

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

<p>In the Matter of the Investigation of WA BIG GUYS MOVERS, LLC D/B/A WA BIG GUYS MOVERS; WABGM</p> <p>For Compliance with WAC 480-15-560 and WAC 480-15-570</p> <hr/> <p>In the Matter of the Penalty Assessment against WA BIG GUYS MOVERS, LLC D/B/A WA BIG GUYS MOVERS; WABGM</p> <p>in the amount of \$2,700</p>	<p>DOCKETS TV-190705 and TV-190706 (Consolidated)</p> <p>ORDER 01</p> <p>CONSOLIDATING DOCKETS; APPROVING SAFETY MANAGEMENT PLAN; UPGRADING SAFETY RATING TO CONDITIONAL; IMPOSING AND SUSPENDING PENALTIES</p>
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BACKGROUND

- 1 On September 13, 2019, 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 WA Big Guys Movers, LLC, d/b/a WA Big Guys Movers; WABGM, (WA Big Guys Movers or Company) for Compliance with Washington Administrative Code (WAC) 480-15-560 and WAC 480-15-570 (Notice).

- 2 The Notice explained that Commission staff (Staff) conducted a compliance review of WA Big Guys Movers’ operations in August 2019 and cited the Company for 59 critical violations of federal and state safety regulations. Based on its review, Staff recommends the Commission cancel WA Big Guys Movers’ household goods carrier permit unless the Company obtains Commission approval of a safety management plan. The Notice directed WA Big Guys Movers to file a proposed safety management plan by October 4, 2019. The Commission also set a brief adjudicative proceeding for October 11, 2019, at 9:30 a.m. to determine whether the Commission should cancel WA Big Guys Movers’ household goods carrier permit.

3 On September 9, 2019, the Commission assessed a \$2,700 penalty (Penalty Assessment) against WA Big Guys Movers for the safety violations discovered during Staff's August 2019 compliance review.¹ The Penalty Assessment includes:

- a \$500 penalty for 5 violations of WAC 480-15-555 for failing to acquire criminal background checks for prospective employees;
- a \$1,800 penalty for 18 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified;
- a \$100 penalty for 2 violations of 49 C.F.R. § 391.51(a) for failing to maintain driver qualification files for each driver;
- a \$100 penalty for 2 violations of 48 C.F.R. § 391.51(b)(2) for failing to maintain inquiries into drivers' driving record in drivers' qualification files;
- a \$100 penalty for 23 violations of 49 C.F.R. § 395.8(a)(1) for failing to require drivers to prepare records of duty status using the appropriate method; and
- a \$100 penalty for 1 violation of 49 C.F.R. § 396.3(b) for failing to keep minimum records of vehicle inspection and maintenance.

4 On September 17, 2019, WA Big Guys Movers filed with the Commission a request for mitigation of the penalty, admitting the violations and requesting the Commission assess a reduced penalty based on the written information provided.

5 On September 30, 2019, WA Big Guys Movers submitted a proposed safety management plan.

6 On October 3, 2019, Staff filed with the Commission its evaluation of the Company's safety management plan and penalty recommendation (Evaluation). Staff determined, based on its review of the Company's proposed plan, that the Company took all of the required steps to bring its safety operations into compliance with Commission regulations. Staff recommends that the Commission upgrade the Company's safety rating to conditional, but also extend the Company's provisional permit period until such time as the Company is able to achieve a satisfactory safety rating. Staff further recommends that the Commission reduce the penalty amount by one-half, to \$1,350. Finally, Staff recommends the Commission suspend a \$675 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: 1) Staff must conduct a follow-up safety investigation at least six months from the effective date of this Order; 3)

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

the Company must not incur any repeat critical violations upon re-inspection; and 3) the Company must pay the \$675 portion of the penalty that is not suspended.

- 7 In the Evaluation, Staff represented that the Company waives its right to a hearing, and recommended that the brief adjudicative proceeding be cancelled. The following day, the Administrative Law Judge notified the parties by email that the Commission was cancelling the October 4, 2019, deadline to file evidence and the October 11, 2019, hearing, and that the Commission would enter an order based on the parties' written submissions.

DISCUSSION AND DECISION

1. Consolidation

- 8 Because the violations cited in Staff's August 2019 investigation gave rise to the enforcement actions taken in both dockets, the Commission exercises its discretion to consolidate these proceedings. Accordingly, Docket TV-190705 and Docket TV-190706 are consolidated.

2. Safety Rating

- 9 Washington Law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's August 2019 compliance review of WA Big Guys Movers found 59 violations of critical safety regulations, which resulted in a proposed unsatisfactory 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.
- 10 On September 30, 2019, the Company submitted its proposed safety management plan and requested the Commission upgrade its safety rating. Staff determined that WA Big Guys Movers' safety management plan addresses each violation, identifies how each violation occurred, describes the steps taken to correct each violation, and describes the controls put in place to ensure compliance going forward. Staff concludes that WA Big Guys Movers' safety management plan is acceptable and satisfies the legal requirements of 49 CFR Part 385. We agree.
- 11 Based on Staff's Evaluation, the Commission finds that the Company has achieved compliance with WAC 480-15 by correcting the violations that led to the proposed unsatisfactory safety rating. Accordingly, the Commission agrees with Staff's

recommendation and grants the Company's request to upgrade its safety rating to conditional.

- 12 We likewise agree with Staff's recommendation to extend the Company's provisional period for its household goods carrier permit. WAC 480-15-305(1)(b) provides that, prior to a grant of permanent authority, an applicant must complete a provisional period of not less than six months and not more than 18 months unless the Commission determines for good cause that the provisional period should be extended. Good cause may include, among other things, a carrier that has not yet achieved a satisfactory safety rating but is making substantial progress toward a satisfactory rating. Here, the Company has corrected the violations at issue and demonstrated that it has taken significant steps to ensure its operations comply with applicable safety regulations. Accordingly, the Commission finds good cause to extend the Company's provisional period until such time as the Company achieves a satisfactory rating.

3. Penalty

- 13 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
- 14 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
- 15 Here, Staff recommends the Commission assess a reduced penalty of \$1,350. We agree with Staff's recommendation. The Company provided a comprehensive safety management plan that details the steps it has taken to bring its operations into compliance with applicable regulations. The safety management plan includes documentation of employee medical certification, driver qualifications, criminal background checks, hours of service records, and vehicle maintenance files. Accordingly, we are satisfied that WA

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.

Big Guys Movers has cured the violations that gave rise to the Penalty Assessment and has put adequate controls in place to prevent the violations from reoccurring. In addition, the Company reported \$172,495 in gross revenue for 2018. We conclude that a \$1,350 penalty provides a sufficient financial incentive for a small company to maintain compliance going forward.

- 16 **Suspended Penalty.** 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 Another factor we consider is whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.⁷
- 17 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 agree with Staff's recommendation and suspend a \$675 portion of the penalty for a period of two years, and then waive it, subject to the following conditions:
- a) WA Big Guys Movers must maintain a conditional safety rating;
 - b) Staff must conduct a follow-up investigation at least six months from the effective date of this Order;
 - c) WA Big Guys Movers may not incur any repeat critical violations of WAC 480-15 upon re-inspection;
 - d) WA Big Guys Movers must pay the remaining \$675 penalty within ten days of the effective date of this Order. The Company may work with Staff to establish mutually agreeable payment arrangements to pay the \$675 portion of the penalty that is not suspended.

⁶ *Id.* at ¶20.

⁷ *Id.*

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 service companies, including common carriers such as household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 19 (2) WA Big Guys Movers is a household goods carrier subject to Commission regulation.
- 20 (3) WA Big Guys Movers cured the deficiencies that led to the proposed unsatisfactory safety rating. Accordingly, WA Big Guys Movers' safety rating should be upgraded to conditional, and the Company should be allowed to maintain its household goods carrier permit.
- 21 (4) Pursuant to WAC 480-15-305(1)(b), the Commission should find good cause to extend WA Big Guys Movers' provisional period until such time as the Company achieves a satisfactory safety rating.
- 22 (5) WA Big Guys Movers committed 59 critical violations of WAC 480-15 and Title 49 C.F.R.
- 23 (6) WA Big Guys Movers does not dispute that the violations occurred.
- 24 (7) WA Big Guys Movers should be penalized \$1,350 for 59 violations of WAC 480-15 and Title 49 C.F.R. The Commission should suspend a \$675 portion of the penalty for two years, and then waive it, subject to the conditions set out in paragraph 17, above.

ORDER

THE COMMISSION ORDERS THAT:

- 25 (1) The Commission approves WA Big Guys Movers, LLC's safety management plan.
- 26 (2) WA Big Guys Movers, LLC's safety rating is upgraded to conditional.
- 27 (3) The Commission assesses a \$1,350 penalty against WA Big Guys Movers, LLC. The Commission suspends a \$675 portion of the penalty for a period of two years, and then waives it, subject to the conditions set out in paragraph 17, above.
- 28 (4) The \$675 portion of the penalty that is not suspended is due and payable within 10 days of the effective date of this Order.

- 29 (5) WA Big Guys Movers, LLC's provisional period is extended until such time as the Company achieves a satisfactory safety rating.

DATED at Lacey, Washington, and effective October 11, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Laura Chartoff

LAURA CHARTOFF

Administrative Law Judge

Service Date: October 11, 2019

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).