

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TN-180983
PENALTY AMOUNT: \$600**

ELMVIEW
PO Box 66
Ellensburg, WA 98926

The Washington Utilities and Transportation Commission (Commission) believes that ELMVIEW (Elmview or Company) violated Washington Administrative Code (WAC) 480-31-100, Equipment – Safety, and WAC 480-31-139, Operation of Motor Vehicles, which adopt Title 49 Code of Federal Regulations (CFR) Part 391 – Qualifications of Drivers, Part 395 – Hours of Service of Drivers, and Part 393 – Parts and Accessories Necessary for Safe Operation.

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 November 28, 2018, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of Elmview and documented the following violations:

- **Five violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** Elmview allowed five employees to drive without having been medically examined and certified.¹
- **One violation of Title 49 CFR Part 393.9 – Inoperative turn signal.** The turn signal on the left front and rear of vehicle #1 was inoperative.

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 very serious and potentially harmful to the public. Companies that use drivers not medically examined and certified, or use vehicle with inoperative lights, put the traveling public at risk. A driver with an undiagnosed medical condition or a vehicle with a defective turn signal both present serious safety concerns.
2. **Whether the violation is intentional.** Considerations include:
 - Whether the company ignored Commission staff's previous technical assistance; and

¹ None of the Company's five drivers were medically certified at the time of the investigation. The Company does not maintain daily trip records, therefore staff is alleging only one occurrence per driver.

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

This carrier has operated since 1964. Staff provided technical assistance in 2004, 2007, and 2009. 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.** Elmview was cooperative throughout the investigation. Management received guidance regarding driver qualifications, hours of service, and vehicle maintenance.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Commission staff does not know if Elmview has corrected these safety violations.
6. **The number of violations.** Commission staff identified seven violation types with a total of seven occurrences.
7. **The number of customers affected.** The Company reported 10,991 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 Elmview is likely to repeat these safety violations.
9. **The Company's past performance regarding compliance, violations, and penalties.** This is Elmview's third routine safety investigation, and the Company has no history of receiving penalties for safety violations. The Commission penalized Elmview in 2009, 2017, and 2018 for failing to timely submit an annual report.
10. **The Company's existing compliance program.** Rick Richards, Chief Financial Officer, is responsible for the Company's safety compliance program.
11. **The size of the Company.** Elmview provides a variety of services, including housing for people with complex medical needs, senior nutrition, and community engagement. The transportation function is small, with five drivers and one commercial motor vehicle. Overall, the Company reported \$9,000,000 in gross revenue in 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.² 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

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

equipment violation meeting the Federal Motor Carrier Safety Administration's "out-of-service" criteria and also for repeat violations of critical regulations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Elmview \$600 for violations of WAC 480-31-100, Equipment – Safety, and WAC 480-31-139, Operation of Motor Vehicles, which adopt Title 49 CFR Parts 391 and 393, calculated as follows:

- Five violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each driver in violation, for a total of \$500.
- One violation of Title 49 CFR Part 393.9 – Inoperative turn signal. 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 through evidence presented at a hearing or in writing. Or, 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 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(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. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, PO 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 December 19, 2018.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TN-180983

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 \$600 in payment of the penalty.

2. **Contest the violations.** I believe that some or all of 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.”