

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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| In the Matter of the Investigation of ESTABLISHED MOVING & STORAGE OF SEATTLE, INC., d/b/a ESTABLISHED MOVING & STORAGE, For Compliance with WAC 480-15 | DOCKETS TV-210741 and TV-210742 (<i>Consolidated</i>) ORDER 01 |
| In the Matter of the Penalty Assessment against ESTABLISHED MOVING & STORAGE OF SEATTLE, INC., d/b/a ESTABLISHED MOVING & STORAGE in the amount of \$36,000 | CONSOLIDATING DOCKETS; CANCELLING BRIEF ADJUDICATIVE PROCEEDING; APPROVING SAFETY MANAGEMENT PLAN; UPGRADING SAFETY RATING; EXTENDING PROVISIONAL PERIOD; IMPOSING AND SUSPENDING PENALTIES |

BACKGROUND

- 1 On October 5, 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 Established Moving & Storage of Seattle, Inc., d/b/a Established Moving & Storage (Established Moving or Company) for Compliance with Washington Administrative Code (WAC) 480-15 (Notice).
- 2 The Notice explained that Commission staff (Staff) conducted a compliance review of Established Moving's operations in September 2021 and cited the Company for 372 violations of critical federal and state safety regulations, which resulted in a proposed unsatisfactory safety rating. Based on its review, Staff recommended the Commission cancel Established Moving's household goods carrier permit unless the Company obtains Commission approval of a safety management plan. The Notice directed Established Moving to file a proposed safety management plan by November 3, 2021. The Notice also set a brief adjudicative proceeding for November 17, 2021, at 9:30 a.m. to determine whether the Commission should cancel Established Moving's household goods carrier permit.

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

3 On January 8, 2021, the Commission assessed a \$36,000 penalty (Penalty Assessment) against New Horizons Moving for the safety violations discovered during Staff's September 2021 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 \$35,400 penalty for 354 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.
- A \$100 penalty for 13 violations of 49 C.F.R. § 395.3(b)(2) for requiring or permitting a property-carrying commercial motor vehicle driver to drive after 70 on-duty hours in 8 consecutive days.

4 On October 28, 2021, Established Moving filed with the Commission a request for mitigation of the penalty, admitting the violations and requesting the Commission reduce the assessed penalty.

5 On November 1, 2021, Staff filed with the Commission its evaluation of the Company's safety management plan and penalty recommendation (Evaluation). Staff indicated that the Company waived its right to a hearing in both dockets and requested the Commission cancel the brief adjudicative proceeding and decide this matter on a paper record.

6 Based on its review of the Company's proposed plan, Staff determined 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 achieves a satisfactory safety rating.

7 Staff further recommends the Commission assess a reduced penalty of \$15,000. Finally, Staff recommends the Commission suspend a \$10,000 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; (2) the Company must not incur any repeat acute or critical violations upon re-inspection; and (3) the Company must pay the \$5,000 portion of the penalty that is not suspended according to the terms of a mutually agreeable payment plan.

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.

DISCUSSION AND DECISION

1. Consolidation and Hearing

8 Because the violations cited in Staff's September 2021 investigation gave rise to the enforcement actions taken in both dockets, the Commission exercises its discretion to consolidate these proceedings. Accordingly, Docket TV-210741 and Docket TV-210742 are consolidated. Based on the parties' agreement, the Commission cancels the brief adjudicative proceeding set for November 17, 2021, and resolves by this Order all issues raised in both dockets.

2. Safety Rating

9 Washington Law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's September 2021 compliance review of Established Moving found 372 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 October 28, 2021, the Company submitted its proposed safety management plan and requested the Commission upgrade its safety rating. Staff determined that Established Moving's 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 Established Moving's safety management plan is acceptable and satisfies the legal requirements of 49 C.F.R. 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 resulted in Staff's recommendation to cancel the Company's household goods permit. 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 \$15,000. 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 driver qualifications, vehicle maintenance, and internal training communications. Accordingly, we are satisfied that Established Moving has cured the violations that gave rise to the Penalty Assessment and has put adequate controls in place to prevent the violations from reoccurring.
- 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

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.

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 \$10,000 portion of the penalty for a period of two years, and then waive it, subject to the following conditions:

- a) Established Moving 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) Established Moving may not incur any repeat acute or critical violations of WAC 480-15 upon re-inspection; and
- d) Established Moving must pay the remaining \$5,000 penalty according to the following schedule:

| Installment | Due Date | Amount |
|-------------|------------------|--------|
| 1 | December 1, 2021 | \$500 |
| 2 | January 5, 2022 | \$500 |
| 3 | February 1, 2022 | \$500 |
| 4 | March 1, 2022 | \$500 |
| 5 | April 1, 2022 | \$500 |
| 6 | May 2, 2022 | \$500 |
| 7 | June 1, 2022 | \$500 |

⁶ *Id.* at ¶20.

⁷ *Id.*

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|----|-------------------|-------|
| 8 | July 1, 2022 | \$500 |
| 9 | August 1, 2022 | \$500 |
| 10 | September 1, 2022 | \$500 |

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) Established Moving is a household goods carrier subject to Commission regulation.
- 20 (3) Established Moving cured the deficiencies that led to the proposed cancellation of its household goods permit. Accordingly, Established Moving’s 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 Established Moving’s provisional period until such time as the Company achieves a satisfactory safety rating.
- 22 (5) Established Moving committed 372 critical violations of WAC 480-15 and Title 49 C.F.R.
- 23 (6) Established Moving does not dispute that the violations occurred.
- 24 (7) Established Moving should be penalized \$15,000 for 372 violations of WAC 480-15 and Title 49 C.F.R. The Commission should suspend a \$10,000 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) Dockets TV-210741 and TV-210742 are consolidated.

- 26 (2) The Brief Adjudicative Proceeding scheduled for November 17, 2021, is cancelled.
- 27 (3) The Commission approves Established Moving & Storage of Seattle, Inc., d/b/a Established Moving & Storage's safety management plan.
- 28 (4) Established Moving & Storage of Seattle, Inc., d/b/a Established Moving & Storage's safety rating is upgraded to conditional.
- 38 (5) The Commission assesses a \$15,000 penalty against Established Moving & Storage of Seattle, Inc., d/b/a Established Moving & Storage. The Commission suspends a \$10,000 portion of the penalty for a period of two years, and then waives it, subject to the conditions set out in paragraph 17, above.
- 29 (6) Established Moving & Storage of Seattle, Inc., d/b/a Established Moving & Storage must pay the \$5,000 portion of the penalty that is not suspended according to the installment plan set out in paragraph 17, above. If a payment is missed, the entire amount of the penalty, including the suspended portion of \$10,000, will become due and payable the day after the missed payment was due.
- 30 (7) Established Moving & Storage of Seattle, Inc., d/b/a Established Moving & Storage's provisional period is extended until such time as the Company achieves a satisfactory safety rating.

DATED at Lacey, Washington, and effective November 10, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Rayne Pearson
RAYNE PEARSON
Administrative Law Judge

Service Date: November 10, 2021

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).