**MEMORANDUM**

July 15, 2015

TO: Steven V. King, Executive Director and Secretary

FROM: David Pratt, Assistant Director, Transportation Safety

 Pam Smith, Compliance Investigator

SUBJECT: *Washington Utilities and Transportation Commission v. Bremerton-Kitsap Airporter Inc.* Answer of Commission Staff to Petition for Review of Order 01 of Bremerton-Kitsap Airporter Inc., Docket TE-150531.

Pursuant to WAC 480-07-904, Staff of the Washington Utilities and Transportation Commission (Commission) submits this Answer to Bremerton-Kitsap Airporter’s (BKA) Request for Review of Order 01 dated June 30, 2105. Order 01 found that BKA violated Washington Administrative Code (WAC) 480-30-221. The WAC requires passenger transportation companies to comply with parts of Title 49, Code of Federal Regulations (CFR), Part 382.

On Feb. 26, 2015, Motor Carrier Safety Investigator, Francine Gagne conducted a compliance review inspection of BKA. Ms. Gagne found 20 violations, two of which were critical violations of CFR Part 382.301(a). – Using a driver prior to the driver receiving a negative pre-employment controlled substance and alcohol use test result.

It is the policy of Transportation Safety staff to recommend that the commission issue penalties for any violations related to keeping the public safe from unqualified drivers, such as drivers driving prior to receiving a negative pre-employment controlled substance and alcohol use test result. BKA’s violations of CFR Part 382.301(a) are just such critical violations.[[1]](#footnote-1) 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.[[2]](#footnote-2)

On June 10, 2015, the Commission assessed a penalty of $1000 ($500 for each violation), against BKA for two critical violations of using a driver prior to receiving a negative pre-employment controlled substance and alcohol use test result.

On June 15, 2015, BKA responded to the Commission’s penalty assessment, denying the violations and requesting that the penalties be discharged or dismissed.

On June 24, 2015, Staff responded, recommending that the Commission deny BKA’s request to discharge or dismiss the penalty.

On June 30, 2015 the Commission issued an order upholding the penalty assessment and denied BKA’s request for mitigation.

On July 1, 2015, BKA responded and requested that the matter be reviewed.

In their response BKA, President Richard Asche, submitted another exact copy of Mr. Rupright’s time sheet for November 21-23[[3]](#footnote-3). BKA maintains that the timesheet shows a first solo drive date of November 21, 2014. This timesheet does not reference a solo drive. On April 1, 2015, Ms. Gagne, asked Cory Dame, Operations Manager, the date of Mr. Rupright’s first solo drive. Mr. Dame confirmed it was November 12, 2014[[4]](#footnote-4). November 12, 2014, is five days prior to the November 17, 2014, negative pre-employment controlled substance and alcohol use test result.

BKA submitted a timesheet for Mr. Legister with additional notes throughout the comment section.[[5]](#footnote-5) These additional notes were not on the previously provided timesheet[[6]](#footnote-6). This new timesheet shows on June 16, “solo” “training” comments added. This does not match the March 9, 2015 information provided by Mr. Dame.[[7]](#footnote-7) On that date, Mr. Dame verified Mr. Legister’s first solo day was June 12, 2014. June 12, 2014 is one day prior to the June 13, 2014 negative pre-employment controlled substance and alcohol use test result.

Finally, BKA provided a copy of Page 19 from the commission guide “Your Guide to Achieving a Satisfactory Safety Record”[[8]](#footnote-8). BKA wrongly believes there is a 30 day grace period to provide the pre-employment controlled substance and alcohol use test result. The section BKA has highlighted is 49 CFR, Part 40.25. Part 40.25 provides instructions for the current employer to request previous employer alcohol testing information. This penalty assessment pertains to 49 CFR, Part 382.301(a) pre-employment testing.

Because Order 01 correctly interprets the rule at issue, it should be affirmed. Please let either of us know if you have any questions.

1. ## C.F.R., [Appendix B to Part 385—Explanation of safety rating process](http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrruletext.aspx?contentid=1556).

 [↑](#footnote-ref-1)
2. *Id.* [↑](#footnote-ref-2)
3. Copy of William Rupright timesheet at Appendix A. [↑](#footnote-ref-3)
4. Copy of Copy of April 1, 2015 email from Mr. Dame at Appendix B. [↑](#footnote-ref-4)
5. Copy of Greg Legister timesheet submitted on July 1, 2015 at Appendix C. [↑](#footnote-ref-5)
6. Copy of Greg Legister originally submitted timesheet at Appendix D. [↑](#footnote-ref-6)
7. Copy of March 9, 2015 email from Mr. Dame at Appendix E. [↑](#footnote-ref-7)
8. Copy of Pg. 19 Your Guide to a Satisfactory Safety Rating at Appendix F. [↑](#footnote-ref-8)