

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty Assessment Against KEIKO MARTINEZ d/b/a U-RELAX MOVING AND DELIVERY SERVICE, In the amount of \$8,300	DOCKET TV-180132 <i>(Consolidated)</i> ORDER 01
In the Matter of the investigation of KEIKO MARTINEZ d/b/a U-RELAX MOVING AND DELIVERY SERVICE, for Compliance with WAC 480-15-560 and WAC 480-15-570	DOCKET TV-180133 <i>(Consolidated)</i> ORDER 01 ORDER OF CONSOLIDATION; ORDER UPGRADING SAFETY RATING; ORDER IMPOSING AND SUSPENDING PENALTIES

BACKGROUND

- 1 On February 28, 2018, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel Certificate as a Household Goods Carrier and Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements In the Matter of the Investigation of Keiko Martinez d/b/a U-Relax Moving and Delivery Service (U-Relax Moving and Delivery Service or Company) for Compliance with WAC 480-15 in Docket TV-180133 (Notice of Intent to Cancel). The Notice explained that Commission regulatory Staff's (Staff) investigation discovered 87 critical violations of Commission rules, and, as a result, Staff proposed an unsatisfactory safety rating for the Company. The Notice set a Brief Adjudicative Proceeding for April 13, 2018, at 9:30 a.m. to determine whether the Commission should cancel U-Relax Moving and Delivery Service's household goods permit.
- 2 Also on February 28, 2018, the Commission assessed an \$8,300 penalty (Penalty Assessment) in Docket TV-180132 against U-Relax Moving and Delivery Service for violations of WAC 480-15-555, Criminal Background Checks for Prospective Employees; WAC 480-15-560, Equipment Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 396 –Inspection, Repair, and Maintenance; and

WAC 480-15-570, Driver Safety Requirements, which adopts 49 CFR Part 391 – Qualifications of Drivers, and Part 395 – Hours of Service of Drivers.

- 3 On March 15, 2018, U-Relax Moving and Delivery Service submitted a safety management plan that addressed each type of violation and the steps the Company has taken and will take to remedy those violations and ensure future compliance.
- 4 On March 21, 2018, Staff submitted an Evaluation of the Safety Management Plan and Recommendations (Evaluation). Staff examined the Company’s safety management plan and concluded it is acceptable and in compliance with applicable law. Staff recommends the Commission upgrade the Company’s safety rating to conditional, and allow the Company to maintain its certificate.
- 5 Based on the Company’s efforts to bring its operations into compliance with Commission regulations, Staff also recommends the Commission consolidate Docket TV-180132 and TV 180133 and assess a reduced penalty in Docket TV-180132 of \$4,150. Staff further recommends that the Commission suspend \$2,075 of the penalty for two years, and then waive it, subject to the following conditions: (1) the Company may not incur any repeat critical violations upon re-inspection in one year; (2) the Company must maintain a conditional safety rating during that time; and (3) the Company must immediately pay the \$2,075 that the Commission does not suspend, although Staff would support a payment arrangement if the Company requests one.
- 6 On April 9, 2018, Staff submitted a letter explaining that it spoke with the Company and found that the Company accepts the conditions outlined in the Evaluation and waives its right to a hearing. Accordingly, Staff recommended that the Commission cancel the brief adjudicative proceeding scheduled for April 13, 2018.
- 7 On April 10, 2018, the Commission issued a notice canceling the April 13, 2018, hearing and informing the parties that the Commission would enter an order resolving the issues in these dockets based on the parties’ written submissions.

DISCUSSION AND DECISION

Consolidation

- 8 The Company’s safety rating in Docket TV-180133 and the penalty assessment in Docket TV-180132 involve common issues of fact and law. Staff recommends that the Commission consolidate these dockets and represents that the Company has no objection to consolidation. Pursuant to WAC 480-07-320, the Commission consolidates Dockets TV-180133 and TV-180132 for Commission consideration.

Docket TV-180133 – Household Goods Carrier Certificate

- 9 Washington law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff’s January 2018 compliance review of U-Relax Moving and Delivery Service found 87 violations of critical regulations, which resulted in Staff proposing an unsatisfactory safety rating for the Company. Violations classified as critical are indicative of a breakdown in a carrier’s management controls. Patterns of noncompliance with a critical regulation are quantitatively linked to higher-than-average accident rates.
- 10 On March 15, 2018, the Company submitted its proposed safety management plan. Like Staff, we construe this submission as a request that the Commission upgrade its safety rating.¹ Staff found that U-Relax Moving and Delivery Service’s safety management plan addresses each violation, identifies 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 the plan is acceptable and satisfies the legal requirements at issue in these dockets.
- 11 Based on Staff’s evaluation, the Commission finds that the Company has achieved compliance with WAC 480-15-555, WAC 480-15-560, and WAC 480-15-570 by correcting the violations that led to the proposed unsatisfactory safety rating and establishing procedures to ensure future compliance. Accordingly, we agree with Staff’s recommendation. The Commission grants the Company’s request to upgrade its safety rating to conditional and allows the Company to maintain its household goods carrier permit.

Docket TV-180132 – Penalty Assessment

- 12 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 Critical violations meet this standard.⁴

¹ See WAC 480-07-395(4) (authorizing liberal construction of pleadings).

² See RCW 80.04.405.

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.

- 13 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 The Commission also considers whether the violations were promptly corrected, a company's history of compliance, and the likelihood the violations will recur.⁶
- 14 The Penalty Assessment cited 87 violations of WAC 480-15-555, WAC 480-15-560, and WAC 480-15-570. The Company admits the violations but claims that they were the result of lack of knowledge of the law. We do not find this explanation compelling. Companies are responsible for knowing and complying with applicable safety regulations.
- 15 U-Relax Moving and Delivery Service, however, immediately took actions to remedy the violations, including submitting a satisfactory safety management plan that details the controls the Company has put in place to prevent repeat violations of Commission safety rules. We are satisfied that the Company takes its safety obligations seriously. Under the circumstances presented here, we agree with Staff that assessing half of the original \$8,300 penalty will be as effective in ensuring the Company's compliance. Accordingly, we mitigate the assessed penalty to \$4,130.
- 16 We also agree with Staff that the Company's responsiveness and cooperation merit suspending a portion of the penalty. Therefore, we suspend \$2,075 of the penalty for a period of two years, and then waive it, subject to the following conditions:
- (a) U-Relax Moving and Delivery Service must maintain a conditional safety rating;
 - (b) U-Relax Moving and Delivery Service may not incur any repeat critical violations upon a non-rated follow-up safety investigation in one year (April 2019); and
 - (c) U-Relax Moving and Delivery Service must pay the remaining \$2,075 penalty within 10 days of the date of this order, or submit jointly with Staff a proposed payment arrangement within 10 days of the effective date of this Order.

⁵ Enforcement Policy ¶19.

⁶ *Id.*

If the Company fails to satisfy any of these conditions, the suspended portion of the penalty will become immediately due and payable.

FINDINGS AND CONCLUSIONS

- 17 (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.
- 18 (2) U-Relax Moving and Delivery Service is a household goods carrier subject to Commission regulation.
- 19 (3) U-Relax Moving and Delivery Service committed 87 violations of WAC 480-15.
- 20 (4) U-Relax Moving and Delivery Service cured the deficiencies that led to its unsatisfactory safety rating within 45 days, as required. Accordingly, the Commission should upgrade U-Relax Moving and Delivery Service's safety rating to conditional and allow the Company to maintain its household goods carrier certificate.
- 21 (5) The Commission should assess a total penalty of \$4,150 for 87 violations of WAC 480-15, and should suspend \$2,075 of that amount for a period of two years subject to the conditions set out in paragraph 16, above.

ORDER

THE COMMISSION ORDERS That

- 22 (1) Keiko Martinez d/b/a U-Relax Moving and Delivery Service's safety rating is upgraded to conditional.
- 23 (2) The Commission assesses a \$4,150 penalty against Keiko Martinez d/b/a U-Relax Moving and Delivery Service. The Commission suspends a \$2,075 portion of the penalty for a period of two years subject to the conditions set out in paragraph 16 above. If Keiko Martinez d/b/a U-Relax Moving and Delivery Service fails to satisfy any of those conditions, the suspended portion of the penalty will become immediately due and payable without further Commission action.

- 24 (3) Keiko Martinez d/b/a U-Relax Moving and Delivery Service must either pay the \$2,075 portion of the penalty that is not suspended or submit jointly with Staff a proposed payment arrangement within 10 days of the effective date of this Order.

DATED at Olympia, Washington, and effective April 16, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

LAURA CHARTOFF
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).