

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against  
PROFESSIONAL TRANSPORTATION, INC.  
  
in the amount of \$18,800

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WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PROFESSIONAL TRANSPORTATION, INC.,

Respondent.

DOCKET TE-144101  
(*Consolidated*)

ORDER 02

Docket TE-160231  
(*Consolidated*)

ORDER 01

ORDER OF CONSOLIDATION;  
ORDER IMPOSING SUSPENDED  
PENALTY; ORDER IMPOSING  
AND SUSPENDING PENALTIES

**BACKGROUND**

On February 13, 2015, the Washington Utilities and Transportation Commission (Commission) entered Order 01, Initial Order Granting Partial Mitigation (Order 01) in Docket TE-144101. Order 01 assessed an \$18,800 penalty against Professional Transportation, Inc. (PTI or Company) for 188 violations of Commission transportation safety rules, a \$6,700 portion of which was suspended for a period of one year on the condition that the Company committed no repeat violations of 49 C.F.R. Part 391.45(a) or 49 C.F.R. Part 396.17(a). The Commission also directed Staff to conduct a follow-up investigation within one year to determine whether PTI had complied with Order 01.

On April 5, 2016, the Commission issued a Complaint (Complaint) and Notice of Brief Adjudicative Proceeding in Docket TE-160231. In the Complaint, Commission staff (Staff) alleges that PTI violated Order 01 a total of 324 times.

On April 13, 2016, the Commission issued a Notice of Brief Adjudicative Proceeding in Docket TE-144101.

The Commission conducted a brief adjudicative proceeding in both dockets on May 24, 2016, before Administrative Law Judge Rayne Pearson. As a preliminary matter, Staff moved to correct erroneous references to 49 C.F.R. Part 396.45(b)(1) in Order 01 and replace them with corrected references to 49 C.F.R. Part 396.45(a). The Commission agrees that these errors should be corrected and amends Order 01 as Staff requests. The Commission also granted Staff's motion to consolidate Dockets TE-144101 and TE-160231.

PTI stipulated to each of the 324 violations alleged in the Complaint, which limited the scope of the hearing to Staff's recommended penalties and the Company's request for mitigation.

Staff presented testimony from Francine Gagne, compliance investigator, and David Pratt, assistant director, Transportation Safety. Ms. Gagne testified briefly about how Staff calculated the 324 violations alleged in the Complaint.

Mr. Pratt presented testimony and evidence related to the Commission's enforcement policy and the Company's history of compliance. Staff recommends the Commission impose the \$6,700 portion of the penalty suspended in Docket TE-144101 because the Company concedes it violated Order 01 by incurring repeat violations of 49 C.F.R. Part 391.45(a) and 49 C.F.R. Part 396.17(a). In addition, Staff recommends the Commission assess penalties of \$264,100 for the 324 violations alleged in the Complaint, for a total penalty of \$270,800. Staff recommends the Commission suspend a \$130,500 portion of the penalty for a period of one year, and then waive it, subject to the condition that the Company commits no repeat violations of Commission safety rules. Mr. Pratt testified that Staff believes an escalated penalty is warranted in this case because the Company appears to have been undeterred by the \$18,800 penalty assessed in Order 01, as evinced by the additional violations Staff discovered upon re-inspection.

The Company presented testimony from David Howland, chief operating officer for PTI. Mr. Howard testified in detail about the steps PTI has taken to correct the violations alleged in the Complaint, including terminating employees who falsified records, replacing the employee charged with overseeing the Company's safety operations, and implementing a number of process and policy changes to ensure compliance with Commission rules.

The BLET Washington State Legislative Board and the SMART-TD Washington State Legislative Board (collectively Legislative Boards) filed joint comments in Docket TE-160231 requesting the Commission impose the maximum penalties for the violations alleged in the Complaint. The Legislative Boards argue that PTI – a company that contracts with railroad companies to transport railroad crew personnel – has been involved in three serious injury accidents since 2013 while transporting Washington

railroad crews. According to the Legislative Boards, railroad companies outsource employee crew transportation to avoid liability and decrease costs at the expense of employee safety.

Julian Beattie, Assistant Attorney General, Olympia, represents Staff. Ryan Parker, General Counsel, Evansville, Indiana, represents PTI.

## **DISCUSSION AND DECISION**

### **1. Suspended Penalty in Docket TE-144101**

Order 01 assessed a penalty of \$18,800, a \$6,700 portion of which was suspended for a period of one year on the condition the Company complied with the terms of Order 01. Because the Company stipulated to the violations alleged in the Complaint, we find that the Company violated the terms of the Order 01 and impose the \$6,700 suspended penalty. PTI must pay the \$6,700 penalty within 10 days of the effective date of this Order.

### **2. Penalty in Docket TE-160231**

Violations discovered during safety inspections are subject to penalties ranging from \$100 to \$1,000 per violation depending on the nature and severity of the company's conduct.<sup>1</sup> The Commission deals more harshly with companies that have a history of noncompliance, repeat violations, and previous penalties.<sup>2</sup> In some cases, Commission requirements are so fundamental to safe operations that the Commission will assess penalties for first-time violations.<sup>3</sup> Violations defined by federal law as "critical" meet this standard.<sup>4</sup>

The Commission considers several factors when determining whether penalty mitigation is appropriate, including whether the company introduces new information that may not have been previously considered or explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring the company's compliance.<sup>5</sup> The Complaint cites 324 violations of Commission rules, and

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<sup>1</sup> See RCW 81.04.380 and RCW 81.04.405.

<sup>2</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶15 (Jan. 7, 2013) (Enforcement Policy).

<sup>3</sup> Enforcement Policy ¶12.

<sup>4</sup> 49 C.F.R. § 385, Appendix B.

<sup>5</sup> *Id.* at ¶19.

Staff seeks the maximum penalties in four of six violation categories. We address each category in turn.

**WAC 480-30-221, 49 C.F.R. Part 390.35**

**Discussion.** WAC 480-30-221, 49 C.F.R. Part 390.35 prohibits auto transportation carriers from making or causing to make fraudulent or intentionally false entries on records subject to inspection. The Company acknowledges that two of its employees modified the expiration date on their medical certification cards at the time of hire, but requests leniency because both employees were immediately terminated when the violations were discovered. To prevent recurrence, PTI has implemented a new procedure to ensure all medical certificates are authenticated as valid and current at the time of hire. Although these are first-time violations, Staff recommends the Commission assess the maximum penalties due to the deceptive conduct that gave rise to the violations.

**Decision.** We agree with Staff's recommendation and assess a \$2,000 penalty for two violations of 49 C.F.R. Part 390.35. Although Staff easily identified the alterations made in these two instances, this type of violation, if undetected, could interfere with the Commission's ability to perform its regulatory functions. While PTI claims its employees falsified their own records, the Company is ultimately responsible for complying with Commission safety rules. Accordingly, we find that these violations warrant the maximum penalty.

**WAC 480-30-221, 49 C.F.R. Part 391.45(a)**

**Discussion.** WAC 480-30-221, 49 C.F.R. Part 391.45(a) requires drivers to be medically examined and certified by a qualified health professional. One of the Company's drivers drove on 36 separate occasions without being medically examined and certified. The Company notes that the number of violations of this type has decreased substantially since Staff's 2014 inspection. Conversely, Staff argues that any number of repeat violations, no matter how few, is unacceptable. Staff recommends the maximum penalty of \$1,000 per violation, for total penalty of \$36,000.

**Decision.** In Docket TE-144101, PTI was penalized \$18,700 for 187 violations of 49 C.F.R. Part 391.45(a). Although the number of drivers who drove without medical certification decreased from 16 in Docket TE-144101 to one in Docket TE-160231, we agree with Staff that the Company must be held accountable for repeat violations, and that an escalated penalty is appropriate. Moreover, the Company did not introduce any new information at hearing that would warrant a penalty reduction. Instead, the Company

merely acknowledged that it was aware of the requirement but failed to meet it. We therefore assess a \$36,000 penalty for 36 violations of 49 C.F.R. Part 391.45(a).

**WAC 480-30-221, 49 C.F.R. Part 391.45(b)(1)**

**Discussion.** WAC 480-30-221, 49 C.F.R. Part 391.45(b)(1) requires any driver who has not been medically examined and certified as physically qualified to operate a commercial motor vehicle in the preceding 24 months to renew their medical certification. Staff discovered during its review that three drivers drove on 111 occasions with expired medical cards.<sup>6</sup> Mr. Howland testified that, to address this issue, the Company has added a field in its electronic driver management system to capture the expiration date for medical examination cards and alert supervisors when cards are up for renewal. The Company suspends from service any drivers whose cards lapse until the drivers renew their certification.

Staff argues that because this violation is similar to the Company's violations of 49 C.F.R. Part 391.45(a), the Commission should treat it as a repeat violation and penalize accordingly. Staff recommends the Commission impose the maximum penalty of \$1,000 per violation, for a total penalty of \$111,000.

**Decision.** We agree that these violations are substantially similar to the Company's prior violations of 49 C.F.R. Part 391.45(a), but nevertheless recognize that 49 C.F.R. Part 391.45(b)(1) is a different subsection that creates a separate requirement for which PTI has not been previously penalized. Accordingly, we will treat the 111 violations of 49 C.F.R. Part 391.45(b)(1) at issue as first-time violations.

While we appreciate the Company's assurances of future compliance in this area, these are "critical" violations that warrant penalties for a first-time offense. Moreover, we find that a "per violation" penalty is appropriate because medical certification is fundamental to safe operations; drivers who are not medically certified may have an undocumented medical condition that puts the traveling public at risk. Accordingly, we assess a penalty of \$100 per violation for each of the 111 violations of 49 C.F.R. Part 391.45(b)(1) alleged in the Complaint, for a total penalty of \$11,100.

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<sup>6</sup> Two of the three drivers who drove with expired medical cards are the same employees who altered the expiration dates on their medical cards, which resulted in a \$2,000 penalty, discussed above.

**WAC 480-30-221, 49 C.F.R. Part 391.51(b)(7)**

**Discussion.** WAC 480-30-221, 49 C.F.R. Part 391.51(b)(7) requires carriers to maintain medical certificates in each of its driver qualification files. The Company acknowledges that it failed to maintain previous medical examination cards in the driver qualification files for 11 of its employees, although it maintained current medical cards for each driver. To correct this violation, the Company has implemented a new policy to maintain paper copies of medical cards for three years, and electronic copies indefinitely. Because these are first-time violations, Staff recommends the Commission assess penalties of \$100 per violation, for a total penalty of \$1,100.

**Decision.** Although these are first-time violations, they are considered “critical,” and therefore fundamental to safe operations. We agree with Staff that penalties are appropriate in light of these circumstances, and assess penalties of \$100 for each of the violations alleged in the Complaint, for a total penalty of \$1,100.

**WAC 480-30-221, 49 C.F.R. Part 391.51(b)(9)**

**Discussion.** WAC 480-30-221, 49 C.F.R. Part 391.51(b)(9) requires carriers to place a note in each driver qualification file verifying that the driver’s medical examination card was issued by a medical examiner listed on the National Registry of Certified Medical Examiners. Staff discovered during its follow-up inspection that driver qualification files for 50 of the Company’s employees did not contain the required note. Because these are first-time paperwork violations that are not classified as either “critical” or “acute,” Staff recommends no penalty.

**Decision.** We agree with Staff’s recommendation and assess no penalties for these violations. PTI is advised, however, that Staff’s investigation report constitutes technical assistance, and repeat violations may result in penalties or other enforcement action.

**WAC 480-30-221, 49 C.F.R. Part 396.17(a)**

**Discussion.** WAC 480-30-221, 49 C.F.R. Part 396.17(a) requires commercial vehicles to be inspected annually by a certified inspector who must complete and sign a required form attesting to the vehicle’s condition. PTI violated 49 C.F.R. Part 396.17(a) by using vehicles that were not inspected by a certified inspector as required on 114 occasions.

At hearing, PTI presented testimony and evidence about its in-house vehicle inspection program, “A-service,” which the Company argues meets or exceeds both federal and state inspection requirements. The Company also claims it had been unable to locate certified

inspectors who would inspect non-commercial vehicles until recently. PTI has nonetheless taken measures to ensure that all vehicles in Washington are inspected by a certified inspector, and has added an electronic reminder to monitor when inspections are due.

Staff argues that the Company was on notice that it must use certified inspectors as a result of Staff's 2014 investigation, and the Commission assessed a minimal penalty for previous violations in Order 01. Staff recommends the Commission assess an escalated penalty of \$1,000 per violation for each of the 114 violations of 49 C.F.R. Part 396.17(a) alleged in the Complaint, for a total penalty of \$114,000.

**Decision.** We agree with Staff that maximum penalties are warranted for repeat violations of 49 C.F.R. Part 396.17(a), which is a “critical” regulation. Although the Company claims its internal inspection standards meet or exceed state and federal requirements, only a certified inspector as defined by 49 C.F.R. Part 396.19 is qualified to conduct the required inspections or determine whether those standards have been met. The Company had ample notice and opportunity to correct these violations, but failed to do so. Accordingly, we assess penalties of \$1,000 for each of the 114 violations of 49 C.F.R. Part 396.17(a) alleged in the Complaint, for a total penalty of \$114,000.

### **Conclusion**

Railroad crew members are required to accept transport by PTI as a condition of employment. Accordingly, the Commission's role in ensuring the Company's operations are safe and reliable is particularly critical. We find that “per violation” penalties – even for first time violations – are appropriate to fulfill that role in the circumstances presented here and assess a total penalty of \$164,200 for 324 violations of WAC 480-30-221.

We commend PTI for effectively completing a total overhaul of its safety operations and making substantial changes to its policies and operations to ensure compliance going forward. We nevertheless are not willing to decrease the penalty amount in response to these measures. Instead, we will exercise our discretion to suspend an \$85,450 portion of the penalty for a period of one year, and then waive it, provided PTI incurs no repeat violations of WAC 480-30-221. The remaining \$78,750 is due within 10 days of the effective date of this Order. The suspended penalty both provides some leniency and supports the Commission's goal of deterring additional violations by providing an incentive for the Company to comply with Commission rules going forward.

We also require Staff to conduct a follow-up investigation of PTI within one year from the effective date of this Order to determine the Company's compliance with the terms of this Order. Based on its review, Staff will make a recommendation about whether the \$85,450 suspended portion of the penalty should be waived or imposed.

### **FINDINGS AND CONCLUSIONS**

- 1 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including auto transportation companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 2 (2) PTI is an auto transportation company subject to Commission regulation.
- 3 (3) PTI violated the terms of Order 01 by incurring repeat violations of Commission safety rules. PTI should be required to pay the \$6,700 penalty suspended in Order 01 in Docket TE-144101 for violating the terms of Order 01.
- 4 (4) PTI violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 390.35, by making or causing to make fraudulent or intentionally false entries on a required medical examiner's certificate on two occasions. PTI should be penalized \$2,000 for two violations of WAC 480-30-221, 49 C.F.R. Part 390.35.
- 5 (5) PTI violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 391.45(a), by using a driver not medically examined or certified on 36 occasions. PTI should be penalized \$36,000 for 36 violations of WAC 480-30-221, 49 C.F.R. Part 391.45(a).
- 6 (6) PTI violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 391.45(b)(1), by using a driver not medically examined and certified in the past 24 months on 111 occasions. PTI should be penalized \$11,100 for 111 violations of WAC 480-30-221, 49 C.F.R. Part 391.45(b)(1).
- 7 (7) PTI violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 391.51(b)(7), by failing to maintain medical certificates in 11 driver qualification files. PTI should be penalized \$1,100 for 11 violations of WAC 480-30-221, 49 C.F.R. Part 391.51(b)(7).
- 8 (8) PTI violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 391.51(b)(9) by failing to place a note in 50 driver qualification files verifying



that the drivers' medical certificates were issued by providers listed on the National Registry of Certified Medical Examiners. Because these are first-time paperwork violations, PTI should not be penalized.

- 9 (9) PTI violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 396.17(a) by using vehicles that were not periodically inspected as required on 114 occasions. PTI should be penalized \$114,000 for 114 violations of WAC 480-30-221, 49 C.F.R. Part 396.17(a).
- 10 (10) PTI should be assessed a total penalty of \$170,900, comprised of the \$6,700 penalty imposed by Order 01 and the \$164,200 penalty imposed for the 324 violations alleged in the Complaint. An \$85,450 portion of the penalty should be suspended for a period of one year, and then waived, provided the Company incurs no repeat violations of Commission safety rules. The Company should be required to pay the remaining \$85,450 portion of the penalty within 10 days of the effective date of this Order.
- 11 (11) Within one year from the effective date of this Order, Staff should conduct a follow-up investigation of PTI's operations and make a recommendation about whether the \$85,450 suspended portion of the penalty should be waived or imposed.

## **ORDER**

### **THE COMMISSION ORDERS That**

- 12 (1) The Commission imposes the \$6,700 suspended portion of the \$18,800 penalty assessed against Professional Transportation, Inc., in Order 01 in Docket TE-144101 for failure to comply with the conditions in that Order.
- 13 (2) The Commission assesses a penalty of \$164,200 against Professional Transportation, Inc., for 324 violations of WAC 480-30-221. The Commission suspends \$85,450 of that amount for a period of one year from the effective date of this Order on the condition that Professional Transportation, Inc., complies with the terms of this Order.
- 14 (3) Within one year from the effective date of this Order, Commission Staff must conduct a review of the operations of Professional Transportation, Inc., to determine its compliance with the terms of this Order. If Professional Transportation, Inc., has complied with the terms of this Order, the Commission

will waive the suspended portion of the penalty. If Professional Transportation, Inc., has not complied with the terms of this Order, the \$85,450 suspended portion of the penalty will become immediately due and payable.

- 15 (4) The \$78,750 portion of the penalty assessed in Docket TE-160231 that the Commission has not suspended and the previously suspended \$6,700 portion of the penalty the Commission assessed in Docket TE-144101 and has now imposed are due and payable within 10 days of the effective date of this Order.
- 16 (5) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective June 8, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON  
Administrative Law Judge

Service Date: June 8, 2016

## NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250