

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Penalty Assessment Against
BEELINE TOURS, LTD. in the Amount of
\$3,300

DOCKET TE-110155

COMMISSION STAFF'S
RESPONSE TO BEELINE TOURS,
LTD'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 Beeline Tours, Ltd.'s (Beeline Tours or the Company) Application for Mitigation.
- 2 On March 1, 2011, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment TE-110155 against Beeline Tours in the amount of \$3,300 for 33 violations of Washington Administrative Code (WAC) 480-30-221, vehicle and driver safety requirements, which requires passenger charter carriers to comply with Title 49, Code of Federal Regulations (CFR), including Part 391.45(b)(1), using a driver not medically examined and certified during the preceding 24 months.
- 3 On March 15, 2011, Beeline Tours filed with the Commission its request for a mitigation hearing (Mitigation Request). Beeline Tours admitted the alleged violations, but asked that the penalty amount be reduced. On April 14, 2011, based on a request by the Commission, Beeline Tours filed its reasons in support of its Mitigation Request and asked that the penalty amount be reduced to \$300. For the reasons set forth below, Staff recommends the Mitigation Request be denied.
- 4 Beeline Tours does not dispute that the violations occurred. In its Mitigation Request, however, the Company states that that the amount of the penalty is not

proportionate to the infraction. Beeline Tours refers to the Federal Motor Carrier Safety Administration's (FMCSA) CSA (Compliance, Safety & Accountability) initiative and states that medical card violations are similar to seatbelt violations in terms of severity.

5 The CSA program is a new, complex program used by the FMCSA as a way to prioritize its work based on carrier performance. The Safety Measurement System (SMS) Methodology used in CSA interprets the severity weights of roadside inspection violations through a five-step process.¹ The weighted points for each violation are assigned based on the likelihood that the violation would result in a crash relative to other violations. Additional severity weight is applied to violations that result in driver or vehicle out-of-service orders. However, the Commission has not adopted by reference the CSA program or its methodology.

6 By contrast, the Commission has adopted by reference the North American Standard Out-Of-Service Criteria published by the Commercial Vehicle Safety Alliance (CVSA).² The CVSA identifies violations that render commercial motor vehicle operators unqualified to drive or out-of-service.³ If, during roadside enforcement, Staff finds that a driver is operating a passenger-carrying vehicle without possessing a valid medical certificate, the violation is considered severe enough that the driver is declared out-of-service. Had the two Beeline Tours drivers in this case been stopped at the roadside without valid medical certification on any of the 33 days in question, they would have been ordered out-of-service and would have been unable to continue driving.

¹ SMS Methodology, pages A-1 through A-3, at Attachment A.

² WAC 480-30-221, WAC 480-30-999.

³ CVSA Policy Statement and driver medical/physical requirements violations, at Attachment B.

7 The violations in this case were found during a compliance review and not at the roadside. During compliance reviews, Staff uses 49 C.F.R. Part 385, Safety Fitness Procedures, also adopted by reference by the Commission,⁴ to determine the overall safety fitness of motor carriers. A compliance review is an onsite examination of motor carrier operations, such as driver’s hours of service, maintenance and inspection, driver qualification, commercial driver’s license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard.

8 To meet the safety fitness standard, a motor carrier must demonstrate that it has adequate safety management controls in place to ensure compliance with the applicable safety requirements. Staff conducts an in-depth examination of the motor carrier's compliance with regulations that the FMCSA has identified as “acute” or “critical.” Beeline Tours’ violations of Part 391.45(b)(1) are considered critical violations.⁵ Critical violations are generally indicative of breakdowns in a carrier's management controls. Patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and usually higher than average accident rates.⁶

9 In its Mitigation Request, Beeline Tours states that administrative errors and oversights have occurred, but the Company has a perfect safety record with no reportable accidents or injuries.

10 The Commission’s rules governing safety requirements for passenger transportation, which adopt certain federal safety regulations, are designed to protect the health and safety

⁴ WAC 480-30-221, WAC 480-30-999.

⁵ C.F.R., Appendix B to Part 385—Explanation of safety rating process, at Attachment C.

⁶ *Id.*

of the traveling public. While Beeline Tours may have an accident-free record, this does not equate to a perfect safety record. The safety violations identified by Staff are not simple issues of administrative errors or oversights. During the most recent compliance review, Staff identified 54 total violations, including the critical violations relating to medical certifications as well other critical violations related to vehicle safety, and Beeline Tours received a “conditional” safety rating. A conditional safety rating means that a motor carrier does not have adequate safety management controls in place to ensure compliance with safety fitness standards.⁷ This is the second conditional rating that Beeline Tours has received in the nine years the Company has been in business.

11 It is the policy of the Transportation Safety section to recommend penalties for any violations related to keeping the public safe from unqualified drivers, such as Beeline Tours’ drivers who drove on 33 occasions without current medical certification. While Staff did not recommend penalties for the other 21 violations found during the compliance review, Staff did send the Company a letter outlining its concerns with Beeline Tours’ compliance history. The letter, dated March 1, 2011, stated that Staff has provided more than adequate information and assistance to Beeline Tours on how to comply with Commission rules.

12 Staff is scheduled to re-inspect Beeline Tours’ operations in May 2011. If Staff finds repeat critical violations, or if Beeline Tours receives a conditional or unsatisfactory rating at the re-check inspection, Staff will recommend that the Commission take additional enforcement action against Beeline Tours up to and including additional penalties and possible suspension of the Company’s operating authority.⁸

⁷ 49 C.F.R. Part 385—Safety Fitness Procedures – 385.3 – Definitions and acronyms, at Attachment D.

⁸ Staff’s March 1, 2011, compliance letter, at Attachment E.


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For the reasons set forth above, Staff recommends that the Mitigation Request be denied.

DATED this 28th day of April, 2011.

Respectfully submitted,

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