



Bob Ferguson

## ATTORNEY GENERAL OF WASHINGTON

Utilities and Transportation Division

1400 S Evergreen Park Drive SW • PO Box 40128 • Olympia WA 98504-0128 • (360) 664-1183

January 21, 2015

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

RE: *In the Matter of a Penalty Assessment against BREMERTON-KITSAP AIRPORTER, in the amount of \$2,900*  
Docket TE-152319

Dear Mr. King:

This letter is in response to the December 31, 2015, letter from Richard Asche, President of Bremerton-Kitsap Airporter, Inc., in which he seeks mitigation of the \$2,900 penalty assessment in Docket TE-152319. The Company's letter requesting mitigation appears to offer three reasons in support of its position:

1. Only a single violation occurred rather than the 29 alleged by Commission Staff.
2. It is ridiculous to assess penalties for previous violations of Commission rules.
3. The Company has endured some difficult times with the recent deaths of its General Manager and another employee.

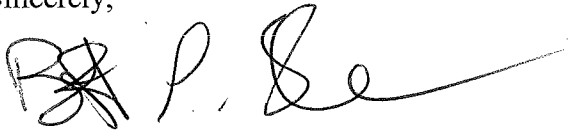
Commission Staff responds to each of the above points in turn.

1. On November 24, 2015, Commission Staff documented a Bremerton-Kitsap driver operating a passenger shuttle without a valid medical certificate. This is the violation the Company presumably acknowledges in its request for mitigation. Commission Staff also visited Bremerton-Kitsap to conduct a further compliance review on December 2, 2015. During this December 2<sup>nd</sup> inspection, Staff discovered that the same Company driver had operated a passenger shuttle without a medical certificate on 29 prior occasions. Each occasion on which a driver operates a passenger shuttle without a valid medical certificate is a separate and distinct violation. Staff therefore documented 29 violations of 49 C.F.R. Part 391.45(b)(1).

2. Under RCW 81.04.405, each and every violation of a Commission law, order, rule, direction, or requirement is a separate and distinct offense. Each offense subjects the offender to a penalty up to \$100 upon written notice from the Commission. Where a driver operates a vehicle 29 separate times without a valid medical certificate as required under the relevant laws and rules, the operating company has committed 29 separate violations. With 29 separate and distinct violations of laws and regulations, the Company is subject to 29 separate penalties, each carrying a fine of up to \$100 in this instance. The imposition of such penalties is consistent with extensive Commission precedent.
3. Staff is not aware of and cannot speak to the Company's staffing or any personal tragedies affecting Bremerton-Kitsap's management or employees. Staff thus cannot comment on how those events impacted Bremerton-Kitsap's ability to keep accurate and adequate records or whether those events merit mitigation of a penalty.

Attached for your reference is a copy of Mathew Perkinson's Motor Carrier Safety Assignment Report.

Sincerely,

A handwritten signature in black ink, appearing to read "Brett P. Shearer". The signature is written in a cursive style with a long horizontal flourish extending to the right.

BRETT P. SHEARER  
Assistant Attorney General  
Enclosure

BPS:klg

cc: David Pratt, Assistant Director, Transportation Safety  
Richard Asche, President, Bremerton-Kitsap Airporter



UTILITIES AND TRANSPORTATION  
COMMISSION

# Assignment Report Motor Carrier Safety

New Entrant?  Yes  No Was a CR conducted between 6-18 months after the permit was issued?  Yes  No

1. Investigator(s): Mathew Perkinson 2. Assignment No.: 115144  
 3. Current Date: 12/11/2015 4. Date of Activity: 12/2/2015-12/11/2015  
 5. Carrier Name: Bremerton-Kitsap Airporter, Inc.  
 6. Company ID: M4709 7. Industry Code: 232 8. USDOT #: 1959699  
 9. Carrier is: Intrastate  Yes  No  Intra and Interstate

**10. Destination Check**

**11. Compliance Review**

SI Rating:	<input type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory	<input type="checkbox"/> Conditional	<input checked="" type="checkbox"/> <i>Not Rated</i>
Number of Vehicles Operated:	<u>18</u>		Number of Drivers Operated:	<u>40</u>
Total Miles Prior Year:	<u>1,522,244</u>		Recordable Accidents Prior Year:	<u>0</u>
Accident Ratio:	<u>0</u>			
CSA Investigation:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Full Investigation	<input checked="" type="checkbox"/> Focused Investigation
Carrier Type:	<input checked="" type="checkbox"/> Passenger Carrier	<input type="checkbox"/> Property Carrier	<input type="checkbox"/> Other:	<u></u>

**12. Part B Violations**

Part	Violations	Part	Violations	Part	Violations
382/40		383		387	
390		391	1	392	
395		396		397	

**13. Vehicle Inspection Data**

**14. Vehicle Inspection Violations**

**15. Driver Inspection Violations**

Medical Card	Medical Waiver	Hours of Service	Driver's License
29			
Comment:	Driver Michael Reser was found to have operated a passenger vehicle for Bremerton-Kitsap Airporter, Inc. (BKA) on at least 29 separate occasions in the past six months while not possessing a valid medical certificate, CFR Part 391.45(b)(1).		

**16. Relevant Carrier History:**

Motor Carrier Safety conducted a destination check on November 24, 2015. During the destination check Mr. Reser of BKA was placed out-of-service by Safety Investigator Francine Gagne for operating a passenger-carrying vehicle without a valid medical certificate in accordance with the North American Standard Out-of-Service Criteria. Mr. Reser's medical certificate expired on January 23, 2015. No violation of operating without a valid medical certificate was found in previous compliance reviews.

# Assignment Report

## Motor Carrier Safety

### 17. Findings:

On December 2, 2015, I visited BKA to determine how many times BKA allowed Mr. Reser to operate a passenger-carrying vehicle without a valid medical certificate in the past six months. Based on time records, paystubs, fuel-receipts, charter bus trip slips, charter requests, and interviews with Lauri Smith (Office Manager of BKA) I determined that Mr. Reser operated a passenger carrying vehicle on at least 29 separate occasions from June 2, 2015, through December 2, 2015: 6/5, 6/6, 6/7, 6/14, 6/15, 6/17, 6/21, 6/28, 7/5, 7/9, 7/19, 7/22, 7/23, 7/26, 7/31, 8/2, 9/5, 9/11, 9/12, 9/17, 9/27, 10/7, 10/14, 10/18, 10/20, 10/24, 10/29, 11/21, and 11/24. Please see the attached charter requests.

Mr. Reser did not operate a commercial motor vehicle after he was placed out of service on November 24, 2015. BKA dispatched an additional vehicle and two drivers to pick him up. A copy of Mr. Reser's new medical certificate issued on November 25, 2015, by Occupational Medicine Associates of Kitsap (OMAK) was obtained. I contacted OMAK on December 2, 2015 and confirmed the medical certificate is valid.

On December 11, 2015, I contacted BKA and discussed the findings.

Please see the following attachments for additional details:

**Attachment A**

November 24, 2015, Driver Vehicle Inspection Report.

**Attachment B**

Mr. Reser's timecards from June 2015 to November 2015.

**Attachment C**

Summary of operation, paystubs, charter requests, fuel receipts, and charter bus trip slips.

**Attachment D**

Mr. Reser's current medical certificate issued November 25, 2015.

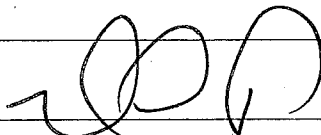
### 18. Recommended Safety Action: Yes No

- Require the company to submit a compliance plan in response to the 15-day letter requirement.
- Recheck – Safety Investigation (Date: Select Date )
- Revisit to recheck a specific issue (Date: Select Date )
- Send the company a compliance letter. Require a response:  Yes  No
- Issue administrative penalties for violations of: CFR 391.45(b)(1)
- Issue a complaint.
- Stop company operations.

### 19. Is this carrier considered a high risk carrier as a result of this activity? Yes No

### 20. Additional Comments:

Investigator's Signature: \_\_\_\_\_



Date: \_\_\_\_\_

12/11/15

OFFICE USE ONLY

Initial Review By: John Foster Date: 12/11/15

Initial Reviewer's Recommendation: This carrier allowed a driver to operate a commercial vehicle on at least 29 occasions without being medically examined within the preceding 24 months in violation of CFR 391.45 (b) (1). Per the UTC enforcement policy, a monetary penalty of \$2,900.00 should be assessed.

Final Review By: D PRATT Date: 12/11/15

Final Reviewer's Recommendation: close & file.  
We will recommend penalties for 29 violations of CFR 391.45(b)(1) @ \$100 ea for a total penalty of \$2900.00

Internal Processing

Date Closed: 12/15/15 By: L. M. M. M.

Company Name: Bremerton-Kitsap Airports

Assignment #: 115144 Staff Assigned: Perkinson