



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

January 26, 2018

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. BML Investments LLC,
d/b/a Wenatchee Valley Shuttle*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TE-171193

Dear Mr. King:

On January 5, 2018, the Washington Utilities and Transportation Commission (Commission) issued a penalty assessment against BML Investments d/b/a Wenatchee Valley Shuttle (Wenatchee Valley Shuttle) in the amount of \$1,500 for violation of WAC 480-30-221 Vehicle and Driver Safety Requirements, which requires charter and excursion companies to comply with Title 49 CFR Part 382 – Controlled Substances and Alcohol Use and Testing, as follows:

- **One violation of Title 49 CFR Part 382.305(a) – Failing to implement a random controlled substance and/or alcohol testing program.** Wenatchee Valley Shuttle had no controlled substance testing program prior to April of 2017.

On January 19, 2018, Wenatchee Valley Shuttle filed with the commission its application for mitigation of penalties (Mitigation Request). Monique Lott, owner of Wenatchee Valley Shuttle, admitted the violations but asked that the penalties be reduced for the reasons set out in the response.

In December 2017, Motor Carrier Safety Investigator Francine Gagne completed a routine safety investigation of Wenatchee Valley Shuttle. A safety investigation is an in-depth examination of the motor carrier's compliance with regulations that the FMCSA has identified as "acute" or

“critical.”¹ 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.² Ms. Gagne documented 101 total violations, 11 of which were of critical or acute regulations, resulting in a satisfactory safety rating.

The Commission's Enforcement Policy, however, provides that some Commission requirements are so critical to safe operations that it may issue penalties for a first-time violation, even if staff has not previously provided technical assistance on specific issues. The Commission will assess penalties for any repeat violations of critical regulations, including for each occurrence of a repeat violation.³

In the Mitigation Request, Ms. Lott admitted the violation and stated that the violation had been corrected. Staff's response to each factor is included below.

Mitigation Request: Title 49 CFR Part 382.305(a) – Failing to implement a random controlled substance and/or alcohol testing program.

In the Mitigation Request, Ms. Lott admitted that Wenatchee Valley Shuttle operated without an approved testing program and implied that she did not fully understand the requirements for drug and alcohol testing as they related to vehicle size and commercial drivers' licenses. When Ms. Lott realized the company was out of compliance she immediately corrected the violation by enrolling in an approved program.

Staff Response: Safety requirements vary depending on the size of vehicle operated. In April 2017, Wenatchee Valley Shuttle identified and corrected this violation on its own accord, prior to staff's safety investigation in December. Therefore, staff recommends the Commission reduce the penalty from \$1,500 to \$800. Staff also recommends the Commission suspend \$400 of the remaining penalty on the condition Wenatchee Valley Shuttle pay the balance and have no similar violations for two years.

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

² *Id.*

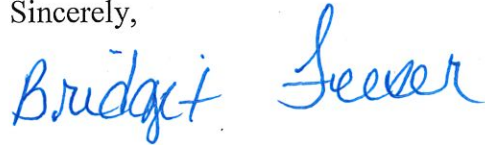
³ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

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Wenatchee Valley Shuttle is a small company with eleven drivers and eight commercial vehicles. In 2016, the company reported \$853,300 in gross revenue and 455,000 miles traveled.

If you have any questions, please contact Mike Turcott, Compliance Investigations Supervisor, Consumer Protection, at (360) 664-1174, or by e-mail at mike.turcott@utc.wa.gov.

Sincerely,



Bridgit Feeser
Assistant Director, Consumer Protection