



**Date:** October 25, 2017

**To:** Gregory J. Kopta  
Director, Administrative Law

**From:** Mathew Perkinson  
Motor Carrier Safety Manager

**Re:** **TE-170950 and TE-170951 Puget Express LLC**  
Evaluation of Safety Management Plan and recommendations regarding the company's safety rating, the cancellation of its operating authority (CH-64310) and associated penalties.

In June 2017, staff completed a compliance investigation of Puget Express, LLC d/b/a Puget Express (Puget Express). Staff conducted the closing conference with the company on September 12, 2017. The compliance investigation resulted in a proposed *unsatisfactory* safety rating effective October 28, 2017.

**The factors that led to the proposed unsatisfactory safety rating were violations of four acute regulations and one critical regulation documented during the compliance investigation. The investigation resulted in a penalty assessment of \$8,300 against the company due to the number of acute and critical violations discovered.**

“Acute” regulations are those where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier.

Acute violations discovered during the investigation included:

1. **One violation of Title 49 CFR Part 382.115(a) – Failing to implement an alcohol and/or controlled substances testing program on the date the employer begins commercial motor vehicle operations.** Puget Express has no alcohol and/or controlled substances testing program.
2. **Thirty-seven violations of Title 49 CFR Part 383.37(a) – Allowing, requiring, permitting, or authorizing a driver to operate a commercial motor vehicle during any period in which the driver does not have a current commercial driver's license or the proper endorsements.** During the six months preceding the compliance investigation, driver Michael Kidane operated a commercial motor vehicle on 37 occasions without the required passenger endorsement, as follows: six days in January, four days in February; six days in March, three days in April, 11 days in May, and seven days in June 2017.

3. **Seventeen violations of Title 49 CFR Part 387.31(a) – Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility.** Puget Express operated without the required minimum level of financial responsibility on 17 occasions, as follows: six days in January, four days in February; six days in March, and one day in April, 2017.
4. **One violation of Title 49 CFR Part 390.35 – Making, or causing to make fraudulent or intentionally false statements, fraudulent or intentionally false entries on records, and/or reproducing records for fraudulent purposes.** Puget Express provided a falsified insurance document to staff on June 13, 2017.

“Critical” regulations are those identified as such where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier’s management controls.

Critical violations discovered during the investigation included:

1. **Eleven violations of Title 49 CFR Part 395.8(a) – Failing to require driver to make a record of duty status.** Driver Michael Kidane operated a commercial motor vehicle eleven times during the 30-day sample period of May 1 through May 30, 2017 without making a record of duty status.

Patterns of noncompliance with acute and critical regulations are linked to inadequate safety management controls and higher-than-average accident rates.

Passenger carriers have 45 days from the date the proposed unsatisfactory safety rating is issued to receive a change to the rating. To upgrade a proposed unsatisfactory safety rating, a company must submit a Safety Management Plan (SMP), which the Commission’s Staff must approve. A carrier’s request to change its safety rating must be based upon evidence that the company has taken corrective actions to address the violations identified and that company operations currently meet the safety fitness standard as specified in 49 CFR Parts 385.5 and 385.7.

A Notice of Intent to Cancel Certificate and Notice of Brief Adjudicative Proceeding was issued on September 13, 2017. The notice instructed Puget Express to submit a SMP no later than October 11, 2017. A Brief Adjudicative Proceeding was held on October 18, 2017. Puget Express failed to submit a SMP by the October 11, 2017, deadline and failed to bring a safety management plan to the Brief Adjudicative Proceeding. During the Brief Adjudicative Proceeding, Administrative Law Judge Pearson instructed Puget Express to submit a SMP no later than October 20, 2017, and requested a staff recommendation on the safety rating and the penalty assessment no later than 12 p.m. October 25, 2017.

The company submitted an initial SMP on October 20, 2017, and also multiple documents and a revised SMP on October 24, 2017.

### **Evaluation of Safety Management Plan**

Staff evaluates a SMP using the following criteria, and provide its analysis of Puget Express’s SMP’s compliance with those criteria:

1. The plan must address each acute, critical, or serious violation discovered during the most recent compliance investigation. Corrective actions to address other violations noted during the investigation must also be included.
  - The safety management plan addresses all violations noted during the most recent compliance investigation. The plan does not include remedies that display that the carrier understands all of the regulations documented during the compliance investigation.
2. Identify why the violations were permitted to occur.
  - Puget Express explains that it was unaware of some requirements, failed to document work that was performed, and lacked the commitment from management to comply with safety regulations. Ultimately, this resulted in the company's unsatisfactory safety rating.
3. Discuss the actions taken to correct the deficiency or deficiencies that allowed the violations to occur. Include actual documentation of this corrective action. (For example: documentation may include items such as new policies and procedures, training programs and sign-in lists, or copies of new forms).
  - Puget Express enrolled in a Department of Transportation Drug and Alcohol Consortium. The plan does not address if Puget Express drivers have taken pre-employment controlled substance tests or been enrolled in a random drug and alcohol testing pool. Mr. Fikre, Puget Express's governing member, states that he will receive the mandatory supervisory training but that this training would take two to three weeks to complete. However, the SMP does not include an alcohol and controlled substances policy, educational materials for drivers, or mention a certificate of policy to be maintained for each driver enrolled in the program.
  - Puget Express provided a medical certificate, a driver abstract, and copy of the Commercial Driver License with a passenger endorsement for the driver currently employed by Puget Express. Mr. Fikre provided a blank employment application that meets the requirements of CFR 391.21. Mr. Fikre makes no mention of any systems put in place to address a driver road test, entry level driver training certificate, or any reference to annual review of driver's driving record.
  - Puget Express provided a current certificate of liability insurance showing that the company is properly insured.
  - Puget Express states it will require drivers to list the time the driver reports for duty, the time the driver is released from duty, and the total hours worked that day on time cards. The time cards used are from the Commission-issued publication, "Your Guide to Achieving a Satisfactory Safety Record." The time cards will be located in the office and Mr. Fikre will ensure accurate logs. The plan does not address who will

review time cards and the frequency at which accuracy will be verified. Puget Express provided no information about record retention requirements.

- Puget Express provided receipts for four previous oil changes in response to not having vehicle maintenance files. Mr. Fikre states he will add vehicle information, create a preventative maintenance plan, and place reminders for service on his calendar. The plan does not address testing of emergency exits and pushout windows or record retention. A blank copy of a Driver Vehicle Inspection Report was sent with the plan as a supporting document but no other documents were issued to support the plan.
4. Outline actions taken to ensure that similar violations do not reoccur in the future. This must include demonstrating adequate safety management controls that will ensure acceptable compliance with applicable safety requirements.
    - Puget Express' plan suggests it will implements new forms and fleet management systems that will allow the company to correct all violations and operate in compliance. Many documents provided did not relate to specific areas of compliance in which the carrier was found to be in violation. The safety management plan displays that the carrier does not fully comprehended the appropriate corrective actions or systems needed to ensure that similar violations do not reoccur despite repeated technical assistance.
  5. If the request includes actions that will be conducted in the near future, such as training, reorganization of departments, purchasing of computer programs, etc., companies must include a detailed description of the activity or training and a schedule of when that activity will commence and when it will be completed.
    - Puget Express purchased a membership to JJ Keller's Fleet Mentor program to assist with compliance updates and processes. The membership is effective November 1, 2017. Puget Express failed to provide a schedule of when the mentor program will be used and when the training will be completed.
  6. Include any additional documentation relating to motor carrier safety and the prevention of crashes that you believe supports your request.
    - No additional documentation was submitted with the plan to support the request.
  7. Include a written statement certifying the carrier will operate within federal and state regulations and the carrier's operation currently meets the safety standard and factors specific in 49 CFR 385.5 and 385.7. A corporate officer; partner, or the owner of the company must sign the statement.
    - The plan states that there Mr. Fikre is more than ever committed in maintaining better bookkeeping, managing the company and that he hopes to stay in business.

## **Summary and Recommendations**

## Safety Rating

- Staff recommends the commission cancel the company's operating authority (CH-64310) effective as of October 28, 2017.
- Puget Express received a proposed unsatisfactory safety rating due to having inadequate safety management controls. Puget Express demonstrated it is unwilling or unable to comply with passenger safety regulations. Puget Express was uncooperative and untimely in producing information as requested by Commission Staff. Puget Express committed repeat violations despite previous technical assistance.
- Staff reviewed Puget Express's safety management plan and concludes it is unacceptable and does not meet the requirement of 49 CFR, Part 385.17 for reasons outline in the recommendation.

## Penalty Recommendation

- On September 15, 2017, the Commission issued a penalty assessment of \$8,300**Error! Reference source not found.** in Docket TE-170950.
- On September 28, 2017, Puget Express applied for mitigation, admitting the violations, and indicated that it would not be able to continue business with such a large penalty.
- The company has taken some steps to bring its operations closer to compliance. Because of the company's actions staff recommends that the commission assess a reduced penalty of \$6,300 and suspend \$3,300 of the reduced penalty for a period of two years – with conditions:
  - The company does not operate or advertise charter and excursion services without the proper authority.
  - If the company is found to operate or advertise without the proper authority during the next two years, staff recommends that the entire suspended penalty be imposed.
  - The remaining \$3,000 penalty is due and payable immediately, although Staff would support a payment plan.