety, at 360-664-1174, or by e-mail at miturcot@utc.wa.gov.

Sincerely,



David Pratt

Assistant Director, Transportation Safety

Enclosures