

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-160829

PENALTY AMOUNT: \$36,900

International District Parking Association
DBA Merchants Parking Association, Merchants Parking/Transia
214 5th Avenue South
Seattle, WA 98104

The Washington Utilities and Transportation Commission (Commission) believes that you have committed violations of Washington Administrative Code (WAC) 480-30-221 Vehicle and Driver Safety Requirements, which requires charter and excursion carriers to comply with Title 49 Code of Federal Regulations (CFR) Part 382 – Controlled Substances and Alcohol Use and Testing, Part 383 – Commercial Driver’s License Standards, Part 391 – Qualifications of Drivers, Part 395 – Hours of Service of Drivers and Part 396 – Inspection, Repair, and Maintenance.

RCW 81.04.405 allows penalties of one hundred dollars for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On April 26, 2016, Commission Motor Carrier Investigator Sandi Yeomans conducted a compliance review of International District Parking Association d/b/a Merchants Parking Association, Merchants Parking/Transia (Transia) and identified the following violations of acute and critical regulations:

Acute

- **Two hundred thirty-four violations of CFR Part 383.37(a) – Allowing, requiring, permitting, or authorizing a driver to operate a commercial motor vehicle during any period in which the driver does not have a current commercial learner’s permit (CLP) or commercial driver’s license (CDL) or does not have a CLP or CDL with the proper class or endorsements. An employer may not use a driver to operate a commercial motor vehicle who violates any restriction on the driver’s CLP or CDL.** Transia allowed employees Mohammad Mohajeripour, Richard Phelps, and Xuseen Saleebaan to operate a commercial motor vehicle with passengers on 234 occasions between November 2015 and April 2016. None of the drivers had a passenger endorsement to operate a commercial motor vehicle with passengers.

Critical

- **One violation of CFR Part 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.** Transia allowed employee Jonathan Duarte to operate a commercial motor vehicle on

November 2, 2015, however Transia had not received a negative pre-employment controlled substance test result until November 10, 2015.

- **One hundred fifteen violations of CFR Part 391.45(a) – Using a driver not medically examined and certified.** Transia allowed employees Jonathan Duarte, Charles Harris, Daniel Miller, and Najeh Mohammed to drive on a total of 115 occasions between January 2015 and April 2016. None of the drivers had been medically examined and certified prior to driving.
- **One violation of CFR Part 391.51(b)(2) – Failing to maintain inquiries into driver’s driving record in driver’s qualification file within 30 days of hire.** Transia failed to check the driving record of employees Peter Castro, Shimanugus Gaim, Charles Harris, Kyu Jung, Tauati Peni, Mohammad Mohajeripour, and Najeh Mohammed within 30 days of hire.
- **Five violations of CFR Part 395.8(a) – Failing to require driver to make a record of duty status.** Transia allowed employees Peter Castro, Jonathan Duarte, Najeh Mohammed, and Kyu Jung to drive without making a record of duty status when not under short haul **exemption** on 5 occasions between November 2015 and February 2016.
- **One violation of CFR Part 396.11(a) – Failing to require driver to prepare driver vehicle inspection report.** Transia failed to require its drivers to prepare a driver vehicle inspection report on 210 occasions.
- **Eight violations of CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected.** Transia failed to maintain records of a periodic vehicle inspection. None of the 8 vehicles inspected had any periodic inspections in the file or on the vehicles at the time of inspection.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violation is to the public.** The violations noted are very serious and potentially harmful to the public. Companies that allow a driver to operate a commercial motor vehicle prior to receiving a negative pre-employment controlled substance test result, disregard requirements for medical examination and certification, allow employees to operate a commercial motor vehicle without the proper endorsements, fail to document drivers’ hours of service, or that use a commercial motor vehicle not periodically inspected put the traveling public at risk. An unknown pre-employment controlled substance test result, an undocumented medical condition, a non-endorsed driver, a potentially fatigued driver, or a potentially defective vehicle presents very serious safety concerns.
2. **Whether the violation is 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 February 9 and 10, 2010, Commission staff conducted a compliance review of Transia from which the company received a satisfactory safety rating. During the compliance review Transia was found in non-compliance of CFR Parts 391, 393, and 396. Transia was provided technical assistance and was penalized by the Commission in the amount of \$100 for violation of CFR Part 391.

On May 11, 12, and 13, 2010, Commission staff conducted a compliance review of Transia from which the company received a satisfactory safety rating. During the compliance review staff provided additional technical assistance and noted violations of CFR Part 396.

On October 14, 2011, Transia submitted an application for charter and excursion authority. In its application for charter and excursion authority, Transia acknowledged its responsibility to understand and comply with applicable motor carrier safety regulations. Commission staff provided technical assistance to Transia as a new entrant for charter and excursion authority on February 14, 2012.

On August 21, 2012, Washington State Patrol conducted a compliance review of Transia from which the company received a conditional safety rating. In the compliance review Transia was found in non-compliance of CFR Parts 380, 382, 383, 391, 395 and 396. Transia was provided technical assistance and was penalized by Washington State Patrol for violation of CFR Part 382.

The company knew, or should have known, about these requirements.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** Transia was very cooperative throughout the entire scope of the investigation and expressed a desire of coming into compliance.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Transia was very helpful throughout the investigation, however the company did not make any attempt to correct any of the violations.
6. **The number of violations.** The number of critical violations noted is significant.
7. **The number of customers affected.** The company traveled 541,969 miles and reported \$2,100,000 in gross revenue in 2015, operating thirty-six vehicles. Due to the number of violations noted, these safety violations potentially affected a significant number of customers.

8. **The likelihood of recurrence.** The company was very cooperative and expressed a desire of coming into compliance, however there were multiple repeat violations including repeats of 3 critical regulations. Therefore, the likelihood of recurrence is high.
9. **The company's past performance regarding compliance, violations, and penalties.** The company has had three previous compliance reviews since 2010. There have been similar violations noted and one previous penalty assessment since 2010.
10. **The company's existing compliance program.** Transia has no formal compliance program.
11. **The size of the company.** Transia operates thirty-six commercial vehicles with thirty-eight drivers and reported \$2,100,000 in gross revenue and 541,969 miles traveled in 2015.

Some of the critical violations noted in the compliance review are first-time violations, but the Commission's Enforcement Policy provides that certain Commission requirements are so fundamental to safe operations that the Commission will issue penalties for a first-time violation, regardless of whether staff has previously provided technical assistance on specific issues.¹ Within these first-time violations are regulations so critical to public safety that the applicable statute (RCW 81.04.405) and the Enforcement Policy penalize each occurrence. Other first-time violations are penalized once for each violation type.

The Commission has considered these factors and determined that Transia should be penalized \$36,900 for violations of WAC 480-30-221 Driver Safety Requirements, which adopts CFR Parts 382, 383, 391, 395 and 396, calculated as follows:

- One violation of CFR Part 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result. This is a repeat violation at the penalty amount of \$500 per occurrence (RCW 81.04.531), for a total of \$500.
- Two hundred thirty-four violations of CFR Part 383.37(a) – Allowing, requiring, permitting, or authorizing a driver to operate a commercial motor vehicle during any period in which the driver does not have a current commercial learner's permit (CLP) or commercial driver's license (CDL) or does not have a CLP or CDL with the proper class or endorsements. This is a first time violation at the penalty amount of \$100 per occurrence, for a total of \$23,400.

¹ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

- One hundred fifteen violations of CFR Part 391.45(a) – Using a driver not medically examined and certified. This is a first time violation at the penalty amount of \$100 per occurrence, for a total of \$11,500.
- One violation of CFR Part 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file within 30 days of hire. This is a first time violation at the penalty amount of \$100 per violation type, for a total of \$100.
- Five violations of CFR Part 395.8(a) – Failing to require driver to make a record of duty status. This is a repeat violation at the penalty amount of \$100 per occurrence, for a total of \$500.
- One violation of CFR Part 396.11(a) – Failing to require driver to prepare driver vehicle inspection report. This is a first time violation at the penalty amount of \$100 per violation type, for a total of \$100.
- Eight violations of CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected. This is a repeat violation at the penalty amount of \$100 per occurrence, for a total of \$800.

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 assessment 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 concerning the violation(s) require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

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 this 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 for mitigation 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 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 his or her 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 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 July 6, 2016.



GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-160829

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. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below:

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 violation, but I believe that the penalty should be reduced for the reasons set out below:

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.”