



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

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April 7, 2017

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

RE: *Washington Utilities and Transportation Commission v. East County Senior Center*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TN-170157

Dear Mr. King:

On February 2, 2017, Motor Carrier Safety Investigator Sandi Yeomans conducted a compliance review investigation, an in-depth examination of the motor carrier's compliance with regulations that the FMCSA has identified as "acute" or "critical."¹ Acute regulations are identified where non-compliance is so severe as to require immediate corrective action regardless of the overall safety posture of the motor carrier. Violations of critical regulations are generally indicative of breakdowns in a carrier's management controls. Non-compliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and unusually higher than average accident rates.² Ms. Yeomans documented 102 violations of critical regulations, resulting in a conditional safety rating.

The Washington Utilities and Transportation Commission's (Commission) Enforcement Policy provides that some Commission requirements are so essential to safe operations that the Commission may issue penalties for a first-time violation, even if Commission staff (Staff) has not previously provided technical assistance on specific issues. The Commission will assess penalties for any repeat violations of critical regulations, including for each occurrence of a repeat violation.³

1 Code of Federal Regulations, Appendix B to Part 385—Explanation of safety rating process

2 *Id.*

3 Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation of CFR Part 391 and CFR Part 396. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

East County Senior Center (East County Senior Center or Company) operates as a private, non-profit transportation provider under certificate number C-987. East County Senior Center was initially granted operating authority in August 1991, but in 1997 the company voluntarily cancelled its operating authority after contracting with Community Transit, the transit authority in Snohomish County. East County Senior Center later reapplied for, and was granted, operating authority as a private, non-profit transportation provider in July 2000.

In March 2007, Staff conducted a compliance review of the company and documented a violation of 391.45(a) for using a driver not medically examined and certified. On February 2, 2017, Staff conducted another compliance review of the company and documented 102 violations of critical regulations.

On March 15, 2017, the Commission issued a penalty assessment under Docket TN-170157 against East County Senior Center in the amount of \$9,800 for 102 critical violations of Washington Administrative Code (WAC) 480-31-130 Operation of Motor Vehicles, which requires private, non-profit transportation providers to comply with Title 49 Code of Federal Regulations (CFR) Part 391 – Qualifications of Drivers, and CFR Part 396 – Inspection, Repair, and Maintenance, as follows:

- **Ninety-six violations of CFR 391.45(a) – Using a driver not medically examined and certified.** East County Senior Center allowed employees Lenhardt Gugela, Rosa Mora, Katherine Miller, Larry Hewitt, and John French to drive on 96 occasions between August 2016 and January 2017 without having been medically examined and certified.
- **Five violations of CFR 391.51(a) – Failing to maintain a driver qualification file for each driver it employs.** East County Senior Center failed to maintain a driver qualification file for its drivers Lenhardt Gugela, Rosa Mora, Katherine Miller, Larry Hewitt, and John French.
- **One violation of CFR 396.17(a) – Using a commercial motor vehicle not periodically inspected.** The company's only commercial motor vehicle had not been periodically inspected, despite being subject to a mandatory state inspection program.

On April 3, 2017, East County Senior Center filed with the Commission its application for mitigation of penalties. Jacob McGee, executive director of East County Senior Center, admits the violations, provides extensive documentation of the corrective action steps taken by the Company, states that the proposed penalty would likely shut down the Company's transportation program, and asks that the penalties be reduced for reasons set out in his response. Staff found East County Senior Center's response to be very thorough, and provides its response below:

- **Mitigation Request: CFR 391.45(a) – Using a driver not medically examined and certified.** East County Senior Center states that it was unaware of the medical

examination requirements and had not received correspondence from the Commission until February 2017. The Company provided copies of its drivers' valid medical certificates and provided documentation that it established a new tracking system to ensure future compliance with this fundamental safety requirement. In addition, East County Senior Center provided a profit and loss statement for fiscal year 2016 showing a net loss of \$9,085.80, stating that the penalty assessment would shut down the Company's Mobility Lifeline transportation program.

Staff response: This is a repeat violation from the 2007 compliance review. East County Senior Center corrected this violation immediately after Staff conducted the compliance review, and the Company has expressed a sincere desire to maintain compliance with this critical safety regulation. Staff is sensitive to the Company's financial situation and understands the importance and impact the transportation service has on the lives of many senior citizens, therefore Staff recommends a reduction of this penalty.

The assessed penalty is \$9,600 for ninety-six occurrences of this violation. Staff recommends that \$8,000 of the penalty be suspended for a period of one year before being waived, on the conditions that: 1) the Company not incur any repeat violations of critical regulations, 2) Staff conducts a follow-up safety investigation in one year to review the Company's safety management practices, and 3) East County Senior Center pays the portion of the penalty that is not suspended.

- **Mitigation Request: CFR 391.51(a) – Failing to maintain a driver qualification file for each driver it employs.** East County Senior Center states that it was unaware of the driver qualification file requirements and had not received correspondence from the Commission until February 2017. The Company provided copies of all the documents present in each of its drivers' qualification files and provided documentation of the notices and forms it has created to be compliant with this safety requirement.

Staff response: The Company provided a list of the documents kept in each of its driver qualification files, and provided supporting evidence with respect to steps taken to correct this violation.

The assessed penalty is \$100 for one violation of this type. Staff recommends no mitigation of this penalty.

- **Mitigation Request: CFR 396.17(a) – Using a commercial motor vehicle not periodically inspected.** East County Senior Center provided a copy of its annual vehicle inspection report dated March 20, 2017.

Staff response: It is the company's responsibility to ensure that its commercial motor vehicle is periodically inspected under the mandatory inspection program. East County Senior Center did provide Staff with a copy of an annual vehicle inspection report dated March 20, which was after Staff had issued the penalty assessment.

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The assessed penalty is \$100 for one violation of this type. Staff recommends no mitigation of this penalty.

East County Senior Center is a small company that currently operates one commercial motor vehicle, and employs two full-time drivers and two part-time drivers. The Company reported \$476,554 in gross revenue and 17,102 miles traveled in 2016.

Staff recommends that \$8,000 of the \$9,800 penalty be suspended for a period of one year before being waived, on the conditions that: 1) the Company not incur any repeat violations of critical regulations, 2) Staff conducts a follow-up safety investigation in one year to review the Company's safety management practices, and 3) East County Senior Center pays the \$1,800 portion of the penalty that is not suspended.

If you have any questions, please contact Jason Hoxit, Compliance Investigator, Transportation Safety, at 360-664-1320, or by e-mail at JHoxit@utc.wa.gov.

Sincerely,



David Pratt
Assistant Director, Transportation Safety