

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TE-190050
PENALTY AMOUNT: \$300**

Four Park Avenue, LLC
d/b/a Four Park Avenue
11630 Slater Ave NE
Kirkland, WA 98034

The Washington Utilities and Transportation Commission (Commission) believes that Four Park Avenue, LLC d/b/a Four Park Avenue (Four Park Avenue or Company) has committed violations of Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Part 390 – Safety Regulations, General, and Title 49 CFR Part 391 – Qualifications of Driver.

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 January 17, 2019, Commission Motor Carrier Investigators Robert Auderer and Francine Gagne completed a comprehensive intrastate investigation of Four Park Avenue and documented the following violations:

- **One violation of Title 49 CFR Part 390.19(b)(2) – Motor carrier, hazardous material safety permit applicant/hold, and intermodal equipment provider identification reports.** The Company failed to file the appropriate form under 390.19(a) (MCS-150, 150B, or 150C) every 24 months according to the schedule.
- **Two violations of Title 49 CFR Part 391.21(a) – Application for Employment.** The company used two drivers, Wendy Hensman and Chris Hogan, who had not completed and furnished an employment application.
- **One violation of Title 49 CFR Part 391.51(b)(2) – General requirements for driver qualification files.** The Company failed to maintain inquiries into the driver's driving record in the driver's qualification file for driver Chris Hogan.

The Commission considered the following factors in determining the appropriate penalties for this violation:

1. **How serious or harmful the violation is to the public.** The violations noted are serious and potentially harmful to the public. Companies that fail to keep records of driver qualifications put the traveling public at risk.

2. **Whether the violation is intentional.** Considerations include:

- Whether the company ignored Commission 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.

In its March 31, 2014, application for a charter and excursion carrier services certificate, Vice President Mike Williams acknowledged the Company's responsibility to comply with applicable laws and regulations. Four Park Avenue was previously cited for these violations at its most recent safety investigation on July 3, 2014. The Company knew or should have known about these requirements.

3. **Whether the company self-reported the violation.** The Company did not self-report the violations.
4. **Whether the company was cooperative and responsive.** Four Park Avenue was cooperative throughout the investigation.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Upon receiving notice of the violations, the Company immediately began making corrections.
6. **The number of violations.** In total, Staff identified seven violation types and a total of 12 individual occurrences.
7. **The number of customers affected.** The Company traveled 46,974 miles in the last 12 months. A significant number of customers as well as members of the traveling public were potentially affected by these violations.
8. **The likelihood of recurrence.** It is unknown if Four Park Avenue is likely to repeat these violations, however the Company was very cooperative with Staff and took appropriate steps to correct the safety violations documented in the report.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the Company's second routine safety investigation. The Company was cited for acute and critical violations on July 3, 2014, related to Hours of Service, Vehicle Maintenance, Controlled Substances, and Driver Fitness. The Company received a proposed unsatisfactory rating by the Commission, which was upgraded on October 7, 2014, and the Company was permitted to operate in intrastate commerce.
10. **The company's existing compliance program.** Vice President Mike Williams is responsible for the Company's safety compliance program.

11. **The size of the company.** Four Park Avenue is a medium-sized company with ten drivers and five vehicles. The Company reported \$2,670,254 in gross revenue for 2017.

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.¹ The Commission generally will assess penalties per type of violation, 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 found in future compliance investigations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Four Park Avenue \$300 for violations of Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Part 390 – Safety Regulations, General, and Title 49 CFR Part 391 – Qualifications of Drivers, calculated as follows:

- One violation of Title 49 CFR Part 390.19(b)(2) – failing to file the appropriate form under 390.19(a) (MCS-150, 150B, or 150C) every 24 months according to the schedule. The Commission assesses a penalty of \$100 for this repeat violation.
- Two violations of Title 49 CFR Part 391.21(a) – using two drivers who had not completed and furnished an employment application. As first-time violations, the Commission assesses a penalty of \$100 for a single occurrence of this repeat violation.
- One violation of Title 49 CFR Part 391.51(b)(2) – failing to maintain inquiries into driver's driving record in driver's qualification file. The Commission assesses a penalty of \$100 for this repeat 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. Or, 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

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

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 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, Post Office 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 Olympia, Washington, and effective February 19, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-190050

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 \$300 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.”