

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

<p>In the Matter of the Investigation of MARSIK MOVERS LLC, For Compliance with WAC 480-15-555 and WAC 480-15-570.</p>	<p>DOCKET TV-220168 ORDER 01</p>
<p>In the Matter of the Penalty Assessment Against MARSIK MOVERS LLC,</p>	<p>DOCKET TV-220169 ORDER 01 CONSOLIDATING DOCKETS; APPROVING SAFETY MANAGEMENT PLAN; EXTENDING PROVISIONAL PERIOD</p>

BACKGROUND

- 1 On March 29, 2022, in Docket TV-220168, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel and Notice of Brief Adjudicative Proceeding; Settling Time for Oral Statements in the Matter of the Investigation of Marsik Movers LLC (Marsik Movers or Company), for compliance with Washington Administrative Code (WAC) 480-15 (Notice). The Notice set a hearing for May 3, 2022.
- 2 The Notice explains that, on March 9, 2022, Commission staff (Staff) completed an investigation of the Company’s compliance with the safety requirements in WAC 480-15. As a result of the compliance investigation, Staff documented 60 safety requirement violations and proposed a conditional safety rating for the Company.¹ Staff notified the Company of this proposed rating on March 9, 2022.
- 3 The Notice indicatd that Marsik Movers must come into compliance with applicable laws by obtaining Commission approval of a safety management plan no later than May 6, 2022. If the Company fails to come into compliance by that date, the Notice indicated

¹ At the hearing, Staff’s counsel clarified that the Notice should reflect 60 violations rather than 61. Staff’s counsel submits that the document is otherwise accurate. See Teimouri, TR 10:10-15.

**Pursuant to RCW 80.01.060(3)
This packet is the final
Order in this docket.**

that the Commission will cancel its household goods carrier permit effective May 9, 2022.

4 On April 5, 2022, in Docket TV-220169, the Commission issued a Penalty Assessment against Marsik Movers in the amount of \$700 as a result of violations discovered during the March 2022 safety investigation (Penalty Assessment). The violations and associated penalty amounts include:

1. Four violations of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background checks or hiring an individual with a disqualifying conviction for a household goods carrier in the state of Washington. The Commission assessed a penalty of \$100 for each occurrence of this critical violation, for a total of \$400.
2. Two violations of 49 C.F.R. § 391.51(a) – Failing to maintain driver qualification file on each driver employed. The Commission assessed a “per category” penalty of \$100 for these critical violations.
3. Thirty-seven violations of 49 C.F.R. § 395.8(a)(1) – Failing to require driver to make a record of duty status. The Commission assessed a “per category” penalty of \$100 for these critical violations.
4. Two violations of 49 C.F.R. § 396.17(a) – Using a commercial motor vehicle (CMV) not periodically inspected. The Commission assessed a “per category” penalty of \$100 for these critical violations.

5 The Commission conducted a brief adjudicative proceeding on May 3, 2022, before Administrative Law Judge Michael Howard. At the hearing, Staff moved for consolidation of Docket TV-220168 with Docket TV-220169. Accordingly, the Commission consolidated Dockets TV-220168 and TV-220169, in order to address the issues raised in the Notice as well as any remaining issues with the Penalty Assessment.

6 At the start of the hearing, Staff asked the Commission to take official notice that the Company admitted the violations at issue in its Application for Mitigation. Staff noted that the Company submitted a safety management plan, but it was not in an acceptable state at the present time.

- 7 Staff then presented testimony from special investigator Tracy Cobile. Cobile met with the Company for an onsite investigation on March 1, 2022.² Cobile explained that she found a total of 60 safety violations, including four “critical” violations, which were documented in her report.³ She noted that critical violations are indicative of “breakdowns in the company’s safety management controls” and are “demonstrated by a pattern of noncompliance.”⁴ At the conclusion of her investigation, Cobile recommended a “conditional” safety rating for the Company.⁵
- 8 Staff then presented testimony from its witness, motor carrier safety supervisor Jason Sharp. Sharp explained that the Company submitted proposed safety management plans, but Staff did not accept any of the safety management plans yet.⁶ Sharp believed that Marsik Movers was close to submitting an acceptable safety management plan.⁷ Sharp recommended that the Commission require the Company to submit an acceptable plan by May 6, 2022, and that if the Company did not submit an acceptable plan, Sharp recommended that the Commission cancel its operating authority effective May 9, 2022.⁸
- 9 With regards to the Penalty Assessment, Sharp noted that the Company did not appear to request mitigation of the penalty.⁹
- 10 Marsik Movers owner Marcel Filip then testified on behalf of the Company. Filip admitted the violations described in Cobile’s report.¹⁰ Filip explained that he could submit an acceptable safety management plan by 5 p.m. on Thursday, May 5, 2022.¹¹
- 11 On May 5, 2022, Marsik Movers submitted a Safety Management Plan (Safety Management Plan) addressing each violation noted during the investigation. Marsik Movers also paid the \$700 penalty in full.
- 12 On May 6, 2022, Staff filed with the Commission its evaluation of the Company’s Safety Management Plan (Evaluation). Staff determined that the Company’s Safety Management Plan is acceptable and meets the requirements of 49 C.F.R. Part 385. Staff notes that the Company took all the required steps to bring its safety operations into

² Cobile, TR 13:5-6.

³ *Id.* at 14:9-10. *See also* Cobile, Exh. TC-1 (Final Compliance Review).

⁴ *Id.* at 14:17-20.

⁵ *Id.* at 14:24-25.

⁶ Sharp, TR 19:23-25.

⁷ *Id.* at 20:12.

⁸ *Id.* at 22:14-18.

⁹ *See id.* at 20:21-21:6.

¹⁰ Filip, TR 26:14-21.

¹¹ *Id.* at 27:11-15.

compliance with Commission regulations. Marsik Movers submitted a Safety Management Plan that addresses each violation, identifies how the violations occurred, describes the steps taken to correct them, and put controls in place to ensure the Company maintains compliance.

13 Staff recommends the Commission accept Marsik Movers's Safety Management Plan. Staff further recommends that the Commission not cancel the Company's permit and extend the provisional for good cause.

14 Daniel Teimouri, Assistant Attorney General, Lacey, Washington, represents Commission Staff (Staff). Marcel Filip, Company Owner, Puyallup, Washington, represents Marsik Movers.

DISCUSSION AND DECISION

15 **Consolidation.** We consolidate dockets TV-220168 and TV-220169. The Commission may consolidate dockets when the facts or principles of law are related.¹² In Docket TV-220168 the Commission is considering whether to cancel the Company's operating authority in light of the March 2022 safety investigation. In Docket TV-220169, the Commission is considering the Penalty Assessment, which is concerned with the same underlying violations. These proceedings involve related facts and principles of law, and consolidation would promote judicial economy. Staff moved for consolidation, and Marsik Movers did not indicate any objection.

16 **Marsik Movers' safety rating and operating authority.** Washington Law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. As noted above, Staff conducted a safety inspection in March 2022. Staff documented a number of critical violations, specifically: four violations of WAC 480-15-555; two violations of 49 C.F.R. § 391.51(a); 37 violations of 49 C.F.R. § 395.8(a)(1); and two violations of 49 C.F.R. § 396.17(a). Staff informed the Company on March 9, 2022, of its conditional safety rating.

17 At the hearing, Company owner Filip admitted each of the violations identified in the March 2022 safety investigation.¹³ Following the hearing, the Company submitted a proposed Safety Management Plan on May 5, 2022.

¹² WAC 480-07-320.

¹³ Filip, TR 26:14-21.

- 18 In its Evaluation, Staff explains that Marsik Movers's Safety Management Plan addresses each violation, identified 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 Marsik Movers's Safety Management Plan is acceptable and satisfies the legal requirements of 49 CFR Part 385. We agree.
- 19 Based on Staff's Evaluation, the Commission approves the Company's Safety Management Plan and accepts Staff's proposed conditional safety rating for the Company.
- 20 Accordingly, the Commission finds that the Company meets the requirements for provisional authority set forth in WAC 480-15-302. Pursuant to WAC 480-15-305, the Commission finds good cause for extending Marsik Movers's provisional period because the Company has made substantial progress towards a satisfactory safety rating.
- 21 Staff does not recommend that the Commission place any conditions on the Company's provisional operating authority. We agree that no conditions are necessary at this time and accordingly decline to place any conditions on this authority. Pursuant to WAC 480-15-305, the Company may regain its permanent operating authority by, among other requirements, completing a provisional period of not less than six months.
- 22 **The Penalty Assessment.** Finally, we observe that Marsik Movers paid the \$700 penalty in full, following the hearing, and that the Company did not request mitigation of the penalty. No outstanding issues remain with regards to the Penalty Assessment.

FINDINGS AND CONCLUSIONS

- 23 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including common carriers such as household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 24 (2) Marsik Movers is a household goods carrier subject to Commission regulation.
- 25 (3) Pursuant to WAC 480-07-320, the Commission should consolidate Dockets TV-220168 and TV-220169 because they share related facts and legal issues.
- 26 (4) Marsik Movers committed 60 violations of WAC chapter 480-15 and federal regulations incorporated by this same chapter.

- 27 (5) Marsik Movers corrected the violations identified in the March 2022 safety investigation. Marsik Movers should be given a conditional safety rating, the Company should be given provisional authority, and this provisional authority should be extended for good cause.
- 28 (6) Pursuant to WAC 480-15-305(1)(b), the Commission should find good cause to extend Marsik Movers's provisional period until the earlier of the following: (1) the Company achieves a satisfactory safety rating and permanent operating authority or (2) the Commission finds good cause to cancel the Company's operating authority.
- 29 (7) Marsik Movers should be penalized \$700 for 60 violations of WAC 480-15.

ORDER

THE COMMISSION ORDERS:

- 30 (1) Dockets TV-220168 and TV-220169 are consolidated.
- 31 (2) The Commission approves Marsik Movers LLC's safety management plan.
- 32 (3) Marsik Movers LLC's safety rating is set as conditional.
- 33 (4) Marsik Movers LLC's provisional period is extended until the earlier of the following: (1) Marsik Movers LLC achieves a satisfactory safety rating and permanent operating authority or (2) the Commission finds good cause to cancel the Marsik Movers LLC's operating authority.

Dated at Lacey, Washington, and effective May 6, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Michael Howard
MICHAEL HOWARD
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).