

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TC-160991
PENALTY AMOUNT: \$400

Shuttle Express, Inc.
dba Shuttle Express
800 Southwest 16th Street
Renton, WA 98057

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 auto transportation companies to comply with Title 49 Code of Federal Regulations (CFR) Part 383 – Commercial Driver's License Standards.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation of Title 49 CFR Part 383. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On July 21, 2016, Commission Motor Carrier Investigator Mathew Perkinson performed a roadside inspection of a Shuttle Express, Inc. d/b/a Shuttle Express (Shuttle Express) driver during a destination check at the Seattle-International Airport holding lot and documented the following violations of critical regulations:

- **One violation (4 occurrences) of CFR Part 383.23(a)(2) – Operating a commercial motor vehicle with an invalid commercial driver's license (CDL).** Shuttle Express allowed employee Laurie Eriks-Gowin to operate a vehicle requiring a CDL on four separate occasions with an invalid CDL. The violations occurred from July 16, 2016 through July 21, 2016.

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 allow a driver with an invalid CDL to operate a vehicle requiring a CDL put the traveling public at risk. Violations of critical regulations are generally indicative of breakdowns in a carrier's management controls.
2. **Whether the violation is intentional.** Considerations include:
 - Whether the company ignored Commission staff's (Staff) 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.

Shuttle Express has a long established history with the Commission and has been provided technical assistance by Staff on numerous occasions. 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.** Shuttle Express was very cooperative and responsive.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Laurie Eriks-Gowin updated her medical card on her motor vehicle record (MVR) and provided the company with a certified copy of her MVR showing that her CDL was reinstated. Shuttle Express also claims to have updated its procedures to validate Non-Excepted Interstate CDL drivers by running MVRs within seven days of its drivers updating their medical certification.
6. **The number of violations.** For a company this size, the number of critical violations noted is insignificant.
7. **The number of customers affected.** It is reasonable to assume that an insignificant number of customers were potentially affected by these safety violations.
8. **The likelihood of recurrence.** The likelihood of recurrence is low. Shuttle Express complied with CFR Part 391.51(b)(7)(ii) by obtaining Laurie Eriks-Gowin's commercial driver's license information system (CDLIS) record within the required fifteen days of updating her medical certification, and claims to have updated its procedures to seven days to avoid recurrence of CFR Part 383.23(a)(2).
9. **The company's past performance regarding compliance, violations, and penalties.** The company has a long history of compliance with regulations that the FMCSA has identified as "acute" or "critical."¹
10. **The company's existing compliance program.** Shuttle Express has established and maintained a compliance program.
11. **The size of the company.** Shuttle Express operated 121 vehicles with 183 drivers and reported \$17,017,605 in gross revenue for 2014.

These are first-time violations, but the Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue

¹ Code of Federal Regulations, Appendix B to Part 385—Explanation of safety rating process

mandatory penalties for each occurrence of a first-time violation.² The Commission generally will assess penalties per type of violation, rather than per occurrence, for other first-time violations of critical regulations that do not meet the criteria for mandatory penalties. The Commission will assess penalties for any repeat violations of critical regulations found in future compliance investigations, including for each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Shuttle Express \$400 for violations of WAC 480-30-221 Driver Safety Requirements, which adopts CFR Part 383, calculated as follows:

- One violation (4 occurrences) of CFR Part 383.23(a)(2) – Operating a commercial motor vehicle with an invalid CDL. These are first-time violations of fundamental safety requirements, and thus the Commission assesses penalties at the statutory amount of \$100 per occurrence, for a total of \$400.

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 violation 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 requires 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 violation 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 violation.

² Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

- 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 take additional enforcement action, including but not necessarily limited to suspending or revoking your certificate to provide regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Olympia, Washington, and effective August 15, 2016.



GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TC-160991

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.”