

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment	)	DOCKET TE-121692
Against	)	
	)	ORDER 01
MILLER SCHMER, INC. d/b/a	)	
SEATTLE EXPRESS	)	ORDER DENYING MITIGATION;
	)	GRANTING PAYMENT PLAN
in the amount of \$1,000	)	
.....	)	

1 **Penalty.** On October 29, 2012, the Washington Utilities and Transportation Commission (Commission) assessed a penalty in the amount of \$1,000 against Miller Schmer, Inc. d/b/a Seattle Express (Seattle Express or Company) for multiple violations of Washington Administrative Code (WAC) 480-30-221, which requires passenger transportation companies to comply with Title 49, Code of Federal Regulations (CFR), including parts 382, 383, and 391, governing drug testing, commercial driver’s license (CDL) requirements, and qualifications of drivers. These rules prohibit passenger transportation companies from using drivers who have not received a negative pre-employment controlled substance test result, earned a valid CDL, and been medically examined and certified.

2 The Commission alleged that one Seattle Express driver drove without having a CDL and the required medical certificate in place. The Commission also alleged that another of the Company’s drivers began work and drove on eight occasions prior to Seattle Express receiving that driver’s negative controlled substance test result. The Commission imposed a penalty of \$100 per violation, for a total penalty of \$1,000.

3 **Mitigation Request.** On November 8, 2012, Seattle Express responded to the Commission, admitting the violations but seeking to have the penalty reduced or spread out with a payment plan. The Company conceded that it had not paid “close enough attention to my drivers to ensure they had proper commercial driver license and medical certificate.” Seattle Express also admitted its awareness of “the pre-employment drug testing and again let that slip due to the amount of work” the Company had during its busy summer season. The Company seeks mitigation of the

penalty because it has now hired a human resources employee whose sole duty is to manage driver files for Seattle Express to ensure future compliance.

- 4 **Commission Staff Opposition to Mitigation.** Commission Staff (Staff) filed a Response on November 13, 2012, opposing the Company's request for mitigation. Staff notes that this is not the Company's first violation regarding pre-employment drug testing or medical certification of drivers. Staff contends that Seattle Express' inattention to driver safety requirements because of an increased workload is not a reasonable excuse for failing to comply with Commission rules. Staff asks that the company's mitigation request be denied but does not oppose a payment plan.
- 5 **Commission Decision.** The Commission denies Seattle Express's request for mitigation. Public safety is the Commission's highest priority. Regulated companies are responsible for complying with all of the Commission's rules and regulations. Our rules requiring auto transportation companies to employ only medically qualified drivers who hold a commercial driver's license and have received a negative pre-employment controlled substance test result are in place to protect the public. Seattle Express acknowledges these safety regulations but does not offer any persuasive reason for us to reduce the penalties imposed for the Company's violations.
- 6 Seattle Express knew of the requirements for all commercial drivers to hold a current medical certificate and be drug tested before starting work. As pointed out in Staff's response, this is not the Company's first violation of driver safety rules. The Company's choice to use unqualified drivers demonstrates not only inattention to our rules, but a knowing violation. The original \$1,000 penalty will not be reduced.
- 7 The Commission will exercise its discretion to grant an installment payment schedule as requested by Seattle Express, but only on the condition that the Company strictly adheres to the amounts and dates set out below. If Seattle Express misses any installment payment date, the entire remaining balance will become due and payable immediately. The Commission adopts the following payment plan:
- \$250 – no later than January 10, 2013
  - \$250 – no later than February 10, 2013
  - \$250 – no later than March 10, 2013
  - \$250 – no later than April 10, 2013

**ORDER**

THE COMMISSION ORDERS THAT:

- 8 (1) The request by Miller Schmer, Inc., d/b/a Seattle Express to mitigate the penalty of \$1,000 assessed against the Company on October 29, 2012, is denied.
- 9 (2) The penalty of \$1,000 assessed against Miller Schmer, Inc., d/b/a Seattle Express is due and payable to the Commission in monthly installments subject to the amounts and due dates recited in the body of this order. If the Company is late or misses any installment payment, the entire remaining balance of the penalty amount will become due and payable immediately without further action.
- 10 (3) The Commission delegates to its Secretary authority to enter this Order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective December 3, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER  
Executive Director and Secretary

**NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. Under WAC 480-07-904(3), you may seek Commission review of this decision. In addition to serving you a copy of the decision, the Commission will post on its Internet Web site for at least 14 days a listing of all matters delegated to the Executive Secretary for decision under WAC 480-07-904(1). You must file a request for Commission review of this order no later than fourteen (14) days after the date the decision is posted on the Commission's Web site. The Commission will schedule your request for review for consideration at**

**a regularly scheduled open meeting. The Commission will notify you of the time and place of the open meeting at which the Commission will review the order.**

**The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. A form for late-filed requests is available on the Commission's Web site.**