

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**NOTICE OF PENALTIES INCURRED AND DUE
FOR VIOLATIONS OF LAWS AND RULES**

**PENALTY ASSESSMENT: TV-180797
PENALTY AMOUNT: \$400**

Eric's Small Moves and Delivery, LLC
111 1st Ave South Apt. 408
Seattle, WA 98104

The Washington Utilities and Transportation Commission (Commission) believes that Eric's Small Moves and Delivery, LLC (Eric's Small Moves or Company) has committed violations of Washington Administrative Code (WAC) 480-15-555 Criminal Background Checks for Prospective Employees, and WAC 480-15-560 Equipment Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 396 – Inspection, Repair, and Maintenance.

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

In September 2018, Commission Motor Carrier Investigator Edward Steiner completed a routine safety investigation of Eric's Small Moves and documented the following violations:

- **Three violations of WAC 480-15-555 – Criminal Background Checks for Prospective Employees.** The Company failed to conduct and maintain copies of criminal background checks for employees Jesse Heater, Chandler Setterlund, and Will Vandagriff.
- **One violation of Title 49 CFR Part 396.17(a) – Periodic Inspection.** The Company used a commercial motor vehicle that was not periodically inspected.

The Commission considered the following factors in determining the appropriate penalty for the violation:

1. **How serious or harmful the violations is to the public.** The violations noted are serious and potentially harmful to the public. Household goods moving companies that hire workers without conducting required background checks put their customers and their belongings at risk. In addition, companies that fail to conduct and document periodic vehicle inspections put the traveling public at risk. Both categories of violations present serious safety concerns.
2. **Whether the violations were intentional.** Considerations include:
 - Whether the Company ignored Commission staff's previous technical assistance; and

- Whether there is clear evidence through documentation or other means that shows the Company knew of and failed to correct the violations.

The Commission granted Eric's Small Moves a provisional operating permit on December 13, 2016. Company representatives attended household goods training on February 22, 2017. In its application for provisional operating authority filed November 10, 2016, the Company acknowledged its responsibility to understand and comply with applicable state and federal safety requirements.

3. **Whether the Company self-reported the violation.** The Company did not self-report the violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative with staff, although difficult to contact via phone.
5. **Whether the Company promptly corrected the violation and remedied the impacts.** The Company did not promptly take correct the violations or remedy the impacts.
6. **The number of violations.** Staff identified four violation types with six individual occurrences.
7. **The number of customers affected.** The Company reported 12,000 miles traveled in 2017. A significant number of customers, as well as members of the traveling public, were potentially affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if Eric's Small Moves is likely to repeat these safety violations.
9. **The Company's past performance regarding compliance, violations, and penalties.** This is Eric's Small Move's first safety investigation. The Company has had no previous violations or penalties.
10. **The Company's existing compliance program.** Eric Burgemeister, Manager and co-owner, is responsible for the carrier's safety and compliance program.
11. **The size of the Company.** Eric's Small Moves is a small company with one driver and one vehicle. The Company reported a gross revenue of \$59,929 for 2017.

The Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue mandatory penalties for each occurrence of a first-time violation.¹ The Commission will generally assess penalties per type of violation, rather than per occurrence, for first-time violations of those critical regulations that do not meet the requirements for mandatory penalties. The Commission will assess penalties for any equipment violation meeting the Federal Motor Carrier Safety Administration's "out-of-service"

¹ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

criteria and also for repeat violations of critical regulations found in future compliance investigations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Eric's Small Moves \$400 for violations of WAC 480-15-555 Criminal Background Checks for Prospective Employees, and WAC 480-15-560 Equipment Safety Requirements, which adopts Title 49 CFR Part 396, calculated as follows:

- Three violations of WAC 480-15-555 – Criminal background checks for prospective employees. The Commission assesses a penalty of \$300 for these violations.
- One violation of Title 49 CFR Part 396.17(a) – Periodic Inspection. The Commission assesses a penalty of \$100 for this violation.

This information, if proven at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Or, if there is a reason for any or all of the violations that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of the penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request to contest the violation(s) or for mitigation of the penalty must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. *See* RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation(s) or application for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Contest the occurrence of the violation(s).
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and submit it electronically through the Commission's web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250.

If you do not act within 15 days, the Commission may take additional enforcement action, including but not necessarily limited to suspending or revoking your certificate to provide regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Olympia, Washington, and effective October 9, 2018.

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-180797

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed. I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

1. **Payment of penalty.** I admit that the violations occurred and enclose \$ _____ in payment of the penalty.

2. **Contest the violations.** I believe that the alleged violations did not occur for the reasons I describe below (**if you do not include reasons supporting your contest here, your request will be denied**):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide above.

3. **Application for mitigation.** I admit the violations, but I believe that the penalty should be reduced for the reasons set out below (**if you do not include reasons supporting your application here, your request will be denied**):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: _____ [month/day/year], at _____ [city, state]

Name of Respondent (Company) – please print

Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”