

## WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TN-170157

PENALTY AMOUNT: \$9,800

East County Senior Center  
PO Box 602  
Monroe, WA 98272

The Washington Utilities and Transportation Commission (Commission) believes that you have committed violations of Washington Administrative Code (WAC) 480-31-100 Equipment-Safety, and WAC 480-31-130 Operation of Motor Vehicles, which adopt Title 49 Code of Federal Regulations (CFR) Part 391 – Qualifications of Drivers, and CFR Part 396 – Inspection, Repair, and Maintenance.

Revised Code of Washington (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 February 2, 2017, Commission Motor Carrier Investigator Sandi Yeomans conducted a compliance review of East County Senior Center (East County Senior Center or company) and documented the following violations of critical regulations:

- **Ninety-six violations of CFR 391.45(a) – Using a driver not medically examined and certified.** East County Senior Center allowed employees Lenhardt Gugela, Rosa Mora, Katherine Miller, Larry Hewitt, and John French to drive on 96 occasions between August 2016 and January 2017 without having been medically examined and certified.
- **Five violations of CFR 391.51(a) – Failing to maintain a driver qualification file for each driver it employs.** East County Senior Center failed to maintain a driver qualification file for its drivers Lenhardt Gugela, Rosa Mora, Katherine Miller, Larry Hewitt, and John French.
- **One violation of CFR 396.17(a) – Using a commercial motor vehicle not periodically inspected.** The company's only commercial motor vehicle had not been periodically inspected, despite being subject to a mandatory state inspection program.

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 serious and potentially harmful to the public. Companies that use drivers not medically examined and certified, and that use a commercial motor vehicle not periodically inspected, put the traveling public at risk. An undetected medical condition, or a potentially defective vehicle, present very serious safety concerns.

2. **Whether the violation is intentional.** Considerations include:
  - Whether the company ignored Commission staff's (Staff) 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.

East County Senior Center was initially granted operating authority as a private non-profit transportation provider in August 1991. In 1997, the company voluntarily cancelled its operating authority after contracting with Community Transit, the transit authority in Snohomish County. East County Senior Center reapplied for, and was granted, operating authority as a private non-profit transportation provider in July 2000.

In March 2007, Staff conducted a compliance review of the company and documented a violation of 391.45(a) for using a driver not medically examined and certified. In addition, Staff provided technical assistance pertaining to qualifications of drivers, and inspection, repair and maintenance. 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.** East County Senior Center was very helpful throughout the entire scope of the investigation. The company expressed a desire to maintain compliance with motor carrier safety rules and regulations.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The company has corrected some of the violations by having its drivers Lenhardt Gugela, Rosa Mora, Larry Hewitt and John French obtain valid medical certificates.
6. **The number of violations.** For a company this size, the number of critical violations noted is significant.
7. **The number of customers affected.** The company traveled 17,102 miles and reported \$476,554 in gross revenue for 2016. A significant number of customers, as well as members of the traveling public, were likely affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if the company is likely to repeat these violations.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the company's first compliance review since March 2007. During the 2007 compliance review, the company had one violation of CFR 391.45(a) for using a driver not medically examined and certified. East County Senior Center has no history of previous penalties.
10. **The company's existing compliance program.** East County Senior Center has no formal compliance program.

11. **The size of the company.** East County Senior Center is a small company with two full-time drivers, two part-time drivers, and one commercial vehicle. In 2016, the company reported \$476,554 in gross revenue and 17,102 miles traveled.

Some of the critical violations noted in the compliance review are first-time violations, but 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>1</sup> The Commission generally will assess penalties per type of violation, rather than per occurrence, for other first-time violations of critical regulations that do not meet the criteria for mandatory penalties. The Commission will assess penalties for any repeat violations of critical regulations found in future compliance investigations, including for each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize East County Senior Center \$9,800 for violations of WAC 480-31-100 Equipment-Safety, and WAC 480-31-130 Operation of Motor Vehicles, which adopt CFR Parts 391 and 396, calculated as follows:

- Ninety-six violations of CFR 391.45(a) – Using a driver not medically examined and certified. These are repeat violations of fundamental safety requirements, and thus the Commission assesses penalties at the statutory amount of \$100 per occurrence, for a total of \$9,600.
- Five violations of CFR 391.51(a) – Failing to maintain a driver qualification file for each driver it employs. These are first-time violations, and thus the Commission assesses penalties at the statutory amount of \$100 per violation type, for a total of \$500.
- One violation of CFR 396.17(a) – Using a commercial motor vehicle not periodically inspected. This is a first-time violation, and thus the Commission assesses a penalty at the statutory amount of \$100 per violation type, for a total of \$100.

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 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

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

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(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 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 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 Olympia, Washington, and effective March 15, 2017,



GREGORY J. KOPTA  
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TN-170157

**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.”