

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

WHIDBEY LOGISTICS LLC d/b/a
WHIDBEY MOVING AND STORAGE

in the amount of \$6,800

DOCKET TV-190111

ORDER 01

GRANTING MITIGATION, IN PART;
IMPOSING AND SUSPENDING
PENALTY

BACKGROUND

1 On April 10, 2019, the Washington Utilities and Transportation Commission (Commission) assessed a \$6,800 penalty (Penalty Assessment) against Whidbey Logistics LLC d/b/a Whidbey Moving and Storage (Whidbey Moving 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.).¹ The Penalty Assessment includes:

- a \$400 penalty for four violations of WAC 480-15-555 for failing to acquire criminal background checks on prospective employees;
- a \$2,400 penalty for 24 violations of 49 C.F.R. Part 383.37(a) for allowing an employee to operate a commercial motor vehicle (CMV) without a current Commercial Driver's license (CDL);
- a \$3,600 penalty for 36 violations of 49 C.F.R. Part 391.45(a) for using a driver not medically examined and certified;

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 Title 49 C.F.R.

- a \$100 penalty for two violations of 49 C.F.R. Part 391.51(b)(2) for failing to maintain inquiries into driver's driving record in driver's qualification file;
- a \$100 penalty for one violation of 49 C.F.R. Part 393.9(a) for having a vehicle with an inoperable required lamp;
- a \$100 penalty for 30 violations of 49 C.F.R. Part 395.8(a)(1) for failing to require driver to prepare a record of duty status;
- a \$100 penalty for three violations of 49 C.F.R. Part 396.17(a) for using a commercial motor vehicle not periodically inspected.

2 On April 22, 2019, Whidbey Moving filed a response to the Penalty Assessment admitting the violations (Mitigation Request). In its Mitigation Request, the Company explained that the 99 violations are first time violations, at least since the change in ownership took place in 2016, and requested that the \$6,800 penalty associated with those violations be significantly reduced. The Company noted that these were its first safety audit and first violations, and that it quickly acted to remedy the violations. It also explained that the penalty presents a significant financial hardship for the Company.

3 On May 16, 2019, Commission staff (Staff) filed a reply² recommending the Commission assess a reduced penalty of \$3,550 and suspend a \$1,775 portion of that penalty for a period of two years, and then waive it, subject to the conditions that (1) Staff will conduct a focused non-rated follow-up investigation of each critical violation identified in 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 \$1,775 portion of the penalty that is not suspended. Staff explained that it believed such mitigation and suspension was appropriate, in part, due to Whidbey Moving's corrective actions and steps to prevent future violations. Additionally, Staff noted that it is sensitive to the Company's financial situation and understands the burden of a significant penalty.

² Staff did not file a reply within ten business days of the Company's response pursuant to WAC 480-07-915(5). Because Staff's reply makes recommendations that are in the Company's favor, we will accept the filing and give Staff's recommendations their proper weight and consideration.

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. The Company did not indicate whether it desired a hearing or a decision based on the information provided. The Company admitted the violations and presented no new information. Therefore, no issues of law or fact are in dispute. Accordingly, we find that a hearing is not appropriate in this case. We 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.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
- 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.⁶ We address each violation category below.
- 7 **WAC 480-15-555.** The Penalty Assessment includes a \$400 penalty for four violations of WAC 480-15-555 for failing to acquire criminal background checks. The Company explained that all violations were promptly corrected.
- 8 Staff recommends the Commission assess a reduced penalty of \$200 because these violations have since been corrected and the Company has taken appropriate steps to

³ See RCW 81.04.405.

⁴ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12, 15 (Jan. 7, 2013) (Enforcement Policy).

⁵ 49 C.F.R. § 385, Appendix B.

⁶ Enforcement Policy ¶19.

ensure that background checks are conducted for all new employees. We agree with Staff's recommendation. The Company admitted the violations, corrected them, and took steps to prevent future violations. In light of these factors, we assess a \$200 penalty for four violations of WAC 480-15-555.

- 9 **49 C.F.R. § 383.37(a).** The Penalty Assessment assessed a \$2,400 penalty for 24 violations of 49 C.F.R. § 383.37(a) because the Company allowed an employee to operate a CMV when the driver did not have a current CDL. The Company corrected these violations.
- 10 Staff recommends the Commission assess a reduced penalty of \$1,200 because these violations have since been corrected. We agree with Staff's recommendation. The Company admitted the violations, explained how the violations were corrected, and took steps to prevent future occurrences. In light of these factors, we assess a \$1,200 penalty for 24 violations of 49 C.F.R. § 383.37(a).
- 11 **49 C.F.R. § 391.45(a).** The Penalty Assessment assessed a \$3,600 penalty for 36 violations of 49 C.F.R. § 391.45(a) because Whidbey Moving allowed one of its drivers who was not medically examined and certified to drive on 36 occasions.
- 12 Staff recommends the Commission assess a reduced penalty of \$1,800 because these violations 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 took steps to prevent future occurrences. In light of these factors, we assess a \$1,800 penalty for 36 violations of 49 C.F.R. § 391.45(a).
- 13 **49 C.F.R. § 391.51(b)(2).** The Penalty Assessment assessed a \$100 penalty for two violations of 49 C.F.R. § 391.51(b)(2) because Whidbey Moving failed to maintain inquiries into driver's driving record in driver's qualification file. The Company corrected these violations.
- 14 Staff recommends no mitigation of this portion of the penalty. We agree. While the Company promptly corrected these violations and took steps to prevent future violations, a penalty was not assessed for each violation, but rather by violation category. Accordingly, we conclude that a \$100 penalty assessment for these two violations is appropriate.

- 15 **49 C.F.R. § 393.9(a).** The Penalty Assessment assessed a \$100 penalty for one violation of 49 C.F.R. Part 393.9(a) because the Company had a vehicle with an inoperable required lamp. The Company corrected this violation.
- 16 Staff recommends the Commission assess a reduced penalty of \$50 because this violation has been corrected by the Company. We agree with Staff's recommendation. The Company admitted the violations and made necessary corrections. In light of these factors, we assess a \$50 penalty for one violation of 49 C.F.R. Part 393.9(a).
- 17 **49 C.F.R. Part 395.8(a)(1).** The Penalty Assessment assessed a \$100 penalty for 30 violations of 49 C.F.R. Part 395.8(a)(1) because the Company failed to require its drivers to prepare a record of duty status.
- 18 Staff recommends no mitigation of this portion of the penalty. We agree. While the Company may have taken steps to prevent future violations, a penalty was not assessed for each violation, but rather by violation category. Accordingly, we conclude that a \$100 penalty for these 30 violations is appropriate.
- 19 **49 C.F.R. Part 396.17(a).** The Penalty Assessment assessed a \$100 penalty for three violations of 49 C.F.R. Part 396.17(a) because the Company used a commercial motor vehicle not periodically inspected. The Company corrected this violation.
- 20 Staff recommends no mitigation of this portion of the penalty. We agree. While the Company promptly corrected this violation, a penalty was not assessed for each violation, but rather by violation category. Accordingly, we conclude that a \$100 penalty assessment for these 30 violations is appropriate.
- 21 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. Whidbey Moving is a small company with two drivers and four CMVs. It reported \$430,000 in gross revenue for 2018, but suffered a net loss of \$20,000. Accordingly, we suspend a \$1,775 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: (1) Staff will conduct a focused non-rated follow-up safety investigation of each critical violation identified in 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 \$1,775 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

- 22 (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.
- 23 (2) Whidbey Moving is a household goods carrier subject to Commission regulation.
- 24 (3) Whidbey Moving violated WAC 480-15-555 when it failed to acquire criminal background checks of prospective employees.
- 25 (4) The Commission should penalize Whidbey Moving \$200 for four violations of WAC 480-15-555.
- 26 (5) Whidbey Moving violated 49 C.F.R. Part 383.37(a) when it allowed an employee to operate a CMV when the driver did not have a current CDL.
- 27 (6) The Commission should penalize Whidbey Moving \$1,200 for 24 violations of 49 C.F.R. Part 383.37(a).
- 28 (7) Whidbey Moving violated 49 C.F.R. Part 391.45(a) when it used a driver not medically examined and certified.
- 29 (8) The Commission should penalize Whidbey Moving \$1,800 for 36 violations of 49 C.F.R. Part 391.45(a).
- 30 (9) Whidbey Moving violated 49 C.F.R. Part 391.51(b)(2) when it failed to maintain inquiries into driver's driving record in driver's qualification file.
- 31 (10) The Commission should penalize Whidbey Moving \$100 for two violations of 49 C.F.R. Part 391.51(b)(2).
- 32 (11) Whidbey Moving violated 49 C.F.R. Part 393.9(a) because it had a vehicle with an inoperable required lamp.

- 33 (12) The Commission should penalize Whidbey Moving \$50 for one violation of
49 C.F.R. Part 393.9(a).
- 34 (13) Whidbey Moving violated 49 C.F.R. Part 395.8(a)(1) when it failed to require its
driver to prepare a record of duty status.
- 35 (14) The Commission should penalize Whidbey Moving \$100 for 30 violations of
49 C.F.R. Part 395.8(a)(1).
- 36 (15) Whidbey Moving violated 49 C.F.R. Part 396.17(a) when it used a commercial
motor vehicle not periodically inspected.
- 37 (16) The Commission should penalize Whidbey Moving \$100 for three violations of
49 C.F.R. Part 396.17(a).
- 38 (17) The Commission should assess a total penalty of \$3,550 for 100 violations of
Chapter 480-15 WAC and Title 49 C.F.R.
- 39 (18) The Commission should suspend a \$1,775 portion of the penalty for a period of
two years, and then waive it subject to the conditions set out in paragraph 21.

ORDER

THE COMMISSION ORDERS:

- 40 (1) Whidbey Moving LLC's request for mitigation is GRANTED, in part, and the
penalty is reduced to \$3,550.
- 41 (2) The Commission suspends a \$1,775 portion of the penalty for a period of two
years, and then waives it, subject to the conditions set out in paragraph 21.
- 42 (3) Whidbey Moving LLC must either pay the \$1,775 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.

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

DATED at Olympia, Washington, and effective May 17, 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.