

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

ALTO MOVING LLC,

in the amount of \$4,700

DOCKET TV-230215

ORDER 01

DENYING REQUEST FOR HEARING;
DENYING MITIGATION; IMPOSING AND
SUSPENDING PENALTIES

BACKGROUND

1 On April 11, 2023, the Washington Utilities and Transportation Commission (Commission) assessed a \$4,700 penalty (Penalty Assessment) against Alto Moving LLC (Alto Moving or Company) for violations of Washington Administrative Code (WAC) 480-15-560 and WAC 480-15-570, which adopt by reference sections of Title 49 Code of Federal Regulations (C.F.R.).¹ The Penalty Assessment includes:

- a \$4,500 penalty for 45 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined or certified;
- a \$100 violation for one violation of 49 C.F.R. § 395.8(a)(1) for failing to require driver to make a record of duty status; and
- a \$100 violation for one violation of 49 C.F.R. § 396.17(a) for using a CMV not periodically inspected.

2 On April 27, 2023, the Company submitted a response to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty (Application). In its response, the Company requested a hearing to present evidence but provided no written support for its Application or its request for hearing.

3 On May 5, 2023, Staff filed a response recommending the Commission deny the request for mitigation. Staff further recommends that the Commission suspend a \$3,500 portion of the penalty for two years, and then waive it, subject to the following conditions: (1) Staff conducts a focused safety investigation of 49 C.F.R. § 391.45(a) within two years

¹ This Order refers to Commission safety regulations that adopt federal rules only by the applicable section of Title 49 C.F.R.

from the date of this Order or as soon thereafter as practicable to review the Company's compliance, (2) Alto Moving must not incur repeat violations of 49 C.F.R. § 391.45(a) upon reinspection, and (3) the Company must pay the \$1,200 portion of the penalty that is not suspended within 10 days, or file a mutually agreeable payment arrangement with Staff.

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 As a preliminary matter, we deny the Company's request for a hearing. The Penalty Assessment advised the Company that a request for hearing will only be granted if material issues of law or fact require consideration of evidence and resolution in hearing. Here, no issues of law or fact are in dispute. The Company provided no evidence to refute the evidence presented by Staff. The facts, therefore, are undisputed, and the law is clear. Accordingly, the Company's request for a hearing is denied.
- 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.⁵ The Commission also considers whether the violations were promptly corrected, a company's history of compliance, and the likelihood the violation will reoccur.⁶ We address each violation category below.
- 7 **49 C.F.R. § 391.45(a).** The Penalty Assessment includes a \$4,500 penalty for 34 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and

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.

certified. In its Application, Alto Moving acknowledges the violation, but provides no new information or evidence to explain why the violation occurred.

8 Staff recommends no mitigation of this portion of the penalty. We agree. Drivers who are not medically certified may have an unknown medical condition that puts the traveling public at risk. The Company knew or should have known about medical examination requirements and has failed to introduce any new information or explain extenuating circumstances that would warrant a reduced penalty. Additionally, although the Company promptly remedied the violations, these were repeat violations. Accordingly, we find that the \$4,500 penalty assessed for 45 violations of 49 C.F.R. § 391.45(a) is appropriate and no mitigation is warranted.

9 **49 C.F.R. § 395.8(a)(1).** The Penalty Assessment assessed a \$100 penalty for one violation of 49 C.F.R. § 395.8(a)(1) for failing to require driver to make a record of duty status. In its Application, Alto Moving acknowledges the violation, but provides no new information or evidence to explain why the violations occurred.

10 Staff recommends no mitigation of this portion of the penalty. We agree. The Company knew or should have known about the requirement to make a record of duty status and has failed to introduce any new information or explain extenuating circumstances that would warrant a reduced penalty. Additionally, although the Company promptly remedied the violation, it is a repeat violation. Accordingly, we find that the \$100 penalty assessed for one violation of 49 C.F.R. § 395.8(a)(1) is appropriate and no mitigation is warranted.

11 **49 C.F.R. § 396.17(a).** The Penalty Assessment includes a \$100 penalty for one violation of 49 C.F.R. § 396.17(a) for using a CMV that was not periodically inspected. In its Application, Alto Moving acknowledges the violation, but provides no new information or evidence to explain why the violations occurred.

12 Staff recommends no mitigation of this portion of the penalty. We agree. The Company knew or should have known about the inspection requirement and has failed to introduce any new information or explain extenuating circumstances that would warrant a reduced penalty. Additionally, although the Company promptly remedied the violation, it is a repeat violation. Accordingly, we find that the \$100 penalty assessed for one violation of 49 C.F.R. § 396.17(a) is appropriate and no mitigation is warranted.

13 **Suspension.** We also agree with Staff that suspending a portion of the penalty is appropriate. The Commission's interest in any enforcement action is compliance, and we find that suspending a portion of the penalty subject to the conditions recommended by

Staff creates further incentive for the Company to comply with safety regulations. Accordingly, we suspend a \$3,500 portion of the penalty for a period of two years and then waive it subject to the conditions that: (1) Staff conducts a focused safety investigation of 49 C.F.R. § 391.45(a) within two years from the date of this Order or as soon thereafter as practicable to review the Company's compliance, (2) Alto Moving must not incur repeat violations of 49 C.F.R. § 391.45(a) upon reinspection, and (3) the Company must pay the \$1,200 portion of the penalty that is not suspended within 10 days, or file a mutually agreeable payment arrangement with Staff.

FINDINGS AND CONCLUSIONS

- 14 (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.
- 15 (2) Alto Moving is a household goods carrier subject to Commission regulation.
- 16 (3) Alto Moving violated 49 C.F.R. § 391.45(a) when it used a driver not medically examined or certified on 45 occasions.
- 17 (4) The Commission should penalize Alto Moving \$4,500 for 45 violations of 49 C.F.R. § 391.45(a).
- 18 (5) Alto Moving violated 49 C.F.R. § 395.8(a)(1) when it failed to require a driver to make a record of duty status on one occasion.
- 19 (6) The Commission should penalize Alto Moving \$100 for one violation of 49 C.F.R. § 395.8(a)(1).
- 20 (7) Alto Moving violated 49 C.F.R. § 396.17(a) when it used a CMV not periodically inspected on one occasion.
- 21 (8) The Commission should penalize Alto Moving \$100 for one violation of 49 C.F.R. § 396.17(a).
- 22 (9) The Commission should suspend a \$3,500 portion of the penalty for a period of two years, and then waive it, subject to the conditions listed in paragraph 13 of this Order.

ORDER

THE COMMISSION ORDERS:

- 23 (1) Alto Moving LLC's request for mitigation of the \$4,700 penalty is DENIED.
- 24 (2) The Commission suspends a \$3,500 portion of the penalty for a period of two years, and then waives it, subject to the conditions that: (1) Alto Moving LLC must either pay the \$1,200 portion of the penalty that is not suspended or file a mutually agreeable payment plan with Staff within 10 days of this Order; and (2) Alto Moving LLC must not incur any repeat violations of 49 C.F.R. § 391.45(a) upon reinspection.
- 25 (3) Commission Staff will conduct a follow-up review of Alto Moving LLC's operations approximately two years after the effective date of this Order.
- 26 (4) If Alto Moving LLC fails to satisfy any of the conditions in paragraph 24 of this order, or fails to comply with the terms of the payment arrangement, if applicable, the entire unpaid portion of the \$4,700 penalty will become immediately due and payable without further Commission order.
- 27 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Lacey, Washington, and effective June 29, 2023.

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.