

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment  
Against

MARTINSON PIANO MOVING, LLC,

in the amount of \$13,800

DOCKET TV-220148

ORDER 01

GRANTING MITIGATION TO \$7,000;  
IMPOSING AND SUSPENDING  
PENALTIES SUBJECT TO CONDITIONS

**BACKGROUND**

1 On April 4, 2022, the Washington Utilities and Transportation Commission (Commission) assessed a \$13,800 penalty (Penalty Assessment) against Martinson Piano Moving, LLC, (Martinson Piano or Company) for 141 violations of Washington Administrative Code (WAC) 480-15-560, which adopts by reference Title 49 Code of Federal Regulations (C.F.R.), Part 396; and WAC 480-15-570, which adopts by reference 49 C.F.R. Part 391.<sup>1</sup> The Penalty Assessment includes:

- a \$13,600 penalty for 136 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.
- a \$100 penalty for three violations of 49 C.F.R. § 391.51(a) for failing to maintain driver qualification files on each driver employed; and
- a \$100 penalty for two violations of 49 C.F.R. § 396.17(a) for using a commercial motor vehicle (CMV) not periodically inspected.

2 On April 12, 2022, 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 April 14, 2022, Staff filed a response recommending the Commission grant the request for mitigation, in part. Staff recommends the penalties be reduced to \$7,000. Staff further recommends that half of the reduced penalty be suspended for a period of two

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<sup>1</sup> WAC 480-15-560 and 570 adopt 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.

years, and then waived, subject to the following conditions: (1) the Company may not incur any repeat violations of 49 C.F.R. §391 upon reinspection, and (2) the Company must pay the \$3,500 portion of the penalty that is not suspended or request a payment arrangement within 10 days of this Order. Staff will conduct a follow-up investigation in two years to review the Company's safety management practices.

4 On April 29, 2022, the Company paid \$3,500 of the penalty.

### DISCUSSION AND DECISION

5 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.<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> Violations defined by federal law as "critical," which are indicative of a breakdown in a carrier's management controls, meet this standard.<sup>4</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>5</sup> We address each violation category below.

7 **49 C.F.R. Part 391.45(a).** The Penalty Assessment includes a \$13,600 penalty for 136 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 medical certificates for its drivers.

8 Staff recommends that the Commission reduce the penalty for these violations from \$13,600 to \$6,800 because the Company took prompt corrective action and implemented protocols to prevent future violations. We agree. Because the Company has taken action

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<sup>2</sup> See RCW 81.04.405.

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

<sup>4</sup> 49 C.F.R. § 385, Appendix B.

<sup>5</sup> Enforcement Policy ¶19.

to ensure future compliance, we reduce the penalty for this violation category by half and assess a total penalty of \$6,800 for 136 violations of 49 C.F.R. Part 391.45(a).

9 **49 C.F.R. § 391.51(a).** The Penalty Assessment includes a \$100 penalty for three violations of 49 C.F.R. §391.51(a) for failing to maintain driver qualification files for three of its drivers. In its response, the Company stated that it has corrected the violation and started files for all drivers.

10 Staff recommends no mitigation of this portion of the penalty. We agree. Although the Company promptly corrected the violation, the Commission assessed the minimum “per category” penalty for this violation. We thus conclude that no further penalty reduction is warranted.

11 **49 C.F.R. § 396.17(a).** The Penalty Assessment includes a \$100 penalty for two violations of 49 C.F.R. § 396.17(a) for failure to have its CMVs periodically inspected. In its response, the Company stated that it has corrected the violation and implemented new record-keeping and scheduling protocols for vehicle maintenance.

12 Staff recommends no mitigation of this portion of the penalty. We agree. Although the Company promptly corrected the violation and took measures to prevent reoccurrence, the Commission assessed the minimum “per category” penalty for this violation. We thus conclude that no further penalty reduction is warranted.

13 **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.<sup>6</sup> Another factor we consider is whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.<sup>7</sup>

14 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 \$3,500 portion of the penalty for two years, and then waive it, subject to the condition that the Company may not incur any repeat violations of

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<sup>6</sup> *Id.* at ¶20.

<sup>7</sup> *Id.*

49 C.F.R. §391. 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 the condition, the suspended penalty will become immediately due and payable without further Commission order.

**FINDINGS AND CONCLUSIONS**

- 15 (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.
- 16 (2) Martinson Piano is a household goods carrier subject to Commission regulation.
- 17 (3) Martinson Piano violated 49 C.F.R. Part 391.45(a) when it used a driver not medically examined and certified on 136 occasions.
- 18 (4) The Commission should penalize Martinson Piano \$6,800 for 136 violations of 49 C.F.R. Part 391.45(a).
- 19 (5) Martinson Piano violated 49 C.F.R. § 391.51(a) when it failed to maintain driver qualification files for three of its drivers.
- 20 (6) The Commission should penalize Martinson Piano \$100 for three violations of 49 C.F.R. § 391.51(a).
- 21 (7) Martinson Piano violated 49 C.F.R. §396.17(a) when it failed to have two of its CMVs periodically inspected.
- 22 (8) The Commission should penalize Martinson Piano \$100 for two violations of 49 C.F.R. §396.17(a).
- 23 (7) The Commission should suspend a \$3,500 portion of the penalty for a period of two years, and then waive it, subject to the condition set out in paragraph 14, above.

**ORDER**

THE COMMISSION ORDERS:

- 24 (1) Martinson Piano Moving, LLC's request for mitigation of the \$13,800 penalty is  
GRANTED, in part, and the penalty is reduced to \$7,000.
- 25 (2) The Commission suspends a \$3,500 portion of the penalty for a period of two  
years, and then waives it, subject to the condition that Martinson Piano Moving,  
LLC, not incur any repeat violations of 49 C.F.R. §391 upon reinspection.
- 26 (3) Commission Staff will conduct a follow-up review of Martinson Piano Moving,  
LLC's operations approximately two years after the effective date of this Order.
- 27 (4) If Martinson Piano Moving, LLC, fails to satisfy the condition in paragraph 25 of  
this order, the remaining \$3,500 of the penalty will become immediately due and  
payable without further Commission order.
- 28 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 May 3, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AMANDA MAXWELL  
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.**