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1 BEFORE THE WASHINGTON

2 UTILITIES AND TRANSPORTATION COMMISSION

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4 In the Matter of the )DOCKET NO. TV-171185

Investigation of )

5 )

URBAN DELIVERY SERVICE LLC )

6 )

For Compliance with WAC )

7 480-15-560 and WAC 480-15-570 )

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BRIEF ADJUDICATIVE PROCEEDING, VOLUME I

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Pages 1-18

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ADMINISTRATIVE LAW JUDGE LAURA CHARTOFF

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13

February 23, 2018

14

9:30 P.M.

15

16 Washington Utilities and Transportation Commission

1300 South Evergreen Park Drive SW

17 Olympia, Washington 98504

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REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358

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

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4 Transportation Commission

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13

ALSO PRESENT:

14 (Witnesses)

15 WAYNE GILBERT

MATHEW PERKINSON

16

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1 OLYMPIA, WASHINGTON; FEBRUARY 23, 2018

2 9:30 A.M.

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

5

6 JUDGE CHARTOFF: Let's be on the record.

7 Good morning. This is Docket TV-171185, which is

8 captioned In the Matter of the Investigation of Urban

9 Delivery Service LLC For Compliance with Washington

10 Administrative Code 480-15-560 and Washington

11 Administrative Code 480-15-570.

12 My name is Laura Chartoff. I am the

13 administrative law judge presiding over today's brief

14 adjudicative proceeding.

15 Today is Friday, February 23rd, 2018, and

16 the time is approximately 9:30 a.m.

17 We're here today because Commission Staff

18 performed a safety investigation of Urban Delivery

19 Service LLC and documented 133 critical violations

20 resulting in a proposed unsatisfactory safety rating.

21 The company has 60 days from the day it received the

22 notice of the unsatisfactory rating to obtain Commission

23 approval of a safety management plan. And on

24 January 16th, 2018, the Commission gave notice of intent

25 to cancel the company's certificate as a household goods

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1 carrier, and notice of this brief adjudicative

2 proceeding setting time for oral statements.

3 This proceeding is to determine whether the

4 Commission should cancel Urban Delivery Service LLC's

5 household goods carrier permit effective

6 February 28th, 2018.

7 So let's begin by taking appearances

8 starting with Staff.

9 MR. SHEARER: Good morning, Your Honor. My

10 name is Brett Shearer. I am assistant attorney general

11 and representing the Commission Staff in this

12 proceeding.

13 JUDGE CHARTOFF: Thank you.

14 Is there anyone here for the company? Is

15 there anyone in the room or on the phone line for Urban

16 Delivery Service LLC?

17 Okay. Let the record reflect that the

18 company has failed to appear.

19 MR. SHEARER: So, Your Honor, Staff would

20 ask for a default order against Urban Delivery Service,

21 and in that order to enforce the full penalty assessment

22 to cancel the company's certificate and authority to

23 operate, and require the company to cease and desist its

24 operations. And Staff would also request permission to

25 continue the proceeding today and place the evidentiary

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1 basis of its recommendation into the record.

2 JUDGE CHARTOFF: Thank you.

3 Okay. I find Urban Delivery Service LLC in

4 default and will issue a written order reflecting this

5 finding. And at this time, Staff can present its case.

6 MR. SHEARER: Thank you, Your Honor. I

7 would like to call Mr. Wayne Gilbert to testify on

8 behalf of Staff.

9 JUDGE CHARTOFF: Mr. Gilbert, please stand

10 and raise your right hand.

11

12 WAYNE GILBERT, witness herein, having been

13 first duly sworn on oath,

14 was examined and testified

15 as follows:

16

17 JUDGE CHARTOFF: You may be seated.

18 MR. SHEARER: Thank you, Your Honor. Just a

19 little bit of quick housekeeping before I start. The

20 exhibits Staff filed in this, WG-1 through WG-4, I'm

21 actually going to be going through them in reverse

22 order. So we'll probably start at 4 and work our way

23 back.

24 JUDGE CHARTOFF: Okay.

25 /////

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

2 BY MR. SHEARER:

3 Q. Good morning, Mr. Gilbert.

4 A. Good morning.

5 Q. Can you please state your full name and spell

6 your last name for the record?

7 A. Wayne Gilbert, G-i-l-b-e-r-t.

8 Q. And, Mr. Gilbert, what is your role here at the

9 UTC?

10 A. Motor carrier safety investigator.

11 Q. And did you have a role in the Docket TV-171185

12 relating to Urban Delivery Service LLC?

13 A. Yes, I did.

14 Q. And what was your role?

15 A. My role was this was assigned as a routine

16 safety investigation, safety audit to determine

17 operating authority. All new entrant carriers go

18 through this for household goods delivery. Within 18

19 months, they need to receive a new entrant safety audit

20 and receive a satisfactory safety record in regards to

21 that audit in order to receive permanent operating

22 authority within the state of Washington.

23 Q. And did you personally conduct that audit and

24 review?

25 A. Yes, I did.

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1 Q. And what did your review of Urban Delivery

2 Service LLC entail, Mr. Gilbert?

3 A. It entailed several violations when I initially

4 actually visited Urban Delivery Services LLC, beginning

5 on page 4 of 22.

6 Q. And this is Exhibit WG-4; is that correct?

7 A. Correct. Found several critical violations

8 within the operations of Urban Delivery LLC starting

9 with No. 1, which was a violation of the primary

10 regulation of 391.45(a) of the MCSRs, using drivers not

11 medically examined and/or certified. Mr. Duryea had

12 operated on four different oc- -- or four different

13 drivers without receiving any medical certification.

14 Q. And I'll take a step back.

15 The document we have entered as WG-4, do you

16 recognize that document as the true and correct copy of

17 your report -- your audit of Urban Delivery Service LLC?

18 A. Yes, I do.

19 Q. Thank you.

20 Please continue to describe the violations you

21 discovered and documented in your report, Mr. Gilbert.

22 A. The first one was no medical certificates. The

23 second one related to maintaining driver qualification

24 files, a violation of 391.51(a), which was also a

25 critical item.

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1 Moving on to page 5, was also a critical

2 violation. This is a violation of WAC 480-15-555,

3 failing to conduct and/or retain paperwork contained or

4 relating to criminal background checks for household

5 goods carriers. Mr. Duryea was operating with three

6 drivers that had not received criminal background

7 checks, and nor did he conduct any of them as admitted

8 by him.

9 No. 4 was 395.8(a), relating to driver time

10 cards, so a record of duty status. Urban Delivery LLC

11 had not completed any record of duty status. There was

12 a total of 120. This was 30 days per driver and the

13 total of four drivers, so equalled 120 days total they

14 did not conduct any record of duty status.

15 No. 5 on that same sheet, violation of 396.3(b),

16 failing to keep minimum records of inspection of vehicle

17 maintenance for both the vehicles that Mr. Duryea was

18 operating. Had no -- no vehicle inspections or no

19 records of maintenance or anything on the vehicles.

20 Moving on to page 6, these were just minor

21 paperwork violations. The first one, 392.2, operating a

22 commercial motor vehicle in accordance -- not in

23 accordance with laws. This is local jurisdictional

24 laws. Mr. Duryea himself was cited by Washington State

25 Patrol at milepost 142 on Interstate 5 for speeding and

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1 being in the left lane of a three-lane interstate. So

2 this was a local violation.

3 And then No. 7 is 396.17(a), using a commercial

4 motor vehicle not periodically inspected. One of two

5 vehicles need -- both vehicles, all commercial motor

6 vehicles need to receive an annual vehicle inspection

7 per DOT guidance. And only one of the vehicles had

8 received one, the other one did not.

9 Q. Mr. Gilbert, you just walked through a whole

10 host of violations, many of which were critical and

11 documented in your report pages 3 through 6 in WG-4, the

12 exhibit we've labeled as WG-4. Why are those

13 violations -- and I'm specifically referring to the

14 critical violations, why are those a concern for UTC

15 Staff?

16 A. It's violation of the Federal Motor Carrier

17 Safety regulations, which is basic safety regulations

18 regarding operation of all commercial motor vehicles on

19 all public roadways.

20 Q. And on that last page that you referenced there,

21 what was the result of your review?

22 A. The result of the review was an unsatisfactory

23 safety rating.

24 Q. And what does an unsatisfactory safety

25 meeting -- rating mean?

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1 A. Means that the operations of Urban Delivery

2 Services are considered unsafe for public roadways.

3 Q. And how do you determine this unsatisfactory

4 rating?

5 A. It's based on the number of violations, and it's

6 all added together within our system once we put it into

7 our system, and it actually comes up with different

8 factors. Referring to page 15 of 22, there's the

9 "Safety Fitness Rating Explanation," and failing more

10 than two factors within that would result in an

11 unsatisfactory safety rating. Mr. Duryea failed both

12 factor two and factor three of that -- of this safety

13 fitness rating, and then factor four received a

14 conditional resulting in an overall unsatisfactory

15 rating for Urban Delivery Services.

16 Q. So is it your opinion that Urban Delivery

17 Service LLC is not fit to operate on the roads in

18 Washington State?

19 A. Yes, it is.

20 Q. Did you attempt to communicate your findings and

21 the findings of your report to the company?

22 A. That I did on several different occasions. I'd

23 actually attempted to contact from the time that we

24 initially visited the carrier. I attempted to contact

25 Mr. Duryea of Urban Delivery Services on a total of 12

0012

1 different occasions.

2 Q. And did you keep a record of your attempts to

3 communicate with this company?

4 A. That I did.

5 Q. Do you recognize the document I'll hand you now

6 we've labeled as Exhibit WG-3, do you recognize that

7 document as a true and a correct copy of your

8 communication logs, your attempts to contact Urban

9 Delivery Service?

10 A. Yes, it is.

11 Q. And how did you finally determine -- how did you

12 communicate your findings to the company?

13 A. Based on numerous failed attempts to -- actually

14 both physically driving up there, through numerous phone

15 calls, emails. In the end, we had to settle for both an

16 email copy that was sent, also sent an actual certified

17 copy of the report, and then also sent just regular

18 mail, a copy of the report.

19 Q. And did you receive a confirmation of receipt of

20 your certified mail delivery?

21 A. That we did.

22 Q. And I'm going to hand you the two documents we

23 have labeled as WG-2 and WG-1. Are these true and

24 correct copies of the confirmation of receipt from the

25 United States Postal Service?

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1 A. That they are.

2 MR. SHEARER: Thank you, Your Honor. I

3 don't have any further questions for Mr. Gilbert. I did

4 forget to ask -- forget to move to have these exhibits

5 admitted, so I will move to have them all admitted.

6 JUDGE CHARTOFF: Okay.

7 MR. SHEARER: Now that we've walked through

8 them.

9 JUDGE CHARTOFF: The exhibits marked as

10 WG-1 --

11 MR. SHEARER: WG-1 through WG-4, Your Honor.

12 JUDGE CHARTOFF: Yes, they are admitted.

13 (Exhibits WG-1 through WG-4 admitted.)

14 MR. SHEARER: Thank you.

15 JUDGE CHARTOFF: Okay. I had a question.

16 So what was the date that the company -- that you

17 believe the company received their report?

18 MR. SHEARER: On Exhibit WG-1, Your Honor,

19 the confirmation receipt is marked December 27th.

20 JUDGE CHARTOFF: Thank you.

21 MR. SHEARER: 2017.

22 JUDGE CHARTOFF: Okay. Do you have anything

23 further?

24 MR. SHEARER: I have no more questions for

25 Mr. Gilbert. I would like to call Mr. Perkinson, but if

0014

1 you have any questions for Mr. Gilbert, Your Honor,

2 you're welcome to present those.

3 JUDGE CHARTOFF: I don't have any questions.

4 MR. SHEARER: All right. Staff would call

5 Mr. Mat Perkinson to testify.

6 JUDGE CHARTOFF: Okay. Mr. Perkinson,

7 please stand and raise your right hand.

8

9 MATHEW PERKINSON, witness herein, having been

10 first duly sworn on oath,

11 was examined and testified

12 as follows:

13

14 JUDGE CHARTOFF: Thank you. Please be

15 seated.

16

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

18 BY MR. SHEARER:

19 Q. Good morning, Mr. Perkinson. Can you please

20 state your name and spell your name for the record?

21 A. It's Mathew Perkinson, P-e-r-k-i-n-s-o-n.

22 Q. And what is your role here at the UTC,

23 Mr. Perkinson?

24 A. I'm the motor carrier safety manager, and I

25 oversee the motor carrier safety and licensing services

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1 programs.

2 Q. And can you explain your role in this current

3 docket for Urban Delivery Service LLC?

4 A. Yeah, like all reports, the investigator goes

5 out, performs the assignment, and then submits a report.

6 Ultimately, I review it and provide or concur with

7 recommendation.

8 Q. And what are your recommendations and rationale

9 for that recommendation for this docket here today?

10 A. So we follow -- we have a guideline that we use

11 for carriers that receive unsatisfactory safety ratings.

12 In terms of penalty assessments, we also have a policy

13 that we follow, specifically critical or acute

14 violations. My recommendations follow that policy in

15 both the rating and the penalty.

16 Q. And so what are those recommendations,

17 Mr. Perkinson?

18 A. The recommendations would be to cancel the

19 certificate and impose the penalty of $6500, which would

20 prohibit the company from operating as a household goods

21 carrier, that would include advertising. If the company

22 were to be found advertising in the future, we would

23 recommend that the Commission classify Urban Delivery

24 LLC in a separate proceeding.

25 Q. And can you speak to the level of cooperation

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1 from Urban Delivery Service with Commission Staff in

2 this case?

3 A. Yeah, so the company generally was uncooperative

4 and untimely. I understand that Mr. Gilbert was able to

5 initially meet with the carrier and then shortly after

6 finding out the outcome of the report, that they became

7 nonresponsive as Mr. Gilbert discussed.

8 Q. And to your knowledge, what action has the

9 company taken to bring its operations into compliance?

10 A. The company was notified and failed to respond

11 to the Commission regarding the rating and/or the

12 penalty assessment. They have not requested mitigation

13 of the penalty and they have failed to submit a safety

14 management plan. So I would say they've taken no steps

15 to come into compliance with safety regulations.

16 Q. Thank you, Mr. Perkinson.

17 MR. SHEARER: I have no further questions,

18 Your Honor.

19 JUDGE CHARTOFF: Okay. And I have no

20 questions either. Is there anything...

21 MR. SHEARER: No, Staff has no further

22 requests, Your Honor.

23 JUDGE CHARTOFF: Oh, okay. So if there's

24 nothing further, I'll -- so I will be issuing an order

25 by the close of business Tuesday reflecting the

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1 Commission's decision. So -- and if there's nothing

2 else, we are adjourned.

3 MR. SHEARER: Thank you, Your Honor.

4 (Adjourned at 9:49 a.m.)

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3 STATE OF WASHINGTON

4 COUNTY OF THURSTON

5

6 I, Tayler Garlinghouse, a Certified Shorthand

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

8 certify that the foregoing transcript is true and

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

10 ability.

11

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14 Tayler Garlinghouse, CCR 3358

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