



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

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August 1, 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. International District Parking Association d/b/a Merchants Parking Association, Merchants Parking/Transia*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TE-160829

Dear Mr. King:

On July 6, 2016, the Washington Utilities and Transportation Commission (commission) issued Penalty Assessment TE-160829 against International District Parking Association d/b/a Merchants Parking Association, Merchants Parking/Transia (Transia) in the amount of \$36,900 for three hundred sixty-five acute and 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 382 – Controlled Substances and Alcohol Use and Testing, Part 383 – Commercial Driver's License Standards, Part 391 – Qualifications of Drivers, Part 395 – Hours of Service of Drivers and Part 396 – Inspection, Repair, and Maintenance, as follows:

Acute

- **Two hundred thirty-four violations of CFR Part 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 learner's permit (CLP) or commercial driver's license (CDL) or does not have a CLP or CDL with the proper class or endorsements. An employer may not use a driver to operate a commercial motor vehicle who violates any restriction on the driver's CLP or CDL.** Transia allowed employees Mohammad Mohajeripour, Richard Phelps, and Xuseen Saleebaan to operate a commercial motor vehicle with passengers on 234 occasions between November 2015 and April 2016. None of the drivers had a passenger endorsement to operate a commercial motor vehicle with passengers.

Critical

- **One violation of CFR Part 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.** Transia allowed employee Jonathan Duarte to operate a commercial motor vehicle on November 2, 2015, however Transia had not received a negative pre-employment controlled substance test result until November 10, 2015.
- **One hundred fifteen violations of CFR Part 391.45(a) – Using a driver not medically examined and certified.** Transia allowed employees Jonathan Duarte, Charles Harris, Daniel Miller, and Najeh Mohammed to drive on a total of 115 occasions between January 2015 and April 2016. None of the drivers had been medically examined and certified prior to driving.
- **One violation of CFR Part 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file within 30 days of hire.** Transia failed to check the driving record of employees Peter Castro, Shimanugus Gaim, Charles Harris, Kyu Jung, Tauati Peni, Mohammad Mohajeripour, and Najeh Mohammed within 30 days of hire.
- **Five violations of CFR Part 395.8(a) – Failing to require driver to make a record of duty status.** Transia allowed employees Peter Castro, Jonathan Duarte, Najeh Mohammed, and Kyu Jung to drive without making a record of duty status when not under short haul exemption on 5 occasions between November 2015 and February 2016.
- **One violation of CFR Part 396.11(a) – Failing to require driver to prepare driver vehicle inspection report.** Transia failed to require its drivers to prepare a driver vehicle inspection report on 210 occasions.
- **Eight violations of CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected.** Transia failed to maintain records of a periodic vehicle inspection. None of the 8 vehicles inspected had any periodic inspections in the file or on the vehicles at the time of inspection.

RCW 81.04.530 allows a penalty of five hundred dollars for failing to comply with the controlled substances and alcohol use and testing requirements of CFR Part 382.

RCW 81.04.405 allows penalties of one hundred dollars for each violation of CFR Parts 383, 391, 395 and 396. In the case of ongoing violations, every day's continuance is considered a separate and distinct violation.

On July 21, 2016 Transia filed with the commission its application for mitigation of penalties. Matthias Duoos, operations manager of Transia, admitted to the majority of violations noted in the penalty assessment, but asked that the penalties be reduced for the reasons set out in the response.

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Transia operates as both a charter and excursion carrier under permit number CH-064549, and as a private, non-profit transportation carrier under permit number C-965.

On February 9 and 10, 2010, commission staff conducted a compliance review of Transia under its private, non-profit transportation authority. During the compliance review Transia was found in non-compliance of CFR Parts 391, 393 and 396, and received a satisfactory safety rating. Transia was provided technical assistance and was penalized by the commission in the amount of \$100 for the violation of CFR Part 391.

On May 11, 12, and 13, 2010, commission staff conducted a compliance review of Transia under its private, non-profit transportation authority. During the compliance review Transia was found in non-compliance of CFR Part 396 and received a satisfactory safety rating. As a result of the compliance review, staff provided additional technical assistance.

On October 14, 2011, Transia submitted an application for charter and excursion authority. In its application for charter and excursion authority, Michael Olson, Executive Director of Transia, acknowledged the company's responsibility to understand and comply with applicable motor carrier safety regulations pertaining to charter and excursion operation. Commission staff provided additional technical assistance to the company during a new entrant visit on February 14, 2012, and granted Transia's charter and excursion carrier certificate on February 21, 2012.

On August 21, 2012, Washington State Patrol conducted a compliance review of Transia under its charter and excursion authority. During the compliance review Transia was found in non-compliance of CFR Parts 380, 382, 383, 391, 395 and 396, and received a conditional safety rating. Transia was provided technical assistance and was penalized by Washington State Patrol for the violation of CFR Part 382.

On April 26, 2016, Motor Carrier Safety Investigator Sandi Yeomans 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 documented 365 violations of acute or critical regulations, resulting in a conditional 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 These types of violations are categorized as "acute" or "critical" under federal standards.

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.

In the mitigation request, Mr. Duoos requests the penalties be dismissed or reduced for the reasons noted below. Staff's response follows.

- **Mitigation Request: CFR Part 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.** Transia states that it gave Jonathan Duarte a pre-employment drug test form upon hire, but the driver forgot to get tested. The company states this was a one-time occurrence, and it will not happen again.

Staff response: It is the company's responsibility to ensure that its drivers have received a negative pre-employment controlled substance test result prior to operating a commercial motor vehicle. This is a repeat violation.

The assessed penalty is \$500 for one violation of this type. Staff recommends no mitigation of this penalty.

- **Mitigation Request: CFR Part 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 CLP or CDL or does not have a CLP or CDL with the proper class or endorsements. An employer may not use a driver to operate a commercial motor vehicle who violates any restriction on the driver's CLP or CDL.** Transia states that Mohammad Mohajeripour made a verbal agreement with the company to obtain a passenger endorsement. The company provided a copy of Mr. Mohajeripour's CLP with a commercial driver instruction permit endorsement, issued on July 16, 2016. Transia states that Xuseen Saleebaan had a CLP during his entire employment with the company and provided a copy of Mr. Saleebaan's CLP with endorsements for double or triple trailer, tank vehicle (liquid/gases), and commercial driver instruction permit, issued on January 22, 2016. Transia states that Richard Phelps mostly drives a fourteen passenger Econoline Van, and that commission staff assumed Mr. Phelps was driving a large bus every day, which is not true.

Staff response: The drivers were marked by Transia as drivers who operate commercial vehicles for their company. Mohammad Mohajeripour and Xuseen Saleebaan did not have a CLP or CDL with a passenger endorsement on the 155 occasions they operated a commercial motor vehicle with passengers. Richard Phelps operated a commercial vehicle requiring a CLP or CDL with a passenger endorsement on 79 occasions according to the list of all company power units and vehicle manifests provided by Transia. These are first-time violations.

The assessed penalty is \$23,400 for 234 occurrences of this violation. Staff recommends the penalty be reduced by half, for a total of \$11,700.

- **Mitigation Request: CFR Part 391.45(a) – Using a driver not medically examined and certified.** Transia states that in very few occasions the medical examiner's certification has been allowed to lapse due to its drivers providing false information about appointments, drivers missing appointments, or from drivers not acting on management's

requests in a timely manner. Transia states that it now understands there is no grace period with regard to medical certification, and that its drivers cannot drive without it.

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. These are first-time violations.

The assessed penalty is \$11,500 for 115 occurrences of this violation. Staff recommends the penalty be reduced by half, for a total of \$5,750.

- **Mitigation Request: CFR Part 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file within 30 days of hire.** Mr. Duoos states that the safety management plan for obtaining motor vehicle records within 30 days of hire has not been allowed to lapse since he became the operations manager. Mr. Duoos contests that some of the violations were dated prior to the commission's 2012 audit and cannot be used against the company, while other violations are not valid because the drivers were not CDL drivers.

Staff response: Drivers do not have to be CDL drivers to be required to have a motor vehicle record inquiry within 30 days of hire. Transia was issued a per violation type penalty of this critical regulation, so to address all seven violations is insignificant to the penalty incurred. This is a first-time violation.

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

- **Mitigation Request: CFR Part 395.8(a) – Failing to require driver to make a record of duty status.** Transia states that it was not aware of a CDL log book until very recently because none of the company's routes are intended to be 12 hours. Transia states that it has a new policy that all CDL drivers are required to keep a log before and after a 12 hour work day in accordance with CFR Part 395.8.

Staff response: In its request for mitigation the company did explain how the violations occurred and documented the steps it is taking to avoid reoccurrence, however these are repeat violations.

The assessed penalty is \$500 for five occurrences of this violation. Staff recommends no mitigation of this penalty.

- **Mitigation Request: CFR Part 396.11(a) – Failing to require driver to prepare driver vehicle inspection report.** Transia states that every driver was provided a driver vehicle inspection report for each vehicle driven on each day. The company states that it should not be penalized for something it understood to be correct, as the company did not receive a violation during its 2012 compliance review conducted by the commission. Transia has since updated its driver vehicle inspection report to include a line for the next shift driver to sign before it is turned in.

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Staff response: Transia has added a line for the next shift driver to sign on its driver vehicle inspection report, however not all of the specific safety items required are covered, such as steering, wheels and rims. This is a first-time violation.

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

- **Mitigation Request: CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected.** Transia states that its maintenance person was on an extended vacation to visit his home country and Mr. Duoos was unable to locate the inspection files during the compliance review. The company states that it was able to locate two large files of periodic inspections after the compliance review, noting that at least six vehicles were inspected in 2016, at least five in 2015, at least five in 2014, at least six in 2013, and at least thirty in 2012. The company states that it has implemented a new policy that the operations manager will be responsible for tracking periodic inspections for all vehicles.

Staff response: Transia was asked for the periodic inspections of the vehicles and Mr. Duoos informed staff that the company did not have any records, and was unaware if his maintenance person had done the inspections or not. Staff checked for the inspection records in the maintenance files and in the vehicles, but could not locate them in either place. During the closing interview with Ms. Yeomans, Mr. Duoos stated that he had the inspection records but did not produce them to staff. These are repeat violations.

The assessed penalty is \$800 for eight occurrences of this violation. Staff recommends no mitigation of this penalty.

Transia is a large company with thirty-six commercial vehicles and thirty-eight drivers. The company reported 541,969 miles traveled and \$2,100,000 in gross revenue for 2015. The company appears to be cooperative and willing to correct the violations noted. Staff recommends that the penalty of \$36,900 be reduced to \$19,450.

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

Enclosures