

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment)	DOCKET TV-143801
Against)	
)	ORDER 01
ADAM’S MOVING AND DELIVERY)	
SERVICE, LLC)	ORDER DENYING MITIGATION
)	
in the amount of \$4,500)	
.....)	

BACKGROUND

- 1 On November 19, 2014, the Washington Utilities and Transportation Commission (Commission) assessed a penalty of \$4,500 (Penalty Assessment) against Adam’s Moving and Delivery, LLC (Adam’s Moving or Company) for 44 violations of Washington Administrative Code (WAC) 480-15-570, which adopts by reference 49 C.F.R. Part 391 related to driver qualifications and hours of service, and one violation of WAC 480-15-560, which adopts 49 C.F.R. Part 396 related to vehicle inspection, repair, and maintenance.

- 2 On December 5, 2014, Adam’s Moving responded to the Penalty Assessment admitting the violations and requesting mitigation of the penalty based on the written information provided. The Company states that prior to receiving the Penalty Assessment, it was unaware of Commission safety requirements, but has since implemented a compliance program and corrected the violations.

- 3 On December 12, 2014, Commission Staff (Staff) filed a response recommending the Commission deny the Company’s request for mitigation. Staff explains that although all 97 violations cited in the Penalty Assessment are first-time offenses, 45 warrant penalties because they present a risk of serious harm to the public. The Penalty Assessment included a reduced penalty of \$100 for 53 violations of 49 C.F.R. Part 396.11(a) because the Company failed to ensure its five drivers completed daily inspection reports on 53 occasions.

- 4 The Commission assessed penalties of \$100 per violation for the remaining 44 violations of 49 C.F.R. Part 391.45(b)(1) for using drivers who were not medically certified, which is a category of violation that is ineligible for reduced penalties even for a first-time offense. Because the Commission assessed a reduced penalty for one category of violations and the Company presented no new information that would support reducing it further, Staff opposes mitigation.

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.¹ In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.² Violations defined by federal law as “critical,” which are indicative of a breakdown in a carrier’s management controls, meet this standard.³
- 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.⁴
- 7 The Penalty Assessment includes a \$100 penalty for 53 violations of 49 C.F.R. Part 396.11(a). Although these violations are classified as critical, the Commission assessed a reduced penalty because they were first-time violations. The Company’s claim that it was unaware of the Commission’s safety rules prior to receiving the Penalty Assessment, however, offers no compelling reason to reduce the penalty any further. The Company chose not to attend the safety portion of the Commission’s

¹ See RCW 80.04.405.

² Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

³ 49 C.F.R. § 385, Appendix B.

⁴ Enforcement Policy ¶19.

household goods industry training in November 2013, and also received relevant technical assistance from Staff in 2005 and 2006. Accordingly, we deny the Company's request for mitigation of the \$100 penalty assessed for violations of 49 C.F.R. 396.11(a).

8 The Penalty Assessment also includes penalties of \$100 each for 44 violations of 49 C.F.R. Part 391.45(b)(1) because the Company failed to ensure that four of its drivers were medically examined and certified. In September 2014, Maurice Boulton drove nine days without medical certification, Adrien Hawtree drove 10 days, Derrick Williams drove eight days, and Anthony Olullette drove 17 days.

9 Adam's Moving claims it was unaware of this requirement, but the Company was cited for the same violation during a 2006 compliance review. It is the Company's responsibility to ensure that all safety regulations are known and followed. As noted in the Penalty Assessment, drivers who are not medically certified may have an undocumented medical condition that puts the traveling public at risk.

10 Adam's Moving also states that it has since corrected all violations and implemented a compliance plan to prevent violations going forward. 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, particularly given the Company's explanation that it was unaware of the requirement despite being previously cited for the same violation. Accordingly, we agree with Staff's recommendation and deny the Company's request for mitigation.

ORDER

THE COMMISSION ORDERS:

- 11 (1) The request of Adam's Moving and Delivery, LLC for mitigation of the \$4,500 penalty is DENIED.
- 12 (2) The penalty is due and payable no later than January 5, 2015.

13 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 December 18, 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.