

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

PENALTY ASSESSMENT: TN-220263  
PENALTY AMOUNT: \$200

Lower Columbia Community Action Council Inc.  
1526 Commerce Ave.  
Longview, WA 98632

The Washington Utilities and Transportation Commission (Commission) believes Lower Columbia Community Action Council Inc. (LCCAC or Company) violated Washington Administrative Code (WAC) 480-31-100, Equipment - Safety, which adopts Title 49 Code of Federal Regulations (49 C.F.R.) Part 393 – Parts and Accessories Necessary for Safe Operation, and WAC 480-31-130, Operation of Motor Vehicles, which adopts 49 C.F.R. Part 391 – Qualification of Drivers.

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 April 12, 2022, Commission Motor Carrier Investigator Tracy Coble completed a routine safety investigation of LCCAC and documented the following violations:

- **Two violations of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified.** The Company allowed drivers Robert Hull and Paul Fry to operate a Commercial Motor Vehicle (CMV) without having a valid medical certificate.
- **One violation of 49 C.F.R. § 393.41 – No or defective parking brake system on CMV.** Commission staff (Staff) discovered a CMV with an inoperative parking brake.<sup>1</sup> This vehicle was placed out-of-service.

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 allow drivers to operate CMVs without having a valid medical certificate and fail to maintain parts and accessories in safe and proper operating conditions at all times 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

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<sup>1</sup> Equipment ID: 15

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

On February 20, 2004, Staff provided technical assistance training to Kelly Wagoner, Transportation Manager of LCCAC. In the report Staff noted that the Company's drivers were not currently medically certified, and that the Company planned to consider and implement a medical qualification program in the future. Staff also discussed repair and maintenance requirements.

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** LCCAC did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company 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.** Staff does not know if the Company has corrected these violations.
6. **The number of violations.** Staff identified 13 violation types with a total of 34 individual occurrences during the safety investigation of LCCAC. Of those violations, Staff identified two violation types that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** LCCAC traveled 121,193 miles in 2021. 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 June 17, 2016, LCCAC was penalized \$900 for failure to submit a complete annual report and failure to pay the annual regulatory fee in order TN-160663. On February 29, 2016, the Commission determined that due to mitigating circumstance, no penalty was due.

The Company has no history of safety related penalties with the Commission.

10. **The Company's existing compliance program.** Kelly Wagoner is responsible for the Company's safety compliance program.

11. **The size of the Company.** LCCAC currently operates four CMVs and employs four drivers. The Company reported \$413,606 in gross revenue for the fiscal year ending December 31, 2021.

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 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 LCCAC \$200 (Penalty Assessment), calculated as follows:

- Two violations of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a "per category" penalty of \$100 for these critical violations.
- One violation of 49 C.F.R. § 393.41 – No or defective parking brake system on CMV. 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.

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

**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 May 6, 2022.

*/s/Michael Howard*  
*on behalf of*  
RAYNE PEARSON  
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TN-220263

**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 \$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.”