

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TV-200271
JOEL CISNEROS, D/B/A ALWAYS MOVIN' MOVING COMPANY	ORDER 01
in the amount of \$2,900	GRANTING MITIGATION, IN PART; IMPOSING AND SUSPENDING PENALTY

**BACKGROUND**

1 On April 5, 2020, the Washington Utilities and Transportation Commission (Commission) assessed a \$2,900 penalty (Penalty Assessment) against Joel Cisneros, d/b/a Always Movin' Moving Company, (Always Moving or Company) for violations of Washington Administrative Code (WAC) 480-15-530 and WAC 480-15-555, as well as WAC 480-15-560 and WAC 480-15-570, which adopt by reference sections of Title 49 Code of Federal Regulations (C.F.R.).<sup>1</sup> The Penalty Assessment includes:

- a \$2,500 penalty for 25 violations of WAC 480-15-530 for operating a motor vehicle without the required minimum levels of insurance coverage;
- a \$200 penalty for two violations of WAC 480-15-555 for failing to acquire criminal background checks on prospective employees;
- a \$100 penalty for one violation of 49 C.F.R. § 391.51(b)(2) for failing to maintain inquiries into driver's driving record in driver's qualification file;

<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.

- a \$100 penalty for one violation of 49 C.F.R. § 393.75(a)(3) for operating a commercial motor vehicle with a flat tire.

- 2 On April 5, 2020, Always Moving submitted a corrective action safety plan to Commission staff (Staff) in which the Company acknowledges the violations and describes steps it took to prevent future occurrences.
- 3 On April 17, 2020, Always Moving filed an application for mitigation of penalties in response to the Penalty Assessment admitting the violations and asking that the penalties be reduced (Mitigation Request). In its Mitigation Request, Always Moving explained that the business is new and that the Company believed it had complied with Commission regulations. After working with Staff to remedy the violations, the Company requested that the \$2,900 penalty associated with those violations be significantly reduced. Always Moving also noted that the Company has lost a substantial portion of its business due to the COVID-19 pandemic, and a penalty of this size would thus be difficult to pay.
- 4 On April 24, 2020, Staff filed a response recommending the Commission assess a reduced penalty of \$1,500, and that it suspend a \$1,000 portion of that penalty for a period of two years, and then waive it, subject to the conditions that (1) Staff will conduct a follow-up investigation within two years, or as soon thereafter as practicable, (2) the Company must not incur any repeat violations of acute or critical regulations during those two years, and (3) Always Moving must pay the \$500 portion of the penalty that is not suspended.
- 5 Staff explained that it believes such mitigation and suspension is appropriate, in part, due to Always Moving's corrective action safety plan, which described the steps taken by the Company to correct all of the violations and prevent future occurrences. Staff is also sensitive to the Company's financial situation and understands the impact of the COVID-19 pandemic on small businesses.

### DISCUSSION AND DECISION

- 6 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

---

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

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>

7 The Commission considers several factors when entertaining a request for mitigation, including whether a 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 a company’s compliance.<sup>5</sup> We address each violation category below.

8 **WAC 480-15-530.** The Penalty Assessment assessed a \$2,500 penalty for 25 violations of WAC 480-15-530 because Always Moving believed that its existing insurance coverage of \$300,000 was sufficient, and only learned of the \$750,000 insurance requirement during the routine safety inspection.

9 Staff recommends the Commission assess a reduced penalty of \$1,250 because Always Moving promptly corrected these violations by filing an updated insurance policy with the Commission on April 14, 2020. We agree with Staff’s recommendation. The Company admitted the violations, explained how the violations were corrected, and provided assurances of future compliance. In light of these factors, we assess a \$1,250 penalty for 25 violations of WAC 480-15-530.

10 **WAC 480-15-555.** The Penalty Assessment includes a \$200 penalty for two violations of WAC 480-15-555 for failing to acquire criminal background checks. Always Moving stated that it was unaware that this requirement included employees who are also family members. The Company has since corrected this violation by completing background checks for all employees and instituting procedures that will ensure background checks are conducted for all new employees moving forward.

11 Staff recommends the Commission assess a reduced penalty of \$100 because these violations have since been corrected, and the Company has taken appropriate steps to ensure that background checks are conducted for all new employees. We agree with

---

<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.

Staff's recommendation. The Company admitted the violations, corrected them, and explained how future violations would be prevented. In light of these factors, we assess a \$100 penalty for 2 violations of WAC 480-15-555.

- 12 **49 C.F.R. § 391.51(b)(2).** The Penalty Assessment assessed a \$100 penalty for one violation of 49 C.F.R. § 391.51(b)(2) because Always Moving failed to maintain inquiries into its driver's driving record in the driver's qualification file. The Company states that it now maintains inquiries into driver driving records in all driver qualification files and has implemented a new calendaring process to periodically review all files maintained.
- 13 Staff recommends the penalty be reduced to \$50 because the Company has implemented new procedures to prevent reoccurrence of this violation. We agree and assess a \$50 penalty for one violation of 49 C.F.R. § 391.51(b)(2).
- 14 **49 C.F.R. § 393.75(a)(3).** The Penalty Assessment assessed a \$100 penalty for one violation of 49 C.F.R. § 393.75(a)(3) because Always Moving's commercial motor vehicle had a flat tire. The Company did not address this violation in either the Mitigation Request or the corrective action safety plan.
- 15 Staff recommends no mitigation of this portion of the \$100 penalty. We agree. Always Moving did not address this violation or give assurance that the Company will maintain the responsibility to ensure that vehicles are free of defects that may potentially put the traveling public at risk. Accordingly, we conclude that a \$100 penalty assessment for this violation is appropriate.
- 16 We also agree with Staff that suspending a portion of the penalty is appropriate in light of the circumstances related to the COVID-19 pandemic. The Commission's primary objective in any enforcement action is to ensure compliance with a company's legal obligations; penalties both punish noncompliance and provide an incentive to comply in the future. The assessed penalty would further neither of these goals if the penalty creates an insurmountable financial burden for a regulated company. Accordingly, we find that suspending a \$1,000 portion of the penalty is appropriate subject to the conditions outlined in paragraph 4, above, with one clarification. Due to the economic uncertainties created by the COVID-19 pandemic, Always Moving must pay the remaining \$500

portion of the penalty that is not suspended by October 1, 2020. Nothing prohibits the Company from making its payment prior to this deadline.<sup>6</sup>

### FINDINGS AND CONCLUSIONS

- 17 (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.
- 18 (2) Always Moving is a household goods carrier subject to Commission regulation.
- 19 (3) Always Moving violated WAC 480-15-530 when it operated a motor vehicle without the required minimum levels of insurance coverage.
- 20 (4) The Commission should penalize Always Moving \$1,250 for 25 violations of WAC 480-15-530.
- 21 (5) Always Moving violated WAC 480-15-555 when it failed to acquire criminal background checks for prospective employees.
- 22 (6) The Commission should penalize Always Moving \$100 for two violations of WAC 480-15-555.
- 23 (7) Always Moving violated 49 C.F.R. § 391.51(b)(2) when it failed to maintain inquiries into a driver's driving record in the driver's qualification file.
- 24 (8) The Commission should penalize Always Moving \$50 for one violation of 49 C.F.R. Part 391.51(b)(2).
- 25 (9) Always Moving violated 49 C.F.R. § 393.75(a)(3) when it operated a commercial motor vehicle with a flat tire.
- 26 (10) The Commission should penalize Always Moving \$100 for one violation of 49 C.F.R. § 393.75(a)(3).

---

<sup>6</sup> This extended due date is consistent with the Commission's recent decision to suspend the payment of all penalties for 6 months for regulated transportation companies experiencing a severe economic downturn due to the COVID-19 pandemic.

- 27 (11) The Commission should suspend a \$1,000 portion of the penalty for a period of two years, and then waive it, subject to the conditions set out in paragraph 4, above.

**ORDER**

THE COMMISSION ORDERS:

- 28 (1) Joel Cisneros, d/b/a Always Movin' Moving Company's request for mitigation is GRANTED, in part, and the penalty is reduced to \$1,500.
- 29 (2) The Commission suspends a \$1,000 portion of the penalty for a period of two years, and then waives it, subject to the conditions that (1) Staff will conduct a follow-up investigation within two years, or as soon thereafter as practicable, (2) Joel Cisneros, d/b/a Always Movin' Moving Company, must not incur any repeat violations of acute or critical regulations during those two years, and (3) Joel Cisneros, d/b/a Always Movin' Moving Company, must pay the \$500 portion of the penalty that is not suspended.
- 30 (3) The \$500 portion of the penalty that is not suspended is due and payable no later than October 1, 2020.
- 31 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-903(2)(e).

DATED at Lacey, Washington, and effective April 28, 2020.

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.**