

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

SEAN T. BROOKS MOVING,
INCORPORATED d/b/a SEAN T.
BROOKS MOVING

in the amount of \$10,700

DOCKET TV-170979

ORDER 01

ORDER GRANTING MITIGATION, IN
PART; IMPOSING AND SUSPENDING
PENALTIES

BACKGROUND

- 1 On September 21, 2017, the Washington Utilities and Transportation Commission (Commission) assessed a \$10,700 penalty (Penalty Assessment) against Sean T. Brooks Moving, Incorporated d/b/a Sean T. Brooks Moving (Sean T. Brooks Moving or Company) for 108 critical violations of Washington Administrative Code (WAC) WAC 480-15-570, which adopts by reference Title 49 Code of Federal Regulations (C.F.R.) Part 391, related to driver qualifications,¹ and one violation of 480-15-555, Criminal Background Checks for Prospective Employees.
- 2 On October 5, 2017, Sean T. Brooks Moving responded to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty based on the written information provided. In its response, the Company acknowledged the violations and provided supporting documentation to demonstrate the corrective actions it took to come into compliance. In addition, the Company explained that the penalty would create a financial hardship, and requested the penalty be reduced.
- 3 On October 11, 2017, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. The Penalty Assessment includes a \$10,500 penalty for 105 violations of 49 C.F.R. Part 391.45(a); a \$100 penalty for three violations of 49 C.F.R. Part 395.51(a); and a \$100 penalty for one violation of WAC 480-15-555. Staff recommends the Commission assess a reduced penalty of \$5,450 because these are first time violations and the Company took prompt corrective action. Staff further recommends that the Commission suspend a \$3,950 portion of the reduced

¹ WAC 480-30-221 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 49 C.F.R.

penalty for a period of two years, and then waive it, subject to the conditions that: (1) the Company does not incur any repeat violations of critical regulations when Staff conducts a follow-up investigation, and (2) the Company pays the \$1,500 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,” which are indicative of a breakdown in a carrier’s management controls, 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 in turn.
- 6 **49 C.F.R. Part 391.45(a).** The Penalty Assessment includes a \$10,500 penalty for 105 violations of 49 C.F.R. Part 391.45(a) because Sean T. Brooks Moving allowed two drivers who were not medically examined and certified to drive on 105 separate occasions during the six months preceding the compliance review. In its response, the Company explained that it was unaware of the requirement that its drivers needed to be medically examined and certified. The Company further explained it immediately corrected the violations. Finally, the Company stated that the penalty would create a severe financial burden that would cause its business to close.
- 7 Staff recommends the Commission assess a reduced penalty of \$5,250 because these are first-time violations and the Company took prompt corrective action. We agree with Staff’s recommendation. The Company corrected the violations prior to receiving the

² See RCW 81.04.405.

³ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

⁴ 49 C.F.R. § 385, Appendix B.

⁵ Enforcement Policy ¶19.

penalty assessment and acknowledged the violations in its response. In light of these factors, we assess a \$5,250 penalty for 105 violations of 49 C.F.R. Part 391.45(a).

8 **49 C.F.R. Part 391.51(a).** The Penalty Assessment also includes a \$100 penalty for three violations of 49 C.F.R. Part 391.51(a) because the Company failed to maintain driver qualification files for each of its three drivers. In its response, the Company stated that the penalty amount was fair, and did not request mitigation. In addition, the Company explained that it was not aware of this requirement, and that it has since created, and currently maintains, a driver qualification file for each of its drivers.

9 Staff recommends no mitigation for this portion of the penalty. We agree. The Commission could have assessed a \$300 penalty, but, because these are first-time violations, assessed a “per category” rather than “per violation” penalty. Accordingly, we find that no further penalty reduction is warranted.

10 **WAC 480-15-555.** Finally, the Penalty Assessment includes a \$100 penalty for one violation of WAC 480-15-555, which requires carriers to complete a criminal background check for every person the carrier intends to hire. The Company failed to conduct criminal background checks for its employees. In its response, the Company stated that the penalty amount was fair, and did not request mitigation. In addition, the Company explained that it was unaware of the requirement to obtain criminal background checks and has since conducted criminal background checks for all current employees. The Company also provided supporting documentation of its employee criminal background checks.

11 Staff recommends no mitigation for this portion of the penalty. We agree. As Staff notes in its response, an employee with an unknown criminal history raises serious concerns about the security of a customer’s belongings, as well as a customer’s personal safety. Accordingly, we find that no further penalty reduction is warranted.

12 **Suspended Penalty.** In light of the Company’s financial situation, we agree with Staff that suspending a portion of the penalty is appropriate. The Commission’s ultimate goal in any enforcement proceeding is compliance, not creating an insurmountable financial burden for a small company. We therefore exercise our discretion to suspend a \$3,950 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: 1) Sean T. Brooks Moving may not incur any repeat critical violations of WAC 480-15 and Title 49 C.F.R.; and 2) Sean T. Brooks Moving must pay the remaining \$1,500 penalty within 20 days of the effective date of this Order. Commission Staff will conduct a follow-up inspection within two years to verify

compliance with Commission safety regulations. The Company may work with Staff to establish mutually agreeable payment arrangements to pay the \$1,500 portion of the penalty that is not suspended.

FINDINGS AND CONCLUSIONS

- 13 (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.
- 14 (2) Sean T. Brooks Moving is a household goods carrier subject to Commission regulation.
- 15 (3) Sean T. Brooks Moving violated 49 C.F.R. Part 391.45(a) when it allowed two drivers who were not medically examined and certified to drive on 105 occasions.
- 16 (4) Sean T. Brooks Moving should be penalized \$5,250 for 105 violations of 49 C.F.R. Part 391.45(a).
- 17 (5) Sean T. Brooks Moving violated 49 C.F.R. Part 391.51(a) when it failed to maintain driver qualification files for three of its employees.
- 18 (6) Sean T. Brooks Moving should be penalized \$100 for three violations of 49 C.F.R. Part 391.51(a).
- 19 (7) Sean T. Brooks Moving violated WAC 480-15-555 when it failed to conduct a criminal background check prior to employment.
- 20 (8) Sean T. Brooks Moving should be penalized \$100 for one violation of WAC 480-15-555.
- 21 (9) The Commission should assess a total penalty of \$5,450 for 109 violations of WAC 458-15 and Title 49 C.F.R. A \$3,950 portion of the penalty should be suspended for a period of two years, and then waived, subject to the conditions set out in paragraph 12, above.
- 22 (7) Sean T. Brooks Moving should be permitted to file jointly with Staff a mutually agreeable arrangement for paying the \$1,500 portion of the penalty that is not suspended.

ORDER

THE COMMISSION ORDERS:

- 23 (1) Sean T. Brooks Moving, Incorporated's request for mitigation of the \$10,700
penalty is GRANTED, in part, and the penalty is reduced to \$5,450.
- 24 (2) The Commission suspends a \$3,950 portion of the penalty for a period of two
years, and then waives it, subject to the following conditions: 1) Sean T. Brooks
Moving, Incorporated may not incur any repeat critical violations of WAC 480-15
and Title 49 C.F.R.; and 2) Sean T. Brooks Moving, Incorporated must pay the
remaining \$1,500 penalty or file jointly with staff a mutually agreeable payment
arrangement within 20 days of the effective date of this Order.
- 25 (3) Commission Staff will conduct a follow-up inspection within two years to verify
compliance with Commission safety regulations.
- 26 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 October 19, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
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.**