

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

CY MOVING INC.

in the amount of \$10,100

DOCKET TV-190140

ORDER 01

GRANTING MITIGATION, IN PART;
IMPOSING AND SUSPENDING
PENALTY

BACKGROUND

1 On April 9, 2019, the Washington Utilities and Transportation Commission (Commission) assessed a \$10,100 penalty (Penalty Assessment) against CY Moving Inc. (CY Moving or Company) for violations of Washington Administrative Code (WAC) 480-15-530 and WAC 480-15-560, which adopt by reference Title 49 Code of Federal Regulations (C.F.R.) Part 396.¹ The Penalty Assessment includes:

- a \$9,900 penalty for 99 violations of WAC 480-15-530 for operating on 99 separate occasion without having the minimum of \$750,000 in auto liability insurance;
- a \$100 penalty for one violation of 49 C.F.R. Part 396.3(b) for failing to maintain minimum records of vehicle inspection and repair; and,
- a \$100 penalty for one violation of 49 C.F.R. Part 396.17(a) for failing to ensure its commercial motor vehicle was periodically inspected.

2 On April 23, 2019, CY Moving filed a response to the Penalty Assessment admitting the violations and requesting mitigation of the penalty amount (Mitigation Request). In its

¹ WAC 480-15-560 adopts 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.

Mitigation Request, the Company explained that the violations were honest and unintentional, and requested that the \$10,100 penalty be significantly reduced. The Company also noted that it does not make enough profit to pay such a large penalty amount. The Company did not provide any additional details or supporting documentation.

- 3 On May 16, 2019, Commission staff (Staff) filed a reply² recommending the Commission assess a reduced penalty of \$3,500 and suspend a \$2,500 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 in two years, or as soon thereafter as practicable, to review the Company's safety management practices, (2) the Company must not incur any repeat violations of critical regulations during those two years, and (3) the Company must pay the \$1,000 portion of the penalty that is not suspended. Staff explained that it believed such mitigation and suspension was appropriate, in part, due CY Moving being a small company with one driver and one commercial motor vehicle (CMV) that reported \$74,597 in gross revenue for 2018.

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 The Commission considers several factors when entertaining a request for mitigation, including whether a company introduces new information that may not have been

² Staff did not file a reply within 10 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.

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.

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.

6 **WAC 480-15-530.** The Penalty Assessment includes a \$9,900 penalty for 99 violations of WAC 480-15-530 for operating on 99 occasions without having the minimum of \$750,000 in auto liability insurance.

7 Staff recommends the Commission assess a reduced penalty of \$3,300 because the Company corrected these violations and is now aware of the requirements. We agree with Staff's recommendation. Accordingly, we assess a \$3,300 penalty for 99 violations of WAC 480-15-530.

8 **49 C.F.R. Part 396.3(b).** The Penalty Assessment assessed a \$100 penalty for one violation of 49 C.F.R. § 396.3(b) because CY Moving failed to keep minimum records of inspection and vehicle maintenance.

9 Staff recommends no mitigation of this portion of the penalty. We agree. We conclude no further penalty reduction is warranted and find that a \$100 penalty assessment for this violation is appropriate.

10 **49 C.F.R. Part 396.17(a).** The Penalty Assessment assessed a \$100 penalty for one violations of 49 C.F.R. Part 396.17(a) because the Company failed to ensure its commercial motor vehicle was periodically inspected.

11 Staff recommends no mitigation of this portion of the penalty. We agree. Accordingly, we conclude that a \$100 penalty assessment for this violation is appropriate.

12 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. The Company is small, with only one driver and one CMV, and reported \$74,597 in gross revenue for 2018. Accordingly, we suspend a \$2,500 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 in two years, or as soon thereafter as practicable, to review the Company's safety management practices; (2) the Company must not incur any repeat

⁶ Enforcement Policy ¶ 19.

violations of critical regulations during those two years; and, (3) the Company must pay the \$1,000 portion of the penalty that is not suspended within 10 days of the date of this Order. To further reduce the financial impact of the penalty, the Company may work with Staff to establish mutually agreeable payment arrangements.

FINDINGS AND CONCLUSIONS

- 13 (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.
- 14 (2) CY Moving is a household goods carrier subject to Commission regulation.
- 15 (3) CY Moving violated WAC 480-15-530 when it operated without having the minimum of \$750,000 in auto liability insurance.
- 16 (4) The Commission should penalize CY Moving \$3,300 for 99 violations of WAC 480-15-530.
- 17 (5) CY Moving violated 49 C.F.R. Part 396.3(b) because it failed to maintain minimum records of vehicle inspection and repair.
- 18 (6) The Commission should penalize CY Moving \$100 for one violation of 49 C.F.R. Part 396.3(b).
- 19 (7) CY Moving violated 49 C.F.R. Part 396.17(a) when it failed to ensure its commercial motor vehicle was periodically inspected.
- 20 (8) The Commission should penalize CY Moving \$100 for one violation of 49 C.F.R. Part 396.17(a).
- 21 (9) The Commission should assess a total penalty of \$3,500 for 101 violations of Chapter 480-15 WAC and Title 49 C.F.R.
- 22 (10) The Commission should suspend a \$2,500 portion of the penalty for a period of two years, and then waive it, subject to the conditions set out in paragraph 12, above.

ORDER

THE COMMISSION ORDERS:

- 23 (1) CY Moving LLC's request for mitigation is GRANTED, in part, and the penalty
is reduced to \$3,500.
- 24 (2) The Commission suspends a \$2,500 portion of the penalty for a period of two
years, and then waives it, subject to the conditions set out in paragraph 12, above.
- 25 (3) CY Moving LLC must either pay the \$1,000 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.
- 26 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.