

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment	)	DOCKET TV-143221
Against	)	
	)	ORDER 01
PMC MOVING, LLC	)	
	)	ORDER DENYING MITIGATION
in the amount of \$5,900	)	
.....	)	

**BACKGROUND**

- 1 On September 18, 2014, the Washington Utilities and Transportation Commission (Commission) assessed a penalty of \$5,900 (Penalty Assessment) against PMC Moving, LLC (PMC or Company) for 58 violations of Washington Administrative Code (WAC) 480-15-570, which adopts by reference 49 C.F.R. Part 391 related to driver qualifications and hours of service, and one violation of WAC 480-15-560, which adopts 49 C.F.R. Part 396 related to vehicle inspection, repair, and maintenance.
  
- 2 On October 6, 2014, PMC responded to the Penalty Assessment admitting the violations and requesting mitigation of the penalty based on the written information provided. The Company states that prior to receiving the Penalty Assessment, it was unaware of Commission safety requirements, but has since implemented a compliance program. The Company also claims that one subset of 21 violations were cited because the Commission’s safety inspector “misconstrued” Company data, and only ten violations actually occurred.
  
- 3 On October 17, 2014, Commission Staff (Staff) filed a response recommending the Commission deny the Company’s request for mitigation. Staff explains that although all 168 violations cited in the Penalty Assessment are first-time offenses, 59 warrant penalties because they present a risk of serious harm to the public. Staff recommended a reduced penalty of \$100 for three violations of 49 C.F.R. Part 396.17(a) because the Company used three vehicles that were not periodically inspected as required.

4 Staff recommended a penalty of \$100 per violation for the remaining 58 violations of 49 C.F.R. Part 391.45(b)(1) for using drivers who were not medically certified, which is a category of violation that is ineligible for reduced penalties even for a first-time offense. Because Staff recommended reduced penalties for one category of violations and the Company presented no new information that would support further reducing the penalty, Staff opposes mitigation.

### **DISCUSSION AND DECISION**

5 Washington law requires household goods carriers 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>1</sup> In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.<sup>2</sup> Violations defined by federal law as “critical,” which are indicative of a breakdown in a carrier’s management controls, meet this standard.<sup>3</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>4</sup>

7 The Penalty Assessment includes a \$100 penalty for three violations of 49 C.F.R. Part 396.17(a). Although these violations are classified as critical, Staff recommended a reduced penalty because they are first-time violations. The Company’s claim that it was unaware of the Commission’s safety rules prior to receiving the Penalty Assessment, however, offers no compelling reason to reduce the penalty any further. When the Company attended the Commission’s household goods industry training in

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<sup>1</sup> See RCW 80.04.405.

<sup>2</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

<sup>3</sup> 49 C.F.R. § 385, Appendix B.

<sup>4</sup> Enforcement Policy ¶19.

January 2011, the Company's owner signed a form acknowledging that training was received in each of the areas where violations occurred. Accordingly, we deny the Company's request for mitigation of the penalty assessed for violations of 49 C.F.R. 396.17(a).

- 8 The Penalty Assessment also includes penalties of \$100 each for 58 violations of 49 C.F.R. Part 391.45(b)(1) because the Company failed to ensure its three drivers were medically examined and certified. Staff found that in June 2014, Nickolas Urbach drove 17 days without medical certification, Julian Lave drove 20 days, and Tyler Prall drove 21 days. The Company disputes Staff's finding with respect to Mr. Prall, but offers no explanation to support its claim that the Commission's safety inspector "misconstrued" Company time sheets. During the safety inspection, PMC was asked to provide records of driver hours of service, which reflected hours for Mr. Prall on 21 days in June. PMC did not submit any evidence to refute Staff's finding – which was based on the Company's own representations – that Mr. Prall drove uncertified on 21 days.
- 9 The Company further claimed it was unaware of the requirement to medically certify its drivers because that point was not emphasized at the Commission's household goods training, but it is solely the Company's responsibility to ensure that all safety regulations are followed. As noted in the Penalty Assessment, drivers who are not medically certified may have an undocumented medical condition that puts the traveling public at risk.
- 10 PMC also stated that it has since implemented a compliance plan to prevent future violations. While we appreciate the Company's assurances of future compliance, medical certification is a fundamental requirement that warrants penalties for a first-time offense. We find a "per violation" penalty for violations of 49 C.F.R. Part 391.45(b)(1) to be an appropriate deterrent, particularly given the Company's explanation that it was unaware of the requirement despite attending Commission-sponsored safety training. Accordingly, we agree with Staff's recommendation and deny the Company's request for mitigation.

**ORDER**

THE COMMISSION ORDERS:

- 11 (1) The request of PMC Moving, LLC for mitigation of the \$5,900 penalty is  
DENIED.
- 12 (2) The penalty is due and payable no later than November 18, 2014.
- 13 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 November 4, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING  
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. 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 website.