

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

PHILIP E. PETTINGER d/b/a
PETTINGER FAMILY MOVERS
COMPANY

in the amount of \$11,300

DOCKET TV-170679

ORDER 01

ORDER GRANTING MITIGATION TO
\$6,300; IMPOSING AND SUSPENDING
PENALTIES

BACKGROUND

- 1 On June 6, 2017, the Washington Utilities and Transportation Commission (Commission) assessed an \$11,300 penalty (Penalty Assessment) against Philip E. Pettinger d/b/a Pettinger Family Movers Company (Pettinger or Company) for 113 critical violations of Washington Administrative Code (WAC) 480-15-570, which adopts by reference Title 49 Code of Federal Regulations (C.F.R.) Part 391 related to driver qualifications.¹
- 2 On June 16, 2017, Pettinger 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 further explained that the penalty would create a financial hardship so severe that it may be forced to cease operations.
- 3 On June 27, 2017, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. The Penalty Assessment assessed an \$11,300 penalty for 113 violations of 49 C.F.R. Part 391.45(a). Staff recommends the Commission assess a reduced penalty of \$6,300 because these are first-time violations and the Company took prompt corrective action. Staff further recommends the Commission suspend a \$3,300 portion of the penalty for a period of two years subject to the condition that the Company does not incur any repeat violations of 49 C.F.R. Part 391.45(a) upon reinspection. Finally, Staff recommends the Company be

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.

permitted to establish payment arrangements to reduce the financial burden of the penalty.

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
- 6 The Penalty Assessment assessed an \$11,300 penalty for 113 violations of 49 C.F.R. Part 391.45(a) because Pettinger allowed one driver who was not medically examined and certified to drive on 113 occasions between October 2016 and April 2017. In its response, the Company explained that it immediately corrected the violations and appointed an employee to oversee compliance going forward.
- 7 Staff recommends the Commission assess a reduced penalty of \$6,300 because these are first-time violations and the Company ensured its driver was medically examined 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 \$6,300 penalty for 113 violations of 49 C.F.R. Part 391.45(a).

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.

8 We also agree with Staff's recommendation to suspend a \$3,300 portion of the penalty in light of the Company's financial situation. The Commission's ultimate goal in any enforcement proceeding is to obtain compliance, not create an unsurmountable financial burden for a small company. We therefore suspend a \$3,300 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: 1) Pettinger must either pay the \$3,000 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement within 20 days of the effective date of this Order; and 2) Pettinger may not incur any repeat violations of 49 C.F.R. Part 391.45(a).

FINDINGS AND CONCLUSIONS

- 9 (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.
- 10 (2) Pettinger is a household goods carrier subject to Commission regulation.
- 11 (3) Pettinger violated 49 C.F.R. Part 391.45(a) when it allowed one driver who was not medically examined and certified to drive on 113 occasions between October 2016 and April 2017.
- 12 (4) Pettinger should be penalized \$6,300 for 113 violations of 49 C.F.R. Part 391.45(a).
- 13 (5) The Commission should suspend a \$3,300 portion of the penalty for a period of two years, and then waive it, subject to the conditions set out in paragraph 8, above.

ORDER

THE COMMISSION ORDERS:

- 14 (1) Philip E. Pettinger d/b/a Pettinger Family Movers Company's request for mitigation of the \$11,300 penalty is GRANTED, in part, and the penalty is reduced to \$6,300.

- 15 (2) The Commission suspends a \$3,300 portion of the penalty for a period of two years, and then waives it, subject to the following conditions: 1) Philip E. Pettinger d/b/a Pettinger Family Movers Company must either pay the \$3,000 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement within 20 days of the effective date of this Order; and 2) Philip E. Pettinger d/b/a Pettinger Family Movers Company may not incur any repeat violations of 49 C.F.R. Part 391.45(a).
- 16 (3) Commission Staff will conduct a follow-up review of Philip E. Pettinger d/b/a Pettinger Family Movers Company's operations to determine compliance with this Order two years after the effective date of this Order.
- 17 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 July 3, 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.