

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of  MVP MOVING AND STORAGE LLC  For Compliance with WAC 480-15-560 and WAC 480-15-570	DOCKET TV-170039 <i>(Consolidated)</i>  ORDER 01
In the Matter of the Penalty Assessment Against  MVP MOVING AND STORAGE LLC  In the amount of \$6,100	DOCKET TV-170038 <i>(Consolidated)</i>  ORDER 01  ORDER OF CONSOLIDATION; ORDER UPGRADING SAFETY RATING; ORDER IMPOSING AND SUSPENDING PENALTIES

**BACKGROUND**

- 1 On February 21, 2017, 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 MVP Moving and Storage LLC (MVP Moving or Company) For Compliance with Washington Administrative Code (WAC) 480-15-560 and WAC 480-15-570 in Docket TV-170039 (Notice of Intent to Cancel). The Notice of Intent to Cancel set the Brief Adjudicative Proceeding for April 4, 2017, at 1:30 p.m.
- 2 Also on February 21, 2017, the Commission assessed a penalty of \$6,100 (Penalty Assessment) in Docket TV-170038 against MVP Moving for 61 violations of Commission rules, as follows: 55 violations of WAC 480-15-570, which adopts by reference Title 49 of the Code of Federal Regulations (49 C.F.R.) Part 391 related to driver qualifications; one violation of 49 C.F.R. Part 396 related to vehicle inspection,

repair, and maintenance; and five violations of WAC 480-15-555 related to criminal background checks for prospective employees.<sup>1</sup>

- 3 On March 7, 2017, MVP Moving filed an application for mitigation of the penalty, admitting the violations and requesting a hearing. In its response, the Company stated, “We had a break down in responsibilities, lost a key employee, and our organization suffered. I have put in place all fixes recommended by UTC and ask for some consideration in the fine.”
- 4 On April 4, 2017, the Commission conducted a brief adjudicative proceeding before Administrative Law Judge Rayne Pearson. The parties agreed that the Commission should address the Penalty Assessment in Docket TV-170038 concurrently with the Company’s proposed safety management plan in Docket TV-170039. Accordingly, the Commission consolidated Dockets TV-170038 and TV-170039.
- 5 Staff presented testimony from Sandi Yeomans, special investigator, and David Pratt, assistant director, Transportation Safety. Ms. Yeomans testified about the critical safety violations that resulted in Staff’s proposed unsatisfactory safety rating for MVP Moving. Following a December 2016 compliance review, Staff documented 55 violations of 49 C.F.R. Part 391.45(a), which requires that drivers be medically examined and certified by a qualified provider prior to operating company vehicles. The Company allowed four employees to drive its vehicles on 55 occasions without a valid medical certificate.
- 6 Staff also documented one violation of 49 C.F.R. Part 395.8(a), which requires drivers to make a record of duty status. The Company allowed its employees to drive on 58 occasions without making a record of duty status in the six months prior to the compliance review.
- 7 Finally, Staff documented one violation of WAC 480-15-555, which requires carriers to conduct criminal background checks for prospective employees. MVP Moving failed to obtain criminal background checks for five employees.
- 8 Mr. Pratt testified that the Company has since submitted a proposed safety management plan that Staff finds acceptable. Staff recommends the Commission upgrade the Company’s safety rating to “conditional,” and allow the Company to maintain its certificate. With respect to the penalty assessed in Docket TV-170038, Staff recommends the Commission suspend a \$3,100 portion of the penalty for a period of two years, and

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<sup>1</sup> WAC 480-15-570 adopts by reference sections of Title 49 C.F.R. Accordingly, Commission safety regulations with parallel federal provisions are hereinafter referenced by the applicable part of 49 C.F.R.

then waive it, subject to the following conditions: 1) the Company may not incur any repeat critical violations of WAC 480-15 upon re-inspection in one year, 2) the Company must maintain a conditional safety rating, and 3) the Company may not incur any repeat critical violations of WAC 480-15 upon re-inspection in two years. Mr. Pratt clarified that the one year inspection will be non-rated. Mr. Pratt also noted that the Company's household goods authority is currently in provisional status. Pursuant to WAC 480-15-305(b), the Commission may extend a carrier's provisional status for good cause, which includes failure to achieve a satisfactory safety rating.

- 9 MVP Moving presented testimony from Erik Hawkins, owner, who acknowledged the violations but requested the penalty be mitigated. Mr. Hawkins explained that the Company now uses the Commission publication "Your Guide to Achieving a Satisfactory Safety Rating" for its employee checklists and forms. All of its drivers are now medically certified, background checked, and are required to complete and submit records of duty status on weekly basis. Mr. Hawkins testified that the violations resulted from lack of oversight, and the Company has since developed a compliance plan to prevent them from reoccurring.
- 10 Jeff Roberson, Assistant Attorney General, Olympia, Washington, represents Commission staff (Staff). Erik Hawkins and Jason Garcia, Owners, Renton, Washington, represent MVP Moving.

## **DISCUSSION AND DECISION**

### **1. Docket TV-170039 – Household Goods Carrier Permit**

- 11 Washington law requires auto transportation carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's December 2016 compliance review of MVP Moving found violations of 61 critical regulations, which resulted in a proposed unsatisfactory 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.
- 12 On March 21, 2017, the Company submitted its proposed safety management plan and requested the Commission upgrade its safety rating. Staff found that MVP Moving'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.

- 13 Based on the testimony and evidence presented at the hearing, the Commission finds that the Company has achieved compliance by correcting the violations that led to the proposed unsatisfactory safety rating. Accordingly, the Commission agrees with Staff's recommendation and grants the Company's request to upgrade its safety rating to conditional.
- 14 We will, however, extend the Company's provisional period for its household goods operating authority. 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. Accordingly, the Commission finds good cause to extend the Company's provisional period until such time the Company achieves a satisfactory rating.

## 2. Docket TV-170038 – Penalty Assessment

- 15 Violations discovered during safety inspections are subject to penalties of \$100 per violation.<sup>2</sup> In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.<sup>3</sup> Critical violations meet this standard.<sup>4</sup>
- 16 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 the company's compliance.<sup>5</sup> The Penalty Assessment cited 61 violations in three categories. We address each category in turn.
- 17 **49 C.F.R. Part 391.45(a).** The Penalty Assessment includes an \$5,500 penalty for 55 violations of 49 C.F.R. Part 391.45(a) because MVP Moving allowed four drivers who were not medically examined and certified to drive on 55 occasions between July and

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<sup>2</sup> See RCW 80.04.405.

<sup>3</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

<sup>4</sup> 49 C.F.R. § 385, Appendix B.

<sup>5</sup> Enforcement Policy ¶19.

December 2016. Mr. Hawkins testified that this requirement was overlooked, and the Company now has controls in place to ensure that all drivers maintain valid medical certificates.

18 We decline to mitigate this portion of the penalty. Although we appreciate the Company's efforts to correct the violations, we find that a "per violation" penalty is appropriate here because medical certification is fundamental to safe operations. Drivers who are not medically certified may have an undocumented medical condition that puts the traveling public at risk.

19 **49 C.F.R. Part 395.8(a).** The Penalty Assessment also includes a \$100 penalty for 58 violations of 49 C.F.R. Part 395.8(a) because MVP Moving allowed its employees to drive without making a record of duty status on 58 occasions in the six months preceding the compliance review. Mr. Hawkins testified that this requirement was also overlooked, but the Company now has controls in place to ensure drivers complete records of duty status and submit them on a weekly basis.

20 We decline to mitigate this portion of the penalty. The Commission could have assessed a \$5,800 penalty, but, because these are first-time violations, assessed a "per category" rather than "per violation" penalty. Accordingly, we find that no further penalty reduction is warranted.

21 **WAC 480-15-555.** The Penalty Assessment also includes a \$500 penalty for five violations of WAC 480-15-555, which requires carriers to complete a criminal background check for every person the carrier intends to hire. Mr. Hawkins explained that this requirement "fell by the wayside," but the Company has since obtained background checks for all current employees and implemented procedures to ensure compliance going forward.

22 We decline to mitigate this portion of the penalty. As noted in the Penalty Assessment, an employee with an unknown criminal history raises serious concerns about personal safety and the security of customer belongings. Although the Company has since corrected the violations, it failed to introduce any new information or explain extenuating circumstances that would warrant a reduced penalty.

23 **Suspended Penalty.** Because the Company has submitted a satisfactory proposed safety management plan that details the controls it put in place to prevent repeat violations of Commission safety rules, we agree with Staff's recommendation and suspend a \$3,100 portion of the penalty for a period of two years, and then waive it, subject to the following conditions:

- a) MVP Moving must maintain a conditional safety rating;
- b) MVP Moving may not incur any repeat critical violations of WAC 480-15 upon re-inspection in one year;
- c) MVP Moving may not incur any repeat critical violations of WAC 480-15 upon re-inspection in two years;
- d) MVP Moving must pay the remaining \$3,000 penalty within ten days of the effective date of this Order. The Company may work with Staff to establish mutually agreeable payment arrangements to pay the \$3,000 portion of the penalty that is not suspended.

### **FINDINGS AND CONCLUSIONS**

- 24 (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.
- 25 (2) MVP Moving is a household goods carrier subject to Commission regulation.
- 26 (3) MVP Moving cured the deficiencies that led to its unsatisfactory safety rating within 60 days, as required. Accordingly, MVP Moving's safety rating should be upgraded to conditional, and the Company should be allowed to maintain its provisional household goods carrier permit.
- 27 (4) MVP Moving violated 49 C.F.R. Part 391.45(a) by allowing drivers who were not medically examined and certified to drive company vehicles on 55 occasions.
- 28 (5) MVP Moving should be penalized \$5,500 for 55 violations of 49 C.F.R. Part 391.45(a).
- 29 (6) MVP Moving violated 49 C.F.R. Part 395.8(a) by failing to require its drivers to make a record of duty status on 58 occasions.
- 30 (7) MVP Moving should be penalized \$100 for one violation of 49 C.F.R. Part 395.8(a).
- 31 (8) MVP Moving violated WAC 480-15-555 by failing to obtain criminal background checks prior to hiring five of its employees.

- 32 (9) MVP Moving should be penalized \$500 for five violations of WAC 480-15-555.
- 33 (10) Pursuant to WAC 480-15-305(1)(b), the Commission should find good cause to extend MVP Moving's provisional period until such time the Company achieves a satisfactory safety rating.
- 34 (11) The Commission should assess a total penalty of \$6,100 for 61 violations of WAC 480-15 and Title 49 C.F.R. A \$3,100 portion of the penalty should be suspended for a period of two years, and then waived, subject to the conditions set out in paragraph 23, above.

**ORDER**

THE COMMISSION ORDERS That

- 35 (1) MVP Moving and Storage LLC's safety rating is upgraded to conditional.
- 36 (2) The Commission assesses a \$6,100 penalty against MVP Moving and Storage LLC. The Commission suspends a \$3,100 portion of the penalty for a period of two years, and then waives it, subject to the conditions set out in paragraph 23, above.
- 37 (3) MVP Moving and Storage LLC's provisional period is extended until such time the Company achieves a satisfactory safety rating.

DATED at Olympia, Washington, and effective April 6, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON  
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 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) 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 fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

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