

## WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-160800  
PENALTY AMOUNT: \$500

BAD MAGICK, LLC  
DBA TWILIGHT TOURS  
412 SOUTH ORCAS STREET  
SEATTLE, WA 98168

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 391 - Qualifications of drivers.

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.

On March 29, 2016, Commission Motor Carrier Investigator Sandi Yeomans conducted a compliance review of Bad Magick, LLC d/b/a Twilight Tours (Twilight Tours) and identified the following violations of critical regulations:

- **Three violations of CFR Part 391.45(a) – Using a driver not medically examined and certified.** Twilight Tours allowed employees Diana Lane and Beau Maples to drive on a total of three occasions between October 2015 and March 2016. None of the drivers had been medically examined and certified prior to driving.
- **Two violations of CFR Part 391.51(a) – Failing to maintain a driver qualification file for each driver it employs.** Twilight Tours failed to maintain driver qualification files for two of its drivers, Diana Lane and Beau Maples.

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 disregard requirements for medical examination and certification or that fail to maintain driver qualification files, puts the traveling public at risk. Utilizing drivers without driver qualification files or an undocumented medical condition 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.

In its application for charter and excursion authority dated September 24, 2014, Diana Lane, part owner of Twilight Tours, acknowledged her responsibility to understand and comply with motor safety rules pertaining to the operation of a charter service, which included CFR Part 391 – Qualifications of drivers.

Staff conducted a new entrant visit on October 27, 2014 and provided additional technical assistance with regard to driver qualifications.

The company knew, or should have known, about these requirements.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** Twilight Tours was evasive throughout the entire scope of the compliance review. The company admitted that it did not make an attempt to be compliant with FMCSRs.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Twilight Tours has acquired the proper medical certificates and complied with the driver qualification file requirements to maintain a file for each driver it employs.
6. **The number of violations.** The number of critical violations noted is notable.
7. **The number of customers affected.** The company traveled 447 miles and reported \$2,000 in gross revenue for 2015, operating two vehicles. Due to the number of violations noted, these safety violations potentially affected a small number of customers.
8. **The likelihood of recurrence.** The company has corrected the critical violations of CFR Part 391. However, the company had received technical assistance on two prior occasions and explained that it did not make an attempt to be compliant with motor carrier safety regulations. The likelihood of recurrence is feasible.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the first compliance review of this company.
10. **The company's existing compliance program.** Twilight Tours has no formal compliance program.
11. **The size of the company.** Twilight Tours is a small charter and excursion company operating two commercial vehicles with two drivers. The company reported \$2,000 in gross revenue and 447 miles traveled in 2015.

All of the critical violations noted in the compliance review are first-time violations, but 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 staff has previously provided technical assistance on specific issues.<sup>1</sup> Within these first-time violations are regulations so critical to public safety that the applicable statute (RCW 81.04.405) and the Enforcement Policy penalize each occurrence. Other first-time violations are penalized once for each violation type.

**The Commission has considered these factors and determined that Twilight Tours should be penalized \$500 for violations of WAC 480-30-221 Driver Safety Requirements, which adopts CFR Part 391, calculated as follows:**

- Three violations of CFR Part 391.45(a) – Using a driver not medically examined and certified, at the penalty amount of \$100 per violation, for a total of \$300.
- Two violations of CFR Part 391.51(a) – Failing to maintain a driver qualification file for each driver it employs, at the penalty amount of \$100 per violation, for a total of \$200.

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 any or all 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(s) 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 any or all 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 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.

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<sup>1</sup> 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 June 17, 2016.



GREGORY J. KOPTA  
Administrative Law Judge

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
**PENALTY ASSESSMENT TE-160800**

**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.”