

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TV-171005
IRON MAN MOVERS AND STORAGE INC.	ORDER 01
in the amount of \$42,800	GRANTING MITIGATION TO \$37,100

BACKGROUND

- 1 On October 10, 2017, the Washington Utilities and Transportation Commission (Commission) assessed a \$42,800 penalty (Penalty Assessment) against Iron Man Movers and Storage Inc. (Iron Man Movers or Company) for 432 violations of Chapter 480-15 Washington Administrative Code (WAC), which adopts by reference sections of Title 49 Code of Federal Regulations (C.F.R.).¹ The Penalty Assessment includes an \$11,400 penalty for 114 violations of WAC 480-15-550 related to cargo insurance coverage;² a \$30,500 penalty for 305 violations of 49 C.F.R. Part 391.45(a) related to driver medical certification; a \$400 penalty for four violations of WAC 480-15-555 related to criminal background checks; a \$100 penalty for one violation of 49 C.F.R. Part 393.209(b) related to steering wheel lash; a \$100 penalty for five violations of 49 C.F.R. Part 396.17(a) related to vehicle inspections; and a \$300 penalty for three violations of 49 C.F.R. Part 396.11(a) related to driver vehicle inspection reports.
- 2 On October 18, 2017, the Company responded to the Penalty Assessment, requesting a hearing to present evidence supporting its request for mitigation of the penalty. In its response, the Company acknowledged it lacked the required cargo insurance coverage,

¹ WAC 480-15-560 and 570 adopt 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.

² The Penalty Assessment cites 114 violations of 49 C.F.R. Part 387.7(a). That rule, however, references the minimum levels of insurance set out in 49 C.F.R. Part 387.9, which applies only to interstate carriers. WAC 480-15-550 sets minimum levels of required cargo insurance for household goods carriers regulated by the Commission. Accordingly, we amend the Penalty Assessment, by this Order, to correctly reference WAC 480-15-550 for violations related to the Company's failure to maintain required minimum levels of cargo insurance.

but asserted its insurance carrier was at fault for dropping the cargo portion of its policy. The Company did not did not address the other violations in its response.

- 3 On October 26, 2017, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. Staff recommends that the Commission reduce the penalty for lacking the required cargo insurance coverage by half, to \$5,700, because the Company promptly corrected the violation. Accordingly, Staff recommends the Commission assess a reduced penalty of \$37,100.

DISCUSSION AND DECISION

- 4 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.³ In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.⁴ Violations defined by federal law as "critical" meet this standard.⁵

- 5 As a preliminary matter, we deny the Company's request for a hearing. The Penalty Assessment advised the Company that a request for hearing will only be granted if material issues of law or fact require consideration of evidence and resolution in a hearing. Because the Company does not dispute the violations, no issues of law or fact are in dispute. Accordingly, the Company's request for a hearing is denied. We turn now to mitigation of the penalty.

- 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.⁶ We address each violation category in turn.

- 7 **WAC 480-15-550.** The Penalty Assessment includes an \$11,400 penalty for 114 violations of WAC 480-15-550 because the Company operated motor vehicles for 114

³ See RCW 81.04.405.

⁴ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

⁵ 49 C.F.R. § 385, Appendix B.

⁶ Enforcement Policy ¶19.

days without the required level of cargo insurance coverage. The Company admits it did not have the required level of cargo insurance, but explains, “[W]e had the required coverage and it was the fault of our insurance carrier for dropping the cargo portion of the policy. It was an error on their part, and not intentional on ours.”

8 Staff’s response noted that it received an email on October 25, 2017, from the Company’s insurance agent, Raquel S. Wagner Insurance, stating that the insurance policy was written in 2006 and that the policy never included cargo insurance. The email further stated that the Company added cargo insurance to the policy on July 28, 2017.

9 Staff recommends that the Commission assess a reduced penalty of \$5,700 because the Company immediately corrected the violations. We agree. The Company corrected the violations prior to receiving the Penalty Assessment. In addition, these are first-time violations. In light of these factors, we assess a \$5,700 penalty for 114 violations of WAC 480-15-550.

10 **49 C.F.R. Part 391.45(a).** The Penalty Assessment includes a \$30,500 penalty for 305 violations of 49 C.F.R. Part 391.45(a) because the Company allowed its employees Leonard Kravchenko, Sagen Brownson, Jonathan Waschow, and Michael Stump to drive on 305 separate occasions without being medically examined and certified. The Company did not address this violation in its response.

11 Staff recommends no mitigation of this portion of the penalty because the Company failed to introduce new information that may have not been considered in setting the assessed penalty amount. We agree with Staff’s recommendation. Medical certification is a fundamental requirement that warrants penalties for a first-time offense, and a “per violation” penalty is appropriate because these violations are considered critical to safe operations. The Company did not introduce any new information related to its failure to meet this requirement or provide an explanation that would warrant a penalty reduction. Accordingly, we assess a \$30,500 penalty for 305 violations of 49 C.F.R. Part 391.45(a).

12 **WAC 480-15-555.** The Penalty Assessment includes a \$400 penalty for four violations of WAC 480-15-555 because the Company hired employees Leonard Kravchenko, Sagen Brownson, Jonathan Waschow, and Michael Stump without obtaining pre-employment background checks. The Company did not address this violation in its response.

13 Staff recommends no mitigation of this portion of the penalty because the Company failed to introduce new information that may have not been considered in setting the assessed penalty amount. We agree with Staff’s recommendation. An employee with an

unknown criminal history raises serious concerns about personal safety and the security of customer belongings. Moreover, the Company failed to provide any explanation that would warrant a penalty reduction. Accordingly, we assess a \$400 penalty for four violations of WAC 480-15-555.

- 14 **49 C.F.R. Part 393.209(b).** The Penalty Assessment includes a \$100 penalty for one violation of 49 C.F.R. Part 393.209(b) because the Company operated a vehicle with excessive steering wheel lash. Company unit number 1, a 1999 GMC, has an 18-inch steering wheel with 13 inches of free play. The Company did not address this violation in its response.
- 15 Staff recommends no mitigation of this portion of the penalty because the Company failed to introduce new information that may have not been considered in setting the assessed penalty amount. We agree with Staff's recommendation and find that the Company failed to provide any explanation that would warrant a penalty reduction. Accordingly, we assess a \$100 penalty for one violation of 49 C.F.R. Part 393.209(b).
- 16 **49 C.F.R. Part 396.17(a).** The Penalty Assessment includes a \$100 penalty for five violations of 49 C.F.R. Part 396.17(a) because the Company failed obtain periodic inspections for five of its six vehicles. The Company did not address this violation in its response.
- 17 Staff recommends no mitigation of this portion of the penalty because the Company failed to introduce new information that may have not been considered in setting the assessed penalty amount. We agree with Staff's recommendation and find that the Company failed provide any explanation that would warrant a penalty reduction. Moreover, the Commission could have assessed a \$500 penalty; because these were first time violations, however, a "per category" rather than a "per violation" penalty was assessed. Accordingly, we assess a \$100 penalty for five violations of 49 C.F.R. Part 396.17(a)
- 18 **49 C.F.R. Part 396.11(a).** The Penalty Assessment includes a \$300 penalty for three violations of 49 C.F.R. Part 396.11(a) because the Company failed to require its drivers to prepare driver vehicle inspection reports on three occasions. The Company did not address this violation in its response.
- 19 Staff recommends no mitigation of this portion of the penalty because the Company failed to introduce new information that may have not been considered in setting the assessed penalty amount. We agree with Staff's recommendation and find that the

Company failed to provide any explanation that would warrant a penalty reduction. Accordingly, we assess a \$300 penalty for three violations of 49 C.F.R. Part 396.11(a).

FINDINGS AND CONCLUSIONS

- 20 (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.
- 21 (2) Iron Man Movers is a household goods carrier subject to Commission regulation.
- 22 (3) Iron Man Movers violated WAC 480-15-550 when it failed to maintain cargo insurance.
- 23 (4) The Commission should penalize Iron Man Movers \$5,700 for 114 violations of WAC 480-15-550.
- 24 (5) Iron Man Movers violated 49 C.F.R. Part 391.45(a) when it allowed four drivers who were not medically examined and certified to drive on 305 occasions.
- 25 (6) The Commission should penalize Iron Man Movers \$30,500 for 305 violations of 49 C.F.R. Part 391.45(a).
- 26 (7) Iron Man Movers violated WAC 480-15-555 when the Company hired four employees without obtaining pre-employment background checks.
- 27 (8) The Commission should penalize Iron Man Movers \$400 for four violations of WAC 480-15-555.
- 28 (9) Iron Man Movers violated 49 C.F.R. Part 393.209(b) when it operated a vehicle with excessive steering wheel lash.
- 29 (10) The Commission should penalize Iron Man Movers \$100 for one violation of 49 C.F.R. Part 393.209(b).
- 30 (11) Iron Man Movers violated 49 C.F.R. Part 396.17(a) when it failed to obtain periodic inspections for five of its six vehicles.
- 31 (12) The Commission should penalize Iron Man Movers \$100 for five violations of 49 C.F.R. Part 396.17(a).

- 32 (13) Iron Man Movers violated 49 C.F.R. Part 396.11(a) when it failed to require its
drivers to prepare driver vehicle inspection reports on three occasions.
- 33 (14) The Commission should penalize Iron Man Movers \$300 for three violations of
49 C.F.R. Part 396.11(a).
- 34 (15) The Commission should assess a total penalty of \$37,100 for 432 violations of
WAC 480-15 and Title 49 C.F.R.
- 35 (16) Iron Man Movers should be permitted to file jointly with Staff a mutually
agreeable arrangement for paying the \$37,100 penalty.

ORDER

THE COMMISSION ORDERS:

- 36 (1) Iron Man Movers and Storage Inc.'s request for mitigation of the \$42,800 penalty
is GRANTED, in part, and the penalty is reduced to \$37,100.
- 37 (2) Iron Man Movers and Storage Inc. must either pay the penalty or file jointly with
Staff a proposed payment arrangement no later than 10 days from the effective
date of this Order
- 38 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 November 8, 2017.

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.**