

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

**PENALTY ASSESSMENT: TG-170950**

**PENALTY AMOUNT: \$8,300**

Puget Express LLC  
d/b/a Puget Express  
3800 South 176<sup>th</sup> Street  
SeaTac, WA 98188

The Washington Utilities and Transportation Commission (Commission) believes that Puget Express LLC d/b/a Puget Express (Puget Express) has committed violations of Washington Administrative Code (WAC) 480-30-221 Vehicle and Driver Safety Requirements which requires charter and excursion companies to comply with Title 49 Code of Federal Regulations (CFR) Part 382 Controlled Substances and Alcohol Use and Testing, Part 383 Commercial Driver's License Standards – Requirements and Penalties, Part 387 Minimum Levels of Financial Responsibility, Part 390 Safety Regulations – General, Part 391 Qualifications of Drivers, Part 395 Hours of Service of Drivers, and Part 396 Inspection, Repair and Maintenance.

Revised Code of Washington (RCW) 81.04.530 allows a penalty of \$1,500 for failing to comply with the controlled substances and alcohol use and testing requirements of Title 49 CFR Part 382. RCW 81.04.405 allows penalties of one hundred dollars for each violation of Title 49 CFR Parts 383, 387, 390, 391, 395 and 396. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

In June 2017, Commission Motor Carrier Investigator Jason Sharp conducted a compliance investigation of Puget Express and documented the following violations:

- **One violation of Title 49 CFR Part 382.115(a) – Failing to implement an alcohol and/or controlled substances testing program on the date the employer begins commercial motor vehicle operations.** Puget Express has no alcohol and/or controlled substances testing program.
- **Thirty-seven violations of Title 49 CFR Part 383.37(a) – Allowing, requiring, permitting, or authorizing a driver to operate a commercial motor vehicle during any period in which the driver does not have a current commercial driver's license or the proper endorsements.** During the six months preceding the compliance investigation, driver Michael Kidane operated a commercial motor vehicle on 37 occasions without the required passenger endorsement, as follows: six days in January, four days in February; six days in March, three days in April, eleven days in May, and seven days in June, 2017.
- **Seventeen violations of Title 49 CFR Part 387.31(a) – Operating a passenger carrying vehicle without having in effect the required minimum levels of financial**

**responsibility.** Puget Express operated without the required minimum level of financial responsibility on 17 occasions, as follows: six days in January, four days in February; six days in March, and one day in April, 2017.

- **One violation of Title 49 CFR Part 390.35 – Making, or causing to make fraudulent or intentionally false statements, fraudulent or intentionally false entries on records, and/or reproducing records for fraudulent purposes.** Puget Express provided a falsified insurance document to staff on June 13, 2017.
- **One violation of Title 49 CFR Part 391.51(a) – Failing to maintain driver qualification file on each driver employed.** Puget Express does not maintain a driver qualification file for its driver, Michael Kidane.
- **Eleven violations of Title 49 CFR Part 395.8(a) – Failing to require driver to make a record of duty status.** Driver Michael Kidane operated a commercial motor vehicle eleven times during the 30-day sample period of May 1 through May 30, 2017, without making a record of duty status.
- **One violation of Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** Puget Express does not maintain a vehicle maintenance file for its 30-passenger bus.

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 test drivers for controlled substances and/or alcohol use, fail to maintain required levels of financial responsibility, and fail to maintain driver or vehicle records put the traveling public at risk. An impaired, fatigued, or unqualified driver, or an undetected vehicle defect all present 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.

Puget Express applied for charter authority in April 2011. In the application Puget Express owner Isaiah Fikre acknowledged the company's responsibility to understand and comply with applicable state and federal regulations. Commission staff provided new entrant technical assistance to Puget Express in May 2011 and conducted a compliance investigation in February 2012. During the 2012 compliance investigation, staff identified violations for no controlled substances and/or alcohol testing program, no driver qualification files, no vehicle inspection and maintenance records, and failure to prepare

record of driver duty status. Staff believes 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.** Puget Express was generally uncooperative throughout the investigation and failed to provide requested information in a timely manner. The company resisted staff's technical assistance.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Staff is not aware of any efforts by the company to correct the violations.
6. **The number of violations.** For a small company the size of Puget Express the number of violations is significant.
7. **The number of customers affected.** The company traveled 1,950 miles and reported \$35,000 in gross revenue for 2016. A significant number of customers, as well as the traveling public, were likely affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if it is likely to repeat these violations, however the company has a history of similar violations, was uncooperative with staff, non-receptive of staff's assistance, and only showed interest in correcting the violations after finding out that its authority may be cancelled.
9. **The company's past performance regarding compliance, violations, and penalties.** Staff noted several similar violations during its 2012 compliance investigation.
10. **The company's existing compliance program.** Puget Express has no formal safety or compliance program.
11. **The size of the company.** Puget Express is a small company, operating one commercial vehicle with two drivers. The company reported 1,950 miles traveled and \$35,000 in gross revenue for 2016.

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>1</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 equipment violation meeting the FMCSA "out-of-service" criteria and for repeat violations of critical regulations found in future compliance investigations, including each occurrence of a repeat violation.

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

The Commission has considered these factors and determined that it should penalize Puget Express \$8,300 for violations of WAC 480-30-221 Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Parts 382, 383, 387, 390, 391, 395 and 396 calculated as follows:

- One violation of Title 49 CFR Part 382.115(a) – Failing to implement an alcohol and/or controlled substances testing program on the date the employer begins commercial motor vehicle operations. The Commission assesses the statutory penalty amount of \$1,500 for this violation.
- Thirty-seven violations of Title 49 CFR Part 383.37(a) – Allowing, requiring, permitting, or authorizing a driver to operate a commercial motor vehicle during any period in which the driver does not have a current commercial driver’s license or the proper endorsements. The Commission assesses a penalty of \$100 for each day’s occurrence of this violation, for a total of \$3,700.
- Seventeen violations of Title 49 CFR Part 387.31(a) – Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility. The Commission assesses a penalty of \$100 for each day’s occurrence of this violation, for a total of \$1,700.
- One violation of Title 49 CFR Part 390.35 – Making, or causing to make fraudulent or intentionally false statements, fraudulent or intentionally false entries on records, and/or reproducing records for fraudulent purposes. The Commission assesses a penalty of \$100 for this violation.
- Title 49 CFR Part 391.51(a) – Failing to maintain driver qualification file on each driver employed. The Commission assesses a penalty of \$100 for this repeat violation.
- Eleven violations of Title 49 CFR Part 395.8(a) – Failing to require driver to make a record of duty status. The Commission assesses a penalty of \$100 for each occurrence of this repeat violation, for a total of \$1,100.
- One violation of Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance. The Commission assesses a penalty of \$100 for this violation.

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 September 14, 2017.

GREGORY J. KOPTA  
Administrative Law Judge

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
PENALTY ASSESSMENT TE-170950

**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 (**if you do not include reasons supporting your contest here, your request will be denied**):

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 (**if you do not include reasons supporting your application here, your request will be denied**):

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.”