

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of LEAVENWORTH SHUTTLE & TAXI, LLC For Compliance with WAC 480-30-221	DOCKET TE-161021 <i>(Consolidated)</i>
<hr/> In the Matter of the Penalty Assessment Against LEAVENWORTH SHUTTLE & TAXI, LLC In the amount of \$19,800	DOCKET TE-161020 <i>(Consolidated)</i>
<hr/> WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. LEAVENWORTH SHUTTLE & TAXI, LLC Respondent.	DOCKET TE-181030 <i>(Consolidated)</i> COMPLAINT FOR PENALTIES AND ORDER OF CONSOLIDATION AND NOTICE OF BRIEF ADJUDICATIVE PROCEEDING; SETTING TIME FOR ORAL STATEMENTS (Set for April 10, 2019, at 1:30 p.m.)

I. PARTIES

I Complainant, the Washington Utilities and Transportation Commission, is an agency of the state of Washington, authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including charter party and excursion service carriers, under the provisions of Title 81 RCW.

2 Respondent, Leavenworth Shuttle and Taxi, LLC (“Leavenworth Shuttle” or “the
Company”) is a limited liability company registered in the state of Washington that does
business in the state of Washington.

II. BACKGROUND

3 Commission staff (Staff) has information from which it believes and therefore alleges that
Leavenworth Shuttle has violated the Commission’s safety regulations, namely WAC 480-
30-221, which requires passenger transportation companies to comply with parts of Title 49
of the Code of Federal Regulations (C.F.R.), including Part 382 (Controlled Substance and
Alcohol Use and Testing); Part 391 (Qualification of Drivers); Part 395 (Hours of Service of
Drivers); and Part 396 (Inspection, Repair and Maintenance).

4 RCW 81.04.110 authorizes the Commission to file a complaint on its own motion, setting
forth any act or omission by a company subject to its regulation that violates any law or any
rule of the Commission. Under RCW 81.04.380, the Commission may impose financial
penalties of up to \$1,000 for each violation.

5 In November 2018, Staff completed a compliance review of Leavenworth Shuttle and
documented violations of eight different provisions of Title 49 C.F.R., all of which the
Commission has adopted by reference in WAC 480-30-221. This complaint concerns
violations of six of these provisions, specifically 49 C.F.R. sections: 382.305(i)(2);
391.45(a); 395.8(a)(1); 396.11(a); 396.13(c); and 396.17(a).

6 As identified below, several of these violations are repeat violations that contravene the
conditions of the penalty suspension in Order 01 in consolidated Dockets TE-161020 and
TE-161021 (Order 01). In Order 01, the Commission suspended \$10,000 in penalties against
the Company. That suspension was subject to the condition that the Company not incur any
repeat violations of WAC 480-30-221. Order 01 further stated that, if the Company failed to
comply with any condition of the order, the entire \$10,000 suspended penalty would become
immediately due and payable without further Commission order. Due to these repeat
violations, Staff filed a motion to impose the suspended penalties in consolidated Dockets
TE-161020 and TE-161021 on January 11, 2019.

7 Staff discovered four violations of 49 C.F.R. § 382.305(i)(2), which requires carriers to
ensure that each driver subject to random alcohol and controlled substances testing has an
equal chance of being selected each time selections are made. The Company did not have
the correct employees in the controlled substance and alcohol testing program for each
quarterly draw in 2017. These are repeat violations because they involve the kind of

regulations that the Commission found the Company violated in Order 01, namely the controlled substance and alcohol use and testing provisions in 49 C.F.R. Part 382.

- 8 Staff discovered one violation of 49 C.F.R. § 391.45(a), which requires carriers to refrain from using a driver not medically examined and certified. The Company allowed Michael Kaelin to drive on 24 occasions without a valid medical certificate. This is a repeat violation of the same regulation that the Commission found the Company violated in Order 01, namely 49 C.F.R. § 391.45(a). This violation is classified as a critical violation under Title 49 C.F.R. A critical violation, also known as a “pattern of occurrence” violation, is triggered by a pattern of noncompliance related to the carrier’s management or operational controls.
- 9 Staff discovered 25 violations of 49 C.F.R. § 395.8(a)(1), which requires carriers to ensure that each of their drivers prepare a record of duty status using the appropriate method. The Company allowed Michael Kaelin to drive 9 times and Dallas Grant to drive 16 times without completing a record of duty status in the month of August 2018. This is a repeat violation of the same regulation that Staff identified in a compliance review completed in May 2017. This violation is classified as a critical violation under Title 49 C.F.R.
- 10 Staff discovered 82 violations of 49 C.F.R. § 396.11(a), which requires carriers to ensure that their drivers prepare a driver vehicle inspection report. The Company allowed Michael Kaelin to operate a vehicle 15 times in July, 19 times in August, and 8 times in September 2018 without completing a driver vehicle inspection report. The company allowed Dallas Grant to operate 6 times in July, 18 times in August, and 16 times in September 2018 without completing a driver vehicle inspection report. These are repeat violations of the same regulation that the Commission found the Company violated in Order 01, namely 49 C.F.R. § 396.11(a). These violations are also classified as critical violations under Title 49 C.F.R.
- 11 Staff discovered three violations of 49 C.F.R. § 396.13(c), which requires carriers to ensure that their drivers sign the last vehicle inspection report when defects or deficiencies were noted. The Company failed to require drivers Dallas Grant and Michael Kaelin to sign the vehicle inspection reports on three separate trips when defects or deficiencies were noted. This is a repeat violation of the same regulation that Staff identified in a compliance review completed in May 2017.
- 12 Staff discovered three violations of 49 C.F.R. § 396.17(a), which requires carriers to refrain from using a commercial motor vehicle not periodically inspected. This violation is classified as a critical violation under Title 49 C.F.R.

III. JURISDICTION

- 13 The Commission has jurisdiction over this matter pursuant to RCW 80.01.040, RCW 81.01.010, RCW 81.04.110, RCW 81.04.160, RCW 81.04.460, and chapter 81.70 RCW.

IV. APPLICABLE LAW AND REGULATIONS

- 14 Charter party carriers and excursion service carriers are common carriers. RCW 81.04.010(11). For the purposes of Title 81 RCW, every common carrier is a public service company under RCW 81.04.010(16), and therefore subject to Commission regulation. *See* RCW 80.01.040(2); RCW 81.01.010.
- 15 The Commission may adopt rules regarding the services provided by public service companies that are subject to its regulation. RCW 81.04.160.
- 16 Chapter 480-30 WAC contains the rules regarding the safe operation of charter party carriers and excursion carriers. WAC 480-30-221 adopts by reference vehicle and driver safety requirements of Title 49 C.F.R. and requires passenger transportation companies (including charter party and excursion carriers) to comply specifically with, among other provisions, Title 49 C.F.R. Parts 382, 391, 395, and 396. WAC 480-30-999 specifies the version of Title 49 C.F.R. adopted by the Commission.
- 17 Chapter 81.04 RCW prescribes penalties of up to \$1,000 for a violation of any Commission order or rule. RCW 81.04.380.

V. COMPLAINT

- 18 The Commission, through its Staff, re-alleges the allegations contained in paragraphs 1–17 above.

VI. REQUEST FOR RELIEF

- 19 Staff requests that the Commission, pursuant to its authority under RCW 81.04.380, RCW 81.04.160, and RCW 81.70.310, assess penalties of up to \$1,000 per violation against Leavenworth Shuttle.

VII. PROBABLE CAUSE

- 20 Based on a review of Staff's Compliance Review of Leavenworth Shuttle, and consistent with RCW 80.01.060, the Commission finds probable cause exists to issue this Complaint.

VIII. ORDER OF CONSOLIDATION

- 21 On October 24, 2016, the Commission entered Order 01 in consolidated Dockets TE-161021 and TE-161020, which, among other things, imposed a \$14,800 penalty against Leavenworth Shuttle, a \$10,000 portion of which was suspended for a period of two years subject to several conditions, including a requirement that the Company must not incur any repeat violations of WAC 480-30-221. On January 11, 2019, Staff filed with the Commission a Motion to Impose Suspended Penalties requesting the Commission impose the \$10,000 suspended penalty based on the same allegations set forth in this Complaint; namely, that Leavenworth Shuttle committed multiple repeat violations of WAC 480-30-221 during the two-year suspension period.
- 22 Because these matters share related facts and principles of law, the Commission exercises its discretion to consolidate Dockets TE-161021, TE-161020, and TE-181030 pursuant to WAC 480-07-320.
- 23 **THE COMMISSION ORDERS that these matters are consolidated for purposes of hearing and determination.** The Commission reserves the right to hold separate hearings and to enter separate orders in the individual dockets as it deems appropriate.

IX. NOTICE OF BRIEF ADJUDICATIVE PROCEEDING

- 24 Pursuant to RCW 34.05.482 and WAC 480-07-610, the Commission schedules a hearing on its own initiative and determines that a brief adjudicative proceeding is appropriate to determine whether the Commission should: 1) impose the suspended penalty assessed in Dockets TE-161021 and TE-161020, and 2) assess additional penalties for violations of the Commission's safety regulations.
- 25 **THE COMMISSION GIVES NOTICE: That it will conduct a brief adjudicative proceeding in this matter at 1:30 p.m., Wednesday, April 10, 2019, in Room 206, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**
- 26 The record in this case will consist of any documents regarding the matters that are considered by or prepared for the presiding officer for the brief adjudicative proceeding and a transcript of any oral statements given at the hearing, which statements will be given under oath.
- 27 Written notice of any other stage in the proceeding or other formal proceedings that the Commission may deem appropriate will be given during the course of this case. The Commission will provide at its offices in Olympia, Washington, copies of documents in the current record for use by the parties or others who may want to review them.

28 Parties wishing to submit any other documents for consideration at the brief adjudicative proceeding must file any such documents, along with a list enumerating and describing such documents, with the Commission **no later than April 3, 2019**, and bring an original and four (4) copies to the hearing. Filing shall be in accordance with WAC 480-07-140.

29 **THE COMMISSION GIVES NOTICE: That any party who fails to attend or participate in the brief adjudicative proceeding set by this Notice, or any other stage of this proceeding, may be held in default under RCW 34.05.440 and WAC 480-07-450.**

30 The names and mailing addresses of all parties and their known representatives are shown as follows:

Carrier: Leavenworth Shuttle & Taxi, LLC
11610 Eagle Creek Road
Leavenworth, WA 98826
leavenworthshuttle@outlook.com

Representative: Unknown

Commission: Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Representative: Joe Dallas
Assistant Attorney General
1400 S. Evergreen Park Drive S.W.
P.O. Box 40128
Olympia, WA 98504-0128
joe.dallas@utc.wa.gov

31 Administrative Law Judge Laura Chartoff, from the Commission's Administrative Law Division, will preside during this proceeding.

DATED at Olympia, Washington February 27, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Director

Inquiries may be addressed to:

Executive Director and Secretary
Washington Utilities and Transportation Commission
Richard Hemstad Building
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

NOTICE

PLEASE NOTE: The hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and, if limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be stated below and returned to Washington Utilities and Transportation Commission, Attention: Mark L. Johnson, 1300 S. Evergreen Park Drive SW, P.O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket: _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired: (Yes) _____ (No) _____

Do you need a certified sign language interpreter?

Visual _____ Tactile _____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone: _____