

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TV-170293
CAN'T STOP MOVING, LLC	ORDER 01
in the amount of \$51,900	ORDER DENYING REQUEST FOR HEARING; GRANTING MITIGATION; IMPOSING AND SUSPENDING PENALTIES

BACKGROUND

- 1 On May 1, 2017, the Washington Utilities and Transportation Commission (Commission) assessed an \$51,900 penalty (Penalty Assessment) against Can't Stop Moving, LLC (Can't Stop Moving or Company) for 529 critical violations of Washington Administrative Code (WAC) 480-15-555, Criminal Background Checks for Prospective Employees, and WAC 480-15-570, which adopts by reference Title 49 Code of Federal Regulations (C.F.R.) Part 391 related to driver qualifications; Part 392 related to driving commercial motor vehicles; Part 395 related to driver hours of service; and Part 396 related to vehicle inspection, repair, and maintenance.¹
- 2 On June 1, 2017, Can't Stop Moving responded to the Penalty Assessment, admitting the violations and requesting a hearing to present evidence supporting its request for mitigation of the penalty. In its response, the Company acknowledged the violations and provided documentation demonstrating that steps it has taken to correct the violations and prevent them from reoccurring. Finally, the Company explained that the penalty would create a financial hardship, and requested it be reduced.
- 3 On June 14, 2017, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. The Penalty Assessment includes a \$49,200 penalty for 492 violations of 49 C.F.R. Part 391.45(a); a \$100 penalty for five violations of 49 C.F.R. Part 391.51(a); a \$1,700 penalty for 17 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 392.2; a \$200 penalty for two violations of 49 C.F.R. Part 395.8(a); a \$100 penalty for four violations of 49 C.F.R. Part 396.3(b); a \$100 penalty for four violations of 49 C.F.R. Part 396.17(a); and a \$500 penalty for five violations of WAC 480-15-555. Staff recommends the Commission assess a reduced penalty of \$25,400. Staff further recommends the Commission suspend a \$15,400 portion of the penalty for a period of two years, and then waive it, subject to the condition that the Company does not incur any repeat violations of critical safety regulations upon reinspection.

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 As a preliminary matter, we deny the Company’s request for a hearing. The Penalty Assessment advised the Company that a request for hearing will only be granted if material issues of law or fact require consideration of evidence and resolution in hearing. Because the Company admitted the violations, no issues of law or fact are in dispute. Accordingly, the Company’s request for a hearing is denied. We turn now to mitigation of the penalty.
- 6 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 below.

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 **49 C.F.R. Part 391.45(a).** The Penalty Assessment includes a \$49,200 penalty for 492 violations of 49 C.F.R. Part 391.45(a) because Can't Stop Moving allowed five drivers who were not medically examined and certified to drive on 492 occasions between October 2016 and March 2017. In its response, the Company explained that it immediately corrected the violations and implemented a system to prevent violations going forward.
- 8 Staff recommends the Commission assess a reduced penalty of \$24,000 because these are first-time violations and the Company has taken steps to ensure that all of its drivers are medically examined and certified as required. We agree. In its response, the Company acknowledged the violations and provided assurances of future compliance. In light of these factors, we assess a \$24,000 penalty for 492 violations of 49 C.F.R. Part 391.45(a).
- 9 **49 C.F.R. Part 391.51(a).** The Penalty Assessment also includes a \$100 penalty for five violations of 49 C.F.R. Part 391.51(a) because the Company failed to maintain driver qualification files for each of its five drivers. In its response, the Company explained that it has created driver qualification files, pre-printed all required forms, and implemented a process for bi-monthly file checks to ensure compliance going forward.
- 10 Staff recommends no mitigation for this portion of the penalty because the Commission assessed the minimum penalty for these violations. We agree. The Commission could have assessed a \$500 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.
- 11 **49 C.F.R. Part 392.2.** The Penalty Assessment also includes a \$1,700 penalty for 17 violation of 49 C.F.R. Part 392.2 because Can't Stop Moving permitted an employee to drive with a suspended driver's license on 17 occasions. In its response, the Company explained that its employee was unaware his license was suspended, and that it has implemented a process to periodically check employee driving records. The Company further explained that is has created a policy to encourage its employees to self-report licensing issues without fear of reprisal.
- 12 Staff recommends the Commission assess a reduced penalty of \$800 for these violations. 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 an \$800 penalty for 17 violations of 49 C.F.R. Part 392.2.

- 13 **49 C.F.R. Part 395.8(a).** The Penalty Assessment also includes a \$200 penalty for two violations of 49 C.F.R. Part 395.8(a) because Can't Stop Moving allowed one of its employees to drive without making a record of duty status on two occasions in the six months preceding the compliance review. In its response, the Company explained that it has trained its employees and placed log books in each of its vehicles.
- 14 Staff recommends the Commission assess a reduced penalty of \$100 for these violations. We agree with Staff's recommendation. The Company accepted responsibility for its actions and promptly corrected the violations. In light of these factors, we assess a \$100 penalty for two violations of 49 C.F.R. Part 395.8(a).
- 15 **49 C.F.R. Part 396.3(b).** The Penalty Assessment also includes a \$100 penalty for four violations of 49 C.F.R. Part 396.3(b) because the Company failed to keep minimum records of vehicle inspection and maintenance for each of its four commercial vehicles. In its response, the Company explained that it has implemented procedures to prevent violations going forward.
- 16 Staff recommends no mitigation for this portion of the penalty because the Commission assessed the minimum penalty for these violations. We agree. The Commission could have assessed a \$400 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.
- 17 **49 C.F.R. Part 396.17(a).** The Penalty Assessment also includes a \$100 penalty for four violations of 49 C.F.R. Part 396.17(a) because Can't Stop Moving used four commercial vehicles that were not periodically inspected as required. In its response, the Company explained it has implemented a periodic maintenance plan to prevent repeat violations.
- 18 Staff recommends no mitigation for this portion of the penalty because the Commission assessed the minimum penalty for these violations. We agree. The Commission could have assessed a \$400 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.
- 19 **WAC 480-15-555.** Finally, the Penalty Assessment includes a \$500 penalty for five violations of WAC 480-15-555, which requires carriers to complete a criminal background check for every person the carrier intends to hire. Can't Stop Moving failed to conduct criminal background checks for five of its employees. In its response, the

Company explained that it has since conducted criminal background checks for all current employees, and has implemented a procedure to ensure pre-employment background checks are completed going forward.

20 Staff recommends the Commission assessed a reduced penalty of \$200 for these violations. We agree with Staff's recommendation. The Company accepted responsibility for its actions and promptly corrected the violations. In light of these factors, we assess a \$200 penalty for five violations of WAC 480-15-555.

21 **Suspended Penalty.** Because the Company submitted a response that details the controls it put in place to prevent repeat violations of Commission safety rules, we agree with Staff's recommendation and suspend a \$15,400 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: 1) Can't Stop Moving may not incur any repeat critical violations of WAC 480-15 and Title 49 C.F.R.; and 2) Can't Stop Moving must pay the remaining \$10,000 penalty within 20 days of the effective date of this Order. The Company may work with Staff to establish mutually agreeable payment arrangements to pay the \$10,000 portion of the penalty that is not suspended.

FINDINGS AND CONCLUSIONS

22 (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.

23 (2) Can't Stop Moving is a household goods carrier subject to Commission regulation.

24 (3) Can't Stop Moving violated 49 C.F.R. Part 391.45(a) when it allowed five drivers who were not medically examined and certified to drive on 492 occasions between October 2016 and March 2017.

25 (4) Can't Stop Moving should be penalized \$24,000 for 492 violations of 49 C.F.R. Part 391.45(a).

26 (5) Can't Stop Moving violated 49 C.F.R. Part 391.51(a) when it failed to maintain driver qualification files for five of its employees.

- 27 (6) Can't Stop Moving should be penalized \$100 for five violations of 49 C.F.R. Part 391.51(a).
- 28 (7) Can't Stop Moving violated 49 C.F.R. Part 392.2 when it permitted an employee to drive with a suspended driver's license on 17 occasions.
- 29 (8) Can't Stop Moving should be penalized \$800 for 17 violations of 49 C.F.R. Part 392.2.
- 30 (9) Can't Stop Moving violated 49 C.F.R. Part 395.8(a) when it allowed an employee to drive without making a record of duty status on two occasions in the six months preceding the compliance review.
- 31 (10) Can't Stop Moving should be penalized \$100 for two violations of 49 C.F.R. Part 395.8(a).
- 32 (11) Can't Stop Moving violated 49 C.F.R. Part 396.3(b) when it failed to maintain minimum records of vehicle inspection and maintenance for its four vehicles, as required.
- 33 (12) Can't Stop Moving should be penalized \$100 for four violations of 49 C.F.R. Part 396.3(b).
- 34 (13) Can't Stop Moving violated 49 C.F.R. Part 396.17(a) by using four commercial vehicles that were not periodically inspected, as required.
- 35 (14) Can't Stop Moving should be penalized \$100 for four violations of C.F.R. Part 396.17(a).
- 36 (15) Can't Stop Moving violated WAC 480-15-555 when it failed to conduct a criminal background check prior to employing five of its drivers.
- 37 (16) Can't Stop Moving should be penalized \$200 for five violations of WAC 480-15-555.
- 38 (17) The Commission should assess a total penalty of \$25,400 for 529 violations of WAC 480-15 and Title 49 C.F.R. A \$15,400 portion of the penalty should be suspended for a period of two years, and then waived, subject to the conditions set out in paragraph 21, above.

- 39 (18) Can't Stop Moving should be permitted to file jointly with Staff a mutually agreeable arrangement for paying the \$10,000 penalty.

ORDER

40 THE COMMISSION ORDERS:

- 41 (1) Can't Stop Moving, LLC's request for a hearing is DENIED.
- 42 (2) Can't Stop Moving, LLC's request for mitigation of the \$51,900 penalty is GRANTED, in part, and the penalty is reduced to \$25,400.
- 43 (3) The Commission suspends a \$15,400 portion of the penalty for a period of two years, and then waives it, subject to the following conditions: 1) Can't Stop Moving, LLC may not incur any repeat critical violations of WAC 480-15 and Title 49 C.F.R.; and 2) Can't Stop Moving, LLC must pay the remaining \$10,000 penalty or file jointly with Staff a mutually agreeable payment arrangement within 20 days of the effective date of this Order.
- 44 (4) Commission Staff will conduct a follow-up inspection within two years to verify compliance with Commission safety regulations.
- 45 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 June 19, 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.