

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of	DOCKET TV-240255
CONSIGLIERI RELOCATION PLLC	ORDER 01
For Compliance with WAC 480-15-560 and WAC 480-15-555	CANCELLING PROVISIONAL PERMIT; ASSESSING AND SUSPENDING PENALTIES

BACKGROUND

- 1 On April 23, 2024, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel (NOIC) against Consiglieri Relocation PLLC (Consiglieri or Company) alleging the Company committed 10 safety violations of Washington Administrative Code (WAC) 480-15.¹ The NOIC set the matter for hearing on May 30, 2024.
- 2 On April 25, 2024, the Commission issued a Notice of Penalties Incurred and Due to Consiglieri. The Notice imposed penalties on Consiglieri in the amount of \$500 for (1) three violations of WAC 480-15-555(1) in the amount of \$300, (2) two violations of Title 49 Code of Federal Regulations (49 C.F.R.) § 391.51(a) in the amount of \$100, and (3) two violations of 49 C.F.R. § 396.3(b) in the amount of \$100.
- 3 Consiglieri did not contest the penalty assessment or seek mitigation of the penalty.
- 4 On May 30, 2024, the Commission convened an evidentiary hearing before Administrative Law Judge Connor Thompson. No representative from the Company appeared at the evidentiary hearing. Despite the Company's absence, the presiding officer continued the hearing and allowed Commission staff (Staff) to present its case to develop a full record for decision in this matter. Staff presented testimony from special investigator Leonard McLaughlin and an exhibit detailing the investigation of the Company and Staff's findings. Staff also presented testimony from Staff witness Jason

¹ *In re Investigation of Consiglieri Relocation PLLC*, Docket TV-240255, Notice of Intent to Cancel Permit as a Household Goods Carrier, 1, ¶ 4 (April 23, 2024).

Sharp. Staff recommended the Commission cancel Consiglieri's permit based on the investigative findings as follows:

- Three critical violations of WAC 480-15-555(1) for failure to complete a criminal background check for every person the carrier intends to hire.
- Two critical violations of 49 C.F.R. § 391.51(a) for failing to maintain qualification files on each driver employed.
- Two critical violations of 49 C.F.R. § 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance.
- Two violations of 49 C.F.R. § 395.8(a)(1) for failing to require a driver to prepare a record of duty status using the appropriate method.
- One violation of 49 C.F.R. § 396.17(a) for using a commercial vehicle not periodically inspected.²

5 During the hearing, Staff testified that Consiglieri had not submitted an acceptable safety management plan (SMP), but that Consiglieri was currently revising their SMP. Staff witness Sharp indicated that because of the missing SMP Staff would recommend cancelling the Company's permit.

6 During the hearing, because of the Company's absence, Staff also moved for default judgment against the Company, pursuant to WAC 480-07-450(1) and Revised Code of Washington (RCW) 34.05.440.

7 As of June 10, 2024, no final SMP had been submitted to Staff.

DISCUSSION

8 Washington law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's 2024 compliance review of Consiglieri found ten violations. The violations found by Staff resulted in a proposed conditional safety rating. We rule on each of the issues presented in this docket.

² Staff, Exh. LM-1, 3-4.

9 WAC 480-07-450(1) states the Commission “may dismiss a party or find a party in default for failure to appear at the time and place set for hearing.” Further, the Commission’s order implementing dismissal or default may dispose of the issues in the proceeding in accordance with RCW 34.05.440.

10 RCW 34.05.440(2) provides that if a party fails to attend a hearing, the presiding officer may serve upon all parties a default or other dispositive order.

A. Whether the Company’s absence constitutes a default

11 RCW 34.05.440 states that a party who either fails to file an application for an adjudicative proceeding within the established time limits or fails to attend or participate in a stage of an adjudicative proceeding, loses the right to an adjudicative proceeding and the agency may resolve the case without the party.

12 On April 23, 2024, the Commission provided notice to Consiglieri of the complaint against the Company. The notice contained the allegations against the Company and provided notice that a hearing would be held on the matter on May 30, 2024. There is no evidence that the notice was in any way not served on the Company and in fact, prior to the hearing, Staff attempted to contact the Company and was unable to do so. Despite service of the NOIC and attempts to contact the Company, the Company failed to appear at the hearing. Accordingly, we find the Company is in default and we will resolve the issues in this proceeding based on the record established.

B. Whether the Company committed the violations alleged by Staff

13 Having carefully considered the written submissions in this docket, the Company’s failure to dispute or otherwise respond to the imposition of penalties, and the testimony from Staff at the May 30, 2024, evidentiary hearing, we find that the Company committed each of the violations noted in paragraph 4 of this Order and documented in McLaughlin, Exh. LM-1.

14 During the evidentiary hearing, Staff witness McLaughlin testified as to each violation, how Staff determined the violation had occurred and provided testimony detailing the evidence supporting each finding of a violation.

15 We therefore adopt Staff’s recitation of violations, as noted in paragraph 4 of this Order, as the Commission’s own findings.

C. Whether the Company's provisional status should be extended

- 16 As of June 10, 2024, the Company has not submitted its updated SMP. While Staff presented testimony that the Company had submitted an SMP at the time of the evidentiary hearing, Staff also testified that the SMP was not compliant regarding what Staff would deem is required by law and therefore did not adequately address the safety violations committed by the Company. Because of this, Staff recommends that the Company's provisional permit be cancelled for the reasons contained in Staff's testimony and filings in this docket.
- 17 Based on Staff's testimony and the record before the Commission, the Commission finds that the Company has not filed an SMP compliant with 49 CFR § 385.
- 18 WAC 480-15-305(1)(b) states that household goods carriers may be granted a provisional permit for a period "of not less than six months and not more than eighteen months from the date the provisional permit was issued unless the commission determines that for good cause the provisional period should be extended beyond eighteen months."
- 19 Good cause may include a variety of factors but generally includes some indication that a carrier is making substantial progress toward a satisfactory safety rating.³
- 20 Unfortunately, Consiglieri has not yet shown that it is making progress towards a satisfactory safety rating.
- 21 Because Consiglieri has not shown it is making substantial progress toward a satisfactory safety rating, we find the Company's provisional permit should be cancelled.

FINDINGS AND CONCLUSIONS

- 22 (1) The Commission is an agency of the state of Washington, vested by statute with the authority to regulate the 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.
- 23 (2) Consiglieri is a household goods carrier subject to Commission regulation.

³ WAC 480-15-305(1)(b).

- 24 (3) Consiglieri committed three critical violations of WAC 480-15-555(1) for failure to complete a criminal background check for every person the carrier intends to hire.
- 25 (4) Consiglieri committed two critical violations of 49 C.F.R. § 391.51(a) for failing to maintain qualification files on each driver employed.
- 26 (5) Consiglieri committed two critical violations of 49 C.F.R. § 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance.
- 27 (6) Consiglieri committed two violations of 49 C.F.R. § 395.8(a)(1) for failing to require a driver to prepare a record of duty status using the appropriate method.
- 28 (7) Consiglieri committed one violation of 49 C.F.R. § 396.17(a) for using a commercial vehicle not periodically inspected.⁴
- 29 (8) Consiglieri has not cured the deficiencies that led to the proposed conditional safety rating.
- 30 (9) Consiglieri has not submitted an SMP and therefore has failed to cure the deficiencies identified by Staff and has not shown the Company is making substantial progress towards a satisfactory safety rating, which is required for an extension of the provisional period. Therefore, the Company's provisional period should not be extended at this time.

ORDER

THE COMMISSION ORDERS:

- 31 (1) Consiglieri Relocation PLLC's provisional permit is deemed cancelled because the Commission has not found good cause in order to extend Consiglieri Relocation PLLC's provisional operating authority.

DATED at Lacey, Washington, and effective June 11, 2024.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Connor A. Thompson
CONNOR THOMPSON
Administrative Law Judge

⁴ Staff, Exh. 1, 3-4.

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 twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) 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 fails to 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). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).