

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of	DOCKET TV-200976
MOVING CLEAR SERVICES LLC	ORDER 01
For Compliance with WAC 480-15	APPROVING SAFETY MANAGEMENT PLAN; MAINTAINING SAFETY RATING; EXTENDING PROVISIONAL PERIOD

**BACKGROUND**

- 1 On December 21, 2020, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel and Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements in the Matter of the Investigation of Moving Clear Services LLC (Moving Clear or Company) for Compliance with Washington Administrative Code (WAC) 480-15 (Notice).
- 2 The Notice explained that Commission staff (Staff) conducted a compliance review of Moving Clear's operations in December 2020 and cited the Company for 39 critical violations of federal and state safety regulations. Based on its review, Staff recommends the Commission cancel Moving Clear's household goods carrier permit unless the Company obtained Commission approval of a safety management plan. The Notice directed Moving Clear to file a proposed safety management plan by January 8, 2021. The Commission also set a brief adjudicative proceeding for January 22, 2021, at 9:30 a.m. to determine whether the Commission should cancel Moving Clear's household goods carrier permit.
- 3 On December 18, 2020, the Commission assessed a \$3,600 penalty (Penalty Assessment) against Moving Clear in Docket TV-200977 for the safety violations discovered during Staff's December 2020 compliance review.<sup>1</sup> The Penalty Assessment included:

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<sup>1</sup> The Penalty Assessment cites violations of Washington Administrative Code (WAC) 480-15-555, WAC 480-15-560, and WAC 480-15-570. WAC 480-15-560 and -570 adopt by reference sections of Title 49 Code of Federal Regulations (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.

- An \$200 penalty for two violations of WAC 480-15-555 for failing to acquire criminal background checks for prospective employees.
- A \$3,000 penalty for 30 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.
- A \$100 penalty for one violation of 49 C.F.R. § 391.51(a) for failing to maintain driver qualification files for each driver.
- A \$100 penalty for four violations of 49 C.F.R. § 395.8(a)(1) for failing to require drivers to prepare records of duty status using the appropriate method.
- A \$100 penalty for one violation of 49 C.F.R. § 396.3(b) for failing to keep minimum records of vehicle inspection and maintenance.
- A \$100 penalty for one violation of 49 C.F.R. § 396.17(a) for using a commercial motor vehicle not periodically inspected.

4 On December 24, 2020, Moving Clear responded to the Penalty Assessment, admitted the violations, and paid the \$3,600 penalty in full.<sup>2</sup>

5 On January 5, 2021, Moving Clear submitted a proposed safety management plan.

6 On January 7, 2021, Staff filed with the Commission its evaluation of the Company's safety management plan (Evaluation). In its Evaluation, Staff indicated that the Company waived its right to a hearing in this Docket and requested the Commission cancel the brief adjudicative proceeding and decide this matter on a paper record. January 14, 2021, the Commission issued a notice canceling the January 22, 2021, hearing, and informing the parties that the Commission would enter an order based on the parties' written submissions.

7 Based on its review of the Company's proposed plan, Staff determined that the Company took all the required steps to bring its safety operations into compliance with Commission regulations. Staff recommends that the Commission maintain the Company's safety rating as conditional and extend the Company's provisional permit period until such time as the Company achieves a satisfactory safety rating.

## DISCUSSION AND DECISION

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<sup>2</sup> Staff's Evaluation recommends that Dockets TV-200976 and TV-200977 be consolidated. Because the Company did not seek mitigation of the penalty, however, we deny Staff's request. No material facts are in dispute, the penalty was paid in full, and Docket TV-200977 is closed.

- 8 Washington Law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's December 2020 compliance review of Moving Clear found 39 violations of critical safety regulations, which resulted in a proposed conditional safety rating. Violations classified as "critical" are indicative of a breakdown in a carrier's management controls. Patterns of noncompliance with a critical regulation are quantitatively linked to inadequate safety management controls and usually higher-than-average accident rates.
- 9 On January 5, 2021, the Company submitted its proposed safety management plan and requested the Commission upgrade its safety rating. Staff determined that Moving Clear's safety management plan addresses each violation, identifies how each violation occurred, describes the steps taken to correct each violation, and describes the controls put in place to ensure compliance going forward. Staff concludes that Moving Clear's safety management plan is acceptable and satisfies the legal requirements of 49 C.F.R. Part 385. We agree.
- 10 Based on Staff's Evaluation, the Commission finds that the Company has achieved compliance with WAC 480-15 by correcting the violations that led to the proposed conditional safety rating. Accordingly, the Commission agrees with Staff's recommendation and grants the Company's request to maintain its permit.
- 11 We likewise agree with Staff's recommendation to extend the Company's provisional period for its household goods carrier permit. WAC 480-15-305(1)(b) provides that, prior to a grant of permanent authority, an applicant must complete a provisional period of not less than six months and not more than 18 months unless the Commission determines for good cause that the provisional period should be extended. Good cause may include, among other things, a carrier that has not yet achieved a satisfactory safety rating but is making substantial progress toward a satisfactory rating. Here, the Company has corrected the violations at issue and demonstrated that it has taken significant steps to ensure its operations comply with applicable safety regulations. Accordingly, the Commission finds good cause to extend the Company's provisional period until such time as the Company achieves a satisfactory rating.

### **FINDINGS AND CONCLUSIONS**

- 12 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including common carriers such as household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.

- 13 (2) Moving Clear is a household goods carrier subject to Commission regulation.
- 14 (3) Moving Clear cured the deficiencies that led to the proposed conditional safety rating. Accordingly, Moving Clear's safety rating should remain conditional, and the Company should be allowed to maintain its household goods carrier permit.
- 15 (4) Pursuant to WAC 480-15-305(1)(b), the Commission should find good cause to extend Moving Clear's provisional period until such time as the Company achieves a satisfactory safety rating.

**ORDER**

THE COMMISSION ORDERS THAT:

- 16 (1) The Commission approves Moving Clear Services LLC's safety management plan.
- 17 (2) Moving Clear Services LLC's safety rating is maintained as conditional.
- 18 (3) Moving Clear Services LLC's provisional period is extended until such time as the Company achieves a satisfactory safety rating.

DATED at Lacey, Washington, and effective January 19, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

*/s/ Rayne Pearson*  
RAYNE PEARSON  
Administrative Law Judge

**Service Date: January 19, 2021**

## **NOTICE TO PARTIES**

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order and you would like the Order to become final before the time limits expire, you may send a letter to the Commission waiving your right to petition for administrative review.

WAC 480-07-610(7) provides that any party to this proceeding has 21 days after service of this initial order to file a petition for administrative review (Petition). Section (7)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-610(7)(c) states that any party may file a response to a Petition within 7 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence that is essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-610(9) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission does not exercise administrative review on its own motion.

Any Petition or response must be electronically filed through the Commission's web portal, as required by WAC 480-07-140(5).