



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

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

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September 1, 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 vs. Explorers 3 LLC, d/b/a  
Evergreen Escapes*  
Commission Staff's Response to Application for Mitigation of Penalties  
Docket TE-160946

Dear Mr. King:

On August 16, 2016 Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment TE-160946 against Explorers 3 LLC dba Evergreen Escapes in the amount of \$5,500 for three violations of WAC 480-30-221 Vehicle and Driver Safety Requirements, which requires charter and excursion carriers to comply with Title 49 CFR Part 391 – Qualifications of Drivers, as follows:

- **Three violations (55 occurrences) of CFR Part 391.45(a) – Using a driver not medically examined and certified.** Evergreen Escapes allowed employees Martin Wentzel, Jeff Carter and Shawna Sherman to drive on 55 occasions during the first six months of 2016 without a current certificate of medical examination.

On August 26, 2016, Evergreen Escapes filed with the Commission its application for mitigation of penalties (Mitigation Request). Eric Rupp, Director of Tour Operations, admitted the violations, provided a detailed explanation of the corrective action steps taken by the company, and asked that the penalties be reduced for the reasons set out in his response.

Evergreen Escapes operates as a charter and excursion carrier under permit number CH-065289. In July 2016, Motor Carrier Safety Investigator Wayne Gilbert conducted a compliance review

inspection, an in-depth examination of the motor carrier's compliance with regulations that the FMCSA has identified as "acute" or "critical."<sup>1</sup> Acute regulations are identified where noncompliance is so severe as to require immediate corrective actions 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.<sup>2</sup> Mr. Gilbert found 50 total violations, all of which were first-time violations.

The commission's Enforcement Policy, however, 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.<sup>3</sup> Of the 50 violations found, three were of acute or critical regulations.

In the Mitigation Request, Mr. Rupp admitted the violations and provided a detailed explanation of how the violations were allowed to occur and the corrective steps taken to prevent future occurrences. Mr. Rupp also provided a copy of the company's newly created Driver and Vehicle Safety Manual. Staff provides its response below:

1. **Three violations (55 occurrences) of CFR Part 391.45(a) – Using a driver not medically examined and certified.** Evergreen Escapes identified three factors within its operations that allowed these violations to occur. Previously, responsibility for the contents of the drivers' qualification files rested solely with the individual employees. In addition, the only manager who possessed knowledge of the vehicle and driver safety requirements was absent for a significant period of time. Finally, there was no structured schedule for periodic self-audits. Evergreen Escapes addressed each of these shortcomings in its response.

The company also offers for consideration that it operates in several states, and as a stand-alone, its Washington operations produced \$442,241 of the \$1,575,000 in gross revenue noted in the Penalty Assessment.

**Staff response:** Evergreen Escapes admitted the violations, provided copies of the employees' current medical certificates and a detailed plan to prevent future occurrences. Staff recommends mitigation of the \$5,500 penalty to \$3,000.

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

2 *Id.*

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

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Evergreen Escapes is a small company currently operating two commercial vehicles with twelve operations. The company reported \$1,575,000 in gross revenue and 94,870 miles traveled in 2015.

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](mailto:miturcot@utc.wa.gov).

Sincerely,



David Pratt  
Assistant Director, Transportation Safety

Enclosures