

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of IRON MOUNTAIN INFORMATION MANAGEMENT SERVICES, INC., For Compliance with WAC 480-15-560 and WAC 480-15-570	DOCKETS TV-200874 and TV-200873 (<i>Consolidated</i>) ORDER 01
In the Matter of the Penalty Assessment against IRON MOUNTAIN INFORMATION MANAGEMENT SERVICES, INC., in the amount of \$100	CONSOLIDATING DOCKETS; APPROVING SAFETY MANAGEMENT PLAN; UPGRADING SAFETY RATING; IMPOSING PENALTIES

BACKGROUND

- 1 On October 27, 2020, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel and Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements in the Matter of the Investigation of Iron Mountain Information Management Services, Inc., (Iron Mountain or Company) for Compliance with Washington Administrative Code (WAC) WAC 480-15-560 and WAC 480-15-570 (Notice).
- 2 The Notice explained that Commission staff (Staff) conducted a compliance review of Iron Mountain's operations on October 15, 2020, and, on October 28, 2020, cited the Company for 81 violations of federal and state safety regulations, which resulted in a proposed "conditional" safety rating. Based on its review, Staff recommends the Commission cancel Iron Mountain's household goods carrier's permit unless the Company obtains Commission approval of a safety management plan. The Notice directed Iron Mountain to file a proposed safety management plan by November 23, 2020. The Commission also set a brief adjudicative proceeding (BAP) for December 7, 2020, at 9:30 a.m. to determine whether the Commission should cancel Iron Mountain's household goods carrier's permit.

**Pursuant to RCW 80.01.060(3)
This packet is the final
Order in this docket.**

3 On October 28, 2020, the Commission assessed an \$100 penalty (Penalty Assessment) against Iron Mountain for the safety violations discovered during Staff's compliance review.¹ The Penalty Assessment includes:

- A \$100 penalty for 81 violations of 49 C.F.R. § 395.8(a)(1) for failing to require drivers to prepare records of duty status using the appropriate method.

4 On November 12, 2020, Iron Mountain submitted a proposed safety management plan. On November 24, 2020, Staff filed with the Commission its evaluation of the Company's safety management plan and penalty recommendation (Evaluation).

5 Staff determined, based on its review of the Iron Mountain's proposed plan, that the Company took all of the required steps to bring its safety operations into compliance with Commission regulations. Staff recommends that the Commission upgrade the Company's safety rating to "satisfactory". Staff further recommends that Dockets TV-200874 and TV-200873 be consolidated.

6 On November 24, 2020, Staff contacted the presiding officer representing that Iron Mountain waives its right to a hearing in Docket TV-200874, and recommending that the BAP be cancelled. On November 24, 2020, the Commission issued a Notice cancelling the December 7, 2020, hearing and informing the parties that the Commission would enter an order based on the parties' written submissions.

DISCUSSION AND DECISION

1. Consolidation

7 Because the violations cited in Staff's investigation gave rise to the enforcement actions taken in both dockets, the Commission exercises its discretion to consolidate these proceedings. Accordingly, Docket TV-200874 and Docket TV-200873 are consolidated.

2. Safety Rating

8 Washington Law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's compliance review of Iron Mountain found 81 violations of Commission safety regulations; all of the violations were "critical," which resulted in a proposed "unsatisfactory" safety rating. Violations

¹ The Penalty Assessment cites violations of WAC 480-15-560 and WAC 480-15-570, which adopt by reference sections of Title 49 Code of Federal Regulations (C.F.R.). Accordingly, Commission safety regulations with parallel federal rules are hereinafter referenced only by the applicable provision of Title 49 C.F.R.

classified as “critical” are indicative of a breakdown in a carrier’s management controls. Patterns of noncompliance with a critical regulation are quantitatively linked to inadequate safety management controls and usually higher-than-average accident rates.

- 9 On November 12, 2020, the Company submitted its proposed safety management plan and requested the Commission upgrade its safety rating to “conditional.” Staff determined that Iron Mountain’s safety management plan addresses each violation, identifies how each violation occurred, describes the steps taken to correct each violation, and describes the controls put in place to ensure compliance going forward. Staff concludes that Iron Mountain’s safety management plan is acceptable and satisfies the legal requirements of 49 C.F.R. § 385. We agree.
- 10 Based on Staff’s Evaluation, the Commission finds that the Company has achieved compliance with WAC 480-15 by correcting the violations that led to the proposed “unsatisfactory” safety rating. Accordingly, the Commission agrees with Staff’s recommendation that Iron Mountain’s safety rating should be upgraded to “conditional.”

3. Penalty

- 11 Violations discovered during safety inspections are subject to penalties of \$100 per violation.² In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.³ Critical violations meet this standard.⁴
- 12 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.⁵
- 13 Staff recommends no mitigation of the penalty. We agree. Although the Commission could have assessed penalties of \$100 per violation, resulting in a total penalty of \$8,100, the Penalty Assessment assessed a minimal, “per category” penalty of \$100 for 81 violations. Accordingly, no further mitigation is warranted.

² See RCW 80.04.405.

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

⁴ 49 C.F.R. § 385, Appendix B.

⁵ Enforcement Policy ¶19.

FINDINGS AND CONCLUSIONS

- 14 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including common carriers such as household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 15 (2) Iron Mountain is a household goods carrier subject to Commission regulation.
- 16 (3) Iron Mountain cured the deficiencies that led to Staff’s recommendation to cancel the Company’s household goods permit. Accordingly, Iron Mountain’s safety rating should be upgraded to “satisfactory.”
- 17 (4) Iron Mountain committed 81 critical violations of WAC 480-15 and Title 49 C.F.R.
- 18 (5) Iron Mountain does not dispute that the violations occurred.
- 19 (6) Iron Mountain should be penalized \$100 for 81 critical violations of WAC 480-15 and Title 49 C.F.R.

ORDER

THE COMMISSION ORDERS THAT:

- 20 (1) The Commission approves Iron Mountain Information Management Services, Inc.’s safety management plan.
- 21 (2) Iron Mountain Information Management Services, Inc.’s safety rating is upgraded to “satisfactory.”
- 22 (3) The Commission assesses a \$100 penalty against Iron Mountain Information Management Services, Inc.
- 23 (4) The \$100 penalty is due and payable now.

24 DATED at Lacey, Washington, and effective December 8, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Samantha Doyle
SAMANTHA DOYLE
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order and you would like the Order to become final before the time limits expire, you may send a letter to the Commission waiving your right to petition for administrative review.

WAC 480-07-610(7) provides that any party to this proceeding has 21 days after service of this initial order to file a petition for administrative review (Petition). Section (7)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-610(7)(c) states that any party may file a response to a Petition within 7 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence that is essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-610(9) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission does not exercise administrative review on its own motion.

Any Petition or response must be electronically filed through the Commission's web portal, as required by WAC 480-07-140(5).