



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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June 15, 2018

Mark L. Johnson, 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. RELO6 LLC, d/b/a Two Men and a Truck*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TV-180394

Dear Mr. Johnson:

On March 5, 2018, Motor Carrier Safety Investigator Wayne Gilbert completed a routine safety investigation of RELO6 LLC, d/b/a Two Men and a Truck (RELO6 or company). A safety investigation is an in-depth examination of the motor carrier's compliance with regulations that the Federal Motor Carrier Safety Administration (FMCSA) has identified as "acute" or "critical."¹ Acute regulations are identified where non-compliance is so severe as to require immediate corrective action 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 unusually higher than average accident rates.² Mr. Gilbert documented 86 violations of critical regulations, all of which were first-time violations, resulting in a conditional safety rating.

The Washington Utilities and Transportation Commission's (Commission) Enforcement Policy provides that some requirements are so essential to safe operations that it may issue penalties for a first-time violation, even if Commission staff (staff) has not previously provided technical

¹ Code of Federal Regulations, Appendix B to Part 385—Explanation of safety rating process

² *Id.*

assistance on specific issues. The Commission will assess penalties for any repeat violations of critical regulations, including for each occurrence of a repeat violation.³

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation of Washington Administrative Code (WAC) 480-15-570. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On May 24, 2018, the Commission issued a penalty assessment under Docket TV-180394 against RELO6 in the amount of \$8,600 for 86 critical violations of WAC 480-15-570, Driver Safety Requirements, which requires household goods carriers to comply with Title 49 Code of Federal Regulations (CFR) Part 391 – Qualifications of Drivers; as follows:

- **Eighty-six violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** RELO6 allowed employees Thomas Darneille and Stephen Erickson to drive on 86 separate occasions while the employees' medical certificates were expired. The violations occurred during a five month period between October 22, 2017, and February 2, 2018.

On June 4, 2018, RELO6 filed with the Commission its application for mitigation of penalties. Richard Clendenen, owner of RELO6, admitted the violations and requested that the penalties be reduced for reasons set out in his response. Staff's response to the mitigation request is below.

- **Mitigation Request: Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** In the company's request for mitigation, Mr. Clendenen stated that his human resources manager had the responsibility to ensure driver medical certificates were current. The manager left the company in September 2017, before scheduling medical examinations. The company, itself, identified the violations prior to Mr. Gilberts visit, and corrected the violations immediately. In addition, Mr. Clendenen stated that all of its drivers now have current medical certificates, and the company re-assigned the duty of tracking medical certificate expirations to its operations manager.

Staff response: It is the company's responsibility to ensure that its drivers have current medical certificates and that it not allow its drivers to operate a commercial motor vehicle without a valid medical certificate. RELO6 acknowledged its responsibility to understand and comply with applicable motor carrier safety regulations on its application signed December 5, 2016.

The company promptly corrected these first-time violations and has established new procedures to prevent future occurrences of this fundamental safety requirement. The assessed penalty is \$8,600 for 86 occurrences of this violation. Staff recommends the penalty be reduced by half, for a total of \$4,300.

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RELO6 is a small company with eight drivers and seven commercial motor vehicles. The company reported \$1,860,198 in gross revenue and 93,884 miles traveled in 2017.

Staff recommends that the penalty of \$8,600 be reduced to \$4,300.

If you have any questions, please contact Brian Braun, Compliance Investigator, Consumer Protection, at 360-664-1129, or by e-mail at brian.braun@utc.wa.gov.

Sincerely,



Bridgit Feeser
Assistant Director, Consumer Protection