

Service Date: February 25, 2019

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-190067
PENALTY AMOUNT: \$100

Beeline Tours LTD
8110 7th Avenue South
Seattle, WA 98108

The Washington Utilities and Transportation Commission (Commission) believes that Beeline Tours LTD (Beeline 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 396 – Inspections, Repair and Maintenance.

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 January 23, 2019, Commission Motor Carrier Investigator Francine Gagne conducted a destination point inspection of Beeline vehicle 501, and documented the following federal mandatory out-of-service violation:

- **One violation of Title 49 CFR Part 396.3(a)(1) – Brakes out of service. Twenty percent or more of the vehicle brakes defective.** Brakes on axle one, left side, axle 2 left side, and axle three, both sides (four of six brakes) were out of adjustment.

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 violation noted is very serious and potentially harmful to the public. Companies that use vehicles with defective brakes put their passengers and the traveling public at risk. This violation presents significant 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.

Staff has conducted safety investigations of Beeline, with technical assistance, 14 times since 2004. Brakes are critical safety items and maintaining these systems is part of basic vehicle maintenance. Staff believes the Company knew, or should have known about these requirements.

3. **Whether the company self-reported the violations.** The Company did not self-report this violation.
4. **Whether the company was cooperative and responsive.** Beeline was cooperative throughout the inspection.
5. **Whether the company promptly corrected the violation and remedied the impact.** The Company dispatched a mechanic to make repairs at the inspection site.
6. **The number of violations.** Commission staff identified six violation types during the inspection, one of which resulted in the vehicle being placed out-of-service.
7. **The number of customers affected.** In its 2017 annual report, the Company reported that it traveled 387,654 miles, carried 33,447 passengers, and conducted 3,095 trips. 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 Beeline is likely to repeat these safety violations, however the Company demonstrated its willingness to come into compliance by taking steps to immediately correct the violation.
9. **The company's past performance regarding compliance, violations, and penalties.** The Commission penalized Beeline in 2011 and 2018 for safety violations, as well as in 2015 and 2017 for failing to submit a timely annual report.¹
10. **The company's existing compliance program.** Tony Connors, Operations Manager, is responsible for the Company's safety compliance program.
11. **The size of the company.** Beeline is a large company, with 37 drivers and 31 commercial motor vehicles. The Company reported \$334,310 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 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.

¹ The 2018 penalty was for brakes out of adjustment.

² 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 Beeline \$100 for a violation of WAC 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Parts 396, calculated as follows:

- One violation of Title 49 CFR Part 396.3(a)(1) – Brakes out of service. The Commission assesses a penalty of \$100 for this out-of-service 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. 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 25, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-190067

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.”