

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TV-210275
AMERICAM MOVER LLC	ORDER 01
in the amount of \$2,800	GRANTING MITIGATION TO \$1,400; IMPOSING AND SUSPENDING PENALTIES SUBJECT TO CONDITIONS

BACKGROUND

1 On May 4, 2021, the Washington Utilities and Transportation Commission (Commission) assessed a \$2,800 penalty (Penalty Assessment) against Americam Movers LLC (Americam or Company) for 28 violations of Washington Administrative Code (WAC) 480-15-555 and WAC 480-15-570, which adopts by reference Title 49 Code of Federal Regulations (C.F.R.), Part 391.¹ The Penalty Assessment includes:

- a \$500 penalty for five violations of WAC 480-15-555 for failing to conduct or retain paperwork containing criminal background check for household goods carrier in the state of Washington as required; and
- a \$2,300 penalty for 23 violations of 49 C.F.R. Part 391.45(a) for using a driver not medically examined and certified.

2 On May 17, 2021, the Company responded to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty. The Company requested that the Commission issue a decision based on the written information provided. In its response, the Company admitted to each of the violations, but stated that it had taken action to correct the violations and prevent recurrence.

3 On May 25, 2021, Staff filed a response recommending the Commission grant the request for mitigation, in part. Staff recommends the penalties be reduced by half, and that the Commission impose a total penalty of \$1,400. Staff further recommends that \$700 of the reduced penalty be suspended for a period of two years, and then waived, subject to the following conditions: (1) the Company may not incur any repeat violations of critical

¹ WAC 480-30-221 adopts by reference sections of Title 49 C.F.R. Accordingly, Commission safety regulations with parallel federal rules are hereinafter referenced only by the applicable provision of 49 C.F.R.

regulations, and (2) the Company must pay the \$700 portion of the penalty that is not suspended. Staff will conduct a follow-up investigation in two years to review the Company's safety management practices.

DISCUSSION AND DECISION

- 4 Washington law requires household goods companies to comply with federal safety requirements and undergo routine safety inspections. 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 Violations defined by federal law as "critical," which are indicative of a breakdown in a carrier's management controls, meet this standard.⁴
- 5 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 We address each violation category below.
- 6 **WAC 480-15-555.** The Penalty Assessment includes a \$500 penalty for five violations of WAC 480-15-555 because the Company failed to conduct background checks for five employees prior to hiring them. In its response, the Company admits the violations and states that it believed that it had a 30-day grace period to conduct thorough background checks. The Company further states that it has implemented a new onboarding process to prevent reoccurrence of this violation.
- 7 Staff recommends that the Commission reduce the penalty for these violations from \$500 to \$250 because the Company took prompt corrective action and implemented protocols to prevent future violations. We agree. Because the Company has taken action to correct the violations and ensure future compliance, we reduce the penalty for this violation category by half and assess a total penalty of \$250 for the five violations of WAC 480-15-555.

² See RCW 81.04.405.

³ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12, 15 (Jan. 7, 2013) (Enforcement Policy).

⁴ 49 C.F.R. § 385, Appendix B.

⁵ Enforcement Policy ¶19.

8 **49 C.F.R. Part 391.45(a).** The Penalty Assessment includes a \$2,300 penalty for 23 violations of 49 C.F.R. Part 391.45(a) for using a driver not medically examined and certified. In its response, the Company stated that it promptly obtained a medical certificate for its driver.

9 Staff recommends that the Commission reduce the penalty for these violations from \$2,300 to \$1,150 because the Company took prompt corrective action and implemented protocols to prevent future violations. We agree. Because the Company has taken action to ensure future compliance, we reduce the penalty for this violation category by half and assess a total penalty of \$1,150 for three violations of 49 C.F.R. Part 391.45(a).

10 **Penalty Suspension.** The Commission considers several factors when determining whether to suspend a portion of a penalty, including whether it is a first-time penalty for the same or similar violations, and whether the company has taken specific actions to remedy the violations and avoid the same or similar violations in the future, such as purchasing new technology, making system changes, or training company personnel.⁶ Another factor we consider is whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.⁷

11 In this case, the Company has taken action to prevent each of the violations from reoccurring. Suspending a portion of the penalty with the conditions proposed by Staff will both increase compliance and provide a strong incentive to avoid violations in the future. Accordingly, we suspend a \$700 portion of the penalty for two years, and then waive it, subject to the following conditions: (1) The Company may not incur any repeat violations of critical regulations, and (2) the Company must pay the \$700 portion of the penalty that is not suspended. Staff will conduct a follow-up safety investigation in two years to review the Company's safety management practices. If the Company fails to comply with either of the conditions, the suspended penalty will become immediately due and payable without further Commission order. To reduce the financial impact of the penalty, the Company may work with Staff to establish mutually agreeable payment arrangements.

FINDINGS AND CONCLUSIONS

⁶ *Id.* at ¶20.

⁷ *Id.*

- 12 (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.
- 13 (2) Americam is a household goods carrier subject to Commission regulation.
- 14 (3) Americam violated WAC 480-15-555 when it failed to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required on five occasions.
- 15 (4) The Commission should penalize Americam \$250 for five violations of WAC 480-15-555.
- 16 (5) Americam violated 49 C.F.R. Part 391.45(a) when it used a driver not medically examined and certified on 23 occasions.
- 17 (6) The Commission should penalize Americam \$1,150 for 23 violations of 49 C.F.R. Part 391.45(a).
- 18 (7) The Commission should suspend a \$700 portion of the penalty for a period of two years, and then waive it, subject to the conditions set out in paragraph 11, above.

ORDER

THE COMMISSION ORDERS:

- 19 (1) Americam Movers LLC's request for mitigation of the \$2,800 penalty is GRANTED, in part, and the penalty is reduced to \$1,400.
- 20 (2) The Commission suspends a \$700 portion of the penalty for a period of two years, and then waives it, subject to the following conditions: (1) Americam Movers LLC must either pay the \$700 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement within 10 days of the effective date of this Order; and (2) Americam Movers LLC may not incur any repeat violations of critical regulations upon reinspection.
- 21 (3) Commission Staff will conduct a follow-up review of Americam Movers LLC's operations approximately two years after the effective date of this Order.

- 22 (4) If Americam Movers LLC fails to satisfy any of the conditions in paragraph 20 of this order or fails to comply with the terms of the payment arrangement, if applicable, the entire unpaid portion of the \$1,400 penalty will become immediately due and payable without further Commission order.
- 23 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 June 14, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK L. JOHNSON
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.