

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-191002

PENALTY AMOUNT: \$6,100

Friday Harbor Jolly Trolley, Inc.,
d/b/a Friday Harbor Jolly Trolley and
Leavenworth Jolly Trolley
P.O. Box 1024
Friday Harbor, WA 98250

The Washington Utilities and Transportation Commission (Commission) believes Friday Harbor Jolly Trolley Inc., d/b/a Friday Harbor Jolly Trolley and Leavenworth Jolly Trolley, (Jolly Trolley or Company) violated Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 391 – Qualifications of Drivers, 49 CFR Part 395 – Hours of Service of Drivers, and 49 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 December 4, 2019, Commission Motor Carrier Investigator Wayne Gilbert completed a routine safety investigation of Jolly Trolley and documented the following violations:

- **Fifty-eight violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified.** Jolly Trolley allowed drivers Theresa Holbrook and Eugene Bergman to drive without being medically certified on 58 occasions between July 2 and August 31, 2019.
- **Five violations of 49 CFR § 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file.** The Company failed to maintain a driving record inquiry in the driver qualification files for Theresa Holbrook, Eugene Bergman, Anthony Jenne, Barbara Hickman, and Terry Stoupa.
- **Eighty-three violations of 49 CFR § 395.8(a)(1) – Failing to require a driver to prepare a record of duty status using the appropriate method.** Jolly Trolley failed to require drivers Theresa Holbrook, Eugene Bergman, Anthony Jenne, Barbara Hickman, and Terry Stoupa to complete a record of duty status using the appropriate method on 83 occasions.

- **One violation of 49 CFR § 396.3(a)(1) – Drag link movement.** Commission staff (Staff) discovered a commercial motor vehicle with drag link movement to its steering system. This commercial motor vehicle was placed out-of-service.¹

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 serious and potentially harmful to the public. Companies that: (1) use drivers that are not medically examined and certified, (2) fail to maintain driving record inquiries, (3) fail to require drivers to create records of duty status, and (4) use commercial motor vehicles that are in need of repairs put the traveling public at risk. These violations present serious safety concerns.
2. **Whether the violations were intentional.** Considerations include:
 - Whether the Company ignored 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.

On March 2, 2016, the Commission received the Company’s application for charter and excursion carrier service. In the application, Anthony Jenne, President of Jolly Trolley, acknowledged the Company’s responsibility to understand and comply with applicable motor carrier safety regulations.

On April 18, 2016, Staff provided new entrant safety regulation training to Jolly Trolley, and Anthony Jenne acknowledged receiving training related to driver qualification files, hours of service, inspection, repair and maintenance, and the requirement for medical certification.

On June 21, 2016, the Commission received the Company’s application for auto transportation service with forbearance from rate regulation. In the application Anthony Jenne and Alison Caruso, Vice President of Jolly Trolley, acknowledged the Company’s responsibility to understand and comply with applicable motor carrier safety regulations.

On November 10, 2016, Jolly Trolley filed with the Commission a joint application to transfer all rights under certificate CH-67128. In the application Alison Caruso acknowledged the Company’s responsibility to understand and comply with applicable motor carrier safety regulations.

On August 15, 2018, the Commission received Jolly Trolley’s application to extend its auto transportation service with forbearance from rate regulation. In the application Alison Caruso acknowledged the Company’s responsibility to understand and comply with applicable motor carrier safety regulations.

¹ Equipment ID: Jolly 3

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Jolly Trolley did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** Jolly Trolley was cooperative throughout the safety investigation and expressed a desire to come into compliance.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Jolly Trolley has not provided Staff with evidence that it has corrected the violations.
6. **The number of violations.** Staff identified 14 violation types with a total of 167 individual occurrences.
7. **The number of customers affected.** The Company employs nine drivers and operates five commercial motor vehicles. Jolly Trolley traveled 30,000 miles in 2018. These safety violations presented a public safety risk.
8. **The likelihood of recurrence.** Staff provided technical assistance with specific remedies to help the Company assess how well its safety management controls support safe operations and how to begin improving its safety performance. The Company was cooperative with Staff, and expressed a desire to come into compliance. In light of these factors, Staff believes the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** Jolly Trolley has no history of violations or penalties with the Commission.
10. **The Company's existing compliance program.** Alison Caruso is responsible for the Company's safety compliance program.
11. **The size of the Company.** Jolly Trolley currently operates five commercial motor vehicles and employs nine drivers. The Company reported \$123,950 in gross revenue for 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.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.

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 Jolly Trolley \$6,100, calculated as follows:

- Fifty-eight violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each occurrence of this violation, for a total of \$5,800.
- Five violations of 49 CFR § 391.51(b)(2) – Failing to maintain inquiries into driver’s driving record in driver’s qualification file. The Commission assesses a “per category” penalty of \$100 for these first-time violations.
- Eighty-three violations of 49 CFR § 395.8(a)(1) – Failing to require a driver to prepare a record of duty status using the appropriate method. The Commission assesses a “per category” penalty of \$100 for these first-time violations.
- One violation of 49 CFR § 396.3(a)(1) – Drag link movement. 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 any or all 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. Alternatively, if there is a reason for any or all 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 their 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(s).
- Admit the violations but request mitigation of the penalty amount.

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 Lacey, Washington, and effective December 19, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-191002

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 \$6,100 in payment of the penalty.

2. **Contest the violation(s).** I believe that the alleged violation(s) 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.”