0100

1 BEFORE THE WASHINGTON

2 UTILITIES AND TRANSPORTATION COMMISSION

3 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

4 In the Matter of the ) DOCKETS TV-170038 and

Investigation of ) TV-170039 (Consolidated)

5 )

MVP MOVING AND STORAGE LLC )

6 )

For Compliance with WAC )

7 480-15-560 and WAC )

480-15-570 )

8 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

)

9 In the Matter of the Penalty )

Assessment Against )

10 )

MVP MOVING AND STORAGE LLC )

11 )

In the amount of $6,100 )

12 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

13 BRIEF ADJUDICATIVE PROCEEDING, VOLUME IV

14 Pages 100-144

15 ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

16

November 22, 2019

17

1:30 p.m.

18

Washington Utilities and Transportation Commission

19 621 Woodland Square Loop Southeast

Lacey, Washington 98503

20

21 REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358

22 Buell Realtime Reporting, LLC

1325 Fourth Avenue, Suite 1840

23 Seattle, Washington 98101

(206) 287-9066 | Seattle

24 (360) 534-9066 | Olympia

(800) 846-6989 | National

25 www.buellrealtime.com

0101

1 A P P E A R A N C E S

2

ADMINISTRATIVE LAW JUDGE:

3

RAYNE PEARSON

4

5

6 FOR COMMISSION STAFF:

7 JEFF ROBERSON

Assistant Attorney General

8 P.O. Box 40128

Olympia, Washington 98504

9 (360) 664-1188

jeff.roberson@utc.wa.gov

10

11 FOR MVP MOVING AND

STORAGE:

12

JASON GARCIA

13 Owner

14

15 ALSO PRESENT:

16 JASON SHARP

Motor Carrier Safety Supervisor

17

18 LISA WYSE

Records and Tariffs Manager

19

20

21

22 \* \* \* \* \*

23

24

25

0102

1 EXAMINATION INDEX

2 JASON GARCIA PAGE

3 Examination by Mr. Roberson. . . . . . . . . . . . 115

4

JASON SHARP

5

Examination by Mr. Roberson. . . . . . . . . . . . 127

6

Examination by Judge Pearson. . . . . . . . . . . . 135

7

Examination by Mr. Garcia. . . . . . . . . . . . . 137

8

9 EXHIBIT INDEX

10 EXHIBITS FOR ADMISSION PAGE

11 JG-1 Safety Management Plan 107

12 JG-2 Safety Management Plan Violation Review 107

13

14

15

16

17

18

19

20

21

22

23

24

25

0103

1 LACEY, WASHINGTON; NOVEMBER 22, 2019

2 1:30 P.M.

3 --o0o--

4 P R O C E E D I N G S

5

6 JUDGE PEARSON: Let's go ahead and be on the

7 record. Before we get started, Mr. Roberson, I don't

8 see Mr. Garcia in the hearing room yet today. Have you

9 spoken to him?

10 MR. ROBERSON: Mr. Garcia called me about 25

11 minutes ago and represented that he would be about 10 to

12 15 minutes late.

13 JUDGE PEARSON: Okay. Thank you. We'll be

14 in recess until Mr. Garcia arrives, then.

15 (A break was taken from

16 1:30 p.m. to 1:38 p.m.)

17 JUDGE PEARSON: So let's go ahead and be on

18 the record. We're convened today for a hearing on the

19 Commission's notice of intent to deny MVP Moving and

20 Storage LLC's application for reinstatement of its

21 household goods permit in consolidated Dockets TV-170038

22 and TV-170039.

23 My name is Rayne Pearson. I'm the

24 administrative law judge presiding over today's hearing,

25 and today is Friday, November 22, 2019, and the time is

0104

1 approximately 1:40 p.m.

2 So we were last here on May 16th in 2019, at

3 that time to hear Staff's renewed motion to cancel MVP

4 Moving's household goods permit for failure to comply

5 with Order 04 in this docket. Order 04 was entered on

6 June 7th, 2018.

7 Following the hearing six months ago, the

8 Commission entered Order 05, which cancelled the

9 company's household goods permit because the company

10 violated Order 04 by committing repeat violations of

11 critical safety regulations, failing to submit a safety

12 management plan that was acceptable to Staff, and

13 failing to attend Commission-sponsored household goods

14 trainings in the manner prescribed by Order 04.

15 On June 20th, 2019, MVP -- MVP Moving filed

16 an application for reinstatement of its household goods

17 carrier permit, and on September 23rd, the Commission

18 issued the notice of intent to deny application for

19 reinstatement and a notice of opportunity for hearing.

20 And the notice explained that the Commission intends to

21 deny the company's application for reinstatement for

22 several reasons.

23 First is that the company has not submitted

24 an acceptable safety management plan; second, that the

25 company has not explained how the violations were

0105

1 allowed to occur and has failed to provide proof that it

2 has corrected the violations at issue; and finally, that

3 only two of the company's nine employees have attended

4 Commission-sponsored household goods training.

5 Additionally, Staff's position is that MVP Moving is not

6 eligible for reinstatement because Order 05 also denied

7 the company the application for permit of authority.

8 So today, MVP Moving will have an

9 opportunity to respond to the allegations set forth in

10 the notice of intent to deny, and we will begin by

11 taking appearances beginning with Mr. Roberson.

12 MR. ROBERSON: Good afternoon, Judge

13 Pearson. Jeff Roberson, AAG, appearing on behalf of

14 Commission Staff.

15 JUDGE PEARSON: Thank you.

16 And Mr. Garcia?

17 MR. GARCIA: Jason Garcia, MVP Moving.

18 JUDGE PEARSON: Okay. Can you spell your

19 last name for the court reporter, please?

20 MR. GARCIA: G-a-r-c-i-a.

21 JUDGE PEARSON: Okay. And do we have

22 current contact information for you?

23 MR. GARCIA: I believe so.

24 JUDGE PEARSON: Address and telephone and

25 email?

0106

1 MR. GARCIA: I sent an email of an updated

2 PO Box with my name and address.

3 JUDGE PEARSON: Okay.

4 MR. GARCIA: So I -- I hope that was listed

5 on there.

6 MR. ROBERSON: As far as I know.

7 JUDGE PEARSON: Okay. All right. So when I

8 call on each party to testify, I will swear you in just

9 like I did last time, so anything that you tell the

10 court reporter [sic] will be under oath and is

11 considered sworn testimony. And for the court

12 reporter's benefit, please speak slowly and clearly and

13 make sure that you're using the microphone on the table

14 in front of you.

15 Do you have any questions before we get

16 started?

17 MR. GARCIA: Just that you received my

18 updated safety management plan.

19 JUDGE PEARSON: Yes.

20 MR. GARCIA: And I have three copies that

21 was provided if anyone wants a copy.

22 JUDGE PEARSON: Okay. And that was actually

23 my first question for you is that I saw those documents

24 that you submitted. One was called the proposed safety

25 management plan, and then there was a second document

0107

1 entitled "Safety Management Plan Violation Review." So

2 would you like to have those documents admitted into the

3 record?

4 MR. GARCIA: Yes.

5 JUDGE PEARSON: Okay. And, Mr. Roberson, do

6 you have any objection to that?

7 MR. ROBERSON: No objection, Your Honor.

8 JUDGE PEARSON: Okay. Then I will go ahead

9 and admit those and mark them as JG-1, Safety Management

10 Plan, and JG-2, Safety Management Plan Violation Review.

11 (Exhibits JG-1 and JG-2 admitted.)

12 JUDGE PEARSON: Okay. So why don't I go

13 ahead and swear you in, and then we can walk through the

14 allegations in the notice of intent to deny and give you

15 an opportunity to respond to those, okay?

16 MR. GARCIA: Okay.

17 JUDGE PEARSON: So please stand and raise

18 your right hand.

19 (Jason Garcia sworn.)

20 JUDGE PEARSON: Okay. Please be seated.

21 MR. GARCIA: Thank you.

22 JUDGE PEARSON: Okay. So let's just go

23 through each of the allegations.

24 The first was that you failed to submit an

25 acceptable safety management plan. And so just to

0108

1 clarify, the safety management plan that we just

2 admitted into the record and marked as Exhibit JG-1,

3 that's different than the safety management plan that

4 you submitted with your application for reinstatement?

5 MR. GARCIA: Yes.

6 JUDGE PEARSON: Okay. So the allegations

7 related to the safety management plan include the

8 company failing to take responsibility for the

9 violations, failing to explain how the violations

10 occurred, and failing to provide proof that the

11 violations were corrected. So do you want to respond to

12 those allegations?

13 MR. GARCIA: You want me to respond to each

14 one?

15 JUDGE PEARSON: Mm-hmm.

16 MR. GARCIA: Okay. So as far as the safety

17 management plan goes, I updated it very thoroughly, and

18 I'm going over each checklist after my three or four

19 training courses. I've fine-combed each situation I've

20 had. As of right now, I only have one employee, which

21 is Carlos Molina. It's been him and I for the last five

22 months. We have done zero household goods moves. We've

23 only just been strategizing on what we're going to do

24 moving forward if we're given the opportunity again.

25 And right now, I'm -- I'm another employee,

0109

1 but I'm -- you know, I'm the owner of the company, so I

2 don't have myself on file there, but I have my DOT

3 medical card, I have everything. So as of right now,

4 Carlos and I are completely applicable [sic] to proceed

5 if given that opportunity.

6 JUDGE PEARSON: Okay. And the new safety

7 management plan that you submitted, does it include

8 language taking responsibility for the violations and

9 explaining how the violations occurred?

10 MR. GARCIA: Yeah, I 100 percent take the

11 responsibility. I -- you know, to -- to add to that, I

12 might have been thinking about, like I said, past -- I

13 was thinking about how many jobs I can do, growth versus

14 safety management, and not doing anything for the last

15 five months has just taught me that that's not

16 important. What's important is public safety and

17 following all the regulations that the UTC provides.

18 JUDGE PEARSON: Okay. And did you provide

19 proof in the safety management plan that the violations

20 were corrected?

21 MR. GARCIA: I did.

22 JUDGE PEARSON: Okay. And of course we'll

23 allow Staff to -- to speak to that in a little bit.

24 So the second allegation was that you failed

25 to require all employees to attend household goods

0110

1 trainings.

2 MR. GARCIA: At that point, I -- I brought

3 three employees, Carlos Molina, David Morrow, and

4 myself. Everybody else that morning, we discussed about

5 how I let everybody go, but at that time, we were doing

6 contract delivery for Ferguson, and I should have got a

7 common carrier's permit to support that versus having

8 the household goods permit. And so that's the only

9 reason why he was pulled over at that weigh station.

10 And so --

11 JUDGE PEARSON: I'm sorry, who was pulled

12 over?

13 MR. GARCIA: It was Mike Lazinski, I

14 believe. Because at the time, I -- there was a training

15 course, I had a full -- I rescheduled all my jobs, I

16 told everyone to be there at 7 o'clock, they didn't show

17 up. It was a paid day, it was paid that, and that just

18 showed the lack of respect that they had for me and what

19 I was trying to do for them. And so at that point, I --

20 I -- I no longer employed them. It's just been Carlos

21 Molina and myself.

22 JUDGE PEARSON: Okay. And you're saying

23 that Carlos has attended trainings?

24 MR. GARCIA: Mm-hmm. I think he's attended

25 two of them, I believe.

0111

1 JUDGE PEARSON: Two of them, okay.

2 So as of right now, both of the company

3 employees, you and Mr. Molina, have attended household

4 goods trainings?

5 MR. GARCIA: That's correct.

6 JUDGE PEARSON: Okay. All right. So the

7 notice also states that the application for

8 reinstatement is moot because the Commission denied the

9 company's application for permanent authority in

10 addition to cancelling the company's provisional

11 authority. So what is your response to Staff's

12 position?

13 MR. GARCIA: Could you just explain what

14 that exactly means?

15 JUDGE PEARSON: I'll let Mr. Roberson

16 explain.

17 MR. ROBERSON: So Mr. --

18 Should I explain to Mr. Garcia or to the

19 Bench?

20 JUDGE PEARSON: Mr. Garcia.

21 MR. ROBERSON: Okay. So, Mr. Garcia, when

22 you were originally given a permit, it was a provisional

23 permit, which allows you to operate for a limited period

24 of time while the Commission evaluates your operations.

25 At the end of that period, the Commission decides

0112

1 whether or not to grant a permanent certificate that

2 would allow you to operate kind of perpetually. If you

3 do not make sufficient progress towards obtaining your

4 permanent permit within your probationary or provisional

5 period, the Commission just denies the application and

6 you need to come back with a new application. That's

7 what happened here. The Commission decided that you

8 hadn't satisfactorily shown your fitness to hold a

9 permit and denied your application for permanent

10 authority.

11 MR. GARCIA: Okay. I understand that.

12 JUDGE PEARSON: So I think what

13 Mr. Roberson -- what Staff's position is, is that your

14 application should be considered as a new application

15 for household goods authority rather than a

16 reinstatement for previously held authority --

17 MR. GARCIA: Okay.

18 JUDGE PEARSON: -- because your application

19 was --

20 MR. GARCIA: When I originally submitted the

21 application in 2014, from that point to when I'm trying

22 to reinstate it, that's when it's held as no

23 improvement; is that correct in a way?

24 MR. ROBERSON: That's what Order 05 says,

25 yes.

0113

1 MR. GARCIA: Okay. Okay.

2 JUDGE PEARSON: So --

3 MR. GARCIA: Then I -- I guess I don't

4 understand, so I just have to submit a new application?

5 Because I didn't think -- I felt like if I sent a new

6 application I was going to be denied 100 percent. So I

7 was only carrying on the reinstatement because it's been

8 within 30 days. So that was my -- am I off?

9 MR. ROBERSON: And I if might here, Your

10 Honor.

11 JUDGE PEARSON: Yes, please.

12 MR. ROBERSON: He is correct. His -- he's

13 not eligible for even a provisional permit because his

14 permit has been involved heavily -- revoked within the

15 last year. And so Mr. Garcia would need to wait until

16 that one-year period has expired before he could apply

17 for a new permit.

18 JUDGE PEARSON: Okay. So that's what

19 Staff's position is, then?

20 MR. ROBERSON: Yes.

21 JUDGE PEARSON: That he was not eligible for

22 reinstatement, and therefore, are you considering this

23 as an application for new authority?

24 MR. ROBERSON: So Staff does not believe

25 he's eligible for reinstatement, and therefore, his

0114

1 application is barred as a new application until the

2 one-year period has passed.

3 JUDGE PEARSON: Okay. So does that make

4 sense to you?

5 MR. GARCIA: It does. It does. And my only

6 response to that is, you know, Erik Hawkins and I were

7 business partners, and we had our first incident with

8 this in 2016, I believe. We carried a $6100 penalty.

9 JUDGE PEARSON: 2017, you mean?

10 MR. GARCIA: Was it 2017?

11 JUDGE PEARSON: Mm-hmm.

12 MR. GARCIA: Sorry. And then the next time

13 I received an audit, it was only $500. I felt like that

14 was a huge improvement because it was only me running

15 the company, not Erik and I. And Erik was the gentleman

16 that handled this, I was only in sales and sending crews

17 out. So that administration part is definitely

18 something that I felt I took pride in, and I -- I -- I

19 missed a few things, but it wasn't $6100 worth of fines.

20 It was only 550 maybe, I think. So I felt like that was

21 improvement. It's just the third time that it came out,

22 it was still $500. So I -- I just carry that as an

23 improvement from my standpoint, but I understand. I get

24 it.

25 JUDGE PEARSON: Okay. Mr. Roberson, do you

0115

1 have any questions for Mr. Garcia?

2 MR. ROBERSON: I do indeed.

3

4 E X A M I N A T I O N

5 BY MR. ROBERSON:

6 Q. So, Mr. Garcia, you just testified that you've

7 only had three employees since basically June of this

8 year; yourself, Mr. Molina --

9 A. That's correct.

10 Q. -- and Mr. Morrow?

11 A. That's correct.

12 Q. On June 20th --

13 A. That's not -- not Mr. Morrow. That was the only

14 attendees of the training program.

15 Q. I'm sorry, my mistake.

16 So do you just have two employees?

17 A. That's correct.

18 Q. Okay. On June 20th, which is five months ago,

19 you submitted an application that listed nine employees

20 other than yourself. Why did you submit that

21 application if they didn't work for you?

22 A. I sent that because on my -- on one of the -- I

23 don't have it in front of me, but that was -- I had nine

24 background checks, and it said I only submitted two

25 background checks of the nine employees. So I think

0116

1 that is why it carried over. I do -- I --

2 Q. But you do --

3 A. I do not have --

4 Q. -- you listed them on the application as

5 employees, correct?

6 A. It's been Carlos and I since the day we -- I got

7 my permit taken away.

8 Q. Okay. So if I represented to you that your

9 application contains a page that's entitled "Current

10 Employees of MVP Moving" and which listed nine people

11 other than yourself, those people weren't your employees

12 when you submitted that page?

13 A. No. I think my intention was just to show you

14 the nine employees I have the background checks on

15 because I was missing those nine employees during one of

16 the dockets that you mentioned.

17 Q. Okay.

18 A. So I think that's why I included that, because

19 if I was missing two of the nine, I submitted that to

20 Watchdogs, and I -- I just paid it to make sure I had

21 it.

22 Q. Okay. Why didn't you just submit an application

23 that says I only have two employees and here are their

24 background checks?

25 A. I misunderstood.

0117

1 Q. Okay.

2 A. I was just trying to carry over and answer all

3 the fails that I -- trying to accept.

4 Q. Fair enough.

5 I'd like to talk about I think what's been

6 marked as -- is it JG-2, which is your safety management

7 plan violation review?

8 A. Okay.

9 Q. I'm looking on page 5, there's discussion about

10 the violation about a lapse in a DOT medical card?

11 A. Was that for Carlos Molina?

12 Q. Yeah.

13 So part of a safety management plan is basically

14 accepting responsibility and explaining how the

15 violations won't happen again, and you just explained

16 that you did that, but I notice here that you basically

17 denied the violation occurred.

18 A. There's a 24-hour window of the DOT medical

19 card, and so on the date of when I was fined for Carlos

20 working a job without a DOT medical card.

21 Q. From what I remember, that's consistent with

22 your testimony last time, but here you seem to be saying

23 that that's not actually what happened because

24 Mr. Molina wasn't actually the driver.

25 A. That's what it was -- so that -- if you -- if

0118

1 you look at the report and you look at the calendar, he

2 wasn't working on that day, but he was fined for that

3 day.

4 Q. Okay. Let's talk about that.

5 Did you present that argument to Mr. Garcia when

6 he gave you the closing letter? Sorry. Mr. Sharp, two

7 Jasons. It was Ms. Yeomans who was there.

8 When Ms. Yeomans sat with you at the closing

9 conference and said we found this violation, did you

10 protest it, did you say that didn't happen?

11 A. I -- I believe I did, but I can't be 100 percent

12 right now. I just know that we looked at it, and I

13 honestly was happy it wasn't $6100 of fines because I

14 was looking for an improvement.

15 Q. So basically there's no record that you've ever

16 denied this violation until the safety management plan

17 is what you're telling me?

18 A. I believe so.

19 Q. Okay. Okay. Another thing that jumps out at me

20 when reviewing Exhibit JG-2 is in many places you talk

21 about how you're automating -- you know, you're

22 calendaring appointments so that you don't miss them.

23 A. That's correct.

24 Q. Do you remember the last time you were at the

25 Commission testifying?

0119

1 A. I did say that, and you agreed on that was

2 acceptable, and I let you down and --

3 Q. Do you --

4 A. -- I'm sorry.

5 Q. Do you remember testifying basically that the

6 calendaring -- calendaring hadn't worked out, that

7 violations were still occurring?

8 A. That -- that's correct.

9 Q. Critical violations?

10 A. I had an issue with my G Suite account. Not an

11 excuse, but Erik Hawkins, when he left the company, he

12 was the admin of the G Suite account for Google, and I

13 can't -- he deleted it. It -- it -- it caused a lot

14 of -- because he was on that account, and so I had to

15 start a whole -- another one.

16 Q. Okay.

17 A. And I lost some information.

18 Q. Have you submitted copies of the new calendar to

19 Staff? Did you bring copies with you today?

20 A. I don't have copies with me today, but I

21 provided it in my safety management plan that was

22 denied, and I have a copy of it right here. I just

23 don't have it --

24 Q. Okay.

25 A. -- in this form, my updated one.

0120

1 Q. Let's also talk about that.

2 So with your application for reinstatement, you

3 submitted a safety management plan and then you updated

4 the safety management plan and it's considerably

5 different. Why did you submit such a different safety

6 management plan?

7 A. I had five months to complete it, and with that

8 five months, I was in a really heavy busy season, and it

9 was very unfortunate I couldn't operate. So I wanted to

10 make sure that it got done correctly and it wasn't just

11 something I did to please the UTC. I wanted to do it to

12 be able to operate and have a successful plan.

13 Q. Okay. So where did you -- did you type it out

14 yourself?

15 A. Carlos and I did it.

16 Q. You guys --

17 A. We both hammered it out.

18 Q. Did you -- did you investigate resources or is

19 this just something that you and Carlos came up with?

20 A. There was -- there was resources involved.

21 Q. Okay. Where did you find those resources?

22 A. His background. His dad owns a trucking

23 company, so he has years of experience within the Idaho

24 regulations, and we just got together and wanted to make

25 sure we provided a good safety management plan that was

0121

1 really thorough and --

2 Q. Okay.

3 A. -- that we could follow and read and...

4 Q. Mr. Molina worked with you at the time of the

5 last hearing, right?

6 A. Correct.

7 Q. So between the order revoking your certificate

8 and the submission of the first safety management plan,

9 why didn't you work with Mr. Molina to produce what you

10 eventually produced?

11 A. I didn't want to involve him at the time. My

12 name was the only name that was on the company. He was

13 just an employee. So it was -- it was only me that

14 produced it, and at that time, I -- I didn't know that

15 he had that much knowledge on -- on creating and helping

16 and -- and so...

17 Q. Did you reach out to any other resources before

18 you submitted -- did you look for any other help or

19 resources before you submitted that first --

20 A. No.

21 Q. -- safety management plan?

22 A. The only other resources I looked at was the

23 previous ones Erik Hawkins submitted.

24 Q. The ones that were --

25 A. They were accepted, but then business partners

0122

1 clash, and we had our disagreements, and he took what he

2 had and I had to find what I had.

3 Q. Fair enough.

4 So you have no other employees?

5 A. Nope.

6 Q. Okay. I noticed that the first safety

7 management plan came in on June 20th, which is 31 days

8 after the order was entered to revoke MVP's permit. Did

9 you read that order?

10 A. I did.

11 Q. Okay. And at the bottom of the order where it

12 said you had 30 days to submit an application for

13 reinstatement, did you read that?

14 A. That's correct.

15 Q. And I guess my question then becomes, why did

16 the application come in a day after the deadline?

17 A. I mailed it out -- I just thought I mailed it

18 out before the 30th day.

19 Q. Okay. I gave you some exhibits, one of them is

20 a page that's a copy of an envelope. It's marked LW-1.

21 So this is the envelope -- I'll represent to you that

22 this is the envelope that you submitted your request for

23 hearing in. Did you have any reason to dispute that?

24 A. Well, the postage says 30 days, but the stamp

25 says 31. So I don't understand that. It says 10/21 and

0123

1 then it says 10/22.

2 Q. Yeah, so the notice had your request for hearing

3 due to be filed on 10/21, correct?

4 A. That's correct.

5 Q. So you went to the post office on the day the

6 notice had to be in and you purchased one-day mail,

7 correct?

8 A. That's correct.

9 Q. So you knew at the time you went to submit this

10 that it wasn't going to be timely, correct?

11 A. I didn't -- no, I thought that just because the

12 date that I went and mailed it to you it was going to be

13 within the time frame.

14 Q. Okay. Did you read the order cancelling your

15 certificate?

16 A. Yeah.

17 Q. I guess, actually, it was the notice of intent

18 to deny where it said if you -- you want to -- maybe --

19 it was Order 05. No, it was the notice. You had to

20 submit a request for a hearing, it had to be filed by

21 October 21st at 5:00 p.m., correct?

22 A. That's correct.

23 Q. So on October 21st, you went to the post office

24 and you went to submit your request for a hearing,

25 correct?

0124

1 A. That's correct.

2 Q. And you would have known at that time there was

3 no way the Commission was going to get it by 5:00 p.m.,

4 correct?

5 A. The problem I had is I thought I was going to

6 deliver it to you guys, to be honest with you, and I ran

7 into a situation. So I went straight to the post office

8 and I tried to mail it out to you. I did not see the

9 5:00 p.m., though. I just thought it was the date.

10 Q. Okay. Well --

11 A. So if you have it there, then that's my mistake.

12 Q. If you turn it over on the back, the post office

13 marked it with an expect- -- expected delivery date of

14 October 23rd, correct?

15 A. I didn't see that. I don't...

16 Q. Okay. What was the unexpected event that

17 prevented you from bringing your --

18 A. Right now, we --

19 Q. -- request for hearing?

20 A. -- Carlos and I, we -- sorry. Right now, Carlos

21 and I, we are contracted through Ryder delivering Ashley

22 Furniture, and I had the docket on me thinking I was

23 going to get a shift over in this area, and I was just

24 going to come in here and hand it to you guys.

25 Unfortunately, it didn't work out that way.

0125

1 Q. Okay. So we've talked a lot about your

2 calendaring. Say you have an event calendared and an

3 event like this comes up, does the Commission have any

4 confidence that you will comply with the rules and

5 perform the calendared event?

6 A. I hope so.

7 Q. Why should the Commission have that confidence

8 given that something came up and you couldn't even

9 timely request this hearing?

10 A. Well, I sent it, and I've attended every single

11 training for the last year. I've --

12 Q. Okay. Are -- are you aware that the Commission

13 literally could have denied you this hearing and just

14 denied your application for reinstatement because it was

15 untimely?

16 A. 100 percent, and at that point --

17 Q. But that didn't motivate you enough to get the

18 request for hearing in on time?

19 A. I'm motivated.

20 Q. I guess, what objective evidence is there of

21 your motivation? That's my question.

22 A. Just everything thus far, still showing up,

23 talking to you guys, trying to fix every single issue

24 that I have. If I'm off by 24 hours, I'm -- I'm trying

25 my best, and if you look at the stamp here, they're all

0126

1 being submitted.

2 Q. True, they're being submitted, but by my

3 account, the last two significant events for you were

4 the application for reinstatement and the request for a

5 hearing, and they're both untimely, right?

6 A. Based on the postage and that, that's correct.

7 Q. Okay. And given that those affect whether or

8 not you would have a permit and therefore seem like

9 significant events, I guess, why should the Commission

10 have any confidence that you will discharge your

11 obligations if you can't comply with those deadlines?

12 A. I just wish you could consider my efforts thus

13 far, attending everything, submitting all the documents,

14 and proving from a ten-page to a 32-page and showing up

15 to every single hearing and calling you if I'm ten

16 minutes late. You know, I'm a -- I'm trying.

17 Q. Fair enough.

18 MR. ROBERSON: I don't have any other

19 questions, Your Honor.

20 JUDGE PEARSON: Okay. So let's turn to

21 Staff's witnesses.

22 MR. ROBERSON: It seems like Mr. Garcia has

23 stipulated to the envelope, so I don't know that

24 Ms. Wyse needs to testify.

25 JUDGE PEARSON: Okay.

0127

1 MR. ROBERSON: If Mr. Garcia has any

2 questions.

3 She was just going to testify about

4 receiving the envelope from you.

5 MR. GARCIA: Okay.

6 MR. ROBERSON: If you have any questions.

7 MR. GARCIA: I don't have any questions.

8 MR. ROBERSON: Then otherwise, I would just

9 ask that she be excused so she can return to work.

10 JUDGE PEARSON: Okay. You're excused,

11 Ms. Wyse.

12 MR. ROBERSON: And at this time, Staff would

13 call Mr. Sharp.

14 JUDGE PEARSON: Okay. Please stand and

15 raise your right hand.

16 (Jason Sharp sworn.)

17 JUDGE PEARSON: Okay. Please be seated.

18

19 E X A M I N A T I O N

20 BY MR. ROBERSON:

21 Q. Good afternoon. Could you please state your

22 name and spell it for the record?

23 A. Jason Sharp, S-h-a-r-p.

24 Q. And who is your employer?

25 A. The Washington Utilities and Transportation

0128

1 Commission.

2 Q. And what position do you hold at the Commission?

3 A. I am the motor carrier safety supervisor.

4 Q. And how long have you been the motor carrier

5 safety supervisor?

6 A. Just over two years.

7 Q. And could you describe your duties as a -- the

8 motor carrier safety supervisor?

9 A. My duties entail assigning motor carrier

10 investigations to our motor carrier investigators,

11 reviewing the work that they submit, and also issuing

12 recommendations based on the findings of those

13 investigative reports.

14 Q. And can you describe any training that you've

15 had that enables you to carry out your duties?

16 A. Yes. In addition to being a supervisor of

17 investigators, I also am a certified investigator,

18 receive federal training through CVSA, the national

19 training center, and am qualified to conduct compliance

20 investigations. I also have two years of on-the-job

21 training reviewing investigative reports and issuing

22 recommendations and evaluating safety plans.

23 Q. And are you familiar with the statutes and rules

24 governing the licensing and operations of household

25 goods carriers?

0129

1 A. Yes, I am familiar.

2 Q. And you're familiar with MVP's background here

3 at the Commission?

4 A. Yes, I am.

5 Q. And you're familiar that at one time MVP held

6 operating authority issued by the Commission?

7 A. Yes.

8 Q. And does MVP still hold a permit?

9 A. Not at this time.

10 Q. And could you explain why not?

11 A. Because the Commission issued Order 5 cancelling

12 its provisional authority.

13 Q. I am handing you what's been marked as Exhibit

14 JS-1. Can you identify that?

15 A. Yes, this is Order 5 from Docket TV-170039 and

16 170038 consolidated.

17 Q. And is that a true and accurate copy of Order

18 05?

19 A. Yes, it appears to be.

20 MR. ROBERSON: At this point, Staff would

21 move to admit Exhibit JS-1.

22 JUDGE PEARSON: Okay. I'm not going to

23 admit it, but I will take official notice of it.

24 MR. ROBERSON: Good enough.

25 BY MR. ROBERSON:

0130

1 Q. In Order 05, does the Commission explain why

2 it's cancelling MVP's household goods carrier permit?

3 A. Yes, it does.

4 Q. And are those reasons basically what Judge

5 Pearson summarized at the start of the hearing?

6 A. They are.

7 Q. And those are, for the record?

8 A. That the carrier failed to work with Staff in

9 submitting a safety management plan, and the carrier

10 failed to have all of its employees attend household

11 goods training provided by the Commission, and also the

12 carrier incurred repeat violations of critical

13 regulations at the last safety investigation.

14 Q. Do the Commission's rules allow a carrier whose

15 permit's been cancelled to apply for reinstatement?

16 A. Yes, they do.

17 Q. And what must a carrier do before applying for

18 reinstatement?

19 A. My understanding is that in order to be

20 considered upon reinstatement, the carrier would have to

21 correct each deficiency that led to its cancellation.

22 Q. And did the order cancelling MVP's certificate

23 set out that same procedure?

24 A. Yes.

25 Q. Did MVP apply for reinstatement?

0131

1 A. Yes, they did.

2 Q. And that happened on June 20th, 2019?

3 A. That -- that sounds right, yes.

4 Q. Do you know if that application was timely?

5 A. According to the order, that application should

6 have been in the day prior to the Commission receiving

7 it.

8 Q. Okay. And did MVP submit anything else along

9 with its application for reinstatement?

10 A. Yes, it did. With its application, the company

11 submitted a statement justifying reason for

12 reinstatement as well as a what appears to be like a new

13 hire onboaring checklist as well as a list of current

14 employees of the company and dates for future review of

15 files and maintenance.

16 Q. Is it fair to say that those documents are

17 essentially an attempt at a safety management plan?

18 A. That's how I interpret it.

19 Q. Would that safety -- well, does that safety

20 management plan meet the criteria for acceptance to --

21 to Staff's satisfaction?

22 A. You know, I guess what I would say is, I could

23 recognize that there is a lot of things that were

24 submitted in the application that would help the company

25 be compliant with its safety program, such as dates that

0132

1 Mr. Garcia referenced earlier for future maintenance,

2 review of files and whatnot. But as far as a safety

3 management plan goes, no, this doesn't address the

4 violations that were discovered and covered in Order 1

5 of this docket as ordered in Order 4. So I -- I guess I

6 take this as, you know, just a -- maybe not so much a

7 safety management plan, but a desire to show improvement

8 in its safety systems.

9 Q. So is it fair to say that what MVP submitted

10 with its application would not have corrected the cause

11 of the Commission's -- well, one of the causes of the

12 Commission's cancellation of its certificate?

13 A. That would be a correct statement, yes.

14 Q. Okay. And you saw the exhibits that Mr. Garcia

15 filed last week, which have been marked as Exhibits I

16 believe JG-1 and JG-2?

17 A. Yes, I've had the chance to review them.

18 Q. And are those -- is it fair to call those the

19 safety management plan collectively?

20 A. Between the -- the two documents, you could

21 state that it's a safety management plan, sure.

22 Q. And does this safety management plan satisfy

23 Staff?

24 A. It does not. The reason being is, it appears

25 that the safety management plan only addresses repeat

0133

1 violations from two separate investigations. It doesn't

2 necessarily address what was ordered.

3 Q. And before you go on, a safety management plan

4 needs to address all the violations, correct?

5 A. Right. So the safety management plan, it must

6 address each violation, identify why the violations were

7 permitted to occur, discuss any corrective actions that

8 were taken to correct the deficiencies identified. With

9 this, the plan must include actual documentation of

10 corrective action, outline any actions taken to ensure

11 future compliance with the regulations, and if -- if

12 something is unable to be identified at that time, then

13 relaying what future actions they want to take. And

14 then the company must also certify that their -- that

15 their safety program is in compliance with the CFRs in

16 Part 385.5 and 385.7, so and that would be certified by

17 a company official.

18 Q. And for clarity in the record, so this second

19 safety management plan doesn't satisfy those criteria?

20 A. It does not.

21 Q. Okay. I'd like to move on and discuss MVP's

22 safety history, and you testified that one of the

23 reasons the Commission cancelled MVP's permit was its

24 safety record, correct?

25 A. The reason, to my understanding, that the permit

0134

1 was cancelled was for failing to comply with Commission

2 orders. The company has received three safety

3 investigations; one of them being a rated and then two

4 follow-up nonrateds.

5 Q. And thank you for that clarification.

6 So in the rated review, did MVP achieve a

7 satisfactory rating?

8 A. No, the company received an unsatisfactory

9 rating, which was later upgraded to conditional.

10 Q. And one of the criteria for passing out of

11 provisional permit status into permanent permit status

12 is the achievement of a satisfactory rating, correct?

13 A. Yes.

14 Q. And so the one rated review does not have a

15 satisfactory rating; is that fair to say?

16 A. Yes.

17 Q. So -- okay. Fair enough.

18 I guess I'd like to move on to your

19 recommendation because it sounds like we don't need to

20 talk about household goods training.

21 What is Staff's recommendation for how the

22 Commission should deal with the application for

23 reinstatement?

24 A. Just based on the company not satisfying every

25 requirement to be reinstated, I believe Staff's position

0135

1 would remain the same, that we deny the application for

2 reinstatement.

3 MR. ROBERSON: And that's all I have for

4 Mr. Sharp, Your Honor.

5 JUDGE PEARSON: Okay. Thank you. I just

6 have a couple of follow-up questions.

7

8 E X A M I N A T I O N

9 BY JUDGE PEARSON:

10 Q. So can you just give me a quick specific list of

11 the deficiencies that you see in this updated safety

12 management plan that was submitted a week ago, JG-1 and

13 JG-2.

14 A. Submitted into exhibits, yes. The safety plan

15 as it's presented, one of them seems like a really good

16 framework for a company's operations. Has a lot of

17 policies and whatnot. The -- there is a couple things I

18 noticed that had we worked together, if the company had

19 asked for any assistance, there's some minor paperwork

20 stuff as far as their employment application is

21 considered for their drivers. It's missing the company

22 name and address that's required by CFR 391.21. Again,

23 it's a paperwork violation, but it would be something

24 that we would identify as a violation.

25 Looking at the plan violation review, for one,

0136

1 it doesn't address each violation. It was combining

2 repeat violations between different investigations. It

3 was somewhat hard to follow for me. I was able to

4 derive what was being stated within it, but it didn't

5 identify each violation, and with that, we didn't have

6 any proof of corrective action included with that plan.

7 Meaning, you know, working with Staff, we would have

8 identified -- we would have liked to have seen a driver

9 qualification file for an example of being able to show

10 that they are in compliance and understand the rules.

11 Q. So then also, was there also no explanation of

12 how the violations were allowed to occur?

13 A. To some degree, I would -- I would say that --

14 pardon me, Your Honor. Let -- let me just --

15 Q. No worries.

16 A. -- look real quick. So looking at a couple of

17 examples here, what I do see is identifying the

18 violation, the corrective action, and then a prevention

19 that the company states they put in place to prevent

20 reoccurrence. So I would say that no, it -- each of

21 them likely does not involve that.

22 Q. It doesn't have --

23 A. Why it happened.

24 Q. Okay. And then I guess my last question has to

25 do with I know Order 04 instructed the company to work

0137

1 with Staff to develop a safety management plan. Did the

2 company work with Staff to develop either the plan that

3 was submitted with its application for reinstatement or

4 these documents that were submitted in advance of the

5 hearing?

6 A. To my knowledge, I know that I haven't received

7 any communication from the company as far as submitting

8 a safety plan, and to my knowledge, Investigator Yeomans

9 has not either since the order came out. Staff had

10 reached out, as previously documented, to try and get

11 that information. We have had no interactions regarding

12 this plan, no.

13 JUDGE PEARSON: Okay. Thank you.

14 Mr. Garcia, do you have any questions for

15 Mr. Sharp?

16

17 E X A M I N A T I O N

18 BY MR. GARCIA:

19 Q. My only question would be, do you have Ms. Sandy

20 Yeomans' report after she sends me her report when I

21 have to respond to each correction?

22 A. I do, yes.

23 Q. Does that at all answer the things that I'm

24 missing?

25 A. It does not qualify as a safety management plan.

0138

1 Some of your responses that I have seen, what we call a

2 15-day letter, are you familiar with that term?

3 Q. Thank you.

4 A. Within that, what you -- what we ask of you to

5 submit is identifying the violations and what you've put

6 into place to correct it. It doesn't constitute in and

7 of itself a safety management plan. So I would say no,

8 it does not.

9 JUDGE PEARSON: Okay.

10 A. And I'm unable to derive between multiple

11 documents --

12 BY MR. GARCIA:

13 Q. Right.

14 A. -- that it still satisfies that.

15 Q. Okay. I'm -- I guess I'm just confused, when I

16 have the 15-day letter and then I write down each

17 violation and I write down how it happened, what I did

18 to fix it, and what I'm going to do to continue

19 business, and from what you're saying is I -- I didn't

20 do that or it's not acceptable?

21 A. I would say that if you had had those questions,

22 you could have reached out to us at any time on how to

23 submit a plan that's acceptable to Staff. What I see in

24 the documents that you've submitted during the follow-up

25 to the investigations would not constitute what needs to

0139

1 be involved in a safety management plan.

2 Q. Okay. In the last two years, I think I've sent

3 four safety management plans. I'm sending them, I just

4 get a no, that it's not acceptable. So am I supposed to

5 ask directly, can you please tell me what I'm missing

6 and whatnot or am I sending these and I'm just getting

7 kind of the no answer? I -- I guess I'm

8 misinterpreting --

9 A. Is that question directed to me?

10 Q. I -- I'm just -- I guess I'm just saying it to

11 everybody.

12 A. Mr. Garcia, I would say that Staff has made

13 themselves available to you on multiple occasions. When

14 we have received your safety management plans, they've

15 been after deadlines for us to even interact with you

16 during that process. Had you sent -- submitted a safety

17 management plan to me within the 30-day window of your

18 cancellation, I could have worked with you or we could

19 have had Staff work with you in clarifying any of those

20 issues. We had no communication from you during that

21 period of time whatsoever.

22 We also didn't have any communication with you

23 from the time that we sent you a reminder letter

24 basically that was submitted to the docket in August of

25 2018 reminding you that you needed to submit a safety

0140

1 management plan. You were reminded of that when we came

2 out to do the follow-up investigation in early 2019,

3 okay?

4 When that happened, we still didn't get that

5 safety management plan until after Investigator Yeomans

6 spoke with you. And at that point, what you sent me was

7 so illegible for the most part through a scan that I

8 even -- I even told you we would accept your submittal,

9 but I needed you to send me a clearer version so that we

10 could review that. And in your email response, you

11 stated you would, and I never heard another thing from

12 you until I saw you at the hearing.

13 So I'm -- I guess I return the question, what

14 should Staff do for you beyond what we have?

15 Q. I would just say in -- in response to that, if

16 I've sent four safety management plans, maybe just

17 highlight what I'm missing, kind of like what's happened

18 in this report, and respond with, Jason, this isn't

19 acceptable. I -- I feel like I'm submitting them, but

20 I'm only getting the no in a hearing or in court, so

21 I -- I'm misinterpreting the support.

22 A. I would say that submitting them in an

23 application or an exhibit prior to contacting Staff is

24 likely not going to be the best route moving forward if

25 you're trying to get Staff to approve a plan, because we

0141

1 have no interaction in the process with you to correct a

2 final product that basically is what I -- I see this

3 being, right, you submit a plan in your application that

4 was incomplete, and you submit a plan as an exhibit here

5 that is incomplete. At no point did Staff have any

6 interaction with you, because you failed to reach out

7 and seek that assistance.

8 Q. So just to clarify, before I submit it, I just

9 send it and have you guys preapprove it in a way?

10 A. I believe that's what Order 4 alluded to as

11 well.

12 Q. Okay.

13 JUDGE PEARSON: Order 04 was very specific

14 that you were to work with Staff to develop a safety

15 management plan that was acceptable to Staff and gave

16 you specific instructions on what the safety management

17 plan must include. So to me, I -- you know, you've been

18 given multiple opportunities to develop and submit a

19 safety management plan. And like Mr. Sharp was saying,

20 it's either not done or it's done at the 11th hour when

21 it's too late for Staff to work with you and help you

22 out.

23 So is there anything else that we need to

24 talk about today while we're here?

25 MR. ROBERSON: Not from Staff's perspective.

0142

1 JUDGE PEARSON: Okay. Mr. Garcia, did you

2 have anything else you wanted to say?

3 MR. GARCIA: I guess my only question now

4 would be for my common carrier, do I work with this

5 department or is this a totally different department?

6 JUDGE PEARSON: You would work with them,

7 yes.

8 MR. GARCIA: Okay. So for that, I need to

9 send you my safety management plan on behalf of my

10 common carrier?

11 MR. SHARP: Your Honor, we -- motor carrier

12 Staff does not have safety regulation over common

13 carriers.

14 JUDGE PEARSON: That's right. I'm sorry.

15 You'd need -- do you have your motor carrier

16 permit or did you still need to obtain the permit?

17 MR. GARCIA: I do have my common carrier

18 permit.

19 JUDGE PEARSON: Okay. So Washington State

20 Patrol does the safety for common carriers.

21 MR. GARCIA: Okay.

22 MR. SHARP: And, Mr. Garcia, if you have any

23 questions about that, I'd be happy to -- to speak with

24 you either on or off the record.

25 MR. GARCIA: Okay.

0143

1 JUDGE PEARSON: Okay. So thank you for

2 coming here today. I will be issuing an order within

3 ten business days reflecting my decision. And is -- it

4 sounds like there's nothing else from either party, so

5 we are adjourned. Thank you.

6 (Adjourned at 2:28 p.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0144

1 C E R T I F I C A T E

2

3 STATE OF WASHINGTON

4 COUNTY OF THURSTON

5

6 I, Tayler Garlinghouse, a Certified Shorthand

7 Reporter in and for the State of Washington, do hereby

8 certify that the foregoing transcript is true and

9 accurate to the best of my knowledge, skill and ability.

10

11

12 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

13 Tayler Garlinghouse, CCR 3358

14

15

16

17

18

19

20

21

22

23

24

25