



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

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Date: April 8, 2019

To: Rayne Pearson, Director, Administrative Law

From: Mathew Perkinson, Assistant Director, Transportation Safety

Re: TE-170950 and TE-170951 Puget Express LLC dba Puget Express
Evaluation of Safety Management Plan and recommendations regarding the company's safety rating and the reinstatement of its charter and excursion carrier operating authority (CH-64310).

On September 12, 2017, staff completed a routine safety investigation of Puget Express LLC dba Puget Express which resulted in an unsatisfactory safety rating.

Federal law incorporated into WAC 480-30-221 prohibits motor carriers transporting passengers in commercial motor vehicles from operating beginning the 46th day after the date of the notice of a proposed unsatisfactory safety rating. A company may request a change to its safety rating based on evidence that the company has taken corrective actions to address the identified violations and that company operations currently meet the safety fitness standard specified in 49 CFR 385.5 and 385.7. In this case, Puget Express had until October 28, 2017 to come into compliance with applicable laws and rules by obtaining commission approval of a safety management plan.

The unsatisfactory safety rating was based on four violations of acute regulations and one violation of critical regulations – 382.115(a), 383.37(a), 387.31(a), 390.35 and 395.8(a).

“Acute” regulations are those identified as such where non-compliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall safety posture of the motor carrier. “Critical” regulations are those identified as such where non-compliance relates to management and operational controls. These are indicative of breakdowns in a carrier's management controls. Patterns of non-compliance with a critical regulation are linked to inadequate safety management controls and higher than average accident rates.

As a result of staff's safety investigation in Docket TE-170950 the commission issued a penalty assessment of \$8,300 for critical safety violations.

The acute and critical violations discovered during the investigation were as follows:

1. **One violation of Title 49 CFR 382.115(a) – Failing to implement an alcohol and/or controlled substances testing program on the date the employer begins commercial motor vehicle operations.** Puget Express has no alcohol and/or controlled substances testing program.
2. **Thirty-seven violations of Title 49 CFR 383.37(a) – Allowing, requiring, permitting or authorizing a driver to operate a commercial motor vehicle during any period in which the driver does not have a current commercial driver’s license or the proper endorsements.** During the six months preceding the compliance investigation, driver Michael Kidane operated a commercial motor vehicle on 37 occasions without the required passenger endorsement, as follows: six days in January, four days in February, six days in March, three days in April, eleven days in May and seven days in June 2017.
3. **Seventeen violations of Title 49 CFR 387.31(a) – Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility.** Puget Express operated without the required minimum level of financial responsibility on 17 occasions, as follows: six days in January, four days in February, six days in March and one day in April, 2017.
4. **One violation of Title 49 CFR 390.35 – Making or causing to make fraudulent or intentionally false statements, fraudulent or intentionally false entries on records, and/or reproducing records for fraudulent purposes.** Puget Express provided a falsified insurance document to staff on June 13, 2017, this violation was dismissed.
5. **Eleven violations of Title 49 CFR 395.8(a) – Failing to require driver to make a record of duty status.** Driver Michael Kidane operated a commercial motor vehicle eleven times during the 30-day sample period of May 1 through May 30, 2017, without making a record of duty status.
6. **One violation of Title 49 CFR 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** Puget Express does not maintain a vehicle maintenance file for its 30-passenger bus.

Puget Express received notice of its proposed unsatisfactory safety rating on September 12, 2017, and the 45 day period to request and receive a safety rating upgrade ends on October 28, 2017. The company also received information explaining the requirements it was to meet in its safety management plan.

On September 13, 2017, the commission issued a Notice of Intent to Cancel Certificate, the commission instructed the company to submit its proposed safety management plan no later than 5 p.m. on Wednesday, October 11, 2017.

On October 18, 2017, the commission convened a brief adjudicated proceeding. As a result of Puget Express not submitting a proposed safety management plan, Judge Pearson issued bench

requests requiring the company to file a proposed safety management plan no later than October 20, 2017, at 5 p.m., and required Staff to file its response and recommendation no later than October 25, 2017, at 12 p.m.

On October 25, 2017, Staff filed its response to the company's proposed safety management plan, noting that the plan was deficient in five of six areas in which corrective action was required.

On October 27, 2017, Order 01 in Dockets TE-170950 and TE-170951 (consolidated) cancelled the company's charter and excursion carrier certificate (CH-64310). The commission ordered:

- Puget Express, LLC cease and desist all operations unless and until its certificate is reinstated or it applies for and obtains a new certificate from the commission.
- A \$8,200 penalty against Puget Express, LLC suspending a \$5,200 portion of the penalty for two years subject to the following conditions: 1) Puget Express, LLC maintains a conditional safety rating or cease and desist all charter and excursion carrier operations, 2) Puget Express, LLC may not incur any repeat violations of WAC 480-30-221, and 3) Puget Express, LLC must either pay the \$3,000 portion of the penalty that is not suspended or file jointly with Staff a proposed payment plan within 10 days of the effective date of this Order.
- If Puget Express, LLC fails to comply with any condition of this Order, the entire \$5,200 suspended penalty will become immediately due and payable without further commission order.

On November 6, 2017, Puget Express paid the \$3,000 portion of the penalty that was not suspended.

In January 2018, staff received complaints that Puget Express was operating a passenger bus. Staff visited Puget Express' website and discovered that the company continued to advertise charter and excursion services in violation of Order 01. Commission staff then posed as a consumer and received a quote from the company. On February 28, 2018, the commission issued Order 02 imposing the suspended penalty of \$5,200 for being in violation of Order 01. The penalty was paid in full on July 19, 2018.

On January 4, 2019, Puget Express' owner, Isaiah Fikre, submitted a safety management plan addressing each violation that was noted during the 2017 safety investigation. On January 14, 2019, Puget Express applied for reinstatement of operating authority as a charter and excursion carrier.

Evaluation of Safety Management Plan

1. **The plan must address each acute, critical, or serious violation discovered during the most recent compliance investigation. Corrective actions to address other violations noted during the investigation must also be included.**

The safety management plan addresses all violations noted during the 2017 safety investigation. The plan includes remedies that display that the carrier understands all of the regulations of which it was found to be in violation.

2. **Identify why the violations were permitted to occur.**

Mr. Fikre explains that his lack of knowledge, organizational skills and poor bookkeeping were the cause of most identified violations. Mr. Fikre also takes responsibility for not being properly prepared and for his lack of management commitment to ensure his company was compliant with safety regulations.

3. **Discuss the actions taken to correct the deficiency or deficiencies that allowed the violations to occur. Include actual documentation of this corrective action. (For example: documentation may include items such as new policies and procedures, training programs and sign-in lists, or copies of new forms.**

Puget Express took action to address each violation identified during the 2017 safety investigation. Mr. Fikre has contracted with a safety consultant to assist in overseeing compliance with state and federal regulations. The consultant helped Mr. Fikre supply a thorough and compliant plan that illustrates an understanding of the company's safety program. The plan contained actual documentation of the company's alcohol and controlled substance testing program, insurance documentation, qualification of drivers, an hours of service timesheet, and vehicle maintenance files.

4. **Outline actions taken to ensure that similar violations do not reoccur in the future. YOU MUST DEMONSTRATE THAT YOUR OPERATIONS CURRENTLY MEET THE SAFETY STANDARD AND FACTORS SPECIFIED IN 49 CFR 385.5 and 385.7. To do so, you must demonstrate that you now have adequate safety management controls in place which function effectively to ensure acceptable compliance with applicable safety requirements.**

The safety management plan states that the consultant was hired to assist the company owner in maintaining the company's safety program in compliance with regulations. VATA will monitor and audit the company's records to ensure compliance. The safety management plan illustrates that the company comprehends the appropriate corrective actions required to ensure that similar violations do not reoccur.

- 5. If the request includes actions that will be conducted in the near future, such as training, reorganization of departments, purchasing of computer programs, etc., companies must include a detailed description of the activity or training and a schedule of when that activity will commence and when it will be completed.**

The plan was complete and no future improvements to come in compliance were identified or necessary.

- 6. Include any additional documentation relating to motor carrier safety and the prevention of crashes that you believe supports your request.**

No additional documentation was submitted with the plan to support the request.

- 7. Include a written statement certifying the carrier will operate within federal and state regulations and the carrier's operation currently meets the safety standard and factors specific in 49 CFR 385.5 and 385.7. A corporate officer; partner, or the owner of the company must sign the statement.**

The plan states that Puget Express will operate in compliance with the Federal Motor Carrier Safety Regulations. Isaiah Fikre certifies that the carrier operations currently meet the safety standards and factors specified in 49 CFR 385.5 and 385.7.

On March 21, 2019, staff performed New Entrant training with Mr. Fikre and inspected three commercial motor vehicles. No violations were identified.

Summary and Recommendations

Staff reviewed Puget Express' safety management plan and concludes it is acceptable and meets the requirements of 49 CFR Part 385. Staff believes that Mr. Fikre has taken the appropriate actions to develop a compliant safety program. Staff recommends that the company's previous safety rating of unsatisfactory be upgraded to conditional and that the commission authorize the company's application for re-instatement as a charter and excursion carrier.

Due to the company's history of non-compliance staff further recommends that Puget Express, LLC undergo a non-rated safety investigation within one year of reinstatement to determine the company's compliance with safety regulations.