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October 22, 2025

Connor Thompson  
Director, Administrative Law Division  
Washington State Utilities and Transportation Commission  
PO Box 47250  
Olympia, WA 98504-7250

Subject: Request for Mitigation of Penalty Assessment in Docket TC-250723

Dear Judge Thompson,

I am the General manager of Bremerton-Kitsap Airporter, Inc., (“BKA” or “Company”) operating a transportation company in Kitsap County. In response to the recent inspection, the Company has sought to make significant enhancements to our safety and operations in accordance with the Federal Motor Carriers Safety Administration (FMCSA) requirements. I would like to thank both Tracy and Jacob for their thorough and informative terminal inspection. It has shown me areas where we need to improve.

BKA does not dispute the violations at issue but respectfully requests mitigation of the \$27,300 penalty proposed in the Commission’s October 9, 2025, Notice.

I would like to address the violations at issue before turning to the factors in the Commission’s Enforcement Policy:

1. One violation of 49 C.F.R § 390.35. Making a fraudulent or intentionally false entry in a driver’s qualification file.
  - a. This was a mistake and will not be repeated, and we are truly apologetic. Michael (the operator) has received detailed instruction on performing document inspections. I also counseled him on the importance of truthfully and honestly attesting to legal documents.

This was Michael’s first inspection and he was anxious. After the Company received the initial report from the Commission on September 17, 2025, Michael received additional, formal instruction on how to review driver documentation. He also was counseled on the importance of making accurate statements. Additionally, he was counseled on the consequences of making intentionally false comments and entries on any and all documentation. I will ensure this recurs and have again emphasized the importance of making fully accurate representations which I in turn adopt.

2. Two violations of 49 C.F.R § 382.301(a) –Using a driver before this company received a negative pre-employment test result.
  - a. There are two drivers at issue here. Regarding driver Kimberly Craig, I wish to clarify that this driver was not driving any Company vehicles before we received the verification of her pre-employment drug screen. Kimberly is a school bus driver and came in prior to school being out for the summer, filled out an application and was scheduled for a pre-employment drug screen. Her drug screen was July 3, 2025, verified on July 8, 2025 and her first day of training was July 24, 2025. She was not in a safety sensitive position prior to July 8, 2025. (see attachments). I have looked at our GPS, ELD system and cannot identify where Kimberly was in control (driving) of any of our vehicle as a driver.

Thus, Kimberly was not actually operating a vehicle in this interval; she was an observer only before her drug-test results were verified by the Company. Moreover, it is typical that the Company will instruct new drivers as to how and when to log in with their name and password on the Electronic Logging Device (ELD) in similar intervals. This training protocol may have caused confusion by suggesting she was in control of a vehicle prior to July 24<sup>th</sup>. While the Company will take steps to ensure this does not occur again, we would like to emphasize that this driver was not in a safety sensitive position before her drug-test results were received and verified.

Regarding driver Jermar Givens, I would again state that to my knowledge, I have never assigned a driver to a safety-sensitive position prior to a pre-employment drug screen verification. Jermar came in January 30, 2025, and his negative drug-test results were forwarded to BKA on February 1, 2025. (see attachments), During the time from 15 Jan 2025 until 20 Jan 2025, Jermar worked around the property as a bus washer and conducted general office and property maintenance. On January 21, 2025, Jermar was trained as our BKA SEATAC Rep to assist passengers at the airport. On January 22, 2025, Jermar was assigned as the BKA SEATAC Rep as a replacement for the assigned employee. Jermar did not drive in a Safety-Sensitive Function until he received his Class C CDL on 01 May 2025.

Thus, BKA does disputes the Staff's finding that "[t]he driver drove on January 21, 2025..." because Jermar was in training at the airport.

Regardless, the Company does not dispute that there may have been technical violations of 49 C.F.R § 382.301(a), but the Company maintains that these two drivers at issue were merely in training and were not in safety-sensitive positions before the Company received the negative drug-test results. We respectfully ask that the Commission consider this mitigating factors.

3. Two Hundred Forty-eight violations of 49 C.F.R § 383.23(a). Operating a commercial motor vehicle without a valid Driver's License.

Jospeh Walsh, Charles Gerlach, Dennis Bittinger and Michael McKay all were valid license holders prior to July 7, 2025. However, as the Staff inspectors noted, medical examiner certificates (MECs) are now processed by FMCSA, instead of being submitted to WA DOL directly. This regulatory change meant that these drivers were technically out of compliance, because their otherwise valid MECs were not entered on their CDL abstracts. This aberration is currently being corrected, and now each of these drivers have updated, valid MECs on file with WADOL.

The Commission here assessed a \$100 per violation penalty for the 248 violations of 49 C.F.R § 383.23(a). If accepted by the Commission, this would amount to \$24,800 of the total \$27,300 penalty proposed by the Commission in its October 9, 2025, Notice.

BKA respectfully requests that the Commission substantially mitigate, or at least suspend, the penalty for 49 C.F.R § 383.23(a) violations. These 248 violations occurred as the result of a recent regulatory change, where our drivers' otherwise valid MECs which were not correctly noted on their CDLs. There is no suggestion of malfeasance or willfulness on the Company's part, and no evidence that the Company has violated this requirement in the past. Even if this is considered a federal driver-safety regulation, the Commission should substantially mitigate this penalty as it is essentially a "first-time paperwork violation" by a small business. RCW 34.05.110(2): ("... agencies shall waive any fines, civil penalties, or administrative sanctions for first-time paperwork violations by a small business.").

4. Fourteen violations of 49 C.F.R § 391.45(a). Using a driver not medically examined. We (Michael and I) will be more diligent when we are onboarding a new employee, making sure that all the information is clear, concise and timely. Michael and I will be going through all files to ensure that all driver's qualification files and other paperwork is correct and complete.

#### Summary:

I acknowledge there are some issues that we have corrected and some that need continuing, on-going resolution. Michael and I are actively reviewing all current employee files and company policies and procedures to ensure we follow the guidelines of the FMCSA, DOT, UTC, and CFR's requirements accordingly. I appreciate the comments from the inspectors to assist us with what we need to do to make this company compliant with all rules and regulations. Michael and I have spent the last two weeks making sure that we are in full compliance and we will consult with the WUTC enforcement staff if any continuing questions arise.

While we the Commission has assessed a total penalty of \$27,300, we respectfully request that the Commission mitigate this high penalty amount given the factors set forth in its Enforcement Policy. We will highlight the most pertinent factors:

- **How serious or harmful the violation is to the public.** The majority of the \$27,300 penalty is comprised of a proposed \$24,800 penalty observed for two Hundred Forty-eight violations of 49 C.F.R § 383.23(a). As we have observed, though, our drivers had otherwise valid medical examiner certificates (MECs) that were not displayed on their CDL abstracts due to a recent change in regulatory practice. While the Company may have erred, our drivers had otherwise valid MECs, and there was no significant harm or risk to the public that would have resulted from using a driver who did not have any valid MEC. Similarly, the two violations of 49 C.F.R § 382.301(a) reflect drivers who were in training, but were not actually operating commercial motor vehicles prior to the Company's receipt of their negative drug-test results.
- **Whether the violation is intentional.** Staff found one violation of 49 C.F.R § 390.35. The Company takes this issue seriously and has counseled its employee. Beyond this single violation of 49 C.F.R § 390.35, there is no suggestion that the Company intended to violate these various rules.
- **Whether the company was cooperative and responsive.** The Commission's Penalty Assessment notes that the Company was cooperative and responsive throughout the investigation.
- **Whether the company promptly corrected the violations and remedied the impacts.** The Penalty Assessment recognizes that some violations were corrected during Staff's visit and the Company received technical assistance on other issues.
- **The likelihood of recurrence.** The Penalty Assessment acknowledges that the likelihood of recurrence is "low."
- **The company's past performance regarding compliance, violations, and penalties.** The Penalty Assessment states that the Company has a past history of penalties for safety violations. However, the Penalty Assessment does not describe these past penalties, describe any recent past penalties, or describe any past penalties for violations of the same regulations at issue here. A search of the Commission's public internet site failed to show any recent penalties assessed against the Company.
- **The size of the company.** The Penalty Assessment states that BKA is a "large company," noting that it has 41 drivers and an annual gross revenue of \$1,450,000. Pursuant to RCW 34.05.110(9)(a), however, BKA would be properly considered a "small business" as it has fewer than 250 employees and a gross revenue of less than seven million dollars.

For all of these reasons, the Company respectfully requests that the Commission either mitigate the proposed penalty of \$27,300 by a substantial amount or suspend the penalty subject to the condition that no repeat violations of the same regulations occur in the prescribed time period. There was no significant harm to the public from these violations. The likelihood of recurrence is low, and the proposed penalty of \$27,300 is excessive given the relatively small size of the Company and its cooperativeness throughout this process.

Finally, the Company requests that the Commission make this determination based on the records before it, without the need for further hearing.

Sincerely,

Lauri Smith  
General Manager  
Bremerton-Kitsap Airporter, Inc