

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TC-180510
PENALTY AMOUNT: \$100**

SHUTTLE EXPRESS, INC.
800 SW 16th Street
Renton, WA 98057

The Washington Utilities and Transportation Commission (Commission) believes that Shuttle Express, Inc. (Shuttle Express or Company) has committed violations of Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Part 396 – Inspection, Repair, and Maintenance.

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 June 2, 2018, Commission Motor Carrier Special Investigator Jason Sharp completed a destination check vehicle inspection of a Shuttle Express vehicle¹ and documented the following violation:

- **One violation of Title 49 CFR Part 396.3(a)(1) – Brake system pressure loss.** Commission staff (Staff) discovered that the vehicle was not able to maintain air pressure during an air loss test.

The Commission considered the following factors in determining the appropriate penalties for this violation:

1. **How serious or harmful the violation is to the public.** The violation noted is serious and potentially harmful to the public. A leaking air brake can affect the vehicle's braking ability, which places the traveling public at risk.
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.

Commission staff has conducted several routine safety investigations of Shuttle Express with the most recent safety investigation taking place in August 2015. The Company

¹ Fleet number 551555.

knew, or should have known, about these requirements; however, there is no evidence that the Company disregarded staff's previous technical assistance.

3. **Whether the company self-reported the violation.** The Company did not self-report the violation.
4. **Whether the company was cooperative and responsive.** The driver, Michael Morelock, cooperated with Staff during the inspection.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The vehicle was immediately taken out of service. Staff has not received written proof of repair, therefore the Commission does not know if Shuttle Express has corrected the violation. The Commission does not require proof of repair.
6. **The number of violations.** In total staff identified two violation types.
7. **The number of customers affected.** The Company traveled 2,403,039 miles 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.** It is difficult for Staff to determine if Shuttle Express is likely to repeat these safety violations. However, the Company was cooperative and responsive to Staff.
9. **The company's past performance regarding compliance, violations, and penalties.** Shuttle Express has been in business for over 47 years,² and has had numerous matters in front of the commission. This is Shuttle Express's first penalty assessment that required a vehicle to be immediately removed from service.
10. **The company's existing compliance program.** Shuttle Express Safety Director and Executive Vice President, Kere Greene, is responsible for the Company's safety compliance.
11. **The size of the company.** Shuttle Express is a large company with 87 drivers and 105 vehicles. The Company reported \$14,220,336 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.³ The Commission generally will assess penalties per type of violation, rather than per occurrence, for first-time violations of those critical regulations that do 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"

² Shuttle Express Inc. began operations in October of 1970.

³ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

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 Shuttle Express \$100 for violation of WAC 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Part 396, calculated as follows:

- One violation of Title 49 CFR Part 396.3(a)(1) – Brake system pressure loss. This is a first-time violation of a fundamental safety requirement. The Commission assesses a penalty of \$100 per occurrence, 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 the violation did not occur, you may deny committing the violation 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 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 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. 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 July 5, 2018.

RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TC-180510

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 \$100 in payment of the penalty.

2. **Contest the violation(s).** I believe that the alleged violation(s) 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.”