

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PROFESSIONAL TRANSPORTATION,
INC.,

Respondent.

DOCKET TE-160231

COMPLAINT

NOTICE OF BRIEF
ADJUDICATIVE PROCEEDING
(Set for May 24, 2016, at 9:30 a.m.)

1 The Washington Utilities and Transportation Commission (Commission) on its own motion, and through its Staff, alleges as follows:

I. PARTIES

2 The Commission is an agency of Washington state authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including passenger charter and excursion carriers, under the provisions of Title 81 RCW.

3 Professional Transportation, Inc. (Company) is an Indiana corporation authorized under Commission-issued Certificate CH-345 to provide charter and excursion services in Washington state.

II. BACKGROUND

4 In December 2014, in Docket TE-144101, the Commission assessed an \$18,800 penalty against the Company based on 188 alleged violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference 49 CFR Part 391 related to driver qualifications, and 49 CFR Part 396 related to vehicle inspection, repair, and maintenance. The Company responded to the Commission's penalty assessment by admitting all violations and by requesting mitigation of the penalty amount.

5 In February 2015, the Commission granted the Company's mitigation request in part by suspending a \$6,700 portion of the \$18,800 penalty for one year on the condition that the Company commit no repeat violations of 49 CFR Part 391.45(a) or 49 CFR 396.17(a).

The Commission directed Staff to perform a follow-up investigation within one year. The Company timely paid the non-suspended \$12,100 penalty.

6 In November 2015, Staff investigator Francine Gagne performed the follow-up investigation required by the Commission's February 2015 order in Docket TE-144101. Ms. Gagne identified 324 violations of motor carrier safety rules.

7 The violations identified by Ms. Gagne are described in Parts B and C of Staff's Investigation Report and are further alleged in the cause of action below.

III. JURISDICTION

8 The Commission has jurisdiction over the subject matter under RCW 81.01, RCW 81.04, RCW 81.70, WAC 480-07, WAC 480-30, and RCW 34.05.

IV. APPLICABLE LAWS AND REGULATIONS

9 Passenger charter and excursion carriers operating under the Commission's authority must comply with the parts of Title 49 of the Code of Federal Regulations (CFR) listed in WAC 480-30-221.

10 Under RCW 81.04.380, the Commission may assess penalties of up to \$1,000 for each violation of any Commission rule by a passenger charter or excursion carrier.

V. CAUSE OF ACTION

11 The Commission alleges that the Company committed 324 violations of WAC 480-30-221 by committing 324 violations of regulations in Title 49 CFR, as follows:

- a. **Two violations of 49 CFR Part 390.35 (acute violations):** Making or causing to make a fraudulent or intentionally false entry on a required medical examiner's certificate. The Company or its employee(s) falsified the expiration date on two medical examiner's certificates.
- b. **Thirty-six violations of 49 CFR Part 391.45(a) (repeat, critical-type violations):** Using a driver not medically certified. Driver Brian Cozad drove on 36 occasions with no medical examiner's certificate on file. The Company previously admitted violations of this regulation during the Commission's 2014 review in Docket TE-144101.
- c. **One-hundred eleven violations of 49 CFR Part 391.45(b)(1) (critical-type violations):** Using a driver not medically examined and certified during the

preceding 24 months. Three drivers, Patrick Bentler, Dorothy Dinsmore, and Christine Rubey, collectively drove on 111 occasions with expired medical examiner's certificates.

- d. **Eleven violations of 49 CFR Part 391.51(b)(7) (critical-type violations):** Failing to maintain medical examiner's certificate in the driver's qualification file. The Company failed to maintain eleven drivers' previous medical examiner's certificates in each driver's qualification file.
- e. **Fifty violations of 49 CFR Part 391.51(b)(9):** Failing to place a note related to the verification of a medical examiner's listing on the National Registry of Certified Medical Examiners required by 391.23(m) in the driver's qualification file. The Company failed to verify that the medical examiners used by 50 drivers appeared on the national registry.
- f. **One-hundred fourteen violations of 49 CFR Part 396.17(a) (repeat, critical violations):** Using a commercial motor vehicle not periodically inspected. The Company used 114 motor vehicles that were not periodically inspected. The Company previously admitted violations of this regulation during the Commission's 2014 review in Docket TE-144101.

VI. REQUEST FOR RELIEF

- 12 Staff requests that the Commission impose monetary penalties in an amount to be determined by further proceedings in this docket.

VII. PROBABLE CAUSE

- 13 Consistent with RCW 80.01.060 and WAC 480-07-307, the Commission finds probable cause to issue this Complaint.

VIII. NOTICE OF BRIEF ADJUDICATIVE PROCEEDING

- 14 Pursuant to RCW 34.05.482 and WAC 480-07-610, the Commission determines that a brief adjudicative proceeding is appropriate for resolving the issues in this complaint.

- 15 **THE COMMISSION GIVES NOTICE that it will hold a brief adjudicative proceeding in this matter at 9:30 a.m., on Tuesday, May 24, 2016, in Room 206, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**

- 16 The record in this case will consist of any documents regarding the matter that are considered by or prepared for the presiding officer for the brief adjudicative proceeding and a transcript of any oral statements given at the hearing, which statements will be given under oath.
- 17 Written notice of any other stage in the proceeding or other formal proceedings that the Commission may deem appropriate will be given during the course of this case. The Commission will provide at its offices in Olympia, Washington, copies of documents in the current record for use by the parties or others who may want to review them.
- 18 Parties wishing to submit any other documents for consideration at the brief adjudicative proceeding must file with the Commission a list enumerating and describing any such documents no later than 5:00 p.m. on Tuesday, May 17, 2016, and bring an original and three (3) copies to the hearing. Filing shall be in accordance with WAC 480-07-140 and WAC 480-07-145.
- 19 **THE COMMISSION GIVES NOTICE that any party who fails to attend or participate in the brief adjudicative proceeding set by this Notice, or any other stage of this proceeding, may be held in default under RCW 34.05.440 and WAC 480-07-450.**
- 20 The names and contact information of all parties and their known representatives are shown as follows:

Respondent: Professional Transportation, Inc.
3700 East Morgan Avenue
Evansville, IN 47715-2240
(812) 471-2440

Representative: Unknown

Commission: Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Representative: Julian H. Beattie
Assistant Attorney General
1400 S. Evergreen Park Drive S.W.
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1225
jbeattie@utc.wa.gov

DATED at Olympia, Washington, and effective April 5, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

Inquiries may be addressed to:

Executive Director and Secretary
Washington Utilities and Transportation Commission
Richard Hemstad Building
1300 S. Evergreen Park Drive S.W.
P. O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

NOTICE

PLEASE NOTE: Hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and, if limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be stated below and returned to Washington Utilities and Transportation Commission, Attention: Steven King, 1300 S. Evergreen Park Drive SW, P.O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION.)

Docket: _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired: (Yes)_____ (No)_____

Do you need a certified sign language interpreter?

Visual _____ Tactile _____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone No.: (____)_____