

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-160477

PENALTY AMOUNT: \$200

TEAM FORKS, LLC
DBA TWILIGHT ADVENTURES
130 SOUTH SPARTAN AVENUE
PO Box 1488
FORKS, WA 98331-9385

The Washington Utilities and Transportation Commission (Commission) believes that you have committed violations 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 395 Drivers Hours of Service and Part 396 Inspection, Repair, and Maintenance.

RCW 81.04.405 allows penalties of one hundred dollars for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

In March 2016 Commission Motor Carrier Investigator Mathew Perkinson conducted a compliance review of Team Forks and documented the following violations of critical regulations:

- **Violation of CFR Part 395.8(a) – Failure to require driver to make a record of duty status.** Team Forks allowed employee Richard Breeden to drive on 15 occasions in September and October 2015 without making a record of his duty status.
- **Violation of CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected.** Team Forks used a vehicle that was not periodically inspected on 15 occasions in September and October 2015 when such inspections were due. The vehicle was last inspected in August 2012.

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 violations noted are serious and potentially harmful to the public. Companies that fail to monitor driver hours of service or conduct annual vehicle inspections put the traveling public at risk. A fatigued driver or poorly maintained vehicle present serious safety concerns.

2. **Whether the violation is intentional.** Considerations include:

- Whether the company ignored 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.

Staff provided Team Forks' first technical assistance in February 2010 as a new entrant, followed by a compliance review in December 2012. No violations were discovered. The company came under new ownership in March 2014, at which time new owner Charlene Cross acknowledged the company's obligation to comply with local, state, and federal regulations pertaining to charter operation. Team Forks did not receive additional technical assistance under its new ownership.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** Team Forks was cooperative and interested in coming into compliance.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Team Forks promptly submitted its compliance plan with supporting documents.
6. **The number of violations.** For a small company, the number of critical violations is notable.
7. **The number of customers affected.** In 2015, the company traveled 3,742 miles and operated one vehicle with two drivers. The number of customers affected is relatively small.
8. **The likelihood of recurrence.** Team Forks was cooperative and took immediate steps to remedy the violations. Staff is optimistic that Team Forks will avoid repeated violations.
9. **The company's past performance regarding compliance, violations, and penalties.** Team Forks is not a new company, but it is under relatively new ownership. The company had one compliance review under previous ownership with no violations noted.
10. **The company's existing compliance program.** Team Forks has no formal compliance program.
11. **The size of the company.** Team Forks operates one commercial vehicle with two drivers, reported \$34,119 in gross revenue in 2015 and traveled 3,742 miles.

Some of the critical violations noted in the compliance review are first-time violations, however the Commission's Enforcement Policy provides that certain Commission requirements are so fundamental to safe operations that the Commission will issue penalties for a first-time violation, regardless of whether or not 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 Team Forks should be penalized \$200 -- \$100 for each of the following two violations of WAC 480-30-221 Driver Safety Requirements, which adopts CFR Parts 395 and 396, calculated as follows:

- One violation of CFR Part 395.8(a) – Failure to require driver to make a record of duty status. Although each of the 15 occasions Team Forks allowed employee Richard Breeden to drive without making a record of his duty status was a separate violation, these are first-time violations, and the Commission exercises its discretion to penalize the company for only a single violation of this rule.
- One violation of CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected. Although each of the 15 occasions that Team Forks used a vehicle that was not periodically inspected was a separate violation, these are first time violations, and the Commission exercises its discretion to penalize the company for only a single violation of this rule.

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 either or both of the violations did not occur, you may deny committing the violation(s) 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 either or both of 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(s) 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.

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

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 May 10, 2016.



GREGORY J. KOPTA

Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-160477

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.”