

Docket No. TV-171185 - Vol. I

In the Matter of the Investigation of Urban
Delivery Service LLC

February 23, 2018



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1 BEFORE THE WASHINGTON
 2 UTILITIES AND TRANSPORTATION COMMISSION
 3 _____
 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)
 8 _____
 9 BRIEF ADJUDICATIVE PROCEEDING, VOLUME I
 10 Pages 1-18
 11 ADMINISTRATIVE LAW JUDGE LAURA CHARTOFF
 12 _____
 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
 18
 19
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1 2
 2 APPEARANCES
 3 ADMINISTRATIVE LAW JUDGE:
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 12
 13 ALSO PRESENT:
 14 (Witnesses)
 15 WAYNE GILBERT
 16 MATHEW PERKINSON
 17 * * * * *
 18
 19
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 21
 22
 23
 24
 25

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1 4
 2 OLYMPIA, WASHINGTON; FEBRUARY 23, 2018
 3 9:30 A.M.
 4 --o0o--
 5 PROCEEDINGS
 6
 7 JUDGE CHARTOFF: Let's be on the record.
 8 Good morning. This is Docket TV-171185, which is
 9 captioned In the Matter of the Investigation of Urban
 10 Delivery Service LLC For Compliance with Washington
 11 Administrative Code 480-15-560 and Washington
 12 Administrative Code 480-15-570.
 13 My name is Laura Chartoff. I am the
 14 administrative law judge presiding over today's brief
 15 adjudicative proceeding.
 16 Today is Friday, February 23rd, 2018, and
 17 the time is approximately 9:30 a.m.
 18 We're here today because Commission Staff
 19 performed a safety investigation of Urban Delivery
 20 Service LLC and documented 133 critical violations
 21 resulting in a proposed unsatisfactory safety rating.
 22 The company has 60 days from the day it received the
 23 notice of the unsatisfactory rating to obtain Commission
 24 approval of a safety management plan. And on
 25 January 16th, 2018, the Commission gave notice of intent
 to cancel the company's certificate as a household goods

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5

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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EXAMINATION

1 BY MR. SHEARER:
 2 Q. Good morning, Mr. Gilbert.
 3 A. Good morning.
 4 Q. Can you please state your full name and spell
 5 your last name for the record?
 6 A. Wayne Gilbert, G-i-l-b-e-r-t.
 7 Q. And, Mr. Gilbert, what is your role here at the
 8 UTC?
 9 A. Motor carrier safety investigator.
 10 Q. And did you have a role in the Docket TV-171185
 11 relating to Urban Delivery Service LLC?
 12 A. Yes, I did.
 13 Q. And what was your role?
 14 A. My role was this was assigned as a routine
 15 safety investigation, safety audit to determine
 16 operating authority. All new entrant carriers go
 17 through this for household goods delivery. Within 18
 18 months, they need to receive a new entrant safety audit
 19 and receive a satisfactory safety record in regards to
 20 that audit in order to receive permanent operating
 21 authority within the state of Washington.
 22 Q. And did you personally conduct that audit and
 23 review?
 24 A. Yes, I did.
 25

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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**

Page 12

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

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EXAMINATION OF PERKINSON / SHEARER 14

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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EXAMINATION OF PERKINSON / SHEARER 15

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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EXAMINATION OF PERKINSON / SHEARER 16

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

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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1 CERTIFICATE

2
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

12 _____
13 Tayler Garlinghouse, CCR 3358
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