

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TV-180198
3Z Movers LLC	ORDER 01
in the amount of \$15,200	GRANTING MITIGATION TO \$8,000

**BACKGROUND**

1 On March 20, 2018, the Washington Utilities and Transportation Commission (Commission) assessed a \$15,200 penalty (Penalty Assessment) against 3Z Movers LLC (3Z Movers or Company) for 165 critical violations of Washington Administrative Code (WAC) 480-15-550, WAC 480-15-555, and WAC 480-15-560 through 570, which adopt by reference sections of Title 49 Code of Federal Regulations (C.F.R.).<sup>1</sup> The Penalty Assessment includes:

- a \$7,200 penalty for 72 violations of 49 C.F.R. Part 391.45(a) for using a driver not medically examined and certified;
- a \$7,200 penalty for 72 violations of WAC 480-15-550 for failing to maintain proper levels of cargo insurance;
- a \$400 penalty for four violations of WAC 480-15-555 for failing to acquire criminal background checks of four prospective employees;
- a \$100 penalty for one violation of 49 C.F.R. Part 391.51(a) for failing to maintain a driver qualification file for each driver it employs;
- a \$100 penalty for one violation of 49 C.F.R. Part 395.8(a)(1) for failing to require its driver to make a record of duty status using the appropriate method;
- a \$100 penalty for one violation of 49 C.F.R. Part 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance; and
- a \$100 penalty for one violation of 49 C.F.R. Part 396.17(a) for using a commercial motor vehicle not periodically inspected.

---

<sup>1</sup> WAC 480-15-560 and -570 adopt by reference sections of Title 49 C.F.R. Accordingly, Commission safety regulations with parallel federal rules are hereinafter referenced only by the applicable provision of 49 C.F.R.

- 2 On April 17, 2018, the Company responded to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty based on the written information provided. The Company described the corrective actions it took and provided supporting documentation for a portion thereof. The Company also explained why some of the violations occurred.
- 3 On April 19, 2018, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. Staff recommends the Commission reduce the penalties assessed with respect to medical certification and cargo insurance violations by half, resulting in a total assessed penalty of \$8,000. Staff further recommends that \$4,000 of the reduced penalty be suspended for a period of two years, and then waived, subject to the following conditions: 1) the Company may not incur any repeat violations of critical regulations and 2) the Company must pay the \$4,000 portion of the penalty that is not suspended. Staff will conduct a follow-up investigation in two years to review the Company's safety management practices.

### **DISCUSSION AND DECISION**

- 4 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>2</sup> In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.<sup>3</sup> Violations defined by federal law as "critical" meet this standard.<sup>4</sup>
- 5 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>5</sup> We address each violation category below.

---

<sup>2</sup> See RCW 81.04.405.

<sup>3</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12, 15 (Jan. 7, 2013) (Enforcement Policy).

<sup>4</sup> 49 C.F.R. § 385, Appendix B.

<sup>5</sup> Enforcement Policy ¶19.

- 6 **49 C.F.R Part 391.445(a) and WAC 480-15-550.** The Penalty Assessment includes a \$7,200 penalty for 72 violations of 49 C.F.R. Part 391.45(a) because the Company used a driver not medically examined and certified. Upon receiving notice of this violation, the driver completed the medical examination and the Company provided a copy of medical examiner's certificate to Staff.
- 7 The Penalty Assessment also includes a \$7,200 penalty for 72 violations of WAC 480-15-550 because 3Z Movers failed to maintain proper levels of cargo insurance. The Company has since obtained cargo insurance through its insurance carrier, National Indemnity Corporation, and provided a copy of the policy to Staff.
- 8 Staff recommends that the Commission reduce the penalty for these violation categories from \$7,200 to \$3,600 each because the Company took prompt corrective action. Staff also notes that these are first-time violations. Finally, Staff is sensitive to the Company's financial situation and the impact of a significant penalty on a small business. The Company, which has one driver and one commercial motor vehicle, reported \$50,400 in gross revenue in 2017.
- 9 We agree with Staff's recommendation to mitigate this portion of the penalty. These are first-time violations that the Company has since corrected, and the original penalty amount represents nearly one-third of the Company's revenue. The Commission's goal in any enforcement proceeding is to obtain compliance, not create an insurmountable financial burden for a small company. Accordingly, we reduce the penalty for these violation categories by half, and assess a total penalty of \$7,200 for 72 violations of 49 C.F.R. Part 391.45(a) and 72 violations of WAC 480-15-550.
- 10 **WAC 480-15-555.** The Penalty Assessment includes a \$400 penalty for four violations of WAC 480-15-555 for failing to acquire criminal background checks of four prospective employees. The Company stated that one of the violations is for an employee (Ali) who obtained a background check in connection with a household goods permit application. 3Z Movers further explained that two employees are no longer with the Company, and that it is in the process of acquiring a criminal background check for the fourth employee.
- 11 Staff recommends no mitigation of this portion of the penalty because the Company failed to provide any evidence that it took corrective action. In addition, Staff was unable to verify that Ali was subject to a criminal background check in connection with a household goods application because Ali was not named in the application 3Z Movers referenced in its mitigation request.
- 12 We agree with Staff's recommendation. Although these are first time violations, the Company did not provide documentation to substantiate that it corrected the violations or

put a policy in place to prevent violations on a going-forward basis. Accordingly, we conclude no penalty reduction is warranted.

- 13 **49 C.F.R. 391.51(a).** The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. Part 391.51(a) because the Company failed to maintain a driver qualification file for its driver. The Company states that it has now compiled a driver qualification file that includes all of the necessary records. The Company explained that it had some of these documents at the time of the investigation but they were not filed correctly.
- 14 Staff recommends no mitigation of this portion of the penalty. We agree. While the Company promptly corrected this first-time violation, the Commission assessed the minimum penalty for this violation. We conclude no further penalty reduction is warranted.
- 15 **49 C.F.R. Part 395.8(a)(1).** The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. 395.8(a)(1) because the Company failed to require its driver to make a record of duty status using the appropriate method (49 C.F.R. Part 391.51(b)). The Company states that it would like more information regarding this safety violation for future compliance, as the Company is unaware of the occurrences in which it did not meet the short haul exemption.
- 16 Staff recommends no mitigation of this portion of the penalty because the Company has failed to correct this violation, but will offer the Company further technical assistance in this area. We agree with Staff's recommendation. Because these were first-time violations, the Commission assessed a penalty by type of violation rather than per occurrence. We conclude no further penalty reduction is warranted.
- 17 **49 C.F.R. Part 396.3(b).** The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. 396.3(b) because the Company failed to keep minimum records of inspection and vehicle maintenance for its commercial vehicle. The Company states that it had the vehicle maintenance documentation but did not present it to the investigator. The Company states it is working on organizing the documentation into a vehicle maintenance file and will continue to maintain the file going forward.
- 18 Staff recommends no mitigation of this portion of the penalty because the Company has not established that it corrected the violation. Staff explains that the Company failed to provide an example of a file, a list of the documents it keeps in such a file, or any other supporting evidence. We agree with Staff's recommendation. The Commission assessed

the minimum penalty for this violation. As such, we conclude that no further penalty reduction is warranted.

19 **49 C.F.R. Part 396.17(a).** The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. Part 396.17(a) because the Company used a commercial motor vehicle not periodically inspected. The Company asserts it had the “vehicle inspected and maintained regularly including brakes, oil, tires, lights, engine, transmission, etc.”

20 Staff recommends no mitigation of this portion of the penalty. Staff responds that “all components of a required Department of Transportation annual vehicle inspection report are not covered during a routine service.” We agree. While this was a first-time violation, the Commission assessed the minimum penalty for this violation. Accordingly, we conclude that no further penalty reduction is warranted.

21 **Penalty Suspension.** The Commission considers several factors in determining whether to suspend a portion of a penalty, including whether it is a first-time penalty for the same or similar violations, and whether the company has taken specific actions to remedy the violations and avoid the same or similar violations in the future, such as purchasing new technology, making system changes, or training company personnel.<sup>6</sup> Another factor we consider is whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.<sup>7</sup>

22 In this case, penalties were assessed for first time violations. In addition, the Company has taken action to prevent several of the violations from reoccurring. Suspending a portion of the penalty with the conditions proposed by Staff will both increase compliance and provide a strong incentive to avoid violations in the future. Accordingly, we suspend a \$4,000 portion of the penalty for two years, and then waive it, subject to the following conditions: (1) The Company may not incur any repeat violations of critical regulations; and (2) the Company must pay the \$4,000 portion of the penalty that is not suspended. Staff will conduct a follow-up safety investigation in two years to review the Company’s safety management practices. If the Company fails to comply with either of the conditions, the suspended penalty will become immediately due and payable without further Commission order.

## FINDINGS AND CONCLUSIONS

---

<sup>6</sup> *Id.* at ¶20.

<sup>7</sup> *Id.*

- 23 (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.
- 24 (2) 3Z Movers is a household goods carrier subject to Commission regulation.
- 25 (3) 3Z Movers violated 49 C.F.R. Part 391.45(a) when it used a driver not medically examined and certified.
- 26 (4) The Commission should penalize 3Z Movers \$3,600 for 72 violations of 49 C.F.R. Part 391.45(a).
- 27 (5) 3Z Movers violated WAC 480-15-555 when it failed to obtain and maintain proper levels of cargo insurance.
- 28 (6) The Commission should penalize 3Z Movers \$3,600 for 72 violations of WAC 480-15-555.
- 29 (7) 3Z Movers violated WAC 480-15-555 when it failed to acquire criminal background checks on four prospective employees.
- 30 (8) The Commission should penalize 3Z Movers \$400 for four violations of WAC 480-15-555.
- 31 (9) 3Z Movers violated 49 C.F.R. Part 391.51(a) when it failed to maintain a driver qualification file for its driver.
- 32 (10) The Commission should penalize 3Z Movers \$100 for one violation of 49 C.F.R. Part 391.51(a).
- 33 (11) 3Z Movers violated 49 C.F.R. Part 395.8(a)(1) when it failed to require its driver to make a record of duty status using the appropriate method.
- 34 (12) The Commission should penalize 3Z Movers \$100 for one violation of 49 C.F.R. Part 395.8(a)(1).

- 35 (13) 3Z Movers violated 49 C.F.R. Part 396.3(b) when it failed to keep minimum records of inspection and vehicle maintenance.
- 36 (14) The Commission should penalize 3Z Movers \$100 for one violation of 49 C.F.R. Part 396.3(b).
- 37 (15) 3Z Movers violated 49 C.F.R. Part 396.17(a) when it used a commercial motor vehicle not periodically inspected.
- 38 (16) The Commission should penalize 3Z Movers \$100 for one violation of 49 C.F.R. Part 396.17(a).
- 39 (17) The Commission should assess a total penalty of \$8,000 for 165 critical violations of WAC 480-15 and Title 49 C.F.R.
- 40 (18) The Commission should suspend a \$4,000 portion of the penalty for a period of two years, and then waive it subject to the conditions set out in paragraph 22, above.

**ORDER**

**THE COMMISSION ORDERS:**

- 41 (1) 3Z Movers LLC's request for mitigation of the \$15,200 penalty is GRANTED, in part, and the penalty is reduced to \$8,000.
- 42 (2) The Commission suspends a \$4,000 portion of the penalty for a period of two years, and then waives it, subject to the following conditions: (1) 3Z Movers LLC must either pay the \$4,000 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement within 10 days of the effective date of this Order; and (2) 3Z Movers may not incur any repeat violations of critical regulations.
- 43 (3) Commission Staff will conduct a follow-up review of 3Z Movers LLC's operations two years after the effective date of this Order.
- 44 (4) If 3Z Movers LLC fails to satisfy any of the conditions in paragraph 42 of this order, or fails to comply with the terms of the payment arrangement, if applicable,

the entire unpaid portion of the \$8,000 penalty will become immediately due and payable without further Commission order.

45 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 May 10, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK L. JOHNSON  
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.**