

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TV-220961
SOUND MOVING NW LLC, D/B/A SOUND MOVING NW,	ORDER 01
in the amount of \$15,300	GRANTING MITIGATION TO \$7,700; IMPOSING AND SUSPENDING PENALTIES SUBJECT TO CONDITIONS

**BACKGROUND**

- 1 On January 4, 2023, the Washington Utilities and Transportation Commission (Commission) assessed a \$15,300 penalty (Penalty Assessment) against Sound Moving NW LLC, d/b/a Sound Moving NW, (Sound Moving NW or Company) for 173 violations of Washington Administrative Code (WAC) 480-15-555 and WAC 480-15-570, which adopts by reference 49 C.F.R. Part 391.<sup>1</sup> The Penalty Assessment includes:
  - a \$1,500 penalty for 15 violations of WAC 480-15-555 for failing to conduct criminal background checks for every person the carrier intends to hire; and
  - a \$13,800 penalty for 138 violations of 49 C.F.R. Part 391.45(a) for using a driver not medically examined and certified;
- 2 On January 12, 2023, the Company submitted a response to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty. In its response, the Company admitted to each of the violations, but stated that it had taken action to correct the violations and prevent recurrence.
- 3 On January 17, 2023, Commission staff (Staff) filed a response recommending the Commission grant the request for mitigation, in part. Staff recommends the penalties be reduced to a total of \$7,700. Staff further recommends that \$3,700 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 upon reinspection, and (2) the Company must pay the \$4,000 portion of the penalty that

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<sup>1</sup> WAC 480-30-221 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.

is not suspended. Staff proposes to 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 companies 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,” which are indicative of a breakdown in a carrier's management controls, 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.
- 6 **WAC 480-15-555.** The Penalty Assessment includes a \$1,500 penalty for 15 violations of WAC 480-15-555 because the Company failed to conduct background checks for fifteen employees prior to hiring them. In its response, the Company admits the violations and states that it provides evidence that the violations have been corrected. The Company further states that it has set up a new protocol to ensure that background checks will be completed before any new hire begins work in future.
- 7 Staff recommends that the Commission reduce the penalty for these violations to \$800. Because the Company has taken action to correct the violations and ensure future compliance, we agree with Staff and assess a total penalty of \$800 for 15 violations of WAC 480-15-555.
- 8 **49 C.F.R. § 391.45(a).** The Penalty Assessment includes a \$13,800 penalty for 138 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and

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<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.

certified. In its response, the Company stated that it promptly obtained medical certificates for its drivers and has implemented procedures to prevent recurrence.

9 Staff recommends that the Commission reduce this portion of the penalty to \$6,900. Because the Company has corrected the violations and taken action to ensure future compliance, we agree with Staff and reduce the penalty for this violation and assess a total penalty of \$6,900 for 138 violations of 49 C.F.R. § 391.45(a).

10 **Penalty Suspension.** The Commission considers several factors when 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>

11 In this case, the Company has taken action 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 suspend a \$3,700 portion of the reduced 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 upon reinspection, 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 compliance with WAC 480-15-555 and 49 C.F.R. § 391.45(a). If the Company fails to comply with either of the conditions, the suspended penalty will become immediately due and payable without further Commission order. To reduce the financial impact of the penalty, the Company may work with Staff to establish mutually agreeable payment arrangements.

### FINDINGS AND CONCLUSIONS

12 (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.

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<sup>6</sup> *Id.* at ¶20.

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

- 13 (2) Sound Moving NW is a household goods carrier subject to Commission regulation.
- 14 (3) Sound Moving NW violated WAC 480-15-555 when it failed to conduct or retain paperwork containing criminal background checks for a household goods carrier in the state of Washington as required on fifteen occasions.
- 15 (4) The Commission should penalize Sound Moving NW \$800 for 15 violations of WAC 480-15-555.
- 16 (5) Sound Moving NW violated 49 C.F.R. § 391.45(a) when it used a driver not medically examined and certified on 138 occasions.
- 17 (6) The Commission should penalize Sound Moving NW \$6,900 for 138 violations of 49 C.F.R. § 391.45(a).
- 18 (7) The Commission should suspend a \$3,700 portion of the penalty for a period of two years, and then waive it, subject to the conditions set out in paragraph 11, above.

**ORDER**

**THE COMMISSION ORDERS:**

- 19 (1) Sound Moving NW LLC, d/b/a Sound Moving NW's request for mitigation of the \$15,300 penalty is GRANTED, in part, and the penalty is reduced to \$7,700.
- 20 (2) The Commission suspends a \$3,700 portion of the penalty for a period of two years, and then waives it, subject to the following conditions: (1) Sound Moving NW LLC, d/b/a Sound Moving NW, 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) Sound Moving NW LLC, d/b/a Sound Moving NW, may not incur any repeat violations of critical regulations upon reinspection.
- 21 (3) Commission Staff will conduct a follow-up review of Sound Moving NW LLC, d/b/a Sound Moving NW's operations approximately two years after the effective date of this Order.

- 22 (4) If Sound Moving NW LLC, d/b/a Sound Moving NW, fails to satisfy any of the conditions in paragraph 20 of this order or fails to comply with the terms of the payment arrangement, if applicable, the entire unpaid portion of the \$7,700 penalty will become immediately due and payable without further Commission order.
- 23 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 February 14, 2023.

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.**