



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

621 Woodland Square Loop S.E. • Lacey, Washington 98503

P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • TTY 1-800-833-6384 or 711

September 27, 2024

Jeff Killip, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

RE: *Washington Utilities and Transportation Commission v. PMC Moving, LLC*
Commission Staff's Response to Contest of Violation
Docket TV-240603

Dear Mr. Killip:

On August 30, 2024, the Washington Utilities and Transportation Commission (Commission) issued a penalty assessment against PMC Moving, LLC (PMC Moving or Company) in the amount of \$3,600 for violations of Washington Administrative Code (WAC) 480-15-555, Criminal Background Checks for Prospective Employees and WAC 480-15-560, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 C.F.R.) Part 390 - Safety Regulations, General, and 49 C.F.R. Part 391 - Qualifications of Drivers, as follows:

- **Nine violations of WAC 480-15-555 - Carrier failed to complete a national criminal background check for an employee. The Company failed to acquire criminal background checks prior to hiring employees Alex, Rocky, Garrett Coleman, Guy Higa, Joseph McBride, Charles Medley, Kevin Mills, Colby Phelps, and Memo Will.**
- **One violation of 49 C.F.R. § 390.19(b)(2) - Failing to file the appropriate form under 390.19(a) (MCS-150, 150B, or 150C) each 24 months according to schedule. The Company failed to update its MCS-150 with correct information at the time of the biennial update or as a routine update.**
- **Twenty-six violations of 49 C.F.R. § 391.45(a) - Using a driver not medically examined and certified. PMC Moving allowed driver John Mitchell to operate a motor vehicle without a valid medical certificate on 26 occasions between May 8, 2024, and June 20, 2024.**

On September 16, 2024, PMC Moving filed with the Commission its application for mitigation in response to the penalty assessment. The Company requested the Commission to issue a decision based solely on the information it provided in its response. Supporting the mitigation request, PMC Moving provided a letter acknowledging that the violations occurred, though it contested the total count of violations of 49 C.F.R. § 391.45(a), and states that it believed to be complying with WAC 480-15-555. The Company did not take issue with the penalty regarding 49 C.F.R. § 390.19(b)(2). Commission staff (Staff) addresses each matter as follows:

- 49 C.F.R. § 391.45(a): PMC Moving admits that its driver had a lapse in medical certification, but contests that the count of 26 occurrences is inaccurate and that the actual number of days in violation is 22. The Company provided communications between itself and Staff outlining the dates in which driver John Mitchell operated without valid medical certification.
- Staff response: Following a review of the supporting documentation provided by PMC Movers and comparing it to documents collected during the safety investigation, Staff agrees with the Company's claim that actual violation count is 22. Staff could have recommended up to \$1,000 for each of these repeat critical violations, however, chose to recommend \$100 per occurrence. Staff recommends that the penalty for this violation be reduced from \$2,600 to \$2,200.
- 49 C.F.R. § 390.19(b)(2): PMC Moving does not dispute the violation occurs. Staff recommends no reduction of the \$100 penalty.
- WAC 480-15-555: The Company claims that the count of nine violations should be six because of the investigator noted violations for "Memo" and "Alex" who are Guillermo Barragan and John A. Lutz (owner). Lutz further claims that Guy Higa has been with the Company since 2022 and has a criminal background check on file. Lutz further claims that each employee had a Washington State Patrol Watch Report on file, but since a national background check is now required, those checks are not valid. PMC Movers claims that the Commission did not properly notify the moving community of its rule change and only found one mention in an October 2023 Mover Newsletter to notify of the requirement.
- Staff response: John Lutz states that six of the violations were a result of the carrier having state background checks as opposed to the national background checks. While accurate, the Company also requested and received the state background checks that it had on file after the initiation of the safety investigation. The regulation requires companies to receive national criminal background checks on every employee it intends to hire. This was not done prior to hiring the employees named in the violation.

Additionally, Staff believes the Commission issued industry appropriate notices of the changes to WAC 480-15-555 throughout the rulemaking process in Docket T-220252, and on multiple occasions following the implementation of the rules.

As for the carrier's claim the "Memo" and "Alex" are Guillermo Barragan and John A. Lutz. Staff has no evidence to refute the claim. The Commission ran a criminal background check on Lutz upon the application process and the Company was previously cited for not obtaining a criminal background check for Barragan during a safety investigation dated April 28, 2022. The Company did not have a criminal background check on file for Higa until after the initiation of the investigation. Staff could have recommended up to \$1,000 for each of these repeat critical violations, however, chose to recommend \$100 per occurrence. Staff recommends that the penalty for this violation be reduced from \$900 to \$700.

Staff recommends the Commission reduce the overall penalty from \$3,600 to \$3,000. The Company further requested to split the payment of the penalty into two installments. The first installment is due on October 1, 2024, and the second installment is due on November 1, 2024. Staff believe this proposed payment arrangement is reasonable and supports granting this request.

If you have any questions, please contact Jason Sharp, Motor Carrier Safety Supervisor, Transportation Safety, at (360) 701-1603, or by email at jason.sharp@utc.wa.gov.

Sincerely,

Jason Sharp
Motor Carrier Safety Supervisor, Transportation Safety