



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • TTY (360) 586-8203

June 7, 2019

Mark L. Johnson, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, WA 98504-7250

RE: *Washington Utilities and Transportation Commission v. Merchants Parcel Delivery, Inc.,
d/b/a Merchants Moving & Storage Co.*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TV-190326

Dear Mr. Johnson:

On May 16, 2019, the Washington Utilities and Transportation Commission (commission) issued a penalty assessment against Merchants Parcel Delivery, Inc., d/b/a Merchants Moving & Storage Co. (Merchants Moving or company) in the amount of \$16,200 for violations of Washington Administrative Code (WAC) 480-15-555, Criminal Background Checks for Prospective Employees; and WAC 480-15-570, Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 390 – Federal Motor Carrier Safety Regulations; General, and Title 49 CFR Part 391 – Qualifications of Drivers, as follows:

- **Sixteen violations of WAC 480-15-555 – Failing to complete a criminal background check for every person the carrier intends to hire.** The company failed to acquire criminal background checks for 16 prospective employees: Justin Bart, Kenneth Carter, Clifton Chesser, Mathew Chesser, Kyler Cunningham, Darrell Franck, Dylan Hansen, Tony Lewis, Joette Marchisella, Jeri McNeven, Antonio Ortega, Mason Robertson, Michael Sammeli, Richard Setten, Chance Shurwin, and Eric Worfe.
- **One violation of Title 49 CFR 390.35 – Making or causing to make fraudulent or intentionally false statements, fraudulent or intentionally false entries on records, and/or reproducing records for fraudulent purposes.** Merchants Moving signed a document attesting that an annual driver review and evaluation of driver Michael Sammeli was complete prior to receiving Mr. Sammeli's annual motor vehicle report.

- **One hundred forty-four violations of Title 49 CFR 391.45(a) – Using a driver not medically examined and certified.** The company allowed its drivers Mason Robertson, Mathew Chesser, and Justin Bart to drive without having been medically examined and certified on 144 occasions during the six months preceding the safety investigation.
- **Two violations of Title 49 CFR 391.51(a) – Failing to maintain driver qualification file on each driver employed.** Merchants Moving failed to maintain driver qualification files for drivers Mathew Chesser and Mason Robertson.

On May 31, 2019, Merchants Moving filed with the commission its application for mitigation of penalties. In the request for mitigation, Joette Marchisella, office manager of Merchants Moving, admitted the violations, stated the company has corrected the violations, implemented new procedures to prevent future occurrences of the violations, and asked that the penalties be reduced for reasons set out in the company's response. Staff's response to the mitigation request is below.

- **Mitigation Request: WAC 480-15-555 – Failing to complete a criminal background check for every person the carrier intends to hire.** Merchants Moving stated that it completed criminal background checks for all 16 of its employees prior to commission staff completing its routine safety investigation. The company stated that it has implemented new procedures to complete criminal background checks on all prospective employees, and provided an example of a completed criminal background check.

Staff response: Employees with unknown criminal histories raise serious concerns about the security of the customer's belongings as well as the customer's personal safety. The company promptly corrected these first-time violations of a fundamental safety requirement, and provided staff with supporting documentation. The assessed penalty is \$1,600 for 16 occurrences of this violation. Staff recommends the penalty be reduced by half, to \$800.

- **Mitigation Request: Title 49 CFR 390.35 – Making or causing to make fraudulent or intentionally false statements, fraudulent or intentionally false entries on records, and/or reproducing records for fraudulent purposes.** Merchants Moving stated that it has modified its procedures to independently obtain driving record abstracts from the Department of Licensing prior to signing documents attesting that annual driver reviews and evaluations of its drivers are completed.

Staff response: This is an acute violation that could result in permitting a disqualified driver to operate a commercial motor vehicle. Acute regulations are those identified as such where non-compliance is so severe as to require immediate corrective actions by a motor carrier, and are quantitatively linked to inadequate safety management controls and

usually higher than average accident rates.¹ Staff recommends no mitigation of this \$100 penalty.

- **Mitigation Request: Title 49 CFR 391.45(a) – Using a driver not medically examined and certified.** Merchants Moving stated that it previously believed non-CDL drivers operating commercial motor vehicles rated under 26,000 GVW did not require medical certification. The company stated that it immediately corrected these first-time violations by getting Mason Robertson, Mathew Chesser, and Justin Bart medically examined and certified, and provided a copy of Justin Bart’s medical certificate.

Staff response: It is Merchants Moving’s responsibility to ensure its drivers have current medical certificates, and that the company not allow its drivers to operate a commercial motor vehicle when medical certification cannot be verified. Merchants Moving promptly corrected these first-time violations of a fundamental safety requirement, and provided staff with supporting documentation. The assessed penalty is \$14,400 for 144 occurrences of this violation. Staff recommends the penalty be reduced by half, to \$7,200.

- **Mitigation Request: Title 49 CFR 391.51(a) – Failing to maintain driver qualification file on each driver employed.** Merchants Moving stated that it previously maintained driver qualification files for only its CDL drivers. The company stated that it now maintains driver qualification files for all of its drivers, described the documents that will be contained in each driver qualification file, and provided examples of the documents maintained in each file.

Staff response: Merchants Moving promptly corrected these first-time violations, and provided staff with supporting documentation. Because the commission assessed a “per category” penalty of \$100 for two occurrences of this violation, staff recommends no mitigation of this penalty.

Merchants Moving is a small company that operated nine commercial motor vehicles, employed six drivers, and reported a gross revenue of \$936,289 in 2018.

Staff recommends the penalty of \$16,200 be reduced to \$8,200. Staff further recommends that \$5,000 of the penalty be suspended for a period of two years before being waived, on the following conditions:

1. Staff conducts a focused safety investigation in two years or as soon thereafter as practicable to review Merchants Moving’s driver qualifications and employees’ criminal background checks;
2. The company not incur any repeat acute or critical violations; and
3. Merchants Moving pays \$3,200, the portion of the penalty that is not suspended.

¹ Appendix B to Title 49 CFR Part 385—Explanation of Safety Rating Process.

Mark L. Johnson
June 7, 2019
Page 4

If you have any questions, please contact Jason Hoxit, Compliance Investigator, Consumer Protection, at (360) 664-1320, or by email at jason.hoxit@utc.wa.gov.

Sincerely,

A handwritten signature in blue ink that reads "Bridgit Feeser". The signature is written in a cursive style with a large initial "B" and "F".

Bridgit Feeser
Assistant Director, Consumer Protection