

Dispute Resolution Committee Hearings

August 19, 2024

9:00 am The meeting was called to order by Mr. Greenawalt.

Introductions were made, and a roll call was taken.

DRC Members present:

Scott Greenawalt, Chair (OK), Tom McDaniel , Vice-Chair (KY), Teri Agnew (KS), Tracy Voegele (ND), Brian Galarneau (NY), Katherine Ataman (WA), Misti Alvarez (ID), Patrick Harrison (VA), Jackie Polk (Lee Trans), Dennis Vanderslice (Holman)

Not in Attendance:

Matthew Andrechik (PA), Wanda Harrie (NS), Scott Ryan (PE)

Mr. Carmen Martorana, Jr., CEO, IFTA, Inc. determined that there was a quorum to do business.

Mr. John Szilagyi, Director of Support Services, IFTA, Inc. will take notes of these proceedings.

Others in Attendance:

Michael Copeland (OK), Parliamentarian, Paula Cole (ME), Chair, PCRC, Rick LaRose, Deputy Director, IFTA, Inc., , Maria Coronado, Program Compliance Facilitator

The first hearing was called:

PCRC v. State of Maryland

Case Number 20240003

The PCRC issued a Final Determination Finding of Non-Compliance (FDFNC) against the State of Maryland.

The FDFNC alleges that Maryland did not make their (A250) 3% audit requirement and (A260) high/low audit requirements.

The interested parties introduced themselves.

Paula Cole, Chair, PCRC

Attendees from Maryland (via telephone) :

Timothy Bowman, Patrick Dunkes, Edward Wykowski, Lindsay Welsh, Amy Hall, Van Howeth

The Dispute Resolution Committee (DRC) had previously determined that the submission from the PCRC was complete and that notice, and jurisdiction are proper and not contested.

The record states that the allegations above are not contested by the DRC.

Mr. Greenawalt then provided the format of the proceedings. Each party will be allowed to present arguments, witnesses and cross-examination of the testimony. Mr. Greenawalt reminded everyone that the meetings of the committee are informal relative to judicial proceedings and the rules of evidence used in judicial proceedings are not required here. The party bringing the issue against the jurisdiction has to establish the burden of proof based on the preponderance of the evidence. The same burden holds for and any claimed damages and proposed remedial actions will be considered. The committee may move into Executive Session to deliberate on, but not vote on the issues before it. All official motions and subsequent voting on the official notices will take place at the open hearing that is scheduled for 3:30 this afternoon.

Ms. Cole stated the facts of the proceeding. The facts state that the 2019 review Maryland was short 24 audits of the 3% audit requirement. The closing letter states that the shortage must be made up prior to the next review. If the shortage is not made up in addition to the 2024 Review Audit requirements, the jurisdiction will be given a Final Determination Finding of Non-Compliance (FDFNC) and referred to the DRC. In the 2024 review, Maryland was found to be out of compliance with the 3% Audit Requirement by 177 audits. The 2024 review showed that they were also out of compliance with the high distance requirement. The PCRC found the State of Maryland out of compliance for two consecutive review cycles. The FDFNC was issued by the PCRC at their meeting.

Mr. Greenawalt asked the respondent if they have any for the PCRC comments. Mr. Bowman began to offer the mitigating circumstances that led to the shortage. Mr. Greenawalt stopped Mr. Bowman stating that this was only for questions to the PCRC. Mr. Bowman did not have any questions for the PCRC. The DRC Members did not have any questions for the PCRC. Ms. Cole's testimony was concluded.

The State of Maryland was able to provide mitigating circumstances. Maryland is not contesting the audit requirements. Maryland, on 7/19/2024, submitted a written response. Receipt of the letter was confirmed by Mr. Greenawalt and the response was forwarded to the committee members. Mr. Bowman stated that the State of Maryland had made up the 24 audits from the 2019 review. From March 2020 through August 2021, the Governor issued an Executive Order that no audits can be done due to the pandemic. Maryland stated that most of the shortfall was due to the executive order. While Maryland chose to not include 2020 in their audit counts, the majority of the audit shortage is from 2021. Staffing shortages of experienced staff during the pandemic was also a factor. The auditors are responsible for the Motor Fuel Tax as well as IFTA audits. The gas tax holiday also led to staffing issues as auditors were used to issue refunds generated by the tax holiday for the Motor Fuel Tax. Once the shortage was realized, Maryland hired additional auditors. Currently, Maryland has 2 supervisors and 7 auditors on the payroll. The staff has been tasked with focusing on the IFTA audits rather than Motor Fuel Tax. 175 IFTA audits have been completed during 2024 to date. The 3% requirement for 2024 is 170. Maryland stated that they are on track to complete their requirements for this year and making up past shortages by the end of 2025.

The PCRC and Committee members were asked if they had any questions for Mr. Bowman.

Mr. Vanderslice asked Maryland when they thought they could make up the shortage by the year 2025. Mr. Bowman responded that he believed that the entire shortage could be made up by the end of 2025.

Mr. Greenawalt asked Mr. Bowman if the payroll costs had been supplied to the Committee. Mr. Bowman stated that the costs had been sent.

Ms. Polk asked Ms. Cole if the audits were made up from 2019. Ms. Cole responded that the reviews are looked at in totality during the 5-year review process.

No further questions were offered.

A motion was made by Ms. Voegle to continue the Maryland proceedings. The motion was seconded by Mr. Harrison. The motion was carried unanimously.

PCRC v. State of Connecticut

Case Number 20240002

Mr. Greenawalt called the case. The FDFNC alleges that Connecticut did not make their (A250) 3% audit requirement and (A260) high/low audit requirements.

Mr. Michael Romeo (respondent) represented the State of Connecticut and Ms. Paula Cole (complainant) were introduced.

The Dispute Resolution Committee (DRC) had previously determined that the submission from the PCRC was complete and that notice, and jurisdiction are proper and not contested.

The PCRC representative stated the facts of the dispute. During the 2019 review cycle, Connecticut was cited for not achieving the 3% audit requirement. There was a shortage of 41 audits. The closing letter from the 2019 review stated that failing to make up the shortage from 2019 in addition to the 3% requirement in the 2024 review would require the PCRC to issue a FDFNC and to appear before DRC. A shortage of 118 audits was found during the 2024 review cycle. 2024 Review also found that Connecticut did not complete their high-distance requirement. The PCRC found the State of Connecticut out of compliance for two consecutive review cycles. The FDFNC was issued by the PCRC at their meeting.

Questions from DRC

Mr. Vanderslice asked what would have happened if they chose to remove 2020 audits from the requirement. Ms. Cole stated that she did have that information available at the moment.

Ms. Alvarez stated that Connecticut had an overage in 2020. Ms. Cole agreed with that statement.

Mr. Romeo did not have questions for the PCRC.

Mr. Martorana confirmed that Connecticut included 2020 audits for their review cycle and did have an overage.

Mr. Romeo addressed the committee. The formal response from Connecticut dated 8/1/2024 stated mitigating reasons. Also included in the response were the payroll and fringe benefit statements. The DRC Chair did confirm receipt of the documents.

There are two mitigating circumstances that led to the shortage in the 3% audit requirement. The first was the loss of experienced IFTA auditors and the second was the implementation of new tax systems. Implementation of the new IPC system led to auditors being pulled away from auditing to assist in implementing the new system. Auditors were used to assist in the registration onto the IPC platform. In 2017, the entire IFTA audit staff and managers were lost to retirements. To combat the loss of the auditors, Motor Fuel auditors were brought in to perform IFTA audits. At this time, additional auditors were being hired to fill the vacant positions.

During the first half of the 2019-2024 review cycle, Connecticut was ahead of the 3% requirement and was well on the way to making up the backlog from the previous review cycle. In 2021 auditor that was recently hired left for another position within state service and there was only 1 IFTA auditor left. In 2021 Connecticut was implementing a new FAST system which required the auditor supervisor and audit trainer to assist in the implementation of the new system. Connecticut included the audit count from 2020 as that was one of their highest production years in the review cycle. Hiring difficulties and the training program, which requires new hires to spend 6 months in the Taxpayer Services Division, led to a slowdown of completed audits in 2021. During 2022, Connecticut hired 2 new auditors. These auditors attended the Audit Workshop as part of their training program. 3 full-time IFTA auditors are currently on staff. Having only new auditors, Connecticut was not able to schedule high distance audits. The facts are not being disputed. Staffing levels are increased and are on pace to make the make up the audits in the next review cycle.

Mr. Romeo concluded his testimony. Ms. Cole did not have any questions for Mr. Romeo. Ms. Ataman asked what the training program is in Connecticut. Mr. Romeo stated that the training program is a 2-year program, and they are at approximately 50 audits completed to date with the average requirement of approximately 75 audits per year to reach the 3% requirement.

Motion to continue the proceedings against Connecticut was made by Ms. Alvarez. Mr. Galarneau seconded the motion. The motion was carried unanimously.

10:00 am the meeting was called back into session.

PCRC v. Commonwealth of Massachusetts

Case Number 20240001

The FDFNC alleges that Massachusetts did not make their (A250) 3% audit requirement and (A260) high/low audit requirements.

The interested parties introduced themselves.

Paula Cole (complainant)

Representing Massachusetts were Amie Acevedo, Steve Adamek, Marikae Toye, Michael Fatale

The Dispute Resolution Committee (DRC) had previously determined that the submission from the PCRC was complete and that notice, and jurisdiction are proper and not contested.

Mr. Greenawalt then provided the format of the proceedings. Each party will be allowed to present arguments, witnesses and cross-examination of the testimony. Mr. Greenawalt reminded everyone that the meetings of the committee are informal relative to judicial proceedings and the rules of evidence used in judicial proceedings are not required here. The party bringing the issue against the jurisdiction has to establish the burden of proof based on the preponderance of the evidence. The same burden holds for and any claimed damages and proposed remedial actions will be considered. The committee may move into Executive Session to deliberate on, but not vote on the issues before it. All official motions and subsequent voting on the official notices will take place at the open hearing that is scheduled for 3:30 this afternoon.

Ms. Cole stated the facts of the proceeding. The facts state that the 2019 review Massachusetts was short 73 audits of the 3% audit requirement. Also, they were 43 short on their high distance requirement. The closing letter states that the shortage must be made up prior to the next review. If the shortage is not made up in addition to the 2024 Review Audit requirements, the jurisdiction will be given a Final Determination Finding of Non-Compliance (FDFNC) and referred to the DRC. In the 2024 review, Massachusetts was found to be out of compliance with the 3% Audit Requirement with a shortage of 255 audits, the high distance requirement by 76 audits, and the low distance requirement by 22 audits. The PCRC found the State of Massachusetts out of compliance for two consecutive review cycles. The FDFNC was issued by the PCRC at their meeting.

The respondent did not have any questions for the PCRC.

DRC had no questions for Ms. Cole.

Massachusetts response:

Massachusetts did not contest the findings. Mr. Adamek stated that staffing issues and COVID were the chief contributors to the shortfall. Retirement of IFTA auditors and the time required to replace and train the new hires affected the audit output. Auditors were required to assist in the operations section due to staffing shortages in the administrative areas.

Ms. Acevedo stated that Massachusetts had sent an action item of fixes. Massachusetts has changed to a 4-quarter audit, rather than an 8-quarter audit. This change has decreased the amount of time required to complete audits. This change has led to an increase in the audit count and Massachusetts is on track to increase their audit output by 25% over previous years. Staffing has been increased. Cross-trained auditors from other sections are being brought in to produce IFTA audits. Massachusetts is working with FAST to implement Records Reviews to help increase audit count. Massachusetts is using a systematic approach to increase scheduling audits to get the auditors their caseloads in a more efficient manner.

Mr. Adamek stated that Massachusetts is looking for the opportunity to make up any backlog.

This concluded Massachusetts testimony.

Ms. Cole did not have any questions for the respondent.

Ms. Polk asked if Massachusetts has their current audit numbers. Ms. Acevedo say that there are currently 50 closed audits, 10 active audits and more being scheduled.

Ms. Ataman asked if the staffing level is full. Massachusetts stated that they have 4 auditors and 1 supervisor but fully staffed at 7 auditors and 1 supervisor.

No further questions were offered.

Motion to move into executive session. The motion was made by Mr. Galarneau, second by Ms. Alvarez. The vote was unanimous.

Proceeding have been continued to Executive Session. To reconvene at 3:30 pm.

3:00 readjourned

The orders have been written.

Motion 1 State of Massachusetts

Patrick will present the motion.

Mr. Greenawalt read the order to the committee. The committee offered edits to the order.

Motion 2 State of Connecticut

Katherine will present the motion when the open session reconvenes. Mr. Greenawalt read the order to the committee. The order is similar to the Massachusetts order except for the dollar amounts that are owed.

Motion 3 State of Maryland

Brian will present the motion. The committee reviewed the order and offered edits. The motion is similar to the Massachusetts motion except for the dollar amounts owed.

Motion to end executive session by Teri Agnew, seconded by Tracy Voegelé. Unanimous vote. Executive session is closed.

Orders have been forwarded to IFTA, Inc. for inclusion in the record.

Open session was called to order at 3:30

Roll was taken:

Scott Greenawalt, Tom McDaniel, Teri Agnew, Tracy Voegele, Misti Alvarez, Katherine Ataman, Brian Galarneau, Patrick Harrison, Jackie Polk, Dennis Vanderslice were present

Mr. Greenawalt thanked the respondents. And explained the proceedings of the Executive Session. Discussions included disgorgement, and how to fairly determine disgorgement. Discussions also included restitution and punitive damages. Mitigating circumstances were discussed during the executive session.

Case # 2024001 – PCRC v Commonwealth of Massachusetts

(See Attachment 2 for the complete order)

Mr. Harrison presented the motion. Tracy Voegele seconded the motion. The order will be added to this record. The motion was read by the chair. The highlights include \$3 Million in disgorgement. The respondent will make up deficiencies by 12/31/2025. Additional punitive damages in the amount of \$300K. IFTA will withhold Funds Netting payments until paid in full. The Chair asked the Committee and then the parties if there were any additional discussion or debate.

No further discussion was had. The vote was unanimously in favor.

2024002 – PCRC v State of Connecticut *(See Attachment 1 for the complete order)*

Ms. Ataman presented the motion. Teri Agnew seconded the motion. The motion will be added to this record. The motion was read by the chair. The highlights include \$1 Million in disgorgement. The respondent will make up deficiencies by 12/31/2025. Additional punitive damages in the amount of \$151K. IFTA will withhold Funds Netting payments until paid in full. The Chair asked the Committee and then the parties if there were any additional discussion or debate.

No further discussion was had. The vote was unanimously in favor.

2024003 – PCRC v State of Maryland (***See Attachment 3 for the complete order***)

Mr. Galarneau presented the motion. Misti Alvarez seconded the motion. The motion will be added to this record. The motion was read by the chair. The highlights include \$1 Million in disgorgement. The respondent will make up deficiencies by 12/31/2025. Additional punitive damages in the amount of \$201K. IFTA will withhold Funds Netting payments until paid in full. The Chair asked the Committee and then the parties if there were any additional discussion or debate.

No further discussion was had. The vote was unanimously in favor.

Mr. Greenawalt stated that the formal order will be issued within 30 days. At that point, any appeals may be made.

Motion to adjourn the meeting was made by Misti Alvarez , seconded by Katherine Ataman. The meeting was adjourned.

ATTACHMENT 1

**PROGRAM COMPLIANCE
REVIEW COMMITTEE**

VS.

THE STATE OF CONNECTICUT

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DRC2024-002

ORDER OF THE DISPUTE RESOLUTION COMMITTEE

The Dispute Resolution Committee Finds and Concludes:

1. Respondent failed to meet the required number of audits for the 2014-2018 and 2019-2023 audit cycles and finds Respondent out of compliance with Section A250 of the IFTA Audit Manual.
2. Respondent failed to meet the high/low distance audit requirement for the 2014-2018 and 2019-2023 audit cycles and finds the Respondent out of compliance with Section A260 of the IFTA Audit Manual.
3. Respondent unjustly benefited from non-compliance and caused damages to fellow jurisdictions and IFTA Inc.
4. Respondent's repeated and prolonged non-compliance warrants punitive actions.

The Dispute Resolution Committee Hereby Orders:

1. Respondent is ordered to disgorge \$1,044,031.77 in unjust benefits received by virtue of not conducting the required number of audits.
2. Respondent is ordered to complete its "deficit" audits (detailed in the FDFNC) by 12/31/25 in addition to the 3% requirement contained in the Agreement.
3. Respondent is ordered to pay a punitive fine in the amount of \$159,000. For every audit not completed by the 12/31/25 deadline, the jurisdiction shall pay an additional fine of \$1,000 for each "make-up" audit not completed. Additional sanctions, including but not limited to, those specified in Section V of the DRP will be considered by the DRC for continued noncompliance.
4. Respondent is ordered to follow an enhanced compliance plan and provide quarterly audit production reports to the PCRC on a quarterly basis. The respondent will, in each quarter, complete a proportionate share of their required audits plus $\frac{1}{4}$ of the audit deficit and report their production statistics to the PCRC.
5. The PCRC is ordered to monitor Respondent's compliance until the DRC deems the jurisdiction to be back in compliance with both A250 and A260 of the Audit Manual.
6. IFTA Inc. is ordered to withhold clearinghouse payments to Respondent until the disgorgement and penalty amounts are collected and distributed to the jurisdictions.
7. The Parliamentarian is directed to submit a draft an order which will include a more detailed findings of fact, conclusions of law, and orders of the Committee to the DRC within 15 days of this order passing. This order will become effective when that draft is adopted as the complete order of the DRC.

Attachment 2

**PROGRAM COMPLIANCE
REVIEW COMMITTEE**

VS.

THE STATE OF MASSACHUSETTS

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DRC2024-001

ORDER OF THE DISPUTE RESOLUTION COMMITTEE

The Dispute Resolution Committee Finds and Concludes:

1. Respondent failed to meet the required number of audits for the 2014-2018 and 2019-2023 audit cycles and finds Respondent out of compliance with Section A250 of the IFTA Audit Manual.
2. Respondent failed to meet the high/low distance audit requirement for the 2014-2018 and 2019-2023 audit cycles and finds the Respondent out of compliance with Section A260 of the IFTA Audit Manual.
3. Respondent unjustly benefited from non-compliance and caused damages to fellow jurisdictions and IFTA Inc.
4. Respondent's repeated and prolonged non-compliance warrants punitive actions.

The Dispute Resolution Committee Hereby Orders:

1. Respondent is ordered to disgorge \$3,896,281.31 in unjust benefits received by virtue of not conducting the required number of audits.
2. Respondent is ordered to complete its "deficit" audits (detailed in the FDFNC) by 12/31/25 in addition to the 3% requirement contained in the Agreement.
3. Respondent is ordered to pay a punitive fine in the amount of \$328,000. For every audit not completed by the 12/31/25 deadline, the jurisdiction shall pay an additional fine of \$1,000 for each "make-up" audit not completed. Additional sanctions, including but not limited to, those specified in Section V of the DRP will be considered by the DRC for continued noncompliance.
4. Respondent is ordered to follow an enhanced compliance plan and provide quarterly audit production reports to the PCRC on a quarterly basis. The respondent will, in each quarter, complete a proportionate share of their required audits plus $\frac{1}{4}$ of the audit deficit and report their production statistics to the PCRC.
5. The PCRC is ordered to monitor Respondent's compliance until the DRC deems the jurisdiction to be back in compliance with both A250 and A260 of the Audit Manual.
6. IFTA Inc. is ordered to withhold clearinghouse payments to Respondent until the disgorgement and penalty amounts are collected and distributed to the jurisdictions.
7. The Parliamentarian is directed to submit a draft of an order which will include a more detailed findings of fact, conclusions of law, and orders of the Committee to the DRC within 15 days of this order passing. This order will become effective when that draft is adopted as the complete order of the DRC.

Attachment 3

**PROGRAM COMPLIANCE
REVIEW COMMITTEE**

DRC2024-003

VS.

THE STATE OF MARYLAND

ORDER OF THE DISPUTE RESOLUTION COMMITTEE

The Dispute Resolution Committee Finds and Concludes:

1. Respondent failed to meet the required number of audits for the 2014-2018 and 2019-2023 audit cycles and finds Respondent out of compliance with Section A250 of the IFTA Audit Manual.
2. Respondent failed to meet the high/low distance audit requirement for the 2014-2018 and 2019-2023 audit cycles and finds the Respondent out of compliance with Section A260 of the IFTA Audit Manual.
3. Respondent unjustly benefited from non-compliance and caused damages to fellow jurisdictions and IFTA Inc.
4. Respondent's repeated and prolonged non-compliance warrants punitive actions.

The Dispute Resolution Committee Hereby Orders:

1. Respondent is ordered to disgorge \$1,269,600 to the Jurisdictions in unjust benefits received by virtue of not conducting the required number of audits.
2. Respondent is ordered to complete its "deficit" audits (detailed in the FDFNC) by 12/31/25 based on its representations to the Committee during the hearing.
3. Respondent is ordered to pay a punitive fine in the amount of \$201,000.00.
4. Respondent is ordered to follow an enhanced compliance plan and provide quarterly audit production reports to the PCRC on a quarterly basis. The respondent will, in each quarter, complete a proportionate share of their required audits plus $\frac{1}{4}$ of the audit deficit and report their production statistics to the PCRC. For every audit not completed by the 12/31/25 deadline, the jurisdiction shall pay an additional fine of \$1,000 for each "make-up" audit not completed. Additional sanctions, including but not limited to, those specified in Section V of the DRP will be considered by the DRC for continued noncompliance.
5. The PCRC is ordered to monitor Respondent's compliance until the DRC deems the jurisdiction to be back in compliance with both A250 and A260 of the Audit Manual.
6. IFTA Inc. is ordered to withhold clearinghouse payments to Respondent until the disgorgement and penalty amounts are collected and distributed to the jurisdictions.
7. The Parliamentarian is directed to submit a draft an order which will include a more detailed findings of fact, conclusions of law, and orders of the Committee to the DRC within 15 days of this order passing. This order will become effective when that draft is adopted as the complete order of the DRC.