



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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COMMISSION

10/20/20 09:28

Received
Records Management

Date: October 20, 2020

To: Samantha Doyle, Administrative Law Judge, Administrative Law Division

From: Jason Sharp, Motor Carrier Safety Supervisor, Transportation Safety Division

Re: TV-200774 and TV-200775 John F. Tuttle, d/b/a Alto Moving

Evaluation of Safety Management Plan, Recommendations regarding the company's safety rating, and the cancellation of household goods operating authority (THG068236)

On September 1, 2020, Commission staff (staff) completed a routine safety investigation of John F. Tuttle, d/b/a Alto Moving (Alto Moving or Company) which resulted in a proposed conditional safety rating.

Provisional household goods companies must achieve a satisfactory safety rating prior to receiving permanent status. As the Company has yet to achieve a satisfactory safety rating, the commission afforded Alto Moving the same opportunity as companies that receive a proposed unsatisfactory safety rating to provide evidence, in the form of an approved safety management plan, showing that the company took corrective action to address the identified violations.

Commission rules prohibit motor carriers from operating beginning on the 61st day after the date of the notice of a proposed unsatisfactory rating. A company may request a change in its safety rating based on evidence that it has taken corrective actions to address the identified violations, and that its operations currently meet the safety standard and factors in 49 CFR 385.5 and 385.7. In this case, Alto Moving has until November 2, 2020, to come into compliance with applicable laws and rules by obtaining commission approval of a safety management plan.

The proposed conditional safety rating was based on two violations of critical regulations – 395.8(a)(1) and WAC 480-15-555.

“Critical” regulations are those identified as such where non-compliance relates to management and operational controls. These are indicative of breakdowns in a company's management controls. Patterns of non-compliance with a critical regulation are linked to inadequate safety management controls and higher than average accident rates.

Critical violations discovered during investigation:

1. Thirty violations of Title 49 CFR § 395.8(a)(1) – Failing to require driver to make a record of duty status.

2. Six violations of WAC 480-15-555 – Failing to complete a criminal background check for every person the carrier intends to hire.

On September 8, 2020, the commission issued a penalty assessment against Alto Moving in the amount of \$10,100 as a result of violations discovered during the routine safety investigation.¹ The penalty includes:

1. A \$600 penalty for six violations of WAC 480-15-555 for failing to complete a criminal background check for every person the carrier intends to hire.
2. A \$9,100 penalty for 91 violations of 49 CFR § 391.45(a) for using a driver not medically examined and certified.
3. A \$100 penalty for one violation of 49 CFR § 391.51(a) for failing to maintain a driver qualification file on each driver employed.
4. A \$100 penalty for 30 violations of 49 CFR § 395.8(a)(1) for failing to require driver to make a record of duty status.
5. A \$100 penalty for one violation of 49 CFR § 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance.
6. A \$100 penalty for one violation of 49 CFR § 396.17(a) for using a commercial motor vehicle not periodically inspected.

In a September 15, 2020, Notice of Intent to Cancel, the commission instructed Alto Moving to submit its proposed safety management plan no later than October 6, 2020.

On September 30, 2020, Alto Moving filed with the commission its application for mitigation of penalties. In the request for mitigation, John F. Tuttle, owner of Alto Moving, admitted the violations and believed that the penalty should be reduced. Alto Moving requested a hearing to present evidence to support the mitigation request.

On October 19, 2020, Alto Moving submitted a safety management plan addressing each violation noted during the investigation. Staff only recommends approving a safety management plan that addresses the following seven items:

1. The plan must address each acute, critical, or serious violation discovered during the most recent investigation. It must also include corrective actions that address other violations noted during the investigation.
2. Identify why the violations were permitted to occur.
3. Discuss the actions taken to correct the deficiency or deficiencies that allowed the violations to occur. Include actual documentation of this corrective action.
4. Outline actions taken to ensure that similar violations do not reoccur in the future. The plan must demonstrate that the company's operations currently meet the safety standard and factors specified in 49 CFR § 385.5 and 385.7. To do so, the plan must demonstrate the company now

¹ TV-200774

has adequate safety management controls in place which function effectively to ensure acceptable compliance with applicable safety requirements.

5. If the request includes actions that will be conducted in the near future, such as training, reorganization of departments, purchasing of computer programs, etc., companies must include a detailed description of the activity or training and a schedule of when that activity will commence and when it will be completed.
6. Include any additional documentation relating to motor carrier safety and the prevention of crashes that the company believes supports its request.
7. Include a written statement certifying the company will operate within federal and state regulations and the company's operation currently meets the safety standard and factors specific in 49 CFR § 385.5 and 385.7. A corporate officer, partner, or the owner of the company must sign the statement.

Summary and Recommendations

Staff reviewed Alto Moving's safety management plan and concludes it is acceptable and meets the requirements of 49 CFR § 385. The plan demonstrates corrective action for each violation other than the Company's vehicle passing a periodic inspection. Alto Moving's plan illustrates that the Company's vehicle has undergone repairs and is scheduled to be periodically inspected. The plan states that the Company will provide staff with proof of the annual inspection upon completion. Because of the Company's actions, staff recommends the commission not cancel the Company's permit and extend its provisional period until such a time that the Company achieves a satisfactory safety rating. Staff further recommends that Dockets TV-200774 and TV-200775 be consolidated.

Staff confirmed with the Company that it waives its right to a hearing in both dockets and on October 19, 2020, recommended that the brief adjudicative proceeding scheduled for October 20, 2020, be cancelled.

In response to the request for mitigation, the Company corrected each violation and took steps to prevent future occurrences. Staff recommends reducing the assessed penalty of \$10,100 penalty to \$5,150. Staff further recommends that \$3,000 of the penalty be suspended for a period of two years before being waived, on the conditions that: (1) staff conducts a follow-up safety investigation at least six months from the date of an Order, (2) the Company may not incur any repeat violations of critical regulations, and (3) Alto Moving pays the \$2,150 portion of the penalty that is not suspended.

The Company took all the required steps to bring its safety operations into compliance with commission regulations. Alto Moving submitted a safety management plan that addresses each violation, identifies how the violations occurred, describes the steps taken to correct them, and put controls in place to ensure the company maintains compliance.

Documentation of driver qualifications, hours of service records, vehicle maintenance, and criminal background check information were included in the plan.

