

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TC-171022
PENALTY AMOUNT: \$7,000**

Rocket Transportation LLC
261321 Highway 101
Sequim, WA 98382

The Washington Utilities and Transportation Commission (Commission) believes that Rocket Transportation LLC d/b/a Rocket Transportation has 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 391 – Qualifications of Drivers.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation of Title 49 CFR Part 391. 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 Sandi Yeomans conducted a compliance review investigation of Rocket Transportation and documented the following violations:

- **Sixty-nine violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** Rocket Transportation allowed three employees without current medical certification to drive on 69 occasions during the six months prior to the compliance review, as follows:
 - Employee Pauline Cheng (three occurrences) drove one day in November and two days in December, 2016.
 - Employee Todd Katke (49 occurrences) drove four days in July, 22 days in August, 20 days in September, and three days in October, 2016.
 - Employee Klaus Sterling (17 occurrences) drove two days in May and 15 days in June, 2016.
- **Two violations of Title 49 CFR Part 391.51(b)(7) – Failing to maintain medical examiner's certificate in driver's qualification file.** Rocket Transportation failed to maintain copies of the medical examiner's certificate in the driver qualification files of two employees, William Wagoner and Pauline Cheng.

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 without current medical certifications, or that fail to maintain required medical examination records put the traveling public at risk. A driver with an undetected medical condition 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.

Since the carrier began operations in 2005, Commission staff have conducted two compliance reviews and have noted no similar violations.

Rocket Transportation applied to the Commission in 2015 for a name change. In the application, managing partner Kathy Roman acknowledged her company's responsibility to understand and comply with applicable state and federal safety requirements.

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.** Rocket Transportation cooperated with staff and willingly received technical assistance.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The company began making corrections immediately and will submit a safety management plan to staff.
6. **The number of violations.** Rocket Transportation is a small company. The number of violations is significant.
7. **The number of customers affected.** The company traveled 534,174 miles and reported \$800,000 in gross revenue for 2016. A significant number of passengers, as well as the traveling public were likely affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if Rocket Transportation is likely to repeat these violations, however the company cooperated with staff and expressed a desire to come into compliance.

9. **The company's past performance regarding compliance, violations, and penalties.** The company has no history of similar violations.
10. **The company's existing compliance program.** Rocket Transportation has no formal safety or compliance program.
11. **The size of the company.** Rocket Transportation is a small company, operating ten commercial vehicles with 14 drivers.

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 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.

The Commission has considered these factors and determined that it should penalize Rocket Transportation \$7,000 for violations of WAC 480-30-221 Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Part 391, calculated as follows:

- Sixty-nine violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified. These are violations of fundamental safety requirements. The Commission assesses penalties at the statutory amount of \$100 per occurrence, for a total of \$6,900.
- Two violations of Title 49 CFR Part 391.51(b)(7) – Failing to maintain medical examiner's certificate in driver's qualification file. This is a first-time violation, and thus the Commission assesses penalties at the statutory amount of \$100 per violation type, for a total of \$100.

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.

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

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 October 18, 2017.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TC-171022

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.”