



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250

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February 3, 2017

Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

RE: *Washington Utilities and Transportation Commission v. Seattle Ocean Travel LLC d/b/a Seattle Ocean Travel*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TE-170026

Dear Mr. King:

On January 18, 2017, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment TE-170026 against Seattle Ocean Travel LLC d/b/a Seattle Ocean Travel (Seattle Ocean Travel) in the amount of \$12,500 for one hundred twenty-five critical violations of WAC 480-30-221 Vehicle and Driver Safety Requirements, which requires charter and excursion carriers to comply with Title 49 Code of Federal Regulations (CFR) Part 391 – Qualifications of Drivers, and Part 396 – Inspection, Repair, and Maintenance, as follows:

- **One hundred twenty-four violations of CFR 391.45(a) – Using a driver not medically examined and certified.** Seattle Ocean Travel allowed Yang He to drive on 124 occasions from August 12 to December 14, 2016 without having been medically examined and certified.
- **One violation of CFR 396.17(a) – Using a commercial motor vehicle not periodically inspected.** The company's only commercial motor vehicle had not been periodically inspected, despite being subject to a mandatory state inspection program.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation of Title 49 CFR Part 391 and Title 49 CFR Part 396. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On January 31, 2017, Seattle Ocean Travel filed with the Commission its application for mitigation of penalties. Yang He and Jing Guo, owners of Seattle Ocean Travel, admit the

violations, provide minimal explanation of the corrective action steps taken by the company, and ask that the penalties be reduced for the reasons set out in their response.

Seattle Ocean Travel operates as a charter and excursion carrier under permit number CH-66039. In its application for charter and excursion authority filed with the Commission in July 2015, Jing Guo acknowledged her responsibility to understand and comply with applicable motor carrier safety rules and regulations. Commission staff conducted a new entrant visit with Seattle Ocean Travel on July 29, 2015, and provided additional technical assistance to the company.

On December 19, 2016, Commission Motor Carrier Safety Investigators Sandi Yeomans and Jason Sharp conducted a compliance review investigation, an in-depth examination of the motor carrier's compliance with regulations that the FMCSA has identified as "acute" or "critical."¹ Acute regulations are identified where non-compliance is so severe as to require immediate corrective action regardless of the overall safety posture of the motor carrier. Violations of critical regulations are generally indicative of breakdowns in a carrier's management controls. Non-compliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and unusually higher than average accident rates.² Ms. Yeomans and Mr. Sharp documented 125 violations of critical regulations, all of which were first-time violations, resulting in a satisfactory safety rating.

The Commission's Enforcement Policy provides that some Commission requirements are so essential to safe operations that the Commission may issue penalties for a first-time violation, even if staff has not previously provided technical assistance on specific issues.³

In the mitigation request, Mr. He and Ms. Guo admitted the violations, and provided a numbered list of the corrective steps taken for each violation. Staff found the company's response to be minimal, and provides its response below:

- **Mitigation Request: CFR Part 391.45(a) – Using a driver not medically examined and certified.** Seattle Ocean Travel's request for mitigation did not address this violation.

Staff response: It is the company's responsibility to ensure that its drivers have current medical certification and to not allow its drivers to operate a vehicle when medical certification has expired. Seattle Ocean Travel did provide staff with a copy of Yang He's valid medical examiner's certificate dated December 26, 2016, prior to staff issuing the penalty assessment.

The assessed penalty is \$12,400 for 124 occurrences of this violation. Staff recommends the penalty be reduced \$5,000, for a total of \$7,400.

¹ Code of Federal Regulations, Appendix B to Part 385—Explanation of safety rating process

² *Id.*

³ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

- **Mitigation Request: CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected.** Seattle Ocean Travel states that it prepares daily driver vehicle inspection reports and regularly has the vehicle maintained. The company states that it was unaware that the vehicle inspection must be in accordance with regulations.

Staff response: It is the company's responsibility to ensure that its commercial motor vehicle is periodically inspected under the mandatory inspection program. Seattle Ocean Travel did provide staff with a copy of an annual vehicle inspection report dated December 22, 2016, prior to staff issuing the penalty assessment.

The assessed penalty is \$100 for one violation of this type. Staff recommends no mitigation of this penalty.

Seattle Ocean Travel is a very small company that currently operates one commercial vehicle and employs one driver. The company reported \$134,733 in gross revenue and 8,680 miles traveled in 2015. Staff recommends that the penalty of \$12,500 be reduced to \$7,500.

If you have any questions, please contact Jason Hoxit, Compliance Investigator, Transportation Safety, at 360-664-1320, or by e-mail at JHoxit@utc.wa.gov.

Sincerely,



David Pratt
Assistant Director, Transportation Safety