

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

MERCHANTS PARCEL DELIVERY,
INC., d/b/a MERCHANTS MOVING &
STORAGE CO.

in the amount of \$16,200

DOCKET TV-190326

ORDER 01

GRANTING MITIGATION TO \$8,200;
IMPOSING AND SUSPENDING PENALTY

BACKGROUND

1 On May 16, 2019, the Washington Utilities and Transportation Commission (Commission) assessed a \$16,200 penalty (Penalty Assessment) against Merchants Parcel Delivery, Inc., d/b/a Merchants Moving & Storage Co. (Merchants Moving or Company) for 16 violations of Washington Administrative Code (WAC) 480-15-555, and 147 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 \$1,600 penalty for 16 violations of WAC 480-15-555 for failing to complete criminal background checks for each of the Company's 16 employees;
- a \$14,400 penalty for 144 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified on 144 occasions;
- 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; and
- a \$100 penalty for two violations of 49 C.F.R. § 391.51(a) for failing to maintain driver qualification files for two of the Company's drivers.

2 On May 31, 2019, the Company responded to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty based on the written information provided. The Company described the corrective actions it took to remedy each violation,

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.

provided supporting documentation, and explained why each violation occurred.

- 3 On June 7, 2019, 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 and 49 C.F.R. § 391.45(a) and assess a total reduced penalty of \$8,200. Staff further recommends that \$5,000 of the reduced penalty be suspended for a period of two years, and then waived, subject to the following conditions: (1) Staff conducts a follow-up focused safety investigation in two years or as soon thereafter as practicable to review the Company's driver qualifications and employee criminal background checks; (2) the Company does not incur any repeat violations of critical or acute regulations; and (3) the Company pays the \$3,200 portion of the penalty that is not suspended.

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" or "acute" 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 below.
- 6 **WAC 480-15-555 and 49 C.F.R. § 391.45(a).** The Penalty Assessment includes a \$1,600 penalty for 16 violations of WAC 480-15-555 because the Company failed to acquire criminal background checks for any of its 16 employees. The Company stated that it has implemented new procedures for completing criminal background checks for all

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.

prospective employees on a going-forward basis and provided an example of a completed criminal background check.

7 The Penalty Assessment also includes a \$14,400 penalty for 144 violations of 49 C.F.R. § 391.45(a) because the Company used three drivers who were not medically examined and certified on 144 occasions. Upon receiving notice of this violation, the drivers completed their medical examinations and the Company provided to Staff a copy of one employee's medical certificate.

8 Staff recommends that the Commission reduce the penalty for these violation categories by half, from \$16,000 to \$8,000, because the Company took prompt corrective and preventative actions. Staff also notes that these are first-time violations.

9 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 \$8,000 for 16 violations of WAC 480-15-555 and 144 violations of 49 C.F.R. § 391.45(a).

10 **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 signed a document attesting that an annual review and evaluation of its driver was complete prior to receiving that employee's annual motor vehicle report.

11 Staff recommends no mitigation of this portion of the penalty because the violation is classified as "acute," and could have resulted in the Company allowing a disqualified driver to operate a commercial motor vehicle. We agree with Staff's recommendation. Although the Company claims the violation was inadvertent, the seriousness of the potential consequences weigh against mitigation. Accordingly, we uphold the \$100 penalty assessed for this violation.

12 **49 C.F.R. § 391.51(a).** The Penalty Assessment also includes a \$100 penalty for two violations of 49 C.F.R. § 391.51(a) because the Company failed to maintain driver qualification files for two of its drivers. The Company states that it has now compiled driver qualification files that include all of the necessary records. The Company explained that it mistakenly believed it was not required to maintain driver qualification files for its drivers who do not have commercial driver's licenses.

13 Staff recommends no mitigation of this portion of the penalty. We agree. While the Company promptly corrected this first-time violation, the Commission assessed the

minimum penalty. The Commission could have assessed a penalty of \$100 per violation, for a total of \$200. Instead, the Commission exercised its discretion to assess a “per category” rather than a “per violation” penalty. Accordingly, we conclude no further penalty reduction is warranted.

- 14 **Penalty Suspension.** The Commission considers several factors when determining whether to suspend a portion of a penalty, including whether it is the company’s first 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.⁶ Another factor we consider is whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.⁷
- 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 of the penalty with the conditions proposed by Staff will both increase compliance and provide a strong incentive to avoid violations in the future. Accordingly, we suspend a \$5,000 portion of the penalty for two years, and then waive it, subject to the following conditions: (1) Staff will conduct a follow-up focused safety investigation in two years or as soon thereafter as practicable to review the Company’s driver qualifications and employee criminal background checks; (2) the Company may not incur any repeat violations of acute or critical regulations; and (3) the Company must pay the \$3,200 portion of the penalty that is not suspended. If the Company fails to comply with these conditions, the suspended penalty will become immediately due and payable without further Commission order.

FINDINGS AND CONCLUSIONS

- 16 (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.

⁶ *Id.* at ¶20.

⁷ *Id.*

- 17 (2) Merchants Moving is a household goods carrier subject to Commission regulation.
- 18 (3) Merchants Moving violated WAC 480-15-555 when it failed to acquire criminal background checks for each of its 16 employees.
- 19 (4) The Commission should penalize Merchants Moving \$800 for 16 violations of WAC 480-15-555.
- 20 (5) Merchants Moving violated 49 C.F.R. § 391.45(a) when it used drivers who were not medically examined and certified.
- 21 (6) The Commission should penalize Merchants Moving \$7,200 for 144 violations of 49 C.F.R. § 391.45(a).
- 22 (7) Merchants Moving violated 49 C.F.R. § 390.35 when it made or caused to make a fraudulent or intentionally false record entry.
- 23 (8) The Commission should penalize Merchants Moving \$100 for one violation of 49 C.F.R. § 390.35.
- 24 (9) Merchants Moving violated 49 C.F.R. § 391.51(a) when it failed to maintain driver qualification files for two of its drivers.
- 25 (10) The Commission should penalize Merchants Moving \$100 for two violations of 49 C.F.R. § 391.51(a).
- 26 (11) The Commission should assess a total penalty of \$8,200 for 163 violations of WAC 480-15 and Title 49 C.F.R.
- 27 (12) The Commission should suspend a \$5,000 portion of the penalty for a period of two years, and then waive it, subject to the conditions set out in paragraph 15, above.

ORDER

THE COMMISSION ORDERS:

- 28 (1) Merchants Parcel Delivery, Inc., d/b/a Merchants Moving & Storage Co.'s request for mitigation of the \$16,200 penalty is GRANTED, in part, and the penalty is reduced to \$8,200.
- 29 (2) The Commission suspends a \$5,000 portion of the penalty for a period of two years, and then waives it, subject to the following conditions: (1) Staff will conduct a follow-up focused safety investigation in two years or as soon thereafter as practicable to review Merchants Parcel Delivery, Inc., d/b/a Merchants Moving & Storage Co.'s driver qualifications and employee criminal background checks; (2) Merchants Parcel Delivery, Inc., d/b/a Merchants Moving & Storage Co. may not incur any repeat violations of acute or critical regulations; and (3) Merchants Parcel Delivery, Inc., d/b/a Merchants Moving & Storage Co.'s must pay the \$3,200 portion of the penalty that is not suspended within 10 days of the effective date of this Order.
- 30 (3) If Merchants Parcel Delivery, Inc., d/b/a Merchants Moving & Storage Co. fails to satisfy any of the conditions in paragraph 29 of this Order, or fails to comply with the terms of any payment arrangement, if applicable, the entire unpaid portion of the \$8,200 penalty will become immediately due and payable without further Commission order.
- 31 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 June 12, 2019.

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.