

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TN-190036

PENALTY AMOUNT: \$7,200

White Pass Community Service Coalition
d/b/a LEWIS Mountain Highway Transit
PO Box 789
Morton, WA 98356

The Washington Utilities and Transportation Commission (Commission) believes that White Pass Community Service Coalition d/b/a LEWIS Mountain Highway Transit (White Pass Community Service Coalition or Company) violated Washington Administrative Code (WAC) 480-31-130, Operation of Motor Vehicles, which adopts Title 49 Code of Federal Regulations (CFR) Part 391 – Qualification of Drivers.

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.

On December 21, 2018, Commission Motor Carrier Investigator Wayne Gilbert completed a routine safety investigation of White Pass Community Service Coalition and documented the following violation:

- **72 violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** The carrier allowed its drivers Mark Otto and Bradley Nelson to drive without having been medically examined and certified on 72 occasions during the six months preceding the safety investigation.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violations are to the public.** The violations noted are very serious and potentially harmful to the public. Non-profit charter companies that fail to ensure their drivers are medically examined and certified put their customers as well as the traveling public at risk. A driver with an unknown medical condition 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 violation.

The carrier applied for a non-profit bus certificate in June 2002. In its application for authority, the Company acknowledged its responsibility to comply with applicable safety laws and regulations. In September, 2008, staff completed a routine safety investigation and the company received a “Satisfactory” safety rating. The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** The Company did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** White Pass Community Service Coalition was cooperative throughout the investigation.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company has corrected this violation by having all current drivers be medically examined and certified.
6. **The number of violations.** Commission staff identified 11 violation types with a total of 91 individual occurrences.
7. **The number of customers affected.** The Company employs five drivers and operates eight motor vehicle. In 2018, the Company traveled 136,631 miles. 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 White Pass Community Service Coalition is likely to repeat these safety violations. However, the Company was very cooperative with Staff, willingly accepted technical assistance, and took immediate steps to correct the violations.
9. **The Company’s past performance regarding compliance, violations, and penalties.** On July 7, 2017 the Commission assessed a penalty of \$1,000 against the Company for failure to submit a complete annual report.
10. **The Company’s existing compliance program.** Mr. Douglas Hayden Department Director, is responsible for the Company’s safety compliance program.
11. **The size of the Company.** White Pass Community Service Coalition is a non-profit carrier operating in the Lewis County area. The Company operates a rural non-profit transit service. The Company currently has eight motor vehicles and employs five drivers. The Company reported \$296,553 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.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

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

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 White Pass Community Service Coalition \$7,200 for violations of WAC 480-31-999, Operation of Motor Vehicles, which adopts Title 49 CFR Part 391, calculated as follows:

- 72 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 occurrence of this critical violation, for a total of \$7,200.

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. Alternatively, 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 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 February 13, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TN-190036

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 \$7,200 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