

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: TE-160241
PENALTY AMOUNT: \$100

SIGHTSEEING OF SEATTLE, LLC
10303 20TH AVENUE NORTHEAST
SEATTLE, WA 98125

The Washington Utilities and Transportation Commission (Commission) believes that you have committed a violation of Washington Administrative Code (WAC) 480-30-221 Vehicle and Driver Safety Requirements, which requires charter and excursion carriers to comply with Title 49 Code of Federal Regulations (CFR) Part 396 Inspection, Repair and Maintenance. Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for every such violation.

On February 12, 2016, Commission Motor Carrier Investigator Mathew Perkinson conducted a compliance review of Sightseeing of Seattle, LLC and documented the following violation of critical regulations:

- **One violation of CFR Part 396.17(a) – Using a vehicle not periodically inspected.** On two occasions (October 1 and 2, 2015) driver Michael Dagg operated a vehicle which had not been inspected within the previous twelve months.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violation is to the public.** The violation noted is serious and potentially harmful to the public. Companies which use vehicles not periodically inspected put the traveling public at risk.
2. **Whether the violation is intentional.** Considerations include:
 - Whether the company ignored Commission Staff's (Staff's) previous technical assistance; and
 - Whether there is clear evidence through documentation or other means that shows the company knew of and failed to correct the violation.

Sightseeing of Seattle, LLC received its charter and excursion certificate in 1998. Staff conducted compliance reviews with Sightseeing of Seattle, LLC in 2003, 2006 and 2011 and noted no violations. The company knew, or should have known, about this requirement.

3. **Whether the company self-reported the violation.** The company did not self-report the violation.
4. **Whether the company was cooperative and responsive.** Sightseeing of Seattle, LLC was cooperative and responsive.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Sightseeing of Seattle, LLC immediately took steps to correct this violation as well as other non-critical violations noted in the compliance review.
6. **The number of violations.** The number of critical violations noted is small.
7. **The number of customers affected.** The company is a charter and excursion carrier. A limited number of customers were potentially put at risk on the two days Mr. Dagg operated the vehicle during which no annual inspection was in effect.
8. **The likelihood of recurrence.** Staff has no information to indicate whether this company is likely to repeat these violations, but the company is small and owner appears to be cooperative.
9. **The company's past performance regarding compliance, violations, and penalties.** Staff conducted compliance reviews in 2003, 2006 and 2011. No violations were noted.
10. **The company's existing compliance program.** The company has no formal compliance program.
11. **The size of the company.** Sightseeing of Seattle, LLC operates one commercial vehicle with one driver. In 2015 the company reported \$111,000 in gross revenue and logged 25,000 miles.

The critical violation noted in the compliance review is a first-time violation, but the Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue penalties for a first-time violation, regardless of whether Staff has previously provided technical assistance on specific issues.¹ Within these first-time violations are regulations so critical to public safety that statute (RCW 81.04.405) and enforcement policy penalize each occurrence.

The Commission has considered these factors and determined that Sightseeing of Seattle, LLC should be penalized \$100 for one violation of WAC 480-30-221 Driver Safety Requirements, which adopts CFR Parts 396:

¹ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

- One violation of CFR Part 396.17(a) – Using a vehicle not periodically inspected.

This information, if proven at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe the violations did not occur, you may deny committing the violation and contest the penalty assessment through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact concerning the violation require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If there is a reason for the violations that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. See RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation or application for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission may then sue you to collect the penalty.

DATED at Olympia, Washington, and effective February 29, 2016.



GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-160241

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed.

I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

1. **Payment of penalty.** I admit that the violation occurred and enclose \$ _____ in payment of the penalty.

2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below:

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide above.

3. **Application for mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below:

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: _____ [month/day/year], at _____ [city, state]

Name of Respondent (company) – please print

Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”