



STATE OF WASHINGTON

## UTILITIES AND TRANSPORTATION COMMISSION

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September 29, 2016

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. Shuttle Express, Inc.*  
*d/b/a Shuttle Express*  
Commission Staff's Response to Request for Hearing  
Docket TE-160991

Dear Mr. King:

On August 15, 2016, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment TE-160991 against Shuttle Express in the amount of \$400 for one violation (four occurrences) of WAC 480-30-221 Vehicle and Driver Safety Requirements. This rule requires charter and excursion carriers to comply with CFR Part 383 – Commercial Driver's License Standards. Shuttle Express contests the violation, believes the violation is the responsibility of its employee, and has requested a hearing.

On July 21, 2016, Commission Transportation Safety staff contacted Shuttle Express driver Laurie Eriks-Gowin during a destination check at SeaTac Airport. Staff discovered that Eriks-Gowin was in possession of an invalid, downgraded Commercial Driver's License (CDL).

Through additional investigation, staff learned that on July 15, 2016 Ms. Eriks-Gowin's CDL was downgraded because she failed to submit a new medical certificate to the Department of Licensing (DOL). Staff also learned that Shuttle Express had allowed Ms. Eriks-Gowin to drive on four separate occasions during July 2016 with an invalid CDL. The Commission subsequently issued a penalty assessment against the company in the amount of \$400 for one violation (four occurrences) of WAC 48-30-221, which adopts CFR Part 383.23(a)(2), for allowing Ms. Eriks-Gowin to drive on four separate occasions with an invalid CDL.

Shuttle Express believes that it should not be penalized for violating WAC 480-30-221 because this violation was the responsibility of its employee, not the company itself. The company's argument, in essence, is that 49 CFR 383.23(a)(2) addresses employee behavior, and that federal regulations prescribe penalties against individuals for certain violations. The company also believes that it acted in good faith by allowing Ms. Eriks-Gowin to drive. The company was satisfied that a current medical card was on file and assumed that the employee would provide the updated card to DOL as required.

Staff agrees that each company driver is responsible for providing DOL with their updated medical card, but disagrees that the employee is solely responsible for violations of the Commission's safety regulations. Under WAC 480-30-005, Application of Rules, the requirements of chapter 480-30 apply to transportation companies subject to the jurisdiction of the Commission under RCW 81.04, 81.68 and 81.70. These rules apply to companies such as Shuttle Express, not its employees.

WAC 480-30-221, under which this penalty is assessed, states, in part: "Companies must comply with all state and local laws and rules governing licensing, vehicle safety, and driver safety. Companies must also comply with the parts of Title 49, Code of Federal Regulations (49 C.F.R.), adopted by reference, that are shown in the following chart." Again, these safety regulations apply to companies, not to individual employees.

In its defense, the company cites 49 CFR 383.37, which prohibits employers from using drivers they know or should know are not qualified to drive. The company states it could not have known of the driver's change in qualification status because they assumed the driver provided the required documentation to DOL, and the driver did not tell the company otherwise. Conversely, staff believes that 49 CFR 383.37 actually places responsibility with using qualified drivers with the employer.

While each driver does have the duty to provide DOL with copies of their updated medical cards, it is the company's responsibility under 49 CFR 383.37 (and also in their best interest) to ensure that employees do so. It is neither practical nor advisable for the Commission to create rules and regulations that direct every detail of a transportation company's safety program. Each carrier must develop its own policies, procedures, and management controls to ensure compliance with safety regulations. Violations of critical safety regulations are generally indicative of breakdowns in, or lack of management controls.

Sincerely,



David Pratt  
Assistant Director, Transportation Safety