

Service Date: April 27, 2018

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TC-180268
PENALTY AMOUNT: \$14,500

ISLAND AIRPORTER LLC
139 Tarte Road
Friday Harbor, WA 98520

The Washington Utilities and Transportation Commission (Commission) believes that Island Airporter LLC (Island Airporter or company) has committed violations of Washington Administrative Code (WAC) 480-30-221 Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 387 – Minimum Levels of Financial Responsibility.

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 March 28, 2018, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of Island Airporter and documented the following violations:

- **One hundred forty-five violations of Title 49 CFR Part 387.31(a) – Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility.** Island Airporter operated 145 days during the six months preceding this safety investigation without the required minimum amount of liability insurance.¹

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. Passenger transportation companies that fail to carry the required minimum amount of insurance place their passengers and the traveling public at financial risk. This presents serious concerns.
2. **Whether the violation is intentional.** Considerations include:
 - Whether the company ignored Commission staff's previous technical assistance; and

¹ The company maintained \$1,050,000 in Auto Liability coverage, however, the required minimum for a passenger transportation carrier regulated by the commission is \$1,500,000.

- Whether there is clear evidence through documentation or other means that shows the company knew of and failed to correct the violation.

Island Airporter owner John Ness applied to the Commission for passenger transportation authority in May 2003. In his application, Mr. Ness acknowledged his responsibility to understand and comply with applicable state and federal safety regulations. Commission staff conducted safety investigations and provided technical assistance to Island Airporter in 2003, 2010, 2012, and 2017. The 2017 technical assistance included information on insurance requirements. The violations noted in the current investigation are first-time occurrences. Staff believes Island Airporter was familiar with 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.** Island Airporter was cooperative and responsive throughout the entire investigation.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Staff is not aware of specific corrections made with respect to these violations.
6. **The number of violations.** Staff identified three violation types with a total of 168 occurrences.
7. **The number of customers affected.** The company reported 61,003 miles traveled in 2017. 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.** Commission staff does not know if Island Airporter is likely to repeat these safety violations.
9. **The company's past performance regarding compliance, violations, and penalties.** This is Island Airporter's fifth safety investigation. The Commission penalized Island Airporter in 2015 for failing to submit a timely annual report. The company has had no other violations or penalties.
10. **The company's existing compliance program.** John Ness, owner, is responsible for the company's safety and compliance program.
11. **The size of the company.** Island Airporter is a small company with one driver and one commercial vehicle. The Company reported \$73,937 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.² The Commission generally will assess penalties per type of violation, rather than per occurrence, for first-time violations of those critical regulations that do

² Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

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 Island Airporter \$14,500 for violations of WAC 480-30-221 – Vehicle and Driver Safety Requirements, calculated as follows:

- One hundred forty-five violations of Title 49 CFR Part 387.31(a) – Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility. These are first-time occurrences of an acute safety violation, and the Commission assesses a penalty of \$100 for each occurrence, for a total of \$14,500.

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(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 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 April 27, 2018.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TC-180268

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.

RECEIVED
PROPERTY MANAGEMENT
2018 MAY 14 AM 8:25

1. **Payment of penalty.** I admit that the violations occurred and enclose \$ _____ in payment of the penalty.

2. **Contest the violations.** I believe that the alleged violations 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):

1) Assumed Ferguson Associates, my insurer who reports to state with form E- was providing mandated coverage for me, as I paid my policy.
2) penalty, to large for me, over 1/2 my annual pay.

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: 5/7/2018 [month/day/year], at Friday Harbor, WA. [city, state]

John Ness
Name of Respondent (company) – please print

[Signature]
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.”

#2

WUTC 1

05-07-2018

Dear W.U.T.C

#1

For 15 years Island Airporter has provided service between San Juan Island and SeaTac airport. Over 200 Miles roundtrip and a ferry ride each way, makes for quite a daily journey. In the approximate million miles travelled over the last 15 years there has never been an accident. I am a single owner operator and I don't know why the insurance policy was written for \$1050000 instead of \$1500000, I suspect a clericle error, but I do know the second it was brought to my attention I had the policy changed. I had trusted Ferguson and Associates to insure me and they let me down, I even wrote on the insurance quote form, notes section: to comply with W.U.T.C requirements. It's also their business to know the state insurance requirements. The fine I'm being asked to pay is about half my yearly income after expenses. I beg you to reduce this fine and promise this will not go unnoticed by me again. Please don't let an unnoticed numerical error put an end to this business.

#8

Sincerely, John Ness dba

Island Airporter

RECEIVED
 RECORDS MANAGEMENT
 2018 MAY 14 AM 8:25
 STATE OF WASH
 UTIL. AND TRAFFIC
 COMMISSION

utc

3/30/2018

Island Airporter LLC response to Part B violations:

#1 Primary 387.31 Insurance below minimum level

Action: When made aware by W.U.T.C, I immediately contacted Insurer, Ferguson and Associates and had Insurance changed to meet requirements. On my Insurance renewal questionnaire for 2018 I made a written comment, as usual, to "Comply with all Washington U.T.C requirements, see attached copy. When questioned why this happened, Ferguson and Associates was not sure, number transposition most likely cause, \$1050000.00 instead of \$1500000.00. I will be more diligent, and less trusting by carefully verifying insurance level numbers next renewal.

#3

#2 Primary 390.19 Failure to file MCS-150 form each 24 months

Action: When made aware by W.U.T.C, I immediately went to D.O.T website and updated MCS-150 and submitted copy to W.U.T.C. I had thought I had until August to do this, Note: My D.O.T numbers had not expired, but I was counseled that I needed a current copy of my MCS-150 for company records with this record being renewed and on file every 24 months. I will make sure in the future to have a current MCS-150 in my records and update every 24 months.

over 70 hours in 8 consecutive

**periods during my peak season I
minutes on 1 sample and over 70
second sample. Because my route
to and from the airport my**

Page 1

Copy of
Packet sent to W.U.T.C
on 4-2-18

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®.	
OFFICIAL USE	
Certified Mail Fee \$3.45	0043
Extra Services & Fees (check box, add fee as appropriate)	01
<input type="checkbox"/> Return Receipt (hardcopy) \$0.00	Postmark Here
<input type="checkbox"/> Return Receipt (electronic) \$0.00	
<input type="checkbox"/> Certified Mail Restricted Delivery \$0.00	
<input type="checkbox"/> Adult Signature Required \$0.00	
<input type="checkbox"/> Adult Signature Restricted Delivery \$0.00	
Postage \$0.50	04/02/2018
Total Postage and Fees \$3.95	
Sent To WUTC	

018 0040 0000 8661 9406

utc

schedule is effected by ferry delays. I drive 6 days a week during my peak season. I will be changing this to 5 days a week this season with no more 6 day a week operations. This will certainly prevent me from ever going over over 70 hours in 8 consecutive days. My actual behind the wheel driving time is between 4 and 4 1/2 hours with the rest of the time out of the vehicle on the ferry or at lunch. My new 5 day schedule begins immediately.

Sincerely, *John Ness*

John Ness

360-378-7438

MOTOR CARRIER IDENTIFICATION REPORT (Application for U.S. DOT NUMBER)

U.S. Department of Transportation
Federal Motor Carrier
Safety Administration

REASON FOR FILING (Check Only One)
 NEW APPLICATION BIENNIAL UPDATE OR CHANGES OUT OF BUSINESS NOTIFICATION REAPPLICATION (AFTER REVOCATION OF NEW ENTRANT)

1. NAME OF MOTOR CARRIER ISLAND AIRPORTER LLC		2. TRADE OR D.B.A. (DOING BUSINESS AS) NAME				
3. PRINCIPAL ADDRESS 139 TARTE ROAD		4. CITY FRIDAY HARBOR	5. STATE/PROVINCE WASHINGTON	6. ZIP CODE + 4 98250	7. COLONIA (MEXICO ONLY)	
8. MAILING ADDRESS 139 TARTE ROAD		9. CITY FRIDAY HARBOR	10. STATE/PROVINCE WASHINGTON	11. ZIP CODE+4 98250	12. COLONIA (MEXICO ONLY)	
13. PRINCIPAL BUSINESS PHONE NUMBER (360) 378-7438		14. PRINCIPAL CONTACT CELL PHONE NUMBER (360) 378-7438		15. PRINCIPAL BUSINESS FAX NUMBER		

16. USDOT NO. 2104388	17. MC OR MX NO.	18. DUN & BRADSTREET NO.	19. IRS/TAX ID NO. EIN# _____ SSN# 538700753
20. INTERNET E-MAIL ADDRESS ISLANDAIRPORTER@HOTMAIL.COM			21. CARRIER MILEAGE (to nearest 10,000 miles for Last Calendar Year) YEAR 61003 2018

22. COMPANY OPERATION (Mark all that apply)
 A. Interstate Carrier B. Intrastate Hazmat Carrier C. Intrastate Non-Hazmat Carrier D. Interstate Hazmat Shipper E. Intrastate Hazmat Shipper F. Vehicle Registrant Only

23. OPERATION CLASSIFICATION (Circle All that Apply)
 A. Authorized For-Hire D. Private Passengers (Business) G. U. S. Mail J. Local Government
 B. Exempt For-Hire E. Private Passengers (Non-Business) H. Federal Government K. Indian Tribe
 C. Private Property F. Migrant I. State Government L. Other

24. CARGO CLASSIFICATIONS (Circle All that Apply)

A. GENERAL FREIGHT	F. LOGS, POLES, BEAMS, LUMBER	J. FRESH PRODUCE	P. GRAIN, FEED, HAY	V. COMMODITIES DRY BULK	BB. CONSTRUCTION
B. HOUSEHOLD GOODS	G. BUILDING MATERIALS	K. LIQUIDS/GASES	Q. COAL/COKE	W. REFRIGERATED FOOD	CC. WATER WELL
C. METAL; SHEETS; COILS; ROLLS	H. MOBILE HOMES	L. INTERMODAL CONT.	R. MEAT	X. BEVERAGES	DD. OTHER
D. MOTOR VEHICLES	I. MACHINERY, LARGE OBJECTS	<input checked="" type="radio"/> M. PASSENGERS	S. GARBAGE, REFUSE, TRASH	Y. PAPER PRODUCTS	
E. DRIVE AWAY/TOWAWAY		N. OIL FIELD EQUIPMENT	T. U.S. MAIL	Z. UTILITY	
		O. LIVESTOCK	U. CHEMICALS	AA. FARM SUPPLIES	

25. HAZARDOUS MATERIALS CARRIED OR SHIPPED (Circle All that Apply) C-CARRIED S-SHIPPED B(BULK) - IN CARGO TANKS NB(NON-BULK) - IN PACKAGE

C S A. DIV 1.1	B NB	C S K. DIV 2.2A (Ammonia)	B NB	C S U. DIV 4.2	B NB	C S EE. HRCQ	B NB
C S B. DIV 1.2	B NB	C S L. DIV 2.3A	B NB	C S V. DIV 4.3	B NB	C S FF. CLASS 8	B NB
C S C. DIV 1.3	B NB	C S M. DIV 2.3B	B NB	C S W. DIV 5.1	B NB	C S GG. CLASS 8A	B NB
C S D. DIV 1.4	B NB	C S N. DIV 2.3C	B NB	C S X. DIV 5.2	B NB	C S HH. CLASS 8B	B NB
C S E. DIV 1.5	B NB	C S O. DIV 2.3D	B NB	C S Y. DIV 6.2	B NB	C S II. CLASS 9	B NB
C S F. DIV 1.6	B NB	C S P. Class 3	B NB	C S Z. DIV 6.1A	B NB	C S JJ. ELEVATED TEMP MAT.	B NB
C S G. DIV 2.1	B NB	C S Q. Class 3A	B NB	C S AA. DIV 6.1B	B NB	C S KK. INFECTIOUS WASTE	B NB
C S H. DIV 2.1 LPG	B NB	C S R. Class 3B	B NB	C S BB. DIV 6.1 Poison	B NB	C S LL. MARINE POLLUTANTS	B NB
C S I. DIV 2.1 (Methane)	B NB	C S S. COM LIQ	B NB	C S CC. DIV 6.1 SOLID	B NB	C S MM. HAZARDOUS SUB(RQ)	B NB
C S J. DIV 2.2	B NB	C S T. DIV 4.1	B NB	C S DD. CLASS 7	B NB	C S NN. HAZARDOUS WASTE	B NB
						C S OO. ORM	B NB

26. NUMBER OF VEHICLES THAT CAN BE OPERATED IN THE U.S.

	Straight Trucks	Truck Tractors	Trailers	Hazmat Cargo Tank Trucks	Hazmat Cargo Tank Trailers	Motor Coach	School Bus		Mini-bus	Van		Limousine		
							1-8	9-15	16+	16+	1-8	9-15	1-8	9-15
OWNED												1		
TERM LEASED														
TRIP LEASED														

27. DRIVER INFORMATION

	INTERSTATE		INTRASTATE		TOTAL DRIVERS			TOTAL CDL DRIVERS		
	Within 100-Mile Radius	Beyond 100-Mile Radius	Within 100-Mile Radius	Beyond 100-Mile Radius	1-8	9-15	16+	1-8	9-15	16+
					1			1		

28. IS YOUR U.S. DOT NUMBER REGISTRATION CURRENTLY REVOKED BY THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION? Yes ___ No X
If Yes, enter your U.S. DOT Number. _____

29. PLEASE ENTER NAME(S) OF SOLE PROPRIETOR(S), OFFICERS OR PARTNERS AND TITLES (e.g. PRESIDENT, TREASURER, GENERAL PARTNER, LIMITED PARTNER)

1. **JOHN NESS, OWNER**
(Please print Name)

2. _____
(Please print Name)

30. CERTIFICATION STATEMENT (to be completed by an authorized official)

I, **JOHN NESS**
(Please print Name), certify that I am familiar with the Federal Motor Carrier Safety Regulations and/or Federal Hazardous Materials Regulations. Under penalties of perjury, I declare that the information entered on this report is, to the best of my knowledge and belief, true.

Vehicles are serviced on the following regular basis: 3,000 miles Monthly Semi-annually Other

Who provides maintenance on your vehicles? Les Schwab, Jiffy Lube, Myself

Are they DOT qualified? Yes No
If "No" explain.

Do your vehicles display promotional lettering or advertisement? No Yes

Do your vehicles have special equipment to transport the handicapped? No Yes

Are daily or pre-trip inspections made? Yes No

Does your state require annual inspections? Yes No

If yes, please attach a copy of your last inspection record for all vehicles over 10 years of age.

We meet (check all applicable):

Federal State County _____ City _____ Other _____ driver qualification and vehicle inspection requirements outlined in the State Department of Transportation and/or the Federal Motor Carrier Regulations.

NOTES:

Comply with all Washington UTC requirements



NORTHLANDS 2018 INSURANCE QUOTE QUESTIONNAIRE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

SERVICE DATE

MAY 22 2015

PENALTY ASSESSMENT: TC-150977

PENALTY AMOUNT: \$200

ISLAND AIRPORTER LLC
139 TARTE ROAD
FRIDAY HARBOR, WA 98250

According to Washington Utilities and Transportation Commission (Commission) records, you have violated Washington Administrative Code (WAC) 480-30-071, which requires auto transportation companies to file your annual report and pay regulatory fees each year by May 1. You did not file an annual report or pay regulatory fees by May 1, 2015.

Revised Code of Washington (RCW) 81.04.080 authorizes the Commission to assess a penalty of \$100 for each violation of a Commission rule. In the case of a continuing violation, every day's continuance is a separate and distinct violation. The Commission interprets noncompliance with WAC 480-30-071 beyond May 1 as a continuing violation, and assesses penalties of \$100 for each day a company fails to file its report or pay its regulatory fees after that date.

As a result, the Commission has assessed penalties against you in the amount of \$200 on the following basis:

On February 27, 2015, the Commission mailed the 2014 annual report forms and the 2015 regulatory fee packets to all auto transportation companies registered in Washington. The instructions page for the annual report form instructed these companies to file annual reports and pay regulatory fees by May 1, 2015. The instructions page also stated that failure to file the annual report by May 1 would result in penalties. The deadline for requesting an extension to file your annual report was April 15. You did not request an extension.

#9
On May 5, 2015, Island Airporter LLC filed its 2014 annual report and paid its 2015 regulatory fee. May 5 is 2 business days from May 1, resulting in a total penalty of \$200.

Your penalty is due and payable now. If you believe the violation did not occur, you may request a hearing to contest the penalty assessment. The Commission will grant that request only if material issues of law or fact require consideration of evidence and resolution in a hearing. A request for a hearing must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request.

If there is a reason for the violation that you think should excuse or reduce 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 a hearing only if material issues of law or fact