

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TN-220877
PENALTY AMOUNT: \$200

Ephrata Senior Center, Inc.
124 C St. NW
Ephrata, WA 98823

The Washington Utilities and Transportation Commission (Commission) believes Ephrata Senior Center, Inc., (ESC or Company) violated Washington Administrative Code (WAC) 480-31-130, Operation of Motor Vehicles, which adopts Title 49 Code of Federal Regulations (49 C.F.R.) Part 391 – Qualification of Drivers.

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 November 22, 2022, Commission Motor Carrier Investigator Francine Gagne completed a routine safety investigation of ESC and documented the following violations:

- **One violation of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified.** The Company allowed driver Rafael Gomez to operate a commercial motor vehicle (CMV) without a valid medical certificate on November 1, 2022.
- **One violation of 49 C.F.R. § 391.51(a) – Failing to maintain driver qualification file on each driver employed.** ESC failed to maintain a driver qualification file for Rafael Gomez.

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 use drivers that are not medically examined and certified, and fail to maintain driver qualification files, put their customers and the traveling public at risk. These violations present safety concerns.
2. **Whether the violations were 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.

The Company has held non-profit transportation authority from the Commission since 1995. In addition, Staff has conducted safety investigations of ESC that resulted in technical assistance on three occasions since 2004. The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** ESC did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation 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.** ESC has not provided Staff with evidence that it corrected the violations.
6. **The number of violations.** Staff identified five violation types with a total of five individual occurrences during the routine safety investigation of ESC. Of those violations, Staff identified two violation types with a total of two individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** ESC reported traveling 500 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. Staff believes the likelihood of recurrence is low if the Company prioritizes safe operations.
9. **The Company's past performance regarding compliance, violations, and penalties.** ESC has no history of penalties for safety violations with the Commission.
10. **The Company's existing compliance program.** Kathy Anderson, manager of ESC, is responsible for the Company's safety compliance program.
11. **The size of the Company.** ESC operates one CMV and employs one driver. The Company reported \$310,540 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.¹ 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"

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

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 ESC \$200 (Penalty Assessment), calculated as follows:

- One violation of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for this violation.
- One violation of 49 C.F.R. § 391.51(a) – Failing to maintain driver qualification file on each driver employed. The Commission assesses a penalty of \$100 for this 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 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 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 December 13, 2022.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TN-220877

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 \$200 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.