

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TV-220592
ESTABLISHED MOVING & STORAGE OF SEATTLE, INC., D/B/A ESTABLISHED MOVING & STORAGE,	ORDER 01
in the amount of \$1,600	DENYING MITIGATION

BACKGROUND

- 1 On November 10, 2021, the Washington Utilities and Transportation Commission (Commission) entered Order 01 in Dockets TV-210741 and TV-210742, which, among other things, approved Established Moving & Storage of Seattle, Inc., d/b/a Established Moving & Storage's (Established Moving or Company) safety management plan (SMP) and imposed a \$15,000 penalty, a \$10,000 portion of which was suspended for two years subject to the conditions that: a) the Company timely pay the portion of the penalty that was not suspended, and b) that the Company does not incur any repeat acute or critical violations upon reinspection.
- 2 On August 17, 2022, the Commission assessed a \$1,600 penalty (Penalty Assessment) against Established Moving for 16 violations of Washington Administrative Code (WAC) 480-15-570, which adopts by reference Title 49 Code of Federal Regulations (C.F.R.).¹ The Penalty Assessment includes:
 - a \$200 penalty for two violations of WAC 480-15-555 for failing to conduct or retain paperwork containing criminal background checks (a repeat violation);
 - a \$100 penalty for one violation of 49 C.F.R. § 390.19(b)(2) for failing to file the MCS-150 registration form each 24 months according to the schedule;
 - a \$100 penalty for one violation of 49 C.F.R. § 391.21(a) for using a driver who has not furnished a completed employment application;

¹ WAC 480-15-560 adopts 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.

- a \$1,100 violation for 11 violations of 49 C.F.R. § 395.8(a)(1) for failing to require drivers to make records of duty status; and
- a \$100 violation of 49 C.F.R. § 396.9(d)(3) for failing to maintain a completed inspection form for 12 months from the date of inspection at the carrier's principal place of business or where the vehicle is housed.

- 3 On August 24, 2022, Commission staff (Staff) filed a letter in Docket TV-210741, informing the Commission that, upon reinspection, Staff had discovered that Established Moving had incurred repeat violations of critical regulations. On September 8, the Commission issued a letter informing the Company that the \$10,000 portion of the penalty that had been suspended was immediately due and payable as a result of Established Moving's failure to meet the conditions under which it would be waived.
- 4 On August 31, 2022, the Company filed with the Commission an application for mitigation of penalties (Application) in this Docket, admitting the violations and requesting that the \$1,600 penalty be reduced based on the written information provided. The Company explains in its Application that it is continuing to make improvements in its safety management protocol, that it is still suffering economically from the effects of the COVID-19 pandemic, and that the penalty on top of the reinstated \$10,000 penalty in Docket TV-210741 would create a substantial financial hardship.
- 5 On September 7, 2022, Staff filed a response recommending the Commission deny the Application. In its response, Staff points out that the SMP approved in Docket TV-210741 details how Established Moving implemented a system to prevent future violations of WAC 480-15-555, and that these repeat violations should not have occurred. Staff states further that it is willing to work with the Company on an agreed payment arrangement that incorporates both the penalty in this Docket and the reinstated penalty in Docket TV-210741.

DISCUSSION AND DECISION

- 6 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.² In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue

² See RCW 81.04.405.

penalties for first-time violations.³ Violations defined by federal law as “critical” meet this standard.⁴

- 7 The Commission considers several factors when entertaining a request for mitigation, including whether a 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 a company’s compliance.⁵ The Commission also considers whether the violations were promptly corrected, a company’s history of compliance, and the likelihood the violation will recur.⁶ We address each violation category below.
- 8 **WAC 480-15-555.** The Penalty Assessment assessed a \$200 penalty for two violations of WAC 480-15-555 for failing to conduct, or retain paperwork containing, criminal background checks. In its Application, Established Moving acknowledges the violation, but provides no new information or evidence to explain why the violation occurred.
- 9 Staff recommends no mitigation of this portion of the penalty. We agree. An employee with an unknown criminal history raises serious concerns about personal safety and the security of customer belongings. Although the Company has since corrected the violations, it failed to introduce any new information or explain extenuating circumstances that would warrant a reduced penalty. The Company’s failure to conduct or retain paperwork containing criminal background checks is not only a violation of WAC 480-15-555, but a failure to abide by the Company’s own SMP. Accordingly, we find that the \$200 penalty assessed for two violations of WAC 480-15-555 is appropriate in light of the circumstances and conclude that no mitigation is warranted.
- 10 **49 C.F.R. § 390.19(b)(2).** The Penalty Assessment assessed a \$100 penalty for one violation of 49 C.F.R. § 390.19(b)(2) for failing to file the MCS-150 registration form every 24 months according to the required schedule. In its Application, Established Moving acknowledges the violation, but provides no new information or evidence to explain why the violation occurred.

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

⁴ 49 C.F.R. § 385, Appendix B.

⁵ Enforcement Policy ¶ 19.

⁶ Enforcement Policy ¶15.

- 11 Staff recommends no mitigation of this portion of the penalty. We agree. The Company had sufficient notice of the filing requirements and has failed to introduce any new information or explain extenuating circumstances that would warrant a reduced penalty. Accordingly, we find that the \$100 penalty assessed for one violation of 49 C.F.R. § 390.19(b)(2) is appropriate and no mitigation is warranted.
- 12 **49 C.F.R. § 391.21(a).** The Penalty Assessment assessed a \$100 penalty for one violation of 49 C.F.R. § 391.21(a) for using a driver who has not completed and furnished an employment application. In its Application, Established Moving acknowledges the violation, but provides no new information or evidence to explain why the violation occurred.
- 13 Staff recommends no mitigation of this portion of the penalty. We agree. Companies who use drivers who have not completed employment applications could be putting their customers, their customers' belongings, and the traveling public at risk. The Company knew or should have known about the employment requirements and has failed to introduce any new information or explain extenuating circumstances that would warrant a reduced penalty. Accordingly, we find that the \$100 penalty assessed for one violation of 49 C.F.R. § 391.21(a) is appropriate and no mitigation is warranted.
- 14 **49 C.F.R. § 395.8(a)(1).** The Penalty Assessment assessed a \$1,100 penalty for 11 violations of 49 C.F.R. § 395.8(a)(1) for failing to require drivers to make a record of duty status on 11 occasions. In its Application, Established Moving acknowledges the violation, but provides no new information or evidence to explain why the violations occurred.
- 15 Staff recommends no mitigation of this portion of the penalty. We agree. The Company knew, or should have known, about the requirement to make a record of duty status. The Company has failed to introduce any new information or explain extenuating circumstances that would warrant a reduced penalty. Accordingly, we find that the \$1,100 penalty assessed for 11 violations of 49 C.F.R. §395.8(a)(1) is appropriate and no mitigation is warranted.
- 16 **49 C.F.R. § 396.9(d)(3).** The Penalty Assessment assessed a \$100 penalty for one violation of 49 C.F.R. § 396.9(d)(3) for failing to maintain completed inspection forms for 12 months from the date of inspection at the carrier's principal place of business or where the vehicle is housed.
- 17 Staff recommends no mitigation of this portion of the penalty. We agree. The Company knew, or should have known, about the requirement to maintain inspection records and

has failed to introduce any new information or explain extenuating circumstances that would warrant a reduced penalty. Accordingly, we find that the \$100 penalty assessed for one violation of 49 C.F.R. § 396.9(d)(3) is appropriate and no mitigation is warranted.

- 18 **Payment Arrangement.** The Commission's primary interest in any enforcement action is compliance, not creating an insurmountable financial encumbrance on a Company still recovering from the economic hardships resulting from a global pandemic. Accordingly, Established Moving should work with Staff to jointly file an agreed payment arrangement that incorporates the \$1,600 penalty in this Docket and the \$10,000 reinstated penalty in Docket TV-210741 by September 28, 2022.

FINDINGS AND CONCLUSIONS

- 19 (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.
- 20 (2) Established Moving is a household goods carrier subject to Commission regulation.
- 21 (3) Established Moving violated WAC 480-15-555 when it failed to conduct or retain paperwork containing criminal background checks on two occasions.
- 22 (4) Established Moving should be penalized \$200 for two violations of WAC 480-15-555.
- 23 (5) Established Moving violated 49 C.F.R. § 390.19(b)(2) when it failed to file the MCS-150 registration form each 24 months according to the schedule.
- 24 (6) Established Moving should be penalized \$100 for one violation of 49 C.F.R. § 390.19(b)(2).
- 25 (7) Established Moving violated 49 C.F.R. § 391.21(a) when it used a driver who had not completed and furnished an employment application.
- 26 (8) Established Moving should be penalized \$100 for one violation of 49 C.F.R. § 391.21(a).
- 27 (9) Established Moving violated 49 C.F.R. § 395.8(a)(1) when it failed to require drivers to make a record of duty status on 11 occasions.

- 28 (10) Established Moving should be penalized \$1,100 for 11 violations of 49 C.F.R. § 395.8(a)(1).
- 29 (11) Established Moving violated 49 C.F.R. § 396.9(d)(3) when it failed to maintain a completed inspection form for 12 months from the date of inspection at the carrier's principal place of business or where the vehicle is housed.
- 30 (12) Established Moving should be penalized \$100 for one violation of 49 C.F.R. § 396.9(d)(3).

ORDER

THE COMMISSION ORDERS:

- 31 (1) Established Moving & Storage of Seattle, Inc., d/b/a Established Moving & Storage's request for mitigation of the \$1,600 penalty is DENIED.
- 32 (2) The Company must work with Staff to file an agreed plan to pay the total penalty of \$11,600 no later than September 28, 2022.
- 33 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Lacey, Washington, and effective September 20, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AMANDA MAXWELL
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.