

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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| <p>In the Matter of the Investigation of ED’S MOVING & STORAGE INC., For Compliance with WAC 480-15</p> | <p>DOCKETS TV-210640 and TV-210641 (<i>Consolidated</i>) ORDER 01</p> |
| <p>In the Matter of the Penalty Assessment against ED’S MOVING & STORAGE INC., in the amount of \$4,300</p> | <p>CONSOLIDATING DOCKETS; CANCELLING HOUSEHOLD GOODS PERMIT; IMPOSING AND SUSPENDING PENALTIES</p> |

BACKGROUND

- 1 On August 31, 2021, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel and Notice of Brief Adjudicative Proceeding, Setting Time for Oral Statements in the Matter of the Investigation of Ed’s Moving & Storage Inc. (Ed’s Moving or Company) for Compliance with Washington Administrative Code (WAC) 480-15 (Notice).
- 2 The Notice explained that Commission staff (Staff) conducted a follow-up compliance review of Ed’s Moving’s operations in August 2021 and cited the Company for 47 violations of federal and state safety regulations, which resulted in a proposed conditional safety rating. Based on its review, Staff recommended the Commission cancel Ed’s Moving’s household goods carrier permit unless the Company obtains Commission approval of a safety management plan. The Notice directed Ed’s Moving to file a proposed safety management plan by October 5, 2021. The Notice also set a brief adjudicative proceeding for October 12, 2021, at 9:30 a.m. to determine whether the Commission should cancel Ed’s Moving’s household goods carrier permit.
- 3 On September 23, 2021, the Commission assessed a \$4,300 penalty (Penalty Assessment) against Ed’s Moving for the safety violations discovered during Staff’s August 2021 compliance review.¹ The Penalty Assessment includes:

¹ The Penalty Assessment cites violations of Washington Administrative Code (WAC) 480-15-555, WAC 480-15-560, and WAC 480-15-570. WAC 480-15-560 and -570 adopt by reference sections of Title 49 Code of Federal Regulations (C.F.R.). Accordingly, Commission safety

- A \$100 penalty for one violation of WAC 480-15-530(3) for failing to maintain public liability and property damage insurance.
- A \$400 penalty for four violations of WAC 480-15-555 for failing to acquire a criminal background check for a prospective employee.
- A \$100 penalty for one violation of WAC 480-15-555(3) for hiring a person who has been convicted of any crime involving theft, burglary, assault, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance within the past five years.
- A \$100 penalty for one violation of 49 C.F.R. § 391.15(a) for using a disqualified driver.
- An \$3,200 penalty for 32 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.
- A \$400 penalty for four violations of 49 C.F.R. § 391.51(a) for failing to maintain driver qualification files for each driver employed.

4 The Commission conducted a virtual brief adjudicative proceeding on October 12, 2021, before Administrative Law Judge Samantha Doyle. Because the violations cited in Staff's August 2021 investigation gave rise to the enforcement actions taken in both dockets, the Commission exercised its discretion to consolidate these proceedings.

5 Staff presented testimony from Ed Steiner, special investigator, and Jason Sharp, motor carrier safety supervisor, Transportation Safety. Steiner provided documentation of the critical safety violations that resulted in Staff's proposed conditional safety rating.

6 Sharp presented additional testimony and evidence related to the Commission's enforcement policy and the technical assistance provided to Ed's Moving since it first obtained its provisional household goods permit in April 2019. Sharp testified that Ed's Moving was penalized \$7,600 in December 2020 in consolidated Dockets TV-200875 and TV-200876 for violations of Commission safety regulations. Those violations resulted in a proposed conditional safety rating. On December 9, 2020, the Commission entered Order 01 in Dockets TV-200875 and TV-200876, which required Staff to conduct a follow-up safety investigation in approximately six months. Staff subsequently performed a follow-up review in August 2021 and found multiple repeat violations that resulted in the proposed conditional safety rating at issue in this proceeding. Sharp testified that, as of the date of the hearing, the Company had not yet provided an acceptable safety management plan.

7 Jackie Johnson, Company manager, testified for Ed's Moving. Johnson admitted each of the violations but requested the penalty be reduced and that the Company be allowed to

regulations with parallel federal rules are hereinafter referenced only by the applicable provision of Title 49 C.F.R.

maintain its permit. Johnson also claimed that the deficiencies contained in the Company's proposed safety management plan had been corrected and would be resubmitted for Staff's review shortly after the hearing.

8 Staff agreed it would review the Company's revised proposed safety management plan and file its evaluation shortly thereafter.

9 On October 21, 2021, Staff filed its evaluation. Staff determined that the Company's proposed plan is insufficient because it fails to adequately demonstrate that corrective actions have been taken to address the safety violations at issue. Specifically, Staff concludes that Ed's Moving's plan fails to demonstrate that each violation has been corrected or that the Company has sufficient management controls in place to ensure that violations do not occur again in the future. Because the Company failed to submit an acceptable safety management plan, Staff recommends the Commission cancel the Company's permit.

10 Staff further recommends the Commission assess a reduced penalty of \$2,500 based on corrective actions the Company took to address the violations Staff discovered during its review.

DISCUSSION AND DECISION

1. Safety Rating

11 Washington Law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's August 2021 compliance review of Ed's Moving found multiple repeat violations of critical safety regulations, which resulted in a proposed conditional safety rating. Violations classified as "critical" are indicative of a breakdown in a carrier's management controls. Patterns of noncompliance with a critical regulation are quantitatively linked to inadequate safety management controls and usually higher-than-average accident rates.

12 On September 9, 2021, the Company submitted a proposed safety management plan and requested the Commission upgrade its safety rating. The Company submitted a revised safety management plan on October 18, 2021. Staff determined that Ed's Moving's revised safety management plan is not supported by evidence that the Company has taken corrective actions to address the violations, or that the Company's operations currently meet the safety fitness standards set forth in 49 C.F.R Parts 385.5 and 385.7. We agree.

13 Based on the testimony and evidence presented at the hearing, the Commission finds that the Company failed to take corrective action to address the violations within a 60-day period as required. Accordingly, the Commission finds good cause to cancel the

Company's provisional household goods permit effective October 26, 2021. The Company must cease and desist all regulated operations, including advertising and offering its services, unless and until the Company's permit is reinstated or the Company applies for and obtains a new permit from the Commission.

2. Penalty

- 14 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 Critical violations meet this standard.⁴
- 15 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
- 16 Here, Staff recommends the Commission assess a reduced penalty of \$2,500. We agree with Staff's recommendation. The Company corrected a portion of the violations identified during the safety investigation, cooperated with Staff, and accepted full responsibility for the violations. Accordingly, we assess a reduced penalty of \$2,500.
- 17 We also exercise our discretion to suspend the \$2,500 penalty for two years, and then waive it, subject to the condition that the Company refrains from operating as a household goods carrier without first obtaining a permit from the Commission. In the event the Company applies for and obtains a household goods carrier permit, it must first pay the \$2,500 penalty in full, or pay the penalty in installments according to the terms of an approved payment plan.

FINDINGS AND CONCLUSIONS

- 18 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public

² See RCW 80.04.405.

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.

service companies, including common carriers such as household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.

- 19 (2) Ed's Moving is a household goods carrier subject to Commission regulation.
- 38 (3) Ed's Moving failed to cure the deficiencies that led to the proposed conditional safety rating or demonstrate that its operations currently meet the safety fitness standards set forth in 49 C.F.R Parts 385.5 and 385.7. Accordingly, Ed's Moving's household goods carrier permit should be cancelled.
- 20 (4) Ed's Moving committed 47 critical violations of WAC 480-15 and Title 49 C.F.R.
- 21 (5) Ed's Moving does not dispute that the violations occurred.
- 22 (6) Ed's Moving should be penalized \$2,500 for 47 violations of WAC 480-15 and Title 49 C.F.R. The Commission should suspend the entire penalty for two years, and then waive it, subject to the condition that Ed's Moving refrains from operating as a household goods carrier without first obtaining a permit from the Commission.
- 23 (7) In the event the Company applies for and obtains a household goods carrier permit, it must first pay the \$2,500 penalty in full, or pay the penalty in installments according to the terms of an approved payment plan.

ORDER

THE COMMISSION ORDERS THAT:

- 24 (1) Ed's Moving & Storage, Inc.'s provisional household goods permit is cancelled. Ed's Moving & Storage, Inc., must cease and desist all operations unless and until its permit is reinstated, or it applies for and obtains a new permit from the Commission.
- 25 (2) Ed's Moving & Storage, Inc., is assessed a penalty of \$2,500. The entire penalty is suspended for two years, and then waived, subject to the condition that Ed's Moving & Storage, Inc., refrains from operating as a household goods carrier unless and until the Company obtains from the Commission the permit required to conduct such operations.

- 26 (3) In the event that Ed's Moving & Storage, Inc., applies for and obtains a household goods carrier permit, it must first pay the \$2,500 penalty in full, or pay the penalty in installments according to the terms of an approved payment plan.

DATED at Lacey, Washington, and effective October 22, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Samantha Doyle
SAMANTHA DOYLE
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order and you would like the Order to become final before the time limits expire, you may send a letter to the Commission waiving your right to petition for administrative review.

WAC 480-07-610(7) provides that any party to this proceeding has 21 days after service of this initial order to file a petition for administrative review (Petition). Section (7)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-610(7)(c) states that any party may file a response to a Petition within 7 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence that is essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-610(9) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission does not exercise administrative review on its own motion.

Any Petition or response must be electronically filed through the Commission's web portal, as required by WAC 480-07-140(5).