

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of  PNW MOVING AND DELIVERY LLC  For Compliance with WAC 480-15-550, WAC 480-15-555, WAC 480-15-560, WAC 480-15-570, and WAC 480-15- 590.	DOCKET TV-220133  ORDER 01
In the Matter of the Penalty Assessment Against  PNW MOVING AND DELIVERY LLC	DOCKET TV-220134  ORDER 01  CONSOLIDATING DOCKETS; APPROVING SAFETY MANAGEMENT PLAN; EXTENDING PROVISIONAL PERIOD; MITIGATING PENALTY

**BACKGROUND**

- 1 On May 10, 2022, in Docket TV-220133, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel and Notice of Brief Adjudicative Proceeding; Settling Time for Oral Statements in the Matter of the Investigation of PNW Moving and Delivery, LLC (PNW Moving or Company), for compliance with Washington Administrative Code (WAC) 480-15 (Notice).
- 2 The Notice set a hearing for April 13, 2022. The Notice also discussed PNW Moving's history of violations before turning to the more recent, follow-up safety investigation that occurred in 2022.
- 3 The Notice observes that, in an earlier 2020 investigation, the Commission staff (Staff) found the Company committed over 100 critical and critical-type violations of state and federal law. The Commission entered an order approving PNW Moving's safety management plan, upgrading the Company's safety rating to conditional, and extending the Company's provisional period for its household goods moving authority until such

time as the Company received a satisfactory safety rating.<sup>1</sup> The Commission also granted the Company's request for mitigation of the assessed penalty, reducing the assessed penalty to \$3,900 and suspending a \$1,950 portion of the penalty subject to the Conditions recommended by Staff.<sup>2</sup>

- 4 The Notice explains that Staff reviewed the PNW Moving's compliance with WAC chapter 480-15 again, between January and February 2022. This is the investigation at issue in this case.
- 5 Specifically, the Notice explains that Staff documented 1 acute-type violation (with 82 individual occurrences) of WAC 480-15-550; 65 critical or critical-type violations (with 175 individual occurrences) of WAC 480-15-555, WAC 480-15-560, and WAC 480-15-570, and the federal regulations incorporated by those provisions; and 29 other violations of WAC chapter 480-15 and the federal regulations incorporated into state law by the chapter, including a violation for an out-of-service vehicle. Staff informed the Company on February 23, 2022, of its conditional safety rating.
- 6 In the Notice, Staff recommends the Commission cancel PNW Moving's provisional household goods carrier permit. The Notice required PNW Moving to come into compliance with applicable laws by obtaining Commission approval of a safety management plan by April 22, 2025.
- 7 On March 18, 2022, in Docket TV-220134, the Commission issued a Penalty Assessment against PNW Moving in the amount of \$25,600 as a result of violations discovered during a February 2022 follow-up safety investigation (Penalty Assessment). The penalty includes:
1. A \$8,200 penalty for 82 violations of WAC 480-15-550 for operating a commercial motor vehicle without having adequate cargo insurance coverage.
  2. A \$300 penalty for three violations of WAC 480-15-555 for failing to properly conduct criminal background checks on drivers.

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<sup>1</sup> *In re Investigation of PNW Moving & Delivery LLC*, Dockets TV-200419 & TV-200421, Order 01, 6 ¶¶ 28-29 (June 24, 2020).

<sup>2</sup> *Id.* ¶ 31.

3. A \$10,900 penalty for 109 violations of 49 C.F.R. § 391.45(a) for using a driver that was not medically examined and certified.
4. A \$6,000 penalty for 90 violations of 49 C.F.R. § 395.8(a)(1) for failing to require drivers to prepare a record of duty status.
5. A \$200 penalty (assessed as a per-category violation) for two violations of 49 C.F.R. § 396.3(b)(2) for failing to have a means to indicate the nature and due date of various inspections and maintenance operations to be performed.

8 On March 28, 2022, PNW Moving filed an Application for Mitigation (Application for Mitigation). PNW Moving indicated that the Company admitted the violations, but it believed that the penalty should be reduced.

9 The Commission conducted a brief adjudicative proceeding on April 13, 2022, before Administrative Law Judge Rayne Pearson. At the hearing the parties agreed that the Commission should address the Penalty Assessment in Docket TV-220134. Accordingly, the Commission consolidated Dockets TV-220133 and TV-220134.

10 At the start of the hearing, Staff asked the Commission to take official notice that the Company admitted the violations at issue in its Application for Mitigation. Staff noted that the Company submitted a safety management plan, but it was not in an acceptable state at the present time.

11 Staff then presented testimony from its witness, motor carrier safety supervisor Jason Sharp. Sharp testified that he was the senior investigator on the Company's 2020 safety investigation and that he assigned the 2022 follow-up safety investigation to Inspector Tracy Coble.<sup>3</sup> Sharp agreed with Coble's findings in the Compliance Review Report, which was admitted into evidence as Exhibit TC-1.<sup>4</sup> Sharp explained that the Company was given a conditional safety rating and that the Company only had provisional operating authority from the Commission.<sup>5</sup> Sharp noted that the provisional status was designed to be completed within 18 months, but it had been more than 18 months since

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<sup>3</sup> Sharp, TR 12:3-10.

<sup>4</sup> Sharp, TR 12:22-24.

<sup>5</sup> *Id.* 13:6-15.

the Company was given provisional status on June 2, 2020.<sup>6</sup> Sharp submitted that the Company did not establish good cause for extending its provisional period and that it did not adhere to the previous safety plan.<sup>7</sup>

- 12 Sharp testified that PNW Moving submitted a safety management plan for Staff to review by the March 30, 2020, deadline set by the Notice and that the Company submitted a second plan the morning of the hearing.<sup>8</sup> Neither safety management plan was acceptable.<sup>9</sup> Sharp explained that the plans did not demonstrate that adequate corrective actions had been taken or that the Company understands all of the safety regulations that it had violated.<sup>10</sup>
- 13 Sharp recommended that if the Company did not submit an acceptable safety management plan, the Commission should cancel its provisional operating authority.<sup>11</sup> If the Company submitted an acceptable safety management plan, then Sharp recommended that the Commission impose conditions on the Company, such as requiring Commission-sponsored training for PNW Moving employees, a repeat safety inspection, and payment of assessed penalties.<sup>12</sup> With regards to the Penalty Assessment, Sharp recommended that the assessed penalty of \$25,600 be reduced to \$21,500.<sup>13</sup> Sharp only recommended that the penalty be suspended if the Commission canceled the Company's operating authority.<sup>14</sup>
- 14 PNW Moving presented testimony from Dmitriy Satir, Company owner. With respect to the violations of WAC 480-15-550 (operating without adequate cargo insurance coverage), Satir noted that he did not realize that he required insurance on each of the vehicles he leased from Enterprise.<sup>15</sup> He corrected this issue around the time of the

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<sup>6</sup> *Id.* 14:4-24.

<sup>7</sup> *Id.* 15:4-13.

<sup>8</sup> *Id.* 15:17-24.

<sup>9</sup> *Id.* 16:7-9.

<sup>10</sup> *Id.* 16:11-20.

<sup>11</sup> *Id.* 18:6-10.

<sup>12</sup> *Id.* 18:10-19:12.

<sup>13</sup> *Id.* 19:21-20:3.

<sup>14</sup> *See id.* 20:15-21:20.

<sup>15</sup> Satir, TR 22:19-23:11.

follow-up safety investigation.<sup>16</sup> With respect to the violations of WAC 480-15-555 (failing to conduct or retain paperwork regarding criminal background checks), Satir admitted that this was his fault and that he had fallen behind on paperwork.<sup>17</sup> With respect to 49 CFR § 391.45(a) (requiring that drivers be medically examined and certified), Satir testified that he believed each certification was valid for two years.<sup>18</sup> Satir since corrected this issue.<sup>19</sup> With regards to 49 CFR § 395.8(a)(1), Satir noted that the two company owners failed to keep track of their on-duty status.<sup>20</sup> The Company corrected this issue by using the software Paychex.<sup>21</sup> With regards to 49 CFR § 396.3(b)(2), Satir explained that he was keeping track of inspection and maintenance operations in a “compliance book” but that he hoped to obtain more training on this topic.<sup>22</sup> Finally, Satir testified that the Company repaired the vehicle with the leaking wheel hub seal.<sup>23</sup>

- 15 On cross-examination, Satir admitted that the violations related to criminal background checks, medical certifications, and records of duty status were repeat violations for the Company.<sup>24</sup> When asked what assurance the Commission might have that PNW Moving would follow a new safety management plan, Satir explained that he was “going to do everything in my power to keep the Company going.”<sup>25</sup>
- 16 Harry Fukano, Assistant Attorney General, Lacey, Washington, represents Commission Staff (Staff). Dmitriy Satir, Company Owner, Tacoma, Washington, represents PNW Moving.

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<sup>16</sup> *See id.*

<sup>17</sup> *Id.* 23:12-18.

<sup>18</sup> *Id.* 23:19-24:5.

<sup>19</sup> *Id.* 24:15-17.

<sup>20</sup> *Id.* 25:3-5.

<sup>21</sup> *Id.* 25:5-7.

<sup>22</sup> *Id.* 25:18-26:12.

<sup>23</sup> *Id.* 26:13-20.

<sup>24</sup> *Id.* 29:2-16.

<sup>25</sup> *Id.* 30:3-4.

- 17 On April 19, 2021, PNW Moving submitted a Safety Management Plan (Safety Management Plan) addressing each violation noted during the investigation.
- 18 On April 20, 2022, Staff filed with the Commission its evaluation of the Company's Safety Management Plan (Evaluation). Staff determined that the Company's Safety Management Plan is acceptable and meets the requirements of 49 C.F.R. Part 385. Staff notes that the Company took all the required steps to bring its safety operations into compliance with Commission regulations. PNW Moving submitted a Safety Management Plan that addresses each violation, identifies how the violations occurred, describes the steps taken to correct them, and put controls in place to ensure the Company maintains compliance.
- 19 Staff recommends the Commission accept PNW Moving's Safety Management Plan. Staff further recommends that the Commission not cancel the Company's permit and extend the provisional period a second time with conditions:
1. PNW Moving sends all employees to Commission sponsored household goods training, either through the Commission's online learning system or the live virtual class provided by Staff, no later than June 15, 2022;
  2. Staff conduct a follow-up safety investigation in one year from the date of an order or as soon thereafter as practicable;
  3. PNW Moving must obtain a satisfactory safety rating following the investigation;
  4. Upon reinspection, PNW Moving may not incur any repeat violations of acute, critical, or critical type regulations;
  5. The Company must get current with any regulatory fees and penalties as a result of late annual report filings by June 30, 2022;
  6. PNW Moving pays its assessed penalty through a mutually agreeable payment arrangement approved by Staff. The payments must be made by the specified dates in the payment arrangement, unless approved by Staff prior to the established deadline; and
  7. Failing to meet any of these conditions would constitute grounds for cancellation of the Company's provisional permit.
- 20 In its Evaluation, Staff also notes that it came to a mutual agreement with PNW Moving on a proposed payment arrangement for the recommended penalty of \$21,500 as follows:

<b>Payment Plan</b>		
<b>Installment</b>	<b>Due Date</b>	<b>Amount</b>
1	September 15, 2022	\$900
2	October 17, 2022	\$900
3	November 15, 2022	\$900
4	December 15, 2022	\$900
5	January 16, 2023	\$900
6	February 15, 2023	\$900
7	March 15, 2023	\$900
8	April 17, 2023	\$900
9	May 15, 2023	\$900
10	June 15, 2023	\$900
11	July 17, 2023	\$900
12	August 15, 2023	\$900
13	September 15, 2023	\$900
14	October 16, 2023	\$900
15	November 15, 2023	\$900
16	December 15, 2023	\$900
17	January 15, 2024	\$900
18	February 15, 2024	\$900
19	March 15, 2024	\$900
20	April 15, 2024	\$900
21	May 15, 2024	\$900
22	June 17, 2024	\$900
23	July 15, 2024	\$900
24	August 15, 2024	\$800

21 Staff recommends that that the Commission grant the Company's request for payment arrangements.

### **DISCUSSION AND DECISION**

22 **Consolidation.** We consolidate dockets TV-220133 and TV-220134. The Commission may consolidate dockets when the facts or principles of law are related.<sup>26</sup> In Docket TV-220133, the Commission is considering whether to cancel the Company's operating authority in light of the 2022 follow-up safety investigation. In Docket TV-220134, the

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<sup>26</sup> WAC 480-07-320.

Commission is considering the Penalty Assessment, which is concerned with the same underlying violations. These proceedings involve related facts and principles of law, and consolidation would promote judicial economy. Neither party objected to consolidation.

- 23 **PNW Moving’s safety rating and operating authority.** Washington Law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. As noted above, Staff conducted a follow-up safety inspection between January and February 2022. Staff documented 1 acute-type violation (with 82 individual occurrences) of WAC 480-15-550; 65 critical or critical-type violations (with 175 individual occurrences) of WAC 480-15-555, WAC 480-15-560, and WAC 480-15-570, and the federal regulations incorporated by those provisions; and 29 other violations of chapter 480-15 WAC and the federal regulations incorporated into state law by the chapter, including a violation for an out-of-service vehicle. Staff informed the Company on February 23, 2022, of its conditional safety rating.
- 24 At the hearing, Company owner Satir admitted each of the violations identified in the 2022 follow-up safety investigation, and he explained how each violation was corrected.<sup>27</sup> The Company also submitted its proposed Safety Management Plan on April 19, 2022.
- 25 In its Evaluation, Staff explains that PNW Moving’s Safety Management Plan addresses each violation, identified how each violation occurred, describes the steps taken to correct each violation, and describes the controls put in place to ensure compliance going forward. Staff concludes that PNW Moving’s Safety Management Plan is acceptable and satisfies the legal requirements of 49 CFR Part 385. We agree.
- 26 Based on Staff’s Evaluation, the Commission approves the Company’s Safety Management Plan and maintains the Company’s conditional safety rating. The Commission extends the Company’s provisional operating authority subject to the conditions recommended by Staff.<sup>28</sup> The Company meets the requirements for provisional authority set forth in WAC 480-15-302. And pursuant to WAC 480-15-305, the Commission finds good cause for extending PNW Moving’s provisional period because the Company has made substantial progress towards a satisfactory safety rating.

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<sup>27</sup> See *supra* ¶ 14.

<sup>28</sup> See *supra* ¶ 18.



- 27 **The Penalty Assessment.** Finally, we consider the appropriate penalty. Staff recommends that the Commission mitigate the penalty from \$25,600 to \$21,500.<sup>29</sup>
- 28 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.<sup>30</sup> The Commission also considers whether the violations were promptly corrected, a company's history of compliance, and the likelihood the violation will recur.<sup>31</sup>
- 29 On the one hand, the March 18, 2022, Penalty Assessment notes several factors that weigh against mitigation. The violations at issue pose significant safety concerns.<sup>32</sup> The Company also incurred a number of repeat violations despite receiving prior technical assistance, submitting a safety management plan, and receiving suspended penalties to encourage compliance.<sup>33</sup> In 2018, the Company operated without a required permit and failed to pay the \$1,500 non-suspended portion of a penalty.<sup>34</sup> These factors weigh against any significant mitigation of the \$25,600.
- 30 On the other hand, Staff witness Sharp recommended mitigation because 82 violations of WAC 480-15-555 were first-time violations.<sup>35</sup> Sharp also noted that Company owner Satir registered for the Commission's household goods training course.<sup>36</sup> PNW Moving has also agreed to a payment arrangement for the proposed mitigated penalty of \$21,500.<sup>37</sup> These factors support mitigating the assessed penalty of \$25,600 to \$21,500.

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<sup>29</sup> Sharp, TR 19:21-20:3.

<sup>30</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

<sup>31</sup> Enforcement Policy ¶19.

<sup>32</sup> Penalty Assessment at 2.

<sup>33</sup> *Id.* at 3.

<sup>34</sup> *Id.*

<sup>35</sup> Sharp, 20:4-10.

<sup>36</sup> Sharp, TR 17:9-12.

<sup>37</sup> *See supra* ¶ 19.

31 We therefore agree with Staff's recommendation. It would not be appropriate, given the  
Company's compliance history, to suspend a portion of the penalty. Yet it is appropriate  
to mitigate the assessed penalty to a degree, to reflect the factors discussed in this Order.

**FINDINGS AND CONCLUSIONS**

- 32 (1) The Commission is an agency of the State of Washington, vested by statute with  
authority to regulate rates, rules, regulations, practices, and accounts of public  
service companies, including common carriers such as household goods carriers,  
and has jurisdiction over the parties and subject matter of this proceeding.
- 33 (2) PNW Moving is a household goods carrier subject to Commission regulation.
- 34 (3) Pursuant to WAC 480-07-320, the Commission should consolidate Dockets TV-  
220133 and TV-220134 because they share related facts and legal issues.
- 35 (4) PNW Moving committed 286 violations of WAC chapter 480-15 and federal  
regulations incorporated by this same chapter.
- 36 (5) PNW Moving corrected the violations identified in the 2022 follow-up safety  
investigation. PNW Moving's safety rating should be maintained as conditional,  
and the Company should be allowed to maintain its provisional household goods  
carrier permit subject to the conditions set forth in paragraph 18 of this Order.
- 37 (6) Pursuant to WAC 480-15-305(1)(b), the Commission should find good cause to  
extend PNW Moving's provisional period until such time that the Company  
achieves a satisfactory safety rating.
- 38 (7) PNW Moving should be penalized \$21,500 for 286 violations of WAC 480-15.  
PNW Moving should submit payments according to the payment plan proposed  
by Staff, as noted in paragraph 19 of this Order.

**ORDER**

**THE COMMISSION ORDERS THAT:**

- 39 (1) The Commission approves PNW Moving and Delivery, LLC's safety  
management plan.
- 40 (2) PNW Moving and Delivery, LLC's safety rating is maintained as conditional.

- 41 (3) PNW Moving and Delivery, LLC's provisional period is extended subject to the  
conditions set forth in paragraph 18 of this Order.
- 42 (4) Dockets TV-220133 and TV-220134 are consolidated.
- 43 (5) PNW Moving and Delivery, LLC's request for mitigation is GRANTED in part,  
and the penalty is reduced to \$21,500
- 44 (6) PNW Moving, LLC, must pay the \$21,500 penalty according to the payment plan  
set forth in paragraph 19 of this Order.

Dated at Lacey, Washington, and effective April 22, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

*/s/ Michael Howard for*  
RAYNE PEARSON  
Administrative Law Judge

### NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-610(7) provides that any party to this proceeding has twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).