

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

**PENALTY ASSESSMENT: TE-190201  
PENALTY AMOUNT: \$100**

Papadimas, Nicholas d/b/a Orion NW  
3719 S. 253<sup>rd</sup> Place  
Kent, WA 98032

The Washington Utilities and Transportation Commission (Commission) believes that Papadimas, Nicholas d/b/a Orion NW (Orion NW 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 – Inspection, 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 March 20, 2019, Commission Motor Carrier Investigator Robert Auderer completed a routine safety investigation of Orion NW and documented the following violations:

- **Two violations of Title 49 CFR 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** Orion NW failed to maintain vehicle maintenance files for its two commercial motor vehicles.

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

1. **How serious or harmful the violations are to the public.** These critical violations are serious and potentially harmful to the public, as companies that fail to maintain minimum records of inspection and vehicle maintenance put the traveling public at risk. Non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and usually higher than average accident rates.<sup>1</sup>
2. **Whether the violations were intentional.** Considerations include:
  - Whether the Company ignored Commission staff's (Staff) 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.

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<sup>1</sup> Appendix B to CFR Part 385—Explanation of Safety Rating Process.

In April 2017 the Commission received the Company's application for charter and excursion carrier authority. In the application, Nicholas Papadimas, owner of Orion NW, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations.

On May 4, 2017, Commission Motor Carrier Investigator Jason Sharp provided new entrant safety regulation training to Orion NW, and Mr. Papadimas acknowledged receiving training pertaining to CFR Part 396 – Inspection, Repair, and Maintenance.

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.** Orion NW was cooperative and responsive throughout the investigation.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company made corrections throughout the investigation as they were identified by Staff.
6. **The number of violations.** Staff identified 13 violation types with a total of 27 individual occurrences.
7. **The number of customers affected.** The Company reported 1,000 miles traveled in the previous 12 months. A notable 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 Orion NW is likely to repeat these safety violations; however, the Company was cooperative, willingly accepted technical assistance, and took immediate steps to correct the violations.
9. **The Company's past performance regarding compliance, violations, and penalties.** This is the Company's first routine safety investigation. On August 12, 2016, Orion NW was penalized \$50 in Docket TE-160723 for failing to file its 2015 annual report and pay 2016 regulatory fees by the due date.
10. **The Company's existing compliance program.** Nicholas Papadimas is responsible for the Company's safety compliance program.
11. **The size of the Company.** Orion NW is a small company, operating two commercial motor vehicles, and employing one commercial driver. The Company reported \$45,000 in gross revenue in 2018.

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.<sup>2</sup> 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 Orion NW \$100 for violations of WAC 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Part 396, calculated as follows:

- Two violations of Title 49 CFR 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance. The Commission assesses a "per category" penalty of \$100 for two occurrences of this first-time critical 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 either or both 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 either or both 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(s) 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 either or both 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](mailto: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.

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

**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 May 20, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TE-190201

**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 one or both 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