

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-210844

PENALTY AMOUNT: \$1,200

San Juan Transit Tours & Charters, LLC
P.O. Box 2809
Friday Harbor, WA 98250

The Washington Utilities and Transportation Commission (Commission) believes San Juan Transit Tours & Charters, LLC, (San Juan Transit or Company) violated Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 C.F.R.) Part 382 – Controlled Substance and Alcohol Use and Testing; 49 C.F.R. Part 391 – Qualification of Drivers; 49 C.F.R. Part 393 – Parts and Accessories Necessary for Safe Operations; 49 C.F.R. Part 395 – Hours of Service of Drivers; and 49 C.F.R. Part 396 – Inspection, Repair, and Maintenance.

Revised Code of Washington (RCW) 81.04.405 allows penalties of \$100 for each violation. RCW 81.04.530 allows penalties of \$500 for each motor vehicle driver employed by the employer who is not in compliance with the motor vehicle driver testing requirements. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On November 3, 2021, Commission Motor Carrier Investigator Tracy Coble completed a routine safety investigation of San Juan Transit and documented the following violations:

- **One violation of 49 C.F.R. § 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.** The Company allowed driver William Cummings to perform a safety sensitive function before receiving a negative pre-employment controlled substance test result verified by a medical review officer.
- **Four violations of 49 C.F.R. § 391.21(a) – Using a driver who has not completed and furnished an employment application.** The Company failed to have drivers Kraig Hansen, Parin Columna, Ruth Finney, and William Pike complete commercial driver employment applications.
- **One violation of 49 C.F.R. § 393.209(d) – Steering system components worn, welded, or missing.** Commission staff (Staff) discovered a commercial motor vehicle (CMV) that had a loose left-side steering arm.¹ The vehicle was placed out-of-service.

¹ Equipment Identification: N Orcas.

- **One violation of 49 C.F.R. § 393.62(a) – No or defective bus emergency exits.** Staff discovered a CMV with an inoperative or defective rear emergency exit.² The vehicle was placed out-of-service.
- **One violation of 49 C.F.R. § 393.75(a)(3) – Tire flat and/or audible air leak.** Staff discovered a CMV that had a right-side tire on axle two with a PSI reading of 30 to 50 percent less than the maximum inflation pressure marked on the tire.³ The vehicle was placed out-of-service.
- **One violation of 49 C.F.R. § 393.9(a) – Inoperative turn signal.** Staff discovered a CMV that had an inoperative left-side rear turn signal, four-way flasher, and brake light.⁴ The vehicle was placed out-of-service.
- **Thirty-six violations of 49 C.F.R. § 395.8(a)(1) – Failing to require driver to make a record of duty status.** The Company failed to require driver Ruth Finney to make a record of duty status on six occasions between August 5 and August 29, 2021, and failed to require driver Parin Columna to make a record of duty status on 30 occasions between July 2 and July 31, 2021.
- **Five violations of 49 C.F.R. § 396.3(b)(2) – Failing to have a means of indicating the nature and due date of the various inspection and maintenance operations to be performed.** The Company failed to properly identify in the vehicle maintenance files the nature and due date of scheduled maintenance operations to be performed on five CMVs.

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. Passenger transportation companies that: (1) use drivers not tested for controlled substances, (2) use drivers who have not completed proper employment applications, (3) use CMVs in need of repair, (4) operate CMVs with defective emergency exits, (5) fail to require drivers to make a record of duty status, and (6) fail to maintain a vehicle maintenance file identifying the nature and due date of schedule maintenance, put their customers and the traveling public at risk. These violations present significant 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.

² Equipment Identification: L58.

³ *Id.*

⁴ *Id.*

On November 8, 2013, the Commission received the Company's application for transfer of San Juan Transit, Inc.'s auto transportation authority. In the application, Kraig Hansen, owner of San Juan Transit and Tours, LLC, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules.

On April 17, 2014, Staff provided technical assistance to Kraig Hansen, including the review of relevant safety regulations.

On May 22, 2014, the Commission received the Company's application requesting to extend its service territory. In the application, Kraig Hansen acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules.

On November 8, 2016, Staff completed a routine safety investigation of San Juan Transit and documented four violations of 49 C.F.R. § 382.301(a). This investigation resulted in an unsatisfactory rating.

On July 28, 2017, Staff completed a follow-up safety investigation of San Juan Transit and documented three repeat violations of 49 C.F.R. § 382.301(a).

On November 29, 2018, Staff completed a follow-up safety investigation of San Juan Transit and documented five violations of 49 C.F.R. § 391.21(a), one violation of 49 C.F.R. § 395.8(a)(1), and five violations of 49 C.F.R. § 396.3(b)(2). The company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** San Juan Transit did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company provided documentation and updates for vehicle maintenance correction and repairs, as well as updates to the Company's drug and alcohol policy. The Company has not provided Staff with evidence that the other violations have been corrected.
6. **The number of violations.** Staff identified 33 violation types with a total of 109 individual occurrences during the safety investigation of San Juan Transit. Of those violations, Staff identified eight violation types with 50 individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** San Juan Transit traveled 19,535 miles in 2020. 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. While the Company was

cooperative with Staff and expressed a desire to come into compliance, four of the violation types discovered in the safety investigation were repeat violations identified since 2016. Absent a commitment to prioritize safe operations, the violations are likely to reoccur.

9. **The Company's past performance regarding compliance, violations, and penalties.** On December 5, 2016, the Commission assessed a \$3,900 penalty against San Juan Transit in Docket TE-161224 for safety violations of WAC 480-30-221. On December 6, 2016, the Commission issued a Notice of Intent to Cancel and Notice of Brief Adjudicative Proceeding in Docket TE-161225. On January 12, 2017, the Commission entered Order 01, which consolidated Dockets TE-161224 and TE-161225, upgraded the Company's safety rating, and suspended a \$2,800 portion of the penalty for a period of two years, subject to conditions. On January 20, 2017, the Company paid the \$1,400 unsuspended portion of the penalty in full. On October 25, 2017, the Commission entered Order 02 imposing the \$2,500 suspended portion of the penalty for failing to comply with the conditions outlined in Order 01 by incurring repeat violations of WAC 480-30-221 in docket TE-161225. On May 29, 2017, the Company paid the \$2,500 previously suspended portion of the penalty in full.

On October 2, 2017, the Commission assessed a \$200 penalty against San Juan Transit in Docket TE-170905 for safety violations of WAC 480-30-221. On October 10, 2017, the Company paid the \$200 the penalty in full.

On December 19, 2018, the Commission assessed a \$100 penalty against San Juan Transit in Docket TE-180987 for safety violations of WAC 480-30-221. On February 21, 2019, the Company paid the \$100 the penalty in full.

10. **The Company's existing compliance program.** Kraig Hansen is responsible for the Company's safety compliance program.
11. **The size of the Company.** San Juan Transit currently operates six CMVs and employs 10 drivers. The Company reported \$26,747 in gross revenue for the fiscal year ending September 30, 2020.

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.⁵ The Commission generally will assess penalties by violation category, 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.

⁵ 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 San Juan Transit \$1,200 (Penalty Assessment), calculated as follows:

- One violation of 49 C.F.R. § 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result. The Commission assesses a penalty of \$500 for this violation.
- Four violations of 49 C.F.R. § 391.21(a) – Using a driver who has not completed and furnished an employment application. The Commission assesses a “per category” penalty of \$100 for these repeat violations.
- One violation of 49 C.F.R. § 393.209(d) – Steering system components worn, welded, or missing. The Commission assesses a penalty of \$100 for this out-of-service violation.
- One violation of 49 C.F.R. § 393.62(a) – No or defective bus emergency exits. The Commission assesses a penalty of \$100 for this out-of-service violation.
- One violation of 49 C.F.R. § 393.75(a)(3) – Tire flat and/or audible air leak. The Commission assesses a penalty of \$100 for this out-of-service violation.
- One violation of 49 C.F.R. § 393.9(a) – Inoperative turn signal. The Commission assesses a penalty of \$100 for this out-of-service violation.
- Thirty-six violations of 49 C.F.R. § 395.8(a)(1) – Failing to require driver to make a record of duty status. The Commission assesses a “per category” penalty of \$100 for these repeat critical violations.
- Five violations of 49 C.F.R. § 396.3(b)(2) – Failing to have a means of indicating the nature and due date of the various inspection and maintenance operations to be performed. The Commission assesses a “per category” penalty of \$100 for these repeat violations.

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 Penalty Assessment 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 November 23, 2021.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-210844

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 \$1,200 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.”