October 16, 2014

Steven V. King, Executive Director and Secretary

Washington Utilities and Transportation Commission

1300 S. Evergreen Park Dr. SW

P. O. Box 47250

Olympia, Washington 98504-7250

RE: *Washington Utilities and Transportation Commission v. PMC Moving, LLC*

Commission Staff’s Response to Application for Mitigation of Penalties

Docket TV-143221

Dear Mr. King:

On September 18, 2014, the Washington Utilities and Transportation Commission (commission) issued Penalty Assessment TV-143221 against PMC Moving, LLC (PMC Moving) in the amount of $5,900, for one violation of WAC 480-15-560, which requires household goods carriers to comply with CFR Part 396 – Inspection, repair and maintenance, and 58 violations of Washington Administrative Code (WAC) 480-15-570, which requires household goods carriers to comply with parts of Title 49, Code of Federal Regulations (CFR), including Part 391 - Qualification of drivers as follows:

* **$100 for one violation of WAC 480-15-560 – Using a commercial motor vehicle not periodically inspected.**  None of PMC Moving’s three vehicles received a periodic inspection in the past 12 months. This is a critical regulation but these are first-time violations, so the Commission assessed a penalty of $100 for one violation of this type. Future violations of this regulation will result in penalties assessed for each violation.
* **$5,800 for** **58 violations of WAC 480-15-570 – Using a driver not medically examined and certified**. PMC Moving’s three drivers drove a total of 58 days without medical certification. These are first-time violations, but the Commission grants no leeway with this type of violation.

On October 6, 2014, PMC Moving filed with the commission its application for mitigation of penalties (Mitigation Request). John Lutz, owner of PMC Moving, admitted the violations but asked that the penalty amount be reduced for the reasons set out in the response.

PMC Moving operates as a household goods carrier under permit number THG-64060. On July 29, 2014, Motor Carrier Safety Inspector Alan Dickson conducted a compliance review inspection at the carrier’s terminal. Compliance reviews are an in-depth examination of the motor carrier's compliance with regulations that the FMCSA has identified as “acute” or “critical.”[[1]](#footnote-1) Acute regulations are identified where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall safety posture of the motor carrier. Violations of critical regulations are generally indicative of breakdowns in a carrier's management controls. Non-compliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and usually higher than average accident rates.[[2]](#footnote-2) Mr. Dickson found 168 total violations, all of which were first-time violations.

The commission’s Enforcement Policy, however, provides that some commission requirements are so critical to safe operations that the commission may issue penalties for a first-time violation, even if staff has not previously provided technical assistance on specific issues.[[3]](#footnote-3) Of the 168 violations found, 61 were of critical regulations.

In the Mitigation Request, Mr. Lutz requests a significant reduction in the assessed penalty based on the following factors. Staff’s response to each factor is included below:

**PMC Moving Mitigation Request**: The commission’s January 2011 Household Goods training did not emphasize that all drivers are required to be medically certified for local moving companies.

**Staff Response**: As indicated in the penalty assessment, John Lutz and John Donohue, PMC Moving’s owners, both attended the Commission’s household goods industry training. Both Mr. Lutz and Mr. Donohue verified receiving this training, including specific information on qualification of drivers, by initialing the enclosed “Verification of Training Received” form at the training.[[4]](#footnote-4) As a regulated household goods moving company, it is Mr. Lutz’s responsibility to be familiar with, and remain educated about, all laws, rules and requirements. Staff recommends no mitigation.

**PMC Moving Mitigation Request:** One of the company’s drivers, Tyler Prall, only drove 10 days in June 2014 instead of the 21 days reported by Mr. Dickson.

**Staff Response**: Prior to the compliance review, Mr. Dickson requested the specific records that he would review during the compliance review, including driver hours of service records for each PMC Moving employee. Based on the documents Mr. Dickson was provided, it appeared that Mr. Prall drove on 21 days during June 2014.[[5]](#footnote-5) In the Mitigation Request, Mr. Lutz did not provide any evidence that supports his claim that Mr. Prall only drove on 10 of those days. Staff recommends no mitigation.

**PMC Moving Mitigation Request –** All of PMC Moving’s drivers have been medically examined as of October 1, 2014.

**Staff Response**: Staff appreciates that Mr. Lutz is working on complying with driver medical certification requirements. However, confusion about the requirements is not a mitigating factor. As a regulated household goods moving company, it is Mr. Lutz’s responsibility to be familiar with, and remain educated about, all laws, rules and requirements. PMC Moving’s drivers were not medically certified as required at the time of the compliance review; therefore, no mitigation is appropriate.

Mr. Lutz did provide copies of current medical reports for all three of his drivers. Unfortunately, these reports do not meet the requirements for medical certification. In order for medical certifications to be valid, commercial motor vehicle drivers must be examined and certified by a practitioner listed on the National Registry of Certified Medical Examiners (National Registry).[[6]](#footnote-6) Only medical examiners that have completed training and successfully passed a test on the Federal Motor Carrier Safety Administration's physical qualification standards are listed on the National Registry.

Mr. Dickson informed Mr. Lutz of the National Registry requirements when they spoke on October 1st. However, none of the three practitioners who evaluated PMC Moving’s drivers was on the National Registry. This means PMC Moving’s drivers are currently not medically certified and continue to be in violation of WAC 480-15-570.

**PMC Moving Mitigation Request** - PMC Moving provided a compliance plan within 15 days as requested.

**Staff Response**: The compliance review took place on July 29, 2014. Mr. Dickson met with PMC Moving for a closing interview on August 27, 2014. The violations were discussed and Mr. Lutz was told to submit a compliance plan to the commission within 15 days (by September 11, 2014). Mr. Lutz’s compliance plan was not post-marked until September 12, 2014.[[7]](#footnote-7) No mitigation is appropriate.

**PMC Moving Mitigation Request** - The company’s vehicles have now been inspected and certified.

**Staff Response**: Vehicle inspections are required annually. This information was covered in the commission’s Household Goods Mover training and Mr. Lutz initialed the verification form acknowledging that he received training. At the time of the compliance review, the vehicles were not inspected as required. Mr. Lutz did not provide any new information or support for why the penalties should be mitigated. Staff recommends no mitigation.

As stated in the penalty assessment, the commission could have assessed up to $6,100 in penalties against PMC Moving for the violations found in the compliance review. Instead, based on the specific factors outlined in the penalty assessment, the commission assessed $5,900 in penalties. In its Mitigation Request, PMC Moving did not provide any new information that supports further mitigation of the penalty; therefore, staff recommends the request be denied. Staff does not oppose payment arrangements on the penalty amount.

If you have any questions, please contact Betty Young, Compliance Investigator, Transportation Safety, at 360-664-1202, or by e-mail at [byoung@utc.wa.gov](mailto:byoung@utc.wa.gov).

Sincerely,

David Pratt

Assistant Director, Transportation Safety

Enclosures

1. Code of Federal Regulations, [Appendix B to Part 385—Explanation of safety rating process](http://www.fmcsa.dot.gov/regulations/title49/section/385.Appendix%20B%20to%20Part%20385) [↑](#footnote-ref-1)
2. *Id.* [↑](#footnote-ref-2)
3. Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V. [↑](#footnote-ref-3)
4. Verification of Training Received form, enclosed. [↑](#footnote-ref-4)
5. PMC Employee Hours Log June 2014, enclosed. [↑](#footnote-ref-5)
6. CFR 391.43 – Medical examination, certificate of physical examination. [↑](#footnote-ref-6)
7. PMC Moving’s compliance plan, enclosed. [↑](#footnote-ref-7)