

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TE-180602
PENALTY AMOUNT: \$100**

Fun Way to Go, LLC
407 S 23rd Street
Renton, WA 98055

The Washington Utilities and Transportation Commission (Commission) believes that Fun Way to Go, LLC (Fun Way to Go 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 393 – Parts and Accessories Necessary for Safe Operation.

Revised Code of Washington (RCW) 81.04.405 allows penalties of \$100 for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

In May 2018, Commission Motor Carrier Investigator Wayne Gilbert completed a vehicle inspection as part of a routine safety investigation of Fun Way to Go and documented the following violation:

- **One violation of Title 49 CFR Part 393.75(a)(3) – Tires.** Staff discovered a flat tire and/or an audible air leak and placed the vehicle out-of-service.

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

1. **How serious or harmful the violations is to the public.** The violations noted are serious and potentially harmful to the public. Companies that fail to maintain critical vehicle safety components such as operational tires put the traveling public at risk. A poorly maintained vehicle presents serious safety concerns.
2. **Whether the violations were 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 violations.

Fun Way to Go began operations in February 2013. The Commission granted operating authority to the Company in January 2014. In its application for authority filed on December, 2013, the Company acknowledged its responsibility to understand and comply with applicable state and federal safety requirements. Maintaining vehicle tires is a

fundamental safety requirement. Staff believes the Company should have been aware of this violation.

3. **Whether the company self-reported the violation.** The Company did not self-report the violations.
4. **Whether the company was cooperative and responsive.** The Company was cooperative throughout the entire scope of the investigation and expressed a desire to come into compliance.
5. **Whether the company promptly corrected the violation and remedied the impacts.** It is unknown whether or not the Company promptly took corrective actions.
6. **The number of violations.** Staff identified 12 violation types with 77 individual occurrences.
7. **The number of customers affected.** The company reported 73,229 miles traveled in 2017. A significant number of customers, as well as members of the traveling public, were potentially affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if Fun Way to Go is likely to repeat these safety violations; however, the Company was cooperative with staff and expressed a desire to come into compliance.
9. **The company's past performance regarding compliance, violations, and penalties.** In 2015 the Company failed to file its 2014 annual report and the Commission assessed a penalty of \$1,000, then later granted mitigation to \$250.
10. **The company's existing compliance program.** Bill Wolsted (Manager of Operations) and Wayne Sampson (Safety Director) are responsible for the carrier's safety and compliance program.
11. **The size of the company.** Fun Way to Go is a small company with 14 drivers and 6 vehicles. The Company reported a gross revenue of \$478,830 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.¹ The Commission will generally 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" criteria and also for repeat violations of critical regulations found in future compliance investigations, including each occurrence of a repeat violation.

¹ 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 Fun Way to Go \$100 for violation of WAC 480-30-221 Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Part 393, calculated as follows:

- One violation of Title 49 CFR Part 393.75(a)(3) – Upon inspection of the Company’s vehicle, F-10, staff discovered a flat tire. This is a violation of a fundamental safety requirement, and thus 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 the violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Or, if there is a reason for the violation that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of the 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 to contest the violation or for mitigation of the penalty 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 violation.
- 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 30, 2018.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-180602

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.”