



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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Date: April 20, 2022

To: Rayne Pearson, Administrative Law Judge, Administrative Law Division

From: Jason Sharp, Motor Carrier Safety Supervisor, Transportation Safety Division

Re: TV-220133 and TV-220134 PNW Moving and Delivery LLC
Evaluation of Safety Management Plan, Recommendations regarding the company's safety rating, and the cancellation of household goods mover operating authority (THG-067549)

On February 23, 2022, Commission staff (Staff) completed a routine safety investigation of PNW Moving and Delivery LLC, (PNW Moving or Company) which resulted in a proposed conditional safety rating.

Provisional household goods companies must achieve a satisfactory safety rating prior to receiving permanent status. As the Company has yet to achieve a satisfactory safety rating, the Commission afforded PNW Moving the same opportunity as companies that receive a proposed unsatisfactory safety rating to provide evidence, in the form of an approved safety management plan (SMP), showing that the company took corrective action to address the identified violations.

Commission rules prohibit motor carriers from operating beginning on the 61st day after the date of the notice of a proposed unsatisfactory rating. A company may request a change in its safety rating based on evidence that it has taken corrective actions to address the identified violations, and that its operations currently meet the safety standard and factors in 49 C.F.R. § 385.5 and 385.7. In this case, PNW Moving has until April 22, 2022, to come into compliance with applicable laws and rules by obtaining Commission approval of a SMP.

The proposed conditional safety rating was based on four violations of acute and critical regulations – 49 C.F.R. § 391.45(a), 395.8(a)(1), WAC 480-15-550, and 480-15-555.

“**Acute**” violations are those identified as such where non-compliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall safety posture of the motor carrier.

“**Critical**” regulations are those identified as such where non-compliance relates to management and operational controls. These are indicative of breakdowns in a company's management controls. Patterns of non-compliance with a critical regulation are linked to inadequate safety management controls and higher than average accident rates.

Acute and critical violations discovered during investigation:

1. Eighty-two violations of WAC 480-15-550 – Operating a commercial motor vehicle (CMV) without having adequate cargo insurance coverage. **(Acute)**
2. Three violation of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background checks or hiring an individual with a disqualifying conviction for a household goods carrier in the state of Washington. **(Critical)**
3. One hundred-nine violations of Title 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified. **(Critical)**
4. Sixty violations of Title 49 C.F.R. § 395.8(a)(1) – Failing to require a driver to prepare a record of duty status. **(Critical)**

In a March 10, 2022, Notice of Intent to Cancel, the Commission instructed PNW Moving to submit its proposed SMP no later than March 30, 2021.

On March 18, 2022, the Commission issued a penalty assessment against PNW Moving in the amount of \$25,600 due to violations discovered during the safety investigation. The penalty includes:

1. A \$8,200 penalty for 82 violations of WAC 480-15-550 for operating a CMV without having adequate cargo insurance coverage.
2. A \$300 penalty for three violations of WAC 480-15-555 for failing to conduct or retain paperwork containing criminal background checks or hiring an individual with a disqualifying conviction for a household goods carrier in the state of Washington.
3. A \$10,900 penalty for 109 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.
4. A \$6,000 penalty for 60 violations of 49 C.F.R. § 395.8(a)(1) for failing to require a driver to prepare a record of duty status.
5. A \$100 penalty for two violations of 49 C.F.R. § 396.3(b)(2) for failing to have a means of indicating the nature and due date of the various inspection and maintenance operations to be performed.
6. A \$100 penalty for one violation of 49 C.F.R. § 396.5(b) for an out-of-service violation of a wheel hub seal leak on a CMV.

On March 28, 2022, PNW Moving filed with the Commission an application for mitigation of penalties.

On April 13, 2022, PNW Moving and Staff participated in the scheduled brief adjudicative proceeding (BAP). During the BAP, Staff testified that the Company had not submitted an acceptable SMP. As related to the application for mitigation of penalties, Staff testified that PNW Moving had corrected the first-time violations of WAC 480-15-550, and that the penalty should be reduced to \$21,500. Judge Pearson directed Staff to submit a final evaluation of PNW Moving's SMP by no later than April 20, 2022.

On April 19, 2021, PNW Moving submitted a SMP addressing each violation noted during the investigation. Staff only recommends approving a SMP that addresses the following seven items:

1. The plan must address each acute, critical, or serious violation discovered during the most recent investigation. It must also include corrective actions that address other violations noted during the investigation.
2. Identify why the violations were permitted to occur.
3. Discuss the actions taken to correct the deficiency or deficiencies that allowed the violations to occur. Include actual documentation of this corrective action.
4. Outline actions taken to ensure that similar violations do not reoccur in the future. The plan must demonstrate that the company's operations currently meet the safety standard and factors specified in 49 C.F.R. § 385.5 and 385.7. To do so, the plan must demonstrate the company now has adequate safety management controls in place which function effectively to ensure acceptable compliance with applicable safety requirements.
5. If the request includes actions that will be conducted in the near future, such as training, reorganization of departments, purchasing of computer programs, etc., companies must include a detailed description of the activity or training and a schedule of when that activity will commence and when it will be completed.
6. Include any additional documentation relating to motor carrier safety and the prevention of crashes that the company believes supports its request.
7. Include a written statement certifying the company will operate within federal and state regulations and the company's operation currently meets the safety standard and factors specific in 49 C.F.R. § 385.5 and 385.7. A corporate officer, partner, or the owner of the company must sign the statement.

Summary and Recommendations

Staff reviewed PNW Moving's SMP and concludes it is acceptable and meets the requirements of 49 C.F.R. § 385. The plan demonstrates that the Company has taken appropriate action to develop a compliant safety program and implemented a system, that if followed, should prevent future repeat violations.

Documentation of driver qualifications, maintenance, leasing, hours of service records, and criminal background documents were included in the plan.

The Company took all the required steps to bring its safety operations into compliance with Commission regulations. PNW Moving submitted a SMP that addresses each violation, identifies how the violations occurred, describes the steps taken to correct them, and put controls in place to ensure the Company maintains compliance.

Staff recommends the Commission accept PNW Moving's SMP. Staff further recommends that the Commission not cancel the Company's permit and extend the provisional period a second time with conditions:

1. PNW Moving sends all employees to Commission sponsored household goods training, either through the Commission's online learning system or the live virtual class provided by Staff, no later than June 15, 2022;

2. Staff conduct a follow-up safety investigation in one year from the date of an order or as soon thereafter as practicable;
3. PNW Moving must obtain a satisfactory safety rating following the investigation;
4. Upon reinspection, PNW Moving may not incur any repeat violations of acute, critical, or critical type regulations;
5. The Company must get current with any regulatory fees and penalties as a result of late annual report filings by June 30, 2022;
6. PNW Moving pays its assessed penalty through a mutually agreeable payment arrangement approved by Staff. The payments must be made by the specified dates in the payment arrangement, unless approved by Staff prior to the established deadline; and
7. Failing to meet any of these conditions would constitute grounds for cancellation of the Company's provisional permit.

On April 19, 2022, Staff and PNW Moving came to a mutual agreement on a proposed payment arrangement of the recommended reduced penalty of \$21,500, as follows:

Payment Plan		
Installment	Due Date	Amount
1	September 15, 2022	\$900
2	October 17, 2022	\$900
3	November 15, 2022	\$900
4	December 15, 2022	\$900
5	January 16, 2023	\$900
6	February 15, 2023	\$900
7	March 15, 2023	\$900
8	April 17, 2023	\$900
9	May 15, 2023	\$900
10	June 15, 2023	\$900
11	July 17, 2023	\$900
12	August 15, 2023	\$900
13	September 15, 2023	\$900
14	October 16, 2023	\$900
15	November 15, 2023	\$900
16	December 15, 2023	\$900
17	January 15, 2024	\$900
18	February 15, 2024	\$900
19	March 15, 2024	\$900

20	April 15, 2024	\$900
21	May 15, 2024	\$900
22	June 17, 2024	\$900
23	July 15, 2024	\$900
24	August 15, 2024	\$800

Staff recommends the Commission grant the Company's request for payment arrangements. PNW Moving is aware that if it fails to pay any installment by the due date, the entire remaining balance will immediately become due and payable without further Commission order.