



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

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March 31, 2017

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. Gigantic Moving & Storage LLC  
d/b/a Gigantic Moving & Storage*  
Commission Staff's Response to Application for Mitigation of Penalties  
Docket TV-170124

Dear Mr. King:

On March 8, 2017, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment TV-170124 against Gigantic Moving & Storage LLC d/b/a Gigantic Moving & Storage (Gigantic Moving or Company) in the amount of \$8,300 for ninety-six critical violations of Washington Administrative Code (WAC) 480-15-555 Criminal Background Checks for Prospective Employees, and 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, and CFR Part 395 – Hours of Service of Drivers, as follows:

- **Seventy-eight violations of CFR 391.45(a) – Using a driver not medically examined and certified.** Gigantic Moving allowed employees Johnson Rilometo, Juan Rocha, Jose Bahena, Scott Gockerell, and Matthew Zuraff to drive on 78 occasions during the month of August 2016 without having been medically examined and certified.
- **One violation of CFR 391.51(a) – Failing to maintain a driver qualification file for each driver it employs.** Gigantic Moving failed to maintain a driver qualification file for its driver Jose Bahena.
- **One violation of CFR 395.3(b)(2) – Requiring or permitting a driver to drive after having been on duty more than 70 hours in 8 consecutive days.** Gigantic Moving allowed Juan Rocha to operate a commercial motor vehicle after being on duty for more than 70 hours. Mr. Rocha exceeded the 70 hour limit on August 15, 2016 at 1:30pm.

- **Ten violations of CFR 395.8(a) – Failing to require driver to make a record of duty status.** Gigantic Moving allowed employees Johnson Rilometo, Juan Rocha, Scott Gockerell, and Matthew Zuraff to drive without making a record of duty status while not under short haul exemption on 10 separate occasions during the six months prior to the compliance review.
- **Five violations of CFR 395.8(k)(1) – Failing to preserve driver’s record of duty status for 6 months.** Gigantic Moving failed to retain its drivers’ record of duty status documents to identify when employees Johnson Rilometo, Juan Rocha, Jose Bahena, Scott Gockerell, and Matthew Zuraff were operating a commercial motor vehicle.
- **One violation of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required.** Gigantic Moving failed to retain a copy of the criminal background check for employee Jose Bahena. Mr. Bahena’s background check on file is dated December 16, 2016, however Mr. Bahena had been employed during the entire six months prior to the compliance review.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation of CFR Part 391 and CFR Part 395, as well as for each violation of WAC 480-15-555. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On March 27, 2017, Gigantic Moving filed with the Commission its application for mitigation of penalties. Timothy Roberts, director of Gigantic Moving, admits the violations, provides minimal explanation of the corrective action steps taken by the Company, and asks that the penalties be reduced for reasons set out in his response.

Gigantic Moving operates as a household goods carrier under permit number THG-65593. In its application for household goods moving authority filed with the Commission in September 2014, Neil Boden, director and part-owner of Gigantic Moving, acknowledged the Company’s responsibility to understand and comply with applicable motor carrier safety rules and regulations. On November 12, 2014, Timothy Roberts, Chip Bratcher, and Neil Boden attended household goods training provided by Commission Staff (Staff), and each attendee acknowledged that training was received regarding motor carrier safety regulations.

On January 25, 2017, Commission Motor Carrier Safety Investigator Wayne Gilbert conducted a compliance review investigation, an in-depth examination of the motor carrier's compliance with regulations that the FMCSA has identified as “acute” or “critical.”<sup>1</sup> 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

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

inadequate safety management controls and unusually higher than average accident rates.<sup>2</sup> Mr. Gilbert documented 96 violations of critical regulations, all of which were first-time violations, resulting in a conditional safety rating.

The Commission's Enforcement Policy provides that some Commission requirements are so essential 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. The Commission will assess penalties for any repeat violations of critical regulations, including for each occurrence of a repeat violation.<sup>3</sup>

In the mitigation request, Timothy Roberts admitted the violations, states that the proposed penalty would drastically affect the financial well-being of the Company, and addresses only one violation. Staff found the Company's response to be inadequate, and provides its response below:

- **Mitigation Request: CFR 391.45(a) – Using a driver not medically examined and certified.** Gigantic Moving states that it was unaware of the medical examination requirements and that the violations were unintentional. The Company states that all of its drivers have obtained valid medical certificates, and a new system has been established to ensure future compliance. Gigantic Moving asks that the Commission penalize per violation type instead of per occurrence for the seventy-eight violations of CFR 391.45(a).

**Staff response:** Gigantic Moving corrected this violation before the Commission Motor Carrier Safety Investigator conducted the closing interview with the Company on February 23, 2017. The Company asks that the Commission penalize per violation type for the 78 occurrences of CFR 391.45(a), but the Commission's Enforcement Policy provides that some requirements are so fundamental to safe operations that the Commission will issue mandatory penalties for each occurrence of a first-time violation. Each time Gigantic Moving allowed an employee to drive without having been medically examined and certified, the Company was potentially putting both their passengers and the traveling public at risk. Due to the expedient correction of this violation, and the Company's desire to maintain compliance with this critical regulation, Staff recommends a reduction of this penalty.

The assessed penalty is \$7,800 for seventy-eight occurrences of this violation. Staff recommends the penalty be reduced \$4,300, for a total of \$3,500.

- **Mitigation Request: CFR 391.51(a) – Failing to maintain a driver qualification file for each driver it employs.** Gigantic Moving's request for mitigation did not address this violation. In the Company's 15-day response letter to the Commission, Gigantic Moving

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<sup>2</sup> *Id.*

<sup>3</sup> Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

states that it has a new procedure in place to complete a new employee's driver qualification file prior to allowing that employee to operate a commercial motor vehicle.

**Staff response:** The Company failed to provide an example of a driver qualification file, a list of the documents the Company keeps in such a file, or any supporting evidence or documentation with respect to steps taken to correct this violation.

The assessed penalty is \$100 for one violation of this type. Staff recommends no mitigation of this penalty.

- **Mitigation Request: CFR 395.3(b)(2) – Requiring or permitting a driver to drive after having been on duty more than 70 hours in 8 consecutive days.** Gigantic Moving did not address this violation.

**Staff response:** The Company failed to provide any information relevant to steps it has taken to comply with this fundamental safety requirement. Allowing a driver to drive after having been on duty for more than 70 hours in 8 consecutive days puts the traveling public at risk, and presents serious safety concerns.

The assessed penalty is \$100 for one occurrence of this violation. Staff recommends no mitigation of this penalty.

- **Mitigation Request: CFR 395.8(a) – Failing to require driver to make a record of duty status.** Gigantic Moving's request for mitigation did not address this violation. In the Company's 15-day response letter to the Commission, Gigantic Moving states that it has obtained a new system that records when an employee is operating a commercial motor vehicle to identify which driver is driving for the day.

**Staff response:** Gigantic Moving states that it has obtained a new system to ensure compliance with motor carrier safety regulations, but failed to provide any supporting evidence or information relevant to the data captured and reported through this new system.

The assessed penalty is \$100 for one violation of this type. Staff recommends no mitigation of this penalty.

- **Mitigation Request: CFR 395.8(k)(1) – Failing to preserve driver's record of duty status for 6 months.** Gigantic Moving did not address this violation.

**Staff response:** The Company failed to provide any information pertaining to a modified policy or practice that would promote future compliance with this safety requirement.

The assessed penalty is \$100 for one violation of this type. Staff recommends no mitigation of this penalty.

- **Mitigation Request: WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required.** Gigantic Moving did not address this violation.

**Staff response:** The Company failed to document any new procedures or requirements that it has established to comply with this fundamental safety requirement. An employee with an unknown criminal history raises serious concerns about the security of the customer's belongings, as well as their personal safety.

The assessed penalty is \$100 for one occurrence of this violation. Staff recommends no mitigation of this penalty.

Gigantic Moving is a small company that currently operates three commercial motor vehicles and employs four drivers. The Company reported \$975,790 in gross revenue and 20,000 miles traveled in 2016. Staff recommends that the penalty of \$8,300 be reduced to \$4,000.

If you have any questions, please contact Jason Hoxit, Compliance Investigator, Transportation Safety, at 360-664-1320, or by e-mail at [JHoxit@utc.wa.gov](mailto:JHoxit@utc.wa.gov).

Sincerely,



David Pratt  
Assistant Director, Transportation Safety