

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

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| In the Matter of the Investigation of<br>ED'S MOVING AND STORAGE, INC.,<br>For Compliance with WAC 480-15         | DOCKETS TV-200875 and<br>TV-200876<br>( <i>Consolidated</i> )<br><br>ORDER 01   |
| In the Matter of the Penalty Assessment<br>against<br>ED'S MOVING AND STORAGE, INC.,<br>in the amount of \$17,500 | CONSOLIDATING DOCKETS;<br>APPROVING SAFETY<br>MANAGEMENT PLAN;<br>MAINTAINING SAFETY RATING;<br>EXTENDING PROVISIONAL<br>PERIOD; IMPOSING AND<br>SUSPENDING PENALTIES |

**BACKGROUND**

- 1 On November 16, 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 Ed's Moving and Storage, Inc., (Ed's Moving or Company) for Compliance with Washington Administrative Code (WAC) 480-15 (Notice).
- 2 The Notice explained that Commission staff (Staff) conducted a compliance review of Ed's Moving's operations in October 2020 and cited the Company for 173 acute and critical violations of federal and state safety regulations. Based on its review, Staff recommends the Commission cancel Ed's Moving's household goods carrier permit unless the Company obtains Commission approval of a safety management plan. The Notice directed Ed's Moving to file a proposed safety management plan by November 30, 2020. The Commission also set a brief adjudicative proceeding for December 8, 2020, at 1:30 p.m. to determine whether the Commission should cancel Ed's Moving's household goods carrier permit.
- 3 On October 28, 2020, the Commission assessed a \$17,500 penalty (Penalty Assessment) against Ed's Moving for the safety violations discovered during Staff's October 2020 compliance review.<sup>1</sup> The Penalty Assessment includes:

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<sup>1</sup> The Penalty Assessment cites violations of Washington Administrative Code (WAC) 480-15-555, WAC 480-15-560, and WAC 480-15-570. WAC 480-15-560 and -570 adopt by reference

- A \$1,300 penalty for 13 violations of WAC 480-15-555 for failing to acquire criminal background checks for prospective employees.
- A \$1,500 penalty for one violation of 49 C.F.R. § 382.115(a) for failing to implement a random controlled substance and alcohol testing program.
- A \$100 penalty for one violation of 49 C.F.R. § 383.23(a) for operating a commercial motor vehicle without a valid commercial driver's license.
- A \$14,300 penalty for 143 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.
- A \$100 penalty for five violations of 49 C.F.R. § 391.51(a) for failing to maintain driver qualification files for each driver.
- A \$100 penalty for five violations of 49 C.F.R. § 396.3(b) for failing to keep minimum records of vehicle inspection and maintenance.
- A \$100 penalty for five violations of 49 C.F.R. § 396.17(a) for using a commercial motor vehicle not periodically inspected.

- 4 On December 1, 2020, Ed's Moving filed with the Commission a request for mitigation of the penalty, admitting the violations and requesting a hearing to present evidence to support its request.
- 5 On December 7, 2020, Staff informed the presiding officer that the Company had submitted to Staff a proposed safety management plan. Staff evaluated the proposed plan and determined it is acceptable. Staff indicated that the Company waived its right to a hearing in both dockets and requested the Commission cancel the brief adjudicative proceeding and decide this matter on a paper record. Also on December 7, 2020, the Commission issued a notice canceling the December 8, 2020, hearing and informing the parties that the Commission would enter an order based on the parties' written submissions.
- 6 On December 8, 2020, Staff filed with the Commission its evaluation of the Company's safety management plan and penalty recommendation (Evaluation). Based on its review of the Company's proposed plan, Staff determined that the Company took all of the required steps to bring its safety operations into compliance with Commission regulations. Staff recommends that the Commission maintain the Company's safety rating as conditional, but also extend the Company's provisional permit period until such time as the Company achieves a satisfactory safety rating.

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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.

7 Staff explained in its Evaluation that, while reviewing the Company's safety management plan, it discovered that 27 violations of 49 C.F.R. § 391.45(a) were cited in error. Accordingly, Staff recommends the Penalty Assessment be reduced to \$14,800 for 146 violations of Commission safety regulations. Staff further recommends that the Commission assess a reduced penalty of \$7,600. Finally, Staff recommends the Commission suspend a \$3,800 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: (1) Staff must conduct a follow-up safety investigation at least six months from the effective date of this Order; (2) the Company must not incur any repeat acute or critical violations upon re-inspection; and (3) the Company must pay the \$3,800 portion of the penalty that is not suspended.

## DISCUSSION AND DECISION

### 1. Consolidation

8 Because the violations cited in Staff's October 2020 investigation gave rise to the enforcement actions taken in both dockets, the Commission exercises its discretion to consolidate these proceedings. Accordingly, Docket TV-200875 and Docket TV-200876 are consolidated.

### 2. Safety Rating

9 Washington Law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's October 2020 compliance review of Ed's Moving found 146 violations of acute and critical safety regulations, which resulted in a proposed conditional safety rating. Violations are considered "acute" when non-compliance is so severe that immediate corrective action is required regardless of the overall safety posture of the company. 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.

10 On December 7, 2020, the Company submitted its proposed safety management plan and requested the Commission upgrade its safety rating. Staff determined that Ed's Moving's 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 Ed's Moving's safety management plan is acceptable and satisfies the legal requirements of 49 C.F.R. Part 385. We agree.

- 11 Based on Staff's Evaluation, the Commission finds that the Company has achieved compliance with WAC 480-15 by correcting the violations that resulted in Staff's recommendation to cancel the Company's household goods permit. Accordingly, the Commission agrees with Staff's recommendation and grants the Company's request to maintain its permit with a conditional safety rating.
- 12 We likewise agree with Staff's recommendation to extend the Company's provisional period for its household goods carrier permit. WAC 480-15-305(1)(b) provides that, prior to a grant of permanent authority, an applicant must complete a provisional period of not less than six months and not more than 18 months unless the Commission determines for good cause that the provisional period should be extended. Good cause may include, among other things, a carrier that has not yet achieved a satisfactory safety rating but is making substantial progress toward a satisfactory rating. Here, the Company has corrected the violations at issue and demonstrated that it has taken significant steps to ensure its operations comply with applicable safety regulations. Accordingly, the Commission finds good cause to extend the Company's provisional period until such time as the Company achieves a satisfactory rating.

### 3. Penalty

- 13 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> Acute and critical violations meet this standard.<sup>4</sup>
- 14 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>
- 15 Here, Staff recommends the Commission assess a reduced penalty of \$7,600. We agree with Staff's recommendation. The Company provided a comprehensive safety

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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.

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, criminal background checks, vehicle maintenance, and insurance. Accordingly, we are satisfied that Ed's Moving has cured the violations that gave rise to the Penalty Assessment and has put adequate controls in place to prevent the violations from reoccurring.

- 16 **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>
- 17 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 agree with Staff's recommendation and suspend a \$3,800 portion of the penalty for a period of two years, and then waive it, subject to the following conditions:
- a) Ed's Moving 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) Ed's Moving may not incur any repeat acute or critical violations of WAC 480-15 upon re-inspection; and
  - d) Ed's Moving must pay the remaining \$3,800 penalty within ten days of the effective date of this Order. The Company may work with Staff to establish mutually agreeable payment arrangements to pay the \$3,800 portion of the

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<sup>6</sup> *Id.* at ¶20.

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

penalty that is not suspended.

### FINDINGS AND CONCLUSIONS

- 18 (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.
- 19 (2) Ed's Moving is a household goods carrier subject to Commission regulation.
- 20 (3) Ed's Moving cured the deficiencies that led to the proposed cancellation of its household goods permit. Accordingly, Ed's Moving's safety rating should be maintained as conditional, and the Company should be allowed to maintain its household goods carrier permit.
- 21 (4) Pursuant to WAC 480-15-305(1)(b), the Commission should find good cause to extend Ed's Moving's provisional period until such time as the Company achieves a satisfactory safety rating.
- 22 (5) Ed's Moving committed 146 acute and critical violations of WAC 480-15 and Title 49 C.F.R.
- 23 (6) Ed's Moving does not dispute that the violations occurred.
- 24 (7) Ed's Moving should be penalized \$7,600 for 146 violations of WAC 480-15 and Title 49 C.F.R. The Commission should suspend a \$3,800 portion of the penalty for two years, and then waive it, subject to the conditions set out in paragraph 17, above.

### ORDER

#### THE COMMISSION ORDERS THAT:

- 25 (1) The Commission approves Ed's Moving and Storage, Inc.'s safety management plan.
- 26 (2) Ed's Moving and Storage, Inc.'s safety rating is conditional.

- 38 (3) The Commission assesses a \$7,600 penalty against Ed's Moving and Storage, Inc. The Commission suspends a \$3,800 portion of the penalty for a period of two years, and then waives it, subject to the conditions set out in paragraph 17, above.
- 27 (4) With 10 days of the effective date of this Order, Ed's Moving and Storage, Inc., must either pay the \$3,800 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement.
- 28 (5) Ed's Moving and Storage, Inc.'s provisional period is extended until such time as the Company achieves a satisfactory safety rating.

DATED at Lacey, Washington, and effective December 9, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

*/s/ Rayne Pearson*  
RAYNE PEARSON  
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).