

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment  
Against

INMOVE LLC

in the amount of \$9,800

DOCKET TV-190082

ORDER 01

GRANTING MITIGATION, IN PART;  
IMPOSING AND SUSPENDING  
PENALTY

**BACKGROUND**

*1* On March 21, 2019, the Washington Utilities and Transportation Commission (Commission) assessed a \$9,800 penalty (Penalty Assessment) against InMove LLC (InMove or Company) for violations of Washington Administrative Code (WAC) 480-15-555, WAC 480-15-560, and WAC 480-15-570, which adopt by reference sections of Title 49 Code of Federal Regulations (C.F.R.).<sup>1</sup> The Penalty Assessment includes:

- a \$500 penalty for 5 violations of WAC 480-15-555 for failing to acquire criminal background checks on prospective employees;
- an \$8,900 penalty for 89 violations of Title 49 CFR Part 391.45(a) for using a driver not medically examined and certified;
- a \$100 penalty for 1 violation of Title 49 CFR Part 391.51(b)(9) for failing to keep medical examiner verification in driver's qualification file;
- a \$100 penalty for 3 violations of 49 C.F.R. Part 395.8(e) for a false record of duty status;
- a \$100 penalty for 1 violation of 49 C.F.R. Part 396.3(a)(1) for having a vehicle with a brake system pressure loss; and,

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<sup>1</sup> 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.

- a \$100 penalty for 2 violations of 49 C.F.R. Part 396.11(a) for failing to require its drivers to prepare vehicle inspection reports.
- 2 On March 25, 2019, InMove filed a response to the Penalty Assessment admitting the violations and requesting a hearing (Mitigation Request). In its Mitigation Request, the Company explained that the 89 violations of Title 49 CFR Part 391.45(a) are first time violations and requested that the \$8,900 penalty associated with those violations be significantly reduced. The Company also noted that it had no prior safety violations or accidents. The Company did not provide any additional details or supporting documentation.
- 3 On April 17, 2019, Commission staff (Staff) filed a response recommending the Commission assess a reduced penalty of \$5,100 and suspend a \$2,550 portion of that penalty for a period of two years, and then waive it, subject to the conditions that (1) Staff will conduct a follow-up investigation within two years, or as soon thereafter as practicable, (2) the Company must not incur any repeat violations of critical regulations during those two years, and (3) the Company must pay the \$2,550 portion of the penalty that is not suspended. Staff explained that it believed such mitigation and suspension was appropriate, in part, due to InMove's 15-day compliance letter to motor carrier staff, which described the steps taken by the Company to correct all of the violations and prevent future occurrences. Staff also believes that a hearing is unnecessary in this circumstance to consider the Company's mitigation request.

### DISCUSSION AND DECISION

- 4 The Commission's 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 hearing. Because the Company admitted the violations and presented no new information, no issues of law or fact are in dispute. Accordingly, the Company's request for a hearing is denied. We will, however, construe the Company's submission as a request for mitigation based solely on the written information provided
- 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>2</sup> In some cases, Commission

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<sup>2</sup> See RCW 81.04.405.

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” meet this standard.<sup>4</sup>

6 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.<sup>5</sup> We address each violation category below, beginning with the 89 violations of Title 49 CFR Part 391.45(a) because the Company specifically requests mitigation of the resulting \$8,900 penalty associated with those violations.

7 **49 C.F.R. § 391.45(a).** The Penalty Assessment assessed an \$8,900 penalty for 89 violations of 49 C.F.R. § 391.45(a) because InMove allowed one of its drivers who was not medically examined and certified to drive on 89 occasions during the six months preceding the safety review.

8 Staff recommends the Commission assess a reduced penalty of \$4,450 because these are first-time violations that have since been corrected and the Company has taken steps to ensure that its drivers are medically examined and certified. We agree with Staff’s recommendation. The Company admitted the violations, explained how the violations were corrected, and provided assurances of future compliance. In light of these factors, we assess a \$4,450 penalty for 89 violations of 49 C.F.R. § 391.45(a).

9 Even though the Company only specifically requested mitigation of the \$8,900 penalty in its mitigation request, it addressed corrective actions it has taken to correct other violations in its 15-day letter to Staff. Additionally, the Commission construes filings to effect just results. Accordingly, we consider the Company’s request for mitigation to impliedly include a request for mitigation of the other violations and associated penalties.

10 **WAC 480-15-555.** The Penalty Assessment includes a \$500 penalty for five violations of WAC 480-15-555 for failing to acquire criminal background checks. The Company has

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<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.

since corrected this violation by completing background checks for all employees and instituted procedures that will ensure background checks are conducted for all new employees moving forward.

- 11 Staff recommends the Commission assess a reduced penalty of \$250 because these violations have since been corrected and the Company has taken appropriate steps to ensure that background checks are conducted for all new employees. We agree with Staff's recommendation. The Company admitted the violations, corrected them, and explained how future violations would be prevented. In light of these factors, we assess a \$250 penalty for 5 violations of WAC 480-15-555.
- 12 **49 C.F.R. § 391.51(b)(9).** The Penalty Assessment assessed a \$100 penalty for one violation of 49 C.F.R. § 391.51(b)(9) because InMove failed to keep medical examiner verification in driver's qualification file. The Company stated that the violation occurred due to a missing page from the file, but asserted that the medical examiner actually had verification. The Company corrected this violation by submitting the missing page from the file and explained that it would check paperwork more carefully in the future prior to submission.
- 13 Staff recommends no mitigation of this portion of the penalty. We agree. While the Company promptly corrected this violation, it is a repeat violation. We conclude no further penalty reduction is warranted and find that a \$100 penalty assessment for this violation is appropriate.
- 14 **49 C.F.R. § 395.8(e).** The Penalty Assessment assessed a \$100 penalty for three violations of 49 C.F.R. § 395.8(e) because the Company had false records of duty status. The Company explained that data entry errors caused these violations because it was transitioning from a manual to an electronic record duty tracking system. The Company corrected these violations and plans to prevent future violations by requiring all hours to be logged electronically.
- 15 Staff recommends no mitigation of this portion of the penalty. We agree. While the Company promptly corrected this violation and set in place a remedy to prevent future violations, the penalty assessed is not per violation, but by violation type. Accordingly, we conclude that a \$100 penalty assessment for these three violations is appropriate.
- 16 **49 C.F.R. § 396.3(a)(1).** The Penalty Assessment assessed a \$100 penalty for one violation of 49 C.F.R. Part 396.3(a)(1) because the Company had a vehicle with a brake

system pressure loss. The Company did not address this violation in either its mitigation request or its 15-day letter.

17 Staff recommends no mitigation of this portion of the penalty. We agree. The Company provided no assurance of future compliance. In addition, this is a critical safety violation that puts the traveling public at risk. Accordingly, we conclude that assessing a \$100 penalty for this violation is appropriate.

18 **49 C.F.R. Part 396.11(a).** The Penalty Assessment assessed a \$100 penalty for two violations of 49 C.F.R. Part 396.11(a) because the Company failed to require its drivers to prepare vehicle inspection reports. The Company explained that these violations occurred because an employee operated a vehicle without authority and, as a non-driver, was not trained to complete the proper paperwork. The Company corrected this violation by logging the incident in the employee's file and taking disciplinary action.

19 Staff recommends no mitigation of this portion of the penalty. We agree. While the Company promptly corrected this violation and set in place a remedy to prevent future violations, the penalty assessed is not per violation, but by violation type. Accordingly, we conclude that a \$100 penalty assessment for these two violations is appropriate.

20 We also agree with Staff that suspending a portion of the penalty is appropriate in light of the circumstances. Our goal here, as in any enforcement proceeding, is to increase compliance, not create an insurmountable financial burden for a regulated company. Accordingly, we suspend a \$2,550 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: (1) Staff will conduct a follow-up investigation within two years, or as soon thereafter as practicable, (2) the Company must not incur any repeat violations of critical regulations during those two years, and (3) the Company must pay the \$2,550 portion of the penalty that is not suspended within 10 days of the date of this Order. To reduce the financial impact of the penalty, the Company may work with Staff to establish mutually agreeable payment arrangements.

## FINDINGS AND CONCLUSIONS

21 (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.

- 22 (2) InMove is a household goods carrier subject to Commission regulation.
- 23 (3) InMove violated 49 C.F.R. Part 391.45(a) when it used a driver not medically examined and certified.
- 24 (4) The Commission should penalize InMove \$4,450 for 89 violations of 49 C.F.R. Part 391.45(a).
- 25 (5) InMove violated WAC 480-15-555 when it failed to acquire criminal background checks of prospective employees.
- 26 (6) The Commission should penalize InMove \$250 for five violations of WAC 480-15-555.
- 27 (7) InMove violated 49 C.F.R. Part 391.51(b)(9) when it failed to note the medical examiner verification in one of its driver's driver qualification file.
- 28 (8) The Commission should penalize InMove \$100 for one violation of 49 C.F.R. Part 391.51(b)(9).
- 29 (9) InMove violated 49 C.F.R. Part 395.8(e) when its employee made false records of duty status.
- 30 (10) The Commission should penalize InMove \$100 for three violations of 49 C.F.R. Part 395.8(e).
- 31 (11) InMove violated 49 C.F.R. Part 396.3(a)(1) because a Company vehicle had a brake system pressure loss.
- 32 (12) The Commission should penalize InMove \$100 for one violations of 49 C.F.R. Part 396.3(a)(1).
- 33 (13) InMove violated 49 C.F.R. Part 396.11(a) when it failed to require its drivers to prepare vehicle inspection reports.
- 34 (14) The Commission should penalize InMove \$100 for two violations of 49 C.F.R. Part 396.11(a).
- 35 (15) The Commission should assess a total penalty of \$5,100 for 101 violations of WAC 480-15 and Title 49 C.F.R.

- 36 (16) The Commission should suspend a \$2,550 portion of the penalty for a period of two years, and then waive it subject to the conditions set out in paragraph 20, above.

**ORDER**

THE COMMISSION ORDERS:

- 37 (1) InMove LLC's request for mitigation is GRANTED, in part, and the penalty is reduced to \$5,100.
- 38 (2) The Commission suspends a \$2,550 portion of the penalty for a period of two years, and then waives it, subject to the conditions set out in paragraph 20, above.
- 39 (3) InMove LLC must either pay the \$2,550 portion of the penalty that is not suspended or file jointly with Staff a mutually agreeable payment arrangement within 10 days of the effective date of this Order.

40 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-903(2)(e).

DATED at Olympia, Washington, and effective April 29, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK L. JOHNSON  
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.**