

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment)	DOCKET TE-150531
Against)	
)	ORDER 01
BREMERTON-KITSAP AIRPORTER,)	
)	ORDER UPHOLDING PENALTY
in the amount of \$1,000)	ASSESSMENT AND DENYING
)	MITIGATION
.....)	

BACKGROUND

- 1 Washington law requires persons operating as a motor carrier in this state to comply with federal motor carrier safety regulations concerning controlled substances and alcohol use and testing. Failure to maintain a testing program that complies with these requirements is subject to a penalty of up to \$1,500 and an additional \$500 for each noncompliant motor vehicle driver. RCW 80.04.530.
- 2 On February 26, 2015, Commission staff (Staff) conducted a compliance review inspection of Bremerton-Kitsap Airporter (BTA or Company). Staff found 20 violations of the testing program requirements, and two of those violations were critical.
- 3 On June 10, 2015, the Commission assessed a penalty of \$1,000 against BTA. The Commission exercised its discretion to impose only a penalty of \$500 for each of the two critical violations of using a driver prior to receiving a negative pre-employment controlled substance and alcohol use test result.
- 4 On June 15, 2015, BTA responded to the Commission’s penalty assessment, denying the violations and requesting that the penalties be discharged or dismissed. The Company contends that its response to a separate letter from Staff requesting a response to the violations “will put the matter to rest.”
- 5 On June 24, 2015, Staff filed a response recommending that the Commission deny BTA’s request to discharge or dismiss the penalty. Staff asserts that the information the Company provided demonstrates that it did not receive negative test results for two drivers until after each of them had begun driving for BTA. Staff also states that it is available to assist BTA with developing an alcohol and drug abuse policy that complies with applicable requirements.

DISCUSSION

6 The Commission upholds the penalty assessment and denies BTA's request for mitigation. We agree with Staff that the Company has not provided any documentation that disproves the alleged violations. To the contrary, the copies of letters and email correspondence BTA submitted detailing the exchange of information between Staff and the Company support the finding that two of its drivers began driving before BTA received the results of those employees' drug and alcohol tests. Such conduct poses a serious threat to public safety and thus is a critical violation of Washington and federal law that warrants the maximum statutory penalty. We also encourage BTA to work with Staff to bring the Company's controlled substance and alcohol testing program into compliance with applicable legal requirements.

ORDER

THE COMMISSION ORDERS:

- 7 (1) Bremerton-Kitsap Airporter's challenge to the penalty assessment and request for mitigation is DENIED.
- 8 (2) The \$1,000 penalty is due and payable no later than July 10, 2015.
- 9 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective June 30, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
Executive Director and Secretary

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.