

ATTN: Steven King Washington Utilities & Transportation Commission

PMC MOVING, LLC DOCKET TV-143221

11/13/14 (THU NOV 13)

John Alex Lutz following up once again in regards to the matter listed above and the recent penalty assessment.

I would like to file an appeal and would like this to be a mitigation hearing in person because I feel some of the points that were included in the previous mitigation letter I had sent out may have been overlooked.

I have also sent along the previous mitigation letter that had been sent out as a reference.

But in essence, I really need to address some of the inaccuracies in Mr. Alan Dickson's report and feel it can be better expressed in person.

Thank you for your time.

JOHN ALEX LUTZ



PMC MOVING, LLC

(206) 446.3009

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EQUIPMENT MANAGEMENT  
2014 NOV 13 PM 3:18  
STATE OF WASH  
UTIL. AND TRNSP  
COMMISSION

**To the Utilities and Transportation Commission Staff –****PMC MOVING****UTC # THG-64060****USDOT # 2015694**

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John Alex Lutz following up in regards to the recent letter and penalty assessment pertaining to the violations of critical regulations. Since receiving the letter on Monday September 22, the items as outlined in the penalty report – annual vehicle inspections and medical certifications – have been corrected. Furthermore, although we received a satisfactory rating for all three trucks, there were a few very minor defects noted in Alan Dickson's report which have also since been updated. That said, I am requesting mitigation in this matter and a significant reduction in the assessed penalty amount because of the following factors:

Although I did attend the Commission's Household Goods training seminar in January 2011, I can recall the main emphasis was going over Tariff 15-C. We talked about what constitutes hourly-rated moves, mileage-rated moves, we talked about Valuation, Estimates, tariff prices on cartons, travel time misc services. We did talk about information in the *Your Guide to Achieving a Satisfactory Safety Record* in the morning session of the program and I recall the lady conducting the seminar elaborated on the Time Logs and we spent quite a bit of time on that subject, but at no point was there ever an emphasis on the fact that all drivers are required to be medically certified to work for a local moving company or it will potentially result in fines. That is a pretty salient point and one I would have definitely remembered. I recall the lady hosting the seminar began skimming through the Safety book as most of the individuals at the training seminar were from local moving companies and were more interested in going over Tariff 15-C. Again, it was never emphasized, it was not in bold, and it is something that would have been remembered.

The fine amount on the report states \$5,900 of which \$5,800 appears to be a result of the 58 recorded violations from the 58 days (\$100/day) our employees drove without being medically certified. As I mentioned in the first paragraph, we have had our three drivers get physical exams (on 10/1/14) and they have all been deemed "fit for duty". Included in the mitigation report are their Medical Exam summaries. Needless to say, one of our drivers, Tyler Prall, only drove on 10 days in June 2014, however the report indicates he drove 21 days. He did actually work 21 days, but that was misconstrued by Mr. Alan Dickson when he was reviewing our company time sheets.

Also in regards to the medical exams, on 10/1 while at the Medical examiner's office in Edmonds, WA I called down to the UTC to make sure there was nothing left out of the physical exam reports and when I talked to Tina Leipski 360 664.1170 in regards to the requirement of the physical exams I asked her if we need to follow the exact rubric for the medical exams as outlined in Section 3 or if it simply could be just a regular physical exam covering the main areas. She sounded confused and didn't know what I was really talking about and I then told her the Commission requires all moving companies to have their drivers take physical exams to which she replied, "I never knew that." I hate to put someone on blast, but considering the penalty amount the Commission is imposing I have to cover all bases. So if someone who works for the Commission is unaware of said policy then the fact of all moving companies required to have all drivers medically examined should be more clearly conveyed and talked about more often. Just to note, after I got off the phone with Tina I called Alan Dickson to double-check if the regular, standard physical exam was acceptable to which he said, "yes."

The penalty assessment report also indicates that we never sent out a compliance plan within 15 days. That was in fact sent out to John Foster within the aforementioned period. I have included that with the mitigation report and it outlined all key areas that needed to be updated along with what actions we were taking which have since been met.

Lastly, as indicated in the first paragraph we had all three trucks thoroughly inspected on 10/1/14 by Andy's Auto in Lynnwood, WA – certified mechanic – and all three trucks are in great working order and are deemed fully suitable for transporting household goods. I have included those reports along with copies of the invoice.

In summary, I feel the penalty amount is overly excessive and should be significantly reduced based on the criteria as outlined above. We are in full compliance and have always resolved any matter brought to our attention by the Commission swiftly. After having met with Alan Dickson and developing a better understanding of the Commission's requirements I feel we have improved the company from an internal standpoint and this will allow us to be more consistent with future reports, inspections, audits, and the like. I would just like the Commission to emphasize more on items of greater importance and to make sure that the potential severity if a company is not in compliance – namely, the medical exams – is expressed more clearly.

Sincerely, John Alex Lutz, Owner PMC Moving, LLC

 10/2/14

SERVICE DATE

NOV - 4 2014

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of a Penalty Assessment ) DOCKET TV-143221
Against )
) ORDER 01
PMC MOVING, LLC )
) ORDER DENYING MITIGATION
in the amount of \$5,900 )
..... )

BACKGROUND

- 1 On September 18, 2014, the Washington Utilities and Transportation Commission (Commission) assessed a penalty of \$5,900 (Penalty Assessment) against PMC Moving, LLC (PMC or Company) for 58 violations of Washington Administrative Code (WAC) 480-15-570, which adopts by reference 49 C.F.R. Part 391 related to driver qualifications and hours of service, and one violation of WAC 480-15-560, which adopts 49 C.F.R. Part 396 related to vehicle inspection, repair, and maintenance.
2 On October 6, 2014, PMC responded to the Penalty Assessment admitting the violations and requesting mitigation of the penalty based on the written information provided. The Company states that prior to receiving the Penalty Assessment, it was unaware of Commission safety requirements, but has since implemented a compliance program. The Company also claims that one subset of 21 violations were cited because the Commission's safety inspector "misconstrued" Company data, and only ten violations actually occurred.
3 On October 17, 2014, Commission Staff (Staff) filed a response recommending the Commission deny the Company's request for mitigation. Staff explains that although all 168 violations cited in the Penalty Assessment are first-time offenses, 59 warrant penalties because they present a risk of serious harm to the public. Staff recommended a reduced penalty of \$100 for three violations of 49 C.F.R. Part 396.17(a) because the Company used three vehicles that were not periodically inspected as required.

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January 2011, the Company's owner signed a form acknowledging that training was received in each of the areas where violations occurred. Accordingly, we deny the Company's request for mitigation of the penalty assessed for violations of 49 C.F.R. 396.17(a).

- 8 The Penalty Assessment also includes penalties of \$100 each for 58 violations of 49 C.F.R. Part 391.45(b)(1) because the Company failed to ensure its three drivers were medically examined and certified. Staff found that in June 2014, Nickolas Urbach drove 17 days without medical certification, Julian Lave drove 20 days, and Tyler Prall drove 21 days. The Company disputes Staff's finding with respect to Mr. Prall, but offers no explanation to support its claim that the Commission's safety inspector "misconstrued" Company time sheets. During the safety inspection, PMC was asked to provide records of driver hours of service, which reflected hours for Mr. Prall on 21 days in June. PMC did not submit any evidence to refute Staff's finding – which was based on the Company's own representations – that Mr. Prall drove uncertified on 21 days.
- 9 The Company further claimed it was unaware of the requirement to medically certify its drivers because that point was not emphasized at the Commission's household goods training, but it is solely the Company's responsibility to ensure that all safety regulations are followed. As noted in the Penalty Assessment, drivers who are not medically certified may have an undocumented medical condition that puts the traveling public at risk.
- 10 PMC also stated that it has since implemented a compliance plan to prevent future violations. While we appreciate the Company's assurances of future compliance, medical certification is a fundamental requirement that warrants penalties for a first-time offense. We find a "per violation" penalty for violations of 49 C.F.R. Part 391.45(b)(1) to be an appropriate deterrent, particularly given the Company's explanation that it was unaware of the requirement despite attending Commission-sponsored safety training. Accordingly, we agree with Staff's recommendation and deny the Company's request for mitigation.

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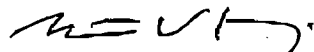
**ORDER**

THE COMMISSION ORDERS:

- 11 (1) The request of PMC Moving, LLC for mitigation of the \$5,900 penalty is DENIED.
- 12 (2) The penalty is due and payable no later than November 18, 2014.
- 13 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 November 4, 2014.

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. The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. A form for late-filed requests is available on the Commission's website.

Washington Utilities & Transportation Commission  
ATTN: Steven King  
1300 S Evergreen Park Dr. SW  
OLYMPIA 98504

OR FAX #  
(360) 586-1150  
(360) 664-1160  
Katy HANCOCK

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- 4 Staff recommended a penalty of \$100 per violation for the remaining 58 violations of 49 C.F.R. Part 391.45(b)(1) for using drivers who were not medically certified, which is a category of violation that is ineligible for reduced penalties even for a first-time offense. Because Staff recommended reduced penalties for one category of violations and the Company presented no new information that would support further reducing the penalty, Staff opposes mitigation.

### 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.<sup>1</sup> In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.<sup>2</sup> Violations defined by federal law as “critical,” which are indicative of a breakdown in a carrier’s management controls, meet this standard.<sup>3</sup>
- 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.<sup>4</sup>
- 7 The Penalty Assessment includes a \$100 penalty for three violations of 49 C.F.R. Part 396.17(a). Although these violations are classified as critical, Staff recommended a reduced penalty because they are first-time violations. The Company’s claim that it was unaware of the Commission’s safety rules prior to receiving the Penalty Assessment, however, offers no compelling reason to reduce the penalty any further. When the Company attended the Commission’s household goods industry training in

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<sup>1</sup> See RCW 80.04.405.

<sup>2</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

<sup>3</sup> 49 C.F.R. § 385, Appendix B.

<sup>4</sup> Enforcement Policy ¶19.