

BEFORE THE WASHINGTON STATE

UTILITIES AND TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND )  
TRANSPORTATION COMMISSION, )  
Complainant, ) Docket No.  
v. ) TE-160231 &  
PROFESSIONAL TRANSPORTATION, ) TE-144101  
INC., )  
Respondents. )

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BRIEF ADJUDICATIVE PROCEEDING

VOLUME I, PAGES 1-66

ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

9:30 A.M.

MARCH 24, 2016

Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive Southwest  
Olympia, Washington 98504-7250

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A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:

RAYNE PEARSON  
Washington Utilities and  
Transportation Commission  
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ALSO PRESENT:

DAVE HOWLAND, Chief Operating Officer  
Professional Transportation

DAVE PRATT, Assistant Director, UTC  
FRANCINE GAGNE, Special Investigator, UTC

\* \* \* \* \*

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1 OLYMPIA, WASHINGTON, MARCH 24, 2016

2 9:30 A.M.

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

5  
6 JUDGE PEARSON: Then let's be on the record.  
7 My name is Rayne Pearson. I'm the administrative law  
8 judge presiding over today's brief adjudicative  
9 proceeding.

10 Today is Tuesday, May 24th, 2016, and the  
11 time is approximately 9:30 a.m. We will hear matters in  
12 two dockets today. The first is Docket TE-160231. On  
13 April 5th, 2016, the Commission issued a complaint in  
14 Docket TE-160231 seeking to impose penalties against  
15 Professional Transportation, Inc.

16 The Complaint alleges 324 violations of the  
17 Motor Carrier Safety rules discovered by Commission  
18 Staff during a follow-up investigation required by Order  
19 01 in Docket TE-144101.

20 Order 01 assessed an \$18,800 penalty, a  
21 \$6,700 portion of which was suspended subject to the  
22 condition that the Company refrain from incurring any  
23 repeat violations of specific Commission rules.

24 And then on April 11th, 2016, Commission  
25 Staff filed a motion to correct Order 01 in Docket

1 TE-144101 and a motion to schedule a hearing in that  
2 docket to determine the status of the suspended penalty.

3 The Commission subsequently issued a notice  
4 to the parties scheduling the hearing in Docket  
5 TE-144101 concurrent with the hearing scheduled for  
6 today in Docket TE-160231.

7 So let's go ahead and take appearances from  
8 the parties and then we will address Staff's motion. So  
9 we'll start with Commission Staff.

10 MR. BEATTIE: Good morning, Judge Pearson.  
11 My name is Julian Beattie. I'm with the Washington  
12 State Attorney General's office, and this morning I'm  
13 assigned to represent the staff of the Washington  
14 Utilities and Transportation Commission.

15 JUDGE PEARSON: Thank you.

16 And Mr. Parker, if you want to enter a full  
17 appearance on the record because I don't believe we  
18 received an actual notice of appearance from you.

19 MR. PARKER: Certainly. My name is Ryan  
20 Parker, Vice President --

21 JUDGE PEARSON: Could you turn your  
22 microphone on? Is the red light on?

23 MR. PARKER: Now.

24 JUDGE PEARSON: And if you could pull it a  
25 little bit closer to you.

1 MR. PARKER: Certainly. How about that?

2 JUDGE PEARSON: Thank you.

3 MR. PARKER: My name is Ryan Parker, Vice  
4 President of Administration and General Counsel for  
5 Professional Transportation, Incorporated.

6 JUDGE PEARSON: Okay. And your address,  
7 phone number and e-mail address?

8 MR. PARKER: My address is 3700 Morgan  
9 Avenue, Evansville, Indiana 47715. E-mail address is  
10 ryan.parker@unitedevv.com -- that's Echo, Victor,  
11 Victor.com. Telephone number is area code  
12 (812) 485-3502.

13 JUDGE PEARSON: Okay. Thank you.

14 And Mr. Beattie, you may proceed with  
15 Staff's motions whenever you're ready.

16 MR. BEATTIE: Thank you, Judge Pearson.

17 Staff has two housekeeping matters before we  
18 turn to the witnesses. The first is that Staff moves to  
19 consolidate Docket 144101 and Docket 160231. The  
20 authority for this is WAC 480-07-320, which allows the  
21 Commission to consolidate two or more proceedings if the  
22 facts or principles of law are related. And as you have  
23 stated already, one of the issues in this BAP this  
24 morning is whether the Company committed repeat  
25 violations, and so there are related issues of law and

1 fact.

2 JUDGE PEARSON: Okay. Mr. Parker, do you  
3 have any objection to consolidating these dockets?

4 MR. PARKER: We have no objection.

5 JUDGE PEARSON: Okay. Then Dockets  
6 TE-144101 and TE-160231 are consolidated.

7 MR. BEATTIE: Thank you.

8 Staff's second motion this morning is to  
9 correct an order in Order -- excuse me -- correct an  
10 error in Order 01 in Docket 144101. This was a written  
11 motion that is already on file with the Commission and,  
12 in essence, Staff believes there was a typo in that  
13 order.

14 There was an erroneous reference to 49 CFR  
15 Part 391.45(b)(1). Staff believes that should have been  
16 a reference to 49 CFR Part 391.45(a), so (a) as opposed  
17 to (b)(1). And the authority for this is  
18 WAC 480-07-875, Subsection 2, which allows the  
19 Commission to act on its own initiative or the motion of  
20 any party to correct an obvious or ministerial error in  
21 its orders.

22 JUDGE PEARSON: Okay. Thank you. You are  
23 correct that the reference to 49 CFR Part 391.45(b)(1)  
24 was a clerical error. So the order that I will issue  
25 reflecting my decision in today's proceedings will note

1 the correction to Order 01 in Docket TE-144101, changing  
2 the reference from 49 CFR Part 391.45(b)(1) to  
3 49 CFR Part 391.45(a).

4 MR. BEATTIE: Thank you very much, Judge  
5 Pearson.

6 JUDGE PEARSON: Okay. So before we get  
7 started, I would like to ask the parties to waive the  
8 requirement that the Commission issue an order within  
9 ten days of this proceeding. I typically like to issue  
10 the order within ten days of receiving the transcript so  
11 that I have that to reference when I'm writing my order.

12 So do either of the parties object to  
13 waiving that requirement?

14 MR. BEATTIE: The Commission Staff has no  
15 objection to such a waiver.

16 JUDGE PEARSON: Okay. Thank you.

17 MR. PARKER: We have no objection.

18 JUDGE PEARSON: Okay. Thank you.

19 So Mr. Parker, also, I reviewed the response  
20 that was submitted by Mr. Howland in advance of the  
21 hearing, and it appears to me from reading the response  
22 that the Company does not actually contest that the  
23 violations occurred, but would instead like to present  
24 evidence and testimony that supports mitigation of the  
25 penalty; is that correct?



1 MR. PARKER: That is correct, your Honor.

2 JUDGE PEARSON: Okay. So if the parties are  
3 willing to stipulate to the violations, we can proceed  
4 just on the issues of penalties this morning.

5 MR. BEATTIE: Staff will still need to call  
6 the inspector, Francine Gagne, to sponsor the  
7 investigation report.

8 JUDGE PEARSON: Absolutely. Okay.

9 So if the parties are willing to stipulate  
10 to the violations, I was going to have Staff first  
11 present Ms. Gagne's testimony, and following that,  
12 Mr. Parker, I would let you present your testimony and  
13 evidence, and then we would conclude by having Mr. Pratt  
14 make his final penalty recommendation once he's been  
15 able to hear what the Company has to say.

16 MR. PARKER: Judge Pearson, I would like to  
17 have Dave Howland respond to most of the questions or  
18 present the evidence that we have, if it would please  
19 the Court.

20 JUDGE PEARSON: Absolutely, yes. I will  
21 swear him in when it's time --

22 MR. PARKER: Very good.

23 JUDGE PEARSON: -- and he can do that.

24 MR. HOWLAND: Thank you.

25 JUDGE PEARSON: Okay. So does anyone have

EXAMINATION BY MR. BEATTIE / GAGNE

10

1 any questions before we get started?

2 MR. BEATTIE: I think that what I'd like to  
3 do with Ms. Gagne is just have her not go in great  
4 detail into each of the violations, but --

5 JUDGE PEARSON: Sure.

6 MR. BEATTIE: -- I think it may be helpful  
7 to the Commission if she gives some brief explanation  
8 about her report.

9 JUDGE PEARSON: Okay. That sounds good.  
10 All right.

11 And Ms. Gagne, if you would please stand and  
12 raise your right hand, I will swear you in.

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

18  
19 JUDGE PEARSON: Okay. You may be seated.  
20 And Mr. Beattie, you can proceed whenever you're ready.

21 MR. BEATTIE: Thank you.

22 \*\*\* EXAMINATION BY MR. BEATTIE \*\*\*

23 BY MR. BEATTIE:

24 Q. Good morning, Ms. Gagne. Will you please spell  
25 your name for the record?

**EXAMINATION BY MR. BEATTIE / GAGNE****11**

1           A.    My name is Francine Gagne, last name is Golf,  
2 Alpha, Golf, November, Echo, G-A-G-N-E.

3           **Q.    What is your position with the Commission?**

4           A.    I'm a special investigator in the Motor Carrier  
5 Safety Division.

6           **Q.    And in your capacity as a special investigator,**  
7 **did you investigate a company called Professional**  
8 **Transportation, Incorporated?**

9           A.    I did.

10          **Q.    Did you record the results of your**  
11 **investigation?**

12          A.    I did.

13          **Q.    Can I have you look at Exhibit FG-1?**

14          A.    Yes. This is a copy of the report that I  
15 submitted.

16          **Q.    And where in your investigation report do you**  
17 **set forth the violations that you found during your**  
18 **investigation?**

19          A.    Violations are listed in the report under what  
20 we call Part B, which starts -- actually, it has its own  
21 page 1 of 2, but it's the second page in after the cover  
22 sheet.

23          **Q.    So if you could please refer to the page numbers**  
24 **that are at the top right corner.**

25          A.    Page 3 of 41.

EXAMINATION BY MR. BEATTIE / GAGNE

12

1 Q. So the violations have already been stipulated  
2 by the parties, but I would like to ask you to look at  
3 the second box, and here you have found that the Company  
4 used a driver that was not medically examined and  
5 certified?

6 A. That's correct.

7 Q. The Complaint alleges that Staff found 36  
8 violations of this particular requirement, and yet I see  
9 in the box labeled "Discovered," you've only indicated 1  
10 violation.

11 So can you tell me how you get to 36?

12 A. Yes. It was -- we discovered -- or I discovered  
13 1 driver out of 340 total drivers; the 36 comes from the  
14 36 days that the Company used the 1 driver that did not  
15 have a medical card on file.

16 Q. Thank you. And I'd like to turn to the third  
17 box. In here, Staff has alleged that the Company used a  
18 driver not medically examined and certified during the  
19 preceding 24 months.

20 And before turning to the substance of this  
21 violation, can you help me understand the difference  
22 between this violation and the previous violation?

23 A. Yes. The first violation, we had no information  
24 that would signify that this particular driver,  
25 Mr. Cozad, ever had a medical card because there was

EXAMINATION BY MR. BEATTIE / GAGNE

13

1 none on file. As an investigator, we have to simply go  
2 with what is presented to us when we request  
3 information. So for the first one, the citation of  
4 using a driver not medically examined and certified is  
5 based on our not having any previous history of having a  
6 medical card.

7 The second, using a driver not medically  
8 examined and certified during the preceding 24 months,  
9 we discovered medical cards, and there was a gap between  
10 medical cards, or a medical card that had expired, so we  
11 know that the person at one point did have a medical  
12 card, but then was used to drive at the expiration of  
13 that card or in a gap between cards.

14 **Q. And for this third set of violations, again,**  
15 **Staff's complaint alleges 111 violations, but the box**  
16 **labeled "Discovered" indicates three violations.**

17 **So can you walk me through how that number**  
18 **became 111?**

19 A. Initially when I did this investigation, I  
20 checked each of the 340 operators or drivers to make  
21 sure that they had medical cards at all, and that's how  
22 I discovered Violation No. 2, that that 1 person didn't  
23 have a medical card on file.

24 In Violation No. 3, we took -- we sample in  
25 doing our investigations, and we had a sample size of 50

EXAMINATION BY MR. BEATTIE / GAGNE

14

1 medical cards for this investigation. And it was 3 of  
2 those 50 where we discovered that those medical cards  
3 had expired, and then those drivers were, in fact, used,  
4 so the 3 of 50 is showing out of the sample, and 3  
5 drivers of the 340 total drivers that PTI gave me as  
6 drivers.

7 **Q. And for the Violation No. 2, you indicated that**  
8 **the driver drove a total of 36 days, and that's how 1**  
9 **driver became 36 violations.**

10 **Is there something similar with Violation No. 3,**  
11 **how we get from 3 drivers to 111 violations?**

12 A. Yes. There is a -- in the back, starting on  
13 page 29 of 41, there's some extracted information that  
14 shows Hours of Service records, and those would be all  
15 the dates for all the drivers that PTI provided, and  
16 each of those dates that the driver drove would be a  
17 separate violation.

18 **Q. So how do you get to 111 violations?**

19 A. For Violation No. 3?

20 **Q. Correct.**

21 A. Mr. Bentler drove for 95 days, Ms. Rubey for 7,  
22 Ms. Dinsmore for 9, and those hopefully add up to 111.

23 **Q. Thank you. Moving on to Violation No. 4, here**  
24 **you've indicated 11 violations discovered, and the**  
25 **description is Failing to maintain medical examiner's**

**EXAMINATION BY MR. BEATTIE / GAGNE****15**

1 **certificates in the driver's file. I only see one**  
2 **example given.**

3 **Is there somewhere in your report where you talk**  
4 **about the other violations?**

5 A. On page 32 of 41, there's a list of drivers. It  
6 shows the last name, first name, hire date, when the  
7 medical certificate was issued, and the expiration date  
8 of the medical certificate. The final column for Notes  
9 would be number of days that the driver drove.

10 And I took drivers that obtained their medical  
11 card from June, because the Company, from the previous  
12 order, was in compliance as of December 2014, so I took  
13 June 2015, figuring they would have had six months to be  
14 in compliance. I started in June, and I found drivers  
15 with driver days that did not have their previous  
16 medical cards on file. They had current, which is  
17 correct; however, regulations require that companies  
18 keep medical cards on file for three years, so there was  
19 no previous card on file for those drivers.

20 And Kevin was used as just one example. The  
21 other names of the drivers would be the drivers to the  
22 left of page 32 that have corresponding days in the  
23 Notes column.

24 **Q. What is Part C of your report?**

25 A. Part C is just a written narrative that does

## EXAMINATION BY MR. BEATTIE / GAGNE

16

1 have still some format to it in that it covers every  
2 section of a standard report, and then explains if you  
3 did or did not cover that section when you conducted  
4 your investigation.

5 This was a focused investigation, so most of the  
6 entries are that this part did not apply, and then I  
7 expanded on the sections, primarily 391 and 395, and  
8 provided additional information that's not necessary for  
9 the violations, per se, but also just gives  
10 investigators -- this part is not normally shared with  
11 carriers, but it gives follow-on investigators  
12 information as to perhaps areas that are of concern, or  
13 just different facts that aren't listed in Part B to  
14 follow up with on further investigations.

15 MR. BEATTIE: Thank you. I have no further  
16 questions for this witness, and I'd like to offer  
17 Exhibit FG-1 into the record.

18 JUDGE PEARSON: Okay. Mr. Parker, do you  
19 have any objection to admitting the investigation report  
20 into the record?

21 MR. PARKER: No objection, your Honor.

22 JUDGE PEARSON: Okay. Then I will admit the  
23 investigation report and mark it as Exhibit FG-1.

24 (Exhibit No. FG-1 was marked and  
25 admitted.)



EXAMINATION BY MR. PARKER / GAGNE

17

1 MR. BEATTIE: Thank you, Judge Pearson.

2 JUDGE PEARSON: Mr. Parker, did you have any  
3 questions for Ms. Gagne?

4 MR. PARKER: No questions.

5 JUDGE PEARSON: Okay. All right. So shall  
6 we --

7 MR. PARKER: Excuse me, your Honor. I do  
8 have one question.

9 JUDGE PEARSON: Okay.

10 \*\*\* EXAMINATION BY MR. PARKER \*\*\*

11 BY MR. PARKER:

12 **Q. Was a copy of this entire report supplied to**  
13 **Professional Transportation, and if so, on what date?**

14 A. I presented a gentleman in Wishram -- at  
15 Mr. Pratt's request, he wanted me to find somebody from  
16 PTI and actually hand them a report.

17 **Q. A gentleman from where?**

18 A. From Wishram, for the terminal. I need to find  
19 his name. The -- oh, Wenatchee, I'm sorry -- Wenatchee  
20 Branch Administrator Dale McKenzie. He did get a copy  
21 of this, and I did discuss some of the issues  
22 relating -- he also was able to provide the leasing  
23 information for vehicles, which we didn't have, so that  
24 was corrected based on the conversation with  
25 Mr. McKenzie.

1           And then Mr. Vincent was contacted via phone  
2 that day and also supplied a copy of this final report,  
3 and that day was March 2nd, 2016.

4           MR. PARKER: No further questions for the  
5 witness.

6           JUDGE PEARSON: Okay. Thank you.

7           All right. Mr. Parker, did you want to make  
8 an opening statement before you call your first witness?

9           MR. PARKER: Sure. I would love to make an  
10 opening statement.

11           If it pleases the Court, we would like to  
12 thank the Commission for the information, and thank the  
13 Court for allowing us the opportunity to provide the  
14 rebuttal evidence and the mitigation evidence that we'll  
15 have today.

16           I'm planning to introduce our Chief  
17 Operating Officer, Mr. Dave Howland, to respond to each  
18 of the allegations in kind, and provide detailed  
19 information and evidence that, in our opinion, shows  
20 Professional Transportation's continuing and ongoing  
21 efforts to ensure compliance, and will show improvement  
22 from prior audits concerning where we certainly stand  
23 today.

24           JUDGE PEARSON: Okay. Thank you. Would you  
25 like to call Mr. Howland at this time?

1 MR. PARKER: Yes. I'd like to call my first  
2 witness. I'd like to call Mr. David Howland, COO of  
3 Professional Transportation as a witness.

4 JUDGE PEARSON: Okay. Mr. Howland, if you  
5 could please stand and raise your right hand.

6  
7 DAVE HOWLAND, witness herein, having been  
8 first duly sworn on oath,  
9 was examined and testified  
10 as follows:

11  
12 JUDGE PEARSON: Okay. You may be seated.  
13 Mr. Parker, you may proceed when you're  
14 ready.

15 MR. PARKER: Okay. Thank you.

16 \*\*\* EXAMINATION BY MR. PARKER \*\*\*

17 BY MR. PARKER:

18 Q. Mr. Howland, would you please spell your full  
19 name for the record?

20 A. David L. Howland, H-O-W-L-A-N-D.

21 Q. Would you please state for the record your role  
22 with Professional Transportation, Incorporated?

23 A. I'm the Chief Operating Officer for Professional  
24 Transportation, Incorporated, managing all aspects of  
25 the operation of the company.

1           **Q.     Approximately what time did you assume your**  
2 **current role with Professional Transportation?**

3           A.     I joined Professional Transportation on  
4 December 7th of 2015.

5           **Q.     Can you give us a little bit of a quick summary**  
6 **of your duties as Chief Operating Officer?**

7           A.     My responsibility is to oversee the operations  
8 and execution of the transportation of crews for our  
9 customers, which includes the vehicle inspections, the  
10 vehicle maintenance, the supply of vehicles, as well as  
11 the drivers and driver training and associated dispatch  
12 of those drivers.

13           **Q.     Thank you, Mr. Howland. Upon receiving**  
14 **information regarding Ms. Gagne's investigative report,**  
15 **can you please describe what kind of actions were taken**  
16 **at PTI to investigate the report?**

17           A.     Yeah. I received a report after it was given to  
18 Mr. Bobby Vincent in March, and we immediately went over  
19 the report internally with both Mr. Vincent and also  
20 with Mr. Bill Cullen, who is the regional vice president  
21 for the west, who has responsibility -- direct  
22 responsibility for all of the operations in Washington  
23 state, as well as our administrative staff in  
24 Evansville, Indiana, in both the vehicle maintenance  
25 department, headed at that time by Mr. Mike Buck, and

1 the HR functions, headed by Mr. Dick Lynch.

2 **Q. What types of orders or what types of direction**  
3 **did you provide your subordinates in terms of gathering**  
4 **of investigative material or findings and research**  
5 **within PTI?**

6 A. In the first meeting, they laid out for me what  
7 the violations had been, what had been seen in the  
8 previous audit that had been conducted in -- a year  
9 earlier, and what was repeat and what were new items  
10 that were found. We then laid out, based on each of  
11 these items, direct responsibilities for the different  
12 staff members to ensure that we had our processes  
13 properly documented and in place, and to determine how  
14 some of these slipped through, and why we didn't have  
15 the proper documentation that we needed in each of these  
16 cases, and then to provide back to me the results of  
17 their investigation and what, if any, changes in their  
18 processes and procedures were required to close the  
19 gaps.

20 **Q. After you received the information, met with**  
21 **your subordinates on the meeting that you described, or**  
22 **the series of meetings that you described, at that time**  
23 **did you formulate a letter of response to the Commission**  
24 **regarding the violations?**

25 A. I did not personally. Mr. Bobby Vincent, who is

1 the director of safety for us, responded back to the  
2 Commission with the information that he had at that  
3 time. And we subsequently continued our internal  
4 investigation and processed changes as we gathered more  
5 information as far as how the exceptions occurred.

6 **Q. And after Mr. Vincent's letter was supplied**  
7 **earlier this month, did you or someone on your staff**  
8 **supply additional information to the Commission in**  
9 **letter form?**

10 A. Yes. The various groups that I've mentioned  
11 before all supplied me with documentation concerning the  
12 violations and what they had found and what had caused  
13 the exceptions. And we compiled that information in my  
14 office and then submitted a letter on the 16th of May to  
15 the Commission with what we had found to be applicable.

16 **Q. Okay. At this time I'd like to ask you about**  
17 **some of the violations that were alleged in Ms. Gagne's**  
18 **report concerning the report relative to Docket 160231.**

19 **In terms of the two violations that are alleged,**  
20 **making or causing to make fraudulent or intentionally**  
21 **false entries on required medical examiner's**  
22 **certificate, what did your investigation uncover**  
23 **regarding these -- this alleged violation?**

24 A. We found that two of our drivers had, in fact,  
25 falsified documents at the time of hiring, and

1 immediately dismissed those drivers.

2 **Q. What types of internal mechanisms does PTI**  
3 **currently have, or what types of policies do they have**  
4 **in place concerning fraudulent misrepresentations by**  
5 **drivers?**

6 A. We have implemented a process with an outside  
7 firm called eVerifile, which does background checks on  
8 all the employees that we propose to hire, and then we  
9 also review the medical records on their hiring to  
10 ensure that everything that the employee submitted  
11 actually matches what we get back from the medical  
12 examination that we do at the time of hiring.

13 **Q. How has this differed from what's been done in**  
14 **the past?**

15 A. Twofold. In the past, Washington state was not  
16 covered by eVerifile. We did that with mostly our  
17 eastern rail carriers and the operations east of the  
18 Mississippi, but we have now expanded that, and it was  
19 expanded in the middle of 2015 to include these  
20 locations so that now all of our locations are covered  
21 by that.

22 As far as the comparison back to the medical  
23 records, we are -- we now have at Evansville the ability  
24 to match the medical records that are coming in with  
25 what the employees have submitted to ensure the

1 correctness. And we're in the process now of  
2 implementing a new electronic system where the employees  
3 or potential employees have to enter the information  
4 electronically into our system so that it becomes much  
5 easier to do the match-up with the medical examinations  
6 that come in.

7 **Q. Would you like to share anything else with the**  
8 **Court regarding any PTI activity that has changed in the**  
9 **last year that would potentially have an effect to**  
10 **minimize or eliminate these types of alleged violations?**

11 A. Yeah. As I stated, I joined PTI in December of  
12 last year, and we've made numerous changes since that  
13 time. Prior to me joining the organization, the  
14 gentleman that was head of our safety department was  
15 dismissed because he was not, I must say, paying enough  
16 attention to the details of the operation.

17 And as I took over in December, I took direct  
18 responsibility for that group. Mr. Vincent now reports  
19 directly to me. I'm a 40-year veteran in the  
20 transportation industry, and safety is absolutely of the  
21 utmost importance of any operation, whether it be a rail  
22 operation, a trucking operation or a passenger vehicle  
23 separation such as this. So it's something that I take  
24 very seriously, and until we find an appropriate person  
25 to backfill as the vice president, that [sic] will



1 continue to report directly to me.

2 Secondly, we recently released the -- as I  
3 stated, the new information system for all of the hiring  
4 process, including medical records. The medical records  
5 now are kept electronically. The new system should be  
6 implemented by July of this year, which will fully  
7 automate all of that process.

8 **Q. Thank you for that. Moving on to violations**  
9 **alleged in part 391.45(a), using a driver not medically**  
10 **certified, would you please share what types of**  
11 **activities PTI has undertaken to prevent these types of**  
12 **violations moving forward?**

13 A. Yeah. This is one -- an area that we had  
14 several violations in the previous audit by the  
15 Commission, and it's an area that we had already  
16 tightened up even before I got here. This is something  
17 Mr. Vincent had worked very hard at doing.

18 And as you can see, out of 340 checked, we had  
19 one that had -- I hesitate to use this term -- but had  
20 the fallen through the cracks. We missed it. Plain and  
21 simple. I wish I could tell the Commission how we  
22 missed that one individual, and why it wasn't caught in  
23 the subsequent match-ups, but it happened. We missed  
24 it.

25 And as soon as we found the violation, we

1 corrected it with this driver. And he's a very good  
2 driver, but we corrected it with this gentleman  
3 immediately so he was properly certified.

4 **Q. Thank you. In terms of the 111 violations**  
5 **alleged of using a driver not medically examined and**  
6 **certified during the previous 24 months, would you**  
7 **please share with the Commission the types of activities**  
8 **that PTI has recently implemented to minimize and**  
9 **eliminate these types of noncompliances?**

10 A. Yeah. We've now added a field within our driver  
11 management system concerning the expiration dates of  
12 their medical certification. And when the expiration  
13 date is approaching, we send out a notification to the  
14 branch manager responsible for that driver to ensure  
15 that they get the driver in and have them recertified.  
16 And as of the expiration date of the current  
17 certification on file, if we have not received a new  
18 certification, the driver is suspended from service  
19 until that certification is received so that we won't  
20 have any further incidents of people not having a  
21 current record on file.

22 **Q. Is your policy of immediately moving this driver**  
23 **to a non-active status, is that something that has been**  
24 **newly implemented?**

25 A. Yes. It was implemented in April of this year

1 after I received the copy of the audit and the findings  
2 from the audit.

3 **Q. Moving on to the alleged violation of failing to**  
4 **maintain a medical examiner's certificate in a driver's**  
5 **qualification file, would you please share the**  
6 **adjustments or changes to your policies and procedures**  
7 **that will effectively eliminate or minimize any**  
8 **violations in this area?**

9 A. This is one that, quite honestly -- and there's  
10 no way to sugarcoat this -- our people at the local  
11 level did not realize that they had to maintain anything  
12 other than the current card. So when they got the  
13 current card on file, quite honestly, I don't know if  
14 they threw away the old one or what they did with it,  
15 but they did not maintain it as part of the file.

16 We now have instructions to those -- both our HR  
17 department to keep it electronically and also for the  
18 field people to keep the hard copies and to maintain  
19 them for the three-year period required, not just the  
20 most current one, which was the practice at some of the  
21 locations. A number of our locations understood the  
22 three years and kept them, but I believe it was two  
23 locations that we found that did not, and that was the  
24 cause of the issue. So that has been addressed and now  
25 we are maintaining those records both locally and

1 electronically on the system.

2 **Q. Regarding the alleged violation of placing note**  
3 **related to the verification of a medical examiner's**  
4 **listing on the national registry of certified medical**  
5 **examiners, would you please share with the Commission**  
6 **what types of modifications to your policy or procedure**  
7 **have been implemented recently to eliminate and/or**  
8 **minimize violations in this area?**

9 A. Yes. This was something that ignorance is no  
10 excuse. Let me say that very boldly. It is no excuse.  
11 However, we knew we had to verify; we did verify. We  
12 didn't know we had to make notation of that on the file.  
13 And so even though they were verifying to make sure we  
14 were using, you know, the proper agencies and we'd gone  
15 through the process, they were not making note of that  
16 on the file.

17 We have now changed that policy so that, as they  
18 verify that, they make the note directly on the  
19 certification as it comes in with the person that did  
20 the verification's name and the date that they did the  
21 verification.

22 **Q. Regarding the alleged violations of 396.17(a),**  
23 **using a commercial motor vehicle not periodically**  
24 **inspected, would you please share, first of all, what**  
25 **types of activities historically PTI has undertaken in**

1 **terms of vehicle inspection?**

2 A. Yeah. We have what we, in our system, call an  
3 "A" service policy. And the "A" service policy is, in  
4 essence, the full inspection of the vehicle whenever we  
5 bring it in for an oil change and tire rotation. I  
6 provided on my documents from May 16th the details of  
7 the "A" service. However, they're taken directly from  
8 this -- from this part of the federal regs, and we  
9 actually have expanded upon those regulations and have  
10 them inspect additional areas above and beyond.

11 So our "A" service is actually slightly more  
12 restrictive than the current requirements under the  
13 statute, and our failure in this regard was that we  
14 began taking our passenger vehicles to be inspected  
15 under the Washington State inspection policy to those  
16 vendors that were listed, and the first four that we  
17 went to refused to do the inspections because they don't  
18 inspect passenger vehicles, and they told us this only  
19 applied to trucks and that they wouldn't do the  
20 inspection.

21 Subsequently, since January of this year, we've  
22 now found a number of inspectors that will, in fact, do  
23 the inspections for us on a passenger vehicle. And we  
24 worked with them on the confusion concerning the areas  
25 of the inspection that are restricted to trucks only

1 that don't apply to passenger vehicles.

2 So we now have a handful of inspectors in the  
3 state that will, in fact, inspect our passenger  
4 vehicles, and as a result, all of the vehicles operated  
5 in this state have been inspected.

6 One of the things to keep in mind in regard to  
7 that is this is a transient fleet. It will flow back  
8 and forth between Washington state and other states  
9 periodically for a number of reasons: For maintenance  
10 reasons, for mileage reasons. We run a lot of high  
11 mileage in Washington, and so we move them into states  
12 where we run lower mileage periodically during their  
13 life.

14 And our new policy is actually recorded  
15 electronically in our maintenance system so that all  
16 vehicles, when they're brought into the state, are  
17 inspected before put into service. And anything leaving  
18 the state, we maintain the Washington state inspection  
19 in it until it expires.

20 But in 2015, for instance, we actually had a  
21 total of about 250 units that had operated as assigned  
22 units in the state of Washington. Out of the 114, all  
23 of those units are still in this state, and all of those  
24 have been inspected and certified with the State  
25 inspection.

1           **Q.     Would you clarify, what's the current status of**  
2 **the PTI vehicle fleet in the state of Washington?**

3           A.     We currently still have a hundred and -- well,  
4 it's actually 113 because one of them was retired after  
5 we had an engine failure in the unit, but we have  
6 113 units still in the state, and all 113 of those units  
7 are inspected with the certifications with the units.

8           MR. PARKER:   If it would please the Court,  
9 we've supplied the Court a bit of information concerning  
10 each vehicle's descriptions of "A" services and listings  
11 of each and every time these vehicles had undergone an  
12 "A" service inspection.  We'd like to have that admitted  
13 as an exhibit.

14           JUDGE PEARSON:   Okay.  Would you prefer to  
15 just admit the entire response with all of its  
16 attachments to have that all as --

17           MR. HOWLAND:   If we could, that would be  
18 terrific.

19           JUDGE PEARSON:   Mr. Beattie, do you have any  
20 objection?

21           MR. BEATTIE:   Staff has no objection.

22           JUDGE PEARSON:   Okay.  So I will admit the  
23 entire response that PTI has submitted on May 16th,  
24 2016, and mark it as Exhibit DH-1.

25           MR. HOWLAND:   Thank you.

1 MR. PARKER: Thank you, your Honor.

2 (Exhibit No. DH-1 marked and  
3 admitted.)

4 BY MR. PARKER:

5 Q. Mr. Howland, can you -- can you describe a  
6 little bit about if PTI has undergone any recent  
7 executive or reorganizational changes at the  
8 responsibility level of director or above in order -- in  
9 order to address the alleged violations that have been  
10 commented on today?

11 A. Yes. We've made several changes since I took  
12 over in the organization. As I mentioned, we released  
13 our vice president of safety, and that now reports  
14 directly to me as the chief operating officer. We also  
15 have now replaced our vice president of fleet management  
16 and maintenance and replaced him with a 25-year veteran  
17 who understands and has been instrumental with us on the  
18 review of this process, to ensure that we comply -- and  
19 I know you don't care beyond the state of Washington,  
20 but that we comply with this in all states where we have  
21 additional inspections required beyond our own "A"  
22 service.

23 We have a field in our information system for  
24 our maintenance of our vehicles that actually covers the  
25 State inspection process and the expiration dates that



1 was not being used by the previous vice president. They  
2 were keeping it on a spreadsheet basis. That is now  
3 changed and we are keeping that in the system, so that  
4 any vehicle operated in the state of Washington that  
5 does not have a current inspection certification will be  
6 parked until it does have an inspection.

7 And the same as what applied with the medical,  
8 that the branch managers will get a notification two  
9 weeks prior to the expiration to get it in and get it  
10 inspected, and if it's still not received by the  
11 expiration date, the vehicle will be marked as out of  
12 service until it has been inspected. So a big change in  
13 that regard, and the new vice president of maintenance,  
14 again, is very aware of the importance of making sure  
15 that this is done and done properly.

16 Finally, we recently named a new director  
17 working with both Mr. Parker and I on compliance issues.  
18 We have a lot of states that have specialty requirements  
19 above and beyond the basic federal requirements, and the  
20 position of this -- or excuse me, the responsibility of  
21 this new position is to help us with those compliance  
22 measures to ensure that we have the proper processes in  
23 place in each of those states, including Washington, to  
24 comply with the requirements of the state, and that  
25 position did not exist up until approximately a month

1 ago.

2 **Q. Very good. Would you finally share with the**  
3 **Commission a bit of your history and your experience in**  
4 **the transportation industry and your expertise that you**  
5 **bring to PTI now that you have assumed the role of COO?**

6 A. You bet. I started my career with the  
7 Burlington Northern Railroad. And within the Burlington  
8 Northern Railroad, I rose through the operating ranks to  
9 become head of equipment and maintenance for all of  
10 their highway assets, as well as their intermodal rail  
11 assets. I managed approximately 15,000 highway trailers  
12 and 18,000 intermodal chassis, as well as a fleet of  
13 approximately 400 over-the-road trucks.

14 After leaving there, I went to a company called  
15 CH Robinson, which is a transportation brokerage  
16 company, managing their asset-based business where I did  
17 pretty much the same thing, managing all of the highway  
18 assets and operation.

19 And then I went to Schneider National as vice  
20 president of rail for Schneider National. And at  
21 Schneider National, I managed all of their intermodal  
22 operations and assets, including a fleet of 1,200  
23 Class 8 trucks that we ran on the highways throughout  
24 the US on an assigned basis to perform our intermodal  
25 delivery service. And I had full responsibility for all

1 compliance with that operation as well.

2           Following that assignment, I went to American  
3 President Lines as head of land transportation globally  
4 for them, where I ran truck operations and intermodal  
5 services in North America, South America, Asia,  
6 Southeast Asia, India and Europe. And I was responsible  
7 for all of the operations and compliance in each of  
8 those countries.

9           I then retired for about a year and a half,  
10 which was really pleasant, but Mr. Romain, who is the  
11 CEO at PTI and United Companies, convinced me to come  
12 out of retirement. He knew his current chief operating  
13 officer's wife had some physical issues, health issues,  
14 and that he had to retire, and he needed somebody that  
15 understood the industry from the ground up to really go  
16 in and redesign the operations of the industry [sic] and  
17 ensure that we were in compliance with not just the  
18 state and legal governments, but also the contracts with  
19 our customers.

20           And with my experience, I agreed to come back to  
21 work and head up the company for a period of time, yet  
22 to be determined, and to make sure that we get  
23 everything running as smoothly as possible and we get  
24 all of the processes cleaned up.

25           And so here I am today. Now -- and I apologize,

1 but I was not here prior to December, and I really --  
2 during December, I was just learning the job with the  
3 executive team, and I actually took operations over on  
4 January 2nd of this year. So it's been a lot to digest  
5 in short order, and this is a portion of it, which  
6 again, when I received the information in early March, I  
7 was somewhat floored, so we immediately got busy, and  
8 one more thing to tackle.

9 **Q. Based on your experience in this profession and**  
10 **your qualifications, do you believe that the changes**  
11 **and -- I guess changes of personnel, changes of policy**  
12 **and procedure that have been implemented at PTI will be**  
13 **effective in terms of rendering significant improvements**  
14 **in the compliance issues in the state of Washington?**

15 A. Yes, absolutely. I can honestly tell you that  
16 in 42 years of transportation, this is the first time  
17 that I have been cited by any business that I run with  
18 exceptions, and I do not take that lightly. That's why  
19 I made the changes in staffing and personnel and in the  
20 process management within the company to address these  
21 issues so that we are in compliance moving forward with  
22 all aspects.

23 And the excuse of, well, we didn't know is not  
24 an acceptable answer to me. And the staff is well aware  
25 that that's not an out. You need to be familiar with

1 all the aspects of what you're managing and the  
2 requirements, and you need to be in full compliance of  
3 those requirements.

4 MR. PARKER: I have no further questions for  
5 the witness.

6 JUDGE PEARSON: Thank you.

7 Mr. Beattie, do you have any questions for  
8 Mr. Howland?

9 MR. BEATTIE: Staff has no questions.

10 JUDGE PEARSON: Okay. Thank you. So at  
11 this time, if you're ready, we can move on to  
12 Mr. Pratt's testimony.

13 MR. BEATTIE: Has Mr. Pratt been sworn in?

14 JUDGE PEARSON: Not yet. So if you'd like  
15 to stand and raise your right hand.

16  
17 DAVE PRATT, witness herein, having been  
18 first duly sworn on oath,  
19 was examined and testified  
20 as follows:

21  
22 JUDGE PEARSON: Okay. Go ahead and be  
23 seated. And Mr. Beattie, you can proceed when you're  
24 ready.

25 MR. BEATTIE: Thank you.

## EXAMINATION BY MR. BEATTIE / PRATT

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1                   \*\*\* EXAMINATION BY MR. BEATTIE \*\*\*

2 BY MR. BEATTIE:

3           **Q. Mr. Pratt, can you please state and spell your**  
4 **name for the record?**

5           A. Sure. My name is David Pratt, P-R-A-T-T.

6           **Q. What is your position with the Commission?**

7           A. I'm currently the assistant director for  
8 transportation safety.

9           **Q. As the assistant director for transportation**  
10 **safety, what was your role with respect to Ms. Gagne's**  
11 **investigation?**

12           A. In my role, one of my jobs is to oversee and  
13 review all motor carrier assignments that come in, all  
14 investigations, and specifically in a case like this, to  
15 review the findings and determine penalty  
16 recommendations.

17           **Q. Did you specifically review Ms. Gagne's**  
18 **investigation with respect to Professional**  
19 **Transportation, Incorporated?**

20           A. Yes, I did.

21           **Q. Mr. Pratt, you mentioned that one of your roles**  
22 **is to develop penalty recommendations. Have you**  
23 **developed a penalty recommendation on behalf of Staff in**  
24 **this particular docket?**

25           A. Yes, I have.

## EXAMINATION BY MR. BEATTIE / PRATT

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1           **Q. I'd like to -- before we get to the specific**  
2 **numbers, I'd like to see if I can understand your**  
3 **process for developing this recommendation.**

4           **Are you aware that this company was previously**  
5 **under investigation by the Commission?**

6           A. Yes, I am.

7           **Q. And that was Docket TE-144101?**

8           A. Yes.

9           **Q. What is your understanding of how that docket**  
10 **was resolved?**

11          A. That docket ended in a penalty assessment for  
12 \$18,800. And through requests for mitigation from the  
13 company, the Commission mitigated \$6,700 of that penalty  
14 with the condition that there were no repeat violations  
15 for one year in that case where the final order was  
16 issued on February 13th of 2015.

17          **Q. What specifically did the Commission order in**  
18 **terms of no repeat violations?**

19          A. Well, I think it was pretty much just like you  
20 said. It was no repeat violations of 391.45(a) and no  
21 repeat violations of 396.17(a), which are the two rules  
22 that cover medical cards and vehicle inspections.

23          **Q. Should the Commission impose the suspended**  
24 **penalty in these consolidated dockets today?**

25          A. Absolutely.

## EXAMINATION BY MR. BEATTIE / PRATT

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1           **Q.     Why?**

2           A.     I believe that this investigation, TE-160231,  
3 has shown that those violation in those two areas did  
4 reoccur. And based on the criteria of the previous  
5 order, any reoccurrences would trigger the suspended  
6 penalty.

7           **Q.     I'd like to turn now to your penalty**  
8 **recommendation for the dockets -- or excuse me -- the**  
9 **violation alleged in TE-160231.**

10           **What is your penalty recommendation there?**

11          A.     Okay. What I'd like to do, if I could really  
12 quickly, is, I just have a couple points I'd like to  
13 cover to kind of explain my rationale and my reasoning  
14 for coming up with this recommendation.

15                 I would also like to add that, as part of my  
16 evaluation of this, I used the Agency's penalty  
17 assessment or penalty criteria. We have 11 factors we  
18 look at which help us -- guide us in the decisions.  
19 It's contained in our Agency's enforcement policy. It  
20 contains -- I'm not going to go over every one of these  
21 11, but it contains things such as previous history with  
22 the company, previous compliance, size of the company,  
23 willingness to comply, previous actions taken against  
24 previous violations and those things.

25                 So I take those factors into consideration when



## EXAMINATION BY MR. BEATTIE / PRATT

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1 I'm looking at it. I look at the seriousness of the  
2 violations that have occurred. I look at the Company's  
3 response and how they've acted, so to speak, since the  
4 penalty or the recommendation was issued. And I kind of  
5 just review the Company's history and try and look at  
6 the big picture.

7 So I'll start by saying, again, in this case  
8 with the previous docket, I believe that \$6,700, it has  
9 been shown that those violations did reoccur and that  
10 should be assessed from that there.

11 But in this case, under TE-160231, I think Staff  
12 has shown, and it's been stipulated here that the  
13 Company committed 324 violations of Agency rules or  
14 federal regulations. Those were made up of a variety of  
15 acute, critical and critical-type violations.

16 And a little bit of a summary. There were two  
17 acute violations, which was the falsified medical cards.  
18 There was 150 repeat violations of not having a medical  
19 card. There was also another 111 almost identical  
20 repeat violations. That was the two 391.51 violations,  
21 the Part A and the Part B. And as Ms. Gagne explained,  
22 the A covers never having a medical card; B covers not  
23 having one renewed in 24 months. So while it's not the  
24 exact same number, it is the same medical card type  
25 violation.

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1           We also had 11 critical-type violations, which  
2 were the filing. And so of the 324 violations, 274 of  
3 those were either acute, critical or critical-type,  
4 which left us with 50 recordkeeping violations out of  
5 this total.

6           So looking at that there, I will remind everyone  
7 that the Commission does have statutory authority to  
8 assess penalties of up to \$1,000 per violation for these  
9 violations here. And then as just a quick reminder,  
10 under the previous docket, TE-144101, there were 188  
11 critical violations in that review, there was 187  
12 violations of no medical card.

13           And while there were 20 vehicles that had not  
14 been inspected back then, we wrote that up as one  
15 violation. It was the first one, so we only counted  
16 that as one back then. This time it's 114.

17           But in that previous case, we also used the  
18 penalty assessment process, which is a real paperwork  
19 process versus a hearing, and that's where we assess  
20 \$100 per penalty, and that's just a flat rate, and  
21 there's not much negotiation other than to get to the  
22 mitigation part there. So that's a whole different  
23 processing than what we've used in this case today.

24           And I'd just like to say that, in January --  
25 January 25th of 2015, the current safety officer, name

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1 was Les Sokolowski -- if I get that pronounced correctly  
2 there -- he wrote in a letter to me, which is part of  
3 the docket in that previous file, that said: PTI has  
4 implemented a DOT-certified driver medical examination  
5 process and our drivers have been certified. We are  
6 also examining and certifying all new hires and tracking  
7 renewals.

8 That was in January of 2015, well before we went  
9 back in November of '15 to review this. So I would have  
10 assumed that ten months after I received that letter  
11 that we would have gone in and we wouldn't have found  
12 these repeat violations.

13 In that previous case, as I mentioned earlier,  
14 the Commission did mitigate about a third of the  
15 penalty, \$6,700. And as part of that mitigation, the  
16 UTC ordered and the Company agreed to no repeat  
17 violations, that we would reinspect in one year to make  
18 sure those hadn't occurred, and if they did reoccur,  
19 then the suspended penalty would become due and payable.

20 And then finally, I'd like to say in that case  
21 that, besides the letter I talked about, PTI did submit  
22 a compliance plan stating that they would correct these  
23 violations and that they had actions planned to prevent  
24 these from recurring in the future.

25 So that's kind of the background that led to

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1 this investigation, going into it, believing that we  
2 would go in and find the Company had corrected the  
3 problems from before. Naturally, you never find  
4 100 percent compliance; we expected we might find some  
5 small things.

6 But this is what we would call a focused  
7 investigation. It was only to look at the parts that we  
8 had violations on before, which were the medical card  
9 issues and the vehicles, and so that's why this was  
10 limited here. I believe if we had looked broader, we  
11 probably would have found more violations, but this was  
12 only meant to look at the things from the previous case.

13 So having said that, in this investigation, we  
14 found 324 violations. Some of the facts I'd just like  
15 to make as part of the record here for note, I did  
16 notice through the data here that many of the company  
17 drivers delayed even getting their medical cards until  
18 June of 2015, which was well after the time the  
19 compliance case ended from before. The previous case  
20 ended February of '15, so we would have expected that  
21 that would have started much sooner than waiting three  
22 or four months, and that's documented on page 12 of  
23 Ms. Gagne's exhibit, FG-1.

24 Secondly, the Company appears not to have taken  
25 any action on doing the vehicle periodic inspections

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1 until the day this current review started. Ms. Gagne,  
2 as is noted in her report on page 12 as well, noted that  
3 she received a call from a maintenance person at the  
4 Company after this investigation was scheduled asking  
5 what he had to do about getting vehicle inspections  
6 done. And so I was kind of frustrated that, here we had  
7 been -- again, eight to ten months had occurred, and the  
8 day the investigation starts that a Company mechanic is  
9 asking what they have to do to get periodic inspections  
10 done. I would have expected they would have come to us  
11 sooner or started those periodic inspections before  
12 that.

13 This investigation did reveal more violations  
14 than in the previous review. Again, the previous  
15 review, we had 188 violations. And in this review, we  
16 had 324, again, just in the two areas: 391, medical  
17 cards, and 396, vehicle inspections.

18 I will say my experience shows that it appears  
19 that these driver files were not being maintained or  
20 reviewed as appropriate. That would have noted the  
21 discrepancies in the medical cards if somebody had been  
22 looking at those files carefully.

23 The fraudulent medical cards that were in the  
24 driver files indicates to me that the Company had  
25 accepted them, because they were located in their files,

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1 but had not really looked at them very carefully.

2 And I can't really speak to why those were  
3 accepted, but it's noted in the report, and as part of  
4 the evidence here, to me, those fraudulent medical cards  
5 were just blatantly obvious that they had been forged.  
6 The number "5" had been written over with a "6" in both  
7 cards to change the certification from 2015 to 2016.  
8 And when I looked at them, it just jumped out at me as  
9 so obvious that those numbers, darker pen written over  
10 the top of them, and so it's obvious they were  
11 falsified, because Ms. Gagne verified with the medical  
12 provider that they had not been renewed.

13 But I just think that the Company should have  
14 seen those and should have noted those when they were  
15 putting them in their files, and they accepted them and  
16 put them in the files, which indicated that they  
17 believed they were good.

18 And I'll -- I guess I'll respond to  
19 Mr. Howland's comments that -- I agree, yes, the  
20 previous person was not paying attention to what they  
21 should have been doing and looking at the files, or they  
22 should have caught those easily.

23 In my opinion, any repeat violations of these  
24 types are completely unacceptable. These were serious  
25 violations. They were critical violations. And for --

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1 to have those be repeated after the case we went through  
2 is just not acceptable.

3 I believe the Company has disregarded the  
4 Commission's previous order in TE-144101, which -- in  
5 which they accepted the fact that they would correct the  
6 violations and prevent them from occurring again.  
7 Again, the Company pledged in writing to us that they  
8 would correct these violations, but instead we found  
9 more a year later instead of finding fewer.

10 And again, in my experience, and based on my  
11 review and my opinion, I believe that this company has  
12 put its drivers, its passengers and the traveling public  
13 at risk by using these vehicles being driven by drivers  
14 that weren't medically certified, and by using vehicles  
15 that had not been periodically inspected, which are the  
16 two main things that cause accidents. Drivers and  
17 vehicles are the two main items, and this company let  
18 these drivers drive. I don't have the exact Washington  
19 mileage here with me, but a tremendous amount of number  
20 of trips on the public highways hauling people with  
21 uncertified drivers and bad vehicles.

22 And then I'll finally say that the previous  
23 penalty did not seem to cause this company to correct  
24 the violations. Generally, when we have a compliance  
25 case, and I'll say a \$12,000 penalty was substantial,

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1 it's usually enough to get the Company's attention to  
2 correct the violations and prevent them from occurring  
3 again. And as we learned in this case, it apparently  
4 did not.

5 So I'm prepared to make a recommendation on each  
6 of the violations, which there are six. And I'll break  
7 these down a little bit because some of these are acute,  
8 some are critical, some are critical-type, and some are  
9 just recordkeeping.

10 **Q. If I could stop you, you're using those terms.**  
11 **Are those your terms or do you derive those terms from**  
12 **some broader industry source?**

13 A. Thank you. That is an industry standard  
14 description of the Code of Federal Regulations under  
15 federal law. CFR 49, and it is under Part 385 of CFR 49  
16 that defines acute, critical and critical-type.

17 And acute is the most serious type violation  
18 that can occur, needs to be corrected immediately. A  
19 critical violation is a violation that can cause  
20 accidents or injuries and are serious enough they need  
21 to be corrected right away as well. A critical-type  
22 violation is a violation that, if a large enough number  
23 of those are found, they rise to critical.

24 And the way that's determined is based on the  
25 sample size that is taken, that we choose from, and



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1 under federal law it goes from critical-type to critical  
2 if there's more than one, or if there's more than ten  
3 percent of the sample size. And in this case, the  
4 couple that resulted in critical-type, they did not  
5 reach that threshold because of the sample size that was  
6 taken, or because in the case of one driver or three  
7 drivers that were found without medical cards.

8 The vehicle violations were critical-type,  
9 again, a repeat because 100 percent of the vehicles were  
10 found to be in violation so that was a critical.

11 **Q. Okay. And I believe you were about to give us**  
12 **your monetary penalty recommendation. I think it would**  
13 **be most helpful if you provided the Commission with your**  
14 **total penalty recommendation and then went back**  
15 **violation by violation and gave some explanation as to**  
16 **how you arrived at that number.**

17 A. Okay. And I have a summary, so the first thing  
18 I'll say before I get to the total number, because  
19 without the individual breakdown, it might come as a  
20 surprise, this total number is derived upon the total of  
21 all the others.

22 And again, I mentioned the Commission has  
23 statutory authority to penalize up to \$1,000 per  
24 violation. In the previous case, we went 100 per  
25 violation. I believe, based on the factors that I

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1 talked about earlier, that this company should be  
2 assessed the maximum penalty for most of these  
3 violations that is available, which is \$1,000 per  
4 violation.

5 My penalty recommendation is going to be -- for  
6 the violations found in this case, the 324, is going to  
7 be \$264,100. And the way I get to that, and I'll just  
8 go through the list that we have in the complaint,  
9 Violation A, which is the acute violation, two  
10 violations of falsified medical cards, I believe those  
11 both should be \$1,000 each. That would be \$2,000.

12 Number B is a critical-type. There were 36  
13 occurrences of this violation, at \$1,000 each is  
14 \$36,000.

15 Violation C, again, critical-type, there were  
16 111 of these violations and, again, at \$1,000 each,  
17 \$111,000. The last two, B and C, are what I would call  
18 repeat violations.

19 Violation D is a critical-type. This is not  
20 having a medical examiner's card in the file. This is a  
21 first-time violation, and per policy, we do not go the  
22 maximum on first-time violations. So for these 11  
23 violations, I would assess \$100 per violation for  
24 \$1,100.

25 On Violation E, there were 50 violations for not

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1 having a note of verification of the medical examiner's  
2 listing on the national registry. That was 50  
3 violations there. Again, these were first-time  
4 violations, and these are what I would call pure  
5 recordkeeping violations. These would never rise to  
6 critical or critical-type, so I recommend no penalty on  
7 those 50 violations.

8 And then finally on F, 114 violations for having  
9 the vehicles not periodically inspected, I believe these  
10 are some of the worst violations we have here. 114  
11 instances, repeat violations from before, and they're  
12 critical. I recommend \$1,000 per violation there.  
13 That's \$114,000.

14 So having said that, that comes up to \$264,100.  
15 If you add in the \$6,700 from their previous docket,  
16 which was suspended and should be assessed on here, that  
17 brings the total penalty in this case to \$270,800.

18 And I will say that, if this case comes back up  
19 in the future and we find further repeat violations, I  
20 would again go for \$1,000 for every violation we found,  
21 and I would potentially recommend that we either suspend  
22 or cancel the Company's operating authority in the state  
23 of Washington for a period of time based on the  
24 seriousness or the egregiousness or the type of  
25 violations we have there. So those are my

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1 recommendations.

2 **Q. One quick point of clarification. You mentioned**  
3 **that Violations B and C were repeat?**

4 A. Yes. Technically, Violation B was 36, the exact  
5 repeat of Part 391.45(a). On Violation C, it's the 111  
6 violations of 391.45(b)(1). And again, I think that's  
7 kind of a semantics of whether they never had a card or  
8 whether it just hadn't been renewed in the previous two  
9 years.

10 **Q. But the two repeat violations from the previous**  
11 **review were Violation B and Violation F; am I correct?**

12 A. Correct, yes.

13 **Q. Thank you.**

14 MR. BEATTIE: And Judge Pearson, that will  
15 conclude Staff's case.

16 JUDGE PEARSON: Okay. Thank you.

17 Mr. Parker, do you have any questions for  
18 Mr. Pratt?

19 \*\*\* EXAMINATION BY MR. PARKER \*\*\*

20 BY MR. PARKER:

21 **Q. Mr. Pratt, did you review the supplemental**  
22 **information that we had provided recently prior to your**  
23 **development of the recommendation?**

24 A. Yes, I did.

25 **Q. What was your thinking in terms of the types of**

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1 information that you had received during the -- from the  
2 supplemental information? Is this a step in the right  
3 direction, or how would you characterize that?

4 A. Well, I would characterize the letters that I  
5 received and the compliance plan from the previous case  
6 as potentially spot-on. It said all the right things.  
7 It said what you were gonna do. And I will -- if you  
8 want, I can reference a couple.

9 You addressed each violation and you explained  
10 how they occurred and you explained how you would  
11 prevent them from occurring again. The part that  
12 troubled me a little bit is there was a lot of language  
13 in there that we should have done this, we should have  
14 done that.

15 And so while I think these -- these -- the  
16 narrative you provided is good and it explains what  
17 needs to be done, my frustration was that I have another  
18 letter from back in January of 2015 with Mr. -- sorry on  
19 the name here -- again, Mr. Sokolowski said almost the  
20 exact same things to me, and he gave me the exact same  
21 rationale: We're going to do this.

22 I think I read the statement where he talked  
23 about having already implemented a medical examination  
24 process to track them and make sure they were all  
25 certified. And so I felt like I heard this story

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1 before, and I accepted it before. It said that you  
2 would make these changes, but then when we went back in,  
3 that they were the same repeat violations.

4 And so, again, I believe these are good things  
5 you need to do, but they just need to be done, because  
6 they were pledged to be done before, and it doesn't  
7 appear that it was followed.

8 **Q. Would the Commission consider, based on the**  
9 **information that you've heard today and the information**  
10 **that has been supplied to you, a suspension of any**  
11 **portion of the current recommended assessment pending an**  
12 **audit within the next year to ensure material**  
13 **compliance?**

14 A. The Commission does regularly entertain  
15 suspensions on penalties as we did in the previous case.  
16 So when I make my recommendations, I do have to think  
17 about that, about what's the best way to go. I kind of  
18 felt like we had a suspended penalty before that didn't  
19 work.

20 I am open to suspending -- to recommending that  
21 the Commission suspend part of this penalty, but I guess  
22 what I was hoping for here today was to make sure that I  
23 heard a stronger pledge than before, and that I had some  
24 real assurances that this would get corrected this time.

25 And then finally, to kind of ask a question back

EXAMINATION BY MR. PARKER / PRATT

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1 to you about what your perspective would be is, if we  
2 did suspend part of this and we went back in another  
3 year and we found more repeat violations, you heard my  
4 recommendation, if we did that and I went back, it would  
5 trigger anything suspended, and it would probably push  
6 me to recommend either suspending the operating  
7 authority for a period of time or cancelling.

8 And so that would be the conditions that  
9 would -- I would recommend, and that the Company would  
10 have to accept and pledge to dealing with.

11 **Q. I believe that the Company would be open to that**  
12 **type of situation. If the Commission would find it**  
13 **acceptable to suspend a portion of the suggested**  
14 **penalty, that we would find it acceptable for a**  
15 **supplemental audit to occur, and then have, ultimately,**  
16 **you know, as a potential penalty, our operating**  
17 **authority.**

18 **We feel very strongly that the changes that**  
19 **we -- that Mr. Howland has implemented are going to be**  
20 **effective. It's not going to be a situation where**  
21 **you've been told one thing with no material compliance,**  
22 **such as the letter that you've referenced from**  
23 **Mr. Sokolowski.**

24 **And we would respectfully request that the**  
25 **Commission consider, based on the information that you**

1 have heard today, and based on the material changes in  
2 personnel, management and executive oversight that we've  
3 described today, or Mr. Howland's described today, a  
4 suspension of a portion of that penalty pending future  
5 verification that we are -- PTI is complying.

6 A. Okay.

7 MR. BEATTIE: Judge Pearson, Staff would not  
8 object to the Company recalling its witness to ask about  
9 the Company's position on suspension. I'm not sure  
10 that -- the previous question was more in the nature of  
11 counsel testifying, so perhaps that would be a better  
12 way to approach that situation.

13 JUDGE PEARSON: Okay. Mr. Howland?

14 MR. HOWLAND: Yeah. There's -- I'd like to  
15 ask just concerning a couple of these -- of these items  
16 to make sure that I understand first off.

17 And I know you stated in your testimony that  
18 you wouldn't always expect it to be 100 percent, but it  
19 ought to be darn close. I think that was your term.

20 One that really sticks out to me is the Item  
21 B, where previously we'd had 16 noncompliant drivers and  
22 this time we had 1 out of 340 that were inspected, which  
23 to me would indicate that we had really put a lot of  
24 effort into this and gone to a lot of work to resolve  
25 this.



1           So out of all the drivers, the 340, we had 1  
2 that was an exception, yet you're recommending the  
3 maximum penalty on that. He drove 36 days, \$1,000 an  
4 incident. That one to me seems rather extreme. I know  
5 it was a driver that was in violation, but it was 1 out  
6 of 340, and we had marked improvement from the previous  
7 year. So that one, I'm a little concerned with how we  
8 got there.

9           The issue -- and I just wanted want to make  
10 one exception on Item F, you stated that we were using  
11 unsafe vehicles is how you termed it. And I think our  
12 information we provided showed that we did, in fact,  
13 inspect those vehicles on a monthly basis, not an annual  
14 basis. And there's no indication in accident reports in  
15 this state that would indicate that those vehicles were  
16 unsafe. They passed the inspection every time we took  
17 them in and/or we made repairs required during those  
18 inspections to bring them up to standard.

19           The state certification, I would agree, was  
20 not with those vehicles. But again, we have since found  
21 inspectors that will do them. But we were told when we  
22 went to inspectors originally that they only did trucks,  
23 they don't do highway vehicles. So we found them, but  
24 we didn't find them until this year.

25           And I just wanted to take exception to the

1 fact that we do not operate unsafe vehicles on the  
2 highway in the state of Washington or any other state.  
3 That's why we spend the money to do a monthly inspection  
4 on those units, not an annual inspection. So I just --  
5 I wanted to clarify that point.

6 As far as the concerns with a suspended  
7 penalty, I agree completely that the \$6,700 from last  
8 year should be reinstated and assessed to us. We did  
9 not do all of the things that we said we would do. The  
10 items of concern to me at this point are B and C at the  
11 \$1,000 level with the improvement we did make in those  
12 areas from last year to this.

13 And with Item F on the inspection issue, I  
14 am again somewhat concerned with your opinion of our  
15 operation and the quality of the vehicles that we serve  
16 in the state of Washington. That just is something that  
17 is not in our character. It's not the way we operate in  
18 Washington or in any other location.

19 I am not concerned about a repeat offense as  
20 we move forward with this. As I've indicated, all of  
21 the units have now been given a Washington state  
22 inspection. And in many cases, we have to drive them  
23 120 to 150 miles one way to find an inspector that will  
24 do that inspection for us. There is no inspector at a  
25 number of the locations we operate that will do that

1 inspection. So that's an extraneous expense that we've  
2 taken on to comply with this, but under my watch, it has  
3 been done and it will continue to be done.

4 As far as the medical records, the items  
5 that we've discussed, we have now put electronic  
6 solutions into place. We have now implemented processes  
7 whereby if it is -- if a card has expired, a medical  
8 certificate has expired, that we are suspending the  
9 drivers until that is corrected. And the same with the  
10 vehicles. If the inspection's not done, it's suspended.

11 So I'm not concerned that you're going to  
12 find additional violations; however, what you may find  
13 when you come back is we may have two or three drivers  
14 that are on suspension because we don't have the current  
15 cards on file.

16 And I would be remiss if I didn't ask  
17 specifically. If you find that, that we have a number  
18 of drivers that are not current but are suspended, is  
19 that considered as a violation?

20 MR. PRATT: If they've driven during that  
21 time without a valid medical card, yes.

22 MR. HOWLAND: No. What I'm saying is, if,  
23 from the date of the expiration, we suspend them on the  
24 date of expiration, they're still drivers on our list,  
25 they're active employees, but they are suspended from

1 driving, that that would not be a violation?

2 MR. PRATT: That's correct. And I think in  
3 this investigation, you'll find that Ms. Gagne did  
4 report -- and I don't have the numbers in front of me --  
5 but she did report numerous drivers that the card had  
6 expired but had not driven. So none of those were  
7 listed as violations this time.

8 MR. HOWLAND: Then I'm much more comfortable  
9 with that position, because with the policies we now  
10 have in place, they are suspended until that is  
11 corrected, both driver and vehicle.

12 That's all I have.

13 MR. PARKER: If it please the Court, may I  
14 ask a question in follow-up?

15 JUDGE PEARSON: Sure.

16 \*\*\* EXAMINATION BY MR. PARKER \*\*\*

17 BY MR. PARKER:

18 **Q. Mr. Howland, would you please comment for the**  
19 **record in terms of if you have any requests that you**  
20 **would like to provide to the Commission regarding a**  
21 **suspension of any of the penalty?**

22 A. Yeah. The portions that I think are valid is in  
23 D, I appreciate the Commission's leniency on the \$100  
24 per incident. It is a new incident. We're not fully  
25 aware of that. And the same with E. We were not aware

1 at all that we needed to make that notation in the file.  
2 And so we appreciate your leniency in those two areas.

3 The -- especially in the area of B and C and F,  
4 you know, I feel that the Company has made an extremely  
5 good faith effort to correct those incidences. It was  
6 one driver under B and it was three drivers under C that  
7 that were the cause of the issue. And obviously those  
8 have been corrected and the new policy would not allow  
9 for that to happen going forward.

10 And then in item F, again, we did not use a  
11 certified inspector for that process; however, we did do  
12 the inspections. And so, you know, I would ask that the  
13 Commission consider that as they look at this violation  
14 process.

15 We will continue to take the units to certified  
16 inspectors, and if that means we have to continue to  
17 drive 150 miles, 300 miles roundtrip, we will do so.  
18 It's an extraneous cost, and we would also ask that the  
19 Commission work with us to perhaps find inspectors  
20 closer to those locations, or if you have some insights  
21 as to inspectors that may be able to be convinced to  
22 inspect passenger vehicles in addition to trucks, that  
23 would help us to alleviate that expense. We do have  
24 inspectors closer to several of our locations, but they  
25 refuse to do passenger vehicles; they will only do

1 trucks. And that was what kind of got us to this  
2 position in the first place.

3 So the expense of doing it is not something that  
4 we're saying should prohibit us from doing it, but we  
5 would absolutely appreciate the Commission's help in  
6 working with the certified inspectors at those locations  
7 where we don't have an inspector to try to help us find  
8 someone that can do the inspections without having to  
9 travel those kinds of distances.

10 That's all I have.

11 JUDGE PEARSON: Mr. Pratt, did you have  
12 anything further, or do you need a minute?

13 MR. PRATT: No. Actually, I just -- I just  
14 kind of had a little bit of a response. I wanted to  
15 clarify a point.

16 JUDGE PEARSON: Okay. Sure.

17 MR. PRATT: So I appreciate what you're  
18 saying and I appreciate the approach you've taken. I  
19 believe you came in and met with one of my staff, John  
20 Foster, a few weeks ago, is that correct? Or was that a  
21 different person?

22 MR. HOWLAND: That was --

23 MS. GAGNE: No, it was Janey and --

24 MR. HOWLAND: And Bill Cullen.

25 MR. PRATT: Okay. We are more than willing

1 to continue to meet with your Company officials to help  
2 them understand the rules and help them learn how to  
3 comply, so I want to put that forward.

4 I'm not sure if it was discussed at the  
5 time, but on the vehicle inspections, PTI could hire a  
6 certified mechanic, or have some of the other mechanics  
7 certified in another location so they could do these  
8 inspections. There's kind of a process you have to go  
9 through, but PTI could use people that have DOT  
10 certifications so you could do them right on your own  
11 premises.

12 And so I'll just pass that to you. And  
13 after the hearing or in the future, we could talk about  
14 that a little bit more so you know about that. But that  
15 is an option you could consider, which would help you  
16 make sure you got those done.

17 So just to kind of close, I guess I'd just  
18 like to amend my penalty recommendation based on what  
19 I've heard from the Company here today.

20 JUDGE PEARSON: Okay.

21 MR. PRATT: I don't change any of my  
22 comments about the seriousness of these or -- and I  
23 really wasn't intending to offend anybody by saying you  
24 were operating unsafe vehicles. But my comment really  
25 was that there was a high potential for unsafe vehicles

1 because they didn't receive DOT inspections. I call  
2 them being inspection light, and so we just don't know,  
3 and that's my clarification there.

4 So based on what Mr. Howland said, I would  
5 agree to recommend that the Commission suspend half of  
6 the penalties in Violation B, C and F, which would total  
7 \$130,500 suspended, which would mean, if I do my math  
8 right here, that I had recommended a penalty of  
9 \$270,800; you suspend 130,500 of that, leaves you with a  
10 penalty of \$140,300, on top -- and then you have to add  
11 the \$6,700 in from the previous docket.

12 JUDGE PEARSON: That was included in the  
13 \$270,800.

14 MR. PRATT: Yes, it was. I'm sorry.

15 JUDGE PEARSON: That was your original  
16 recommendation, right?

17 MR. PRATT: Yes. Thank you. I'm just  
18 writing these down on the fly as we're going.

19 JUDGE PEARSON: Okay.

20 MR. PRATT: And then I guess my final  
21 recommendation would be that, yes, the Commission, if  
22 they accept these recommendations for my penalty and the  
23 suspension, that they also hold the suspension over for  
24 one year, that we do a reinspection in one year to  
25 ensure that no repeat violations have occurred.



1 JUDGE PEARSON: Okay. Anything further?

2 MR. BEATTIE: I do want to mention that  
3 Staff is not offering Exhibit DP-2 into the record.

4 JUDGE PEARSON: Okay.

5 MR. BEATTIE: It was a letter that is very  
6 similar to the one that the Company provided as an  
7 exhibit, and so there's no need to duplicate that.

8 JUDGE PEARSON: Okay. Thank you.

9 Okay. So anything further from the Company?

10 MR. PARKER: Nothing further, your Honor.

11 JUDGE PEARSON: Okay. And nothing further  
12 from Staff?

13 MR. BEATTIE: Nothing further.

14 JUDGE PEARSON: Okay. Thank you. So as I  
15 explained at the beginning of the hearing, I will issue  
16 an order within ten days of receiving the transcript,  
17 which is typically within seven to ten days from today.

18 And I just want to thank you all for coming  
19 here today and we are adjourned.

20 MR. PARKER: Thank you, your Honor.

21 (Hearing concluded at 11:00 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 2nd day of June, 2016.

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17 ANITA W. SELF, RPR, CCR #3032

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