



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • TTY (360) 586-8203

May 23, 2017

Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, Washington 98504-7250

RE: *Washington Utilities and Transportation Commission v. Safe-To-Go-Movers, LLC d/b/a James & John Movers*
Commission Staff's Response to Request for Commission Review of Mitigated Penalties
Docket TV-170233

Dear Mr. King:

On February 23, 2017, Motor Carrier Safety Investigator Sandi Yeomans conducted a compliance review investigation, an in-depth examination of the motor carrier's compliance with regulations that the FMCSA has identified as "acute" or "critical."¹ Acute regulations are identified where non-compliance is so severe as to require immediate corrective action regardless of the overall safety posture of the motor carrier. Violations of critical regulations are generally indicative of breakdowns in a carrier's management controls. Non-compliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and unusually higher than average accident rates.² Ms. Yeomans documented 103 violations of critical regulations, all of which were first-time violations, resulting in a satisfactory safety rating.

The Washington Utilities and Transportation Commission's (Commission) Enforcement Policy provides that some Commission requirements are so essential to safe operations that the Commission may issue penalties for a first-time violation, even if Commission Staff (Staff) has not previously provided technical assistance on specific issues. The Commission will assess penalties for any repeat violations of critical regulations, including for each occurrence of a repeat violation.³

¹ Code of Federal Regulations, Appendix B to Part 385—Explanation of safety rating process

² *Id.*

³ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation of CFR Part 391 and CFR Part 395. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

Safe-To-Go-Movers, LLC d/b/a James & John Movers (Safe-To-Go-Movers or Company) operates as a household goods carrier under permit number HG-66130. In its application for household goods moving authority filed with the Commission in September 2015, James Mwangi acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules and regulations. On March 17, 2016, Dartanion Cox, an employee representing Safe-To-Go-Movers, attended household goods training provided by Staff, and Mr. Cox acknowledged that training was received regarding motor carrier safety regulations.

On April 19, 2017, the Commission issued Penalty Assessment TV-170233 against Safe-To-Go-Movers in the amount of \$10,200 for 103 critical violations of Washington Administrative Code (WAC) 480-15-570 Driver Safety Requirements, which requires household goods carriers to comply with Title 49 Code of Federal Regulations (CFR) Part 391 – Qualifications of Drivers, and CFR Part 395 – Hours of Service of Drivers, as follows:

- **One hundred one violations of CFR 391.45(a) – Using a driver not medically examined and certified.** Safe-To-Go-Movers allowed employee William Baker to drive on 101 occasions from August 1 to December 12, 2016, without having been medically examined and certified.
- **Two violations of CFR 395.8(a) – Failing to require driver to make a record of duty status.** Safe-To-Go-Movers allowed employees James Mwangi and William Baker to drive without making a record of duty status while not under short haul exemption on two separate occasions. The violations occurred on December 12, 2016, and January 5, 2017.

On April 27, 2017, Safe-To-Go-Movers filed with the Commission its application for mitigation of penalties. James Mwangi, general manager and owner of Safe-To-Go-Movers, admitted the violations, provided an explanation of the corrective action steps taken by the Company pertaining to the medical certification violations, and asked that the penalties be reduced for reasons set out in his response.

On May 3, 2017, Staff issued a response to the Commission regarding Safe-To-Go-Movers' application for mitigation of penalties. In the letter, Staff recommended that the \$10,100 assessed penalty for 101 occurrences of CFR 391.45(a) be reduced \$5,000, and recommended no mitigation of the \$100 assessed penalty for 2 violations of CFR 395.8(a). Staff's recommendation to the Commission was that the assessed penalty of \$10,200 be reduced to \$5,200.

On May 8, 2017, the Commission issued an order granting mitigation to \$5,200. In the order, Safe-To-Go-Movers was ordered to either pay the penalty or file jointly with Staff a proposed payment arrangement no later than May 19, 2017.

Steven King
May 23, 2017
Page 3

On May 16, 2017, James Mwangi of Safe-To-Go-Movers filed with the Commission a request for review of Order 01. In the request, the Company states that while it is grateful for the reduction of the penalty, it is still overwhelmed by the remaining amount due. Safe-To-Go-Movers asks the Commission to review the mitigated penalty amount, and asks for relief.

Staff response: Safe-To-Go-Movers allowed an employee to drive without having been medically examined and certified. These violations potentially exposed the traveling public to significant risks on 101 separate trips, as Mr. Baker could have had a serious undiagnosed medical condition. It is for this reason that Staff believes the mitigated penalty of \$5,200 is sufficient, and does not warrant further reduction. The Company expressed a concern with the final penalty amount impacting its business, and Staff believes that payment arrangements would be a beneficial option for Safe-To-Go-Movers to lessen the financial burden of the penalty.

If you have any questions, please contact Jason Hoxit, Compliance Investigator, Transportation Safety, at 360-664-1320, or by e-mail at JHoxit@utc.wa.gov.

Sincerely,



David Pratt

Assistant Director, Transportation Safety