

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TE-210905
PENALTY AMOUNT: \$100**

Friday Harbor Jolly Trolley Inc.
P.O. Box 1024
Friday Harbor, WA 98250

The Washington Utilities and Transportation Commission (Commission) believes Friday Harbor Jolly Trolley Inc.¹ (Friday Harbor 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 C.F.R.) Part 382 – Controlled Substance and Alcohol Use and Testing.

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 November 16, 2021, Commission Motor Carrier Investigator Wayne Gilbert completed a follow-up safety investigation of Friday Harbor Jolly Trolley and documented the following violations:

- **Sixteen violations of 49 C.F.R. § 382.305(b)(1) – Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.** The Company utilized a drug and alcohol testing consortium that did not test at the applicable annual rate for random alcohol testing.

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 fail to conduct random alcohol testing at the appropriate rate put their customers and the traveling public at risk. These violations present safety concerns.
2. **Whether the violations were intentional.** Considerations include:
 - Whether the Company ignored Commission staff's (Staff) previous technical assistance; and

¹Friday Harbor Jolly Trolley Inc., d/b/a Friday Harbor Jolly Trolley; Leavenworth Jolly Trolley; Roche Harbor Express.

- Whether there is clear evidence through documentation or other means that shows the Company knew of and failed to correct the violation.

On November 10, 2016, the Commission received the Company's application for transfer of Friday Harbor Jolly Trolley's charter and excursion authority. In the application, Alison Caruso, owner of Friday Harbor Jolly Trolley, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules.

On August 14, 2018, the Commission received the Company's application requesting to extend its service territory. In the application, Alison Caruso acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules.

On December 4, 2019, Staff completed a routine safety investigation of Friday Harbor Jolly Trolley that resulted in an unsatisfactory safety rating.

On November 4, 2021, the Commission received the Company's application to change its corporate name. In the application, Alison Caruso acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules.

3. **Whether the Company self-reported the violations.** Friday Harbor Jolly Trolley 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.** Friday Harbor Jolly Trolley has not provided Staff with any evidence that the violations have been corrected.
6. **The number of violations.** Staff identified 19 violation types with a total of 63 individual occurrences during the safety investigation of Friday Harbor Jolly Trolley. Of those violations, Staff identified one violation type with 16 individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Friday Harbor Jolly Trolley traveled 4,872 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. The Company was cooperative throughout the safety investigation and expressed a desire to come into compliance. In light of these factors, Staff believes that the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** On December 19, 2019, the Commission assessed a \$6,100 penalty against Friday Harbor

Jolly Trolley in Docket TE-191002 for safety violations of WAC 480-30-221. On December 19, 2019, the Commission issued a Notice of Intent to Cancel Certificate as a Passenger Transportation Company and Notice of Brief Adjudicative Proceeding in Docket TE-191003. On January 9, 2020, the Commission entered Order 01, which consolidated Dockets TE-191002 and TE-191003, upgraded the Company's safety rating, assessed a reduced penalty of \$3,200 and suspended a \$2,000 portion of the penalty for a period of two years, subject to conditions. On January 16, 2020, the Company paid the \$1,200 unsuspended portion of the penalty in full.

10. **The Company's existing compliance program.** Alison Caruso is responsible for the Company's safety compliance program.

11. **The size of the Company.** Friday Harbor Jolly Trolley currently operates five commercial motor vehicles and employs five drivers. The Company reported \$39,680 in gross revenue for the calendar year ending December 31, 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.² 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.

The Commission has considered these factors and determined that it should penalize Friday Harbor Jolly Trolley \$100 (Penalty Assessment), calculated as follows:

- Sixteen violations of 49 C.F.R. § 382.305(b)(1) – Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions. The Commission assesses a "per category" penalty of \$100 for these critical 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

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

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 December 16, 2021.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-210905

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 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.”