



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION
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May 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. Wise Choice Movers, LLC*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TV-180287

Dear Mr. Johnson:

On March 29, 2018, Motor Carrier Safety Investigator Sandi Yeomans completed a routine safety investigation of Wise Choice Movers, LLC (Wise Choice 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 Ms. Yeomans documented 235 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 Commission requirements are so essential to safe operations that the Commission may issue penalties for a first-time violation, even if Commission staff (staff) has not previously provided technical assistance on specific issues. The Commission will assess

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

² *Id.*

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) 480-15-555, WAC 480-15-560, and WAC 480-15-570. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On April 24, 2018, the Commission issued a penalty assessment under Docket TV-180287 against Wise Choice in the amount of \$22,900 for 235 critical violations of 480-15-555, Criminal Background Checks for Prospective Employees; WAC 480-15-560, Equipment Safety Requirements, which require household goods carriers to comply with Title 49 Code of Federal Regulations (CFR) Part 393 – Parts and Accessories Necessary for Safe Operation, and Part 396 – Inspection, Repair, and Maintenance; and WAC 480-15-570, Driver Safety Requirements, which require household goods carriers to comply with Title 49 CFR Part 391 – Qualifications of Drivers; as follows:

- **Two hundred nineteen violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** Wise Choice allowed employees Mark Marshal, Codey Ince, Danny Plotner, Steven Spruel, and Shane Wise to drive on 219 separate occasions without having been medically examined and certified. The violations occurred during a six month period between Sept. 1, 2017, and Feb. 25, 2018.
- **One violation of Title 49 CFR Part 393.11 – No or defective lighting devices or reflective material as required.** Commission staff discovered one commercial motor vehicle with a defective back up light and no brake lights.⁴
- **One violation of Title 49 CFR Part 393.201(a) – Frame cracked, loose, sagging, or broken.** Commission staff discovered one commercial motor vehicle with the wood spacer on the frame rotten, parts missing, and the section dislodged.⁵
- **Four violations of Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** Wise Choice failed to maintain minimum records of inspection and vehicle maintenance for its four commercial motor vehicles.
- **One violation of Title 49 CFR Part 396.5(b) – Leaking wheel (grease) seal.** Commission staff discovered one commercial motor vehicle with a leaking wheel hub seal.⁶
- **Four violations of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle that is subject to a mandatory state inspection program without having the**

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

⁴ Fleet number 20.

⁵ *Id.*

⁶ Fleet number 26.

commercial motor vehicle inspected under that program. Wise Choice failed to have an annual inspection performed on its four commercial motor vehicles.

- **Five violations of WAC 480-15-555 – Failure to complete a criminal background check for every person the carrier intends to hire.** Wise Choice failed to acquire criminal background checks for its employees Mark Marshal, Codey Ince, Danny Plotner, Steven Spruel, and Shane Wise.

On May 7, 2018, Wise Choice filed with the Commission its application for mitigation of penalties. Brandon Wise, owner of Wise Choice, admits the violations, offers explanations for the violations that occurred, provides the corrective action steps taken by the company, and asks 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, Wise Choice states it failed to maintain its drivers' medical certificates and allowed its drivers' medical certification to expire but has put new procedures in place to ensure future compliance with this safety regulation.

In the company's 15 day response letter, Wise Choice states all of its drivers now have current medical certificates, and the company maintains the medical certifications in each driver qualification file. In addition, Wise Choice states it created a new-hire checklist that includes obtaining a valid medical certificate to ensure that a driver will not operate a commercial motor vehicle when medical certification cannot be verified.

Staff response: It is Wise Choice's responsibility to ensure its drivers have current medical certificates and that the company not allow its drivers to operate a commercial motor vehicle when medical certification cannot be verified. Wise Choice acknowledged its responsibility to understand and comply with applicable motor carrier safety regulations on numerous occasions prior to the safety investigation on March 29, 2018.

However, the company promptly corrected these first-time violations and established new procedures to prevent future occurrences of this fundamental safety requirement. The assessed penalty is \$21,900 for 219 occurrences of this violation. Staff recommends the penalty be reduced by half, to \$10,950.

- **Mitigation Request: Title 49 CFR Part 393.11 – No or defective lighting devices or reflective material as required.** Wise Choice states that it corrected the violations pertaining to vehicle maintenance shortly after the violations were discovered. The company does not specifically address this violation in its request for mitigation or its 15 day response letter.

Staff response: It is Wise Choice's responsibility to ensure that its commercial motor vehicles are free of defects that may potentially put the traveling public at risk. The

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

- **Mitigation Request: Title 49 CFR Part 393.201(a) – Frame cracked, loose, sagging, or broken.** Wise Choice states that it corrected the violations pertaining to vehicle maintenance shortly after the violations were discovered. The company does not specifically address this violation in its request for mitigation or its 15 day response letter.

Staff response: It is Wise Choice's responsibility to ensure that its vehicles are free of defects that may potentially put the traveling public at risk. The assessed penalty is \$100 for one occurrence of this violation. Staff recommends no mitigation of this penalty.

- **Mitigation Request: Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** In the company's request for mitigation, Wise Choice states it implemented new procedures and established a training program to ensure compliance with this violation.

In the company's 15 day response letter, Wise Choice states that it has created a vehicle maintenance file for all of its commercial motor vehicles, and has trained its staff on how to inspect each motor vehicle prior to operation.

Staff response: Wise Choice states that it created a vehicle inspection and maintenance file for all of its commercial motor vehicles; however, the company failed to provide any supporting documentation or an example of its vehicle maintenance file. The assessed penalty is \$100 for one violation of this type. Staff recommends no mitigation of this penalty.

- **Mitigation Request: Title 49 CFR Part 396.5(b) – Leaking wheel (grease) seal.** Wise Choice states it corrected the violations pertaining to vehicle maintenance shortly after the violations were discovered. The company does not specifically address this violation in its request for mitigation or its 15 day response letter.

Staff response: It is Wise Choice's responsibility to ensure that its vehicles are free of defects that may potentially put the traveling public at risk. The assessed penalty is \$100 for one occurrence of this violation. Staff recommends no mitigation of this penalty.

- **Mitigation Request: Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle that is subject to a mandatory state inspection program without having the commercial motor vehicle inspected under that program.** In the company's request for mitigation, Wise Choice states its commercial motor vehicles were serviced by a mechanic shortly after the violations were discovered.

In the company's 15 day response letter, Wise Choice states it now understands that all commercial motor vehicles must have an annual inspection performed at a state certified

Mark L. Johnson

May 15, 2018

Page 5

facility and that it has implemented a new tracking system to ensure its vehicles receive an annual inspection as required

Staff response: The company promptly corrected these first-time violations and established new procedures to prevent future occurrences of 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 – Failure to complete a criminal background check for every person the carrier intends to hire.** Wise Choice's request for mitigation does not address these violations. In the company's 15 day response letter, Wise Choice states it created a new hire checklist that includes completing a criminal background check prior to employment and that it created an account with Washington State Patrol to run full background checks. The company states it performed criminal background checks on all of its current employees and every employee is in compliance with Commission regulations.

Staff response: Employees with unknown criminal histories raise serious concerns about the security of the customer's belongings as well as the customer's personal safety. The company corrected these first-time violations and in doing so identified a driver with a disqualifying criminal record. Staff contacted the company and discovered that the driver with the disqualifying criminal record is no longer employed by the company.

In its 15 day response letter the company states it established new procedures to prevent future occurrences of this fundamental safety requirement. The assessed penalty is \$500 for five occurrences of this violation. Staff recommends no mitigation of this penalty.

Wise Choice is a small company with five drivers and four commercial motor vehicles. The company reported \$685,082 in gross revenue and 62,196 miles traveled in 2017.

Staff recommends the penalty of \$22,900 be reduced to \$11,950. Staff is sensitive to the company's financial situation and understands the impact a significant penalty has on a small business. For these reasons staff further recommends that \$6,700 of the reduced penalty be suspended for a period of two years before being waived, on the conditions that: 1) the company not incur any repeat violations of critical regulations, 2) staff conducts a follow-up safety investigation in two years to review the company's safety management practices, and 3) Wise Choice pays the \$5,250 portion of the penalty that is not suspended.

If you have any questions, please contact Jason Hoxit, Compliance Investigator, Consumer Protection at (360) 664-1320, or by email at jason.hoxit@utc.wa.gov.

Sincerely,



Mathew Perkinson

Motor Carrier Safety Manager, Transportation Safety