

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
NOTICE OF PENALTIES INCURRED AND DUE
FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: TE-161185
PENALTY AMOUNT: \$1,300

W Excursions LLC
610 West Tietan Street
Walla Walla, WA

The Washington Utilities and Transportation Commission (Commission) believes 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 CFR Part 391 – Qualifications of Drivers. RCW 81.04.405 allows penalties of \$100 for each violation of Part 391. In the case of an ongoing violation, each day's continuance is considered a separate and distinct violation

In October 2016, Commission Motor Carrier Investigator Sandi Yeomans conducted a compliance review of W Excursions LLC and documented the following violations of critical regulations:

- **Three violations (twelve occurrences) of CFR 391.45(a) – Using a driver not medically examined and certified.** Over a six-month period in 2016, three employees drove on twelve separate occasions without having first been medically examined and certified. Chris Carter drove on April 16 and May 14; Katie O'Neal drove on April 22, May 13 and 19, June 4, August 6, and September 9 and 17; and Korey Fletcher drove on June 18 and 25, and July 30.
- **Four violations of CFR 391.51(a) – Failing to maintain driver qualification file on each driver.** W Excursions LLC had no driver qualification files for any of its four drivers.

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 employ drivers not medically examined and certified or that do not maintain qualification files place the traveling public at risk. A driver with an undocumented medical condition or who otherwise is unqualified presents serious safety concerns.
2. **Whether the violation is intentional.** Considerations include:
 - Whether the company ignored Commission 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 violations.

In its January 2015 application for charter and excursion service authority, Juston Watson, owner of W Excursions LLC acknowledged the company's responsibility to understand and comply with applicable motor carrier safety rules. Staff provided new entrant technical assistance in March 2015. 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.** W Excursions LLC was very cooperative and responsive.
5. **Whether the company promptly corrected the violations and remedied the impacts.** W Excursions LLC has elected to terminate its charter and excursion operations. The company has two more rides scheduled for December 2016 which it will refer to another licensed carrier.
6. **The number of violations.** For a small company like W Excursions LLC, the number of critical violations is significant.
7. **The number of customers affected.** W Excursions LLC is a small company and reported only 1,467 miles travelled in 2015. It is likely that only a small number of customers were potentially put at risk by these violations.
8. **The likelihood of recurrence.** The company indicated it would be terminating its operations as of November 1, 2016.
9. **The company's past performance regarding compliance, violations, and penalties.** W Excursions LLC has no history of previous compliance reviews, violations, or penalties.
10. **The company's existing compliance program.** W Excursions LLC has no formal compliance program.
11. **The size of the company.** W Excursions LLC is a small company, operating one commercial vehicle with four drivers. In 2015, the company reported \$10,921 in gross revenue and 1,467 miles travelled.

The Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue mandatory penalties for each occurrence of a first-time violation.¹ Otherwise, 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

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

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 W Excursions LLC \$1,300 for violations of WAC 480-30-221 Vehicle and Driver Safety Requirements, which adopts CFR Part 391, calculated as follows:

- Three violations (twelve occurrences) of CFR 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each occurrence of this critical violation for a total of \$1,200
- Four violations of CFR 391.51(a) – Failing to maintain a driver qualification file on each driver. This is a first-time, critical violation, and staff recommends a penalty of \$100 for one violation of this type.

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(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.

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 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 November 18, 2016.

For 
GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-161185

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.”