



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

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May 31, 2017

Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
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Olympia, WA 98504-7250

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Re: *Washington Utilities and Transportation Commission v. Ibrahim A. Suseyi*
d/b/a The Suseyi Pro Moving Company
4949 NE Avalon Place
Bainbridge Island, WA 98110
Commission Staff's Response to Application for Mitigation of Penalties
Docket TV-170243

Dear Mr. King:

In March 2017, Motor Carrier Safety Investigator Francine Gagne conducted a compliance review investigation of The Suseyi Pro Moving Company (Pro Moving). A compliance review is an in-depth examination of the motor carrier's compliance with regulations that the Federal Motor Carrier Safety Administration has identified as "acute" or "critical."¹ Acute regulations are identified where non-compliance is so serious as to require immediate corrective actions regardless of the overall safety posture of the carrier. Violations of critical regulations are generally indicative of breakdowns in a carrier's management controls. Non-compliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate management controls and unusually higher than average accident rates.² Ms. Yeomans found 169 violations, including repeat occurrences, all of which were first-time violations.

The Commission's enforcement policy provides that some requirements are so critical to safe operations that the Commission may issue penalties for a first-time violation, even if staff has not

¹ Title 49 CFR Part 385, Appendix B – Explanation of Safety Rating Process

² *Id.*

previously provided technical assistance on specific issues.³ Of the 169 violations found, 140 were of critical regulations.

On April 19, 2017, the Commission issued a penalty assessment under docket TV-170243 against Pro Moving in the amount of \$14,000 for violations of WAC 480-15-570 Driver Safety Requirements, which requires household goods carriers to comply with Title 49 Code of Federal Regulations (CFR) Part 391, as follows:

- **One-hundred forty violations of CFR Part 391.45(a) – Using a driver not medically examined and certified.** During the six months preceeding the compliance review, Pro Moving allowed five of its employees to drive on 140 occasions without having been medically examined and certified.

On May 5, 2017, Pro Moving filed with the Commission an application for mitigation. In the application, Pro Moving owner Ibrihim Suseyi admitted the violations, requested the penalty amount be reduced by an unspecified amount, and provided four supporting points.

Mitigation request: CFR Part 391.45(a) – Using a driver not medically examined and certified. (120 occurrences) Pro Moving requested mitigation of the penalty by an unspecified amount, and provided four reasons in support of this request. Each point is summarized, along with staff response, below:

1. Pro Moving points out that in Order 01 in Docket TV-150123, effective February 23, 2015, the Commission granted temporary authority to Pro Moving to provide household goods moving services on a provisional basis for at least six months, during which time the Commission will evaluate whether Pro Moving has met the criterial for permanant authority as specified in WAC 480-15-305. Pro Moving points out that Commission staff conducted no compliance review until March 2017, more than two years after temporary authority was granted. Pro Moving suggests that delaying the compliance review until 2017 allowed the number of violations to grow because the company is making more trips than when it began operations in 2015.

Staff response: WAC 480-15-305 requires new household goods carriers to operate in provisional status for at least six months, and that the company undergo a compliance review and attain a satisfactory safety rating before receiving permanent authority. There is no requirement that the compliance review occur within the first six months of the company's operation. Several factors are considered when scheduling companies for their first compliance review. A compliance looks at a six-month sample of company records when checking for driver medical cards. Whether the review occurred six months or two years after issuance of the temporary authority is immaterial. Staff believes it is possible the company is busier now than it was during its first six months of operation, however staff has no interest in delaying a compliance review to increase the number of violations cited.

³ Docket A-120061 – Enforcement Policy of the Washington Utilities and Transportation Commission, Section V.

2. Pro Moving states that the violations were unintentional. Co-owners Ibrahim Suseyi and Sara Ibrahim attended commission-sponsored household goods movers training but stated they did not believe medical certifications were required. The company states that the training was “disjointed” on account of interruptions from the participants.

Staff response: Ibrahim Suseyi attended training on March 18, 2015. Sara Suseyi attended on November 18, 2015. Sara Suseyi attended only the portion of the training dealing with rules and tariffs, Ibrahim Suseyi attended the entire training and both signed and initialed the record of training respective to sections covered. Staff provided the Commission’s publication “Your Guide to Achieving a Satisfactory Safety Rating” to attendees at both the March 18 and November 18 training sessions. The training may have appeared “disjointed” due participants asking questions about the material. Staff encourages this. Staff also believes that sufficient technical assistance was provided during the training, and that Pro Moving had sufficient opportunity to ask questions and obtain additional information if necessary.

3. Pro Moving points out that in order to expedite physician appointments for each of its drivers to become medically examined and certified, the company made the appointments and paid \$570 for each employee’s examination. The company states that by doing so, it has already incurred a significant financial penalty in this matter.

Staff response: Pro Moving failed to identify the physician, indicate whether the physician is listed on the FMCSA’s National Registry, or provide any evidence of payment. Staff recognizes that five examinations at \$570 each, for a total of \$2,850, is not an insignificant expense, however staff must respectfully disagree with the company’s characterization of the \$2,850 as a “significant financial penalty.” These arrangements were made voluntarily by the company, and not as a penalty imposed by the Commission.

4. Pro Moving points out that in proportion to the size of the company, a penalty of \$14,000 is substantial and would devastate the company, jeopardizing it’s ability to continue operating as a household goods carrier. This would not be in the best interest of consumers.

Staff response: Pro Moving is a small company with five drivers and five commercial vehicles. In 2016 the company reported 4,666 miles traveled and \$430,000 in gross revenue. The penalty, without mitigation, represents 3.2% of the company’s 2016 revenue.

Staff recommendation: While staff believes the company is interested in compliance and attempting to correct the violations, staff has seen no evidence that the five employees cited in the compliance review have actually obtained current medical certificates. Nevertheless, staff recommends mitigation of the penalty from \$14,000 to \$7,000 as follows:

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May 3, 2017
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1. Mitigation of the penalty by \$2,850, the amount staff believes Pro Moving paid for its employees' medical examinations, and
2. Mitigation of the penalty by an additional \$4,150 on the condition Pro Moving provides copies of current medical certificates within 14 days for employees Altyn Stevens III, Jack Le, Alexander Ohannes, Michael Rogass and Kelly Merritt.

If you have any questions, please contact Mike Turcott, Compliance Investigator, Transportation Safety, at (360) 664-1174 or by e-mail at miturcot@utc.wa.gov.

Sincerely,



David Pratt
Assistant Director, Transportation Safety

Enclosures