

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation of
SAN JUAN TRANSIT TOURS AND
CHARTERS LLC d/b/a SAN JUAN
TRANSIT
For Compliance with WAC 480-30-221

DOCKET TE-161225
(Consolidated)

In the Matter of the Penalty Assessment
Against
SAN JUAN TRANSIT TOURS AND
CHARTERS LLC d/b/a SAN JUAN
TRANSIT
In the amount of \$3,900

DOCKET TE-161224
(Consolidated)

COMMISSION STAFF'S MOTION
FOR IMPOSITION OF SUSPENDED
PENALTIES

I. RELIEF REQUESTED

1 In its order entered January 12, 2017, in this docket, the Washington Utilities and Transportation Commission (Commission) suspended \$2,500 of a \$3,900 penalty subject to compliance with conditions. Commission Staff (Staff) believes that San Juan Transit Tours and Charters LLC d/b/a San Juan Transit (“San Juan Transit” or “Company”) has failed to meet the condition requiring that the Company not “incur any repeat acute or critical violations of WAC 480-30-221 upon re-inspection in six months.”¹ Accordingly, Staff requests that the Commission impose the suspended portion of the penalty on San Juan Transit.

II. STATEMENT OF FACTS

2 The Commission assessed penalties against San Juan Transit in Docket TE-161224 in the amount of \$3,900. Concurrently, the Commission served San Juan Transit with a

¹ Order 01 at ¶¶ 27 and 45.

notice of intent to cancel its auto transportation certificate and notice of hearing due to the unsatisfactory safety rating that the Company had recently received. The unsatisfactory safety rating and the penalty assessment proceeded from the same underlying alleged violations, and the two dockets were consolidated at hearing on January 10, 2017. Following the hearing, at which Staff recommended that the Commission upgrade San Juan Transit's safety rating to "conditional," based on the safety management plan that the Company submitted, the Commission entered Order 01 on January 12, 2017.

3 In Order 01, the Commission specifically found that San Juan Transit violated a number of federal rules, including the following:

- 49 C.F.R. § **382.301(a)** by using drivers prior to receiving a negative pre-employment controlled substance and alcohol test result; and
- 49 C.F.R. § **396.17(a)**, by using commercial vehicles not periodically inspected.²

These federal rules are adopted by reference in WAC 480-30-221.

4 The Commission declined to mitigate the \$3,900 penalty but conditionally suspended \$2,500 of the amount. One of the conditions of the suspension provided that San Juan Transit may not "incur any repeat acute or critical violations of WAC 480-30-221 upon re-inspection in six months."³

5 On June 20, 2017, Staff conducted a follow-up investigation of San Juan Transit.⁴

Motor Carrier Safety Investigator Wayne Gilbert identified repeat violations in two areas:

- The Company allowed three drivers to operate a commercial motor vehicle prior to receiving a negative pre-employment drug test for each of them. These acts are violations of 49 C.F.R. § **382.301(a)**, and constitute critical violations.

² Order 01 at ¶¶ 31, 37, and 39 respectively.

³ Order 01 at ¶¶ 27 and 45.

⁴ Declaration of Wayne Gilbert, ¶ 4.

- The Company operated a commercial motor vehicle before a periodic inspection was accomplished. This act is a violation of 49 C.F.R. § 396.17(a) and constitutes a critical violation.⁵

6 In addition to the repeat critical violations, Staff also identified a non-repeat acute violation of federal rules adopted in WAC 480-30-221, which occurred when San Juan Transit's liability insurance lapsed temporarily and the Company nevertheless operated the vehicle.⁶ Further, Staff conducted a destination check on August 11, 2017, and placed two San Juan Transit vehicles out of service due to vehicle defects.⁷

7 The Company responded to Staff's findings, admitting two of the repeat violations and also the non-repeat acute insurance violation.⁸ This is explained in the Declaration of Wayne Gilbert, and the Company response is attached to Mr. Gilbert's declaration. In his declaration, Mr. Gilbert addresses the repeat violations that the Company contests.⁹

III. EVIDENCE RELIED UPON

8 Staff relies on the Declaration of Wayne Gilbert, dated September 18, 2017, with attachments, which is appended to this motion, as well as the record in this docket.

IV. DISCUSSION

9 It is clear that San Juan Transit has failed to comply with the condition requiring the Company to operate without engaging in any repeat violations upon re-inspection in six months. San Juan Transit has admitted to a repeat violation involving drug testing for drivers (49 C.F.R. § 382.301(a)), and to a repeat violation related to using a vehicle not periodically

⁵ Declaration of Wayne Gilbert at ¶ 6.

⁶ *Id.* at ¶ 7.

⁷ *Id.* at ¶ 8.

⁸ *See id.* at ¶ 9.

⁹ *Id.* at ¶ 10.

inspected (49 C.F.R. § 396.17a)). Mr. Gilbert explains in his declaration how San Juan Transit violated the rule requiring a preemployment drug test with respect to two additional drivers, which constitutes two more repeat violations.¹⁰ On this basis, Staff asks the Commission to impose the suspended penalties on San Juan Transit in the amount of \$2,500.

10 In addition, Staff believes that San Juan Transit continues to have serious compliance issues. Not only does San Juan Transit still have trouble with timely drug testing verification, it continued to operate when its insurance lapsed, and Staff placed two vehicles out of service due to defects on one day.

11 As indicated in the declaration of Mr. Gilbert, Staff intends to conduct an accelerated rated compliance investigation of San Juan Transit, in the next 12 months. In the meantime, Staff asks the Commission to impose suspended penalties in the amount of \$2,500 on San Juan Transit to focus the Company on safety compliance.

DATED September 20, 2017.

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¹⁰ Declaration of Wayne Gilbert at ¶ 10.