November 9, 2012

David W. Danner, 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. Miller Schmer, Inc. DBA Seattle Express*

Commission Staff’s Response to Application for Mitigation of Penalties

Docket TE-121692

Dear Mr. Danner:

On October 29, 2012, the Washington Utilities and Transportation Commission (commission) issued Penalty Assessment TE-121692 against Miller Schmer, Inc. d/b/a Seattle Express (Miller Schmer) in the amount of $1,000 for ten violations of Washington Administrative Code (WAC) 480-30-221, Vehicle and driver safety requirements, which requires passenger transportation companies to comply with Title 49, Code of Federal Regulations (CFR), including Part 382 - Controlled substances and alcohol use testing, Part 383 – Commercial driver’s license requirements, and Part 391 - Qualifications of drivers.

On November 8, 2012, Miller Schmer filed with the commission its request for mitigation (Mitigation Request). Miller Schmer admitted the alleged violations, but asked that the penalty amount be reduced, or in the alternative, that the company be given a payment plan to satisfy the penalty.

In his Mitigation Request, Miller Schmer Vice President Matt Schmer states that he was overwhelmed with work and did not pay close enough attention to his drivers to ensure they had proper commercial driver’s licenses (CDL) and current medical certificates. Mr. Schmer states he was aware of the pre-employment drug testing requirement, but let it slip because of workload. Mr. Schmer also states he was unaware that he had to have the negative pre-employment drug test result back prior to the employee beginning work.

This is not the first time Miller Schmer violated requirements related to pre-employment drug tests or driver medical certification. In 2005, during a compliance review of Miller Schmer, commission staff noted five violations of CFR Part 382.301(a) - Using a driver before receiving a negative pre-employment controlled substance test result and five violations of CFR Part 391.45(a) – Using a driver not medically examined and certified.[[1]](#footnote-1) At that time, Mr. Schmer committed to addressing these violations.[[2]](#footnote-2) Miller Schmer knew or should have known how to comply with these requirements.

Mr. Schmer’s stated inattention to driver safety requirements because of increased workload is not a reasonable excuse for failing to comply. During roadside enforcement, when commission staff finds that a driver is operating a passenger-carrying vehicle without possessing a valid CDL or medical certificate, the violation is considered severe enough and the danger to the public is considered great enough that the driver is declared unqualified to drive and is placed out-of-service.[[3]](#footnote-3) Miller Schmer knew or should have known how to comply with these requirements.

The commission’s rules governing safety requirements for passenger transportation are designed to protect the health and safety of the traveling public. It is the policy of the Transportation Safety section to recommend that the commission assess penalties for any violations related to keeping the public safe from unqualified drivers, such as drivers who drive without required CDLs, current medical certification, or proof a negative pre-employment drug test.

Commission staff has provided more than adequate information and assistance to Miller Schmer on how to comply with federal and state laws and rules. Staff will conduct a follow-up review within six months to determine if the company’s safety management program has improved. If staff finds repeat violations related to driver qualifications or if Miller Schmer receives a conditional or unsatisfactory safety rating at the re-check inspection, staff will recommend the commission take additional enforcement action against Miller Schmer, up to and including additional penalties and possible suspension of the company’s operating authority.

Staff recommends the Mitigation Request be denied. Staff has no objection to the commission granting Miller Schmer a payment plan as requested by the company.

If you have any questions, please contact Betty Young, Compliance Investigator, Transportation Safety, at 360-664-1202, or by e-mail at [byoung@utc.wa.gov](mailto:byoung@utc.wa.gov).

Sincerely,

David Pratt

Assistant Director, Transportation Safety

Enclosures

1. March 2005 compliance review report at Attachment A. [↑](#footnote-ref-1)
2. March 2005 letter from Matt Schmer at Attachment B. [↑](#footnote-ref-2)
3. The Commercial Vehicle Safety Alliance (CVSA) identifies violations that render commercial motor vehicle operators unqualified to drive or out-of-service – Attachment C. [↑](#footnote-ref-3)