

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TV-170124
GIGANTIC MOVING & STORAGE LLC d/b/a GIGANTIC MOVING & STORAGE	ORDER 01
in the amount of \$8,300	ORDER GRANTING MITIGATION TO \$4,000

BACKGROUND

- 1 On March 8, 2017, the Washington Utilities and Transportation Commission (Commission) assessed an \$8,300 penalty (Penalty Assessment) against Gigantic Moving & Storage, LLC d/b/a Gigantic Moving & Storage (Gigantic Moving or Company) for 96 critical violations of Washington Administrative Code (WAC) 480-15-555, Criminal Background Checks for Prospective Employees, and WAC 480-15-570, which adopts by reference Title 49 Code of Federal Regulations (C.F.R.) Part 391 related to driver qualifications and Part 395 related to driver hours of service.¹
- 2 On March 27, 2017, Gigantic Moving responded to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty based on the written information provided. In its response, the Company explained that the violations were unintentional and have since been corrected. The Company requests the Commission reduce the total penalty to \$600 – a \$100 penalty for each violation category – and suspend the remaining \$7,700 on the condition of future compliance. Finally, the Company explained that it has yet to make a profit, and the penalty would create a financial hardship.
- 3 On March 31, 2017, Commission staff (Staff) filed a response recommending the Commission grant the Company’s request for mitigation, in part. The Penalty Assessment includes a \$7,800 penalty for 78 violations of 49 C.F.R. Part 391.45(a); a \$100 penalty for one violation of 49 C.F.R. Part 391.51(a); a \$100 penalty for one violation of 49 C.F.R. Part 395.3(b)(2); a \$100 penalty for 10 violations of 49 C.F.R. Part 395.8(a); a

¹ WAC 480-30-221 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 49 C.F.R.

\$100 penalty for five violations of 49 C.F.R. Part 395.8(k)(1); and a \$100 penalty for one violation of WAC 480-15-555. Staff recommends reducing the portion of the penalty assessed for violations of 49 C.F.R. Part 391.45(a) to \$3,500 because these are first-time violations and the Company took prompt corrective action. Staff does not recommend any further mitigation because the Company failed to address the other violation categories in its response. Accordingly, Staff recommends the Commission assess a reduced penalty of \$4,000.

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.² In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.³ Violations defined by federal law as “critical,” which are indicative of a breakdown in a carrier’s management controls, meet this standard.⁴
- 5 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.⁵ We address each violation category in turn.
- 6 **49 C.F.R. Part 391.45(a).** The Penalty Assessment includes a \$7,800 penalty for 78 violations of 49 C.F.R. Part 391.45(a) because Gigantic Moving allowed five drivers who were not medically examined and certified to drive on 78 occasions in August 2016. In its response, the Company explained that it immediately corrected the violations and implemented a system to prevent violations going forward.
- 7 Staff recommends the Commission assess a reduced penalty of \$3,500 because these are first-time violations and the Company ensured all of its drivers were medically examined

² See RCW 81.04.405.

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

⁴ 49 C.F.R. § 385, Appendix B.

⁵ Enforcement Policy ¶19.

and certified prior to receiving the Penalty Assessment. We agree. In its response, the Company acknowledged the violations and provided assurances of future compliance. In light of these factors, we assess a \$3,500 penalty for 78 violations of 49 C.F.R. Part 391.45(a).

8 **49 C.F.R. Part 391.51(a).** The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. Part 391.51(a) because the Company failed to maintain a driver qualification file for one of its drivers. The Company did not address this violation in its response.

9 Staff recommends no mitigation for this portion of the penalty because the Company failed to provide an example of a driver qualification file, a list of the documents kept in the file, or any other supporting documentation. We agree with Staff's recommendation and find that the Company failed to introduce any new information that would warrant a penalty reduction. Accordingly, we assess a \$100 penalty for one violation of 49 C.F.R. Part 391.51(a).

10 **49 C.F.R. Part 395.3(b)(2).** The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. Part 395.3(b)(2) because Gigantic Moving required or permitted an employee to drive in excess of 70 hours in eight consecutive days. The Company did not address this violation in its response.

11 Staff recommends no mitigation for this portion of the penalty because fatigued drivers present serious safety concerns and put the traveling public at risk. We agree with Staff's recommendation and find that the Company failed to introduce any new information that would warrant a penalty reduction. Accordingly, we assess a \$100 penalty for one violation of 49 C.F.R. Part 395.3(b)(2).

12 **49 C.F.R. Part 395.8(a).** The Penalty Assessment also includes a \$100 penalty for 10 violations of 49 C.F.R. Part 395.8(a) because Gigantic Moving allowed its employees to drive without making a record of duty status on 10 occasions in the six months preceding the compliance review. The Company did not address this violation in its response.

13 Staff recommends no mitigation for this portion of the penalty because the Company failed to provide any supporting documentation to demonstrate that it has created a system to prevent the violations from reoccurring. We agree with Staff's recommendation. The Commission could have assessed a \$1,000 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.

14 **49 C.F.R. Part 395.8(k)(1).** The Penalty Assessment also includes a \$100 penalty for five violations of 49 C.F.R. Part 395.8(k)(1) because Gigantic Moving failed to retain its drivers’ records of duty status for a six month period, as required. The Company did not address this violation in its response.

15 Staff recommends no mitigation for this portion of the penalty because the Company failed to provide any information demonstrating the steps the Company has taken to correct the violations and prevent them from reoccurring. We agree with Staff’s recommendation. The Commission could have assessed a \$500 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.

16 **WAC 480-15-555.** The Penalty Assessment also includes a \$100 penalty for one violation of WAC 480-15-555, which requires carriers to complete a criminal background check for every person the carrier intends to hire. Gigantic Moving produced a criminal background check for an employee who worked for the Company during the six months preceding the compliance review that was dated December 16, 2016. The Company did not address this violation in its response.

17 Staff recommends no mitigation for this portion of the penalty because the Company failed to produce any documentation demonstrating that it has put controls in place to ensure future compliance. We agree with Staff’s recommendation. 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. Accordingly, we decline to mitigate this portion of the penalty.

18 To reduce the financial impact of the penalty, the Company may work with Staff to establish mutually agreeable payment arrangements.

FINDINGS AND CONCLUSIONS

19 (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.

- 20 (2) Gigantic Moving is a household goods carrier subject to Commission regulation.
- 21 (3) Gigantic Moving violated 49 C.F.R. Part 391.45(a) when it allowed five drivers who were not medically examined and certified to drive on 78 occasions in August 2016.
- 22 (4) Gigantic Moving should be penalized \$3,500 for 78 violations of 49 C.F.R. Part 391.45(a).
- 23 (5) Gigantic Moving violated 49 C.F.R. Part 391.51(a) when it failed to maintain a driver qualification file for one of its employees.
- 24 (6) Gigantic Moving should be penalized \$100 for one violation of 49 C.F.R. Part 391.51(a).
- 25 (7) Gigantic Moving violated 49 C.F.R. Part 395.3(b)(2) when it required or permitted an employee to exceed 70 hours of drive time in eight consecutive days.
- 26 (8) Gigantic Moving should be penalized \$100 for one violation of 49 C.F.R. Part 395.3(b)(2).
- 27 (9) Gigantic Moving violated 49 C.F.R. Part 395.8(a) when it allowed its employees to drive without making a record of duty status on 10 occasions in the six months preceding the compliance review.
- 28 (10) Gigantic Moving should be penalized \$100 for ten violations of 49 C.F.R. Part 395.8(a).
- 29 (11) Gigantic Moving violated 49 C.F.R. Part 395.8(k)(1) when it failed to retain its drivers' records of duty status for six months, as required.
- 30 (12) Gigantic Moving should be penalized \$100 for five violations of 49 C.F.R. Part 395.8(k)(1).
- 31 (13) Gigantic Moving violated WAC 480-15-555 when it failed to conduct a criminal background check prior to employing one of its drivers.
- 32 (14) Gigantic Moving should be penalized \$100 for one violation of WAC 480-15-555.

- 33 (15) Gigantic Moving should be permitted to file jointly with Staff a mutually agreeable arrangement for paying the \$4,000 penalty.

ORDER

THE COMMISSION ORDERS:

- 34 (1) Gigantic Moving & Storage, LLC d/b/a Gigantic Moving & Storage's request for mitigation of the \$8,300 penalty is GRANTED, in part, and the penalty is reduced to \$4,000.
- 35 (2) Gigantic Moving & Storage, LLC d/b/a Gigantic Moving & Storage must either pay the penalty or file jointly with Staff a proposed payment arrangement no later than April 24, 2017.
- 36 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective April 10, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
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.