

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TE-180987
PENALTY AMOUNT: \$100**

San Juan Transit Tours & Charters
PO Box 2809
Friday Harbor, WA 98250

The Washington Utilities and Transportation Commission (Commission) believes that San Juan Transit Tours & Charters (San Juan or Company) violated 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 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 1, 2018, Commission Motor Carrier Investigator Ed Steiner conducted an inspection of San Juan's unit N3 and documented the following federal out-of-service violation:

- **One violation of Title 49 CFR Part 393.9 – Required lamp inoperable.** The left rear turn signal on vehicle N3 was inoperable.

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 very serious and potentially harmful to the public. Companies that use a vehicle with inoperative turn signals put 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.

Keeping a vehicle's lights in operating condition is a basic maintenance requirement for all vehicle owners. This vehicle inspection was scheduled in advance with the Company. The Company should have known about and corrected this violation prior to the inspection.

3. **Whether the company self-reported the violation.** The Company did not self-report this violation.

4. **Whether the company was cooperative and responsive.** San Juan was cooperative and responsive throughout the investigation.
5. **Whether the company promptly corrected the violation and remedied the impacts.** San Juan immediately corrected the violation.
6. **The number of violations.** Commission staff identified three violation types during the investigation with a total of 11 occurrences.
7. **The number of customers affected.** The Company reported 66,929 miles traveled in 2017. A significant number of customers, as well as members of the traveling public, were potentially affected by this safety violation.
8. **The likelihood of recurrence.** The Commission does not know if San Juan is likely to repeat this violation, but the company made immediate corrections and expressed its desire to operate in compliance with safety regulations.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the San Juan's third routine safety investigation. The Commission penalized San Juan for safety violations in 2016 and 2017.
10. **The company's existing compliance program.** Kraig Hansen, owner, is responsible for the Company's safety compliance program.
11. **The size of the company.** San Juan is a small company with seven commercial motor vehicle and 22 drivers. The Company reported \$175,184 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.¹ 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" 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 San Juan \$100 for violation of WAC 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 393, calculated as follows:

- One violation of Title 49 CFR Part 393.9 – Required lamp inoperable. The Commission assesses a \$100 penalty for this mandatory federal out-of-service violation.

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

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(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 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, 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 TE-180987

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 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.”