



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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May 3, 2017

Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive Southwest
P.O. Box 47250
Olympia, WA 98504-7250

Re: *Washington Utilities and Transportation Commission v. Sound Generations LLC*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TN-170226

Dear Mr. King:

In February 2017, Motor Carrier Safety Investigator Sandi Yeomans conducted a compliance review investigation of Sound Generations. A compliance review is an in-depth examination of the motor carrier's compliance with regulations that the Federal Motor Carrier Safety Administration has identified as "acute" or "critical."¹ Acute regulations are identified where non-compliance is so serious as to require immediate corrective actions regardless of the overall safety posture of the 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 management controls and unusually higher than average accident rates.² Ms. Yeomans found 417 violations, including repeat occurrences, all of which were first-time violations.

The Commission's enforcement policy provides that some requirements are so critical 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 Of the 417 violations found, 120 were of acute or critical regulations.

On April 17, 2017, the Commission issued a penalty assessment under docket TN-170226 against Sound Generations in the amount of \$11,300 for violations of WAC 480-31-100

¹ Title 49 CFR Part 385, Appendix B – Explanation of Safety Rating Process

² *Id.*

³ Docket A-120061 – Enforcement Policy of the Washington Utilities and Transportation Commission, Section V.

Equipment – Safety, and 480-31-130 Operation of Motor Vehicles, which require private, nonprofit transportation providers to comply with Title 49 CFR Parts 391 and 396, as follows:

- **Three violations (112 occurrences) of CFR Part 391.45(a) – Using a driver not medically examined and certified.** Sound Generations allowed three of its drivers, Nickolas Adams, Lorri Engbaum, and Manuel Fernandez to drive on 112 occasions during which time the drivers were not medically examined and certified. Mr. Adams drove twice in April 2016. Ms. Engbaum drove six times in May and June 2016. Mr. Fernandez drove 89 times in 2016 (21 times in August, 19 times in September, 20 times in October, 16 times in November, 13 times in December), and 15 times in January 2017.
- **Eight violations of CFR 396.17(a) – Using a commercial motor vehicle not periodically inspected.** Sound Generations operated eight commercial motor vehicles which had not been periodically inspected.

On May 1, 2017, Sound Generations filed with the Commission an application for mitigation. In the application, Sound Generations Vice President Joanne Donahue admitted the violations, described corrective steps taken, and requested the penalties be dismissed.

1. **Mitigation request: CFR Part 391.45(a) – Using a driver not medically examined and certified. (112 occurrences)** Sound Generations states that the majority of these occurrences were due to their employee, Mr. Fernandez, driving with an invalid medical examination certificate. The company had a medical certificate on file for Mr. Fernandez. The company suggests that the form was obsolete and did not display the medical examiner's national registry number. (Staff's investigation determined that the medical examiner was not listed in the National Registry, thus invalidating the examination).

The other two employees, Ms. Engbaum and Mr. Adams, drove on eight occasions after their certificates had expired and before they obtained new certificates. The company suggests these are harmless violations because both drivers did pass their subsequent physical examinations to get their new certificates, and each only drove a few times without being currently certified.

Staff response: The requirement that medical examinations be conducted by medical examiners listed on the National Registry has been in effect since 2014. It is not a new requirement. This is a critical requirement to ensuring that drivers are medically certified. Medical examinations conducted by examiners not on the National Registry do not meet this requirement.

With respect to the trips made by Ms. Engbaum and Mr. Adams, staff disagrees with the suggestion that the risk was minimal. While it is reassuring that both drivers passed their examinations and were recertified, a lot can happen with respect to one's health in the two years between medical examinations. Drivers and employers are both responsible to ensure adequate controls are in place to schedule re-examinations before the end of the two-year period.

Staff opposes the company's request to dismiss the penalties in whole, however, because the company admitted the violations and took immediate corrective actions, staff will recommend mitigation of the \$11,100 penalty to \$5,000.

2. **Mitigation request: Part 396.17(a) – Using a commercial vehicle not periodically examined.** Sound Generations stated that their vehicle inspections are handled by subcontractors under the direction of Metro Transit. Sound Generations states that in the future, its vehicle inspections will meet the federal requirements.

Staff response: Staff appreciates Sound Generations willingness to come into compliance in this area. Staff found that eight vehicles had not received periodic inspections that meet federal requirements. Because the Commission imposed a penalty of \$100 for only a single violation of this type, Staff does not recommend further mitigation of this penalty.

Sound Generations is a large company, with 67 drivers and 47 commercial vehicles. In 2016 the company reported 549,727 miles traveled and \$14,000,000 in overall gross revenue. The budget for Sound Generations transportation program is \$2,637,306.

The company was cooperative and responsive, and has provided documentation that the violations have been corrected. Staff recommends mitigation of the \$11,300 penalty to \$5,100.

If you have any questions, please contact Mike Turcott, Compliance Investigator, Transportation Safety, at (360) 664-1174 or by e-mail at miturcot@utc.wa.gov.

Sincerely,



David Pratt
Assistant Director, Transportation Safety

Enclosures

