

BEFORE THE WASHINGTON STATE

UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the)
Investigation of)
LEAVENWORTH SHUTTLE & TAXI, LLC) Docket Nos.
For Compliance with WAC) TE-161020 &
480-30-221) TE-161021
) (Consolidated)
)

BRIEF ADJUDICATIVE PROCEEDING, VOLUME I

Pages 1 - 33

ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

9:31 A.M.

October 20, 2016

Washington Utilities and Transportation Commission
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A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:

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DAVID WITT, In Propria Persona

ALSO PRESENT:

Dave Pratt
Sandi Yeomans

* * * * *

HEARING

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1 OLYMPIA, WASHINGTON; OCTOBER 20, 2016

2 9:31 A.M.

3
4 P R O C E E D I N G S

5
6 JUDGE PEARSON: Good morning. Let's be on
7 the record. This is Docket TE-161021, which is
8 captioned In the Matter of the Investigation of
9 Leavenworth Shuttle & Taxi, LLC, for Compliance with WAC
10 480-30-221.

11 My name is Rayne Pearson. I'm the
12 administrative law judge presiding over today's brief
13 adjudicative proceeding. Today is Thursday, October 20,
14 2016, and the time is approximately 9:35 a.m.

15 On September 28th, 2016, the Commission
16 issued a Notice of Intent to Cancel Certificate as an
17 Auto Transportation Carrier, Notice of Brief
18 Adjudicative Proceeding; Setting Time for Oral
19 Statements.

20 The Commission issued the Notice of Intent
21 to Cancel following a compliance review conducted by
22 Commission Staff in July 2016, which resulted in a
23 proposed unsatisfactory safety rating for Leavenworth
24 Shuttle.

25 The company had until October 10th, 2016, to

1 file a proposed safety management plan, and the company
2 also had 45 days from the day it received the notice of
3 the proposed unsatisfactory safety rating on
4 September 7th, 2016, to request and receive an upgraded
5 safety rating, and Monday, October 24th, is the 45th
6 day; is that correct?

7 MR. PRATT: (Nods head.)

8 JUDGE PEARSON: So at the conclusion of the
9 hearing, I may be issuing a ruling from the bench
10 regarding the status of the company's auto
11 transportation certificate.

12 And before we came on the record this
13 morning, we spoke briefly about the penalty assessment
14 in Docket TE-161020 in the amount of \$19,800, and
15 Mr. Witt indicated that he filed an application for
16 mitigation, and Staff indicated that that has not yet
17 been received.

18 But I do think that it makes sense to
19 address the penalty while we're all here today, which
20 will give you, Mr. Witt, an opportunity to explain any
21 corrective actions that you have taken to prevent the
22 violations from recurring, and Staff can consider that
23 information and then make a recommendation about whether
24 or not the penalty should be reduced.

25 So I am assuming that Staff has no objection

1 to consolidating Dockets TE-161021 and TE-161020?

2 MR. SHEARER: No objection, your Honor.

3 JUDGE PEARSON: Okay. So then those matters
4 are consolidated and we will hear from the parties on
5 both dockets this morning.

6 So when I call on each party to testify, I
7 will swear you in with an oath of witness, which means
8 that everything that you say here today will be under
9 oath and is considered sworn testimony.

10 And so for the court reporter's benefit,
11 please speak slowly and clearly and into the microphone.
12 Also make sure that we only speak one at a time. Please
13 don't interrupt when anyone else is speaking. And once
14 you're sworn in, you can present your testimony and
15 introduce any exhibits, if you have pre-filed any, and I
16 will rule on the admissibility of each of those.

17 So I think first what we should do is have
18 Staff address the Notice of Intent to Cancel, and then
19 following Staff's presentation, the company will have
20 the opportunity to ask Staff's witness any questions,
21 and then you can present your testimony to address the
22 violations and the penalty assessment.

23 Once you're done testifying, Staff's
24 attorney may have some questions for you, and then Staff
25 can make a final recommendation with respect to the

1 penalty.

2 So do you have any questions before we get
3 started?

4 MR. WITT: No. No, I don't.

5 JUDGE PEARSON: Okay. So first let's take a
6 short appearance from Commission Staff.

7 MR. SHEARER: Hello, Commissioner -- or
8 your Honor. My name is Brett Shearer. I'm assistant
9 attorney general representing Commission Staff.

10 JUDGE PEARSON: Thank you.

11 And for the company, Mr. Witt, if you could
12 state your first and last name for the record, spelling
13 your last name, and give us your address, phone number
14 and e-mail address.

15 MR. WITT: Sure. My name is David Witt,
16 W-I-T-T. My address is 11610 Eagle Creek Road,
17 Leavenworth, Washington 98826. Phone number is
18 (509) 670-1849. E-mail is David_Witt, W-I-T-T,
19 @hotmail.com.

20 JUDGE PEARSON: Thank you, Mr. Witt.

21 So Mr. Shearer, you may proceed with the
22 issue of the proposed unsatisfactory safety rating
23 whenever you're ready.

24 MR. SHEARER: Yes, your Honor. And I would
25 call Ms. Sandra Yeomans to the stand, the Staff

EXAMINATION BY MR. SHEARER / YEOMANS

8

1 investigator in this case.

2 JUDGE PEARSON: Okay. Ms. Yeomans, if you
3 could stand and raise your right hand.

4

5 SANDI YEOMANS, witness herein, having been
6 first duly sworn on oath,
7 was examined and testified
8 as follows:

9

10 JUDGE PEARSON: Okay. You may be seated.

11 *** EXAMINATION BY MR. SHEARER ***

12 BY MR. SHEARER:

13 Q. Hello, Ms. Yeomans. Can you please state your
14 name for the record and spell your last name?

15 A. My name is Sandi Yeomans. Last name is
16 Y-E-O-M-A-N-S.

17 Q. And what is your position here at the UTC,
18 Ms. Yeomans?

19 A. I'm a special investigator.

20 Q. And can you please explain your role in Dockets
21 TE-161020 and TE-161021 involving Leavenworth Shuttle &
22 Taxi, LLC?

23 A. I was an investigator for the compliance review.

24 Q. And can you please explain what an investigation
25 or a compliance review is?

EXAMINATION BY MR. SHEARER / YEOMANS**9**

1 A. The compliance review is going into the company
2 and checking to see if they are in compliance with the
3 laws and regulations.

4 **Q. And did you document your review of Leavenworth**
5 **Shuttle & Taxi?**

6 A. Yes, I did.

7 **Q. And how did you document that?**

8 A. It was documented on the CAPRI report, which we
9 file after doing a review.

10 **Q. Thank you, Ms. Yeomans.**

11 **I'd like to turn your attention to a proposed**
12 **exhibit from Staff.**

13 MR. SHEARER: Your Honor, I haven't given
14 you a copy yet. Would you like --

15 JUDGE PEARSON: I would like a copy.

16 MR. SHEARER: I will take a moment to do
17 that here.

18 JUDGE PEARSON: Does Mr. Witt have a copy as
19 well?

20 MR. SHEARER: I'll give him one.

21 JUDGE PEARSON: Thank you.

22 BY MR. SHEARER:

23 **Q. All right.**

24 **Ms. Yeomans, I will turn your attention to the**
25 **document in front of you labeled Exhibit No. SY-1.**

EXAMINATION BY MR. SHEARER / YEOMANS**10**

1 Do you have that document in front of you?

2 A. Yes.

3 **Q. And what -- can you explain what this document**
4 **is?**

5 A. This is the assignment report, which is a
6 summary of the investigation.

7 **Q. And is this document a true and correct copy of**
8 **that report that you completed?**

9 A. Yes.

10 MR. SHEARER: Your Honor, I would move to
11 admit Exhibit SY-1 into the record.

12 JUDGE PEARSON: And Mr. Witt, do you have
13 any objection to admitting this into the record?

14 MR. WITT: No, I do not.

15 JUDGE PEARSON: Okay. Then I will admit
16 that and mark it Exhibit No. SY-1.

17 (Exhibit No. SY-1 marked and
18 admitted.)

19 BY MR. SHEARER:

20 **Q. I'll direct you to turn your attention to a**
21 **subsequent Exhibit labeled SY-2.**

22 **And do you recognize this document, Ms. Yeomans?**

23 A. Yes.

24 **Q. And what is this document?**

25 A. This is Part A of a CAPRI report that explains

EXAMINATION BY MR. SHEARER / YEOMANS

11

1 that it's a compliance review, who was contacted during
2 that review, what their classification is, number of
3 vehicles, and overview of the company.

4 **Q. And is this a true and correct copy of the**
5 **compliance review you completed during your**
6 **investigation of Leavenworth Shuttle & Taxi, LLC, in**
7 **this case?**

8 A. Yes.

9 MR. SHEARER: Your Honor, I would move to
10 admit Exhibit SY-2 into the record.

11 JUDGE PEARSON: Okay. Mr. Witt, do you have
12 any objection to this exhibit?

13 MR. WITT: I don't.

14 JUDGE PEARSON: Okay. Then I will admit and
15 that and mark it as SY-2.

16 MR. SHEARER: Thank you, your Honor.

17 (Exhibit No. SY-2 marked and
18 admitted.)

19 BY MR. SHEARER:

20 **Q. Now, I'd like to explore some of the contents of**
21 **this report with you, Ms. Yeomans.**

22 **If you could turn to page 3 of that exhibit, the**
23 **top of the document says Part B, Violations, just for**
24 **everybody's reference.**

25 **Now, what is this section of this document, this**

EXAMINATION BY MR. SHEARER / YEOMANS**12**

1 Part B, Ms. Yeomans?

2 A. This is Part B of the compliance report that is
3 a listing of all violations that were discovered during
4 the compliance review.

5 Q. And I will call your attention to the -- in the
6 upper left corner, there's a "1" and then the
7 terminology "Federal" and "Critical."

8 Can you explain what that means, Ms. Yeomans?

9 A. That is the first violation. It is a federal
10 violation, and it is critical, which is -- I don't know
11 the word. It's more severe than a regular violation.

12 Q. And then one column over, there's a -- it says
13 "Primary" and there's a list of numbers there. Can you
14 explain what that column heading means?

15 A. That would be the regulation that was not done.

16 Q. And if I flip through this page and the next few
17 pages, I see 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and
18 13.

19 Does that -- so that all indicates that you
20 found and documented 13 types of violations; is that
21 accurate?

22 A. That's correct.

23 Q. And the headings and columns that we just went
24 through for the first one apply to all of those.
25 They're similarly labeled; is that correct?

EXAMINATION BY MR. SHEARER / YEOMANS**13**

1 A. Correct.

2 **Q. Now, to start off with, the first Federal**
3 **Critical violation that we just discussed, there's a**
4 **description there in that box, and it says, "Using a**
5 **driver before the motor carrier has received a negative**
6 **preemployment controlled substance test result."**

7 **Can you please explain what that means?**

8 A. Before a driver is eligible to drive a
9 commercial motor vehicle, they have to have a
10 preemployment and receive the results back from that
11 preemployment test, and it has to be negative before
12 they are able to drive a commercial motor vehicle, and
13 that was not done.

14 **Q. And Ms. Yeomans, can you please explain how you**
15 **determined that Leavenworth Shuttle & Taxi had not**
16 **performed those, had not complied with that rule?**

17 A. I contacted their consortium, who gave me a list
18 of all tests that had been given, and in these two
19 cases, a preemployment test had not been done.

20 **Q. And moving on to the violation in Part B labeled**
21 **No. 2, where it says "State Critical," and there's**
22 **another list of CFR numbers there, in that box, there's**
23 **a description that says, "Using a driver not medically**
24 **examined and certified."**

25 **Can you please explain what that means,**

EXAMINATION BY MR. SHEARER / YEOMANS**14**

1 Ms. Yeomans?

2 A. Yeah. It's a state violation, because they are
3 an intrastate company, and in order to drive a
4 commercial motor vehicle, they do need to be medically
5 certified by an examiner that's on the national
6 registry. And in this case, there was no certificate in
7 their file. And when I asked Mr. Witt, he said they had
8 not received any examinations.

9 Q. And -- well, you answered my next question.

10 Please explain how you knew or how you came to
11 the conclusion that the company had not complied with
12 that requirement. Do you have anything to add to that,
13 Ms. Yeomans?

14 A. I don't believe so.

15 Q. Thank you.

16 And we'll move on down to the number 3 where
17 it's again labeled "State Critical." The next column
18 over, there's a series of CFR numbers, and the
19 description below says, "Failing to require a driver to
20 prepare driver vehicle inspection report."

21 Can you please explain what that means?

22 A. At the end of each day, a carrier that
23 transports passengers needs to fill out a driver vehicle
24 inspection report stating that they inspected the
25 vehicle, and if there was any critical things that were

EXAMINATION BY MR. SHEARER / YEOMANS

15

1 wrong that needed to be corrected, and they were not
2 done.

3 **Q. And can you please explain how you concluded**
4 **that that was not done in this case?**

5 A. When inspecting the maintenance for this
6 company, I found that there was no driver vehicle
7 inspection reports. And I asked Mr. Witt, he said they
8 had not done them in the past, but they had just started
9 doing the vehicle inspection reports.

10 **Q. Thank you.**

11 **Now, those three categories of violation we just**
12 **discussed, those are all labeled "Critical" in this Part**
13 **B.**

14 **Can you please give a little more detail as to**
15 **what a critical violation is?**

16 A. I forgot the word again. A critical violation
17 means that the carrier is operating in an unsafe manner
18 in those categories.

19 **Q. And if I turn your attention to a few pages**
20 **later, page 6 of Exhibit SY-2, in large bold letters, I**
21 **see the word "Unsatisfactory."**

22 **Can you please explain what that means,**
23 **Ms. Yeomans?**

24 A. That is a safety rating that is given to this
25 compliance review.

EXAMINATION BY MR. SHEARER / YEOMANS

16

1 **Q. And is there a relationship between the critical**
2 **violations that we just discussed and this**
3 **unsatisfactory relationship?**

4 A. Yes. If you look to the right, it says "Rating
5 Factors," and because there was two critical [sic] in
6 one factor and one critical in factor four, that would
7 put them in an unsatisfactory status.

8 **Q. And what happens when a company receives an**
9 **unsatisfactory rating?**

10 A. At the closing, we give them information on how
11 to upgrade their status, explain what happens if they do
12 not.

13 **Q. And did you inform Leavenworth Shuttle & Taxi**
14 **that -- of their proposed unsatisfactory rating?**

15 A. Yes.

16 **Q. And have you had -- or have you received a**
17 **written plan for corrective actions from Leavenworth**
18 **Shuttle & Taxi since this proposed rating?**

19 A. No.

20 MR. SHEARER: Thank you, Ms. Yeomans.

21 Now, your Honor, the federal -- the critical
22 violations that we walked through with Ms. Yeomans,
23 those three categories, as you can see, there's also
24 another ten non-critical violations. Staff's happy to
25 walk through those if you'll find those helpful. I

1 didn't think that would be necessary, but --

2 JUDGE PEARSON: It's not necessary.

3 MR. SHEARER: Thank you. Then I have no
4 further questions for Ms. Yeomans, your Honor.

5 JUDGE PEARSON: Okay.

6 Mr. Witt, do you have any questions for
7 Ms. Yeomans?

8 MR. WITT: No -- well, no, I don't believe I
9 do.

10 JUDGE PEARSON: Okay. So if you would
11 please stand and raise your right hand, then we can move
12 on to the penalty.

13
14 DAVID WITT, witness herein, having been
15 first duly sworn on oath,
16 was examined and testified
17 as follows:

18

19 *** TESTIMONY BY MR. WITT ***

20 JUDGE PEARSON: Please be seated. So I
21 didn't receive any exhibits from you in advance of the
22 hearing. It does look like you brought something with
23 you. Did you want to identify that?

24 MR. WITT: I did. I have my response to the
25 13 violations in here, and then also the Aspen reports

1 and my annuals, and my alcohol and controlled substances
2 training form, as well as the consortium that we now are
3 a part of for our drivers and their medicals and all
4 that.

5 JUDGE PEARSON: Okay. So is that your
6 proposed safety management plan?

7 MR. WITT: Well, it's my response to -- it's
8 not like it's a detailed A, B, C, D. I just did it.
9 It's -- we're a very small company. I didn't write up,
10 I'm going to do X, Y, Z, X, Y, Z.

11 A lot of the things that she discussed,
12 especially those critical ones, I got on right away. In
13 fact, when she was there, we were in the process of some
14 of those and completed them and got her back those
15 changes, you know, especially, you know, the
16 preemployment test, every --

17 JUDGE PEARSON: Well, hold on. Let's walk
18 through them one by one. I guess what I wanted to know
19 is if you wanted to distribute them or --

20 MR. WITT: I would love to, yes.

21 JUDGE PEARSON: So has this been mailed to
22 the Commission?

23 MR. WITT: It has not. I didn't recognize
24 the dates on the mailing. There was a lot of paperwork,
25 and I overlooked that. And so once I missed the date, I

1 just thought I'd bring it with me when I came.

2 JUDGE PEARSON: Okay. So this looks to me
3 more like a response to the penalty assessment.

4 MR. WITT: Okay.

5 JUDGE PEARSON: And so I -- you should --
6 rather than me admitting it into the record as an
7 exhibit, I would prefer that you file a copy with the
8 records center before you leave here today --

9 MR. WITT: Okay.

10 JUDGE PEARSON: -- since you do have a right
11 to respond to the penalty assessment. And then I think
12 probably most of what's in here you're going to testify
13 to --

14 MR. WITT: Right.

15 JUDGE PEARSON: -- today would be my guess.

16 So does Staff have any objection to treating
17 that in this way?

18 MR. SHEARER: No, your Honor. The more
19 information the better in this case.

20 JUDGE PEARSON: Okay. So why don't we walk
21 through each of the violations, and you can just explain
22 why the violation occurred, and then any steps that
23 you've taken to correct the violation to prevent it from
24 recurring.

25 And we'll start with 49 CFR Part 382.301(a),

1 using a driver before receiving a negative preemployment
2 controlled substance and alcohol use test result.

3 MR. WITT: Okay. So when -- well, I'm going
4 to start a little bit at the beginning.

5 JUDGE PEARSON: Sure.

6 MR. WITT: When I first purchased this
7 company a little over three years ago, there was
8 nothing -- it was kind of blue sky that I was
9 purchasing, and there was no -- nothing in procedures,
10 what consortium to belong to, anything that was -- it
11 was not transferred across, so I walked in blindly. My
12 background is in tourism and recreation.

13 I had a very steep learning curve, and that
14 critical violation occurred because I was ignorant to
15 the fact that it needed to occur. I knew that the CDL
16 drivers that I had hired had tests with their other
17 companies that they worked with, and I assumed that
18 those would be sufficient, you know, if we needed to
19 look back on them. I did not have them take the
20 preemployment test and so -- because I just didn't know.

21 JUDGE PEARSON: Okay. And so what have you
22 done to correct that?

23 MR. WITT: In part of our hiring process,
24 and immediately from that point -- because when I was
25 made aware of it, I immediately contacted Foley, who I'd

1 been working with since we purchased the company, and
2 they were not really willing to work with me locally
3 anyway. I'd spoken with Confluence Health, who does a
4 consortium in the local area there in that Chelan
5 County, Okanogan, Douglas County area, and got our
6 company involved with them, and set up a consortium with
7 them, immediately had all my employees that were driving
8 any vehicle go in for a preemployment, and then as well
9 as their physicals for driving. And then they've become
10 part of the -- we've become part of the consortium.

11 JUDGE PEARSON: Okay. And so that kind
12 of --

13 MR. WITT: That was the immediate result. I
14 did -- part with [sic] my hiring processes is, I've got
15 a list of everything that needs to happen that I have
16 when I hire people. I just -- just run through that
17 list, you know, everything from the I-9 IRS forms to our
18 policies on harassment, and best policies on dealing
19 with the customers, DVIRs, et cetera.

20 JUDGE PEARSON: Okay. So that kind of leads
21 us into that second category of violations, which is 49
22 CFR Part 391.45(a), which is using a driver not
23 medically examined and certified.

24 So does Confluence Health now -- are they
25 the ones who examined and certified your drivers?

1 MR. WITT: They are. They are.

2 JUDGE PEARSON: Okay.

3 MR. WITT: And also with -- in regards to
4 these three drivers, I did not realize that,
5 irregardless of them being a non-CDL holder, they needed
6 to have a medical card if they were transporting people
7 that were eight and above, and I was -- I did not know
8 that.

9 JUDGE PEARSON: Okay. So then the third
10 category of violations, which is 49 CFR Part 396.11(a),
11 for failure to require your drivers to prepare driver
12 vehicle inspection reports?

13 MR. WITT: So that one's a little more
14 simple in the fact that we had them perform the DVIR,
15 except we never reported that the DVIR occurred. And it
16 was brought to my attention earlier this year that we
17 needed to have a record of those, and so we started
18 recording the DVIRs, but they were in an inadequate form
19 that was not recognized, and so that was the result of
20 that.

21 JUDGE PEARSON: So you were --

22 MR. WITT: Oh, sorry, the correction --
23 sorry. I keep interrupting you. Go ahead.

24 JUDGE PEARSON: So you were using an
25 incorrect format, you were collecting data but not --

1 MR. WITT: Correct. It was an incorrect
2 format. We changed it to page 189 on the -- Your Guide
3 to Achieving a Satisfactory Safety Report, and that's
4 our new form for our DVIRs.

5 JUDGE PEARSON: Okay. Thank you.

6 Is there anything else that you'd like to
7 add?

8 MR. WITT: Yes. When I was -- I had first
9 bought the company, we had an inspection probably about
10 maybe a month or so after I was there, or we first
11 bought it, the vehicles were inspected. The person that
12 did it, I don't even recall his name, was there for a
13 very short amount of time. And I had no idea that
14 this -- this book, the Your Achieving [sic] -- Your
15 Guide to Achieving a Satisfactory Safety Record even
16 existed. Had I had this, I believe I could have saved
17 myself a lot of headaches, and I use it a lot now.

18 JUDGE PEARSON: Okay. Thank you.

19 Mr. Shearer, do you have any questions for
20 Mr. Witt?

21 MR. SHEARER: No, your Honor.

22 JUDGE PEARSON: Okay. So does Staff want to
23 address the penalty?

24 MR. SHEARER: Yes, your Honor.

25 JUDGE PEARSON: Okay. So I assume I'll be

EXAMINATION BY MR. SHEARER / PRATT

24

1 swearing in Mr. Pratt?

2 MR. SHEARER: Yes, please, your Honor.

3 JUDGE PEARSON: Okay. If you could stand
4 and raise your right hand.

5
6 DAVID PRATT, witness herein, having been
7 first duly sworn on oath,
8 was examined and testified
9 as follows:

10 JUDGE PEARSON: Okay. You may be seated.

11 *** EXAMINATION BY MR. SHEARER ***

12 BY MR. SHEARER:

13 Q. Mr. Pratt, can you say your name and spell your
14 name for the record?

15 A. Sure. My name is David Pratt, last name
16 P-R-A-T-T.

17 Q. What is your role here at the UTC, Mr. Pratt?

18 A. I manage the motor carrier and rail safety
19 programs.

20 Q. And are you aware of the penalty assessment in
21 this case against Leavenworth Shuttle & Taxi, LLC?

22 A. Yes, I am. I was involved in making the
23 decisions and preparing that document.

24 Q. And can you please explain the nature of that
25 penalty?

EXAMINATION BY MR. SHEARER / PRATT**25**

1 A. Sure. We have an enforcement policy that we use
2 when we make penalty decisions, and so we followed the
3 Agency's and the Motor Carrier's enforcement policy.

4 Some of the violations that we find out there
5 with carriers we consider as mandatory penalties because
6 they're so critical to affect public safety. These
7 three fall into that category. Specifically, 1 and 2
8 are probably the more serious ones of not having the
9 proper driving credentials to drive, not having a
10 preemployment drug test, and then the medical card
11 issue.

12 As you can see, the penalties are pretty big on
13 number 2 because we assess a penalty for each time the
14 vehicle is driven. And in this case, on the 391.45(a)
15 penalties, they drove 187 times, so that's \$100 per each
16 violation for that. That's why that's -- the bulk of
17 this penalty on here was that.

18 So basically, when we prepared this, the
19 penalties are determined based on the critical
20 violations, and in this case, the three first -- or the
21 first three violations we've discussed were all
22 critical, and those were what drove the penalty amounts
23 to a recommendation of \$19,800.

24 And to further break that down a little bit, it
25 comes down \$1,000 on the first penalty, and that's \$500

EXAMINATION BY MR. SHEARER / PRATT

26

1 per driver; the second one, \$100 per occurrence, which I
2 mentioned before, 187 occurrences; and then the third
3 one, it's 145 occurrences, but because this is a
4 first-time violation, we assess a penalty for the
5 violation type. If this were to have been a repeat
6 violation, we would have assessed a penalty for each
7 occurrence, which would have been 145, so it was
8 fortunate from that perspective.

9 So my dilemma I have here today is to try and
10 make a recommendation to the judge on the penalty when
11 I've just now in the last ten minutes gotten a chance to
12 review the materials produced by Mr. Witt. And I do
13 appreciate him bringing those today.

14 And so I really haven't had time to look at
15 these, to read them all, to think about them and
16 understand them, so I do need a little bit of time to do
17 that before I can weigh in on whether or not I think
18 it's an adequate plan.

19 Normally what I would do is, I would assess the
20 plan, and then I would say how well I feel the company
21 has addressed the plan, to make a determination on where
22 we go with the penalties. And so I'm in a little bit of
23 a dilemma here on how to make that determination and
24 recommendation, so --

25 JUDGE PEARSON: Quick question. Are you

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1 referring to this -- you used the word "plan," but
2 you're not deeming it his proposed safety management
3 plan, correct? You're talking about his compliance plan
4 with respect to the violations?

5 THE WITNESS: Yes.

6 JUDGE PEARSON: Okay.

7 THE WITNESS: So I would consider his letter
8 here his attempt at a safety management plan.

9 JUDGE PEARSON: Okay.

10 THE WITNESS: Because I see he has
11 identified each violation, he has talked about why they
12 were allowed to occur, and then he's given a little bit
13 of information about what he's done to correct them.
14 Those are the three factors of a safety management plan.

15 So I think, in spirit, that this attempts to
16 meet it. Again, I need to read through all the
17 violations, because there were 13, but I do believe he's
18 made an attempt to give us a plan. Whether we'll label
19 it that way or not, I don't know.

20 JUDGE PEARSON: Okay.

21 THE WITNESS: So again, like I said, my
22 uncertainty now is, until I know whether I feel this is
23 adequate and he's got a good plan going forward, is to
24 whether -- to how I think that will affect the penalty
25 recommendation.

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1 JUDGE PEARSON: So another question.

2 Would it be useful to take a brief recess,
3 or is this something that you would need several days?

4 THE WITNESS: I don't think a brief recess
5 would be enough today. I think I need at least several
6 hours to review it, and so --

7 JUDGE PEARSON: Okay.

8 THE WITNESS: -- one option might be to
9 consider that -- the proposed cancellation date is the
10 25th, which is next Tuesday. Ms. Yeomans and I could
11 review this between now and then. I could submit
12 something to the Commission by Monday with my
13 recommendation for the safety plan, the safety rating,
14 the permit status and the penalty.

15 JUDGE PEARSON: Okay.

16 THE WITNESS: If you don't want to wait
17 until Monday, I can make a recommendation right now.

18 JUDGE PEARSON: I'm fine with waiting until
19 Monday. I think that is definitely in the company's
20 best interest that we give you some time to look that
21 over since we are up against a clock. And it would
22 obviously be preferable, I think, from all parties'
23 standpoint, that -- if we can save your permit, that we
24 do that.

25 MR. WITT: Yes.

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1 JUDGE PEARSON: Not only for you, but for
2 the administrative burden that it would place on the
3 Commission having to reinstate a certificate and issue
4 an upgraded safety rating and all those other steps. I
5 think, if it's possible, we definitely should -- and
6 you're willing, we should hold off on those
7 recommendations, and then if you can submit them --

8 THE WITNESS: Yes. I can make a commitment
9 that Ms. Yeomans and I will review this today. I'm not
10 sure what her schedule is. I know I have some things
11 planned. But we can get it reviewed, we can talk about
12 it. I believe she's off tomorrow, so I can continue
13 reviewing it this weekend, and I can have a -- I'll
14 produce a letter to you by Monday kind of outlining what
15 I learned and what I think and what my recommendation
16 is.

17 I can only speculate now what it might be,
18 so I guess I really don't want to go there until I have
19 a chance to look, but I can submit, say, Monday morning.

20 JUDGE PEARSON: I think Monday morning would
21 be sufficient, because I do think that I am up against a
22 clock, too, as far as getting an order out with a
23 decision on the certificate before we hit 12:01 a.m. on
24 the 25th of October.

25 THE WITNESS: Correct.

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1 JUDGE PEARSON: So if you can get it to me
2 Monday morning, I think I can probably turn the order
3 around that same day.

4 THE WITNESS: Okay. I will commit to trying
5 to get it to you as early as I can Monday morning, say,
6 by 10:00?

7 JUDGE PEARSON: Okay.

8 THE WITNESS: But I do -- I guess I do want
9 to make sure Mr. Witt is aware that, if I don't think
10 this plan is adequate, then the feedback is going to be,
11 you need to do more work on it, you need to share with
12 us a little bit more about what you're gonna do. That
13 might take a few days for him, which might put us in a
14 period of cancellation while that's worked out. That I
15 don't know yet, but I want to make sure Mr. Witt's aware
16 of that.

17 MR. WITT: In response to that, you will
18 have my full and undivided attention for this.

19 THE WITNESS: Okay.

20 JUDGE PEARSON: And just so you understand,
21 in the event that it does need more work and we hit that
22 45th day and I have to issue an order cancelling the
23 permit, there is that 30-day period where you can
24 request to have your certificate reinstated without
25 having to go through the application process and obtain

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1 a new certificate, so that's somewhat of a grace period
2 that you have in the event that you need it.

3 MR. WITT: Okay.

4 JUDGE PEARSON: Okay. So anything further?

5 MR. SHEARER: Nothing from Staff,
6 your Honor.

7 JUDGE PEARSON: Okay. So I think -- I'm
8 trying to think procedurally of the best way to -- we'll
9 just call it a bench request, the additional information
10 from Staff, and so you can e-mail it to me directly when
11 you have your response and just CC Mr. Witt and file it
12 with the records center, and then we'll just place it in
13 the record that way.

14 MR. PRATT: Okay.

15 JUDGE PEARSON: I think that's probably the
16 easiest way to handle it.

17 MR. SHEARER: That makes sense to me,
18 your Honor. And Staff's more than willing to follow
19 that path.

20 JUDGE PEARSON: Okay. Sounds good.

21 Thank you, Mr. Witt, for driving all the way
22 over here this morning. We appreciate it.

23 MR. WITT: Thank you for listening to me
24 today.

25 JUDGE PEARSON: Yes.

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1 Thank you to Staff as well, and we will be
2 off the record and be adjourned.

3 (Hearing concluded at 10:11 a.m.)

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C E R T I F I C A T E

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3 STATE OF WASHINGTON)

4 COUNTY OF KING) ss.

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7 I, ANITA W. SELF, a Certified Shorthand Reporter

8 in and for the State of Washington, do hereby certify

9 that the foregoing transcript is true and accurate to

10 the best of my knowledge, skill and ability.

11 IN WITNESS WHEREOF, I have hereunto set my hand

12 and seal this 27th day of October, 2016.

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18 ANITA W. SELF, RPR, CCR #3032

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