0067

1 BEFORE THE WASHINGTON

2 UTILITIES AND TRANSPORTATION COMMISSION

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4 WASHINGTON UTILITIES AND )

TRANSPORTATION COMMISSION, )

5 )

Complainant, )

6 )

vs. ) Dockets TE-160231 &

7 ) TE-144101

PROFESSIONAL TRANSPORTATION, ) (Consolidated)

8 INC., )

)

9 )

Respondent. )

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11

HEARING

12

Volume II, Pages 67- 169

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ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

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June 28, 2017

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1 OLYMPIA, WASHINGTON; JUNE 28, 2017

2 1:31 P.M.

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4

P R O C E E D I N G S

5

6 JUDGE PEARSON: All right. So let's be on

7 the record. Good afternoon. My name is Rayne Pearson.

8 I'm the administrative law judge presiding over today's

9 proceeding. Today is Wednesday, June 28th, 2017, and

10 the time is just after 1:30 p.m.

11 Today we will hear Staff's April 7th, 2017

12 motion to enforce the penalties suspended in Order 02 in

13 consolidated Dockets TE-160231 and TE-144101.

14 Following a brief adjudicative proceeding on

15 May 24th 2016, the Commission imposed a $170,900

16 penalty, an $85,450 portion of which was suspended for a

17 period of one year on the condition that PTI incurred no

18 repeat violations of Commission's safety rules.

19 So let's go ahead and take short appearances

20 from the parties, and then we will address Staff's

21 motion. So let's begin with Commission Staff.

22 MR. BEATTIE: Thank you. Julian Beattie,

23 Office of the Attorney General representing Commission

24 Staff.

25 JUDGE PEARSON: Thank you.

0071

1 MR. WILEY: Hi, Your Honor. Dave Wiley and

2 Blair Fassburg of Williams Kastner for the respondent,

3 Professional Transportation, Inc.

4 MR. FASSBURG: Let's see if I am actually on

5 since he said it for me. Also, Blair Fassburg with

6 Williams Kastner for Professional Transportation, Inc.

7 JUDGE PEARSON: Okay. Thank you.

8 So because Staff brought the motion, Staff

9 will go first today and then, Mr. Wiley, you will have

10 an opportunity to make your presentation, bring your

11 witness up, and then at the end, I'm going to allow

12 Staff to make a final recommendation.

13 So, Mr. Beattie, you may proceed when you're

14 ready.

15 MR. BEATTIE: Thank you, Judge Pearson.

16 Staff has one witness, Dave Pratt.

17 JUDGE PEARSON: Okay. Mr. Pratt, if you

18 could stand and raise your right hand.

19

20 DAVE PRATT, witness herein, having been

21 first duly sworn on oath,

22 was examined and testified

23 as follows:

24

25 JUDGE PEARSON: Okay. Please be seated.

0072

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

2 BY MR. BEATTIE:

3 Q. Can you spell your name for the record, please?

4 A. Sure. Dave Pratt, it's P-r-a-t-t.

5 Q. What is your position at the Commission?

6 A. I'm currently the assistant director for

7 transportation safety.

8 Q. So as the judge just recounted, Staff filed a

9 motion recommending that the Commission impose the

10 $85,450 suspended penalty in these consolidated dockets.

11 Can you please summarize the basis for this

12 request?

13 A. Yes, last year in Docket TE-160231, the

14 Commission imposed penalties of a -- I don't have the

15 exact amount, around $170,000 with 85,000 and the change

16 suspended under a condition that there were no repeat

17 violations again within a one year-time period. And

18 additional violations were discovered, which to me

19 triggered the order from the judge that said --

20 triggered the suspended penalties.

21 Q. What were the violations that triggered the

22 suspended penalty?

23 A. Specifically they were violations of 391.45(a),

24 which are violations of medical card requirements.

25 Q. Can you please tell us a little more about the

0073

1 medical card requirement?

2 A. Sure. Any driver of a passenger vehicle in

3 Washington State is required to have a medical card. It

4 means medical certification, means they must obtain it

5 from a certified doctor that assures that they have no

6 medical conditions which might hinder safe operations of

7 a vehicle and endanger their passengers or the public.

8 And they have to get one of those every two years or

9 else have it renewed every two years in order to be

10 there, and it's a document that's required to be kept in

11 the company files.

12 Q. How many violations of the medical card

13 regulation did Staff discover?

14 A. On this occasion they discovered two.

15 Q. Are those two violations sufficient to trigger

16 the suspended penalty?

17 A. Yes.

18 Q. Have you read the response from the company,

19 Professional Transportation, Inc?

20 A. Yes, I have.

21 Q. PTI claims it's unfair for Staff to penalize

22 violations that were discovered during what the company

23 contends was a technical assistance visit.

24 Can you address those concerns, please?

25 A. Well, I guess what I'd say is they were

0074

1 violations discovered during the visit when Mr. Gilbert,

2 the investigator in question, went through the files,

3 looked at files, and discovered there were no medical

4 cards. And so he was obligated to write that up at that

5 point and provide a report to me.

6 Q. In the end, was this visit a technical assistant

7 visit?

8 A. No, it was not.

9 Q. Why not?

10 A. Well, one, it wasn't conducted as a technical

11 assistance visit. It was conducted as what we would

12 call a nonrated compliance investigation.

13 Q. The company's response indicates some confusion

14 with the term "nonrated," so can you explain what that

15 means?

16 A. Sure. When we perform compliance investigations

17 on the safety side, they get a safety rating at the end

18 of that investigation. It's either unsatisfactory,

19 conditional, or satisfactory. We don't conduct rated

20 investigations every time we do a review, because under

21 federal criteria, again, we typically do not issue

22 another rating within a two-year period. So when we go

23 back into a company within two years, we do a nonrated

24 review, and the only difference is just at the end of

25 the compliance investigation, there will not be a rating

0075

1 on the document. Instead of saying one of those three

2 ratings, it will just be blank or it will actually say,

3 "This is a nonrated review."

4 Q. I think the company suggested that "nonrated" is

5 some sort of informal term for technical assistance; do

6 you agree with that?

7 A. No, not at all.

8 Q. And can you just reiterate why that is?

9 A. Sure. Well, like I said, a technical assistance

10 visit is where we would sit down with a company, we

11 would go over our safety guide with them, we would talk

12 about the rules, we would share information, we would

13 answer questions, but we don't look at files. We don't

14 get into file cabinets, we don't look at records.

15 A nonrated or a rated compliance investigation

16 is where you actually take the next step and you look at

17 files and records and document whether there is

18 compliance or not. So that's the difference. You don't

19 document violations during the technical assistance

20 because you don't look at -- you don't look at records.

21 Q. Professional Transportation also is asking for

22 mitigation of the penalty on the basis that the repeat

23 violations discovered by Staff were, quote, momentary,

24 unquote, which I understand to mean that the violations

25 lasted for minutes or hours as opposed to days or weeks.

0076

1 So what is your response to the idea that

2 mitigation is appropriate based on the duration of the

3 violations?

4 A. Well, one, I guess I'd say I don't think

5 duration should play into a mitigation, because if you

6 want to look at it from a black and white perspective, a

7 violation is a violation whether it was one minute or

8 one day. The way we measure violations, it is by the

9 day, so whether it just bled over into one day, it still

10 counts as one violation for one day.

11 And so the reason I felt it wasn't appropriate

12 to address mitigation and I felt it was appropriate to

13 ask the Commission to enforce their suspended penalty

14 was because the Commission had an order from the judge

15 that said if there are repeat violations, that I'm

16 supposed to bring this back in front and ask for the

17 suspended penalty to be imposed. And I didn't believe

18 it was appropriate for me to start negotiating or

19 mitigating a penalty at that point.

20 Q. In my reading, one of the assumptions in PTI's

21 response document is that these violations that you've

22 been discussing would not have been discovered had the

23 company not voluntarily requested what they're calling a

24 courtesy audit.

25 Is it true that the violations would not have

0077

1 been discovered had the company not itself requested an

2 audit?

3 MR. WILEY: Your Honor, I'm going to object

4 to the form. I think it mischaracterizes the response

5 and it's also leading.

6 JUDGE PEARSON: Okay. So I will let you

7 rephrase it because I was actually going to ask that

8 same question.

9 So if -- what characterization are you

10 specifically objecting to?

11 MR. WILEY: The portion in the early part of

12 the question where he was characterizing what his

13 understanding of our position was. I think that went

14 too far in terms of what we said in the response. If

15 it's -- if it's phrased in a more neutral fashion, I'm,

16 you know, not going to object, and obviously you have a

17 right to ask it so...

18 JUDGE PEARSON: Okay. So if we just take

19 out the part about the company believing that it

20 wouldn't have been discovered, then I think we can go

21 ahead with the question.

22 BY MR. BEATTIE:

23 Q. Mr. Pratt, would these violations have been

24 discovered absent what is being referred to as a

25 technical assistance visit?

0078

1 A. I can't answer that positively a hundred percent

2 one way or the other, but I would say more than likely.

3 And the reason I say that is because of the order last

4 year, we were ordered to go back within one year and do

5 another compliance investigation, which would have been

6 a nonrated review within one year. That would have been

7 during this month of June. So we would have gone back

8 in the month of June, we would have looked at the same

9 sample period, and we would have gone through the same

10 exercise we did.

11 And the reason I say I can't be a hundred

12 percent is you take a sample of drivers, you take a

13 sample when you do a review. So it is possible that the

14 one of those two drivers might not have been in that

15 sample. So I can't say a hundred percent they would or

16 wouldn't have, but if they had been, yes, we would have

17 discovered those violations during the review that we

18 were scheduled to do this month.

19 Q. In Order 02, the Commission required Staff to

20 conduct a follow-up investigation within one year of

21 that order. Is the -- when you say that you had -- you

22 were planning to look at the company's files again this

23 month, are you referring to the follow-up investigation

24 that was required in that order?

25 A. Yes, we -- we have a work plan in our program

0079

1 down there, and it's on a yearly basis, and when we have

2 cases like this when the judge or the Commission in any

3 kind of case gives us an order to do something or tells

4 us we need to do something, in this case, we add that to

5 our work plan for the next year. So I can say after

6 that hearing last year, I went back and PTI was added to

7 the work plan to be done by June of this year.

8 Ms. Gagne of my program was scheduled to do it. And so

9 when PTI reached out to us, I believe it was in early

10 March, Ms. Gagne was busy and Mr. Gilbert agreed to go

11 do it, and we just -- it was just done early.

12 Q. Thank you.

13 MR. BEATTIE: No further questions.

14 JUDGE PEARSON: Okay. Mr. Wiley?

15 MR. WILEY: Yes, Your Honor, thanks.

16 Before we get started, Mr. Pratt, I hope

17 you'll allow me -- I think this is the last time that

18 we're going to be in a hearing together, and I wanted to

19 say that even though we are not always on the same side,

20 particularly like today, I really appreciate your

21 openness and willingness to discuss issues involving

22 transportation industry clients over the year. I think

23 you're a great example of a dedicated public servant,

24 and you're much too young to retire. So with that said,

25 now I can get into the real stuff.

0080

1 MR. PRATT: Thank you.

2

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

4 BY MR. WILEY:

5 Q. First of all, do -- you have your amended

6 declaration there, correct?

7 A. Yes, I do.

8 Q. Okay. When you say in your -- going to

9 paragraph two, I'll try to get as specific as I can

10 because I will avoid objections, I assume, that way. So

11 if you go to paragraph two, you say that you supervised

12 the original enforcement activity and the March 2017

13 follow-up investigation; do you see that?

14 A. Yes.

15 Q. Okay. Can you just tell us what you mean by the

16 verb "supervise" in this context, please?

17 JUDGE PEARSON: I'm sorry, what page are you

18 on?

19 MR. WILEY: It's section two of his amended

20 declaration, Your Honor. And I don't have the page in

21 front of me but --

22 MR. PRATT: First page.

23 MR. WILEY: Page -- yes, it's page 1.

24 BY MR. WILEY:

25 Q. (As read) I also supervised Staff's March 2017

0081

1 follow-up investigation which I describe in more detail

2 below.

3 Can you tell us what you mean by "supervise"

4 there, please?

5 A. Sure. I manage the transportation safety

6 program, which includes motor carrier safety, and

7 Mr. Gilbert works for motor carrier safety, so in

8 essence, that's what I mean by that, is I supervise that

9 program.

10 Q. So in other words, you're referring to the

11 formal chain of command in which you are the head of

12 that department and he reports up to you?

13 A. Yes. I will clarify, I was not there at the

14 review with the company.

15 Q. Correct.

16 And there's been some -- some confusion about

17 when this -- this technical assistance or follow-up

18 investigation occurred. The declaration said March,

19 have you subsequently learned that that is not a correct

20 date? In other words, there is testimony that says it's

21 February 14th and 15th of 2017. Have you verified

22 whether that, in fact, is accurate?

23 A. No.

24 Q. Okay.

25 A. And I guess I just -- I wasn't quite sure of

0082

1 that date earlier, so I just looked at the closing order

2 on that Docket 160231 and saw that the final order was

3 dated June. So the reason -- the reason I'll say that

4 is our work plan was changed --

5 Q. Okay.

6 A. -- when we were asked to come in, so that

7 original date was no longer on the work plan. And so I

8 went and looked at the final order, saw that it was

9 dated June, so I said that we had to come back within

10 one year. That was June of this year.

11 Q. So if there is testimony from Professional

12 Transportation that the follow-up visit occurred in

13 February, not March of 2017, you wouldn't dispute that?

14 A. If you'll give me a second --

15 Q. Sure.

16 A. -- I'll look at the date on the report. I can

17 tell you I know March 17th was the date that the report

18 was filed.

19 Q. Right.

20 A. So it's possible you're right, that it was

21 finished.

22 Q. Yeah. We're going to talk about that report so

23 I concur on that, but I'm talking about the actual event

24 that led up to the report.

25 JUDGE PEARSON: Would you mind --

0083

1 A. The report that went to the company, is that

2 what you're asking?

3 BY MR. WILEY:

4 Q. Excuse me?

5 A. You're talking about this --

6 Q. Yes, when you visited the company.

7 A. Right here, it's on the final page. The closing

8 interview was conducted on April 4th, 2017, and so

9 thirty -- the investigation was schedule for February

10 14th of '17. It was conducted shortly after that so

11 yes, February.

12 Q. Okay. In your amended declaration, can you tell

13 us, you know, just what your practice is in terms of you

14 recount item by item all of the individual violations

15 notice both in 2014 and 2016. Is there any reason that

16 you did that or is that just a standard practice by you?

17 A. I believe it's just standard practice, because

18 this was a carry forward of those two previous cases.

19 It was just standard practice to document the two

20 previous cases.

21 Q. So even though the orders discuss them very

22 specifically, you put that in your latest declaration?

23 A. Yes.

24 Q. Okay. Do you recall at the close of the

25 testimony in the last hearing -- now, I wasn't there.

0084

1 Mr. Beattie was there, the judge was there, and our

2 clients were there, and you were there, but do you

3 recall at the close of your testimony in -- in May --

4 May 24th, 2016, where you offered the Staff to work with

5 PTI to answer future questions on compliance and work

6 with them to improve the same?

7 A. I don't remember the specific comment but

8 probably, sure.

9 Q. Okay. I will hand you just -- I will represent

10 for the witness that these are copies of pages 62, 63,

11 and 64 from the hearing transcript, and I'd ask you to

12 review -- if you'd read out loud the highlighted

13 sentence there.

14 A. Sure, this is a report by me and I say, "We are

15 more than willing to continue to meet with your company

16 officials to help them understand rules and help them

17 learn how comply, so I want to put that forward."

18 Q. Thank you.

19 The last year's docket, as I understand the

20 process, the -- because there was a stipulation that PTI

21 had committed the violations of which it was charged,

22 the Commission imposed the suspended penalty at that

23 time which was $6700 from the 2014 docket; isn't that

24 what happened?

25 A. Yes.

0085

1 Q. Okay. And then the Commission in 2016 levied

2 another penalty for new violations and suspended half of

3 that penalty which is what we're here today on; is that

4 correct?

5 A. Yes.

6 Q. Okay. You -- in your original and your amended

7 declaration, and I am focusing, as I told your counsel,

8 on the amended declaration because I view that as

9 superseding, you indicate that Mr. Gilbert visited PTI

10 for a nonrated compliance review. You use that term

11 "nonrated." We heard your testimony about what that was

12 just minutes ago. Is that still your testimony that

13 that was the purpose of Mr. Gilbert going to PTI?

14 A. I will say that I think there was some confusion

15 about when Mr. Gilbert went to PTI, but Mr. Gilbert's

16 outcome and report that he submitted to me was a report

17 on a nonrated compliance investigation.

18 Q. And when you say "there was some confusion," I

19 think you're referring to internal confusion within the

20 Staff at the UTC as to what the purpose of that visit

21 was for; is that correct?

22 A. Yes.

23 Q. Okay.

24 A. Let me rephrase that. I'm not sure if it was

25 Staff confusion. I think when Mr. -- well, let's back

0086

1 up a little bit. Ms. Gagne received a request, she

2 turned it over to Mr. Gilbert, and when Mr. Gilbert

3 looked at it, he thought it was a request to come out

4 and look their operations over. He was not completely

5 aware of the terms of the suspended penalty that was

6 hanging over them. So I think when he went out there,

7 he believed that -- or he didn't know about that.

8 Later that afternoon when I learned he was out

9 there at the company's operations, I put a call into him

10 and asked him to get ahold of me, and we talked about

11 you can't do a visit like this while you're out there.

12 He informed me he talked to the company officials first

13 thing on the second morning he was there and let them

14 know that that's the reason he was there. And they did

15 not ask him to leave or did not ask him to stop.

16 Q. Okay. There's a lot of information in that

17 statement. Let's back up a little bit.

18 There -- have you looked at the exhibits that

19 are attached to the response by the PTI and the

20 declaration of William Cullen? There's a lot of email

21 exchanges between Mr. Gilbert, Ms. Gagne, Ms. Walters,

22 and company officials such as Tyler Huffman, correct?

23 A. Correct.

24 Q. And we'll talk about those later and their

25 testimony, but it's clear that Mr. Gilbert at least at

0087

1 the end of January believed this was a nonrated courtesy

2 audit; isn't that true?

3 A. I'd say no, we don't do nonrated courtesy

4 audits.

5 Q. Well, I'm asking about your understanding of

6 what Mr. Gilbert believed, not what you believe is the

7 policy. So I'm saying was there at least some confusion

8 that you would acknowledge on Mr. Gilbert's part about

9 what the purpose of his visit was in February?

10 A. Yes.

11 Q. Okay. And by the way, February 2017 would be

12 how many months into the year review period that you

13 referenced in the Commission's order on the suspended

14 penalty? Can you count those for us? June to February,

15 would seven or eight months be a fair --

16 A. Sure.

17 Q. Okay. So it certainly wasn't at the end of the

18 year by any stretch of the imagination?

19 A. No, it was few months away, sure.

20 Q. And for instance, if the site visit had occurred

21 in March as you originally believed, that would have

22 been further into the year than actually occurred in

23 February, correct?

24 A. Right.

25 Q. Okay. Going back to your declaration again,

0088

1 specifically section 18.

2 MR. WILEY: And I will try to get a page

3 real quickly, Your Honor. I'm sorry, I don't -- did it

4 by sections.

5 JUDGE PEARSON: You mean a paragraph number?

6 MR. WILEY: Yes. 18 --

7 THE WITNESS: Page 4.

8 MR. WILEY: Page 4. Excuse me, page 4 and

9 5.

10 BY MR. WILEY:

11 Q. Okay. So do you agree that all -- that all of

12 the parties involved in arranging and initially

13 participating in the February site visit apparently

14 believed that no penalties would result from the visit?

15 A. I would say on day one --

16 Q. Yes.

17 A. -- Mr. Gilbert and company officials discussed

18 that it was a technical assistance visit. I believe,

19 like I mentioned earlier, that after Mr. Gilbert and I

20 talked, that he informed the company on -- first thing

21 the next morning that that was not the case, and so

22 going forward after that, that had been clarified.

23 Q. Okay. Let's go back to, then, that conversation

24 that you had that I'm learning about for the first time.

25 That was -- was that on the 14th of February or

0089

1 day one of the visit or are you not sure?

2 A. It would have been if I -- okay. I'm going by

3 my declaration, paragraph 16 says that on March 17th

4 Mr. Gilbert visited the company. So if that was the

5 first day that he visited the company, it would have

6 been later that afternoon or first thing the next

7 morning that Mr. Gilbert and I communicated.

8 Q. Okay. And just to correct the record, because

9 your declaration is incorrect on that, that was actually

10 on February 14th, 2017, correct, even though your

11 declaration has March 17th?

12 A. I believe, yes.

13 Q. Okay.

14 A. As we discussed earlier.

15 JUDGE PEARSON: So it was Valentine's Day,

16 not St. Patrick's Day.

17 MR. WILEY: Very good point of reference,

18 thank you.

19 BY MR. WILEY:

20 Q. So we can acknowledge that going forward that

21 when you referred to the site visit on March 17th, that

22 is not correct, it's actually February 14th and 15th?

23 A. Yes.

24 Q. So your testimony, as I understand it, is that

25 you had a conversation with your subordinate,

0090

1 Mr. Gilbert, either late in the afternoon on Valentine's

2 Day or the morning of the next day; is that correct?

3 A. Yes.

4 Q. Okay. And can you recall and relay for the

5 record what that conversation consisted of?

6 A. I'd say in general --

7 Q. Yes.

8 A. -- if I can. In general, I think I communicated

9 and said I'm not sure what you're --

10 Q. Doing there?

11 A. What your visit is at PTI. I want to make sure

12 you're aware of the suspended penalty and the previous

13 order, and that this cannot be a technical assistance

14 visit. It has to be review if you're there.

15 Q. Did you ask him did you ever give the impression

16 to the respondent company that it was contrary to that,

17 that in other words, that it was a technical assistance

18 courtesy audit to help them at their request?

19 A. I'm not sure I understand your question.

20 Q. My question is did you tell -- did you learn in

21 that conversation with your subordinate that he had

22 communicated that the visit was for a courtesy technical

23 visit to assist them with questions and concerns that

24 they had to avoid violating the rules?

25 A. Yes.

0091

1 Q. Okay. And so that was when you basically told

2 him you got this wrong?

3 A. Right, and I made sure he talked to the company

4 before he continued with any other -- any other

5 interaction with them to make sure they understood.

6 Q. Well, wasn't the horse already out of the barn

7 on that? I mean, he was down there, he had -- and we're

8 going to go over what he requested from them. It's kind

9 of hard to undo -- and people were out from Indiana, I

10 mean --

11 A. Yeah, I can't say which records he looked at on

12 the first day so, you know, possibly, yes.

13 Q. Okay. We'll have some testimony on that, but

14 okay.

15 So you would acknowledge, then, that both -- you

16 would characterize it that both PTI and your enforcement

17 officer on February 14th were operating under a mistaken

18 belief that this review was for technical assistance and

19 would not result in penalties?

20 A. I wouldn't go so far as to say it would not

21 result in penalties. I don't think that -- let me

22 rephrase that. I'm not aware of that conversation

23 occurring. I'm aware that the company and Mr. Gilbert

24 thought it was technical assistance, but I don't think

25 there was any -- ever a discussion that it would not

0092

1 result in penalties.

2 Q. So we're looking right now -- I don't want to

3 waste time, but, Mr. Pratt, if I can point you to some

4 of the email exchange. There was a discussion

5 between -- I don't want to mischaracterize, but there

6 was a discussion between Mr. Gilbert and PTI people

7 earlier in the spring that this would not result in

8 penalties or that it was a courtesy visit and something

9 to the effect of no harm, no foul. Now, I'll -- if we

10 need to plod through them, I will, I'm going to ask

11 these witnesses about them. But would you have any

12 reason to believe that Mr. Gilbert didn't so communicate

13 to PTI?

14 A. Well, I wasn't part of those emails --

15 Q. You wouldn't, I understand that you wouldn't,

16 but how about your subordinate? Do you know whether he

17 made that communication or effectively that

18 communication?

19 A. I don't.

20 Q. Okay. When you say at section 18 of your

21 declaration that, quote, during a technical assistance

22 visit, Staff discusses its safety guide with the company

23 and answers questions but performs no review of the

24 company's files and documents -- excuse me, and

25 documents no violations.

0093

1 Can you tell us where that policy or definition

2 of technical assistance is either memorialized or

3 codified?

4 A. I'm not sure whether I have it as a written

5 policy in there, but I can say our practice of technical

6 assistance, which we do for every new entrant that

7 applies for a permit here in the agency, is to go out to

8 take a copy of our safety manual which contains all the

9 forms that are required to be in compliance, and it

10 explains the different statutes and rules. We go over

11 that with them, we explain it to them, we do not look at

12 records. Generally they don't have records at that

13 time.

14 Q. If I can just interrupt you. You're going way

15 beyond my question. My question just was was that

16 policy, that definition of technical assistance,

17 memorialized anywhere that we can refer to? It sounds

18 like you're saying no, it's an informal Staff policy,

19 but it's one that's been continuing as you indicate.

20 A. Yes, it's been in existence since I've been in

21 this position for ten years and without --

22 Q. But it's not in writing is my point.

23 A. It might be memorialized on our website. I

24 would have to look at those web pages.

25 Q. Okay. We'll check that, but other than that, do

0094

1 you know of any other place where that's memorialized so

2 we can figure out what a technical assistance audit

3 would be?

4 A. The only other option would be possibly in my

5 enforcement policy. I would have to look at that. I

6 don't have a copy in front of me, but we do define

7 technical assistance and the enforcement policy, I do

8 know that.

9 Q. Since the previous penalties -- you know, let me

10 back up.

11 I understood your declaration and your testimony

12 here today to say in so many words that if you look at

13 files, if you review documents, that's no longer a

14 technical assistance courtesy audit, that becomes a

15 compliance review; is that a correct understanding?

16 A. Yes.

17 Q. Okay. Well, my question, then, to you is since

18 the previous penalties that were assessed, PTI often

19 clearly involved file documentation errors, would it be

20 a surprise that even during a technical assistance

21 visit, Staff would look at the company's files if they

22 were trying to help them get better about documenting

23 files, wouldn't you have to look at files?

24 A. Possibly.

25 Q. Okay.

0095

1 A. But they also would have to write those -- if

2 they looked at the files, they'd have to document a

3 violation if they discovered it, and that's where it

4 moves into an unrated review.

5 Q. Okay. So I think I'm getting a better

6 understanding. You're saying that even if it was a

7 technical assistance visit and the person or company

8 wanted input from the Staff, which was very helpful

9 input as you'll hear along the way, if they, in fact,

10 had to look at a file to see whether medical cards were

11 being properly maintained or employment applications

12 were being properly documented, that would trigger a

13 violation right there because you looked at paper?

14 A. Correct.

15 Q. Okay. Now, do you know whether, in fact,

16 Mr. Gilbert requested paper documentation from PTI

17 before he came to the site visit in February?

18 A. Yes, he did.

19 Q. And -- and there are -- I'm going to hand you an

20 exhibit. I think you may be looking at exactly where

21 this is.

22 MR. FASSBURG: Don't give him the old one.

23 BY MR. WILEY:

24 Q. I'm asking you to look at the January 30th email

25 from Wayne Gilbert to I believe it was Jude Winters.

0096

1 I'm asking you to look at that now, and this was -- this

2 was a list of documents that Mr. Gilbert said are

3 typically made available to investigators during

4 technical assistance visits; do you see that document?

5 A. This one here?

6 Q. Yes.

7 A. This is not --

8 Q. That was what was attached by Mr. Gilbert to his

9 email on January 30th, 2017, to Jude Winters in

10 anticipation of the technical assistance visit; do you

11 see that exhibit?

12 A. Yes.

13 Q. Okay. And it says, (as read) Please have the --

14 MR. WILEY: Your Honor, do you have a copy

15 in front of you?

16 JUDGE PEARSON: I do, and I just want to say

17 let's -- just for the record because I forgot when we

18 first came on the record that the parties did stipulate

19 to the admission of all the exhibits. So if you could

20 refer to them --

21 MR. WILEY: Okay.

22 JUDGE PEARSON: -- by the exhibit number,

23 that way we'll have it on the record.

24 MR. WILEY: I may need some assistance from

25 my colleague.

0097

1 MR. FASSBURG: Yeah, and I need to jump in

2 to make a clarification, because I think this was

3 something -- this particular page with the list of

4 documents wasn't originally filed. So I just want to

5 clarify with Mr. Beattie, this was the attachment, but

6 it wasn't actually filed. So the stipulation covered

7 what was filed. Our exhibit today includes the original

8 attachment. So I don't know if he's stipulating to its

9 admission as well, and we need that clarification.

10 MR. BEATTIE: Um...

11 MR. WILEY: Subject to check.

12 MR. BEATTIE: I understand you to be saying

13 that these emails that were attached to Mr. Cullen's

14 declaration embedded within here was an attachment; is

15 that --

16 MR. WILEY: Correct.

17 MR. FASSBURG: Yeah, it's -- this is -- it's

18 been labeled for today as Exhibit DP-3X, and I believe

19 for Mr. Cullen's declaration it was Exhibit 3 as well.

20 And it says right at the top attachment, Appointment

21 letter, but that was not actually filed with

22 Mr. Cullen's declaration, but the document that we have

23 submitted today is the appointment letter that we have

24 provided.

25 MR. WILEY: It corresponds to the date of

0098

1 the email and was the attachment that Mr. Gilbert was

2 referring to.

3 JUDGE PEARSON: So let's refer to it as

4 DP-3X, because I'd like to keep Mr. Cullen's declaration

5 separate as its own exhibit. So anything that's

6 attached to it, I belive has been separated out.

7 MR. FASSBURG: Of course, it has been

8 correct, and I'm just clarifying that when we stipulated

9 to the admissibility, it was as to what was filed, and

10 I'm pointing out just so that we're all aboveboard, that

11 particular page has not previously been filed.

12 MR. BEATTIE: Okay. Staff has no objection.

13 JUDGE PEARSON: Okay.

14 MR. WILEY: Thank you, Mr. Beattie.

15 BY MR. WILEY:

16 Q. Now, Mr. Pratt, have you had an opportunity to

17 look at that list at all? I assume this is the first

18 time you've seen it so I want you to --

19 A. First time I have seen this specific letter, but

20 I'm familiar with this document, yes. This is a

21 template that we use for compliance reviews.

22 Q. Okay. And I call your attention particularly to

23 item five on that list. Could you read that for the

24 record, please?

25 A. Sure, item 5 requests driver qualification files

0099

1 for all drivers used in the past 12 months, including

2 copies of medical certificates on drivers operating

3 commercial motor vehicle with a GVWR of 10,001 pounds or

4 more or eight passengers including the driver or more.

5 Q. So, again, following up my question about the

6 need to look at paper documents to confirm or

7 corroborate compliance with rules like 391 CFR 45, CFR

8 391.45. Wouldn't -- wouldn't it be futile to go down to

9 a respondent motor carrier if they're asking about their

10 compliance with that rule? Wouldn't it be futile not to

11 look at files? How else could you -- how else could you

12 assist them in terms of whether their current practices

13 were complying with those requirements?

14 A. Sure. The typical procedure is you go in, and

15 we will use medical cards as the example since that's

16 what we're talking about here. Typically on a medical

17 card issue, if somebody wants clarification on it, we

18 pull out our safety guide, we take them to the medical

19 card section, we tell them what the requirements are, we

20 talk about the National Registry that the doctors have

21 to be on, we show them the forms that are required to be

22 used by those doctors, we explain the recordkeeping

23 requirements of it, and we explain how they verify that

24 those are legitimate medical cards when they get them

25 from their drivers. And that's how we make sure that

0100

1 they know what they need to be and then have examples of

2 them in that book.

3 Q. That might be protocol, but in this instance,

4 that's not what Mr. Gilbert did on February 14th, is it?

5 A. Did not appear, no.

6 Q. Okay. And so you can understand, I assume, that

7 at least on February 14th, PTI believed in good faith

8 that it was working with the representative of the

9 Commission to learn, to show them what they've been

10 doing, how they've been doing it, and seek to understand

11 what they might need to do better; is that fair?

12 A. That's fair.

13 Q. Okay. How in your view would PTI -- keeping in

14 mind your protocol that you've just described, how in

15 your view could PTI have been better able to demonstrate

16 any progress in compliance of this specific rule to

17 Mr. Gilbert about medical cards or about employment

18 applications without showing him what they were doing in

19 their files?

20 A. They -- well, I guess they could have done it

21 like most carriers do, and they could have talked

22 through the requirements and made sure they understood

23 them. And in that case, they probably would have talked

24 about previous violations that were documented in a

25 previous review and gone over those as the example.

0101

1 Q. Is there any admonition to carriers who are

2 seeking your input which you volunteered the last year

3 and the -- I believe the judge's order really speaks to

4 the orientation of the company to comply. Is there any

5 way they would know that they shouldn't show you what

6 they were actually doing, that they should just have

7 mock versions or -- I mean, how would they know that?

8 How would I know that in that circumstance?

9 A. You know, I think you make a fair point. They

10 might not, but it's up to the investigator to be clear

11 with them, and I guess I think that's what occurred

12 here. This letter that you're talking about here was

13 what we call an appointment letter. When we schedule a

14 compliance review or a compliance investigation, this

15 letter goes out to the carrier that says we're going to

16 be in the area, we'd like to look at these records.

17 This was not the correct letter that should have been

18 used for a technical assistance visit so...

19 Q. You've just anticipated my next question, which

20 was, is -- did he unintentionally make a switcheroo here

21 in terms of the wrong letter that he needed to send

22 them, as far as you understand?

23 A. I would characterize that by saying he

24 misunderstood the assignment and started tackling it

25 from a technical assistance in his mind, but he started

0102

1 by following the compliance investigation process.

2 Q. So there was some switch signals. And to your

3 knowledge, was that until at least the day you mentioned

4 when you countermanded the nature of the investigation

5 on February 15th, was that ever communicated to PTI to

6 your knowledge, that the fact that oops, I gave you the

7 compliance letter, appointment letter rather than the

8 technical assistance letter?

9 A. I can't speak to that because I don't know the

10 answer, but I do know that he communicated clearly with

11 them on the morning of the second day that it was not a

12 technical assistance visit.

13 Q. Well, we're going to ask them about that, but

14 how do you know he communicated clearly and was that in

15 writing or what's your knowledge of how you know that he

16 communicated that?

17 A. Probably because I have had multiple

18 conversations with him since that date.

19 Q. Okay. Since February 15th?

20 A. Yes.

21 Q. But you're aware that his original report a

22 month later recommends no penalties and says that it's a

23 technical assistance visit, aren't you?

24 A. Right, and I had to overrule him.

25 Q. Okay. We will get into that briefly, but at

0103

1 least 30 days later, he was still believing that this

2 should have been a technical assistance visit and that

3 they shouldn't be fined; is that correct?

4 A. I don't know if that's what he really believed.

5 I can't speak to that because I believe I had told him

6 at that point there that I was obligated to ask for the

7 suspended penalty.

8 Q. Well, would it --

9 A. I'm going to be very honest with you, Mr. Wiley,

10 I do not interfere when they draft their reports. I let

11 them draft them because I like to see what they have to

12 say before I edit and help them make changes.

13 Q. Fair enough, but what I'm saying is if you are

14 so sure that he countermanded or basically communicated

15 that this wasn't going to be a technical assistance

16 visit on February 15th, why would he a month later still

17 be characterizing it as a technical assistance visit?

18 A. I think it was still his confusion that the

19 penalty would be imposed.

20 Q. So then if he was still confused a month later,

21 he could very well have been confused about what he

22 communicated on February 15th to PTI, correct; isn't

23 that possible?

24 A. Yes --

25 Q. Your answer is "yes"?

0104

1 A. Yes.

2 Q. Okay.

3 A. He also could have been clear.

4 Q. Yeah, well, we don't know that, do we?

5 Okay. At section 20 of your declaration, you

6 talk about at your request, Gilbert notified PTI of

7 Staff's intent to pursue enforcement of the suspended

8 penalty. Again, I think you're there referring to now

9 this conversation that we know took place on February

10 15th. But do you know whether he communicated

11 that this -- that because of what he found the day

12 before that suspended penalties would be invoked?

13 A. And I have to say I'm a little fuzzy on this. I

14 can recall that when Mr. Gilbert and I talked about that

15 he had found medical card violations, and I'm going to

16 caveat by saying I don't know if he told me that that

17 first day or if it was the second day or the third day,

18 but when he told me that, I told him, I said we have to

19 pursue those penalties based on a previous order, make

20 sure the company knows that. And so while I don't have

21 in my head here exactly whether that was February 15th

22 or 16th, I believe it was right in that time period.

23 Q. That's what you're assuming, but you never

24 confirmed that with Mr. Gilbert directly, did you?

25 A. Yeah, he told me that he let them know that.

0105

1 Q. That they would be subject to penalties on

2 February 5th, is that your testimony? That Mr. Gilbert

3 on February 15th said that you're going to be subject to

4 penalties for violations of the medical card rule?

5 A. My recollection is that I instructed Mr. Gilbert

6 to inform the company that they would be subject to that

7 suspended penalty, and that it would be a result of the

8 visit he had. And I will say that I can't tell you

9 exactly the time or day that I told him that, so it's

10 possible it was a day after.

11 Q. My question is not what you told him, it's what

12 they told -- he told them and what you know about that,

13 and can you say under oath that you know he communicated

14 that they would be subject to fines on February 15th for

15 medical card violations?

16 A. I can tell you that he told me he communicated

17 with the company that they would be subject to

18 violations. What I don't know is when he -- what day

19 exactly he said that, but I do know that he specifically

20 told me that he communicated with them that.

21 Q. Okay. And it could have been, say, April 4th

22 when he had his exit interview?

23 A. I don't believe it was anywhere near that late,

24 no.

25 Q. Okay.

0106

1 A. It was within a couple days, because I believe

2 this came to a head in a couple days, and I tried to get

3 out in front of it and figure out what the best way to

4 deal with it was.

5 Q. Okay. And speaking of getting out in front of

6 it, let's talk about the assignment report for motor

7 carrier safety, which is an exhibit to your declaration,

8 and I'm only going to talk to you about two pages there.

9 MR. WILEY: Your Honor, this is already in.

10 JUDGE PEARSON: Okay.

11 BY MR. WILEY:

12 Q. Okay. I haven't seen one of these in a few

13 years so bear with me. I want to understand what I'm

14 looking at. Gilbert Sharp -- or Sharp Gilbert, excuse

15 me, is Wayne Gilbert, correct?

16 A. Yes.

17 Q. I confirmed that, didn't I?

18 Okay. So this is talking about certain aspects

19 of -- now, is this issued for compliance reviews and

20 technical assistance or only compliance reviews?

21 A. This?

22 Q. Yes.

23 A. This is the cover page to our internal report

24 that goes on top of the formal report. So, yeah, this

25 is a generic cover page that is used for all

0107

1 assignments.

2 Q. Okay. So if I were going on a technical

3 assistance visit, I would still use this form

4 potentially?

5 A. You could or you could do a memo form to me.

6 Q. Okay. It is not required, but I could, in fact,

7 use it, okay.

8 Let's go to box 16 on relevant carrier history.

9 Do you see the second sentence?

10 A. Sure.

11 Q. Okay. And would you read that, please.

12 A. Talking about where it starts, "For this

13 reason"?

14 Q. You can read both sentences.

15 A. They're short.

16 Q. Okay. They're both short.

17 A. Okay. "Professional Transportation, Inc. has

18 had numerous safety violation history in the State of

19 Washington, and in January 2017 requested a

20 comprehensive technical assistance to be conducted to

21 help the organization identify any weak areas that could

22 be improved upon. For this reason, a nonrated review

23 was chosen as the best possible way to help the carrier

24 identify the areas that lacked oversight so they could

25 target and improve upon them."

0108

1 Q. Okay. Does that suggest to you that at least by

2 the date of this report, which is March 17th, the chief

3 investigator on this action was under the belief that

4 this was a nonrated review?

5 A. Yes.

6 Q. Okay. And the box 17 are his findings, correct,

7 in -- in formal fashion?

8 A. Yes.

9 Q. Okay. Talks about some of the software that

10 they've used, et cetera?

11 A. Yes.

12 Q. Okay. Flipping to the next -- to the back of

13 the double-sided exhibit, box 18 (as read) Recheck

14 safety investigation, 7/1/2017. That would be

15 approximately a year after the Commission's order in the

16 TC -- the case from 2016, correct?

17 A. Yes.

18 Q. Which is TC-160231.

19 Okay. And so that -- I believe you referred to

20 Francine Gagne as doing a -- doing that investigation or

21 that she was anticipated to do that investigation; is

22 that correct?

23 A. Yes, it was on her work plan.

24 Q. And that's what you're talking about in box 18?

25 A. That's what Mr. Gilbert was implying that he

0109

1 believes, that she would still go out there and do this

2 by July.

3 Q. Okay.

4 A. And as a result of that notice she did,

5 we don't need to go back up there by July.

6 Q. Okay. And thank you for that clarification.

7 When I said you, I meant Mr. Gilbert, so fair enough.

8 Okay. And box 20 sort of talks about that; does

9 it not? I mean, that confirms what you just said?

10 A. Yes.

11 Q. Okay. Box 19, by the way, this carrier is not

12 considered a high risk carrier; isn't that what he

13 concluded?

14 A. Yes, that's subject to criteria, though.

15 Q. Okay. Well, I'm just asking you about what he

16 says there.

17 A. Yes, he says no.

18 Q. And is that his signature in the first -- above

19 "Office Use Only," is that Mr. Gilbert's signature?

20 A. Yes.

21 Q. And that's on St. Patrick's Day in 2017,

22 correct?

23 A. Yes.

24 Q. Okay. Let's go down. Now you can decipher

25 handwriting for me. "Office Use Only, Initial Review

0110

1 By," who is that?

2 A. That would be Matt Perkinson.

3 Q. Okay.

4 A. The supervisor of the motor carrier safety

5 section.

6 Q. Of the UTC?

7 A. Yes.

8 Q. Okay. Boy, I would never have gotten that

9 signature.

10 And that's on the 21st of March; is it not?

11 A. Correct.

12 Q. Okay. What's his recommendation in review?

13 A. He says that this was a carrier-requested

14 technical assistance visit, he agrees with the

15 recommendations to provide the data to Investigator

16 Gagne so that she could perform a full compliance review

17 at this point.

18 Q. And that would be on or about the July 1st date

19 that's indicated, I assume?

20 A. Yes.

21 Q. Okay. So he there confirms that it's a

22 technical assistance visit; does he not? First

23 sentence.

24 A. Well, he says the carrier requested technical

25 assistance.

0111

1 Q. Okay. Yeah.

2 And so you, then, below on the 28th, about a

3 week after Mr. Parkinson [sic] reviews, you indicate

4 what your recommendation is, correct?

5 A. Yes.

6 Q. Okay. And in the second sentence, what do you

7 say?

8 A. I said, "Any repeat violations from the 2016

9 review trigger the suspended penalty."

10 Q. Third sentence, sorry.

11 A. That was the second, so third --

12 Q. Yeah, third.

13 A. "This should not have been a review but a TA

14 visit with no review of files, but rather a discussion

15 of the safety requirements."

16 Q. So this is your written memorialization of

17 basically countermanding the nature of the visit after

18 it occurred; is that correct?

19 A. I would say it's clarifying how I see this

20 activity and what I believe the outcome should be in

21 making sure everybody understood it as my sign-off on

22 the report.

23 Q. And specifically regarding that third sentence,

24 but aren't you saying that this should not have been a

25 review but a technical assistance visit with no review

0112

1 of files?

2 A. Yes, what I mean by that is that the company

3 requested a TA, you could have gone out and given them

4 pure TA and walked away without identifying violations,

5 and that's what he should have done. And I will just

6 tell you, Mr. Gilbert is not a veteran of here, but --

7 he's not a new employee, but he's not been around a long

8 time. He was confused as to what he was really supposed

9 to do out there.

10 Q. But isn't Professional Transportation suffering

11 the consequences of that review because they believed

12 they should provide files pursuant to Mr. Gilbert's

13 letter?

14 A. I'm not sure I'd characterize it the same way,

15 but I believe that yes, they were under the impression

16 it was a technical assistance visit.

17 Q. And if you knew that no -- I assume you didn't

18 know that he was asking to look at all of these files

19 before he went down there?

20 A. No, and I wish I had obviously.

21 Q. And when you found that out, do you know who

22 communicated to PTI the fact that by virtue of reviewing

23 their files, they were in your view automatically

24 subject to forfeiture of the penalty?

25 MR. BEATTIE: Objection. Asked and

0113

1 answered.

2 BY MR. WILEY:

3 Q. I'm not sure if it's Mr. Gilbert or Mr. Pratt,

4 did you notify them of that, these would be the file

5 issue?

6 A. No, it would have been Mr. Gilbert.

7 Q. Okay. And do you know if -- is it your

8 testimony that that -- I take it it is your testimony,

9 let me withdraw that.

10 I take it it is your testimony that that

11 occurred sometime on or shortly after February 15th

12 rather than at the exit interview where he told them

13 that they were going to be subject to fines on

14 April 4th, 2017?

15 MR. BEATTIE: Objection. Asked and

16 answered.

17 MR. WILEY: I have just clarified.

18 JUDGE PEARSON: Okay. I do believe he

19 answered that question so...

20 BY MR. WILEY:

21 Q. Okay. Now, in your declaration when you say you

22 are, quote, obligated in your role as assistant director

23 for transportation safety to refer the observed

24 violations to the Commission for enforcement once

25 Mr. Gilbert reviewed PTI's files, what do you mean

0114

1 specifically about that obligation? Is that obligation

2 also memorialized in a rule or written somewhere as a

3 referenced source?

4 A. I can't say whether it's memorialized, I don't

5 know, but I would say it is the expectation of me and my

6 job, it is the procedures I follow, it is the -- my

7 belief to uphold the integrity of my position is to not

8 try and change something after it occurs and call it

9 something different, but to say we need to correct

10 whatever occurred and put it on the table. And in this

11 case, unfortunately it resulted in asking for suspended

12 penalties, but it was -- to me it was the right thing to

13 do to clarify what happened and what the facts were.

14 Q. Okay. So in answer to my question, again, I

15 think you're testifying that it's not in any formal

16 written policy or rule of which you are familiar, but

17 it's an interpretation of your job responsibilities,

18 once files are reviewed and violations are observed in

19 those files, to refer that to the Commission whatever

20 the circumstance or the belief of both parties were to

21 revealing those files?

22 A. No, that's not what I said.

23 Q. Okay. What -- you said that you believed --

24 A. What I said was --

25 Q. First of all, can you answer my question about

0115

1 is there a written policy or rule of which you are aware

2 that mandates the assistant director of transportation

3 safety to refer a violation to the Commission if files

4 are reviewed?

5 A. No.

6 Q. Okay. You can answer.

7 A. Okay. When a Commission order comes out that

8 instructs Staff to do something specifically within a

9 time period, we do that. As the assistant director, I

10 have discretion what I refer up or down or not to the

11 Commission as far as penalties or any other type of

12 enforcement action.

13 So when I look at reports like this, I follow my

14 enforcement policy which helps guide me to determine

15 whether or not there are penalties. And in this case, I

16 followed the order from the judge from the previous year

17 that said if repeat violations are found, that the

18 suspended penalties are triggered. So at that point, I

19 believed it was my obligation to bring this back in

20 front of the judge to alert her that we did identify

21 additional violations, and it's up to the judge to

22 determine how to handle that.

23 Q. Are you saying that Order 02 says anything about

24 compliance audit versus technical assistance and whether

25 written files are examined or aren't examined in terms

0116

1 of whether the violations are occurring?

2 A. I believe it just says a follow-up visit should

3 be conducted within one year.

4 Q. And that could be a technical assistance visit;

5 could it not?

6 A. Sure.

7 Q. Okay. And then a compliance review could happen

8 at the end of a year; could it not?

9 A. Right.

10 Q. Okay. Regarding the April 4 -- how do you call

11 those, exit interviews? What do you refer to them --

12 A. Closing conference.

13 Q. Okay. Download meeting, closing conference.

14 At the closing conference, a number of alleged

15 violations were removed, were they not, or shortly

16 thereafter?

17 A. Prior to the closing they were removed, yes.

18 Q. Okay. And is that kind of adjustment where you

19 knock off 60 alleged violations, is that fairly common

20 in that practice?

21 A. In that scenario, yes, it's common.

22 Q. Okay.

23 A. The scenario was that additional data was

24 provided to us after the investigation was complete and

25 that lowered the number of violations. And I will tell

0117

1 you that companies are required to provide the

2 information we ask for when they're there. If they

3 don't, there are different actions we can take. So we

4 are kind of obligated to follow up on that.

5 Q. Yeah, and that's for a compliance audit, though,

6 is it not?

7 A. Yes.

8 Q. If it were a technical assistance audit, it

9 would be -- it wouldn't be unusual that a company would

10 not have all the documents there or all the specific

11 questions able to be answered; isn't that fair?

12 A. Right, a technical assistance we wouldn't

13 necessarily be looking at those records, we would be

14 just talking generalities.

15 Q. Ideally that's true.

16 Okay. Regarding the alleged medical rule

17 violations which is the focus of Staff's motion which is

18 why we're here.

19 A. Okay.

20 Q. Am I correct that you viewed those two incidents

21 as the trigger for cancelling the -- for accelerating

22 the fine, the suspended fine? That's what I understand

23 your declaration says; is that correct?

24 A. I'm not sure I'd use the term about

25 "accelerating," but I would say those two violations

0118

1 triggered my action to ask the Commission to impose the

2 suspended penalties, yes.

3 Q. Okay. Were you aware of the nature of the --

4 the job functions of the two drivers who were at issue

5 in the alleged medical card rule violations in January

6 of 2017?

7 A. I'd ask you to clarify that question. I knew

8 they were drivers for the company, I'm not sure what

9 else you're looking for.

10 Q. Are you aware that PTI employs different types

11 of drivers?

12 A. Sure.

13 Q. Okay. And would you tell me what those types

14 are based on your understanding?

15 A. I believe they have yard drivers, I believe they

16 have drivers that do intrastate and drivers that do

17 interstate, and different vehicles that they might

18 operate might have different drivers assigned to

19 different vehicles.

20 Q. And you also understand that they have what we

21 call OTR or over-the-road drivers, correct?

22 A. Yes.

23 Q. Okay. With respect to the yard drivers, do you

24 know what yard drivers do?

25 A. Yes, they move -- they move train crews up and

0119

1 back and forth through the yards.

2 Q. And do you know if Mr. Rowley and Ms. Brown

3 were, in fact, yard drivers?

4 A. I don't have that right in front of me. I

5 believe they did at times perform yard driver duties,

6 yes.

7 Q. And in the interval in which they are cited by

8 the Commission Staff now for violating the medical card

9 rules, do you know if, in fact, they operated as yard

10 drivers exclusively within the confines of railroad

11 yards and not over the public highways?

12 A. I don't -- I don't see that in the report and

13 quite truthfully, I don't -- I don't recollect whether

14 that was exactly the scenario there.

15 Q. I agree with you and my question is you don't

16 know one way or the other, then?

17 A. No.

18 Q. Okay. As far as the one-year suspension period

19 is concerned or the review period during the one-year

20 suspension, isn't it more likely that any mandated

21 enforcement compliance review would take place at the

22 chronological end of that period rather than slightly

23 more than halfway through?

24 A. Generally, yes.

25 Q. By the way, isn't it true that at least in here,

0120

1 you are in effect asking for fines that total for two

2 fines approximately $42,000 each if you look at it that

3 way; isn't that true?

4 A. If you choose to look at it that way, yes.

5 Q. And you rationalize the apparent harshness of

6 that result by saying that they're a third-time

7 violator, correct, of that rule, and it's a critical

8 rule?

9 A. Yes.

10 Q. Isn't it also true, though, that you have

11 recently recommended in another auto trans charter case

12 fines of $300 per violation for an alleged third-time

13 violator?

14 A. For different road violations, yes.

15 Q. But those rules also implicate safety; do they

16 not?

17 A. Yes.

18 Q. Okay. So when you say -- when the Commission

19 says in Order 02 that -- that there was going to be a --

20 that they ordered a compliance review that you put on

21 your plan that you alluded to, would it be logical that

22 both the Staff and the company would expect that review

23 to have occurred on or about July 1st as you say in your

24 report?

25 A. Sure, within a -- you know, a reasonable time

0121

1 period around there, yes. I'd say generally always

2 before that date, could have been -- could have been

3 based on the company's schedule, Staff schedules, within

4 60 days around that window.

5 Q. Yeah, and in reality, isn't it also true,

6 though, a lot of times that gate gets pushed out a few

7 months, 60 days in the direction of extension?

8 A. Well, I would say generally we work not to

9 because when we have an order that says do it by this

10 date --

11 Q. Doesn't it happen --

12 A. -- generally it gets done by then.

13 Q. But doesn't it happen because I think I can

14 recall --

15 A. It has, sure.

16 Q. Okay. Now, just -- just a few more questions.

17 Wrapping up here. Let's go back over what the

18 communication and -- and have you had a chance to look

19 at the email string between the company and Mr. Gilbert

20 and Ms. Gagne over the period of December to, say,

21 April? It's attached as an exhibit to Mr. Cullen's

22 declaration, so I assume you've seen them, and I don't

23 want to belabor them right now, I just want to kind of

24 characterize them.

25 A. Yes.

0122

1 Q. Okay. Considering all that back and forth and

2 the understanding and the mutual mistakes and everything

3 else that you talked about in terms of countermanding

4 Mr. Gilbert, who is still a month later calling it a

5 technical assistance visit and not asking for fines that

6 you then impose, can you understand how that -- have you

7 ever heard of enforcement cases about entrapment as a

8 doctrine? Can you understand how that might be an idea

9 that occurred to the company here?

10 MR. BEATTIE: Objection.

11 JUDGE PEARSON: Sustained. I think that's

12 an improper characterization of the content of

13 entrapment.

14 BY MR. WILEY:

15 Q. Okay. Well, let me ask you this way, Mr. Pratt.

16 It sure certainly was mistake or -- of fact or could be

17 characterized in common parlance as a kind of

18 bait-and-switch result; could it not?

19 A. Oh, no, not at all.

20 Q. Okay. So the fact that your investigator called

21 it a technical assistance visit, there wouldn't be

22 fines, he's there to hel -- I'm from the government, I'm

23 here to help you sort of align and gets then -- you

24 know, we get an $85,000 fine after a visit that we

25 requested and sought out, you don't see any --

0123

1 A. Mr. Wiley, that is not a bait-and-switch.

2 Q. Okay.

3 A. A bait-and-switch is an intentional action by

4 somebody to trick or trick somebody into an action.

5 This was no trickery here --

6 Q. Okay. So --

7 A. Bait-and-switch, that's an inappropriate term.

8 Q. Okay. I -- no -- no harm was intended, but what

9 I'm asking you is putting aside intent, wasn't the

10 effect of that completely the converse of what they

11 thought they were going to get in terms of the visit

12 from the Staff assisting them as you suggested in the

13 hearing in June that you were willing to have your Staff

14 people do?

15 A. I would say that yes, they figured they didn't

16 have any violations so there might not be any

17 consequences, but I also think that they didn't realize

18 that they also had many, many other violations that were

19 identified there as well.

20 Q. Well, we're not talking about those today, but

21 what I'm asking you is at a minimum, putting aside any

22 inference of improper motive, at least it could be

23 fairly said they got some very mixed signals from the

24 Commission Staff in this incident, didn't they?

25 A. Yes.

0124

1 Q. Okay. Okay. Now, just final couple questions.

2 You were very much involved in the Staff's

3 promulgation of formal enforcement policy in 2013 that a

4 lot of us have referred to over the years, and we

5 appreciated that being memorialized.

6 Can you tell me in terms of that policy whether

7 you believe after this incident that the Commission's

8 goal of self-reporting is furthered by the position

9 you're taking here?

10 A. I think your term -- use of the term

11 "self-reporting" is different. This wasn't a

12 self-reporting. Self-reporting is when a company knows

13 they've committed violations and they reach out and say,

14 We realize we've committed these violations. We want to

15 come clean. We want to talk about how to correct them.

16 Q. Well, that's rather technical. What I'm saying

17 is they've had violations that they've acknowledged in

18 the past, they're seeking to prevent them from

19 recurring. By asking your Staff to come down and work

20 with them as have been pledged on the record, wasn't

21 that a form of asking for assistance to understand --

22 isn't it an element of self-reporting in your view?

23 A. No.

24 Q. Okay.

25 A. But I would say yes, they asked for technical

0125

1 assistance to come in and help them.

2 Q. Okay. Well, how about this element of the -- of

3 the 2013 enforcement policy, (as read) Encouragement of

4 cooperation between the Staff and the company.

5 Do you think the position of the Commission

6 Staff now in mandating that $85,000 penalty encourages

7 cooperation by the company and the Staff?

8 A. It doesn't further it.

9 Q. Okay. Now, do you -- even if the Commission

10 were to find here the technical violations of the

11 medical card rules, do you still believe based on all of

12 the above that a focus on third-time violations

13 overrides the equities and understandings of the parties

14 here? In other words, you still believe that the -- the

15 boom should be lowered for the full $85,000 under all of

16 the facts, equities, and circumstances of this incident?

17 A. Well, I would say that regardless of whether it

18 was a technical assistance or compliance review, those

19 medical card violations occurred, and the company failed

20 to prevent those violations from occurring. They failed

21 to keep those drivers certified. Regardless of how we

22 discovered them, those drivers were still not certified.

23 And so when it comes to me referring it back

24 over to the Commission, I don't have an option there of

25 saying do something lighter or change it different. I

0126

1 simply refer back and say your order says that if there

2 were further violations, to bring this back to the

3 Commission. So my choices are limited there.

4 Q. I think the judge has already said she's going

5 to ask for your recommendation at the end, so I think

6 here is your opportunity to really tell us whether you

7 think under all of these circumstances that lowering the

8 boom, so to speak, no harm intended by that expression,

9 is fair and reasonable under these circumstances as a

10 matter of policy.

11 A. I guess before I answer that, I would be

12 interested in hearing from the witness of the company.

13 Q. I think she is going to ask you at the end,

14 anyways.

15 A. Right.

16 Q. So you'll reserve judgment on that, is what

17 you're saying?

18 A. Yes.

19 MR. WILEY: Thank you. No further questions

20 at this time, Your Honor.

21 JUDGE PEARSON: Okay. Mr. Beattie, do you

22 have any redirect?

23 MR. BEATTIE: I do, thank you.

24 /////

25 /////

0127

1 /////

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

3 BY MR. BEATTIE:

4 Q. Mr. Pratt, Mr. Gilbert brought you violations,

5 correct?

6 A. Correct.

7 Q. Given Order 02, do you feel you had any

8 discretion in this case to decide to decline to refer

9 those to the Commission?

10 MR. WILEY: Objection. Asked and answered

11 and objection, calls for a legal conclusion of Order 02.

12 JUDGE PEARSON: So I'm not sure about that

13 second part. I'll let him answer the question. I know

14 that he asked and answered it in a different format, but

15 I'll let him answer now.

16 A. I believe the expectation of me is when the

17 Commission issues an order that says I must do

18 something, that I must do it, and that I don't have a

19 lot of discretion when it's in an order that says if

20 this occurs, you must do X.

21 BY MR. BEATTIE:

22 Q. Mr. Wiley moments ago referred to the repeat

23 medical card violations as, quote, technical violations.

24 Is a technical violation still a violation that

25 you would refer to the Commission?

0128

1 A. Yes.

2 Q. If a driver operates a vehicle for one minute

3 without a medical card, is that a violation?

4 MR. WILEY: Objection. Asked and answered

5 on direct.

6 JUDGE PEARSON: Okay. Sustained.

7 BY MR. BEATTIE:

8 Q. Mr. Wiley asked you if you believe that $85,000

9 and change is appropriate for two violations. Do you

10 really think that $85,000 is -- is that a proper

11 characterization of what you're asking from this case?

12 A. I guess my -- what I'm asking for in this case

13 is to bring it back and forth in front of the judge to

14 say we have a suspended $85,000-penalty that we

15 discovered repeat violations, and I want to bring it to

16 your attention. And the judge needs to decide how she

17 wants to handle it.

18 Q. My question was a little confusing.

19 Did Staff come up with an $85,000 recommendation

20 in this investigation?

21 A. No, it was the suspended penalty from the

22 previous case. And that's why I felt that was the

23 number that was on the order that was my only option to

24 ask for that number. I didn't feel I had the -- I

25 didn't have the discretion to ask for a reduced penalty

0129

1 or a larger penalty or a mitigated. I felt the order

2 was very clear that I could only come back and say

3 85,000 or I don't do anything.

4 MR. BEATTIE: Thank you. No other

5 questions.

6 JUDGE PEARSON: Okay. I just have a couple

7 of clarifying questions to ask you.

8

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

10 BY JUDGE PEARSON:

11 Q. So first of all, the 2014 penalty, the first

12 one, did that come out of a rated safety review?

13 A. Yes.

14 Q. Okay. And then the 2016 as well was the next

15 two-year --

16 A. Yes.

17 Q. -- rated compliance review? Okay.

18 A. Actually, that was also still part of a

19 follow-up, too, from '14.

20 Q. But they were both rated reviews?

21 A. Yes.

22 Q. And I understand that in the context of what I

23 see from before me oftentimes if there is a suspended

24 penalty, we will specify in the order based upon Staff's

25 recommendation that the follow-up investigation in

0130

1 one-year's time will be nonrated. However, typically --

2 are nonrated reviews typically performed unless it's in

3 the context of a follow-up investigation where there's a

4 suspended penalty?

5 A. Yes, there can be. They can be conducted in

6 other scenarios. We could find we could do it at a

7 destination check where we -- say we do SeaTac Airport

8 and we do driver checks. We could discover a driver

9 with some medical card issues or CDL issues or whatever,

10 that would cause us maybe go to the company's operation

11 and take a look at it. So we might -- if we start

12 seeing stuff, we might say let's do a nonrated review

13 since we're coming in here.

14 Q. Okay.

15 A. And I think I need to clarify something earlier.

16 I'm sorry, the 2016 was nonrated either.

17 Q. Okay.

18 A. And, again, the reason I believe on that was

19 that was part of the follow-up from the '14, from the

20 previous penalties.

21 Q. Okay. So in the scenario that you just

22 described where a nonrated review results out of

23 something other than a Commission order, do you

24 typically have penalties associated with those nonrated

25 reviews or do you typically only recommend penalties

0131

1 that come out of either rated reviews or nonrated in the

2 context of the suspended penalty?

3 A. No, I could do it in any scenario, and an

4 example to use for you would be some of the

5 unsatisfactory safety cases we've had up here, when we

6 changed the rating -- or they had an unsatisfactory,

7 we've upgraded it to conditional, we had to go back and

8 do another review. That one was mandated to be unrated

9 because we can't change the safety rating within a

10 two-year period. So that one would be automatically be

11 nonrated, but if we found more violations there that

12 were critical, following our enforcement policy, we

13 would recommend penalties.

14 Q. Okay. So there's no correlation between

15 penalties and nonrated or rated safety reviews?

16 A. No.

17 Q. Penalties can arrive at any time?

18 A. Yes.

19 Q. Okay. I think those are my only questions. Oh,

20 no, I did have another question.

21 When I'm looking at the report that has

22 Mr. Perkinson's recommendation followed by your

23 recommendation, Mr. Perkinson said, "I agree with the

24 recommendation to provide the data to Investigator Gagne

25 for her safety investigation schedule later this year."

0132

1 So you said earlier in your direct testimony

2 that these violations may or may not have been

3 discovered if the review had taken place at a different

4 time, but because Mr. Gilbert passed that information on

5 to Ms. Gagne, even if -- this recommendation had been

6 followed as opposed to moving to impose the suspend

7 penalty, now she would have been aware of these

8 violations, correct, so the outcome would have been the

9 same?

10 A. She still has to choose a sample, but my

11 expectation among my investigators, if you know that

12 there's something like this and you know you had

13 specific drivers, you might want to include them in your

14 sample, so yes.

15 JUDGE PEARSON: Okay. All right. Thank

16 you. I don't have any further questions.

17 MR. WILEY: I just have a question after

18 your last question, if I could, Your Honor, to him.

19 JUDGE PEARSON: What is it?

20

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

22 BY MR. WILEY:

23 Q. If it had been at a technical assistance visit,

24 there wouldn't have been any penalties, correct?

25 A. Correct.

0133

1 JUDGE PEARSON: Okay. So I would like to

2 take a five-minute break at this point before we keep

3 going, so let's do that and come back at about -- let's

4 just say 2:55.

5 (A break was taken from

6 2:48 p.m. to 2:58 p.m.)

7 JUDGE PEARSON: When we were off the record,

8 Mr. Wiley just mentioned that he had additional

9 witnesses of which I was not made aware prior to this.

10 So I wanted to let him describe what he's proposing to

11 do and then see if Staff has any objections.

12 MR. WILEY: And, Your Honor, by the way, I

13 went back to the notice of May 17th, and it just said

14 exhibits, it didn't say witnesses, which I found kind of

15 unusual, but that's why you didn't know. I didn't think

16 you wanted to know.

17 JUDGE PEARSON: Okay.

18 MR. WILEY: Right now we're going to -- we

19 propose to present three witnesses, one, Ms. Jude

20 Winters out of Vancouver terminal and then two

21 management executive employees from Evansville at the

22 headquarters. So we had thought as of yesterday that it

23 might save time to put the two management executive

24 witnesses on in a panel sort of form and Mr. Fassburg is

25 going to cross-examine them -- or direct-examine them.

0134

1 So that would be my proposal. Do you want to see how it

2 goes and then object at the time or?

3 MR. BEATTIE: Ms. Winters is going to

4 testify to what generally?

5 MR. WILEY: To the events about the site

6 visit and the policy in her role in enforcement. She's

7 really the compliance person for the company. The other

8 two are policy witnesses at the management level.

9 MR. BEATTIE: Well, I suppose -- and this is

10 premature. We can see what happens, but I'm a little

11 concerned that one of your witnesses is going to say

12 something that is inconsistent with the statement of

13 Mr. Cullen whose declaration was admitted, but he's not

14 here.

15 MR. WILEY: He's no longer in his role with

16 the company. That's why he's not here. We have his

17 successor here.

18 JUDGE PEARSON: And is that person going to

19 adopt his --

20 MR. WILEY: Yes.

21 JUDGE PEARSON: -- declaration?

22 MR. WILEY: Yeah, and we've already -- if we

23 say anything inconsistent, I assume that counsel can

24 bring that out in cross-examination, Your Honor.

25 MR. BEATTIE: Sure, I'm just trying to

0135

1 figure out are -- is -- are all of your witnesses what

2 you would call fact witnesses? Is Ms. Winters a fact

3 witness or is she here to also talk generally about the

4 company's practices?

5 MR. WILEY: Well, I think she's primarily a

6 fact witness, but she is in a vague position for

7 compliance for the Washington operations, so from that

8 standpoint, she might be deemed a policy witness in that

9 role, but she's primarily a fact witness.

10 MR. BEATTIE: Okay.

11 MR. WILEY: Do you want to just see how it

12 goes and then if you have objections we can argue them?

13 MR. BEATTIE: I think that would be

14 acceptable.

15 JUDGE PEARSON: Okay. So I will just say

16 with the caveat that I don't want to harp too much more

17 on this issue about the nature of the visit. I think it

18 was fairly well-established that there was a

19 miscommunication between Staff and the company, and so I

20 don't want to go over tedious details about that. I

21 feel like it's all in the record and I get it.

22 MR. WILEY: Okay. Your Honor, I had

23 intended to have her sponsor the exhibits to the Cullen

24 declaration, which are emails between her and

25 Mr. Gilbert.

0136

1 MR. BEATTIE: Those are already in.

2 JUDGE PEARSON: Those are already in.

3 MR. WILEY: Well, okay. I'm going to refer

4 to a couple of them, but other than that, I will try not

5 a belabor that point. And knowing you, you will let me

6 know if I am.

7 JUDGE PEARSON: I will, yes.

8 MR. WILEY: Okay. Your Honor, if you're

9 ready, I would call Ms. Jude Winters to the stand.

10 JUDGE PEARSON: Okay.

11

12 JUDE WINTERS, witness herein, having been

13 first duly sworn on oath,

14 was examined and testified

15 as follows:

16

17 JUDGE PEARSON: Okay. You may be seated.

18 Just make sure that you speak directly into that

19 microphone.

20

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

22 BY MR. WILEY:

23 Q. Hi, Ms. Winters. Could you please state and

24 spell your -- your name for the record and provide your

25 business address?

0137

1 A. Jude Winters, W-i-n-t-e-r-s, and my address is

2 in Vancouver, Washington. 100 East 19th Street, Suite

3 700.

4 Q. And what is your current title with Professional

5 Transportation, Inc.?

6 A. Compliance manager.

7 Q. Okay. And can you give us just a very brief

8 thumbnail on your background in the industry in terms of

9 when did you first become employed in the transportation

10 industry, by whom, and bring us up to the present real

11 quickly.

12 A. I was employed by Coach America in March of 2010

13 and continued over with PTI when they got the assets and

14 was an assistant branch manager in the Vancouver

15 location.

16 Q. Okay. And when you said "Coach America," that

17 was the predecessor entity to PTI that they purchased

18 assets from?

19 A. Yes.

20 Q. Okay. And so that's about six years in the

21 industry; is that fair?

22 A. Yes.

23 Q. Okay. Would you please describe what your --

24 what your role as assistant branch manager was or is

25 versus your current job?

0138

1 A. Assistant branch manger, hiring drivers, making

2 sure there were enough drivers on the board scheduled,

3 day-to-day operations of making sure everyone was

4 turning in their paperwork, getting paid.

5 Q. And how long did you hold that position, please?

6 A. With PTI, from August 2012 until about spring

7 this year.

8 Q. Okay. And would you describe what your current

9 role is beginning in spring of 2017?

10 A. Compliance manager, I am making sure all the

11 drivers have a DOT medical card on file, making sure

12 that they're don't -- driver qualification files,

13 everything is in there, all the new hires and all the

14 renewals and annuals.

15 Q. Mr. Cullen's declaration speaks of tasking you

16 as the quote/unquote point person beginning in June of

17 2016 after the order was issued in the -- this

18 proceeding; is that correct?

19 A. Yes.

20 Q. And in that role from June 16, two thousand --

21 from June 2016 forward, could you please describe your

22 role in enhancing enforcement compliance with safety

23 regulations in the state of Washington?

24 A. Well, as being the main point of contact for

25 branch managers to turn in their cards, keeping the

0139

1 driver qualifications updated, one point of contact one

2 place, gaining access to the fleet mentor program to

3 make sure all the direct driver qualification files were

4 in there and reaching out to the branches, letting them

5 know a month in advance, a week in advance when their

6 drivers' cards were expiring.

7 Q. And you mentioned the fleet mentor program,

8 we've seen through Mr. Pratt's testimony a reference to

9 a -- your use of a JJ Keller database that allows you to

10 track drivers' files extensively; is that what you're

11 referring to?

12 A. Yes.

13 Q. And can you just in simple fashion tell us what

14 that software program does, please?

15 A. It has areas where you can download the certain

16 files for a driver qualification file, application,

17 initial motor vehicle report, annual list of violations,

18 annual motor vehicle, the DOT cards road test,

19 everything that's needed to keep a driver qualification

20 file.

21 Q. Would you just describe the -- the interaction

22 that you had with branch managers just generally in your

23 compliance role, please?

24 A. I communicate with them daily and they get a 90

25 days' advance notice of when all of their drivers are

0140

1 expiring, and then I send out weekly reports of when

2 they're expiring, put them on a hold where they can't be

3 called out for any trips ten days previous to cards

4 expiring, and keeping up with the branch managers with

5 making sure they know and drivers know the importance of

6 not driving on an expired card.

7 Q. And also, employment applications and other --

8 A. And applications, yeah, all the new hires go

9 through me with applications to make sure everything is

10 in there and all the information is correct.

11 Q. And in the state of Washington, has PTI then

12 separated the compliance function apart from the

13 operations function?

14 A. Correct.

15 Q. Okay. With regard to this current incident, can

16 you tell me if -- if it was you who, in fact, initiated

17 the communication with the WUTC enforcement Staff and

18 give us a little background on how that happened,

19 please?

20 A. It was -- it was Bill Cullen had came to me and

21 said he felt it was time to reach out to the UTC and

22 find out where we're at from where we were and how much

23 more we need to go and what we really need to work on.

24 Q. And, in fact, did you initiate correspondence

25 via email to the -- Francine Gagne to request that

0141

1 assistance?

2 A. Yes, I did.

3 Q. Okay. And there have been some -- I believe you

4 have some exhibits that have been marked as DPX --

5 DP-2X, DP-3X, and DP-5X in -- in -- identified for -- or

6 now in the record. Are these, in fact, examples of the

7 communication that you initiated with the Staff of the

8 WUTC regarding a courtesy audit that you requested be

9 conducted for the middle of February?

10 A. Yes.

11 Q. And by the way, because Mr. Pratt at least

12 initially wasn't certain, can you confirm that that

13 visit, whatever we characterize it, occurred on February

14 14th and 15th of 2017?

15 A. Yes, the initial visit.

16 Q. And where was that, please?

17 A. In the Vancouver Professional Transportation

18 office.

19 Q. And at that time, did you -- had you ordered

20 files and written documents pursuant to the January 30

21 letter from Mr. Gilbert to be reviewed by Mr. Gilbert on

22 his arrival on January 14th?

23 A. Yes.

24 Q. And were those, in fact, files and records

25 sent -- some of them at least, files and records sent

0142

1 from Evansville headquarters for the purpose of the

2 courtesy audit?

3 A. Yes.

4 Q. And can you -- in terms of the events leading up

5 to that February 14 visit, was there any doubt in your

6 mind that it was going to be an informational assistance

7 session with Mr. Gilbert?

8 A. No.

9 Q. And was he very willing to provide that

10 assistance?

11 A. Yes.

12 Q. Okay. And during the time from June of 2016 to

13 February of 2017, did you, in fact, have numerous

14 contacts with the WUTC enforcement personnel regarding

15 questions about rule, application, and compliance?

16 A. Yes.

17 Q. And would you characterize the tenor of those

18 conversations and contacts, please?

19 A. They were very helpful, they were very

20 courteous, they never made me feel like I had a stupid

21 question. They always showed me where to find the

22 answer and gave me a good answer.

23 Q. And could you just list a couple of names of the

24 people you dealt with at that time in that period?

25 A. Francine Gagne and Wayne Gilbert.

0143

1 Q. And how about John Foster, did you also have

2 contact with him?

3 A. I did not, but the previous person that was

4 doing this before -- during that June meeting might

5 have.

6 Q. The -- would you describe the -- the meeting on

7 the 14th of February at least as a give-and-take sort of

8 interchange and dialogue, how would you describe that --

9 that session, please?

10 A. I -- can --

11 Q. Did Mr. Gilbert review files and answer

12 questions?

13 A. He did.

14 Q. And did you have -- were you there alone or were

15 some other people from PTI there?

16 A. There were other people from PTI.

17 Q. Can you identify who some of those people were,

18 please?

19 A. Bill Cullen was there, the vice president at

20 that time, Brad Gilbert was there. He was representing

21 fleet and --

22 Q. Brad Gilbert's not to be confused with Wayne

23 Gilbert. Mr. Brad Gilbert's an employee of PTI,

24 correct?

25 A. Correct, yes. And Tyler Huffman was there also.

0144

1 Q. And Mr. Huffman shows up in some of the email

2 correspondence; does he not?

3 A. Yes.

4 Q. And what is his position?

5 A. Tyler Huffman is senior auditor, internal

6 auditor for PTI.

7 Q. And is he based in Evansville?

8 A. Yes.

9 Q. And can you characterize, please, for us what

10 your commitment is in terms -- you personally in terms

11 of compliance with all of the WUTC safety regulations in

12 your role for PTI?

13 A. I'm committed a hundred percent to make sure PTI

14 is in compliance, and we're always working on ways to

15 better our system on notifying drivers, notifying branch

16 managers, keeping track of records and...

17 Q. And since you've been in your position, have you

18 strengthened those reporting avenues and procedures in

19 working through this new software program as well?

20 A. I believe that we have been able to concentrate

21 on it and better communication with the branches and

22 branch leaders.

23 Q. One final question.

24 I asked Mr. Pratt about the type of drivers that

25 PTI employs, and did you hear his testimony with respect

0145

1 to intrastate, interstate, over-the-road --

2 A. Yes.

3 Q. -- and yard drivers?

4 A. (Witness nodding head.)

5 Q. Do you agree with that characterization in terms

6 of what they do?

7 A. The over-the-road drivers and the DYV and the

8 intrastate and interstate still kind of confuses me a

9 bit.

10 Q. But with respect to the DYV drivers, could you

11 tell us what they do?

12 A. They work in the rail yards transporting the

13 rail crews throughout the rail yards.

14 Q. And is that -- and by the way, do you know if

15 Ms. -- I don't want to get the gender wrong, if

16 Mr. Rowley and Ms. Brown were, in fact, DYV drivers?

17 A. At that time?

18 Q. Yes.

19 A. No.

20 Q. You don't know --

21 A. No. Oh, yes, yes, they are DYV drivers. I'm

22 sorry.

23 MR. WILEY: No further questions.

24 JUDGE PEARSON: Can you tell me what that

25 stands for again?

0146

1 THE WITNESS: Designated yard vans.

2 JUDGE PEARSON: DYV, okay. I couldn't

3 understand that last letter, okay.

4 Mr. Beattie, whenever you're ready.

5 MR. BEATTIE: No, Your Honor. We don't have

6 any questions.

7 JUDGE PEARSON: Okay. I just have a couple

8 of follow-up questions.

9

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

11 BY JUDGE PEARSON:

12 Q. Mr. Howland, is he still with the company?

13 A. No.

14 Q. He was a witness in the --

15 MR. WILEY: You will hear from the

16 management people about that, Your Honor.

17 BY JUDGE PEARSON:

18 Q. Okay. And so is it standard practice to bring

19 out senior management from Indiana for all informal

20 meetings with state regulators?

21 A. No.

22 Q. So why was that decision made in this case?

23 A. I honestly, I couldn't say. I think that -- I

24 couldn't say.

25 Q. Okay. I will save that question.

0147

1 JUDGE PEARSON: Okay. Well, if that's it,

2 then you may step down. Thank you.

3 MR. FASSBURG: Your Honor, we will call Ryan

4 Shoener and Ryan Kassenbrock if we're all in agreement

5 to testify in a panel.

6 MR. BEATTIE: No objection.

7 JUDGE PEARSON: Okay.

8

9 RYAN SHOENER & witnesses herein, having been

10 RYAN KASSENBROCK, first duly sworn on oath,

11 were examined and testified

12 as follows:

13

14 JUDGE PEARSON: You may be seated. Please

15 just make sure that your microphones are turned on. The

16 red light will come on when it's on.

17

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

19

20 MR. FASSBURG: Okay. I will take these one

21 at a time initially so we can have it clear.

22 Mr. Kassenbrock, could you please state your

23 full legal name and spell your last name.

24 MR. KASSENBROCK: Ryan Kassenbrock, last

25 name K-a-s-s-e-n-b-r-o-c-k.

0148

1 MR. FASSBURG: And, Mr. Shoener, will you

2 please do the same.

3 MR. SHOENER: Ryan Shoener, S-h-o-e-n-e-r.

4 MR. FASSBURG: Mr. Kassenbrock, will you

5 please state your position with Professional

6 Transportation.

7 MR. KASSENBROCK: I'm the chief operating

8 officer for Professional Transportation.

9 MR. FASSBURG: And I understand your

10 responsibilities for Professional Transportation are

11 vast, so I would like you to, for the Commission, please

12 describe what your responsibilities are with respect to

13 regulatory compliance and safety.

14 MR. KASSENBROCK: So generally I'm in charge

15 of making sure that the appropriate leadership is in

16 place to ensure compliance.

17 MR. FASSBURG: And, Mr. Shoener, I will ask

18 you the same question.

19 MR. SHOENER: I currently am the vice

20 president of western operations, which is 13 states.

21 One of those being the state of Washington as my

22 territory. I oversee a management team in each of my

23 divisions with a director position equivalent to an AVP

24 in a lot of companies as well as management that goes

25 down into the localized level, including Vancouver as

0149

1 we're discussing here, and then overseeing the drivers

2 and their safety, their compliance to regulations, both

3 federal and state, and then also the operating

4 procedures and expectations for our customers with PTI.

5 And then I interplay with corporate to make sure that

6 we're implementing and training their policies,

7 educating them, and working with their support staff

8 there.

9 MR. FASSBURG: So with respect to your

10 duties, Mr. Shoener, are you more the details person

11 compared to Mr. Kassenbrock's executive position?

12 MR. SHOENER: I would say in terms of field

13 operations, yes. We take what Mr. Kassenbrock outlines

14 for us strategically from corporate and implement it at

15 the ground level tactically and to more detail and

16 oversight to use operationally.

17 MR. FASSBURG: And then back to you,

18 Mr. Kassenbrock. Can you describe for us more of what

19 you do on a day-to-day basis that would pertain to

20 regulatory compliance and safety, for example, you can

21 give us what might occur on an individual day.

22 MR. KASSENBROCK: Yeah, so to elaborate on

23 how I answered the first question. Initially, kind of

24 step back and look at how we design our leadership work

25 around compliance. So the expectations for those

0150

1 leaders. I've put leaders in place that I feel

2 confident are going to ensure compliance, and then from

3 that point, it's setting the expectations and holding

4 people accountable to what I expect the focus needs to

5 be on compliance.

6 So day to day, Ryan and his team have weekly

7 compliance calls with our headquarters. I think it's

8 important to note that a strategic change that we've

9 made is to separate that compliance function, as you

10 heard from Jude, out from the operating route. And that

11 oversight now lies in our headquarters in Evansville

12 working with Jude on the ground.

13 So, you know, once that design has been

14 changed, the accountability then goes weekly with Ryan

15 Shoener and his operating team for execution. I am

16 getting debriefed from a senior director of legal

17 compliance in Evansville on progress towards that

18 compliance goal monthly, and then I'm then reporting to

19 our CEO and principal on progress we're making in the

20 state of Washington.

21 MR. FASSBURG: Now, I understand that a

22 little over a year ago when PTI was involved in a

23 hearing here at the Commission, the COO at that time was

24 Mr. Dave Howland. Can you please explain for the

25 Commission why you are now the COO instead of

0151

1 Mr. Howland?

2 MR. KASSENBROCK: Yeah, Dave unfortunately

3 had a medical condition that forced him to retire early

4 in September of 2016. And so on -- at the end of

5 September, I took over as COO.

6 MR. FASSBURG: Prior to you taking over as

7 COO, were you with Professional Transportation?

8 MR. KASSENBROCK: Yes, I have been with PTI

9 for 18 years now.

10 MR. FASSBURG: What was your position

11 immediately prior to being the COO?

12 MR. KASSENBROCK: I was vice president of

13 administration for PTI.

14 MR. FASSBURG: Now, I understand that in the

15 past PTI had some problems here in Washington with

16 respect to regulatory compliance. Can you describe for

17 us in how many other states PTI operates?

18 MR. KASSENBROCK: We operate in 34 states

19 currently.

20 MR. FASSBURG: Are there any other states

21 that require PTI to comply with the federal motor

22 carrier safety regulations in the same way Washington

23 requires it?

24 MR. KASSENBROCK: No.

25 MR. FASSBURG: Has that required PTI to come

0152

1 up with a system for regulatory compliance specific to

2 the state of Washington?

3 MR. KASSENBROCK: Yes.

4 MR. FASSBURG: How many different states

5 does PTI have to comply with different sets of rules --

6 or let me ask that a little bit more artfully.

7 How many different sets of state rules does

8 PTI have to comply with?

9 MR. KASSENBROCK: Many. I don't know the

10 exact count, but there's variations within states.

11 MR. FASSBURG: Okay. Now, turning to you

12 briefly, Mr. Shoener. I understand that your position

13 is a little different in the company. Does your

14 involvement deal more with the specific region and the

15 state of Washington specifically?

16 MR. SHOENER: It is part of my umbrella of

17 oversight, yes. It is one that falls under my

18 responsibility.

19 MR. FASSBURG: Can you give us a little bit

20 more flavor of how things have been different for you

21 with respect to Washington versus other states.

22 MR. SHOENER: The biggest piece are twofold

23 for us when it comes to the how the state operates.

24 Obviously in terms of how we hire drivers, there's

25 different regulations on hiring in terms of wages and

0153

1 those considerations, which we had those nuances across

2 the -- as a whole. But in terms of compliance and

3 regulation, these are very unique.

4 It comes in terms of how the state

5 requirements are with the amount of oversight that goes

6 into it to the point that we've not only out of the

7 findings from previous pieces of what we found, which is

8 the magnitude of it, that we had specific focus on it to

9 make sure we had all the components, because the details

10 that go into it from the certifications and all the

11 background that goes into that, we have extensive

12 policies within our company as a whole.

13 There's obviously more restrictions that go

14 with that. Or I shouldn't say "restrictions," that's

15 the wrong word, but more requirements that fall under

16 that umbrella for the state of Washington that we want

17 to be in compliance of and we've been going through that

18 process because the uniqueness of it out of the 34

19 states that we operate in.

20 MR. FASSBURG: So as a result of the, I

21 guess, the violations and PTI's effort to eliminate them

22 and become fully compliant with those rules as they

23 apply in Washington more differently than any other

24 states, has PTI, in fact, created a system that focuses

25 specifically on Washington? That could be to either one

0154

1 of you.

2 MR. SHOENER: I would say yes -- I would say

3 yes, we have in terms of the oversight that comes with

4 it. We then incorporated tools that we can use as a

5 company, but it has really grown out of our work here in

6 the state of Washington that we're using to better our

7 system corporately, but is specifically geared around

8 the state of Washington.

9 MR. KASSENBROCK: Yeah, I mean, I would add

10 to that that we have dedicated -- we have created and

11 dedicated positions within the enterprise solely focused

12 on the state of Washington.

13 MR. FASSBURG: Now, Mr. Shoener, when did

14 you assume the position that you're currently in?

15 MR. SHOENER: Late February of 2017 this

16 year.

17 MR. FASSBURG: Is it your understanding that

18 you came on to help ensure PTI's compliance with the

19 rules in Washington?

20 MR. SHOENER: Yes, that was one of my

21 primary expectations, to oversee that my team was

22 meeting those expectations out here.

23 MR. FASSBURG: Now, just as a whole, based

24 on PTI's past performance, how do you feel PTI has been

25 doing in the last year?

0155

1 MR. SHOENER: I would say based on where we

2 were last year and the recommendations that are there, I

3 would say we have made significant efforts both in

4 changing the overall corporate structure to give us

5 direct representation that we need as well as looking to

6 update our systems that we use to track that

7 technologically.

8 We've also incorporated more specific

9 training to our field leaders so they have the exact

10 expectations from that that they had to make sure we're

11 compliant with everything from the weekly interactions

12 we have through phone calls to web training we put

13 together. And that's because of the driver on boarding

14 as well as the manager on boarding at that front level

15 with the state of Washington that we want to make as our

16 best practices. And then corporate has also

17 increased -- I would -- improved their communication to

18 us both in frequency and timelines as I'm sure

19 Ms. Winters outlined for us there.

20 MR. KASSENBROCK: Yeah, I would add that we

21 certainly feel like we're in a completely different

22 place than we were 12 months ago. I feel like we've got

23 the leadership and oversight correct in where it needs

24 to be. We've got the functions split out where the

25 oversight is actually oversight and a separate layer

0156

1 from the operating execution group. So we certainly

2 feel like the systems are in place and the correct

3 people are in place and the correct organization

4 structure in place for us to be in full compliance.

5 MR. SHOENER: I guess one thing I do want to

6 clarify I think pertinent here is Jude is a split role,

7 running a branch operation with the railroad, with the

8 vans to support them primarily as our customer. We're a

9 24/7 operation, 365. I jokingly say we work more than

10 postal workers sometimes and because of that, she was

11 wearing the hat of a 24/7 operator attempting to meet

12 the requirements of our customer and then also adding

13 the expectations of compliance oversight, which we found

14 obviously with a magnitude of weight.

15 The number of drivers we have operating

16 here, we have to give the infrastructure to make sure we

17 good faith are meeting that requirement, and that's

18 where Ryan was able to work with us and allow us to

19 give -- to build up that support group there. To meet

20 our operational components, we also have that specific

21 oversight to that role, which is a big change we made

22 starting back in June and really more clearly defined in

23 the last eight to ten months here.

24 MR. FASSBURG: So just to make sure everyone

25 understands what occurred there with respect to Jude, is

0157

1 it your testimony that she is now dedicated to

2 regulatory compliance whereas she previously had a dual

3 role?

4 MR. SHOENER: Yes, sir.

5 MR. FASSBURG: Now, is there anything else

6 that PTI has done specifically to Washington to ensure

7 regulatory compliance that you can think of off the top

8 of your head? Well, you know what, let me just ask you

9 something a little differently.

10 Has PTI hired anyone outside of PTI to

11 assist with regulatory compliance in Washington?

12 MR. KASSENBROCK: We've hired outside

13 counsel obviously. We believe that they're going to

14 assist us going forward with guidance around compliance.

15 And I think the focus is in the right place for future

16 compliance.

17 MR. SHOENER: I would just add in addition

18 to the spirit of why we're here, I think what led us

19 here is in good faith, we were taking up the

20 recommendations to at least want to partner to the

21 recommendations as the UTC offered to us to give that

22 support, and then we've attempted also to work with them

23 as well, along with bringing on legal counsel in our

24 infrastructure as well. We've attempted to partner with

25 them in good faith to make ourselves better.

0158

1 MR. FASSBURG: Sure. That segues well to

2 what I'll use as my final question to both of you.

3 Do you have any comments about how you feel

4 the meetings with UTC Staff went and what you think

5 should be the result of them?

6 MR. KASSENBROCK: Well, I'll start off by

7 echoing what Jude said initially about how that

8 relationship was functioning, which by all accounts was

9 fantastic. The conversations going back and forth and

10 the partnership leading up to the February meeting was

11 excellent and was playing out just how we thought that

12 was going to play out, which led to us reaching out for

13 that partnership and further guidance on how we can

14 become perfect in complying with the regulations. So,

15 you know, I think leading up to that, it was playing out

16 exactly how we kind of strategically thought it was

17 going to. We made changes and changed our processes,

18 changed our folks in oversight, and then we're going to

19 test that with the partnership of the UTC in that

20 February meeting so...

21 MR. FASSBURG: Do you have anything else to

22 add?

23 MR. SHOENER: I think the only thing is that

24 we want to -- obviously in good faith, we want to

25 continue to work with UTC to make sure that we are in

0159

1 compliance. I think that leading up to that February, I

2 echo everything that's been said. Obviously it puts a

3 significant quandary for why we're here, and we want to

4 find a way to get past this, attempting to come in good

5 faith with full exposure, which has led more concerns

6 for being here. But think I do want it to be known

7 that, you know, going forward we do want to meet the

8 compliance of what's there and better ourselves. That's

9 as a corporate culture we're there, we want to better

10 our systems and continue to work with Staff.

11 Obviously, when you get put in a situation,

12 it will make you take pause to make sure that as to how

13 we go forward and make sure we have clear expectations,

14 both communicated both ways, which I think is the

15 biggest challenge that I've taken from it. But at our

16 core, we want to continue to work with the State and be

17 an operator here because of the vital role we play.

18 MR. FASSBURG: Okay. No further questions.

19 Thank you.

20 JUDGE PEARSON: Okay. Before I turn you

21 over to Mr. Beattie, can you tell me your title again,

22 Mr. Shoener?

23 MR. SHOENER: Sure, vice president of

24 western operations.

25 JUDGE PEARSON: Thank you.

0160

1 MR. BEATTIE: No questions. Thank you.

2 JUDGE PEARSON: Okay.

3

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

5

6 JUDGE PEARSON: So I just have a couple of

7 questions for whoever wishes to answer. I will direct

8 the question that I asked Ms. Winters about if it was

9 PTI's understanding that it was an informal meeting,

10 then I'm curious about the decision to fly people out

11 from Evansville. That makes it seem like you didn't

12 regard it as an informal meeting. So I just want to

13 reconcile that.

14 MR. KASSENBROCK: Yeah, I'll take that. We

15 had pieces of the compliance assigned out to different

16 department folks and so, you know, our fleet department

17 obviously resides in our headquarters in Evansville,

18 Indiana. Tyler Huffman, as the internal auditor, had

19 been building audit processes in our headquarters in

20 Evansville. So it was really from a learning

21 perspective of sending those folks and investing in

22 their travel to come out and participate in that

23 technical assistance.

24 So it was essentially to learn and improve

25 on our processes was the thought behind that. So

0161

1 Mr. Cullen is based in Salt Lake City, and so that was

2 his operation, number one.

3 Number two, he was taking the lead on the

4 compliance at that point. So he was there for that

5 standpoint.

6 JUDGE PEARSON: Okay. Thank you. And then

7 I'm sure you saw the comments filed by the Brotherhood

8 of Locomotive Engineers and the Sheet Metal, Air, Rail,

9 and Transportation. Did you both get a chance to review

10 those comments?

11 MR. KASSENBROCK: Yes.

12 MR. SHOENER: Yes.

13 JUDGE PEARSON: Okay. So I'd just like to

14 hear from you your responses to those comments and if

15 you could address their concerns.

16 MR. KASSENBROCK: I will make a simple

17 statement that the safety of our clients and our

18 employees is paramount always. It's -- safety is at the

19 front of everything that we do, and it's part of who we

20 are. And so that's how we continue to -- we plan to

21 continue and operate going forward in the future so...

22 MR. SHOENER: I think you take the corporate

23 vision that's out there and then from a day-to-day basis

24 we know that -- we coin it that we have precious cargo

25 when we transport. The safety of our drivers and the

0162

1 safety of our people is first and foremost. We have

2 safety expectations and compliance expectations that

3 work with that, and that is the -- who we transport with

4 our primary customers being the class 1 railroads and

5 the Daily T and UTU employees that are in them. And

6 we're committed to operating safely and continuing to

7 improve our processes in any way that's going to help us

8 better that vision of keeping our employees and keeping

9 our passengers safe, and operating in the compliance and

10 the expectations as well of state and federal

11 regulations.

12 JUDGE PEARSON: Okay. Thank you. And then

13 one other question, and I think this is directed to

14 Ms. Winters, but either of you should also be able to

15 answer it. At the end of her testimony, Mr. Wiley made

16 a distinction about the designated yard vans, and so I'm

17 wondering if it's the company's position that drivers

18 who drive those yard vans don't need medical cards?

19 MR. KASSENBROCK: No, that's not our

20 position.

21 MR. SHOENER: No, that's not our position.

22 JUDGE PEARSON: Okay.

23 MR. SHOENER: It's more the scope of what

24 they do and then in a DYV, designated yard van, they

25 can -- a large percentage if not all of their percentage

0163

1 of travel can actually be contained within a yard,

2 private property at times, and not actually on the

3 public highways themselves or public roads. So that's

4 where we distinguish that and was looking at that point

5 where they were actually touching. But at the core,

6 it's the expectation that our drivers meet that

7 requirement to have the correct documentation.

8 JUDGE PEARSON: Okay. So your position is

9 that it was a less dangerous situation than if they'd

10 been on a highway with other motorists?

11 MR. SHOENER: I would not say less dangerous

12 based on what occurs in a yard with transportation

13 operations with a railroad. I would say just the

14 designation of where they were physically operating

15 could be deemed different be it on a public or private

16 property highway. But as far as overall, both have

17 their extensive amount of risks whether you're in rail

18 yard or on highways and any type of roadway.

19 JUDGE PEARSON: Okay. Thank you for

20 clarifying that.

21 Okay. Did you have any follow-up or...

22 MR. FASSBURG: No, we don't have any

23 follow-up questions.

24 JUDGE PEARSON: Okay. Then you may both

25 step down. Thank you.

0164

1 MR. WILEY: Your Honor, I think the panel

2 was a time-saving format.

3 JUDGE PEARSON: Mr. Beattie, did you need a

4 couple minutes or are you...

5 MR. BEATTIE: No.

6 JUDGE PEARSON: Okay. All right. So you

7 can proceed. Are you calling Mr. Pratt, is that what

8 you want to do to get that recommendation?

9 MR. BEATTIE: Yes, please.

10 JUDGE PEARSON: Okay.

11

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

13 BY MR. BEATTIE:

14 Q. Okay. Mr. Pratt, should the Commission impose

15 the $85,000 -- $85,450 suspended penalty from these

16 consolidated dockets?

17 A. Yes, I believe -- I believe they should.

18 Q. Why?

19 A. Well, I will try to keep this succinct. I know

20 there's a lot of moving parts to this. I believe that

21 we're talking about two violations here that triggered

22 the suspended penalty. The penalties are more about the

23 2016 case. Those penalties were for violations that

24 occurred in '16 and the company was given a chance to

25 only pay half that penalty if they would stay in

0165

1 compliance. So to me, it was more about that when we

2 found noncompliance again, it wasn't about we're trying

3 to find 85,000 or $42,000 per violation as Mr. Wiley

4 suggested. It was basically going back and imposing the

5 full penalty on the previous case and the previous

6 violations because they didn't adhere to the terms of

7 that previous case and the order that was there.

8 I think the other part that affected that, my

9 opinion here about that, was also that there were a lot

10 of other critical violations discovered during this

11 nonrated review that we did back in February, and that

12 troubled me that these were violations that did not

13 occur in previous reviews. And so that flavors my

14 opinion too that while the company did improve and

15 obviously instead of having a hundred vehicles

16 noninspected and the other numbers as far as the drivers

17 not having their medical cards, that there are still

18 other violations that had started occurring that weren't

19 in existence before.

20 So it's a combination of those factors that

21 leads me to believe that yes, you should impose this. I

22 chose not to ask the Commission to impose any additional

23 penalties on the new critical violations we found.

24 Again, I thought it was a little bit out of the purview

25 of the suspended penalty so I chose not to.

0166

1 Q. If the Commission declines to impose the

2 suspended penalty, would that have any impact on your

3 program's enforcement generally?

4 A. No.

5 Q. Do you view this case as setting any kind of

6 precedent with respect to suspended penalties?

7 A. No, I believe it just reinforces the practice

8 we've had of if a company has suspended penalties and we

9 discover repeat violations, that we ask for the

10 suspended penalties to be imposed.

11 Q. Anything else?

12 A. No.

13 MR. BEATTIE: Okay. Thank you.

14 JUDGE PEARSON: You look like you want to

15 say something.

16 MR. WILEY: Yeah, Your Honor, just in

17 reference to one of Mr. Pratt's comments if I may. I

18 don't think it is appropriate as to the scope of his

19 recommendation to include therein reference to alleged

20 other violations which were not the subject of Staff's

21 motion, which we expressly indicated in our response we

22 would not address because they hadn't utilized that.

23 And while I believe Mr. Pratt acknowledged that it

24 wouldn't be fair to include that, he did reference that,

25 and I would object to any consideration of those

0167

1 allegations at this stage, Your Honor, in terms of the

2 Staff's motion.

3 JUDGE PEARSON: Okay. That makes sense. I

4 think the order was clear that the imposition of the

5 suspended penalty would be based only on repeat

6 violations. So I will regard that testimony accordingly

7 within the confines of what the previous order stated.

8 So is there anything further?

9 MR. WILEY: Nothing further, Your Honor.

10 JUDGE PEARSON: Okay. So before we go off

11 the record, I will say that rather than -- I know this

12 isn't technically a BAP, but I don't think there's any

13 way I can get the order out in ten days because I would

14 like the transcript. So just in case that provision of

15 the APA applies, I want the parties' agreement to waive

16 that.

17 MR. WILEY: Your Honor, absolutely, and I

18 would note that both Mr. Beattie, Mr. Fassburg, and

19 myself have two briefs, one in a court of appeals case

20 due the next week and another reply brief in a case you

21 know something about, and we would like that reprieved

22 to not have to do any argumentation around that date if

23 you don't mind.

24 JUDGE PEARSON: Sure.

25 MR. BEATTIE: Sure, although I'm not sure

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1 what that's in reference to.

2 MR. WILEY: Well, if we were to do any

3 responses due to the timing, the further out, the better

4 in terms of July schedule.

5 MR. BEATTIE: Okay.

6 JUDGE PEARSON: I think he's referring to

7 some sort of petition for administrative review.

8 MR. BEATTIE: I understand now. Okay. I

9 thought he was suggesting briefs.

10 JUDGE PEARSON: No, I won't accept them

11 anyway.

12 Okay. Thank you all very much for coming

13 today and we are adjourned.

14 (Adjourned at 3:41 p.m.)

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1 C E R T I F I C A T E

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3 STATE OF WASHINGTON

4 COUNTY OF THURSTON

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6 I, Tayler Russell, a Certified Shorthand Reporter

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

8 that the foregoing transcript is true and accurate to

9 the best of my knowledge, skill and ability.

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12 Tayler Russell, CCR 3358

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