

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment	)	DOCKET TV-120911
Against	)	
	)	ORDER 01
AMERICA’S MOVING MACHINES,	)	
INC.,	)	ORDER PARTIALLY
	)	SUSPENDING PENALTY,
in the amount of \$2,100.00.	)	SUBJECT TO CONDITION
.....	)	

**MEMORANDUM**

- 1 **Penalty.** On July 23, 2012, the Washington Utilities and Transportation Commission (Commission) assessed a penalty of \$2,100 against America’s Moving Machines, Inc. (America’s Moving), for violations of Washington Administrative Code (WAC) 480-15-480. This rule requires household goods carriers to file annual reports with the Commission by May 1 of each year.
  
- 2 **Background.** On February 29, 2012, the Commission mailed Annual Report forms and Regulatory Fee packets to all regulated household goods carriers as required by WAC 480-15-480(1)(b). The Commission’s cover letter informed the regulated companies that they must complete their annual report form, pay any regulatory fees and return the material by May 1, 2012, to avoid enforcement action. The letter also related that a company could file a written request for an extension of time by April 24, 2012, stating a valid reason why it needed an extension and committing to a date by which the report would be filed. America’s Moving did not file its report or request an extension.
  
- 3 On May 15, 2012, the Commission mailed a letter to America’s Moving and other companies that had not yet filed an annual report notifying them that they had incurred, as of that date, a penalty of \$900. The letter explained that companies who filed their annual reports no later than May 25, 2012, would receive mitigated penalties of \$25 per day, with an additional \$25 per day assessed for each instance in the previous five years that the company received a penalty for filing a late report.

- 4 America's Moving did not file its report by May 25, 2012. The Commission's electronic record of annual reports filed shows the company filed its report on August 7, 2012. However, the electronic copy of the document itself shows a Commission (*i.e.*, Records Center) time and date stamp on June 22, 2012. The electronic copy of the document includes a cover sheet marked with the word: "Incomplete." The explanation for the discrepancy in the two dates is unclear, as is the basis for the cover sheet notation. The document in the Commission's records currently appears to be substantially, if not fully complete. Regardless, it is clear that the company filed its annual report well after the May 1, 2012, deadline for filing and the May 25, 2012, deadline for reduced penalties.
- 5 The Commission's July 23, 2012, penalty assessment instructed America's Moving to complete, sign and send to the Commission within 15 days after receipt of the penalty assessment a standard Commission form that allows for payment of the penalty, a request for hearing, or an application for mitigation. What transpired in connection with this requirement is also unclear from the record. Staff's response to America's Moving's request for mitigation relates that the Commission informed the company it had until August 7, 2012, to respond to the penalty assessment. Staff's response states that "on August 24, 2012, America's Moving Machines wrote the commission requesting mitigation of penalties." This implies America's Moving missed the deadline for requesting mitigation, which is one of the points on which Staff relies in recommending against mitigation.
- 6 The letter from America's Moving requesting mitigation, as attached to Staff's response, is dated August 5, 2012, bears a facsimile date of August 24, 2012, and a Commission Records Management time and date stamp on August 27, 2012. This supports Staff's reportage of the course of events. However, there is another copy of this letter in the Commission's records. This copy also is dated August 5, 2012, but it bears three Commission time and date stamps, the earliest of which is August 2, 2012. The other two time and date stamps bear the date of August 27, 2012, with one by Financial Services at 8:04 a.m. and one by Records Management at 1:59 p.m. The August 2, 2012, date stamp implies that America's Moving at least attempted to comply with the Commission's requirements for mitigation request within the time allowed.
- 7 **Mitigation Request.** In its Mitigation Request, America's Moving does not dispute that the violation occurred. The company states:

We recently received a large fine for turning in our annual report late. We are writing to respectfully request a reduction in the amount. My wife and I struggle to keep up with the paperwork required to keep a business running and while we have learned much in the past few years, we still have far to go. We are also in a very stressful situation with the federal government that is taking much of our time, energy and financial reserves. Though I have been in this country for more than 10 years, entered legally, began a legal business, pay taxes and am married to a US citizen, I am currently fighting deportation. If I get deported I will lose everything I have worked for – not to mention my family, home and friends. This has put so much pressure on me that I have let other responsibilities fall through the cracks. I apologize for my annual reports' tardiness. Please consider this letter in making your final decision.

- 8 **Commission Staff Opposition to Mitigation.** Commission Staff filed a Response to the Mitigation Request on September 7, 2012. Staff opposes mitigating the assessed penalty because America's Moving "failed to file its response within the 15-day timeframe required for the commission to consider mitigation and based on the company's delinquent annual report filing in the past."<sup>1</sup>
- 9 **Commission Determination.** The Commission hesitates to grant the Mitigation Request by America's Moving because of the company's previous failure to file its annual report on time, coupled with the violation here, suggests a lack of regulatory fitness. It is the company's responsibility to ensure that its regulatory fee and annual report are filed by the May 1 deadline each year. The Commission reminds companies of their obligation each year, as it did in this case by its mailing of an Annual Report form and Regulatory Fee packet to America's Moving on February 29, 2012, well ahead of the May 1, 2012, deadline. The company did not respond to this reminder. The Commission again contacted America's Moving via letter dated May 15, 2012, stating that its annual report was overdue and offering administrative "mitigation" of potential penalties if the company filed by May 25, 2012. Yet, America's Moving again failed to respond.

---

<sup>1</sup> According to Staff's Response: "America's Moving Machines was granted provisional household goods authority in July 2009 and received a penalty for \$100 in June 2010 for a violation of WAC 480-15-480."

- 10 While it remains unclear whether the company filed on June 22, 2012, or on August 2, 2012, it is clear America's Moving did not file its annual report by May 31, 2012, which is the date to which the Commission tied its penalty assessment.<sup>2</sup> It also is undisputed that this is a second violation of the reporting deadline in three years of operations. Thus, Staff's rationale supporting the amount of the penalty initially assessed, and one of the two reasons Staff opposes mitigation, are well-grounded.
- 11 Staff's second reason for opposing mitigation, however, is not fully supported by the record. It appears that Commission, in fact, received a letter from America's Moving on August 2, 2012, requesting mitigation within the deadline established by the penalty assessment. Whether this request was misdirected or some other event led to it not coming to the attention of the appropriate Staff, it appears that the Commission personnel involved in the preparation of Staff's response to the mitigation request were not aware of it and relied instead on an identical letter bearing a later time and date stamp.
- 12 Considering these circumstances, and acknowledging the serious challenges faced by the owner of America's Moving, fighting deportation and all it implies, the Commission determines that it should grant the Mitigation Request in part, by suspending all but \$200 of the penalty assessed. The amount of the suspended penalty, \$1,900, is sufficient to promote future compliance, the Commission's primary goal. A penalty of \$200 is a reasonable punitive measure to impose for the company's violation of WAC 480-15-480, thus striking a reasonable balance between the two goals of compliance and punishment for this violation.

### **ORDER**

#### **THE COMMISSION ORDERS THAT:**

- 13 (1) The penalty of \$2,100 assessed against America's Moving Machines, Inc., on July 23, 2012, is suspended to the extent of \$1,900, subject to the condition that the company files its 2012 annual report by May 1, 2013. If the company fails to timely file its 2012 annual report, the suspended penalty will become due and payable without further action by the Commission.

---

<sup>2</sup> The Commission assessed a \$2,100 penalty based on passage of 21 business days after the May 1, 2012, deadline. The Commission could have assessed a much higher penalty based on the actual number of calendar days the company's report was late relative to May 1, 2012.

- 14 (2) The balance of the penalty assessed, \$200, is due and payable to the Commission within 15 days following the date of this Order.
- 15 (3) The Commission delegates to its Secretary authority to enter this Order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective September 26, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER  
Executive Director and Secretary

**NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. Under WAC 480-07-904(3), you may seek Commission review of this decision. In addition to serving you a copy of the decision, the Commission will post on its Internet Web site for at least 14 days a listing of all matters delegated to the Executive Secretary for decision under WAC 480-07-904(1). You must file a request for Commission review of this order no later than fourteen (14) days after the date the decision is posted on the Commission's Web site. The Commission will schedule your request for review for consideration at a regularly scheduled open meeting. The Commission will notify you of the time and place of the open meeting at which the Commission will review the order.**

**The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. A form for late-filed requests is available on the Commission's Web site.**