

**BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION**

In the Matter of the Investigation of

BACKBREAKERS NW, LLC,

For Compliance with WAC 480-15-555,  
WAC 480-15-560, and WAC 480-15-  
570

In the Matter of the Penalty Assessment  
against

BACKBREAKERS NW, LLC,

in the amount of \$900

DOCKETS TV-200153  
and TV-200152  
(Consolidated)

ORDER 01

CONSOLIDATING DOCKETS;  
APPROVING SAFETY  
MANAGEMENT PLAN;  
UPGRADING SAFETY  
RATING; IMPOSING AND  
SUSPENDING PENALTIES

**BACKGROUND**

- 1 On March 10, 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 Backbreakers NW, LLC, (Backbreakers or Company) for Compliance with Washington Administrative Code (WAC) 480-15-555, WAC 480-15-560, and WAC 480-15-570 (Notice).
- 2 The Notice explained that Commission staff (Staff) conducted a compliance review of Backbreakers' operations on March 3, 2020, and cited the Company for 97 critical or critical-type violations of federal and state safety regulations, which resulted in a proposed "unsatisfactory" safety rating. Based on its review, Staff recommended the Commission cancel Backbreakers' household goods carrier permit unless the Company obtained Commission approval of a safety management plan. The Notice directed Backbreakers to file a proposed safety management plan by April 2, 2020. The Commission also set a brief adjudicative proceeding (BAP) for April 16, 2020, at 9:30 a.m. to determine whether the Commission should cancel Backbreakers' household goods carrier permit. On March 16, 2020, the Commission assessed a \$900 penalty

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

(Penalty Assessment) against Backbreakers for the safety violations discovered during Staff's compliance review.<sup>1</sup> The Penalty Assessment includes:

- a) A \$500 penalty for five violations of WAC 480-15-555 for failing to conduct criminal background checks for five employees. The Penalty Assessment assessed a penalty of \$100 for each occurrence of this violation.
- b) A \$100 penalty for two violations of 49 C.F.R. § 391.51(b)(2) for failing to ensure that a driver's abstract was maintained for two drivers.
- c) A \$100 penalty for ninety violations of 49 C.F.R. § 395.8(a)(1) for failing to maintain a record of duty status for three drivers on 90 occasions between January 1 and January 30, 2020.
- d) A \$100 penalty for two violations of 49 C.F.R. § 396.3(b) for failing to keep the minimum required vehicle maintenance records for the Company's two commercial motor vehicles.
- e) A \$100 penalty for two violations of 49 C.F.R. § 396.17(a) for failing to have an annual inspection performed on its two commercial vehicles.

3 On March 18, 2020, Backbreakers filed with the Commission a request for mitigation of the penalty based on the written information provided and waived its right to a hearing.

4 On March 27, 2020, Backbreakers submitted a proposed safety management plan. On March 31, 2020, Staff filed with the Commission its evaluation of the Company's safety management plan and penalty recommendation (Evaluation).

5 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." Staff further recommends that the Commission assess a reduced penalty of \$450. Finally, Staff recommends the Commission suspend a \$250 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: 1) Staff will conduct a follow-up safety investigation at least six months from the date of this Order, 2) the Company must not incur any repeat critical violations upon re-inspection, and 3) Backbreakers must pay the \$200 portion of the penalty that is not suspended.

6 On March 31, 2020, Staff sent an email to the presiding officer representing that the Company waives its right to a hearing and recommending that the brief adjudicative

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<sup>1</sup> The Penalty Assessment cites violations of WAC 480-15-560 and WAC 480-15-570, which both 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.

proceeding be cancelled. On April 1, 2020, the Commission issued a Notice cancelling the April 16, 2020, hearing and informing the parties that the Commission would enter an order based on the parties' written submissions.

## DISCUSSION AND DECISION

### 1. Consolidation

7 Pursuant to WAC 480-07-320, the Commission, in its discretion, may consolidate two or more proceedings in which the facts or principles of law are related. 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 on its own motion. Accordingly, Docket TV-200153 and Docket TV-200152 are consolidated.

### 2. Safety Rating

8 Washington Law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's compliance review of Backbreakers found 111 violations of Commission safety regulations; 102 of the violations were "critical," 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.

9 On March 27, 2020, the Company submitted its proposed safety management plan and requested the Commission upgrade its safety rating to "conditional." Staff determined that Backbreakers' 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 Backbreakers' safety management plan is acceptable and satisfies the legal requirements of 49 CFR Part 385. We agree.

10 Based on Staff's Evaluation, the Commission finds that the Company has achieved compliance with WAC 480-30-221 by correcting the violations that led to the proposed "unsatisfactory" safety rating. Accordingly, the Commission agrees with Staff's recommendation that the Company's safety rating should be upgraded to "conditional."

### 3. Penalty

- 11 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>
- 12 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>
- 13 Here, Staff recommends the Commission assess a reduced penalty of \$450. 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 includes documentation of driver qualifications, records of duty status, vehicle maintenance records, and criminal background check information. Accordingly, we are satisfied that Backbreakers has cured the violations that gave rise to the Penalty Assessment and has put adequate controls in place to prevent the violations from reoccurring.
- 14 **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 the company has taken specific actions 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.<sup>6</sup> Another factor we consider is whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.<sup>7</sup>
- 15 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

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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.

<sup>6</sup> *Id.* at ¶20.

<sup>7</sup> *Id.*

of the penalty with the conditions proposed by Staff will both increase compliance and provide an incentive to avoid violations in the future.

- 16 Accordingly, we agree with Staff's recommendation and suspend a \$250 portion of the penalty for a period of two years, and then waive it, subject to the following conditions:
- a) Backbreakers must maintain a conditional safety rating;
  - b) Staff must conduct a follow-up investigation at least six months from the effective date of this Order;
  - c) Backbreakers may not incur any repeat critical violations of WAC 480-15 upon re-inspection; and
  - d) Backbreakers must pay the remaining \$200 penalty by October 1, 2020. Nothing prohibits the Company from making its payment prior to this deadline.<sup>8</sup>

#### FINDINGS AND CONCLUSIONS

- 17 (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.
- 18 (2) Backbreakers is a household goods carrier subject to Commission regulation.
- 19 (3) Backbreakers cured the deficiencies that led to Staff's recommendation to cancel the Company's household goods permit. Accordingly, Backbreakers' safety rating should be upgraded to "conditional."
- 20 (4) Backbreakers committed 102 critical violations of WAC 480-15 and Title 49 C.F.R.
- 21 (5) Backbreakers does not dispute that the violations occurred.
- 22 (6) Backbreakers should be penalized \$450 for 102 critical violations of WAC 480-15 and Title 49 C.F.R. The Commission should suspend a \$250 portion of the

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<sup>8</sup> This extended due date is consistent with the Commission's recent decision to suspend payment of all penalties for 6 months for regulated transportation companies experiencing a severe economic downturn due to the COVID-19 pandemic.

penalty for two years, and then waive it, subject to the conditions set out in paragraph 17, above.

**ORDER**

THE COMMISSION ORDERS THAT:

- 23 (1) The Commission approves Backbreakers NW, LLC's safety management plan.
- 24 (2) Backbreakers NW, LLC's safety rating is upgraded to "conditional."
- 25 (3) The Commission assesses a \$450 penalty against Backbreakers NW, LLC. The Commission suspends a \$250 portion of the penalty for a period of two years, and then waives it, subject to the following conditions:
- a) Backbreakers NW, LLC, must maintain a conditional safety rating;
  - b) Staff must conduct a follow-up investigation at least six months from the effective date of this Order; and
  - c) Backbreakers NW, LLC, may not incur any repeat critical violations of WAC 480-15 upon re-inspection.
- 26 (4) The \$200 portion of the penalty that is not suspended is due and payable no later than October 1, 2020.

DATED at Lacey, Washington, and effective April 10, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

*/s/ Samantha Doyle*  
SAMANTHA DOYLE  
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)