

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment	)	DOCKET TV-143549
Against	)	
	)	ORDER 01
HEIDI BERGMAN d/b/a ALICE THE	)	
MOVER	)	ORDER DENYING MITIGATION
	)	
in the amount of \$2,900	)	
.....	)	

**BACKGROUND**

- 1 On September 29, 2014, the Washington Utilities and Transportation Commission (Commission) assessed a penalty of \$2,900 (Penalty Assessment) against Heidi Bergman d/b/a Alice the Mover (Alice the Mover or Company) for 29 violations of Washington Administrative Code (WAC) 480-15-570, which adopts by reference 49 C.F.R. Part 391 related to driver qualifications.
  
- 2 On October 14, 2014, Alice the Mover responded to the Penalty Assessment admitting the violations and requesting mitigation of the penalty based on the written information provided. The Company explained that it mistakenly believed medical certifications were only required for drivers who have a Commercial Driver’s License (CDL). The Company further stated that the penalty would create an extreme financial hardship, and provided assurances of future compliance with the Commission’s safety regulations.
  
- 3 On October 17, 2014, Commission Staff (Staff) filed a response recommending the Commission deny the Company’s request for mitigation. Staff explained that each of the 29 violations for which penalties were assessed – all of which are first-time violations – are classified as “critical.” Violations defined by federal law as “critical” are indicative of a breakdown in a carrier’s management controls.<sup>1</sup> Although Staff stated that it appreciates the Company’s commitment to compliance going forward, the Commission does not grant leeway for this category of violations. Staff does, however, support extended payment arrangements given the Company’s financial concerns.

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<sup>1</sup> 49 C.F.R. § 385, Appendix B.

- 4 Staff recommended a penalty of \$2,900 for 29 violations of 49 C.F.R. Part 391.45(b)(1) for using a driver who was not medically certified on 29 occasions, which is a category of violation that is ineligible for reduced penalties, even for a first-time offense.

### DISCUSSION AND DECISION

- 5 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.<sup>2</sup> In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.<sup>3</sup>
- 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.<sup>4</sup>
- 7 Here, penalties are appropriate for first-time violations because the violations cited are considered critical to safe operations. The Company failed to ensure its driver was medically examined and certified; the employee drove, uncertified, on 29 occasions during a six-month period. Drivers who are not medically certified may have an undocumented medical condition that puts the traveling public at risk. The Company explained that it was unaware non-CDL drivers require medical cards, but stated that it has since implemented a compliance plan to prevent future violations.
- 8 While we appreciate the Company's assurances of future compliance, medical certification is a fundamental requirement that warrants penalties for a first-time offense. We find a "per violation" penalty for violations of 49 C.F.R. Part 391.45(b)(1) to be an appropriate deterrent to repeat violations, and deny the Company's request for mitigation. The Company may, however, work with Staff to establish mutually agreeable payment arrangements to decrease the financial impact of the penalty.

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<sup>2</sup> See RCW 80.04.405.

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

<sup>4</sup> Enforcement Policy ¶19.

**ORDER**

THE COMMISSION ORDERS:

- 9 (1) The request of Heidi Bergman d/b/a Alice the Mover for mitigation of the \$2,900 penalty is DENIED.
- 10 (2) Heidi Bergman d/b/a Alice the Mover must either pay the penalty or file jointly with Staff a proposed payment plan no later than November 6, 2014.
- 11 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 October 23, 2014.

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. The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. A form for late-filed requests is available on the Commission's website.**