

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment)	DOCKET TC-100147
Against)	
)	ORDER 01
Bremerton-Kitsap Airporter, Inc.,)	
)	ORDER DENYING MITIGATION
in the amount of \$600.00.)	
.....)	

1 **Penalty.** On February 3, 2010, the Washington Utilities and Transportation Commission (Commission) assessed a penalty in Docket TC-100147 in the amount of \$600 against Bremerton-Kitsap Airporter, Inc. (B-K Airporter or Company), for violations of Washington Administrative Code (WAC) 480-30-216. This rule prohibits passengers from being permitted to stand during transit unless the vehicle is equipped with devices designed and permanently installed to provide stability and safety for those standing passengers.¹ The Commission advised B-K Airporter that it was required to act within 15 days of receiving the notice either to pay the amount due, request a hearing to contest the alleged violation, or request mitigation to contest the amount of the penalty. The Penalty Assessment was served on B-K Airporter by certified mail on February 5, 2010.²

2 **Mitigation Request.** On February 18, 2010, B-K Airporter electronically submitted a letter to the Commission admitting the violations but seeking mitigation due to what it characterized as “extenuating circumstances.” The Commission received a hard copy of the letter and attachments on Monday, February 22, 2010.³

¹ See WAC 480-30-216(5).

² The Commission received the signed certified card on February 8, 2010, indicating B-K Airporter’s receipt of the Penalty Assessment.

³ B-K Airporter failed to ensure delivery of a hard copy of its mitigation request the following business day after submitting it via e-mail, as required by WAC 480-07-145(6)(a). Nevertheless, as B-K Airporter’s hard copy was delivered to the Commission on the last day of the 15 day appeal period, we consider its mitigation request to be timely filed.

3 In its letter, B-K Airporter acknowledged that its cutaway bus could only seat 24 passengers and noted that the Company was unaware of any devices that could be installed to expand the capacity of the vehicle. It explained that on the night of the alleged violations, the Company's driver was making the last pick-up at Sea-Tac Airport at or shortly after 12:30 a.m., with no further scheduled service until about 4:30 a.m. According to the company, the driver did not want to anger any of the potential customers and departed the airport with 30 passengers, accommodating everyone who had been waiting for a ride. This forced six of the passengers to stand for at least a portion of the drive to Purdy, Port Orchard, and on into Bremerton.

4 B-K Airporter explained that it has a ground agent at Sea-Tac to assist its drivers in queuing passengers only between the hours of 11:00 a.m. and 8:20 p.m., and therefore, the shuttle driver that night faced an "impossible task of determining a passenger count and who got there first."

5 B-K Airporter does not seek specific relief, but only an administrative decision on the information it presents. However, the letter indicates support for "strengthening the 'gotcha' provisions of WAC 480-30-216(5) to allow for the removal of any standing passenger regardless of when they presented themselves to the driver for boarding the bus and with accompanying enforcement procedures."

6 **Commission Staff Opposition to Mitigation.** Commission Staff filed a Response opposing B-K Airporter's request for mitigation on March 4, 2010. Staff focused its response on the Company's responsibility for passenger safety and took issue with each alleged mitigating circumstance raised in B-K Airporter's mitigation request.

7 According to Commission Staff, cutaway buses such as those operated by B-K Airporter can be outfitted with proper equipment to permit passengers to safely stand in a stable fashion. Even so, Staff points out that the distance from Sea-Tac to Purdy, the Company's first stop on the night in question, exceeds the 35-mile regulatory limit on distance that a passenger can be allowed to stand.

8 Staff indicates its general agreement with B-K Airporter's described methodology for implementing its first-come, first-served boarding policy but questions why the Company failed to implement its own procedures on the night in question. Staff,

pointing out the greater potential for harm if this bus made a sudden stop or was involved in a vehicle accident, disagrees that B-K Airporter's desire to keep its passengers happy overrides the Company's obligation to ensure the safety of the traveling public. Staff suggests that "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."

9 Finally, Staff questions B-K Airporter's suggestion that the Commission's rules should be modified, particularly when raised in the context of a mitigation request. Staff views the currently effective regulations as sufficient to empower the Company to refuse service to passengers when doing so would be unsafe.⁴

10 **Commission Decision.** The Commission denies B-K Airporter's request for mitigation. Our administrative regulations are clear and unambiguous in seeking to ensure the traveling public's safety through specific limitations and requirements. In this instance, B-K Airporter placed its passengers at risk by knowingly violating WAC 480-30-216(5). Simply put, public safety cannot be compromised.

11 The evidence in the record supports a finding (and the Company acknowledges) that B-K Airporter violated WAC 480-30-216 by failing to safely operate its airport shuttle service on December 29/30, 2009. The Company allowed six passengers to stand in a vehicle not equipped with appropriate safety devices and allowed all six of these passengers to stand for a distance of more than 35 miles. As explained below, we find no extenuating or mitigating circumstances to justify the Company's disregard for safety standards.

12 As a certificate holder, B-K Airporter is responsible for complying with all applicable laws and Commission regulations. WAC 480-30-216 contains the following relevant provisions:

- (4) **Passenger loading capacity.** No motor vehicle used in the transportation of passengers will carry more passengers than can be carried safely. In no case will a motor vehicle transport more than one hundred fifty percent of its rated seating capacity.

⁴ See WAC 480-30-451.

(5) **Standing passengers.** No passenger will be permitted to stand unless the vehicle is equipped with devices designed and permanently installed to provide stability and safety for standing passengers. Even if the vehicle is properly equipped, no passenger will be permitted to stand for a distance exceeding thirty-five miles.

(6) **Reserve equipment.** All auto transportation companies must maintain sufficient reserve equipment to insure the reasonable operation of established routes and fixed time schedules.

13 B-K Airporter is required to ensure that its cutaway buses are not overloaded. We understand that the Company may not wish to have a ground agent physically present at Sea-Tac Airport outside its usual peak hours. However, B-K Airporter remains responsible for developing an appropriate system to determine ridership priority and not transporting more passengers than its vehicles can safely carry.

14 B-K Airporter's cutaway buses are not currently equipped with any apparatus designed and permanently installed to provide stability and safety for standing passengers. Our safety regulations are clear that without such devices, the Company cannot allow passengers to stand in its vehicles. There are no exceptions to this rule.

15 If B-K Airporter chooses to install back-of-seat hand holds for standees, it must ensure that they are not utilized for trips that exceed 35 miles. According to the Company's certificate, it appears that its only authorized stops from Sea-Tac Airport within this geographical limitation are those prior to Purdy on its approved routing (i.e., Gig Harbor, Tacoma, and Joint Base Lewis McChord).

16 The Company's driver violated state regulations and chose to endanger the Company's passengers instead of risking their disappointment in having to wait for the next scheduled B-K Airporter departure or secure alternate forms of transportation. We agree with the assessment of Mr. John Foster, a Commission Transportation Specialist:

The driver should have advised the passengers that the bus could only transport 24 passengers and that standees are not permitted by regulation. The driver should not allow on board, nor collect fares from, any passengers that cannot be legally transported.⁵

B-K Airporter must ensure its drivers are properly trained and empowered to adhere scrupulously to safety regulations.

- 17 We disagree with the Company's suggestion that WAC 480-30-216 (5) is somehow ambiguous or inadequate. As noted by Commission Staff, WAC 480-30-451 already contains complementary language empowering motor carriers to refuse service in appropriate situations. We also reject B-K Airporter's characterization of important safety regulations as "gotcha" provisions.⁶
- 18 In sum, Bremerton-Kitsap Airporter, Inc., failed to comply with its obligations under Commission rules. Placing passengers in jeopardy of serious injury or death cannot be excused. The circumstances described in the Company's letter requesting mitigation do not provide a justification for failing to adhere to important safety rules adopted by this Commission. The \$600 penalty assessed by the Commission is due and payable within 15 days of the date of this Order.
- 19 It is so ordered.

⁵ See Commission Staff's Response to Bremerton-Kitsap Airporter, Inc.'s Application for Mitigation – Declaration of John Foster, ¶ 9.

⁶ We note that the closing paragraphs of B-K Airporter's original letter to the Commission of January 18, 2010, addressing the complaint underlying this Penalty Assessment, contained a similar suggestion that it is the passenger's responsibility to make decisions about his or her own safety. In that correspondence, the Company's President wrote: "If Mr. Myers had safety concerns about the overloaded bus, I am curious as to why he did not get off the bus before it departed the airport. Perhaps his reasons are the same as the other 29 passengers." The Company then suggests revising and striking that portion of the regulation that permits exceeding a vehicle's seating capacity load limit by up to 150 percent. As noted above, we observe no ambiguity in WAC 480-30-216(4) or (5) and reiterate the Company's obligations to safety.

20 The Secretary has been delegated authority to enter this Order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective March 9, 2010.

WASHINGTON STATE 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.