

## WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TC-170339

PENALTY AMOUNT: \$300

Speedishuttle Washington LLC  
1238 South Director Street  
Seattle, WA 98108

The Washington Utilities and Transportation Commission (Commission) believes that you have committed violations of Washington Administrative Code 480-30-221 Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Parts 390 and 396.

Revised Code of Washington (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 2017, Commission Motor Carrier Investigator Wayne Gilbert conducted a compliance review of Speedishuttle Washington LLC (Speedishuttle) and documented violation of the following acute and critical regulations<sup>1</sup>:

- **One violation of CFR Part 390.35 – Making fraudulent or intentionally false entry on inspection and vehicle maintenance record.** Speedishuttle falsified the record of a 90-day emergency push-out window inspection on vehicle 17.
- **Sixty violations of CFR 396.11(a) – Failing to require driver to prepare a driver vehicle inspection report.** Speedishuttle failed to require its drivers to make driver vehicle inspection reports on 60 of 210 trips examined.
- **Two violations of CFR 396.11(c) – Failing to correct safety-related defects listed on vehicle inspection report(s).** Speedishuttle failed to identify if and when repairs noted on the vehicle inspection report were corrected.

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. Transportation providers put the traveling public at

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<sup>1</sup> Acute regulations are identified where non-compliance is so serious as to require immediate corrective actions regardless of the overall safety posture of the carrier. Violations of critical regulations are generally indicative of breakdowns in a carrier's management controls. Non-compliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate management controls and unusually higher than average accident rates. 49 CFR Part 385, Appendix B – Explanation of Safety Rating Process.

risk by falsifying safety inspection records, failing to require its drivers to perform safety inspections, and not ensuring documented defects are repaired. An undetected or ignored vehicle defect 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 violation.

Speedishuttle applied for Auto Transportation authority in October, 2014. In its application, Speedishuttle acknowledged its responsibility for understanding and complying with federal, state and local laws and rules pertaining to regulated passenger transportation services. Speedishuttle began operations in April 2015 under Auto Transportation certificate C-065854. During the permitting process, Commission transportation safety staff provided technical assistance to Speedishuttle with respect to applicable motor carrier safety regulations. 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.** Speedishuttle cooperated with the investigation and provided Staff with requested documentation.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The company demonstrated its interest in gaining compliance by correcting violations as they were identified during the compliance review investigation, and implementing procedures to prevent future violations.
6. **The number of violations.** For a company this size, the number of critical violations noted is insignificant.
7. **The number of customers affected.** The company traveled 737,691 miles and reported \$1,534,340 in gross revenue for 2016. These safety violations potentially affected a significant number of customers as well as members of the traveling public.
8. **The likelihood of recurrence.** The Commission does not know if the company is likely to repeat these violations, but the company is cooperative and has taken steps to correct these violations and prevent future occurrences.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the company's first compliance review. The company has no history of previous violations or penalties.

10. **The company's existing compliance program.** Speedishuttle has no formal compliance program.
11. **The size of the company.** Speedishuttle is a medium-size company, with 23 drivers and 18 commercial vehicles. In 2016 the company reported 737,691 miles traveled and \$1,534,340 in gross revenue.

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 mandatory penalties for each occurrence of a first-time violation.<sup>2</sup> 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 Speedishuttle \$300 for violations of WAC 480-30-221 Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Parts 390 and 396, calculated as follows:

- One violation of CFR Part 390.35 – Making fraudulent or intentionally false entry on inspection and vehicle maintenance record. This is a first-time, acute violation. The Commission assesses a penalty of \$100 for this violation.
- Sixty violations of CFR 396.11(a) – Failing to require driver to prepare a driver vehicle inspection report. These are first-time, critical violations. The commission assesses a penalty of \$100 for one violation of this type.
- Two violations of CFR 396.11(c) – Failing to correct safety-related defects listed on vehicle inspection report(s). These are first-time, critical violations. The commission assesses a penalty of \$100 for one violation of this type.

This information, if proved 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

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

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 May 10, 2017.

*/s/ Gregory J. Kopta*  
GREGORY J. KOPTA  
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TC-170339

**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.”