

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TV-180862
JOSE IBARRA MARTINEZ d/b/a IBARRA MOVING	ORDER 01
in the amount of \$2,200	GRANTING MITIGATION TO \$1,200; SUSPENDING PENALTY, IN PART

**BACKGROUND**

1 On November 2, 2018, the Washington Utilities and Transportation Commission (Commission) assessed a \$2,200 penalty (Penalty Assessment) against Jose Ibarra Martinez d/b/a Ibarra Moving (Ibarra Moving or Company) for 51 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.).<sup>1</sup> The Penalty Assessment includes:

- a \$1,600 penalty for 16 violations of 49 C.F.R. Part 391.45(a) for using a driver not medically examined and certified;
- a \$100 penalty for one violation of 49 C.F.R. Part 391.51(a) for failing to maintain a driver qualification file for each driver it employs;
- a \$100 penalty for 30 violations of 49 C.F.R. Part 395.8(a) for failing to require its driver to make a record of duty status;
- a \$100 penalty for one violation of 49 C.F.R. Part 396.17(a) for using a commercial motor vehicle not periodically inspected; and
- a \$300 penalty for three violations of WAC 480-15-555 for failing to obtain criminal background checks for three prospective employees.

2 On November 19, 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 stated it that has created a successful safety management plan

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<sup>1</sup> 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.

approved by Commission staff (Staff) and has since corrected the violations at issue.

- 3 On December 3, 2018, Staff filed a response recommending the Commission grant the Company's request for mitigation, in part. Staff recommends the penalties related to medical certification requirements, vehicle inspection requirements, and criminal background checks be reduced by half, and that the Commission impose a total penalty of \$1,200. Staff further recommends that \$700 of the reduced penalty be suspended for a period of two years, and then waived, subject to the following conditions: 1) the Company may not incur any repeat violations of critical regulations and 2) the Company must pay the \$500 portion of the penalty that is not suspended. Staff will conduct a follow-up investigation in two years to review the Company's safety management practices.

#### 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.<sup>2</sup> In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.<sup>3</sup> Violations defined by federal law as "critical" meet this standard.<sup>4</sup>
- 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.<sup>5</sup> We address each violation category below.

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<sup>2</sup> See RCW 81.04.405.

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

<sup>4</sup> 49 C.F.R. § 385, Appendix B.

<sup>5</sup> Enforcement Policy ¶19.

6 **49 C.F.R Part 391.45(a).** The Penalty Assessment includes a \$1,600 penalty for 16 violations of 49 C.F.R. Part 391.45(a) because the Company used a driver not medically examined and certified on 16 occasions. Upon receiving notice of this violation, the driver completed a medical examination and the Company provided a copy of the medical examiner's certificate to Staff. The Company stated in its response that it has established new procedures to ensure compliance going forward.

7 Staff recommends that the Commission reduce the penalty for these violations from \$1,600 to \$800 because the Company took prompt corrective action. Staff also notes that these are first-time violations. Finally, Staff is sensitive to the Company's financial situation and the impact of a significant penalty on a small business. The Company, which has one driver and one commercial motor vehicle, reported \$56,500 in gross revenue in 2017.

8 We agree with Staff's recommendation to mitigate this portion of the penalty. These are first-time violations that the Company has since corrected, and the original penalty amount is significant in proportion to the Company's revenue. The Commission's goal in any enforcement proceeding is to obtain compliance, not create an insurmountable financial burden for a small company. Accordingly, we reduce the penalty for this violation category by half, and assess a total penalty of \$800 for 16 violations of 49 C.F.R. Part 391.45(a).

9 **49 C.F.R. 391.51(a).** The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. Part 391.51(a) because the Company failed to maintain a driver qualification file for its driver. The Company stated in its response that it implemented a new procedure to prevent future violations from occurring.

10 Staff recommends no mitigation of this portion of the penalty. We agree. Although the Company promptly corrected the violation, the Commission assessed the minimum penalty for this violation. We thus conclude that no further penalty reduction is warranted.

11 **49 C.F.R. Part 395.8(a)(1).** The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. 395.8(a)(1) because the Company failed to require its driver to make a record of duty status. The Company stated that it now records duty status on an appropriately-formatted timecard.

12 Staff recommends no mitigation of this portion of the penalty. We agree with Staff's recommendation. Because these were first-time violations, the Commission assessed a

penalty by type of violation rather than assessing a penalty for each occurrence. We conclude no further penalty reduction is warranted.

- 13 **49 C.F.R. Part 396.17(a).** The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. Part 396.17(a) because the Company used a commercial motor vehicle not periodically inspected. The Company stated that its vehicle was inspected on September 18, 2018, and provided Staff with a copy of the annual vehicle inspection report. The Company further stated that it has implemented new procedures to prevent the violation from reoccurring.
- 14 Staff recommends this portion of the penalty be reduced by half because the Company promptly corrected the violation and created new procedures to ensure future compliance. We conclude that Staff's recommendation is reasonable in light of the circumstances, and assess a reduced penalty of \$50.
- 15 **WAC 480-15-555.** The Penalty Assessment includes a \$300 penalty for three violations of WAC 480-15-555 for failing to obtain criminal background checks for three prospective employees. The Company stated that it was unaware of this requirement, and has since completed a background check for its only current employee, Leonard Andraca. The Company also stated that it has created new procedures to ensure compliance going forward.
- 16 Staff recommends this portion of the penalty be reduced by half because Ibarra Moving took prompt corrective action, provided documentation that it completed a background check for Mr. Andraca, and implemented a policy to prevent future violations from occurring. We agree with Staff's recommendation. The Company provided satisfactory documentation that it corrected the violations and implemented new procedures. Accordingly, we assess a reduced penalty of \$150 for these violations.
- 17 **Penalty Suspension.** The Commission considers several factors when 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.<sup>6</sup>

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<sup>6</sup> *Id.* at ¶20.

Another factor we consider is whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.<sup>7</sup>

18 In this case, penalties were assessed for first time violations. In addition, the Company has taken action to prevent each of the violations from reoccurring. Suspending a portion of the penalty with the conditions proposed by Staff will both increase compliance and provide a strong incentive to avoid violations in the future. Accordingly, we suspend a \$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; and (2) the Company must pay the \$500 portion of the penalty that is not suspended. 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 either of the conditions, the suspended penalty will become immediately due and payable without further Commission order. To reduce the financial impact of the penalty, the Company may work with Staff to establish mutually agreeable payment arrangements.

#### FINDINGS AND CONCLUSIONS

- 19 (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.
- 20 (2) Ibarra Moving is a household goods carrier subject to Commission regulation.
- 21 (3) Ibarra Moving violated 49 C.F.R. Part 391.45(a) when it used a driver not medically examined and certified on 16 occasions.
- 22 (4) The Commission should penalize Ibarra Moving \$800 for 16 violations of 49 C.F.R. Part 391.45(a).
- 23 (5) Ibarra Moving violated 49 C.F.R. Part 391.51(a) when it failed to maintain a driver qualification file for its driver.

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<sup>7</sup> *Id.*

- 24 (6) The Commission should penalize Ibarra Moving \$100 for one violation of 49 C.F.R. Part 391.51(a).
- 25 (7) Ibarra Moving violated 49 C.F.R. Part 395.8(a) when it failed to require its driver to make a record of duty status.
- 26 (8) The Commission should penalize Ibarra Moving \$100 for 30 violations of 49 C.F.R. Part 395.8(a).
- 27 (9) Ibarra Moving violated 49 C.F.R. Part 396.17(a) when it used a commercial motor vehicle not periodically inspected.
- 28 (10) The Commission should penalize Ibarra Moving \$50 for one violation of 49 C.F.R. Part 396.17(a).
- 29 (11) Ibarra Moving violated WAC 480-15-555 when it failed to acquire criminal background checks for three prospective employees.
- 30 (12) The Commission should penalize Ibarra Moving \$150 for three violations of WAC 480-15-555.
- 31 (13) The Commission should assess a total penalty of \$1,200 for 51 critical violations of WAC 480-15 and Title 49 C.F.R.
- 32 (14) The Commission should suspend a \$700 portion of the penalty for a period of two years, and then waive it subject to the conditions set out in paragraph 18, above.

### ORDER

#### THE COMMISSION ORDERS:

- 33 (1) Jose Ibarra Martinez d/b/a Ibarra Moving's request for mitigation of the \$2,200 penalty is GRANTED, in part, and the penalty is reduced to \$1,200.
- 34 (2) The Commission suspends a \$700 portion of the penalty for a period of two years, and then waives it, subject to the following conditions: (1) Jose Ibarra

Martinez d/b/a Ibarra Moving must either pay the \$500 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) Jose Ibarra Martinez d/b/a Ibarra Moving may not incur any repeat violations of critical regulations.

- 35 (3) Commission Staff will conduct a follow-up review of Jose Ibarra Martinez d/b/a Ibarra Moving's operations approximately two years after the effective date of this Order.
- 36 (4) If Jose Ibarra Martinez d/b/a Ibarra Moving 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 portion of the \$1,200 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 December 5, 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.**