

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-121692

PENALTY AMOUNT: \$1,000

MILLER SCHMER, INC
DBA SEATTLE EXPRESS
11618 59TH DRIVE SE
SNOHOMISH, WA 98296

The Washington Utilities and Transportation Commission (Commission) believes that you have committed one or more violations of Washington Administrative Code (WAC) 480-30-221, Vehicle and driver safety requirements, which requires passenger transportation companies to comply with Title 49, Code of Federal Regulations (CFR), including Part 382 - Controlled substances and alcohol use testing, Part 383 - Commercial driver's license requirements, and Part 391 - Qualifications of drivers. Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for every such violation.

As a result, the Commission hereby notifies you that it has assessed penalties against you in the amount of \$1,000, as follows:

On June 11, 2012, at a destination check of vehicles at SeaTac Airport, Commission Motor Carrier Inspector Tom McVaugh placed Miller Schmer's driver John Nelson out of service for the following violations:

- **One violation of CFR 383.23(a) – Operating a commercial motor vehicle without a valid commercial driver's license.** Driver John Nelson drove without a Commercial Driver's License on June 11, 2012.
- **One violation of CFR 391.45(a) – Using a driver not medically examined and certified.** Driver John Nelson drove without being medically examined and certified on June 11, 2012.

When Mr. McVaugh conducted a follow-up compliance review on August 16, 2012, he documented the following additional violations:

- **Eight violations of CFR Part 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.** Driver Toby Doyle was hired on June 1, 2012. He took a pre-employment controlled substance test on June 18, 2012, but Miller Schmer did not receive the negative test result until June 20, 2012. Mr. Doyle drove for the company on eight occasions prior to Miller Schmer receiving the negative test result.

This information, if proved 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 the violations did not occur, you may request a hearing to contest the penalty assessment. If there is a reason for the violations that you think should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty. See RCW 81.04.405.

You have the right to present your request for review or mitigation at a hearing, but you are not required to do so. If you do, the Commission will review the evidence supporting your request in an informal hearing, called a Brief Adjudicative Proceeding, before an administrative law judge. The administrative law judge will consider your plea and 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.
- Request a hearing to contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission may then sue you to collect the penalty.

DATED at Olympia, Washington, and effective October 29, 2012.



GREGORY J. KOPTA
Director, Administrative Law Division

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-121692**

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 violation occurred and enclose \$_____ in payment of the penalty.
2. **Request for a hearing.** I believe that the alleged violation did not occur, based on the following information, and request a hearing, which is a process that allows an affected person to present argument to an administrative law judge for a decision by an administrative law judge:
3. **Application for mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reason(s) set out below,
- a) I ask for a hearing for a decision by an administrative law judge based on the information presented above.
- OR b) I waive a hearing and ask for an administrative decision on the information I present directly 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.”