

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TE-190523

2019 JUL 8 PM 3:56

**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 \$4,400 in payment of the penalty.

2. **Contest the violations.** I believe that one or both of 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**):

*the company did not "knowingly" allow a driver to drive CMV ~~without~~ without a CDL. Driver to our knowledge had a CDL as he had a current Health card. to our knowledge we were in total compliance. only because of a communication glitch*

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

*Did the DOT not have this info.*

OR  b) I ask for a Commission decision based solely on the information I provide above.

*the public was never "endangered"*

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**):

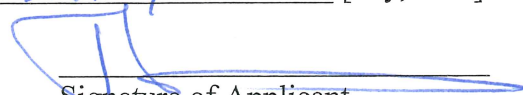
a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

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: 7/9/2019 [month/day/year], at Des Moines, WA [city, state]

Jael Mensorides  
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 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.”

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-190523

PENALTY AMOUNT: \$4,400

Customized Tours & Charter Service, LLC  
d/b/a Customized Tours & Charter Service;  
Customized Tours; Tours of Seattle; Customized Charters;  
Seattle Charters; and TourSeattle.com  
1620 S. 240<sup>th</sup> Street  
Des Moines, WA 98198

STATE OF WASH.  
UTILITIES AND TRANSP.  
COMMISSION  
JUL 18 PM 3:26

The Washington Utilities and Transportation Commission (Commission) believes that Customized Tours & Charter Service, LLC d/b/a Customized Tours & Charter Service; Customized Tours, Tours of Seattle; Customized Charters; Seattle Charters; and TourSeattle.com (Customized Tours or Company) violated Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 383 – Commercial Driver’s License Standards; Requirements and Penalties.

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 June 18, 2019, Commission Motor Carrier Investigator Wayne Gilbert completed a routine safety investigation of Customized Tours and documented the following violations:

- **Forty-four violations of Title 49 CFR 383.37(a) – Knowingly allowing, requiring, permitting, or authorizing an employee to operate a CMV during any period in which the driver does not have a current CLP or CDL or does not have a CLP or CDL with the proper class or endorsements.** Customized Tours allowed driver Cesar Hernandez to operate a commercial motor vehicle with a downgraded CDL between January 30, 2019, and June 5, 2019.

The Commission considered the following factors in determining the appropriate penalty for these violations:

1. **How serious or harmful the violations are to the public.** These violations are serious and potentially harmful to the public, as companies that use drivers not properly licensed put the traveling public at risk. Noncompliance with acute regulations is quantitatively linked to inadequate safety management controls and usually higher than average accident rates.<sup>1</sup>

<sup>1</sup> Appendix B to CFR Part 385—Explanation of Safety Rating Process.

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 began its operations in September 1989, and the Commission's earliest record of Customized Tours' operating authority dates back to 1990.

On December 21, 2009, Commission Motor Carrier Investigator Tom McVaugh completed a routine safety investigation of Customized Tours, which resulted in a "satisfactory" safety rating. Staff provided technical assistance to the Company during this investigation.

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** The Company did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** Customized Tours was cooperative and responsive throughout the investigation.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company expressed a desire to come into compliance.
6. **The number of violations.** Staff identified 17 violation types with a total of 107 individual occurrences.
7. **The number of customers affected.** The Company reported 200,000 miles traveled in 2018. A significant number of customers, as well as members of the traveling public, were potentially affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if Customized Tours is likely to repeat these safety violations; however, the Company was cooperative and willingly accepted technical assistance.
9. **The company's past performance regarding compliance, violations, and penalties.** Staff previously conducted a safety investigation of Customized Tours in December 2009, and the Company received a "satisfactory" safety rating.

On September 10, 2014, Customized Tours was penalized \$400 in Docket TE-143298 for using a commercial motor vehicle not periodically inspected.

On June 21, 2016, Customized Tours was penalized \$1,000 in Docket TE-160693 for failure to file its 2015 annual report or pay its 2016 regulatory fee.

10. **The Company's existing compliance program.** Joel Mensonides is responsible for the Company's safety compliance program.
11. **The size of the Company.** Customized Tours is a medium-sized company, operating 10 commercial motor vehicles, and employing 12 commercial drivers. The Company reported \$1,770,500 in gross revenue in 2018.

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.<sup>2</sup> The Commission generally will assess penalties per type of violation, 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" criteria and also 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 Customized Tours \$4,400 for violations of WAC 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Part 383, calculated as follows:

- Forty-four violations of Title 49 CFR 383.37(a) – Knowingly allowing, requiring, permitting, or authorizing an employee to operate a CMV during any period in which the driver does not have a current CLP or CDL or does not have a CLP or CDL with the proper class or endorsements. The Commission assesses a penalty of \$100 for each occurrence of this acute violation, for a total of \$4,400.

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 that any or all of 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. Or, 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 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 his or her decision.

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

**You must act within 15 days after receiving this notice** to do one of the following:

- Pay the amount due.
- Contest the occurrence of either or both 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](mailto: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 July 3, 2019.

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