

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

**PENALTY ASSESSMENT: TC-180268**

**PENALTY AMOUNT: \$14,500**

ISLAND AIRPORTER LLC  
139 Tarte Road  
Friday Harbor, WA 98520

The Washington Utilities and Transportation Commission (Commission) believes that Island Airporter LLC (Island Airporter or company) has committed violations of Washington Administrative Code (WAC) 480-30-221 Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 387 – Minimum Levels of Financial Responsibility.

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.

On March 28, 2018, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of Island Airporter and documented the following violations:

- **One hundred forty-five 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.** Island Airporter operated 145 days during the six months preceding this safety investigation without the required minimum amount of liability insurance.<sup>1</sup>

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. Passenger transportation companies that fail to carry the required minimum amount of insurance place their passengers and the traveling public at financial risk. This presents serious concerns.
2. **Whether the violation is intentional.** Considerations include:
  - Whether the company ignored Commission staff's previous technical assistance; and

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<sup>1</sup> The company maintained \$1,050,000 in Auto Liability coverage, however, the required minimum for a passenger transportation carrier regulated by the commission is \$1,500,000.

- Whether there is clear evidence through documentation or other means that shows the company knew of and failed to correct the violation.

Island Airporter owner John Ness applied to the Commission for passenger transportation authority in May 2003. In his application, Mr. Ness acknowledged his responsibility to understand and comply with applicable state and federal safety regulations. Commission staff conducted safety investigations and provided technical assistance to Island Airporter in 2003, 2010, 2012, and 2017. The 2017 technical assistance included information on insurance requirements. The violations noted in the current investigation are first-time occurrences. Staff believes Island Airporter was familiar with 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.** Island Airporter was cooperative and responsive throughout the entire investigation.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Staff is not aware of specific corrections made with respect to these violations.
6. **The number of violations.** Staff identified three violation types with a total of 168 occurrences.
7. **The number of customers affected.** The company reported 61,003 miles traveled in 2017. A significant number of customers, as well as members of the traveling public, were likely affected by these safety violations.
8. **The likelihood of recurrence.** Commission staff does not know if Island Airporter is likely to repeat these safety violations.
9. **The company's past performance regarding compliance, violations, and penalties.** This is Island Airporter's fifth safety investigation. The Commission penalized Island Airporter in 2015 for failing to submit a timely annual report. The company has had no other violations or penalties.
10. **The company's existing compliance program.** John Ness, owner, is responsible for the company's safety and compliance program.
11. **The size of the company.** Island Airporter is a small company with one driver and one commercial vehicle. The Company reported \$73,937 in gross revenue for 2017.

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 first-time violations of those critical regulations that do

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

not meet the requirements for mandatory penalties. The Commission will assess penalties for any equipment violation meeting the Federal Motor Carrier Safety Administration's "out-of-service" criteria and also 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 Island Airporter \$14,500 for violations of WAC 480-30-221 – Vehicle and Driver Safety Requirements, calculated as follows:

- One hundred forty-five 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. These are first-time occurrences of an acute safety violation, and the Commission assesses a penalty of \$100 for each occurrence, for a total of \$14,500.

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 submit it electronically through the Commission's web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to [records@utc.wa.gov](mailto:records@utc.wa.gov). If you are

unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250.

**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 April 27, 2018.

*/s/ Rayne Pearson*  
RAYNE PEARSON  
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TC-180268

**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 violations occurred and enclose \$\_\_\_\_\_ in payment of the penalty.

[ ] 2. **Contest the violations.** I believe that the alleged violations 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 violations, 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.”