

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

<p>In the Matter of the Investigation of PNW MOVING AND DELIVERY LLC For Compliance with WAC 480-15-560 and WAC 480-15-570</p>	<p>DOCKET TV-200421 ORDER 01</p>
<p>In the Matter of the Penalty Assessment Against PNW MOVING AND DELIVERY LLC In the Amount of \$7,800</p>	<p>DOCKET TV-200419 ORDER 01 CONSOLIDATING DOCKETS; APPROVING SAFETY MANAGEMENT PLAN; UPGRADING SAFETY RATING TO CONDITIONAL; MITIGATING AND SUSPENDING PENALTY</p>

BACKGROUND

- 1 On May 19, 2020, in Docket TV-200421, 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 PNW Moving and Delivery, LLC (PNW Moving or Company), for compliance with Washington Administrative Code (WAC) 480-15 (Notice).
- 2 The Notice explained that, between March and May 2020, Commission staff (Staff) reviewed PNW Moving’s compliance with the requirements of WAC 480-15, which adopts provisions of Title 49 of the Code of Federal Regulations (CFR), Parts 390, 391, 392, 395, and 396. Staff recommended that the Commission cancel the Company’s household goods carrier permit unless the Company obtained Commission approval of a safety management plan. The Notice directed PNW Moving to file a proposed safety management plan by July 6, 2020. The Commission also noticed a brief adjudicative proceeding on June 24, 2020, 9:30 a.m., to determine whether the Commission should cancel PNW Moving’s household goods carrier permit.

**Pursuant to RCW 80.01.060(3)
This packet is the final
Order in this docket.**

3 On May 19, 2020, in Docket TV-200419, the Commission issued a penalty assessment against PNW Moving in the amount of \$7,800 as a result of violations discovered during the routine safety investigation (Penalty Assessment). The penalty includes:

1. A \$700 penalty for seven violations of WAC 480-15-555 for failing to conduct or retain paperwork containing criminal background checks for household goods carrier employees.
2. A \$6,900 penalty for 69 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.
3. A \$100 penalty for three violations of 49 C.F.R. § 391.51(a) for failing to maintain a driver qualification file on each driver employed.
4. A \$100 penalty for 90 violations of 49 C.F.R. § 395.8(a)(1) for failing to require drivers to prepare a record of duty status.

4 On June 1, 2020, PNW Moving filed with the Commission its application for mitigation of penalties. In the request for mitigation, Dmitriy Satir, the Company's owner, admitted the violations and requested that the penalty be reduced. Satir stated that he was willing to attend Commission-sponsored training and bring the Company into compliance.

5 On June 11, 2020, Staff filed a motion to consolidate Dockets TV-200421 and TV-200419. Staff submitted that both dockets involve the same operative set of facts. Staff represented that PNW Moving had no objection to this motion.

6 On June 18, 2020, PNW Moving submitted a proposed safety management plan.

7 On June 22, 2020, Staff filed with the Commission its evaluation of the Company's safety management plan (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 and to address the critical violations of five safety regulations: 49 C.F.R. § 391.51(a), 49 C.F.R. § 395.8(a)(1), 49 CFR § 391.45(a), and WAC 480-15-555.¹ Staff thus recommends that the Commission upgrade the Company's safety rating to conditional and extend its provisional operating authority until the Company receives a satisfactory safety rating.

¹ WAC 480-15-999 adopts by reference Title 49 of the Code of Federal Regulations pertaining to safety requirements for household goods carriers.

- 8 In its Evaluation, Staff recommends reducing the assessed penalty of \$7,800 to \$3,900. Staff further recommends that \$1,950 of the penalty be suspended for a period of two years, and then waived, subject to the conditions that: (1) Staff conducts a follow-up safety investigation at least six months from the date of this Order; (2) the Company may not incur any repeat violations of critical regulations; and (3) PNW Moving pays the \$1,950 portion of the penalty that is not suspended.
- 9 On June 22, 2020, Staff requested that the Commission cancel the brief adjudicative proceeding and decide this matter on a paper record. Staff stated that it conferred with PNW Moving and that the Company waived its right to a hearing.
- 10 On June 23, 2020, the Commission issued a notice canceling the June 24, 2020, hearing and informing the parties that the Commission would enter an order based on the parties' written submissions.

DISCUSSION AND DECISION

1. Staff's Motion to Consolidate

- 11 We consolidate dockets TV-200421 and TV-200419. The Commission may consolidate dockets when the facts or principles of law are related.² Staff requested that the Commission consolidate these dockets, and PNW Moving did not object to Staff's motion. These dockets concern the same underlying facts, and the Commission can most efficiently consider these issues by consolidating the dockets.

2. PNW Moving's Safety Rating

- 12 Washington Law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's compliance review conducted between March and May 2020 found 96 critical violations of regulations codified in 49 CFR Parts 391 and 395, 7 critical-type violations of WAC 480-15-555, and 3 non-critical violations of RCW 81.04.070 and 49 CFR Parts 390 and 396, which resulted in a proposed unsatisfactory safety rating.
- 13 On June 18, 2020, the Company submitted its proposed safety management plan and requested the Commission upgrade its safety rating. Staff determined that PNW Moving's safety management plan addresses each violation, identified 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 PNW

² WAC 480-07-320.

Moving's safety management plan is acceptable and satisfies the legal requirements of 49 CFR Part 385. We agree.

14 Based on Staff's Evaluation, the Commission finds that the Company has achieved compliance with 49 C.F.R. § 391.51(a), 49 C.F.R. § 395.8(a)(1), 49 CFR § 391.45(a), and WAC 480-15-555 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.

15 We also agree with Staff's recommendation to extend the Company's provisional period for its household goods operating authority. 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. Accordingly, the Commission finds good cause to extend the Company's provisional period until such time that the Company achieves a satisfactory rating.

3. The Commission's Penalty Assessment

16 The Commission assessed a \$7,800 penalty against PNW Moving for the violations discovered during Staff's routine safety investigation. PNW Moving admitted the underlying violations and requested mitigation of the penalty. Staff recommends reducing the penalty to \$3,900 and suspending \$1,950 subject to conditions, including the condition that PNW Moving does not incur any acute or critical violations upon reinspection.

17 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.³ The Commission also considers whether the violations were promptly corrected, a company's history of compliance, and the likelihood the violation will recur.⁴

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

⁴ Enforcement Policy ¶19.

18 We grant the Company's request for mitigation. We agree with Staff's recommendation to reduce the assessed penalty to \$3,900 and suspend a \$1,950 portion subject to the conditions that Staff recommends. PNW Moving has corrected the violations at issue and filed a proposed safety management plan, which Staff found provides adequate protections to ensure that the violations will not reoccur. In light of these factors, we find that a lesser penalty is sufficient to ensure compliance with WAC 480-15. The reduced penalty is substantial but not unduly punitive relative to the Company's small size.

19 PNW Moving must either pay the \$1,950 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement within 20 days of the effective date of this Order. Due to the difficult economic conditions regulated household goods companies are currently experiencing due to the COVID-19 pandemic, the Commission will consider a delayed start date for any proposed payment plan.

FINDINGS AND CONCLUSIONS

- 20 (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.
- 21 (2) PNW Moving is a household goods carrier subject to Commission regulation.
- 22 (3) PNW Moving committed 169 violations of WAC 480-15.
- 23 (4) PNW Moving cured the deficiencies that led to the proposed unsatisfactory safety rating. PNW Moving's safety rating should be upgraded to conditional, and the Company should be allowed to maintain its provisional household goods carrier permit.
- 24 (5) Pursuant to WAC 480-15-305(1)(b), the Commission should find good cause to extend PNW Moving's provisional period until such time that the Company achieves a satisfactory safety rating.
- 25 (6) Pursuant to WAC 480-07-320, the Commission should consolidate Dockets TV-200421 and TV-200419 because they share related facts and legal issues.
- 26 (7) PNW Moving should be penalized \$3,900 for 169 violations of WAC 480-15, \$1,950 portion of which should be suspended for a period of two years, and then waived, subject to the conditions that: (1) Staff conducts a follow-up safety investigation at least six months from the date of this Order; (2) the Company

may not incur any repeat violations of critical regulations upon reinsepection; and (3) PNW Moving must either pay the \$1,950 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement within 20 days of the effective date of this Order.

ORDER

THE COMMISSION ORDERS THAT:

- 27 (1) The Commission approves PNW Moving and Delivery, LLC's safety
management plan.
- 28 (2) PNW Moving and Delivery, LLC's safety rating is upgraded to conditional.
- 29 (3) PNW Moving and Delivery, LLC's provisional period is extended until such time
that the Company achieves a satisfactory safety rating.
- 30 (4) Dockets TV-200421 and TV-200419 are consolidated.
- 31 (5) PNW Moving and Delivery, LLC's request for mitigation is GRANTED in part,
and the penalty is reduced to \$3,900. A \$1,950 portion of the penalty is suspended
for a period of two years, and will be waived thereafter, subject to the conditions
that: (1) Staff conducts a follow-up safety investigation at least six months from
the date of this Order; (2) PNW Moving, LLC, may not incur any repeat
violations of critical regulations upon reinspection; and (3) PNW Moving, LLC,
pays the \$1,950 portion of the penalty that is not suspended.
- 32 (6) PNW Moving, LLC, must either pay the \$1,950 portion of the penalty that is not
suspended or file jointly with Staff a proposed payment arrangement within 20
days of the effective date of this Order.

Dated at Lacey, Washington, and effective June 24, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Michael Howard
MICHAEL HOWARD
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 480-07-825(2)(a) provides that any party to this proceeding has 20 days after the entry of this initial order to file a petition for administrative review (Petition). Section (2)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(2)(c) states that any party may file a response to a Petition within 10 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.

RCW 80.01.060(3) 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).