

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Penalty Assessment  
Against BREMERTON-KITSAP  
AIRPORTER, INC. in the Amount of \$600

DOCKET TC-100147

COMMISSION STAFF'S  
RESPONSE TO BREMERTON -  
KITSAP AIRPORTER, INC.'S  
APPLICATION FOR MITIGATION

1 Pursuant to WAC 480-07-370(1)(c), Staff of the Washington Utilities and  
Transportation Commission (Staff) submits this response to Bremerton-Kitsap Airporter,  
Inc.'s (Bremerton-Kitsap or Company) Application for Mitigation.<sup>1</sup>

**I. BACKGROUND**

2 On February 3, 2010, the Washington Utilities and Transportation Commission  
(Commission) assessed a penalty (Penalty Assessment) in the amount of \$600 against  
Bremerton-Kitsap for six violations of WAC 480-30-216(5), related to the operation of  
motor vehicles, which requires that "no passengers will be permitted to stand unless the  
vehicle is equipped with devices designed and permanently installed to provide stability and  
safety for standing passengers." The rule also requires that even if the vehicle is properly  
equipped, no passenger will be permitted to stand for a distance exceeding 35 miles. The  
violations were identified upon investigation of a safety complaint by a passenger traveling

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<sup>1</sup>Please note that this response does not come from the Commission but from Commission Staff. Commission Staff is a party in this case and is separate from the Commission. The Commission will be the ultimate decision maker in this matter. An Administrative Law Judge will consider the Company's statements and Commission Staff's statements and will issue a decision. The Commission may accept, modify, or reject that decision.

on December 29, 2009, who complained of the Company's bus being loaded beyond capacity with passengers standing in the aisles.<sup>2</sup>

3 On February 18, 2010, the president of Bremerton-Kitsap, on behalf of the Company, filed an Application for Mitigation of Penalties (Mitigation Request), admitting the violations, waiving a hearing and asking for an administrative decision on the information it presented. For the reasons given below, and as set forth in the Declaration of John Foster attached to this Response, Staff opposes mitigation.<sup>3</sup>

## II. ARGUMENT

7 In its Mitigation Request, Bremerton-Kitsap admits the violations and that its vehicle was loaded beyond capacity with 30 passengers in a 24-passenger capacity bus. The Company requests mitigation of the penalty amount on the basis of various "extenuating circumstances." Staff disagrees.

The Company asserts that it has "never seen such devices installed on cutaway passenger buses or vans." In contrast to the Company's assertion, however, Staff's investigator has observed, in the course of his duties, that buses similar to the one operated by Bremerton-Kitsap, operated by other regulated carriers in the Puget Sound region, are properly equipped for standing passengers.<sup>4</sup> The rule requires, without exception, that passenger transportation companies such as Bremerton-Kitsap equip their buses with devices to provide safety and stability, before passengers will be permitted to stand.

In support of mitigation, the Company explains that a large number of passengers waiting to board on this particular route presented difficulties for the driver. The Company

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<sup>2</sup> Declaration of John Foster, ¶ 5, and Attachment A.

<sup>3</sup> Foster Declaration, ¶ 13.

<sup>4</sup> Foster Declaration, ¶ 6. In addition, Mr. Foster found pictures of buses similar to Bremerton-Kitsap's with mounted handholds on the back of aisle seats, for example, readily available on the internet. See Attachment B.

also describes its first-come, first-served boarding policy, which includes color-coded boarding passes limited to 24, the capacity of the bus. The process that the Company explains appears designed to avoid overloading buses, and the Company should have been able to comply with the rule. If the 30 waiting passengers had been issued the color-coded boarding passes, and understood that the service is first-come, first-served, the first group of 24 passengers should have been transported, and the second group made to wait for the next departure. The driver could have advised passengers that state regulations required the Company to limit boarding to the seating capacity, and that no one would be permitted to stand.<sup>5</sup> The driver should not allow to board, or collect fares from, passengers that cannot be legally transported, at any hour.<sup>6</sup> Perhaps most importantly, although some customers not among the first 24 may be inconvenienced by having to wait to board the next bus, Bremerton-Kitsap is responsible for the safety of its passengers. If this bus had an accident or made a sudden stop, the danger and potential harm to those standing would have been much greater because of the lack of safety equipment.<sup>7</sup> The Commission's rules are designed to ensure the safety of the traveling public. Passenger safety should not be compromised for the sake of convenience.

Lastly, the Company states it would support strengthening the provisions of WAC 480-30-216(5) to allow for the removal of any standing passengers regardless of when they presented themselves to the driver for boarding the bus. This argument does not support mitigation of the penalty. First, this docket is not the proper forum for the Commission to consider changes in the existing rules. That aside, however, the rule already restricts the

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<sup>5</sup> Foster Declaration, ¶¶ 8-9.

<sup>6</sup> Foster Declaration, ¶ 9. Also, carriers are required to have sufficient reserve equipment available "to ensure the reasonable operation of established routes and time schedules." WAC 480-30-216(6). Having an additional bus on standby for a given departure seems an appropriate response to accommodate a large volume of customers during the busy holiday season that would otherwise have to wait for the next departure.

<sup>7</sup> Foster Declaration, ¶ 7.

carrier from overloading an improperly-equipped bus and it is the Company's responsibility for ensuring compliance and passenger safety. Moreover, in this instance, regardless of whether the bus was properly equipped, no passenger would have been permitted to stand, because the first stop on the route, Purdy, was in excess of 35 miles from Sea-Tac.<sup>8</sup> Finally, WAC 480-30-451 already allows the Company to refuse service to persons in a variety of circumstances, including when the Company deems that providing service would be hazardous, unsafe, or dangerous to persons or property. In permitting passengers to stand, Bremerton-Kitsap transported those passengers in an unsafe manner.


### III. CONCLUSION

Staff does not support mitigation of the assessed penalty. Accordingly, Staff requests that the Commission deny Bremerton-Kitsap's Mitigation Request.

DATED this 4<sup>th</sup> day of March, 2010.

Respectfully submitted,

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<sup>8</sup>WAC 480-30-216(5). Foster Declaration, ¶ 11. See also Attachment A, on pages 3 and 8.