

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TV-180287
WISE CHOICE MOVERS, LLC	ORDER 01
in the amount of \$22,900	GRANTING MITIGATION TO \$11,950; SUSPENDING PENALTY, IN PART

BACKGROUND

1 On April 24, 2018, the Washington Utilities and Transportation Commission (Commission) assessed a \$22,900 penalty (Penalty Assessment) against Wise Choice Movers, LLC (Wise Choice Movers or Company) for 235 critical violations of Washington Administrative Code (WAC) 480-15-555, and WAC 480-15-560 through 570, which adopt by reference sections of Title 49 Code of Federal Regulations (C.F.R.).¹ The Penalty Assessment includes:

- A \$21,900 penalty for 219 violations of 49 C.F.R. Part 391.45(a) related to using a driver not medically examined and certified;
- a \$100 penalty for one violation of 49 C.F.R. Part 391.11 related to defective vehicle lighting devices;
- a \$100 penalty for one violation of 49 C.F.R. Part 393.201(a) related to a defective vehicle frame;
- a \$100 penalty for four violations of 49 C.F.R. Part 396.3(b) related to vehicle maintenance and inspection records;
- a \$100 penalty for one violation of 49 C.F.R. 396.5(b) related to a leaking wheel seal on a vehicle;
- a \$100 penalty for four violations of 49 C.F.R. Part 396.17(a) related to failure to comply with a mandatory state inspection program; and

¹ WAC 480-15-560 and -570 adopt 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.

- a \$500 penalty for five violations of WAC 480-15-555 related to criminal background checks for prospective employees.
- 2 On May 7, 2018, the Company responded to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty based on the written information provided. The Company explained that it remedied all of the violations as soon as it became aware of them as a result of the compliance review, and that it has implemented procedures to ensure the violations do not reoccur. The Company further explained that the penalties would be a hardship for the Company.
- 3 On May 15, 2018, Commission staff (Staff) filed a response recommending the Commission grant the Company’s request for mitigation, in part. Staff recommends the Commission reduce the \$21,900 penalty for using a driver not medically examined and certified by half to \$10,950, resulting in a total penalty assessment of \$11,950. Staff further recommends that \$6,700 of the reduced penalty be suspended for a period of two years, and then waived, subject to the conditions that: 1) the Company does not incur any repeat violations of critical regulations; 2) Staff conducts a follow-up safety investigation in two years to review the Company’s safety management practices, and 3) the Company pays the \$5,250 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” 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

² See RCW 81.04.405.

³ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12, 15 (Jan. 7, 2013) (Enforcement Policy).

⁴ 49 C.F.R. § 385, Appendix B.

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 \$21,900 penalty for 219 violations of 49 C.F.R. Part 391.45(a) because the Company allowed five employees to drive on 219 separate occasions without having been medically examined and certified. The vast majority of the Penalty Assessment resulted from this violation category. In the Company's request for mitigation, the Company admitted the violation and explained that all of its drivers now have current medical certificates in their driver qualification files, and that it created a new-hire checklist that includes obtaining a valid medical certificate to ensure this violation does not reoccur.
- 7 Staff recommends that the Commission reduce the penalty by half from \$21,900 to \$10,950 because the Company promptly corrected these first time violations and established new procedures to prevent future occurrences of this fundamental safety requirement. We agree with Staff's recommendation and assess a reduced penalty of \$10,950. Mitigation of the penalty is appropriate because this is a first-time violation and the Company promptly corrected the violation.
- 8 **WAC 480-15-555.** The Penalty Assessment also includes a \$500 penalty for five violations of WAC 480-15-555 because the Company failed to acquire criminal background checks for five employees. The Company's request for mitigation does not address these violations specifically, but the Company explained in its 15-day response letter to Staff that the new-hire checklist will also include a criminal background check. The Company further explained that it created an account with the Washington State Patrol to run full background checks, and that it has performed checks on all of its current employees, and is now in compliance.
- 9 Staff recommends no mitigation of this penalty, and we agree. Employees with unknown criminal histories raise serious concerns about the safety of customers and their belongings. In this case, the Company's background check identified a driver with a disqualifying criminal record. We conclude a \$500 penalty for five occurrences of this violation is appropriate.
- 10 **49 C.F.R. Part 391.11, 393.201(a), 396.3(b), 396.5(b), 396.17(a).** The remaining penalties all relate to vehicle inspection and maintenance, and related recordkeeping. The

⁵ Enforcement Policy ¶19.

Penalty Assessment includes a \$100 penalty for one violation of 49 C.F.R. Part 393.11 because Staff discovered one commercial motor vehicle with a defective back up light and no brake lights. It includes a \$100 penalty for one violation of 49 C.F.R. 393.201(a) because Staff discovered a commercial motor vehicle with the wood spacer on the frame rotten, with parts missing, and the section dislodged. It includes a \$100 penalty for four violations of 49 C.F.R. 396.3(b) because the Company failed to maintain minimum records of inspection and vehicle maintenance for its four commercial vehicles. It includes a \$100 penalty for one violation of 49 C.F.R. Part 396.5(b) because Staff discovered one commercial motor vehicle with a leaking wheel hub seal. Finally, the penalty assessment includes a \$100 penalty for four violations of 49 C.F.R. 396.17(a) for failing to have its vehicles inspected at a state certified facility.

- 11 In the Company's request for mitigation, the Company stated that it had its vehicles serviced by a mechanic shortly after the violations were discovered. In the Company's 15-day letter to Staff, the Company states it understands that its commercial motor vehicles must have an annual inspection performed at a state-certified facility and that it has implemented a tracking system to ensure its vehicles receive inspections as required. The Company further explained that it created vehicle maintenance files and trained its staff on how to inspect each motor vehicle prior to operation.
- 12 Staff recommends no mitigation of these penalties, and we agree. In this case, the Company failed to have its vehicles inspected and failed to maintain vehicle maintenance files. In addition, Staff discovered three categories of defects on the Company's vehicles. It is the Company's responsibility to ensure that its commercial motor vehicles are free of defects that may potentially put the traveling public at risk. We are concerned about the Company's lack of attention to vehicle inspection and maintenance. While these were first-time violations, the Commission assessed the minimum penalty for each of the violations. Therefore, we conclude the assessed penalty of \$500 for these vehicle inspection and maintenance related violations is appropriate.
- 13 **Penalty Suspension.** 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.⁶

⁶ *Id.* at ¶20.

14 In this case, penalties were assessed for first time violations and the Company has taken action to prevent the violations from reoccurring. Suspending a portion of the penalty subject to the conditions proposed by Staff will both increase compliance and provide a strong incentive to avoid violations in the future. Accordingly, we suspend a \$6,700 portion of the penalty for two years, and then waive it, subject to the following conditions: (1) The Company may not incur any repeat violations of critical regulations; (2) the Company must pay the \$5,250 portion of the penalty that is not suspended; and 3) Staff will conduct a follow-up safety investigation in two years to review the Company's safety management practices. If the Company fails to comply with any of the conditions, the suspended penalty will become immediately due and payable without further Commission order.

FINDINGS AND CONCLUSIONS

- 15 (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.
- 16 (2) Wise Choice Movers is a household goods carrier subject to Commission regulation.
- 17 (3) Wise Choice Movers violated 49 C.F.R. Part 391.45(a) when the Company allowed five employees to drive on 219 separate occasions without having been medically examined and certified.
- 18 (4) The Commission should penalize Wise Choice Movers \$10,950 for 219 violations of 49 C.F.R. Part 391.45(a).
- 19 (5) Wise Choice Movers violated WAC 480-15-555 when it failed to conduct and keep evidence of criminal background checks for five employees.
- 20 (6) The Commission should penalize Wise Choice Movers \$500 for five violations of WAC 480-15-555.
- 21 (7) Wise Choice Movers violated 49 C.F.R. Part 393.11 when Staff discovered one commercial motor vehicle with a defective back up light and no brake lights.
- 22 (8) The Commission should penalize Wise Choice Movers \$100 for one violation of 49 C.F.R. Part 393.11.

- 23 (9) Wise Choice Movers violated 49 C.F.R. 393.201(a) when Staff discovered a commercial motor vehicle with the wood spacer on the frame rotten, with parts missing, and the section dislodged.
- 24 (10) The Commission should penalize Wise Choice Movers \$100 for one violation of 49 C.F.R. 393.201(a).
- 25 (11) Wise Choice Movers violated 49 C.F.R. 396.3(b) when the Company failed to maintain minimum records of inspection and vehicle maintenance for its four commercial vehicles.
- 26 (12) The Commission should penalize Wise Choice Movers \$100 for four violations of 49 C.F.R. 396.3(b).
- 27 (13) Wise Choice Movers violated 49 C.F.R. Part 396.5(b) when Staff discovered one commercial motor vehicle with a leaking wheel hub seal.
- 28 (14) The Commission should penalize Wise Choice Movers \$100 for one violation of 49 C.F.R. Part 396.5(b).
- 29 (15) Wise Choice Movers violated 49 C.F.R. 396.17(a) when it failed to have its four vehicles inspected at a state-certified facility.
- 30 (16) The Commission should penalize Wise Choice Movers \$100 for four violations of 49 C.F.R. 396.17(a).
- 31 (17) The Commission should assess a total penalty of \$11,950 for 235 critical violations of WAC 480-15 and 49 C.F.R.
- 32 (18) The Commission should suspend a \$6,700 portion of the penalty for period of two years, and then waive it subject to the conditions set out in paragraph 14, above.

ORDER

THE COMMISSION ORDERS:

- 33 (1) Wise Choice Movers, LLC's request for mitigation of the \$22,900 penalty is GRANTED, in part, and the penalty is reduced to \$11,950.
- 34 (2) The Commission suspends a \$6,700 portion of the penalty for period of two years, and then waives it, subject to the following conditions: (1) Wise Choice Movers,

LLC must either pay the \$5,250 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement within 10 days of the effective date of this Order; and (2) Wise Choice Movers, LLC may not incur any repeat violations of critical regulations.

- 35 (3) Commission Staff will conduct a follow-up review of Wise Choice Movers, LLC's operations two years after the effective date of this Order.
- 36 (4) If Wise Choice Movers, LLC fails to satisfy any of the conditions in paragraph 34 of this Order, or fails to comply with the terms of the payment arrangement, if applicable, the entire unpaid balance of the \$11,950 penalty will become immediately due and payable without further Commission order.
- 37 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 July 6, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK L. JOHNSON
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.