

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of

ULTIMATE MOVERS LLC

for Compliance with WAC 480-15-550,
WAC 480-15-560, and WAC 480-15-570

In the Matter of the Penalty Assessment
Against

ULTIMATE MOVERS LLC

in the Amount of \$6,600

DOCKETS TV-210786 and TV-210787
(Consolidated)

INITIAL ORDER 01

CONSOLIDATING DOCKETS;
APPROVING SAFETY
MANAGEMENT PLAN;
UPGRADING SAFETY RATING TO
CONDITIONAL AND EXTENDING
PROVISIONAL PERIOD; IMPOSING
AND SUSPENDING PENALTIES
SUBJECT TO CONDITIONS

BACKGROUND

- 1 On November 3, 2021, 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 Ultimate Movers LLC (Ultimate Movers or the Company) for Compliance with Washington Administrative Code (WAC) 480-15-550, 480-15-560, and 480-15-570 (Notice).
- 2 The Notice explained that Commission staff (Staff) conducted a compliance review of Ultimate Movers' operations between September and October 2021 and cited the Company for 161 violations of federal and state safety regulations, including 155 critical violations, resulting in a proposed unsatisfactory safety rating. Based on its review, Staff recommended the Commission cancel Ultimate Movers' household goods carrier permit unless the Company obtained Commission approval of a safety management plan. The Notice directed Ultimate Movers to file a proposed safety management plan by November 24, 2021. The Commission also set a brief adjudicative proceeding for

**Pursuant to RCW 80.01.060(3)
This packet is the final
Order in this docket.**

December 9, 2021, at 1:30 p.m. to determine whether the Commission should cancel Ultimate Movers' household goods carrier permit.

3 Also on November 3, 2021, the Commission assessed a \$6,600 penalty (Penalty Assessment) in Docket TV-210787 against Ultimate Movers for the safety violations discovered during Staff's compliance review.¹ The Penalty Assessment includes:

- A \$200 penalty for 2 critical violations of WAC 480-15-555 for failing to conduct or retain paperwork containing criminal background checks;
- a \$6,000 penalty for 60 critical violations of 49 C.F.R. § 395.45(a) for using a driver not medically examined and certified;
- a \$100 penalty for 3 critical violations of 49 C.F.R. § 391.51(b)(2) for failing to maintain inquiries into driver's driving record in driver's qualification file;
- a \$100 penalty for 90 critical violations of 49 C.F.R. § 395.8(a)(1) for failing to require a driver to prepare a record of duty status;
- a \$100 penalty for 1 violation of 49 C.F.R. § 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance; and
- a \$100 penalty for 1 violation of 49 C.F.R. § 396.17(a) for using a commercial motor vehicle not periodically inspected.

4 On November 17, 2021, Ultimate Movers submitted a request for mitigation in Docket TV-210787, admitting the violations and requesting the Commission assess a reduced penalty based on the written information provided.

5 On November 24, 2021, Ultimate Movers submitted a proposed safety management plan.

6 On December 2, 2021, Staff contacted the administrative law division and indicated that Staff had accepted the Company's safety management plan and was in the process of preparing an evaluation to file with the Commission. Staff also requested on behalf of the Parties that the Commission cancel the brief adjudicative proceeding and decide this matter on a paper record. That same day, the Commission issued a notice canceling the

¹ 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.

December 9, 2021, hearing and informing the parties that the Commission would enter an order based on the parties' written submissions.

7 On December 3, 2021, Staff filed with the Commission its evaluation of the Company's safety management plan (Evaluation). Staff determined, based on its review of the Company's proposed plan, that the Company took all of the required steps to bring its safety operations into compliance with Commission regulations. Staff recommends that the Commission upgrade the Company's safety rating to conditional, but also extend the Company's provisional permit period until such time as the Company is able to achieve a satisfactory safety rating. Staff further recommends, in response to the Company's request for mitigation, that the Commission assess a reduced penalty of \$3,300 and suspend a \$2,000 portion of the penalty for a period of two years, and then waive it, subject to the following conditions:

- (1) Staff must conduct a follow-up safety investigation at least six months from the effective date of this Order;
- (2) the Company must not incur any repeat critical violations upon re-inspection; and
- (3) the Company must pay the \$1,300 portion of the penalty that is not suspended according to the payment plan agreed with Staff, reproduced in Table 1 below.

Table 1. Parties' Payment Plan

Installment	Due Date	Amount
1	January 3, 2022 ²	\$350
2	February 1, 2022	\$350
3	March 1, 2022	\$350
4	April 1, 2022	\$350

² In Staff's Evaluation, the Parties' proposed plan inadvertently indicated a first payment due date in 2021 instead of 2022.

DISCUSSION AND DECISION

1. Consolidation

8 Because the violations cited in Staff's investigation gave rise to the enforcement actions
taken in both dockets, the Commission exercises its discretion to consolidate these
proceedings. Accordingly, Docket TV-210786 and Docket TV-210787 are consolidated.

2. Safety Rating

9 Washington Law requires household goods carriers to comply with federal safety
requirements and undergo routine safety inspections. Staff's compliance review of
Ultimate Movers found 161 violations of safety regulations, including 155 critical
violations, 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.

10 On November 24, 2021, the Company submitted its proposed safety management plan
and requested the Commission upgrade its safety rating. Staff determined that Ultimate
Movers' safety management plan addresses each violation, identifies how each violation
occurred, describes the steps taken to correct each violation, and put controls in place to
ensure compliance going forward. Staff concludes that Ultimate Movers' safety
management plan is acceptable and satisfies the legal requirements of 49 C.F.R. Part 385.
We agree.

11 Based on Staff's Evaluation, the Commission finds that the Company has achieved
compliance with Chapter 480-15 WAC 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 upgrade its safety rating to
conditional.

12 We likewise agree with Staff's recommendation to extend the Company's provisional
period for its household goods carrier permit. 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.³ Good cause may include, among other things, a carrier that

³ WAC 480-15-305(1)(b).

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.

3. Penalty

- 13 Violations discovered during safety inspections are subject to penalties of \$100 per violation.⁴ In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.⁵ Critical violations meet this standard.⁶
- 14 The Commission considers several factors when entertaining a request for mitigation, including whether the 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 compliance.⁷
- 15 Here, Staff recommends the Commission assess a reduced penalty of \$3,300. We agree with Staff's recommendation. The Company provided a comprehensive safety management plan that details the steps it has taken to bring its operations into compliance with applicable regulations. The safety management plan 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. Accordingly, we are satisfied that Ultimate Movers has cured the violations that gave rise to the Penalty Assessment and has put adequate controls in place to prevent the violations from reoccurring. In addition, the Company operates one commercial motor vehicle, employs three drivers, and reported \$30,000 in gross revenue for 2020. We conclude that a \$3,300 penalty provides a strong financial incentive for a small company to maintain compliance going forward.

⁴ See RCW 80.04.405.

⁵ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶ 12, 15 (Jan. 7, 2013) (Enforcement Policy).

⁶ 49 C.F.R. § 385, Appendix B.

⁷ Enforcement Policy at ¶ 19.

16 **Suspended Penalty.** The Commission considers several factors in determining whether to suspend a portion of a penalty, including whether it is a first-time penalty for the same or similar violations, and whether specific actions have been taken to remedy the violations and avoid the same or similar violations in the future, such as purchasing new technology, making system changes, or training company personnel.⁸ Another factor we consider is whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.⁹

17 In this case, penalties were assessed for first-time violations. In addition, the Company has taken action to prevent each of the violations from reoccurring. Suspending a portion of the penalty with the conditions proposed by Staff will both increase compliance and provide a strong incentive to avoid violations in the future. Accordingly, we agree with Staff's recommendation and suspend a \$2,000 portion of the penalty for a period of two years, and then waive it, subject to the following conditions:

- (1) Ultimate Movers must maintain a conditional safety rating;
- (2) Staff must conduct a follow-up safety investigation at least six months from the effective date of this Order;
- (3) the Company must not incur any repeat critical violations of Chapter 480-15 WAC upon re-inspection; and
- (4) Ultimate Movers must pay the \$1,300 portion of the penalty that is not suspended according to the payment plan agreed with Staff, reproduced in Table 1. If Ultimate Movers fails to pay any installment by the due date, the entire remaining balance, including the suspended portion of the penalty, will immediately become due and payable without further Commission order.

FINDINGS AND CONCLUSIONS

18 (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.

⁸ *Id.* at ¶ 20.

⁹ *Id.*

- 19 (2) Ultimate Movers is a household goods carrier subject to Commission regulation.
- 20 (3) Ultimate Movers committed 161 violations of Chapter 480-15 WAC and Title 49 C.F.R., including 155 critical safety violations.
- 21 (4) Ultimate Movers does not dispute that the violations occurred.
- 22 (5) Ultimate Movers cured the deficiencies that led to the proposed conditional safety rating and submitted a safety management plan addressing the controls it has put in place to ensure the Company maintains compliance. Accordingly, the Commission should approve Ultimate Movers' safety management plan and upgrade its safety rating to conditional.
- 23 (6) Pursuant to WAC 480-15-305(1)(b), the Commission should find good cause to extend Ultimate Movers' provisional period until such time as the Company achieves a satisfactory safety rating.
- 24 (7) Staff's investigation gave rise to the enforcement actions taken in both Docket TV-210786 and Docket TV-210787. Accordingly, the Commission should exercise its discretion to consolidate the proceedings.
- 25 (8) Ultimate Movers should be penalized \$3,300 for 161 violations of Chapter 480-15 WAC and Title 49 C.F.R. The Commission should suspend a \$2,000 portion of the penalty for two years, and then waive it, subject to the conditions set out in Paragraph 17, above.

ORDER

THE COMMISSION ORDERS:

- 26 (1) Docket TV-210786 and Docket TV-210787 are consolidated.
- 27 (2) Ultimate Movers LLC's safety management plan is approved.
- 28 (3) Ultimate Movers LLC's safety rating is upgraded to conditional and its provisional period is extended until it achieves a satisfactory safety rating.

- 29 (4) The Commission assesses a \$3,300 penalty against Ultimate Movers LLC. The Commission suspends a \$2,000 portion of the penalty for a period of two years and then waives it, subject to the conditions set out in Paragraph 17, above.

DATED at Lacey, Washington, and effective December 7, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ *Andrew J. O'Connell*

ANDREW J. O'CONNELL

Administrative Law Judge

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).