

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

AVATAR MOVERS – VANCOUVER,
LLC, D/B/A TWO MEN AND A
TRUCK – VANCOUVER,

in the amount of \$2,400

DOCKET TV-200737

ORDER 01

GRANTING MITIGATION
TO \$1,250; CLOSING DOCKET

BACKGROUND

1 On August 31, 2020, the Washington Utilities and Transportation Commission (Commission) assessed a \$2,400 penalty (Penalty Assessment) against Avatar Movers – Vancouver, LLC, d/b/a Two Men and a Truck – Vancouver, (Avatar Movers or Company) for one violation of Washington Administrative Code (WAC) 480-15-555, and 23 violations of WAC 480-15-570, which adopts by reference sections of Title 49 Code of Federal Regulations (C.F.R.).¹ The Penalty Assessment includes:

- a \$100 penalty for one violation of WAC 480-15-555 for failing to conduct a criminal background check on an employee;
- a \$100 penalty for one violation of 49 C.F.R. § 390.35 for making or causing to make a fraudulent or intentionally false record entry on a required medical examiner’s certificate;
- a \$100 penalty for one violation of 49 C.F.R. § 391.15(a) for using a driver with a suspended driver’s license; and
- a \$2,100 penalty for 21 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified on 21 occasions.

2 On August 19, 2020, the Company responded to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty based on the written information provided. The Company provided a corrective action safety plan in which it described the corrective actions it took to remedy each violation, provided supporting documentation,

¹ WAC 480-15-570 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 Title 49 C.F.R.

explained why each violation occurred, and described the steps it took to prevent further occurrences.

- 3 On September 21, 2020, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. Staff recommends the Commission mitigate the penalties assessed for violations of WAC 480-15-555, 49 C.F.R. § 391.15(a), and 49 C.F.R. § 391.45(a) and assess a total reduced penalty of \$1,250.
- 4 On September 24, 2020, the Company made a payment of \$1,250, the amount recommended by Staff.

DISCUSSION AND DECISION

- 5 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" or "acute" meet this standard.⁴
- 6 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 below.
- 7 **WAC 480-15-555, 49 C.F.R. § 391.15(a), and 49 C.F.R. § 391.45(a).** The Penalty Assessment includes a \$100 penalty for one violation of WAC 480-15-555 because the Company failed to acquire a criminal background check on one of its employees at the time of hire. The Company stated that it has implemented a new auditing procedure to

² See RCW 81.04.405.

³ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12, 15 (Jan. 7, 2013) (Enforcement Policy).

⁴ 49 C.F.R. § 385, Appendix B.

⁵ Enforcement Policy ¶19.

ensure that criminal background checks are completed prior to new hires beginning employment.

- 8 The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. § 391.15(a) for using a disqualified driver. The Company stated that it has implemented a policy that states a driver will be terminated if the Company is not made aware of a traffic infraction or driver's license suspension and that it has notified its employees of this requirement.
- 9 The Penalty Assessment also includes a \$2,100 penalty for 21 violations of 49 C.F.R. § 391.45(a) because the Company used drivers who were not medically examined and certified on 21 occasions. The Company stated that it has implemented a new policy and calendaring system to notify management monthly of any expiring medical certificates or driver's licenses.
- 10 Staff recommends that the Commission reduce the penalty for these violation categories by half, from \$2,300 to \$1,150, because the Company took prompt corrective and preventative actions. Staff also notes that these are first-time violations.
- 11 We agree with Staff's recommendation to mitigate this portion of the penalty. These are first-time violations that the Company has since corrected, and the Company provided documentary evidence that it has changed its practices going forward. Accordingly, we reduce the penalty for these violation categories by half and assess a total penalty of \$1,150 for one violation of WAC 480-15-555, one violation of 49 C.F.R. § 391.15(a), and 21 violations of 49 C.F.R. § 391.45(a).
- 12 **49 C.F.R. § 390.35.** The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. § 390.35 because a Company representative made or caused to be made a fraudulent or intentionally false entry on a required medical examiner's certificate. The Company responded that it now reviews all medical certificates after drivers return from their medical examinations.
- 13 Staff recommends no mitigation of this portion of the penalty because the Company's intent to deceive the Commission by providing falsified documents to avoid regulatory compliance is extremely concerning. We agree with Staff's recommendation. The seriousness of the violation weighs against mitigation, as does the relatively small amount of the penalty itself. Accordingly, we uphold the \$100 penalty assessed for this violation.

FINDINGS AND CONCLUSIONS

- 14 (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.
- 15 (2) Avatar Movers is a household goods carrier subject to Commission regulation.
- 16 (3) Avatar Movers violated WAC 480-15-555 when it failed to acquire criminal background checks for one employee before that employee began to operate under its authority.
- 17 (4) The Commission should penalize Avatar Movers \$50 for one violation of WAC 480-15-555.
- 18 (5) Avatar Movers violated 49 C.F.R. § 390.35 when it made or caused to be made a fraudulent or intentionally false entry on a required medical examiner's certificate.
- 19 (6) The Commission should penalize Avatar Movers \$100 for one violation of 49 C.F.R. § 390.35.
- 20 (7) Avatar Movers violated 49 C.F.R. § 391.15(a) when it used a disqualified driver.
- 21 (8) The Commission should penalize Avatar Movers \$50 for one violation of 49 C.F.R. § 391.15(a).
- 22 (9) Avatar Movers violated 49 C.F.R. § 391.45(a) when it used drivers on 21 occasions who were not medically examined and certified.
- 23 (10) The Commission should penalize Avatar Movers \$1,050 for 21 violations of 49 C.F.R. § 391.45(a).
- 24 (11) The Commission should assess a total penalty of \$1,250 for 24 violations of WAC 480-15 and Title 49 C.F.R.

ORDER

THE COMMISSION ORDERS:

- 25 (1) Avatar Movers – Vancouver, LLC, d/b/a Two Men and a Truck – Vancouver’s request for mitigation of the \$2,400 penalty is GRANTED, in part, and the penalty is reduced to \$1,250.
- 26 (2) Because Avatar Movers – Vancouver, LLC, d/b/a Two Men and a Truck – Vancouver, submitted a payment of \$1,250 on September 24, 2020, no further penalty is due and this docket is closed.
- 27 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 October 6, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



MARK L. JOHNSON
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.