

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of

AIRUS MOVERS LLC,

For Compliance with WAC 480-15-530,
WAC 480-15-550, WAC 480-15-555, WAC
480-15-560, and RCW 81.80.075.

DOCKET TV-240620

ORDER 01

CANCELLING HOUSEHOLD
CARRIER PERMIT; UPHOLDING
PENALTIES

BACKGROUND

- 1 On September 5, 2024, in Docket TV-200620, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel Permit As A Household Good Carrier (Permit)/Notice of Brief Adjudicative Proceeding against Airus Movers LLC (Airus Movers or Company).¹ The Commission intended to cancel Airus Movers' Permit to provide services as a household goods carrier effective October 13, 2024, for cause, following a hearing on the factual allegations Commission staff (Staff) found as a result of its compliance investigations.
- 2 On September 9, 2024, the Commission issued a Notice of Penalties Incurred and Due for Violations of Laws and Rules (Penalty Assessment) against Airus Movers for \$15,600, which was immediately due. The Commission found the Company committed 202 violations of WAC 480-15 as follows:
 - Nine violations of WAC 480-15-555(1) - Failure to complete a criminal background check for every person the carrier intends to hire.
 - One hundred forty-three violations of 49 C.F.R. § 391.45(a) - Using a driver not medically examined and certified.

¹ *In the Matter of the Investigation of Airus Movers, LLC for Compliance with WAC 480-15-530, WAC 480-15-550, WAC 480-15-555, WAC 480-15-560, and RCW 81.80.075, Docket TV-240620 Notice of Intent to Cancel Certificate, Notice of Brief Adjudicative Proceeding (September 5, 2024).*

- Four violations of 49 C.F.R. § 391.51(a) - Failing to maintain driver qualification file on each driver employed.
- Forty-two violations of 49 C.F.R. § 395.8(a)(1) - Failing to require a driver to prepare a record of duty status using the appropriate method.
- Two violations of 49 C.F.R. § 396.3(b) - Failing to keep minimum records of inspection and vehicle maintenance.
- Two violations of 49 C.F.R. § 396.17(a) - Using a commercial motor vehicle not periodically inspected.

3 The Commission considered the following factors before it issued the Penalty Assessment:

- How serious or harmful the violations are to the public.
- Whether the violations were intentional.
- Whether the Company self-reported the violations.
- Whether the Company was cooperative and responsive.
- Whether the Company promptly corrected the violations and remedied the impacts.
- The number of violations.
- The number of customers affected.
- The likelihood of recurrence.
- The Company's past performance regarding compliance, violations, and penalties.
- The Company's existing compliance program.
- The size of the Company.

4 The Company did not pay the Penalty Assessment.

5 On October 2, 2024, the Commission convened a Brief Adjudicative Proceeding (BAP) before Administrative Law Judge M. Hayley Callahan. The Company did not attend the BAP. Assistant Attorney General Cassandra Jones represented Staff. Staff moved to hold Airus Movers in default and requested the Commission hear the merits of the case. The Commission granted Staff's motion and request.

6 On October 10, 2024, Airus submitted a safety management plan (SMP).² On October 11, 2024, Staff filed its Evaluation of the Company's SMP.³ According to the SMP

² Staff's Evaluation of Airus Movers LLC's Safety Management Plan (Evaluation), filed October 11, 2024.

³ SMP Evaluation at 1.

Evaluation, the Company had until October 12, 2024, to address the identified violations and to meet safety standards and factors in 49 C.F.R. § 385.5 and 385.7, which could be evidenced in its October 10, 2024, SMP.

DISCUSSION

A. Default Initial Order

7 RCW 34.05.440(2) provides

If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, other than failing to timely request an adjudicative proceeding as set out in subsection (1) of this section, the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order.

8 WAC 480-07-450(1) states

Dismissal or default. *The commission may dismiss a party or find a party in default for failure to appear at the time and place set for hearing. The commission will implement any dismissal or default by a written order. When a party is found in default, the commission's order stating that finding also may dispose of the issues in the proceeding, as provided by RCW 34.05.440. (Emphasis added.)*

9 The Notice of Intent to Cancel Permit as a Household Goods Carrier included a notice that any party who failed to attend or participate in the hearing may be held in default in accordance with the terms of RCW 34.05.440 and WAC 480-07-450. The Company did not attend the Brief Adjudicative Proceeding nor submit a continuance request. Based on Airus Movers' failure to appear, Judge Callahan asked Staff whether to move to hold Airus Movers in default pursuant to RCW 34.05.440(2) and WAC 480-07-450 (1).

B. Decision

10 The Commission electronically served Airus Movers with the Notice of Intent to Cancel Permit as a Household Goods Carrier on September 5, 2024, 27 days in advance of the Brief Adjudicative Proceeding that was held on October 2, 2024. Accordingly, Airus Movers was properly and legally served and provided due and proper notice of the time

and place set for the hearing. Airus Movers did not appear at the Brief Adjudicative Proceeding and is therefore held in default.

- 11 Airus Movers' failure to appear at the Brief Adjudicative Proceeding is unacceptable. Both the Commission and Staff expended resources preparing for, and attending, the Brief Adjudicative Proceeding. This default order cancels the Company's Permit immediately, as discussed below, and should serve to impress upon Airus Movers the importance of responding to the Commission's communications and notices as well as cooperating with Commission Staff.
- 12 The Commission convened a virtual brief adjudicative proceeding in this docket on October 2, 2024, before Judge Callahan. Staff was the only party who appeared at the proceeding. Staff moved for default pursuant to RCW 34.05.440(2) and WAC 480-07-450. Staff also requested that it be allowed to present a prima facie case demonstrating that the Commission should cancel Airus Movers' Permit. The Commission granted Staff's request.
- 13 During the hearing, Staff presented testimony from investigator Leonard McLaughlin and exhibits from the investigations of the Company. Staff also presented testimony from Staff witness Jason Sharp.
- 14 Mr. Sharp testified that the Company did not submit an acceptable safety management plan. We noted that the deadline to submit the SMP was set for October 12, 2024, as set forth in the Notice of Intent to Cancel Permit as a Household Goods Carrier. Mr. Sharp also testified that he would work with the Company on an acceptable safety management plan until the deadline of October 12, 2024.⁴ The SMP will be addressed below in this order. At close of its case, Staff recommended that the Commission continue the cancellation process.
- 15 Pursuant to RCW 34.05.440(2) and WAC 480-07-450, the Commission finds that the Company is in default, as it failed to appear for this Brief Adjudicative Proceeding.
- 16 Moreover, the Commission reviewed the evidence Staff presented at the Brief Adjudicative Proceeding as well as the findings set forth in the SMP Evaluation. We found the evidence submitted at the Brief Adjudicative Proceeding to be persuasive and in favor of Staff's position that the Company's permit be canceled. Specifically, the testimony that showed, among other things, that the Airus' drivers operated without valid medical certification, a

⁴ Sharp, TR 34:00.

critical violation.⁵ Additionally, Airus did not maintain a record of driver qualification and did not have background checks for nine (9) employees, two more critical violations.⁶

17 With regard to Airus' SMP, submitted October 10, 2024, Staff states that it reviewed the SMP to ensure that it addressed the following seven requirements:

1. The plan must address each acute, critical, or serious violation discovered during the most recent investigation. It must also include corrective actions that address other violations noted during the investigation.
2. Identify why the violations were permitted to occur.
3. Discuss the actions taken to correct the deficiency or deficiencies that allowed the violations to occur. Include actual documentation of this corrective action.
4. Outline actions taken to ensure that similar violations do not reoccur in the future. The plan must demonstrate that the company's operations currently meet the safety standards and factors specified in 49 C.F.R. § 385.5 and 385.7. To do so, the plan must demonstrate the company now has adequate safety management controls in place which function effectively to ensure acceptable compliance with applicable safety requirements.
5. If the request includes actions that will be conducted in the near future, such as training, reorganization of departments, purchasing of computer programs, etc., companies must include a detailed description of the activity or training and a schedule of when that activity will commence and when it will be completed.
6. Include any additional documentation relating to motor carrier safety and the prevention of crashes that the company believes supports its request.
7. Include a written statement certifying the company will operate within federal and state regulations and the company's operation currently meets the safety standard and factors specific to 49 C.F.R. § 385.5 and 385.7. A corporate officer, partner, or the owner of the company must sign the statement.⁷

18 At the completion of its review, Staff determined that Airus Movers' SMP did not meet the legal requirements of 49 C.F.R. § 385 to justify an upgrade to the proposed unsatisfactory safety rating.⁸ The plan failed to demonstrate that Airus Movers has corrected the violations identified during the safety investigation or that appropriate safety management

⁵ McLaughlin, Tr. at 13:8-23. This is considered a critical violation which is evidence of a breakdown in the company's management controls.

⁶ McLaughlin, Tr. at 14:8-15:20.

⁷ SMP Evaluation at 2-3.

⁸ SMP Evaluation at 1. The Company received an unsatisfactory safety rating, on August 13, 2024.

controls have been established to prevent future violations.⁹ These violations included those enumerated during the Brief Adjudicative Proceeding.¹⁰

19 Consequently, based on the evidence presented at the Brief Adjudicative Proceeding and SMP Evaluation the Commission has good cause to cancel the Company's Permit. Therefore, the Commission shall cancel Airus Movers LLC's household goods carrier operating permit.

ORDER

THE COMMISSION ORDERS:

- 20 (1) Airus Movers LLC is held in default. Should Airus Movers fail to respond to this Order by filing a written motion within ten (10) days requesting that the order be vacated pursuant to WAC 480-07-450(2), the default in this proceeding shall remain in place.
- 21 (2) Airus Movers LLC's operating permit as a household goods carrier is deemed canceled.
- 22 (3) Airus Movers LLC is assessed a penalty of \$15,600, which was past due and must be paid immediately.
- 23 (4) Airus Movers LLC is ordered to immediately cease and desist operations as a household goods carrier within the state of Washington.

DATED at Lacey, Washington, and effective October 21, 2024.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ M. Hayley Callahan
M. HAYLEY CALLAHAN
Administrative Law Judge

⁹ SMP Evaluation at 3.

¹⁰ SMP Evaluation at 3; McLaughlin, Tr. at 13:8-15:20.