

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-220755

PENALTY AMOUNT: \$10,100

Sky Harbor Shuttle LLC
P.O. Box 697
Elma, WA 98541

The Washington Utilities and Transportation Commission (Commission) believes Sky Harbor Shuttle LLC (Sky Harbor or Company) violated Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 C.F.R.) Part 391 – Qualification of Drivers; 49 C.F.R. Part 393 – Parts and Accessories Necessary for Safe Operation; and 49 C.F.R. Part 396 – Inspection, Repair, and Maintenance.

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 October 6, 2022, Commission Motor Carrier Investigator Tracy Cobile completed a routine safety investigation of Sky Harbor and documented the following violations:

- **Ninety-nine violations of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified.** Sky Harbor allowed drivers Mark Vincent, Ray Hirschi, Stephanie Carter, and Rodney Robbins to operate a commercial motor vehicle (CMV) without a valid medical certificate on 99 occasions between March 3 and September 3, 2022.
- **One violation of 49 C.F.R. § 393.41 – No or defective parking brake system on CMV.** Commission staff (Staff) discovered a CMV with a defective parking brake system. This CMV was placed out-of-service.¹
- **Two violations of 49 C.F.R. § 396.17(a) – Using a CMV not periodically inspected.** Sky Harbor failed to have an annual inspection performed on two CMVs.

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. Passenger transportation companies that: (1) use drivers that are not medically examined and certified, (2) use CMVs that have not

¹ Vehicle Identification Number 1FTSE34L96HA17132.

been inspected, and (3) use CMVs in need of repair put 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
- Whether there is clear evidence through documentation or other means that shows the Company knew of and failed to correct the violation.

On March 6, 2020, the Commission received the Company's application for charter and excursion carrier authority. In the application, Stacy Andrews, CEO of Sky Harbor, acknowledged the Company's responsibility to understand and comply with 49 C.F.R. Parts 391, 393, and 396.

On June 5, 2020, Staff provided new entrant carrier safety regulation training to Sky Harbor, which included technical assistance pertaining to motor carrier safety regulations. The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Sky Harbor did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation, corrected some of the identified violations, and expressed a desire to come into compliance with motor carrier safety regulations.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Sky Harbor has not provided Staff with evidence that it corrected the violations of 49 C.F.R. § 391.45(a), 49 C.F.R. § 393.41, and 49 C.F.R. § 396.17(a).
6. **The number of violations.** Staff identified 22 violation types with a total of 202 individual occurrences during the routine safety investigation of Sky Harbor. Of those violations, Staff identified three violation types with a total of 102 individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Sky Harbor reported traveling 400,000 intrastate 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 with Staff and expressed a desire to come into compliance. In light of these factors, Staff believes the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** This is the Company's first routine safety investigation. Sky Harbor has no history of penalties for safety violations with the Commission.

10. **The Company's existing compliance program.** Stacy Andrews is responsible for the Company's safety compliance program.
11. **The size of the Company.** Sky Harbor currently operates two CMVs and employs 11 drivers for its intrastate operations. The Company reported \$1,391,572 in gross revenue for 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.² 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 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 Sky Harbor \$10,100 (Penalty Assessment), calculated as follows:

- Ninety-nine violations of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each occurrence of this critical violation, for a total of \$9,900.
- 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.
- Two violations of 49 C.F.R. § 396.17(a) – Using a CMV not periodically inspected. The Commission assesses a "per category" penalty of \$100 for these critical violations.

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 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 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

² 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 their 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 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 Penalty Assessment. 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 October 18, 2022.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-220755

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 \$10,100 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 or she makes a materially false statement which he or she 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 or her 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.