

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TV-170178
RIGHT TURN MOVING LLC	ORDER 01
in the amount of \$10,200	ORDER GRANTING MITIGATION TO \$3,200

BACKGROUND

- 1 On March 23, 2017, the Washington Utilities and Transportation Commission (Commission) assessed a \$10,200 penalty (Penalty Assessment) against Right Turn Moving LLC (Right Turn Moving or Company) for 103 critical violations of Washington Administrative Code (WAC) 480-15-560 and WAC 480-15-570, which adopt by reference Title 49 Code of Federal Regulations (C.F.R.) Part 391 related to driver qualifications; Part 395 related to driver hours of service; and Part 396 related to vehicle inspection, repair, and maintenance.¹
- 2 On April 17, 2017, Right Turn Moving responded to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty based on the written information provided. In its response, the Company addressed only the violations related to its employee's expired medical certificate. The Company accepted responsibility for its conduct and explained that the violations were immediately corrected. The Company further explained that it has put controls in place to ensure that medical certificates are tracked and renewed when required. Finally, the Company explained that its operations are very small, and the penalty would create a financial hardship.
- 3 On April 21, 2017, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. The Penalty Assessment includes a \$10,000 penalty for 100 violations of 49 C.F.R. Part 391.45(a); a \$100 penalty for one violation of 49 C.F.R. Part 395.8(a); and a \$100 penalty for two violations of 49

¹ WAC 480-30-221 adopts by reference sections of Title 49 C.F.R. Accordingly, Commission safety regulations with parallel federal rules are hereinafter referenced only by the applicable provision of 49 C.F.R.

C.F.R. Part 396.17(a). Staff recommends reducing the portion of the penalty assessed for violations of 49 C.F.R. Part 391.45(a) to \$3,000 because these are first-time violations and the Company took prompt corrective action. Staff does not recommend any further mitigation because the Company failed to address the other violation categories in its response. Accordingly, Staff recommends the Commission assess a reduced penalty of \$3,200.

DISCUSSION AND DECISION

- 4 Washington law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Violations discovered during safety inspections are subject to penalties of \$100 per violation.² In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.³ Violations defined by federal law as “critical,” which are indicative of a breakdown in a carrier’s management controls, meet this standard.⁴
- 5 The Commission considers several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have been considered in setting the assessed penalty amount, or explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring the company’s compliance.⁵ We address each violation category in turn.
- 6 **49 C.F.R. Part 391.45(a).** The Penalty Assessment includes a \$10,000 penalty for 100 violations of 49 C.F.R. Part 391.45(a) because Right Turn Moving allowed one driver who was not medically examined and certified to drive on 100 occasions in the six months preceding the compliance review. In its response, the Company explained that it immediately corrected the violations and implemented a system to prevent violations going forward.

² See RCW 81.04.405.

³ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

⁴ 49 C.F.R. § 385, Appendix B.

⁵ Enforcement Policy ¶19.

- 7 Staff recommends the Commission assess a reduced penalty of \$3,000 because these are first-time violations and the Company ensured its driver was medically examined and certified prior to receiving the Penalty Assessment. We agree with Staff's recommendation. In its response, the Company acknowledged the violations and provided assurances of future compliance. In light of these factors, we assess a \$3,000 penalty for 100 violations of 49 C.F.R. Part 391.45(a).
- 8 **49 C.F.R. Part 395.8(a).** The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. Part 395.8(a) because Right Turn Moving allowed one of its employees to drive without making a record of duty status on one occasion in the six months preceding the compliance review. The Company did not address this violation in its response.
- 9 Staff recommends no mitigation for this portion of the penalty because the Company failed to address this violation in its response. We agree. Because the Company failed to provide any supporting documentation to demonstrate that it has created a system to prevent the violations from reoccurring, we decline to mitigate this portion of the penalty.
- 10 **49 C.F.R. Part 396.17(a).** The Penalty Assessment also includes a \$100 penalty for two violations of 49 C.F.R. Part 396.17(a) because Right Turn Moving failed to have either of its vehicles periodically inspected, as required. The Company did not address this violation in its response.
- 11 Staff recommends no mitigation for this portion of the penalty because the Company did not address this violation in its response. We agree. Right Turn Moving failed to provide any information demonstrating the steps the Company has taken to correct the violations and prevent them from reoccurring. In addition, the Commission could have assessed a \$200 penalty, but, because these are first-time violations, assessed a "per category" rather than "per violation" penalty. Accordingly, we find that no further penalty reduction is warranted.
- 12 To reduce the financial impact of the penalty, the Company may work with Staff to establish mutually agreeable payment arrangements.

FINDINGS AND CONCLUSIONS

- 13 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 14 (2) Right Turn Moving is a household goods carrier subject to Commission regulation.
- 15 (3) Right Turn Moving violated 49 C.F.R. Part 391.45(a) when it allowed a driver who was not medically examined and certified to drive on 100 occasions during the six months preceding the compliance review.
- 16 (4) Right Turn Moving should be penalized \$3,000 for 100 violations of 49 C.F.R. Part 391.45(a).
- 17 (5) Right Turn Moving violated 49 C.F.R. Part 395.8(a) when it allowed its employee to drive without making a record of duty status on one occasion in the six months preceding the compliance review.
- 18 (6) Right Turn Moving should be penalized \$100 for one violation of 49 C.F.R. Part 395.8(a).
- 19 (7) Right Turn Moving violated 49 C.F.R. Part 396.17(a) when it failed to have either of its vehicles periodically inspected as required.
- 20 (8) Right Turn Moving should be penalized \$100 for two violations of 49 C.F.R. Part 396.17(a).
- 21 (9) Right Turn Moving should be permitted to file jointly with Staff a mutually agreeable arrangement for paying the \$3,200 penalty.

ORDER

THE COMMISSION ORDERS:

- 22 (1) Right Turn Moving LLC's request for mitigation of the \$10,200 penalty is
GRANTED, in part, and the penalty is reduced to \$3,200.
- 23 (2) Right Turn Moving LLC must either pay the penalty or file jointly with Staff a
proposed payment arrangement no later than May 8, 2017.
- 24 The Secretary has been delegated authority to enter this order on behalf of the
Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective April 25, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website.