

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of SMOOTH MOVES LLC For Compliance with WAC 480-15	DOCKETS TV-210861 and TV-210862 (<i>Consolidated</i>) ORDER 01
In the Matter of the Penalty Assessment against SMOOTH MOVES LLC in the amount of \$16,300	CONSOLIDATING DOCKETS; APPROVING SAFETY MANAGEMENT PLAN; UPGRADING SAFETY RATING; IMPOSING AND SUSPENDING PENALTIES

BACKGROUND

- 1 On November 24, 2021, 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 Smooth Moves LLC (Smooth Moves or Company) for Compliance with Washington Administrative Code (WAC) 480-15 (Notice).
- 2 The Notice explained that Commission staff (Staff) conducted a compliance review of the Company's operations in November 2021 and cited Smooth Moves for 333 critical violations of federal and state safety regulations. Based on its review, Staff recommended the Commission cancel the Company's household goods carrier permit unless it obtained Commission approval of a safety management plan. The Notice directed Smooth Moves to file a proposed safety management plan by December 15, 2021. The Commission also set a brief adjudicative proceeding for December 29, 2021, at 9:30 a.m. to determine whether the Commission should cancel the Company's household goods carrier permit.
- 3 On December 1, 2021, the Commission assessed a \$16,300 penalty (Penalty Assessment) against Smooth Moves for the safety violations discovered during Staff's November 2021 compliance review.¹ The Penalty Assessment includes:

¹ The Penalty Assessment cites violations of Washington Administrative Code (WAC) 480-15-555, WAC 480-15-560, and WAC 480-15-570. WAC 480-15-560 and -570 adopt by reference sections of Title 49 Code of Federal Regulations (C.F.R.). Accordingly, Commission safety

- A \$1,200 penalty for 12 violations of WAC 480-15-555 for failing to acquire criminal background checks for prospective employees.
- A \$14,500 penalty for 145 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.
- A \$100 penalty for four violations of 49 C.F.R. § 391.51(a) for failing to maintain driver qualification files for each driver.
- A \$200 penalty for two violations of 49 C.F.R. § 393.9(a) for using a vehicle with inoperative brake lamps.
- A \$100 penalty for 150 violations of 49 C.F.R. § 395.8(a)(1) for failing to require a driver to prepare a record of duty status.
- A \$100 penalty for one violation of 49 C.F.R. § 396.3(a)(1) for using a commercial motor vehicle with brakes out of adjustment.
- A \$100 penalty for five violations of 49 C.F.R. § 396.3(b) for failing to keep minimum records of vehicle inspection and maintenance.

- 4 On December 15, 2021, Smooth Moves filed with the Commission a request for mitigation of the penalty, admitting the violations and requesting a hearing to present evidence to support its request.
- 5 On December 28, 2021, Staff informed the presiding officer that the Company had submitted a proposed safety management plan. Staff evaluated the proposed plan and determined it is acceptable. Staff indicated that the Company waived its right to a hearing in both dockets and requested the Commission cancel the brief adjudicative proceeding and decide this matter on a paper record. Also on December 28, 2021, the Commission issued a notice canceling the December 29 hearing and informing the parties that the Commission would enter an order based on the parties' written submissions.
- 6 On December 28, 2021, Staff filed with the Commission its evaluation of the Company's safety management plan and penalty recommendation (Evaluation). Based on its review of the Company's proposed plan, Staff determined that the Company took all 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 conditional.
- 7 Staff further recommends that the Commission assess a reduced penalty of \$8,100. Finally, Staff recommends the Commission suspend a \$5,100 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: (1) the Company must maintain a conditional safety rating; (2) Staff must conduct a follow-up safety investigation at least six months from the effective date of this Order; (3) the

regulations with parallel federal rules are hereinafter referenced only by the applicable provision of Title 49 C.F.R.

Company must not incur any repeat acute or critical violations upon re-inspection; and (4) the Company must pay the \$2,600 portion of the penalty that is not suspended.

DISCUSSION AND DECISION

1. Consolidation

8 Because the violations cited in Staff's November 2021 investigation gave rise to the enforcement actions taken in both dockets, the Commission exercises its discretion to consolidate these proceedings. Accordingly, Docket TV-210861 and Docket TV-210862 are consolidated.

2. Safety Rating

9 Washington Law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's November 2021 compliance review of Smooth Moves found 333 violations of critical safety regulations, which resulted in a proposed unsatisfactory safety rating. Violations 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.

10 On December 23, 2021, Smooth Moves submitted its proposed safety management plan and requested the Commission upgrade its safety rating. Staff determined that the Company'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 the Company's safety management plan is acceptable and satisfies the legal requirements of 49 C.F.R. Part 385. We agree.

11 Based on Staff's Evaluation, the Commission finds that Smooth Moves has achieved compliance with WAC 480-15 by correcting the violations that resulted in Staff's recommendation to cancel the Company's household goods permit. Accordingly, the Commission agrees with Staff's recommendation and grants the Company's request to upgrade its safety rating to "conditional."

3. Penalty

- 12 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 Acute and critical violations meet this standard.⁴
- 13 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
- 14 Here, Staff recommends the Commission assess a reduced penalty of \$8,100. We agree with Staff's recommendation. The Company provided a comprehensive safety management plan that details the steps it has taken to bring its operations into compliance with applicable regulations. The safety management plan includes documentation of driver qualifications, criminal background checks, vehicle maintenance, and hours of service records. Accordingly, we are satisfied that Smooth Moves has cured the violations that gave rise to the Penalty Assessment and has put adequate controls in place to prevent the violations from reoccurring.
- 15 **Suspended Penalty.** 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.⁶ Another factor we consider is whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.⁷
- 16 In this case, the Company has remedied the violations and taken actions to prevent each 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 agree with Staff's

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.

⁶ *Id.* at ¶20.

⁷ *Id.*

recommendation and suspend a \$5,500 portion of the penalty for a period of two years, and then waive it, subject to the following conditions:

- a) Smooth Moves must maintain a conditional safety rating;
- b) Staff must conduct a follow-up investigation at least six months from the effective date of this Order;
- c) Smooth Moves may not incur any repeat acute or critical violations of WAC 480-15 upon re-inspection; and
- d) Smooth Moves must pay the remaining \$2,600 penalty within ten days of the effective date of this Order. The Company may work with Staff to establish mutually agreeable payment arrangements to pay the \$2,600 portion of the penalty that is not suspended.

FINDINGS AND CONCLUSIONS

- 17 (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.
- 18 (2) Smooth Moves is a household goods carrier subject to Commission regulation.
- 19 (3) Smooth Moves cured the deficiencies that led to the proposed cancellation of its household goods permit. Accordingly, Smooth Moves's safety rating should be upgraded to conditional, and the Company should be allowed to maintain its household goods carrier permit.
- 20 (4) Smooth Moves committed 333 critical violations of WAC 480-15 and Title 49 C.F.R.
- 21 (5) Smooth Moves does not dispute that the violations occurred.
- (6) Smooth Moves should be penalized \$8,100 for 333 violations of WAC 480-15 and Title 49 C.F.R. The Commission should suspend a \$5,500 portion of the penalty for two years, and then waive it, subject to the conditions set out in paragraph 16, above.

ORDER

THE COMMISSION ORDERS THAT:

- 22 (1) The Commission approves Smooth Moves LLC's safety management plan.
- 23 (2) Smooth Moves LLC's safety rating is upgraded to conditional.
- 24 (3) The Commission assesses a \$8,100 penalty against Smooth Moves LLC. The Commission suspends a \$5,500 portion of the penalty for a period of two years, and then waives it, subject to the conditions set out in paragraph 16, above.
- 25 (4) With 10 days of the effective date of this Order, Smooth Moves LLC must either pay the \$2,600 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement.

DATED at Lacey, Washington, and effective December 30, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Rayne Pearson
RAYNE PEARSON
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).