



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

621 Woodland Square Loop S.E. • Lacey, Washington 98503

P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • TTY (360) 586-8203

August 9, 2019

Mark L. Johnson
Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

RE: *Washington Utilities and Transportation Commission v. Customized Tours & Charter Service, LLC d/b/a Customized Tours & Charter Service; Customized Tours; Tours of Seattle; Customized Charters; Seattle Charters; and TourSeattle.com*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TE-190523

Dear Mr. Johnson:

On July 3, 2019, the Washington Utilities and Transportation Commission (commission) issued a penalty assessment against Customized Tours & Charter Service, LLC d/b/a Customized Tours & Charter Service; Customized Tours; Tours of Seattle; Customized Charters; Seattle Charters; and TourSeattle.com (Customized Tours or company) in the amount of \$4,400 for violations of Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 383 – Commercial Driver's License Standards; Requirements and Penalties, as follows:

- **Forty-four violations of Title 49 CFR Part 383.37(a) – Knowingly allowing, requiring, permitting, or authorizing an employee to operate a CMV during any period in which the driver does not have a current CLP or CDL or does not have a CLP or CDL with the proper class or endorsements.** Customized Tours allowed driver Cesar Hernandez to operate a commercial motor vehicle with a downgraded CDL between January 30, 2019, and June 5, 2019.

On July 18, 2019, the commission received Customized Tours' request to contest the violations. Part of the company's reason for contention was that they did not "knowingly" allow a driver to drive with a downgraded CDL. Staff communicated with the company that the full language of CFR Part 383.37(a) includes "should reasonably know."

Based on the conversations with staff, the company requested to change its position from contesting the violations to an application for mitigation.

On August 2, 2019, the commission received Customized Tours' request for mitigation of penalties. In the request for mitigation, Joel Mensonides, General Manager of Customized Tours, admitted the violations, and asked for a commission decision based solely on the information provided. Staff's response to the mitigation request is below.

- **Mitigation Request: Title 49 CFR Part 383.37(a) – Knowingly allowing, requiring, permitting, or authorizing an employee to operate a CMV during any period in which the driver does not have a current CLP or CDL or does not have a CLP or CDL with the proper class or endorsements.** Customized Tours stated that these violations occurred because the company did not knowingly commit the violations. The company also stated that the driver had a medical certificate the entire time and that there was a communication error between the doctor's office and Washington State Department of Licensing (DOL). The company immediately corrected these violations by submitting the required medical certificates to DOL.

Staff response: In the company's 15-day response letter to the investigation report, Mr. Mensonides acknowledged that the company was unaware of the requirement to obtain a motor vehicle report from DOL within 15 days of receiving a new medical certificate to ensure that DOL has recorded the medical certificate on file. The company stated that it has established procedures to ensure this violation does not reoccur in the future.

Customized Tours is a medium-sized company, operating 10 commercial motor vehicles and employing 12 commercial drivers. The company reported \$1,770,500 in gross revenue in 2018.

The company immediately corrected the violation and took steps to prevent future occurrences. Therefore, staff recommends the penalty of \$4,400 be reduced to \$2,200. Staff further recommends that \$1,800 of the penalty be suspended for a period of two years before being waived, on the conditions that: 1) staff conducts a focused safety investigation of the driver license status of the company's drivers in two years or as soon thereafter as practicable to review the company's safety management practices, 2) the company not incur any repeat violations of CFR Part 383.37(a), and 3) Customized Tours pays the \$400 portion of the penalty that is not suspended.

If you have any questions, please contact Brian Braun, Compliance Investigator, Consumer Protection, at (360) 664-1129, or by email at brian.braun@utc.wa.gov.

Sincerely,



Bridgit Feeser
Assistant Director, Consumer Protection