

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment	)	DOCKET TV-143123
Against	)	
	)	ORDER 01
A BETTER COMPANY, LLC d/b/a	)	
A BETTER MOVING COMPANY	)	ORDER DENYING MITIGATION
	)	
in the amount of \$1,300	)	
.....	)	

**BACKGROUND**

- 1 On August 28, 2014, the Washington Utilities and Transportation Commission (Commission) assessed a penalty of \$1,300 (Penalty Assessment) against A Better Company, LLC d/b/a A Better Moving Company (A Better Moving Company or Company) for 12 violations of Washington Administrative Code (WAC) 480-15-570, which adopts by reference 49 C.F.R. Parts 391 and 395 related to driver qualifications and hours of service, and one violation of WAC 480-15-560, which adopts 49 C.F.R. Part 396 related to vehicle inspection, repair, and maintenance.
- 2 On September 12, 2014, A Better Moving Company responded to the Penalty Assessment admitting the violations and requesting mitigation of the penalty based on the written information provided. The Company states that prior to receiving the Penalty Assessment, it was unaware of Commission safety requirements, but has since implemented a compliance program. The Company also claims that the Commission’s motor carrier safety inspector represented the inspection as an “informational/friendly review,” and told the Company that penalties would not be assessed unless and until repeat violations were discovered during a subsequent inspection.
- 3 On September 22, 2014, Commission Staff (Staff) filed a response recommending the Commission deny the Company’s request for mitigation. Staff explains that although all 31 violations are first-time offenses, 24 warrant penalties because they present a risk of serious harm to the public. Staff recommended a reduced penalty of \$100 for 11 violations of 49 C.F.R. Part 395.8(a) because the Company’s driver failed to make a record of duty status for 11 days. Staff also recommended a reduced penalty of

\$100 for two violations of 49 C.F.R. Part 396.17(a) because neither of the Company's two vehicles had been inspected in the previous 12 months.

- 4 Staff recommended a penalty of \$100 per violation for the remaining 11 violations of 49 C.F.R. Part 391.45(b)(1) for using a driver who was not medically certified, which is a category of violation that is ineligible for reduced penalties even for a first-time offense. Because Staff recommended reduced penalties in two of three violation categories and the Company presented no new information, Staff opposes mitigation.

### DISCUSSION AND DECISION

- 5 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.<sup>1</sup> In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.<sup>2</sup> Violations defined by federal law as "critical," which are indicative of a breakdown in a carrier's management controls, meet this standard.<sup>3</sup>
- 6 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>4</sup>
- 7 The Penalty Assessment includes a \$100 penalty for 11 violations of 49 C.F.R. Part 395.8(a), and a \$100 penalty for two violations of 49 C.F.R. Part 396.17(a). Although both categories of violations are classified as critical, the Penalty Assessment assessed reduced penalties because these are first-time violations. The Company's claim that it was unaware of the Commission's safety rules prior to receiving the Penalty Assessment, however, offers no compelling reason to reduce the penalties any further. When the Company attended the Commission's household goods industry training in July 2012, the Company's owner signed a form acknowledging that training was received in each of the areas where violations occurred. Accordingly, we deny the

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<sup>1</sup> See RCW 80.04.405.

<sup>2</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

<sup>3</sup> 49 C.F.R. § 385, Appendix B.

<sup>4</sup> Enforcement Policy ¶19.

Company's request for mitigation of the penalties assessed for violations of 49 C.F.R. Parts 395.8(a) and 396.17(a).

- 8 The Penalty Assessment also includes penalties of \$100 each for 11 violations of 49 C.F.R. Part 391.45(b)(1). The Company failed to ensure its driver was medically examined and certified between May 23 and July 22, 2014. The employee drove, uncertified, on 11 occasions in June. As Staff noted in the Penalty Assessment, drivers who are not medically certified may have an undocumented medical condition that puts the traveling public at risk. The Company explained that it was unaware the driver's medical card had expired, and had no plan in place to ensure it was kept current. The Company also stated that it has since implemented a compliance plan to prevent future violations.
- 9 While we appreciate the Company's assurances of future compliance, medical certification is a fundamental requirement that warrants penalties for a first-time offense. We find a "per violation" penalty for violations of 49 C.F.R. Part 391.45(b)(1) to be an appropriate deterrent, particularly given the Company's explanation that it simply failed to pay attention to the requirement. Accordingly, we agree with Staff's recommendation and deny the Company's request for mitigation.

### ORDER

#### THE COMMISSION ORDERS:

- 10 (1) The request of A Better Company, LLC d/b/a A Better Moving Company's for mitigation of the \$1,300 penalty is DENIED.
- 11 (2) The penalty is due and payable no later than October 20, 2014.
- 12 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective October 6, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING  
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. The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. A form for late-filed requests is available on the Commission's website.